

# NO DIRTY MONEY

The Swiss Experience  
in Returning Illicit Assets



Avant même la chute d'un tyran cleptomane, la justice helvétique pourra séquestrer ses avoirs.

Le Point, France, 31 mai 2016

Swiss banks shut vaults against illicit money.

The News, Nigeria, April 28, 2015

Switzerland adopted what is arguably the world's toughest law for repatriating the ill-gotten gains of corrupt politicians to the people of those countries.

Stuart A. Levey, former Undersecretary for Terrorism and Financial Intelligence at the US Department of the Treasury  
In: Foreign Affairs, June 16, 2011

Seule la Suisse a agi clairement.

Daniel Lebègue, président de Transparency International France, Le Soleil, Sénégal, 2 février 2011

Das Parlament in Bern sagt Diktatoren den Kampf an.

Frankfurter Allgemeine Zeitung, Deutschland, 20. Juni 2015

Switzerland took a proactive approach and became a pioneer in recovering and restituting stolen assets to developing countries.

OECD Peer Review, 2009

La nuova legge pone la Svizzera all'avanguardia mondiale nella lotta al denaro sporco frutto della corruzione.

Corriere della Sera, Italia, 29 settembre 2015

The old days are over. No despot, no dictator or other kleptocrat will easily be able to deposit dirty money. Switzerland as a favorite place for criminal or blood money should be a thing of the past.

Theodore S. Greenberg, former Chief of the Money Laundering Section of the US Department of Justice  
In: Bloomberg, February 15, 2011

## Switzerland's pioneering role

The World Bank estimates that USD 20 to 40 billion finds its way into the pockets of corrupt officials in developing countries each year. This represents 20% to 40% of the total amount of aid provided in development cooperation programmes.

The political and social explosiveness of the situation became apparent in the Arab Spring uprisings, when tens of thousands took their discontent with their living conditions into the streets. The key trigger for these popular uprisings was the suspicion that portions of the ruling elites in these countries had for decades been enriching themselves at public expense, while the general population faced a daily struggle against poverty and misery.

Against this background, the Swiss Federal Council in 2011 responded immediately with a preventive freeze of Tunisian and Egyptian assets invested in Switzerland. In early 2014, in connection with the crisis in Ukraine and removal of the then president, the Federal Council again froze assets to prevent the risk that funds would be withdrawn.

Switzerland has long pursued a proactive policy in dealing with illegal monies of politically exposed persons (PEPs), both as a major international financial centre and as a committed actor in development cooperation. Since the fall of Ferdinand Marcos in 1986, Switzerland has steadily refined its systems for prevention, freezing and restitution of dictators' assets. During the past 25 years, Switzerland has returned some two billion dollars to the countries of origin – more than any other financial centre.

A new federal law uniformly governing and consolidating practices that have been followed for years (from freezing to confiscation to restitution of illegally acquired assets of foreign PEPs) came into force in Switzerland on 1 July 2016. With this step Switzerland further strengthened its pioneering international role.

At the UN and World Bank and in cooperation with the G7 countries, Switzerland has long been active in combating corruption. Switzerland works to establish international standards for efficient restitution of stolen funds so that money can be restored to its rightful owners in the countries of origin. A partnership based on trust and dialogue is always essential in these matters.

We are pleased to present our most important milestones and policy instruments here. Perhaps this brochure will even help to update a few preconceived notions about our financial sector.



Didier Burkhalter, head  
of the Federal Department  
of Foreign Affairs

# SWITZERLAND DOES NOT WANT CORRUPT MONEY

**Step by step, Switzerland has been developing a toolkit for dealing with illegally acquired dictators' assets since 1986. Today Switzerland takes a leading role in identifying and returning such assets, thereby underscoring its commitment to development policy, fighting corruption and preventing abuse of its financial centre.**

“I am just a middle man,” says Swiss banker Lachaise moments before being killed by a knife thrown to the back of the neck. “I am doing the honourable thing and returning the money to its rightful owner.” James Bond of Her Majesty’s Secret Service replies sarcastically, “And we know how difficult that can be for the Swiss.”

The cliché of the unscrupulous Swiss banker is still widespread in popular culture, as this scene from the film “The World Is Not Enough” illustrates. The depiction of Switzerland as a black hole of finance, attracting dubious fortunes from all over the world, has taken on a life of its own in thrillers and novels.

This unflattering image is firmly entrenched in many people’s minds, but it has little in common with today’s reality. A broad political will to prevent acceptance of criminal funds prevails in

Switzerland today. The government and Parliament have repeatedly tightened money laundering legislation since the 1980s.

This is particularly true with respect to fortunes of heads of state and high-ranking officials who are bleeding their countries dry while enriching themselves at their people's expense. Switzerland has no interest in harbouring funds of this sort in its financial sector. Indeed, it has expressly developed a toolkit for returning looted assets to the countries of origin.

#### **PROTECTIVE LEGAL MECHANISMS**

Immediately after the fall of Ferdinand Marcos in the spring of 1986, Switzerland began developing a set of defensive measures against illicitly acquired assets. It had come to light that the Philippine dictator had hidden hundreds of millions of dollars in Swiss bank accounts – funds that Marcos had plundered from the Asian nation's state coffers.

There was a wave of popular outrage in Switzerland and abroad, rattling decision makers in the political and business communities. Alerted by the Marcos' bank in Switzerland, the Swiss government invoked the Federal Constitution, under which it can issue decisions if needed to safeguard the interests of the country. A few days after the dictator's fall, it ordered a freeze on the Marcos' millions (see p. 10). This was a first. No other government had ever preventively frozen assets based on the constitution even before the country in question had officially demanded their return.

Since then, step by step, Switzerland has continued developing and refining its practices in handling looted assets. Its approach is based on two pillars: prevention and restitution. Where possible, dictators' funds should be kept from entering the Swiss financial sector in the first place. If they nevertheless slip through the tight net of preven-

## **The dimensions of corruption**

The sums involved are enormous: the World Bank estimates that politicians and officials in developing and emerging-market countries enrich themselves by USD 20 to 40 billion every year.

Switzerland works actively to counter abuse of its financial system by corrupt leaders, not least through its foreign and development policy. It has established special rules governing transactions with politically exposed persons (PEPs) and implements all international standards.

(Foreign) PEPs include heads of state and of government, senior politicians, and government, judicial, military and political party officials at the national level, senior executives of state-owned corporations of national importance, as well as their families and business associates.

Business relations with these clients are not prohibited altogether – after all, it is far from true that all PEPs are corrupt. But banks must treat them as clients with elevated risk and serve them with special care.

Despite all the myths, there are no anonymous numbered Swiss bank accounts. Banking secrecy is lifted where there is suspicion of criminal activity.

tive measures, they should be quickly identified, preventively frozen and, if criminal in origin, returned to the country of origin. This system has largely proven effective, as the events of the Arab uprisings and most recently in Ukraine demonstrate. The Swiss government promptly identified and froze any corrupt assets in these cases. It is actively supporting the countries in question in recovering the secured assets in order to improve the living conditions of their people.



“Switzerland does not want the Marcos' money.” Federal Councillor Jean-Pascal Delamuraz, April 1997

#### **A GLOBAL LEADERSHIP ROLE**

Today Switzerland plays a leading role in the hunt for dirty money worldwide. Its commitment is underpinned with rigorous action. Switzerland has returned some two billion dollars to plundered countries, more than any other financial centre. World Bank experts estimate that this amount is equal to nearly half of all recovered assets worldwide.

Restitution of stolen assets is a complex and often arduous process with many hurdles and obstacles. Corruption is endemic in many of the countries in question. State structures, particularly the justice system, are ineffective or function only poorly. States such as these are often incapable of conducting a proper mutual legal assistance process. Moreover, the political will or strength to pursue corrupt (former) ▶

elites is often lacking. Successfully resolving cases such as these requires perseverance and the resolve to develop tailor-made approaches.

Switzerland pursues illicitly acquired assets for several reasons: As a donor state, Switzerland promotes good governance and anti-corruption measures in its international development cooperation programmes. The struggle to strengthen the rule of law and eradicate impunity for the powerful is also among the priorities of Swiss foreign policy.

Switzerland has no interest in allowing abuse of its financial system, one of the world's leading financial centres. Its reputation and integrity are key factors in global competition which must be defended. These principles are also enshrined in the asset recovery strategy adopted by the Federal Council in May 2014.

#### **DEVASTATING CONSEQUENCES**

Dictators who enrich themselves not only steal money from their countries, they also, and above all, rob their people of development prospects. Corruption has devastating consequences for a country's society and economy. Public and private resources are stolen through corruption. It undermines the rule of law and deters investors. It distorts access to state services. Ultimately, corruption threatens the very foundations of democracy and calls the legitimacy of public administration into question.

The consequences are borne largely by the weakest members of society, who as the result of corruption have even worse access to schools, hospitals and other public services. In many countries corruption is among the most important obstacles to development.

