



SAMAHAN NG EX-DETAINEES LABAN SA DETENSYON AT ARESTO

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POSITION PAPER

of the Samahan ng Ex-detainees Laban sa Detensyon at Aresto (SELD A) on the Substitute Bill in the Senate known as the “Human Rights Victims Compensation Act of 2011”

It has been twenty five years since the dictator Marcos was ousted by people power and eighteen years after the landmark decision by the US Court granting the long-sought justice for the 9,539 victims of martial law and an award for reparation. But the Philippine government has yet to reciprocate the said decision of another country rendering justice for the martial law victims

We believe that rendering justice to victims – which includes restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition of the crimes committed against the Filipino people – is the core principle of the rule of law and one of the main pillars of democracy. When the Samahan ng mga Ex-detainees Laban sa Detensyon at Para sa Amnestiya (now Samahan ng Ex-detainees Laban sa Detensyon at Aresto) or SELDA initiated the class action suit against the Marcos family for the thousands of victims of human rights violations during the dictatorship in 1986, they had these principles in mind.

Thus, a class action suit for 10,000 victims was filed before the US Federal District Court System on April 7, 1986. The suit was consolidated with two other cases - that of the 21 Filipino expatriates in the US led by Vic Clemente and Fluellen Ortigas and the case of three victims for the case of Francisco Sison, Jose Maria Sison and Jose Piopongco - into MDL 840. The court ruled against the Marcos family on Sept. 22, 1992, finding the dictator guilty of crimes against humanity. The court ordered the Marcos family to pay an exemplary damages of US 1.9 billion and later, compensatory damages of US\$776 million to the victims.

The process of seeking justice and reparation is so tedious and extremely difficult for the victims of martial rule. It seems like reliving again those long years of unjust detention and tortures and the unbearable suffering wrought about by the worst forms of persecution against the victims.

Yet, despite the victims now being very old, sickly and dying, the struggle for justice has no rest. The fight is still on, be in the halls of congress or in the streets and elsewhere. The victims of martial rule, as they had held it decades ago, proudly still, held high the banners of freedom and democracy. The struggle for justice lives on.

We thus call on our senators to join us and heed our call for justice.

Congress with both houses would make its mark in history if it will enact a law that would acknowledge the State's moral and legal obligation to render justice to the victims of the worst forms of human rights violations during martial law. We believe that the immediate passage of an act for indemnification of martial law victims will serve as a beacon and reminder to everyone not to repeat any injustices and human rights violations.

Thus, we express our support to the Substitute Bill in the House of Representatives. We also recognize the Substitute Bill in the Senate being prepared by the Senate Committees on Justice, Human Rights and Finance. However, there are serious questions and objections that we are posing as regards this Substitute Bill in the Senate, which includes the following:

1. The Senate Substitute Bill must recognize and duly take into consideration the final judgment of the US Federal Court System in the Human Rights Litigation against the Estate of Ferdinand E. Marcos (Multi District Litigation 840) and the Swiss Federal Supreme Court Decision of December 10, 1997.

Through these measures, the State acknowledges its moral and legal obligation to compensate the 9,539 class suit plaintiffs and the 24 direct action plaintiffs who were already adjudged as victims by the US Federal Court System in Honolulu, Hawaii. In this class action suit, the victims have gone through a rigorous process of screening, first by the human rights organizations themselves who made sure that the complainants are legitimate victims, and the Marcos lawyers who would make sure that a fake claimant, if any, is exposed. Even the Hawaii court conducted its own processing of the victims. The US court made awards to certain categories of victims through three phases of the trial (on liability, exemplary damage and compensatory damage), with jurors and experts evaluating the claims in accordance with certain norms and measurements under the well-developed tort system in the US. Thus, it is but just that Senate primarily recognizes this historical landmark judgment and acknowledges the established right of those already proven as victims in the US court and make immediately available compensation for them.

Sections 4 and 5 of the Substitute Bill provides for the rules on “presumption”, or on whether or not a person applying as a human rights victim under this bill will be considered prima facie a “human rights victim” as defined in said bill. The House version of the bill has provided that persons listed in the Hawaii judgment will be considered *conclusively* a “human rights victim”, which means that all the applicant applying under said provision has to prove is that he or she is one of the Hawaii judgment-creditors,

and nothing else. On the other hand, the Senate version merely provides for a *prima facie* or *disputable* presumption, which presumption is susceptible of being contradicted by evidence to the contrary. A *conclusive presumption* is the better view on this matter, on the basis that a Hawaii judgment-creditor already has proven his case in the Hawaii court and need not undergo the same gruelling proceeding all over again.

2. The Senate Substitute Bill should acknowledge and recognize the significant role of the main organizations that worked for the victims immediately after martial law—particularly in documenting their cases and filing of complaints for their compensation. SELDA is the main organizations that conducted the documentation of the 9,539 human rights victims immediately after martial law. Together with the Task Force Detainees of the Philippines (TFDP) and the Friends and Families of Victims of Disappearances (FIND), these were the non-government organizations that were very active in monitoring and documenting human rights violations during the Martial Law Period. These three should be the main organization included in the commission that will be tasked to identify the victims and implement the enacted law.

3. The most questionable provision in Section 3 of the Senate Substitute Bill is the qualification that for a human rights violation to be compensable, the killing, torture or infliction of physical injuries must be committed against a '*Filipino citizen peacefully exercising civil or political rights*'.

This provision could be used to exclude anyone who was an MNLF, NPA, Light a Fire movement, EDSA or other supposed non peaceful rebellions, arrested and summarily executed, on the ground that he was not '*peacefully exercising*' her rights when she was 'salvaged'. Remember that it was at this period when the anti-dictatorship forces have reached such breadth, from armed to non-armed resistance, because of the ferocity of the military violence.

International Humanitarian Law prohibits the summary execution not only of civilians but also of combatants (including guerrilla fighters) being held as prisoners of war. Under international humanitarian law, arrested Filipino guerrillas fighting the Japanese during World War II cannot be summarily executed or tortured by the Japanese. This Bill impliedly declares that once you resorted to armed resistance, you have forfeited your human rights.

We appeal to all our senators to review this bill, considering the above-mentioned questions and objections, to act compassionately for the aging and sickly victims of Martial Law, and together with the House of Representative enact a law that will render justice and indemnification for the victims.