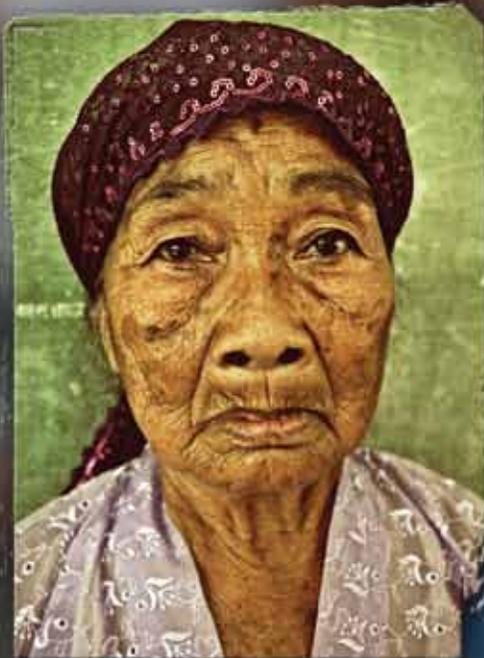




A Human Rights
Class Action
Distribution
in the
Philippines
By
Robert A. Swift



PHOTOGRAPHED BY Antonio Oquias



Filipinos wait their turn to receive their compensation for being victims of the regime of former Philippines President Ferdinand Marcos.

Antonio Abiog approached me in a wheelchair, his emaciated body slumped to one side. Eighty-four years old with thinning gray hair and sunken cheeks, his eyes focused on me. After examining his paperwork, I located a check bearing his name for 43,200 pesos (US \$1,000). As I placed it in his hand and wrapped his fingers around it, tears flowed down his cheeks. An earlier stroke made his words indecipherable. His son, standing behind him, explained that his father was crying tears of joy for he had never thought he would receive compensation for the torture he suffered in one of Ferdinand Marcos' detention centers in the Philippines.

Filipino Victims Sue Marcos in the U.S.

Abiog was one of over 7,500 Filipinos eligible to receive money in the *Marcos Human Rights Litigation*. Filed in 1986, the case consumed 25 years of arduous litigation to reach a point where the class members received their first compensation. It was the first class action human rights case in American and world jurisprudence. The class members were torture victims or the heirs of those summarily executed or disappeared. These *jus cogens* human rights violations occurred during the martial law years 1972 through 1986 when Marcos resorted to force to maintain himself as a virtual dictator in the Philippines. Marcos' *modus operandi* was to sign arrest orders of political detainees personally. Tens of thousands of Filipinos, mostly dissidents and opponents of the Marcos regime, were arrested and detained for lengthy periods with no charges ever filed against them. A subset was tortured for information. Almost 5,000 were summarily

executed, among whom 1,000 simply disappeared.

Marcos died in 1989 in Hawaii three years after the People Power revolution toppled his regime. The litigation, filed in Hawaii under the Alien Tort Statute, was vigorously defended by his widow, Imelda Marcos, and son, Ferdinand R. Marcos. The Judicial Panel on Multidistrict Litigation assigned the case to Judge Manuel L. Real, the then chief judge of the Central District of California. He appointed me lead counsel. In 1991 the case was certified as a class action. The liability phase of the jury trial began in 1992, followed by the exemplary damage and compensatory damage phases in 1994 and 1995. The same jury, after completion of all phases of trial, returned an overall verdict for 9,539 class members for nearly \$2 billion. The judgment was affirmed by the Ninth Circuit in 1996 and is now a landmark in American and international human rights jurisprudence.



Robert A. Swift was lead counsel in the class action human rights damages distribution for victims of the Marcos regime. Each eligible class member received \$1,000.

Collection Is Difficult

Collection of the judgment proved exceedingly difficult. Ferdinand and Imelda Marcos kept few assets in their own names, preferring alias names and shell corporations in tax havens such as Panama, Liechtenstein and Switzerland. Philippine courts have refused to this day to recognize the class action judgment even though Philippine procedure has a class action rule nearly identical to Federal Rule 23. The new Philippine government pursued Marcos assets worldwide and spent millions of dollars on legal counsel to oppose the efforts of the human rights victims to recover the Marcos assets. Even a ruling delivered by the United Nations Human Rights Committee that the Philippine government had violated international law by delaying enforcement of the class judgment did not provoke any change. Switzerland and the United States also opposed collection efforts by the victims.

The recovery of \$10 million of Marcos money in the United States – after six years of protracted litigation – was fortuitous and enabled the current distribution of \$1,000 to all eligible class members. The amount was not adequate compensation for the abuses committed, but it was a meaningful start. The amount represented roughly two years' earnings for a farmer and four years' earnings for a housekeeper. Many of the female claimants were housekeepers

since that was the only work an under-educated mother with six children could perform after her husband was killed.

Distribution to Victims

The distribution marked the first time that human rights victims in Asia had ever been compensated for the abuses they suffered. But distribution presented its own problems. The class had originally been constituted in 1993, some 18 years earlier. Addresses were old and most had not been updated. Worse, as I learned during distribution, 15 to 20 percent of the class members were deceased and necessitated replacement checks to the next of kin. Even use of the mail had its limitations. The Philippine postal system was unreliable at best and corrupt in some regions. If checks were mailed, they could be stolen and cashed by persons using false identification papers. So there was no effective alternative to distributing checks to each eligible claimant in person.