Economics has established a clear link between poverty and corruption. Swiss economist Beatrice Weder di Mauro, for example, has shown that high levels of corruption lead to lower investment and lower growth rates.

World Bank experts David Dollar and Lant Pritchett show that investments in poorly governed countries often evaporate without effect. Daniel Kaufmann, for many years one of the World Bank's leading anti-corruption experts, investigated the effects of good governance. His conclusion: countries that combat corruption and advance the rule of law can substantially reduce child mortality and as much as quadruple their per capita income. Kaufmann calls this the "400% good governance dividend".

Encouraging good and transparent governance is a key objective of Swiss foreign and development policy. Switzerland supports numerous projects to build independent and functional judicial systems, ensure freedom of the press and of opinion, strengthen participation in civil society and support the private sector in partner countries. The best and most efficient way to



"We do not want this money and we do not need it." Federal Councillor Kaspar Villiger, September 2000

fight corruption is prevention. The most effective place to prevent criminal assets from accumulating and flowing into Switzerland in the first place is at the source.

#### **PROTECTING THE FINANCIAL CENTRE**

Switzerland has a financial sector of global importance, one that is essential to the country's prosperity, economic output and employment. Some 200,000

#### **Tried and tested: prevention and restitution**

A tight-knit mesh of laws is designed to prevent funds of corrupt provenance from penetrating the Swiss financial system. Nevertheless, global criminals can find gaps in even the most densely woven net. In these cases Switzerland makes every effort to quickly identify, block and return stolen assets to their country of origin.

Swiss foreign policy seeks to prevent politicians and officials from being able to enrich themselves in the first place by fighting corruption and promoting good governance. Money laundering regulations require clients to be clearly identified, economic beneficiaries determined and the source of assets ascertained.

Any account transaction suggesting criminal activity must be reported to the authorities, and the account in question must be provisionally frozen. Under the system of international mutual legal assistance, Switzerland can block suspicious accounts and furnish information about their owners.

Once a court has legally established the illicit provenance of assets, the path is clear for restitution to the country of origin.

people in Switzerland work in the financial industry – roughly 6% of the entire workforce. Swiss banks employ a further 100,000 people abroad.

The good reputation and credibility of a financial centre are becoming increasingly important advantages in international economic competition. Switzerland has some very strong cards to play here: legal security as well as political and social stability, reputability and trustworthiness. These advantages must be protected. Switzerland therefore works rigorously to prevent criminal infiltration of its financial sector.

Prevailing international standards allow banks and other financial intermediaries to maintain business relationships with PEPs. Receiving money from PEPs is thus not illegal per se. However, such clients are subject to enhanced due diligence requirements (see p. 28).

Switzerland has adopted these international standards in full and is implementing them systematically. Transactions that suggest criminal activity must be reported to the authorities, and the accounts in question can be preventively frozen in the event of suspicion. As part of the international mutual legal assistance process, suspicious assets can be frozen pending a judicial determination of the source of the funds.

#### **PARTNERSHIPS AND DIALOGUE**

Switzerland's many years of experience with PEPs' illicitly acquired assets show that every case is different. Each case has its own specific characteristics and legal complications. Addressing them successfully requires a creative and pragmatic approach. Close cooperation between the state searching for the stolen assets and the state in whose financial system the assets are suspected to be is key. Incidentally, in the great majority of cases not involving PEPs, there is no particular difficulty in restitution of illegal funds.

Switzerland makes it a high priority to share expertise with partner countries so that proceedings can be conducted efficiently. It works closely with the International Centre for Asset Recovery (ICAR) at the Basel Institute on Governance, an experienced non-profit organisation which focuses on combating corruption. Another important partner for Switzerland is the Stolen Asset Recovery Initiative (StAR), a project of the World Bank and the UN Office on Drugs and Crime. Besides local technical expertise, ICAR and StAR also play a significant role in the continuing development of national and international standards.

More than anything else, successful restitution of embezzled money requires a certain stubbornness and creative thinking. It is important to Switzerland



"Illicitly acquired dictators' assets belong to the countries concerned."  
Federal Councillor  
Micheline Calmy-Rey, April 2011

that recovered assets benefit the people rather than sinking back into the mire of corruption. To that end, the measures best suited to ensuring transparent and accountable restitution are considered in each instance. Mutual legal assistance cannot function as a one-way street. Formal and practical problems can only be resolved through shared effort.

The following pages describe a dozen cases from different continents, from Ferdinand Marcos to Sani Abacha, from the uprisings in Egypt and Tunisia to Ukraine, as examples of how Switzerland has developed and continues to refine its toolkit against dictators' plundered assets. ●

# 2 BN

## RESTITUTED BY SWITZERLAND.

Switzerland has so far restituted some two billion dollars in plundered assets to the countries of origin. Suspicious assets valued at hundreds of millions of dollars remain frozen. A few examples are shown on this world map. It is important to Switzerland that the funds are returned transparently to the country of origin and benefit the people. To this end, the Swiss government works closely with the countries affected, establishing the appropriate processes and monitoring mechanisms jointly with them. Tailored solutions are important for dealing appropriately with the unique aspects of each case.

- ▨ RESTITUTED
- ▨ FROZEN
- 10 MILLION

### JEAN-CLAUDE DUVALIER

Haiti — P. 13

Switzerland froze USD 6 million in 1986. The mutual legal assistance process failed after over 20 years of efforts. Switzerland adopted new legislation to address the special aspects of cooperation with countries with weak state structures. The assets were definitively confiscated by the Swiss judicial authorities in 2013.

USD 6 MILLION

### MOUSSA TRAORÉ

Mali — P. 16

In 1997 Switzerland restituted embezzled state assets to a developing country for the first time ever in the amount of CHF 3.9 million (approximately USD 2.7 million at the time).

CHF 3.9 MILLION

### SANI AND ABBA ABACHA

Nigeria — P. 18

In 1999 Switzerland declared the regime of President Sani Abacha to be a criminal organisation and confiscated its assets as “obviously illegal”. It returned over USD 700 million. In 2016 Switzerland and Nigeria agreed on the restitution of a further USD 321 million from the dictator’s son Abba Abacha.

USD 700 +  
321 MILLION

### VLADIMIRO MONTESINOS

Peru — P. 21

In 2002, just one year after the fall of the corrupt head of intelligence, Switzerland returned the first millions — thanks to smooth cooperation with the Peruvian authorities.

USD 93 MILLION

## ZINE AL-ABIDINE BEN ALI

Tunisia — P. 22

In January 2011, after the dictator's fall, the Swiss government froze assets from Ben Ali's entourage on a precautionary basis. The legal assistance process advanced rapidly thanks to intensive cooperation with Tunisia. A first, relatively modest sum was returned in June 2016.



CHF 60 MILLION\*

## VIKTOR YANUKOVICH

Ukraine — P. 25

Following the demonstrations on Maidan Square in Kyiv and the removal of Ukraine's then president Viktor Yanukovich, Switzerland preventively froze his assets. It also immediately offered the new government technical support for preparing legal assistance requests to Switzerland.



USD 70 MILLION\*

Kazakhstan — P. 26

Switzerland is now in a position to restitute USD 163 million to Kazakhstan. A part of this money has already been returned to fund social projects with the support of an internationally supported foundation. A further tranche will be restituted via World Bank projects.

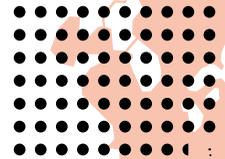


USD 163 MILLION

## FERDINAND MARCOS

Philippines — P. 10

In 1986 Switzerland froze the accounts of a toppled ruler for the first time. At the time it took 60 rulings from the Swiss Federal Supreme Court before the funds could be restituted.



USD 684 MILLION

## BASHAR AL-ASSAD

Syria — P. 22

Switzerland has imposed various sanctions against the Syrian regime, including asset freezes as well as travel bans and trade restrictions.

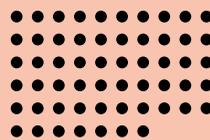


CHF 120 MILLION\*

## HOSNI MUBARAK

Egypt — P. 22

Within a half hour of Mubarak's fall, Switzerland had frozen his assets. The Swiss justice authorities initiated their own criminal proceedings. Egypt for its part petitioned Switzerland for legal assistance.



USD 570 MILLION\*

## MOBUTU SESE SEKO

Zaire / Democratic Republic of the Congo — P. 16

Switzerland froze USD 5.5 million for 12 years, but was ultimately forced to release the funds to Mobutu's heirs in 2009. The restitution failed due to a lack of political will on the part of the DRC.

Angola — P. 26

USD 64 million was restituted to Angola in the form of development projects, mainly through investments in vocational education and mine clearance. The Swiss development cooperation agency and Angola are jointly responsible for implementation.



