

Returning illicit assets: the procedure under the 2015 Act

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

According to the Federal Department of Foreign Affairs, Switzerland has returned more than USD 2 billion of illicit assets of politically exposed persons since the 1980s. This article traces how the practice moved from case-by-case freezes to the Foreign Illicit Assets Act of 2015, and what the Abacha case revealed about the conditions under which a return succeeds.

1 Three stages, from ad hoc freezes to codification

The history of asset recovery in Switzerland can be read in three stages. The first opened in 1986 with the Marcos and Duvalier cases, when the Federal Council froze assets case by case on the basis of the Federal Constitution, in the urgency that followed the fall of a ruler. According to Public Eye, the Salinas case of 1996 and the Mobutu case of 1997 exposed weaknesses in Swiss legislation on illicit financial flows. They led to the Anti-Money Laundering Act (AMLA) of 1998, which requires financial intermediaries to apply heightened diligence to politically exposed persons.

The second stage, in the 2000s, brought the large returns: Abacha to Nigeria, Dos Santos in Angola, Nazarbayev in Kazakhstan and Montesinos in Peru. These cases showed that a return depends on cooperation with the state of origin, on a judicial confiscation decision and on safeguards over the use of the funds. The Mobutu case marked the limits of the system, since the frozen funds were released in 2009 to the former president's entourage for lack of cooperation from the Democratic Republic of the Congo.

The third stage, codification, followed the Arab Spring. The Federal Council froze the assets of Ben Ali on 19 January 2011, those of Mubarak on 11 February 2011 and, as a preventive step, those of the Libyan regime on 21 February 2011, according to the Federal Department of Foreign Affairs (FDFA). A special statute known as the Lex Duvalier had entered

into force on 1 February 2011, permitting the confiscation of about CHF 5.7 million frozen since 1986, as MercoPress reported on 2 February 2011. These steps led to the Federal Act of 18 December 2015 on the Freezing and Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act, FIAA), in force since 1 July 2016.

2 The Abacha case

Sani Abacha, Nigerian head of state from 1993 to 1998, embezzled more than USD 2.2 billion of public funds according to Public Eye. After his death part of the money was traced to Switzerland, where nearly USD 700 million was frozen on some 140 accounts held with Swiss financial intermediaries. The freeze dates from 1999 and followed a request by Nigeria for mutual legal assistance. RTS reported on 28 June 2010 that Bern had blocked more than USD 700 million since that year.

A judgment of the Federal Supreme Court of February 2005 allowed the assets to be handed over, after which Nigeria recovered USD 808 million between 2005 and 2009. When the last tranche of USD 7 million was paid in March 2010, the Swiss foreign minister stressed that Switzerland was the only country to have returned all the funds found on its territory, as reported by RTS and later by Jeune Afrique on 17 March 2015.

A second phase concerned assets held in third countries, notably Luxembourg, which had been frozen because of criminal proceedings opened in Geneva against one of the dictator's sons. Under a settlement of July 2014 between Nigeria and the Abacha family, the confiscated assets were allocated to Nigeria while the charges against the son were dropped. The Geneva Public Prosecutor's Office repatriated and confiscated the funds in 2014. In 2015 the Geneva judiciary decided to return USD 380 million. On 1 December 2017 the Federal Council approved an agreement with Nigeria and the World Bank on the return of nearly USD 321 million. Le Temps described it on 5 December 2017 as the second-largest sum ever returned by Switzerland in a corruption case. In total, Switzerland has returned more than USD 1 billion to Nigeria.

Nigeria's Geneva lawyer, Enrico Monfrini, told Le Temps that his firm had found the funds and had them frozen, with the Confederation acting only as a last resort.

3 How the returned funds were used: two readings

Public Eye reports on studies published in 2006 by the World Bank and non-governmental organisations. In its account, they found part of the

assets returned in 2005 allocated to projects that were already completed, non-existent, abandoned or planned without regard to the population's needs. A World Bank fact sheet of 4 December 2017 presents the same exercise in other terms. It describes a monitoring of about USD 723 million carried out in 2005 and 2006 by 20 field monitors drawn from six federal ministries and Nigerian civil society. The fact sheet states that "at no point did our report suggest that a substantial part of the funds looted were missing or had been misused".

The 2017 agreement allocated the USD 321 million to targeted cash transfers to poor households under the National Social Safety Net Project, monitored by the World Bank with half-yearly reports by the NGOs of the Network on Asset Recovery.

4 How the Act of 2015 works

The FIAA organises three steps. Under Articles 3 and 4, the Federal Council may freeze assets as a protective measure. It may do so to support mutual legal assistance when the government of the state of origin has lost or is losing power, or with a view to confiscation when that state cannot meet the requirements of mutual assistance because its structures have failed. Under Articles 14 and 15, the Federal Administrative Court may order confiscation. Illicit origin is presumed where the person's wealth grew exorbitantly in connection with public office while the level of corruption in the state of origin is notoriously high. Under Articles 17 and 18, restitution finances public-interest programmes that improve living conditions or strengthen the rule of law in the state of origin.

During the parliamentary debate on item 14.039, the National Council reversed its position by 120 votes to 62, so that criminal limitation periods can no longer be invoked to prevent a return. The Egyptian freeze of 2011, covering some USD 570 million according to swissinfo.ch, was lifted on 20 December 2017 after the Swiss judicial authorities had closed the mutual assistance proceedings at the end of August 2017 for lack of material results. The Tunisian and Ukrainian freezes, of CHF 56 million and CHF 70 million respectively, were extended several times according to RJB. On 5 January 2026 the Federal Council ordered a preventive freeze of any assets held in Switzerland by Nicolás Maduro and persons linked to him, according to the FDFA.

5 Measuring the results

Two aggregate figures circulate that measure different things. The FDFA counts more than USD 2 billion returned by Switzerland since the 1980s. Public Eye counts some CHF 1.7 billion returned by Switzerland out of 5 billion returned internationally since the late 1990s, a share that places the country first.

6 What to take from it

Recovery takes years. The Abacha funds were frozen in 1999, whereas the last agreement on their return dates from December 2017.

The state of origin decides the outcome. The Mobutu release of 2009 and the lifting of the Egyptian freeze in 2017 show that the FIAA cannot replace cooperation from the state of origin.

Returned funds are monitored. Since the 2017 Abacha agreement, returns are tied to public-interest programmes with third-party monitoring, a model written into Articles 17 and 18 FIAA.

7 Sources

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