

## **PHILIPPINE STATEMENT**

### **INTERNATIONAL EXPERT MEETING ON THE MANAGEMENT AND DISPOSAL OF RECOVERED AND RETURNED STOLEN ASSETS, INCLUDING IN SUPPORT OF SUSTAINABLE DEVELOPMENT 14-16 FEBRUARY 2017, UN CONFERENCE CENTER, ADDIS ABABA**

#### **SESSION 5:**

#### **USE OF RETURNED ASSETS TO COMPENSATE VICTIMS AND SUPPORT THE SUSTAINABLE DEVELOPMENT GOALS (SDGs) AND THE ADDIS ABABA ACTION AGENDA (AAAA)**

**16 February 2017**

Good afternoon. I have been asked to discuss the Philippine experience in the recovery and return of stolen assets, and how these recovered and returned assets have been used and to what purposes.

I wish to first of all, thank our gracious hosts, Ethiopia and Switzerland, for organizing this Meeting, as well as the UNODC and STaR, which brings together experts from across the disciplines of Asset Recovery and of financing and sustainable development. Indeed, the 2030 Agenda for Sustainable Development and its 17 SDGs point us towards a multi-disciplinary and cross-cutting approach to tackling our collective development aspiration and to veer away from a silo, mind-my-own-business approach.

I am now handling sustainable development and financing matters for the Philippine mission to the UN in New York, and so I approach this topic from that perspective. This meeting however brings me back to my previous incarnation as a lawyer at the Legal Office of our Foreign Ministry. Back then, we negotiated the PH-Swiss and PH-ROK Mutual legal Assistance Treaties (MLATs), and participated in the UNCAC negotiations and 1<sup>st</sup> cycle review, as well as the crafting of our Anti-Money Laundering Law. We worked on our own with the geographic or policy office involved, but even if we had an economic office within the ministry, we did not involve them. Nor did we involve our economic planning agency. Rather, we worked with the Justice Ministry and Solicitor-General's office.

On first impression, it may seem difficult to find the connection between stolen assets and the SDGs, and in particular SDG 16.4. But if we think that trillions of dollars are needed to achieve the 2030 Agenda and the SDGs, the next question is where do we get those funds? As they say, anything helps. When there are funds that rightfully belong to the State and are public resources are stolen and siphoned off for private purposes, then getting back those funds, and not losing them to corruption in the first place, becomes all the more crucial, because we could have and should have used those funds for national priorities.

Now, as can be illustrated by our experience, which I will discuss in a while, these national priorities have not always been filtered through the lens of sustainable development or even just economic development, for that matter. It was filtered through the lens of social justice, human rights violations and consequently the need to compensate individual victims.

For purposes of this discussion, I will limit myself to the specific case of the recovery of the Marcos assets.<sup>1</sup>

The Philippine narrative on stolen assets is centered on the Marcos ill-gotten wealth. Ferdinand Marcos was President of the Philippines from 1965-1986, a period of 20 years. He was removed from his position by a peaceful People's Revolution in 1986. The first act of the new government was to create a Commission – called the Presidential Commission on Good Government – mandated to recover the ill-gotten wealth of President Marcos, his family and cronies, invest graft and corruption cases and ensure that these practices shall not be repeated again. That was in 1986.

It is now 2017. 30 years have passed. And yet, we still have not recovered all of the \$10 billion that Marcos and his cronies are estimated to have amassed and stolen. To date, we have only recovered \$3.7 billion. Many of these assets – cash deposits, shares of stock, real estate properties, paintings and works of art, jewelry, even gold bars, to name a few – are still tied up in litigation both in the Philippines and in foreign countries. Specifically, we have 282 pending cases involving assets with an estimated worth is \$711.5 million. And we continue to discover more assets. At the same time, many are still yet to be found. It is an understatement to say that it has been a long, arduous, process.

It took us 10 years to recover the first \$700 million from Switzerland. Let it be noted that this was a pioneering and landmark case since when we requested mutual legal assistance from Switzerland to recover the alleged Marcos ill-gotten wealth in 1986, when there were no MLATs, law or case law in Switzerland to guide this effort.

How were these funds and assets recovered or returned used?

## **1. Remittances to the Comprehensive Agrarian Reform Program (CARP)**

By virtue of a law passed by Congress in 1988,<sup>2</sup> the government was mandated to use the funds from the recovered/returned Marcos assets for the **Comprehensive Agrarian Reform Program**, a government initiative that aims to grant landless farmers and farmworkers ownership of agricultural

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<sup>1</sup> Based on the 2015 Annual Report of the Philippine Commission on Good Government (PCGG), which may be accessed at <http://pcgg.gov.ph/wp-content/uploads/2016/12/Accomplishment-Report-FY-2015.pdf> and the PCGG 30th Year Milestone Report, which may be accessed at <http://pcgg.gov.ph/through-the-years-pcgg-at-30-recovering-integrity-a-milestone-report/>

<sup>2</sup> Republic Act 6657

lands, as a social justice measure. It was scheduled to have been completed in 1998 but was extended to 2008 (by another law)<sup>3</sup> and again in 2009 for another five (5) years.

For this, a new ministry was created, the Department of Agrarian Reform.