USD 64 MILLION

\*As at autumn 2016

# FERDINAND MARCOS

**The turn of the tide: in 1986 Switzerland froze the assets of a corrupt ruler for the first time.**

His wife Imelda's obsession with shoes became a symbol of his rule: according to media reports, after the fall of Philippine dictator Ferdinand Marcos 2,700 pairs of shoes were found in the presidential palace in Manila. If true, this means Imelda could have worn a new pair every day for seven years.

Ferdinand Marcos became president through a democratic election in 1965. In 1972 he declared martial law to remain in power beyond the limit on his tenure in office. Thenceforth he ruled the country by decree as a dictator.

As he went into forced exile in the United States in 1986, the World Bank estimated his fortune at five to ten billion dollars. By comparison, per capita income in the Philippines at the time was around USD 750 – per year.

## “MISTER FIFTEEN PERCENT”

The members of the clique surrounding Marcos had siphoned off not only foreign development and military aid but also World Bank loans and Japanese reparations to their own accounts. They had looted the country's most important industries through state monopolies. They had forced private business owners to sign over their companies. They had demanded bribes for public contracts. For all these reasons, Marcos was notorious throughout Asia as “Mister Fifteen Percent”.

The stolen money was invested abroad through front companies or parked in foreign banks. For example,

the Marcos clan bought a shopping centre in Manhattan, the well-known Crown Building on Fifth Avenue, and a seaside villa on Long Island worth hundreds of millions of dollars. In late Feb-

## Switzerland and the Philippines have worked closely together.

ruary 1986, after a peaceful revolution, Marcos fled with his family to Hawaii. It took customs in Honolulu 23 pages to record what the family had brought with them in 15 suitcases and 22 crates, including several million dollars' worth of pearls, sapphires, rubies and diamonds, dozens of luxury watches and 24 gold ingots. Marcos died in Honolulu at the age of 72 in September 1989.

## A FAR-REACHING DECISION

On the evening of 24 March 1986, the Swiss government was meeting with the president of Finland, in Bern on a state visit. Just as the hosts and guests were toasting the excellent relations between their two countries, a senior official pulled the Swiss foreign minister discreetly aside. A Swiss bank had just called him, the senior official reported. Ferdinand and Imelda Marcos had deposited more than USD 200 million ▶





### **In brief**

In the Marcos case, the Swiss government set a fundamentally new course. It ordered the corrupt ruler's funds frozen as a precautionary measure a few days after his fall, even before the Philippines had requested it. In this way it prevented the funds being withdrawn and laid the foundations for a criminal investigation of the case. Switzerland subsequently worked closely with the new Philippine government and was ultimately able to return USD 684 million to the Philippines. Restitution was made contingent on a guarantee that a portion of the funds would benefit the victims of the Marcos regime.

there. One hour earlier a representative of the couple had ordered the funds transferred abroad immediately. The bank could not refuse—unless the transaction was prohibited on the spot.

There was no time to waste. In the midst of the state visit, the foreign minister unobtrusively passed the information on to his six fellow federal councilors in a corner of the room. And the Swiss government took a far-reaching decision: it ordered a freeze on all of Ferdinand and Imelda Marcos' assets to thwart their withdrawal and lay the foundations for a criminal investigation into the source of the funds. It based its action on the Federal Constitution, which authorises the government

(p.16), the Arab uprisings (p.22) and Ukraine (p.25).

A very close cooperation developed between the Philippine and Swiss authorities after the fall of Marcos. Both sides worked intensively for many years to return the frozen funds to the Philippine people.

The Marcos case is an excellent example of how difficult such restitution can be both legally and practically. At the time the Philippines had no mutual legal assistance agreement with Switzerland. This complicated the proceedings. The legal assistance legislation at the time had only recently come into force, and there were as yet no precedents. Although the new democratic government of the Philippines had submitted a legal assistance request for release of the bank documents and restitution of the Marcos assets, the Marcos family was able to contest every step in court.

The Swiss Federal Supreme Court alone handed down no fewer than 60 decisions in the Marcos case. Over a period of years it affirmed the permissibility of legal assistance and ultimately decided that the frozen funds could, in principle, be returned to the Philippines. The Federal Supreme Court approved the remittance to a blocked account at the Central Bank of the Philippines in June 1998. To guarantee the formal legality of the proceedings, the court made the definitive release of the funds subject to certain conditions: the Philippines must initiate criminal proceedings against Imelda Marcos and conduct them under due process of law, and a portion of the money must be used to compensate the victims of the Marcos regime. A law to this effect was adopted by the Philippine parliament in February 2013.

In the opinion of Philippine foreign minister Albert del Rosario, the Marcos case had set new standards for future restitutions and use of illicitly acquired funds.

## SUMMARY

The Marcos case was a turning point for Switzerland and opened the way for similar cases. Thus it sent a clear signal to dictators: Switzerland is no longer a refuge for illicit assets. The Swiss government froze the Marcos assets promptly and on its own initiative. It has drawn lessons from the protracted legal assistance procedure and updated legislation to facilitate and accelerate the process. ●

RESTITUTED: APPROXIMATELY

USD 684  
MILLION



Peaceful popular demonstrations led to the dictator's fall.

to take the necessary decisions in “safeguarding the interests of the country”. It was a historic decision. Just a few years earlier the Swiss government had refused to freeze the assets of the deposed Shah of Iran.

## A FIRST

The Marcos case was the first time Switzerland had ever ordered a freeze on the assets of a former head of state – and on its own initiative, even before the Philippines had requested legal assistance. This first in March 1986 served as a signal. The Swiss government would subsequently invoke “safeguarding the interests of the country” several more times in preventively freezing suspicious assets of corrupt heads of state, particularly in the cases of Jean-Claude Duvalier (see p.13), Mobutu Sese Seko

# JEAN-CLAUDE DUVALIER

**For the past quarter-century, Switzerland has made intensive efforts to return the Duvalier assets.**

Jean-Claude Duvalier, known as “Baby Doc”, was just 19 years old when he came to power in Haiti. After the death of his father, who had ruled the Caribbean nation as dictator, he succeeded him as “President for Life”. According to Transparency International estimates, Baby Doc and his relatives illegally spirited away between 300 and 800 million dollars. With a per capita income of USD 350 dollars per year, the Caribbean island nation was then the poorest country of the American continent.

## **A PENCHANT FOR LUXURY CARS**

As the Swiss Federal Criminal Court determined, the Duvalier clan’s fortune was based on the state tobacco monopoly, which the family managed as its own private property. The Duvaliers also extorted “levies” from businesses which they used for themselves. State employees were subject to forced “donations” withheld from their salaries. Taxes were imposed for fictitious social programmes. Nor did the Duvalier clan hesitate to tax sacks of flour donated by foreign aid organisations for the already deprived populace.

The clan diverted the money to foreign banks and used it to buy real estate, such as a chateau near Paris and an apartment in the Trump Tower on Fifth Avenue in Manhattan. Baby Doc was also known to have a penchant for expensive sports cars.

Food riots in Haiti began in the autumn of 1985 and soon spread throughout the country. After the United States withdrew its support, Baby Doc fled to exile in France in February 1986.



The corrupt regime turned Haiti into the West’s poorhouse.

## **A CLEAR SIGNAL**

Soon after Duvalier’s flight, the new Haitian government requested the freezing of any assets he or his entourage might have in Swiss banks. The Swiss government immediately ordered a freeze on a total of USD 2.4 million. Although the sum was significantly smaller than international media had speculated, the move was still a clear signal: just three weeks after Switzerland had for the first time ever ordered a freeze on the assets of a head of state in the case of Ferdinand Marcos (see p. 10), it was now again moving resolutely against the presumed criminal fortune of a fallen dictator.

At first it seemed the Duvalier case might be resolved quickly. Haiti promptly submitted a request for mutual legal assistance, held out the prospect of criminal proceedings against the Duvaliers and guaranteed a trial in conformity with human rights. The Swiss authorities, for their part, agreed to send bank documents to Haiti. They declared themselves ready in principle to transfer the seized monies to the island nation as soon as the Duvaliers had been convicted.

The path seemed clear, but nothing turned out as expected. Following the despotism of Duvalier, the hope that Haiti could become a democratic state under the rule of law soon collapsed. Political power struggles ensued, elections were falsified, several military coups

**Haiti was unable to reach a verdict.**

took place, armed groups made the country unsafe. Switzerland even funded a lawyer for Haiti so that legal assistance could continue. In the end, all of the Swiss authorities’ efforts were in vain. For 24 years, Haiti proved unable to reach a final and enforceable verdict against the Duvalier clan. After long years of dictatorship, state structures were simply too weak.

Switzerland’s supreme court ruled in 2010 that, after such a long delay, the frozen assets could no longer be repatriated to Haiti through the legal assistance process. The statute of limitations on the crimes of which Baby Doc stood accused had run out. The court explicitly regretted its own decision, citing the “systematic plundering of the state treasury” by the Duvalier clan that the lower court had established. And more: “The hierarchical structure, the criminal aims and the prevailing atmos- ▶

phere of fear indicate a criminal organisation as defined in Swiss law.” The provisions of international mutual legal assistance were too strict in the case of assets of fallen dictators, the court concluded. But this could only be changed through legislation.