In February 2011 letters were mailed to eligible claimants informing them of their eligibility and the date and place where they could go to receive their checks. As evidence of their eligibility, they were asked to bring with them my letter and two forms of photo identification. I selected 16 distribution points throughout the Philippines where the largest numbers of claimants resided. Human rights groups, the Philippine

Despite these demanding conditions, distribution was highly effective. Almost 85 percent of the checks were distributed in five weeks.



Commission on Human Rights (CHR) and the media all publicized the locations and dates.

A press conference on Feb. 28 launched the distribution. It was held at Club Filipino in Metro Manila where Cory Aquino was inaugurated as president 25 years earlier. Philippine and international media attended the press conference and spread the news across Asia, the Middle East and the United States.

Security Issues

Distribution posed security issues. Criminal groups might try to steal the checks and negotiate them before stop payments could be issued. Six of the distribution locations were in Mindanao where 30 percent of the claimants resided. A sporadic armed insurgency was alive and well in Muslim provinces there, and kidnappings were commonplace. At the urging of the CHR, the Philippine National Police and the armed forces of the Philippines provided security in the form of plainclothesmen and armed soldiers. They accompanied my colleagues and me from airport to hotel to distribution center. Fortunately, there was no violence.

The claimants had a different security issue. Once they received a check they needed to convert it to currency and find their way home. Few had bank accounts. The bank the checks were drawn on had 500 branch offices throughout the country and at least one branch in each distribution city. Claimants usually arrived with one or two family members and went to the bank immediately after receiving a check. There was but one reported robbery of a claimant.

Distribution at each location was designed to be as quick and efficient as possible. A triage system was employed to speedily process those claimants whose names were on a list and who brought my letter and photo identification. Those on the list but lacking my letter were processed separately and asked questions about their claims to verify that they were the correct claimant. Family members of deceased claimants were asked to produce death certificates and questioned as to whether they were in

fact the next of kin. Those not on the list went to a third table where they completed forms explaining why they believed they had an eligible claim. Local members of human rights groups were employed to assist with the processing. A colleague or I again scrutinized the list for the claimant's name and reviewed identification papers before handing out a check. For those who had to wait, there were chairs and water since the weather in this pre-summer period was predictably hot and humid.

The Poorest of the Poor

The claimants were truly the poorest of the poor. The death of a loved one had taken an emotional and financial toll on their lives. Many were older and hardship was evident on their wrinkled, wizened faces. The oldest to appear was 89 years old though quite a few were in their 70s and early 80s. Most traveled by bus, sometimes with money loaned from relatives. Depending on where they lived, some traveled for as much as 10 hours, often at night. I was surprised to see as many as 100 people waiting for me when a distribution center opened at 8 a.m.

Most smiled at meeting me and expressed their gratitude. A few told me they believed justice had been done. Some showed me their gunshot wounds, amputation or photos of their deceased loved ones. Others embraced me; several cried in my arms. A firm handshake needed no translation.

Curiosity compelled me to inquire how individual claimants planned to spend the money. Many farmers said they would buy a carabao (water ox) or acquire more land. Others planned to place an engraved stone at the site of their loved one's grave or repair their house. Some wanted to educate their children or grandchildren or buy medicine. In Mindanao, where men often have more than one wife, one man told me that now he could afford a third wife.

Despite these demanding conditions, distribution was highly effective. Almost 85 percent of the checks were distributed in five weeks. Considering that eligible claimants had to appear with their papers at a place and on a date with their papers in hand, the turnout

was remarkable. A second phase of distribution improved distribution to 97 percent.

Instilling Fear and Discontent

In a letter handed to me while I was in Mindanao, a cloistered nun described the torture and murder of her brother, Emmanuel. The story reminded me of many other accounts presented in court during the trial. Sister Scholastica Rosales explained how Emmanuel, a teenage leftist, was seized by the military, tortured over several days, then shot and thrown into a remote mass grave while still breathing. To the anger of the local military commander, her family later found the grave with the help of a witness to the killing and reburied her brother's decomposed remains. She wrote, "it is ironic that people who are supposed to protect and secure peace and order are the ones who cause and instilled fear, discontent, injustice and death." She stated she cried four times while writing the letter and blessed those attorneys who had persevered to obtain justice for the victims. In a refrain born of her faith, she added, "I forgive those who caused so much pain and suffering to us."

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Too often victims of human rights abuses are forgotten. Governments, especially our own, treat victims like pawns while they castigate other governments for committing human rights abuses. When repressive dictators are overthrown, new governments ignore the victims. Human rights groups shine a spotlight on abuses and abusive regimes but have more important priorities than the welfare of victims. It is ironic that it is far easier to recover for property damage from a right-angle auto collision than for torture in a third-world country. The Marcos case did not change this but did show an enlightened approach the judiciary can take to achieve justice and compensate victims of heinous abuses. ■

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