So far, \$1.735 billion dollars have been given to the CARP. In addition, 3,057 hectares of agricultural land recovered from Marcos associates (“cronies”) have been transferred distributed to farmer beneficiaries.

Beyond distribution of land, these funds have been used for the construction of farm to market roads, bridges, irrigation facilities, acquisition of post harvest facilities, rural electrification, potable water supply, school buildings, extension and training services, credit assistance, scholarships, creation of agrarian reform committees, assistance to 5,053 farm organizations with nearly 500,000 members.

## **2. Human Rights Victims Reparations**

It must be noted that when our government was filing the cases for recovery of the cash deposits and securities in Switzerland, there was a third party claim from human rights victims of the Marcos government, numbering more than 10,000 persons. They were eventually told to file their claims in the probate of the Marcos estate or against the current government as the human rights abuses were considered acts of the State.

In 2012, our Congress enacted a law “providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime” otherwise known as the “Human Rights Victims Reparations and Recognition Act.”<sup>4</sup>

For this, it allocated \$222 million dollars, which form part of the \$700 million funds transferred to the Philippine Government by order of the Swiss federal Supreme Court in 1997. A Compensation Board was created to evaluate claims, which to date has received 75,730 applications. So far, initial payments are expected to be released only to 4,000 eligible claimants. The others are still being evaluated.

To identify the victims, the law defines who are considered human rights victims, including a time period. There is conclusive presumption of this if that person is among the claimants in the class suit in the Human Rights litigation case against the estate of Marcos filed in Hawaii. Then there are also those recognized as human rights victims by the Bantayog ng mga Bayani Foundation, a CSO.

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<sup>3</sup> Republic Act 8352

<sup>4</sup> Republic Act No. 10368

The law also provides for non-monetary compensation and the creation of a memorial for the human rights victims of Martial Law.

### **3. Development of the Coconut Industry**

Among the stolen assets were stocks/shares in San Miguel Corporation, one of the biggest conglomerates in the Philippines and in Asia. It was proven that these shares were bought with funds derived from a tax levied on coconut farmers, supposedly for the development of our coconut industry. To date, these are valued at \$2.1 billion assets and are in escrow.

In November 2016 the Senate Committees on Agriculture and Finance approved Senate Bill (SB) 1233, or “An Act Creating the Coconut Farmers and Industry Fund, Providing for its Management and Utilisation and for Other Purposes,” which seeks to create an 11-man Coconut Farmers and Industry Trust Committee. This law will eventually decide how the funds will be used for the development of the coconut industry.

As you see, the funds are all remitted to the National Treasury and a law by Congress is needed to determine the use of these funds. So far, all these three (3) uses that I mentioned are based on idea of social justice and reparations for victims. During this period, consideration of “development” and inclusion of our development planning agency did not really figure into the decision-making process on how the funds were to be used.

It is noteworthy though that our new draft Philippine Development Plan for 2018-2022– which is formulated via an inter-agency process led by our National Economic and Development Authority (NEDA) -- identifies the forfeiture and recovery of assets/wealth from or used for the commission of crimes as one of the weaknesses of the Philippine criminal justice system. Hence it lays down as a strategy that measures will have to be taken to strengthen civil forfeiture and recovery mechanisms especially in relation to cases of corruption, among others.

And last January, in our 4<sup>th</sup> State Conference for the Implementation and Review of UNCAC, the Resolution adopted by the participating agencies and submitted to our President “emphasized the importance of integrating the Philippines’ UNCAC compliance with the NEDA’s 10-point socio-economic agenda, particularly in areas of poverty reduction; accountable, responsive and participatory governance, fairs and stable order based on international rule of law; and peace and security.”

These developments – together with our support for Paragraph 25 of the Addis Ababa Action Agenda -- indicate a growing recognition of the linkages between the use of stolen assets for the development priorities and with the 2030 Agenda and achievement of the SDGs.

The basic challenge is making the 2030 Agenda and the SDGs known to all stakeholders, including our asset recovery specialists, so that the connection can be made between SDGS and stolen assets. A crucial stakeholder is our parliament – for it is our Congress that determines where the recovered funds are to be used. Our House of Representatives has a Special Committee on the Sustainable Development Goals, whose mandate is the legislative agenda for the achievement of the SDGs. One of the bills currently under consideration is an “An Act Establishing the Sustainable Development Goals (SDG) Fund”<sup>5</sup>, for the use of local government units. It is notable that under this bill, the funds shall be sourced from sweepstakes/lotto draws, gaming revenue and sin taxes. Why not include recovered funds from the Marcoses, which are in escrow and in banks, as sources of funding too?

Of course, before we can use these stolen assets and the funds, we need to identify and recover them, and conclude pending cases. We hope this does not take another 30 years. Indeed, it would be useful if guidelines on asset recovery are developed, as called for by paragraph 25 of the Addis Ababa Action Agenda.

Thank you for your attention.

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<sup>5</sup> [http://www.congress.gov.ph/legisdocs/basic\\_17/HB04390.pdf](http://www.congress.gov.ph/legisdocs/basic_17/HB04390.pdf)  
<https://www.senate.gov.ph/lisdata/2500821538!.pdf>