Mutual legal assistance, therefore, had definitively failed. Ultimately this meant that Switzerland would have to return the frozen millions – which with accumulated interest had meanwhile more than doubled – to the Duvalier clan. And this despite clear indications of their illicit provenance. The Swiss government refused to tolerate such an outcome and invoked the Federal Constitution to block the Duvalier assets. Concurrently, it fast-tracked work already initiated on a special law for restitution of plundered assets from countries with severely weakened state structures.

The Federal Act on the Restitution of Assets Illicitly Obtained by Politically Exposed Persons (RIAA), known as the “Lex Duvalier”, entered into force on 1 February 2011. The legislation made it possible to freeze and confiscate dictators’ assets if (and only if) mutual legal assistance had failed, as in the Duvalier and later the Mobutu case (p. 16), because of the failure of state structures in the country of origin. Invoking the RIAA, the Swiss government began a legal action for the confiscation of the Duvalier assets in April 2011. The court ruled in its favour in September 2013.

To ensure efficient restitution of the Duvalier assets, Switzerland identified potential projects to strengthen human rights. Negotiations on these projects are still under way.

#### SUMMARY

The Duvalier case (and later the Mobutu case) revealed the limits of international mutual legal assistance. Countries where state structures have failed may well be incapable of reaching a final and enforceable judgment. Switzerland was

the first country in the world to devise a special law to make it easier to confiscate criminal assets in these cases. ●

FROZEN: APPROXIMATELY

USD 6  
MILLION





### **In brief**

Restitution of the Duvalier assets through the international mutual legal assistance mechanism failed – after 24 years of continuous efforts – because state structures in Haiti were too weak. As a result, Switzerland would have had to release the funds to the Duvalier family despite strong indications that they had been acquired illicitly. To prevent this outcome, Switzerland established a new legal basis in 2010. The legislation addressed cases where states were unable to draft a request for mutual legal assistance or conduct a trial meeting Swiss requirements. The substance of the “Lex Duvalier” was recently incorporated into the Federal Act on the Freezing and the Restitution of Illicit Assets Held by Foreign Politically Exposed Persons (FIAA), which came into force on 1 July 2016.

## Mali – the first restitution



# MOUSSA TRAORÉ

The sum was modest, but its remittance was historic: in 1997 Switzerland returned CHF 3.9 million to Mali.

It was the first time ever that Switzerland had been able to return a dictator's illicit assets to a developing country. The funds had come from Moussa Traoré's entourage. The career soldier, educated in France, had come to power in the West African country in a coup d'état in 1968. Some 23 years later (in 1991), he had been overthrown by another military coup.

The Moussa Traoré case led to several changes in the way Switzerland deals with plundered assets. The Swiss government took more resolute action than ever before to ensure that it could identify and freeze Traoré's fortune. Immediately after his fall, it assumed the cost of hiring two Swiss lawyers to search for potential accounts on Mali's behalf. And indeed, the lawyers found several bank accounts registered in the name of the director of the state tobac-

co company, a long-time comrade-in-arms of Traoré's.

Switzerland immediately ordered a freeze on the funds, even before Mali had submitted a request for mutual legal assistance. The lawyers appointed by Switzerland helped the new Malian government draft a legally correct request.

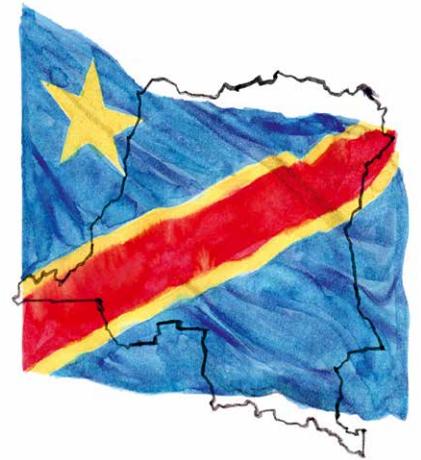
Cooperation between the Swiss and Malian authorities was smooth: the West African country gave notice of the formal request, submitted it within the deadline and commenced criminal proceedings for misappropriation of public funds against Moussa Traoré and his accomplices.

Traoré was ultimately convicted of violent crimes during his term in office and of embezzlement of state assets. The final and enforceable verdict opened the way for restitution of the monies, and Switzerland was free to return the dictator's funds to Mali.

The process in the Mali case became a model for Switzerland to follow in further cases. It likewise appointed lawyers to assist with criminal prosecution in connection with the fortunes of Mobutu Sese Seko (Democratic Republic of the Congo) and Jean-Claude Duvalier (Haiti). ●

**RESTITUTED: APPROXIMATELY CHF 3.9 MILLION**

## Zaire / DR Congo – lack of political will



# MOBUTU SESE SEKO

The Mobutu case is a perfect example: if the political will in the country of origin is lacking, the case cannot be resolved.

When Marshal Mobutu Sese Seko (born Joseph-Désiré Mobutu) was forced into exile in 1997 after 32 years in power, the *Financial Times* estimated his fortune at "four billion dollars plus 20 villas". This sum was roughly equal to the foreign debt of Zaire, as the Democratic Republic of the Congo (DRC) was then known.

Under the pretext of a supposed "Africanisation", the despot with the leopard-skin toque had taken control of his country's mineral riches and used them to enrich himself. Zaire was one of the richest countries in the world in natural resources, but in the early 1990s its people's annual per capita income was a mere USD 250. During the same period, Mobutu chartered a supersonic Concorde aircraft to take his family shopping in Paris.

Mobutu understood how to profit from the Cold War like few other rulers, fanning fears in the West of a communist invasion by Zaire's southern neighbour Angola. The end of the Cold War finally cost the marshal the support of his protecting powers. The country fell into years of unrest, culminating in a full-fledged civil war. In May 1997 Mobutu went into exile in Morocco, where he died a few months later of prostate cancer.

On the day before Mobutu's flight, the Swiss authorities ordered all banks to undertake a systematic search for any of the marshal's assets. The search found a bank account and a villa valued jointly at CHF 7.7 million (roughly USD 5.5 million at the time). This was much less than the media had suspected; Mobutu must have stashed the lion's share of his fortune away in other countries.

#### **MUTUAL LEGAL ASSISTANCE FAILS**

The new government of the DRC asked for legal assistance. The Swiss government responded by preventively freezing the money and villa based on the special powers granted by the Federal Constitution. The Swiss government had already acquired experience with this instrument in the cases of Marcos (p. 10) and Duvalier (p. 13).

For six years, Switzerland asked the Congolese authorities to fill in the gaps in its request for legal assistance. It reminded the DRC that Switzerland, being bound by the rule of law, could not simply freeze Mobutu's assets indefinitely. But it received no reply from Kinshasa, nor did the DRC initiate criminal proceedings against Mobutu.

Ultimately Switzerland had no choice but to halt legal assistance in 2003. Still the Swiss government was not ready to give up: if the freeze were cancelled, the funds (very likely the proceeds of corruption) would go back to Mobutu's heirs. The government therefore again ordered a freeze on the

assets based on the Swiss constitution. At the same time, it instructed the foreign ministry to seek a solution with Kinshasa to allow the funds to be returned to the DRC.

Despite various steps by Switzerland, several more years passed with no action by the DRC. In July 2007 the President of the Swiss Confederation even travelled to Kinshasa and entreated the DRC to appoint a liaison for the matter. In the end, Switzerland made one final attempt, proposing to furnish a lawyer to represent the DRC in criminal proceedings against Mobutu's entourage in Switzerland. Switzerland had first used this approach in the Traoré case (p. 16). The government of the DRC accepted the proposal at the last minute, allowing Switzerland to extend the freeze on the Mobutu assets one last time.

## **Switzerland appointed a lawyer for the DRC.**

Finally it appeared that the matter was moving forward and would yet come to a good end. The lawyer for the DRC filed a criminal complaint in Switzerland. The prosecuting authorities concluded, however, that the statute of limitations had passed on any offences and the Mobutu funds must be handed over to the family. Instead of pursuing further legal avenues, the DRC instructed its lawyer in Switzerland not to contest the ruling. As a result the Swiss supreme court was prevented from declaring any final judgment.

#### **LACK OF WILL**

Thus all opportunities for the frozen assets to be used for the good of the Congolese people were thwarted. It be-

came apparent that the Mobutu clan could still wield influence; Mobutu's oldest son even served as deputy prime minister at the time.

By law, Switzerland was left with no choice but to release the money to Mobutu's heirs in 2009 – despite having spent 12 years working relentlessly to prevent just that.

The unsatisfactory outcome of the Mobutu case (together with the Duvalier case, p. 13) ultimately led Switzerland to draft special legislation, known as the "Lex Duvalier", to permit confiscations under such circumstances. ●

# SANI ABACHA

**It was a worldwide first: Switzerland declared a head of state and his associates a criminal organisation.**

Amongst Africa's corrupt dictators, one of the most corrupt – and most brutal – was General Sani Abacha. The career officer, educated in Britain and the United States, came to power in Nigeria in a coup d'état in November 1993 and ruled until June 1998. His dictatorship was marked by systematic human rights violations.

In the five years of his rule, Abacha thoroughly looted the West African country. According to World Bank estimates, the general and his entourage enriched themselves by three to five billion dollars during this period. By comparison, per capita income in Nigeria at the time was around USD 270 – per year.

## DIPPING INTO STATE COFFERS

The general systematically had public contracts awarded to cronies at vastly inflated fees. One of his sons diverted tens of millions of dollars meant for an immunisation programme. Foreign companies had to pay large bribes to close deals in the oil-rich country.

Independent sources maintained that Abacha was siphoning roughly 10% of annual petroleum industry revenues into his own pockets. Moreover, the general regularly dipped directly into the state treasury, having the Nigerian central bank supply him with cash. Abacha's son Mohammed later admitted in court that his father had brought home over USD 700 million in banknotes – “sometimes in plastic bags, sometimes

in cardboard boxes”. Family members and accomplices took the embezzled money abroad, sometimes in person, sometimes through a network of front companies. There they deposited the funds in banks, mainly in the United Kingdom, Switzerland, Luxembourg and Liechtenstein.

After Sani Abacha succumbed to a heart attack in June 1998, his wife Maryam attempted to flee the country. She was arrested at the airport in Lagos with 38 suitcases filled with millions of US dollars and British pounds.

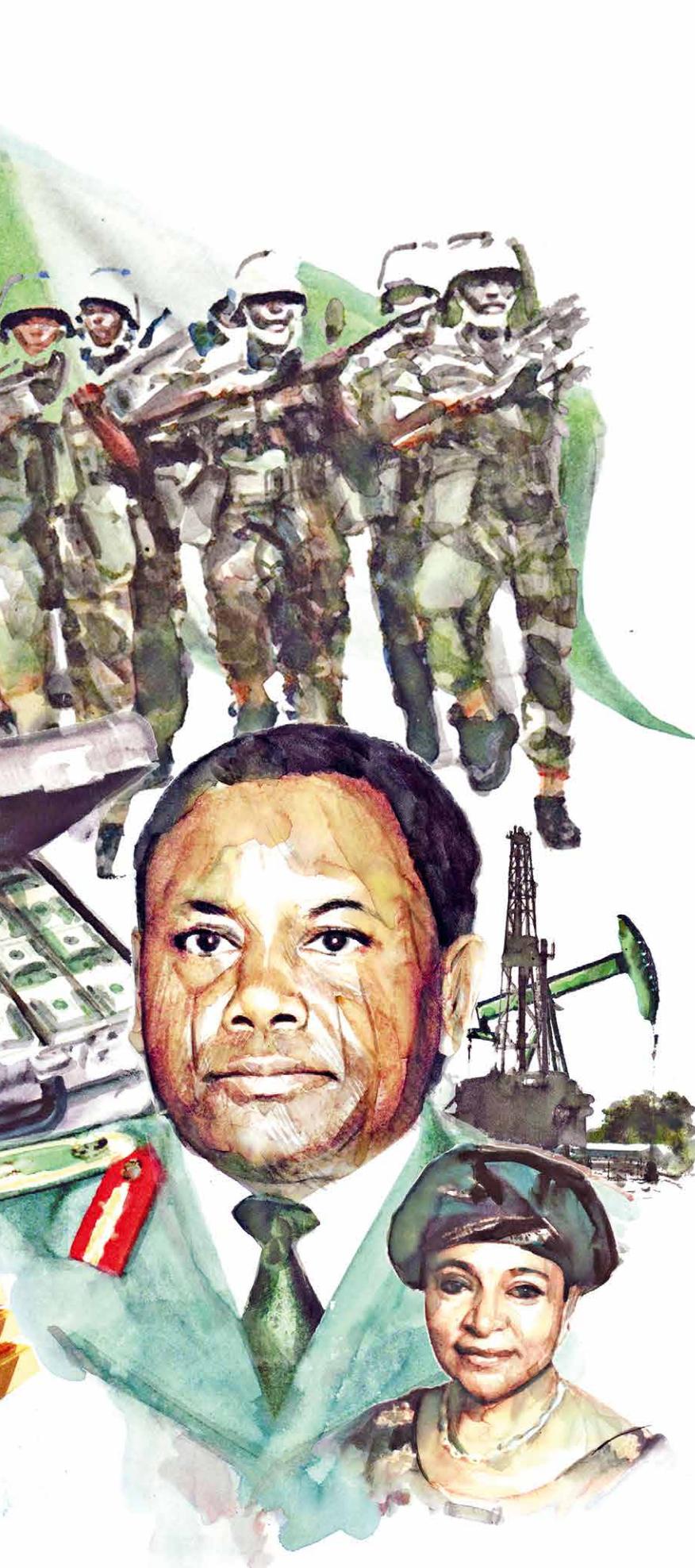
In September 1999 Nigeria's new government petitioned Switzerland to freeze any assets belonging to Abacha. The Swiss judicial authorities ordered a freeze on approximately USD 700 million, as it appeared to them highly likely

**The general siphoned off 10% of oil revenues.**

that the funds had been stolen by the Abacha clan. They also launched their own criminal proceedings on suspicion of money laundering, fraud, embezzlement – and of membership in a criminal organisation.

This was a first with far-reaching consequences. Never before had a ▶





### **In brief**

The first step in the action Switzerland decided to take was to freeze approximately USD 700 million. It instituted criminal proceedings, declared Sani Abacha and his entourage a “criminal organisation” and seized their assets as “evidently criminal” (“Abacha I”). As part of the international mutual legal assistance process, Switzerland ultimately became the first country to return frozen millions to Nigeria. The money was used to fund development projects, which the World Bank was able to monitor. So far this is the largest sum of plundered assets ever repatriated worldwide, and the first time that proper use of such funds has been subject to review. Moreover, the process of recovering a further USD 321 million was initiated in 2016 (“Abacha II”).

head of state, his family and members of his government been qualified as a “criminal organisation” under criminal law. This innovative step, which was ultimately upheld by Switzerland’s highest court, was decisive in the successful fight against the corrupt Abacha regime. As members of a “criminal organisation”, the Abachas and all their accomplices were subject to criminal prosecution in Switzerland – regardless of whether they had ever set foot in the country. It was sufficient that they had concealed money in Switzerland.

### REVERSAL OF THE BURDEN OF PROOF

Still more important: the burden of proof was now reversed. Switzerland no longer had to prove that the money had originated in crimes committed by the Abachas. Under suspicion of being a criminal organisation, the onus was now on the Abacha clan to prove that it had earned the frozen funds legally – which it failed to do.

Through the criminal proceedings, Swiss authorities gained access to information on the Abachas’ bank accounts in other countries. This led to the seizure of a further USD 830 million in Luxembourg and the Principality of Liechtenstein. Seven Swiss banks were publicly reprimanded by the supervisory authority for severe violation of due diligence duties in the Abacha affair; some of them were also fined.

In February 2005 the Swiss Federal Supreme Court handed down a further landmark decision in the Abacha case in which it reinterpreted the legislation on mutual legal assistance. Where funds of “obviously illegal origin” are at issue in connection with a criminal organisation, it has since then no longer been necessary for court proceedings to be concluded in the country of origin itself.

Since then all frozen funds in Switzerland, over USD 700 million, have been returned to Nigeria. Switzerland has been assured that the Abacha mon-

ies would be used for various development projects with the involvement of civil society. The West African nation has used the funds for health and education and for roads, electricity and water supplies. Nigeria was prepared to accept World Bank monitoring of the use of the funds (see p. 26). This aspect of the case, known as “Abacha I”, was likewise a world first.

### ABACHA II

But the story continued: until February 2015 the Geneva public prosecutor’s office also conducted criminal proceedings against Abba Abacha, the son of the deceased dictator. Illegally acquired



The people celebrated Nigeria’s transition to democracy in 1999.

Abacha clan assets were frozen in Luxembourg through the mutual legal assistance mechanism and later transferred to Switzerland.

As part of a comprehensive settlement between the Nigerian government and the Abacha family, the participants in 2014 agreed to return the funds to the Nigerian state while simultaneously dropping criminal proceedings against Abba Abacha. The latter in turn waived claims to the assets. Having spent 561 days in detention awaiting trial in Switzerland, he had already effectively served the originally envisioned sentence.

In February 2015 the Geneva public prosecutor’s office ordered the confiscation of the USD 321 million recovered from Luxembourg and its restitution to Nigeria. The order again stipulates that the use of the funds be

subject to monitoring by the World Bank. Switzerland and Nigeria signed an agreement in March 2016 on the modalities of returning the Abacha assets.

### SUMMARY

The Abacha I case saw further pragmatic development by the responsible authorities and the Swiss justice system of the legal arsenal for dealing with illicit assets of PEPs. Switzerland is so far the only country to have restituted manifestly criminal assets without requiring final conclusion of court proceedings in the country of origin. In the Abacha II case, Nigeria and Switzerland are currently still discussing use of the funds. ●

RESTITUTED: APPROXIMATELY

USD 700  
MILLION  
+321  
MILLION



## VLADIMIRO MONTESINOS

The Swiss authorities warned Peru of dubious assets frozen in Switzerland even before Peru itself had taken action.

The brief video landed like a bombshell. It showed Vladimiro Montesinos, head of Peru's intelligence service, on a beige leather sofa in his office. Next to him sat a member of parliament. The video showed Montesinos placing bundles of dollar bills into a brown envelope and handing it to the MP. The money, it emerged, was part of a USD 15,000 bribe to persuade an opposition politician to switch his support to then president Alberto Fujimori.

The video, broadcast by a television station on 14 September 2000, spelled the beginning of the end of Fujimori's ten-year rule. Peruvian courts subsequently found some 2,000 similar videos. These "Vladi-videos", as they were popularly known, proved that politicians and judges, businesspeople and journalists were being bribed by the government.

Montesinos' mistrust became his downfall: he had filmed himself with a hidden camera as he handed over bribe money, keeping the clips in reserve in case a bribe recipient should become recalcitrant. Soon after the broadcast, both Montesinos, a personal advisor to the president, and Fujimori left the country.

Scarcely had the bribery video become known abroad before several banks in Switzerland took the initiative to block Montesinos' accounts and report the assets to the authorities. The public prosecutor's office in the canton of Zurich promptly commenced criminal proceedings for money laundering against Montesinos and froze some USD 77 million originating from the intelligence head and his associates.

### "SPONTANEOUS" MUTUAL LEGAL ASSISTANCE

The public prosecutor's office in Zurich informed the Peruvian authorities of the blocked accounts and asked them to investigate the origin of the assets, recommending at the same time that Peru submit a request for mutual legal assistance. Peru had previously been unaware of Montesinos' accounts in Switzerland. Swiss law explicitly provides for "spontaneous" mutual legal assistance.

The information from Zurich enabled the Peruvian justice authorities to formulate a detailed request for mutual legal assistance. It proved essential to the criminal prosecution in an international corruption scandal involving the then Peruvian president's closest associates.

Investigations in the two countries revealed that Montesinos had been receiving "commissions" for deliveries of weapons since 1990 and concealing the bribe money in Luxembourg, the United States and Switzerland. In return he saw to it that Peru would favour certain arms dealers when awarding contracts. The intelli-

gence head was eventually arrested in Venezuela and later received a lengthy prison sentence for embezzlement and bribery, among other charges.

On 20 August 2002 Switzerland transferred USD 77.5 million to the Central Reserve Bank of Peru. Whereas in the Marcos case it had taken 18 years before Switzerland was able to return the plundered assets, in the "Montesinos I" case it had taken little over one year. A total of USD 93 million had been repatriated to Peru by 2006. A further USD 23 million ("Montesinos II") remains frozen preventively. Several procedures should be concluded in the near future, and further restitutions are likely. The Montesinos I case was resolved unusually quickly thanks to very close cooperation among all parties involved: the banks as well as the authorities in Peru and Switzerland. ●

**RESTITUTED: APPROXIMATELY USD 93 MILLION**

# THE ARAB UPRISINGS

**Within a half hour of the fall of Hosni Mubarak, Switzerland had ordered a preventive freeze on his assets.**

Leila Ben Ali, wife of the Tunisian president, was well provisioned for her one-way journey. Two weeks before fleeing to Saudi Arabia with her family on 14 January 2011, she is alleged to have visited the Tunisian central bank in person. There, according to a report in the newspaper *Le Monde* citing intelligence sources, she took possession of USD 65 million in gold ingots.

Although the truth of this story has never been confirmed, it has become emblematic of the kleptocracies of the Arab world. The Arab revolts were directed in large part against corruption, despotism and nepotism, as the heads of state of Tunisia, Egypt and Libya had probably enriched themselves with public money on a grand scale.

**More time available to enable states to request mutual legal assistance.**

The Swiss government responded promptly to the events, applying all the experience accumulated since dealing with the Marcos assets. It ordered a freeze on the assets of dozens of PEPs,

including heads of state, ministers, high-ranking officials and their families and business associates.

The accounts of Tunisian president Zine al-Abidine Ben Ali were frozen preventively five days after his fall, those of Egyptian president Hosni Mubarak after just half an hour. Other countries such as the member states of the European Union followed suit a few days later. This was the first time the EU had ordered a preventive account freeze, thus taking an approach similar to the one long practised in Switzerland.

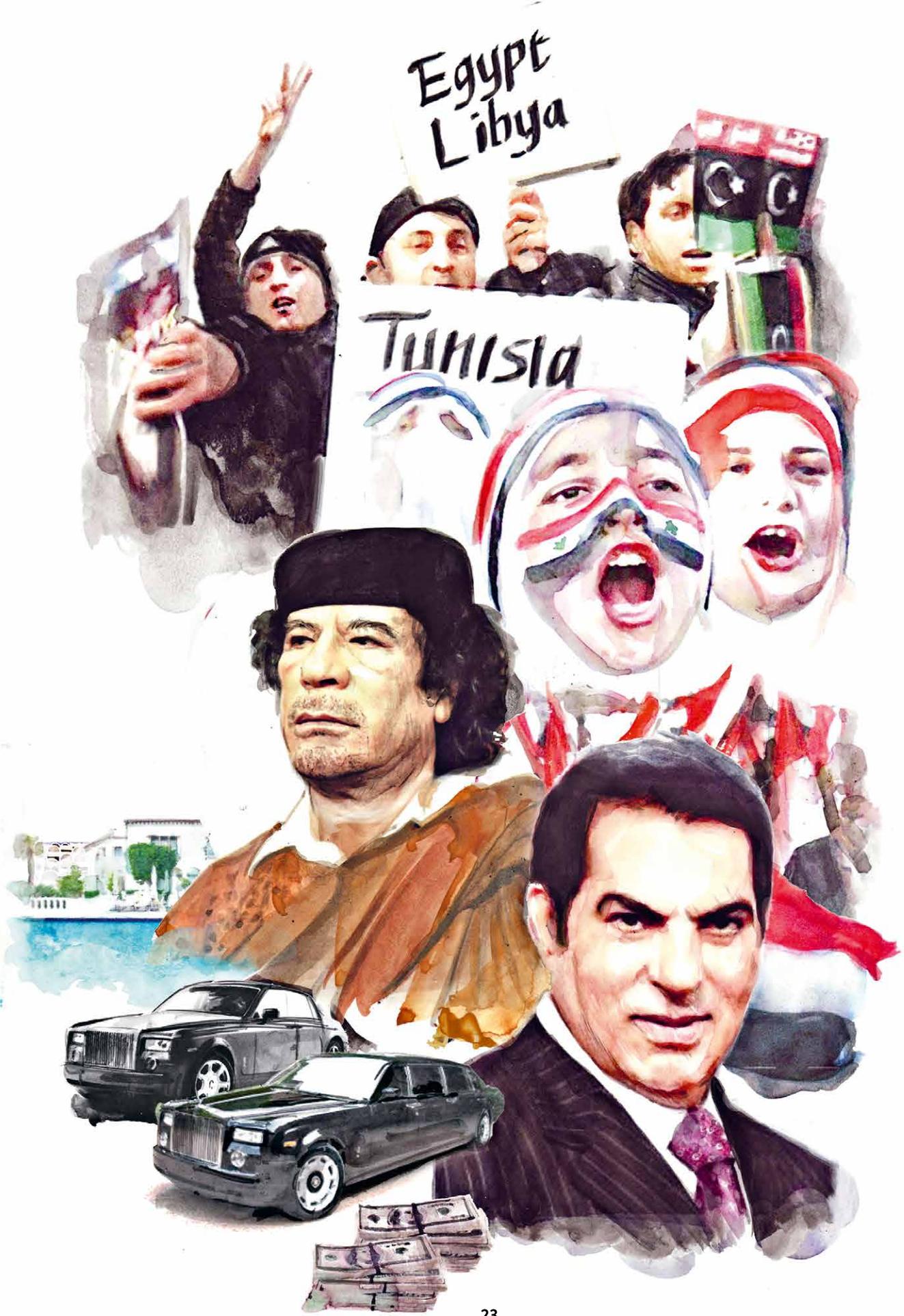
## **HUNDREDS OF MILLIONS FROZEN**

Switzerland's action prevented the toppled rulers from withdrawing and concealing their money. The freeze gave the countries involved time to submit mutual legal assistance requests to Switzerland so that the origin of the funds could be established in court.

The Swiss government froze hundreds of millions of francs in presumptive illicit dictators' assets, invoking its authority under the Federal Constitution to safeguard the interests of the country. In addition, Switzerland also applied UN sanctions (as in the case of Libya) or complied with EU sanctions (as in the case of Syria). ▶

## **In brief**

Switzerland responded more quickly to the historic upheavals in the Arab world than any other country. It froze the assets of PEPs and companies from Egypt, Tunisia, Libya and Syria valued at hundreds of millions of Swiss francs. It sent experts to the countries in question to assist them in drafting requests for mutual legal assistance. Switzerland's experience shows the crucial importance of close cooperation for the successful repatriation of embezzled funds. Alongside the proceedings in the affected countries, the Swiss justice authorities have launched their own investigations.



By autumn of 2016 the situation was as follows:

- USD 570 million in assets from Egypt is ascribed to former president Hosni Mubarak and his entourage.
- CHF 60 million has been linked to exiled Tunisian president Zine al-Abidine Ben Ali.
- CHF 120 million is connected to Bashar al-Assad, the president of Syria, and with Syrian companies (EU sanctions).
- CHF 90 million remains frozen from the entourage of Libyan dictator Muammar al-Gaddafi (UN sanctions).

Switzerland is actively supporting the governments in their efforts to recover the frozen assets. The Swiss authorities have traced tens of thousands of financial transactions connected to the North African autocrats. They are conducting investigations in both the Tunisian and Egyptian cases, notably on suspicion of money laundering.

Switzerland is working at the political level as well to advance democracy and strengthen human rights. In the Arab countries, Switzerland is promoting free media, strengthening of civil society, a strong rule of law and an independent judicial system. In certain judicial systems in its partner countries, however, Switzerland is facing its own limits: Switzerland cannot take the place of the judicial authorities of the country of origin if the latter acquit former rulers or their close associates.

### COOPERATION IS ESSENTIAL

Switzerland's experience in the recovery of dictators' assets clearly reveals the crucial importance of a close working relationship based on trust and dialogue between the countries for successful restitution of plundered assets. This is especially true of countries in a post-revolutionary phase.

To advance potential restitution, Switzerland has established good contacts with its Tunisian and Egyptian partners at all political levels. The local judicial authorities, as in Tunisia, are mostly well trained and take a professional approach to their work. For obvious reasons, however, they have little experience with complex cases of economic crime in government circles.

Delegations of Swiss experts therefore visited Tunisia and Egypt shortly after freezing the assets to support judicial authorities there. The Swiss government has the clear political will to return illicitly acquired assets to the plundered countries. But it is equally resolute in defending the rule of law. In essence this means that the judicial authorities must prove the illicit origin of the frozen assets through criminal proceedings in a court of law.

The uprisings in the Arab world have generally triggered a genuine paradigm shift, making restitution of illicitly acquired assets a global issue. The international community must



New governments took office following the popular uprisings.

take action. The Arab Forum on Asset Recovery (AFAR), formed in 2012 under the auspices of the G8 countries, is a sign of this trend. At the request of the United States and the G7, Switzerland hosted the third AFAR assembly in Geneva in 2014. Switzerland also actively promoted closer partnerships between the countries of origin and the financial centres at the fourth meeting in Tunisia in 2015.

### SUMMARY

Switzerland's response to the Arab uprisings has validated the practices for dealing with dictators' assets that it has developed over the years: Switzerland is prepared to promptly freeze such assets on a preventive basis in the event of political upheaval and actively support the countries involved. The issue gained considerable international salience at the time of the Arab revolts, and the need for coordination among countries was recognised. Since then, countries have frequently taken inspiration from proven Swiss practices. ●

**FROZEN: HUNDREDS OF MILLIONS OF SWISS FRANCS**



## VIKTOR YANUKOVICH

The case of the deposed president of Ukraine shows what good international cooperation can accomplish.

The announcement came as a surprise. On 21 November 2013 President Yanukovich declared that he would not sign an association agreement with the European Union. The statement triggered massive civil protests in Ukraine – and the beginning of the end of the Yanukovich regime.

Maidan Square in the centre of the capital city of Kyiv became the stage for a genuine revolution, known in Ukraine today as the “Revolution of Dignity”. The people had long been fed up with shameless corruption and blatant mismanagement by their authorities. After months of unrest marred by violence, German, French and Polish diplomats succeeded in reaching an agreement between the government and the opposition calling for new elections.

But Viktor Yanukovich felt threatened in his own country – and he took precautions. Even during the course of

negotiations, he had precious paintings, icons and vases from his official residence packed into removal vans and helicopters.

On 21 February he fled the city under cover of night. First he flew by helicopter to Kharkiv, the second-biggest city in the country’s east. From there he took a car to Crimea, whence he continued to Moscow. The next day he was deposed by Parliament.

### LESS MONEY THAN EXPECTED

A few days later, on 26 February 2014, the Swiss government adopted the Ordinance on Measures against Certain Persons from Ukraine, which came into force on 28 February, and froze their assets. Switzerland took this action in close cooperation with Liechtenstein and Austria, particularly in compiling lists of targeted individuals, and the EU followed suit soon afterwards. The Ukraine case was the first in which a freeze on assets was coordinated and ordered at the international level from the outset. The measures were based on the experience gained during the Arab uprisings and enabled actions to proceed swiftly.

The change of regime has had a significant impact on Switzerland because of its geographical location, the exposure of its financial sector and its economic relations with Ukraine. The sum of assets frozen in Switzerland, approximately USD 70 million, was less than the media had expected. However, this was presumably due in part to the deterrent effect of Switzerland’s many years of engagement in the fight against plundered assets.

In London in late April 2014, the format of the multilateral Arab Forum on Asset Recovery, which had already proven successful, was applied to Ukraine at the launch of a Ukraine Forum on Asset Recovery. The forum’s aim was not only for the states to take a political stance on the return of illicit assets to Ukraine, but also to establish a

practical exchange between financial centres and the Ukrainian authorities, in anticipation of long years of cooperation generally required in restitution cases.

For the assets to be repatriated, Ukraine would have to furnish proof that they had been acquired illegally. This would be a major challenge given the country’s shortage of both expertise and qualified manpower.

### SWISS EXPERTISE

Switzerland therefore resolved to support Ukraine in its efforts, asking the International Centre for Asset Recovery (ICAR) in Basel to provide professional and strategic assistance to the Ukrainian authorities. The ICAR, whose extensive expertise is recognised worldwide, focuses on strategic and technical support. It sent an expert in financial investigations to Ukraine.

Cooperation with Ukraine is going relatively well. Since the change of regime, the Ukrainian authorities have submitted numerous requests for mutual legal assistance. On the basis of these requests, Switzerland has been able to order several freezes. Overall, Ukrainian assets worth roughly USD 70 million are frozen in Switzerland. ●

**FROZEN: APPROXIMATELY  
USD 70 MILLION**

# RESTITUTION OF ASSETS

## Switzerland's efforts to ensure that returned dictators' assets are used appropriately.

Switzerland has so far returned roughly USD 2 billion in plundered assets. In the process it is concerned that victims of bribery, abuse of office and violence benefit from the restitution. The funds should be returned openly and transparently and be used for the good of the people. The Federal Act on the Freezing and the Restitution of Illicit Assets Held by Foreign Politically Exposed Persons (FIAA) states that the aim of restitution is “to improve the living conditions of the inhabitants of the country of origin or to strengthen the rule of law in the country of origin and thus to contribute to the fight against impunity”.

This is just as important as the return of the funds. After all, even where money that could be used to fund worthwhile projects is at issue, justice must be served. PEPs who abuse their power and enrich themselves at the expense of their people must be held accountable. In simple terms, crime must not pay.

In many cases Switzerland, in collaboration with the countries impacted, has succeeded in upholding these principles. In the “Abacha I” case (p. 18), for example, Nigeria undertook to use the money to fund health, education and infrastructure projects. The country signed an agreement with Switzerland under which the World Bank could oversee use of the funds. This oversight,

known as monitoring, was a world first at the time. It has become a model for other cases involving restitution of dictators' assets. Angola and Kazakhstan are two good examples of the practice.

### **EXAMPLE: ANGOLA**

Switzerland and Angola concluded two bilateral agreements in 2005 and 2012 governing return and use of funds frozen in the canton of Geneva.

One case involved USD 21 million in accounts belonging to Angolan officials. The other involved USD 43 million originating from embezzlement of public funds in connection with the sale of Angolan oil.

In the first case, the USD 21 million was used to strengthen agricultural vocational education and training in Angola and to fund mine-clearance programmes. Angola is one of the most heavily mined countries in the world. Even years after the end of the civil war, anti-personnel mines are a major danger to the population. A further programme was agreed between Switzerland and Angola at the end of 2012. Here USD 43 million is to be returned for development projects.

### **EXAMPLE: KAZAKHSTAN**

In the case of Kazakhstan, a trilateral monitoring system was set up with the World Bank and the United States to

support the return of the funds. In 2007 the country received USD 115 million from Switzerland from bribe money that had been frozen in Geneva. Switzerland, the United States and Kazakhstan agreed that the funds should be used for projects to benefit disadvantaged young people.

A foundation was established in Kazakhstan for this purpose, entirely independent of the Kazakh authorities. The frozen funds were transferred to the foundation in instalments. A board of trustees supervised their use. On suspicion of mismanagement, disbursement of funds could be frozen at any time on request of a country representative. The World Bank declared itself prepared to assume monitoring duties.

Since then, the money has been fully restituted. According to the World Bank's final report, the foundation achieved outstanding results. Disadvantaged families and young people benefited from social and health services and higher education subsidies.

During the foundation's six years of operations, it significantly improved the living conditions of 208,000 Kazakhs. Moreover, local capacities and expertise were decisively enhanced.

Restitution through a foundation proved to be administratively cumbersome, however, so in 2012 Switzerland assigned the World Bank directly to re-

turn and use a further USD 48 million. These funds originated from a criminal case based on suspicion of money laundering.

A settlement had been reached during the course of these proceedings, with the participants agreeing to return the frozen funds to the Kazakh people. Among other things, the funds were to be used to improve energy efficiency in public buildings such as hospitals and schools.

### SETBACKS STILL POSSIBLE

Setbacks can still occur in use of recovered funds. In the Montesinos case (p. 21), for example, Peru used the funds for leisure activities for the police, among other things. This was not what Switzerland had intended. In the Abacha case (p. 18), the World Bank complained of lack of transparency in budgeting and accounting, making effective supervision difficult. And in the Angola case, non-governmental organisations criticised some of the ways the funds were actually used.

Such lessons learned are taken into consideration when structuring each new restitution process. But each case is unique, and there is never absolute certainty about the use of such funds. Nevertheless, Swiss experience shows that with the right mechanisms it is possible to seek transparency and justice in restitution of plundered assets. Cooperation with the country of origin, political will, and close monitoring offer the best guarantees that the funds will be used to benefit the people and not be misappropriated once again. ●

**RESTITUTED:**  
**ANGOLA – USD 64 MILLION**  
**KAZAKHSTAN –**  
**USD 163 MILLION**

## How restituted funds can help

### The Philippines

Two-thirds of the recovered Marcos millions were used for land reform, thanks to which poor farmers now own a piece of land. Cases of corruption and mismanagement did occur during the process. One-third of the money is to be used as compensation for victims of human rights violations. This was a condition set by Switzerland for the return of the funds.

### Nigeria

Under the supervision of the World Bank and with participation by civil society, infrastructure projects were funded to electrify rural areas and provide better road access. This benefits the inhabitants. However, according to World Bank monitoring, financial irregularities and bookkeeping errors occurred in the projects.

### Angola

The funds were used to build agricultural boarding schools where several hundred young people are being educated. Special equipment for clearing land mines was purchased and people trained to operate it. Drawing lessons from the negative aspects of its experience in the Philippines and Nigeria, Switzerland managed the finances itself.

### Kazakhstan

The recovered proceeds of corruption are mainly intended to fight rampant youth unemployment in Kazakhstan. The funds are being used to subsidise firms offering apprenticeships to ease young people's entry into the labour market. Support is also being provided for young people from poor families seeking to pursue an academic education.

# EQUIPPED FOR THE FUTURE

Everyone involved must work to ensure that the misappropriated funds are returned more quickly.

Popular uprisings in recent years have focused attention on the question of how the international community deals with dictators' assets. In particular, the issue of how to return these funds most efficiently to the countries from which they were stolen has drawn much attention. Switzerland's stance is unambiguous: assets that have been embezzled by PEPs should be returned to their rightful owners. In so doing, Switzerland adheres to the following principles:

- Misappropriated funds should be returned transparently and in close cooperation with the countries affected.
- The funds should primarily benefit the victims of corruption, i.e. in most cases the local population, for example through development projects.

## PARTNERSHIP IS KEY

Switzerland's many years of experience with recovery of plundered assets show that the key to success is a partnership based on mutual trust between the countries involved. Difficulties resulting from different judicial systems can only be overcome by working together – or otherwise, for the most part, not at all. In the case of Peru (p. 21), for example, the cooperation worked perfectly. It took only about a year from blocking to

the first restitution payment. Haiti (p. 13) and the Democratic Republic of the Congo DRC (p. 16) are examples of the opposite. Their governments were too weak (Haiti) or unwilling (DRC) to carry out a mutual legal assistance process and achieve a legally binding ruling.

## PROTECTING FUNDAMENTAL RIGHTS

One of the biggest challenges is the length of the restitution process. Especially in complex cases of state corruption, even under ideal conditions with very close cooperation the process often takes several years. Legal deadlines must be observed and opportunities provided to appeal decisions. Even in the case of dictators' funds, fundamental rights such as freedom of property must not be restricted without observing certain rules. The rule of law – and with it legal certainty – must be respected. Thus embezzled funds cannot simply be returned overnight.

But what is possible and necessary is to make the restitution process more efficient at the national and international levels. An innovative and pragmatic approach is needed. During investigations into membership of a criminal organisation, for example, fallen despots must prove that their frozen assets in Switzerland were earned legally. This

## The legal arsenal

Switzerland possesses a proven set of legislative instruments for dealing with illicitly acquired assets of PEPs. These tools govern the identification, freezing and restitution of such assets.

The Swiss Federal Constitution gives the government the power to issue ordinances of limited duration to safeguard the interests of the country (Art. 184 para. 3). Freezing assets in connection with Ukraine in late February 2014, for example, was done on this basis.

The Federal Act on Combating Money Laundering and Terrorist Financing has governed due diligence obligations in financial transactions since 1 April 1998. Under this act, banks must clearly identify all of their clients and determine the beneficial owner of assets. There are no anonymous numbered bank accounts in Switzerland. In the event of justified suspicion of money laundering, banks must provisionally freeze assets and report them to the authorities. Special due diligence obligations apply to PEPs. Banks must decide at the senior management level and review each year whether to enter into and continue a client relationship with a politically exposed person.

The Swiss Criminal Code contains provisions on money laundering (Art. 305<sup>bis</sup> and 305<sup>ter</sup>), bribery (Art. 322<sup>ter</sup> ff) and membership in criminal organisations (Art. 260<sup>ter</sup>). Banking secrecy is lifted during criminal investigations.

The Federal Act on International Mutual Assistance in Criminal Matters has enabled Switzerland since 1981 to provide legal assistance to countries with which it has not entered into a bilateral agreement. It also allows sharing of evidence and release of assets.

The new Federal Act on the Freezing and the Restitution of Illicit Assets Held by Foreign Politically Exposed Persons (FIAA) came into force on 1 July 2016. It governs the freezing, confiscation and restitution of dictators' illicit assets in cases which cannot be resolved on the basis of the law on international mutual legal assistance in criminal matters, thus providing a uniform legal basis for action (see adjacent text).

reversal of the burden of proof was first successfully used by Switzerland in the case of the Nigerian General Sani Abacha (p. 18). Focused technical support provided by experts can also significantly accelerate a mutual legal assistance procedure.

#### **NEW LEGISLATION**

In response to the events in the Arab world and the asset freezes ordered by the Federal Council, Parliament sent a procedural request to the government in March 2011. The request called for drafting a statute to eliminate the need to invoke the Federal Constitution in future.

In May 2011 the Swiss government responded positively and proposed replacing the RIAA (the "Lex Duvalier") with a comprehensive piece of legislation. Switzerland's long-standing practices in dealing with dictators' assets were to be consolidated on a comprehensive legal basis. Parliament adopted the Federal Act on the Freezing and the Restitution of Illicit Assets Held by Foreign Politically Exposed Persons (FIAA) in December 2015. The law governs freezing, confiscation and restitution of dictators' assets in cases that cannot be resolved on the basis of the law on international mutual legal assistance in criminal matters.

It also provides for measures to support the country of origin in its recovery efforts, especially through legal experts' reports or secondment of specialists. It enables preventive freezing of assets to support potential cooperation under mutual legal assistance. In cases where the mutual legal assistance process has definitively failed, the FIAA allows the Swiss government to initiate confiscation and restitution processes.

#### **A STRATEGY**

The Swiss government approved a strategy for the freezing, confiscation and restitution of dictators' assets in 2014. The strategy is directed at relevant ad-

ministrative agencies and serves to ensure optimal coordination among Swiss authorities. The objectives of the strategy are to return assets as quickly as possible in accordance with the rule of law, strengthen Switzerland's international engagement, ensure transparent and carefully selected procedures of restitution and actively and clearly communicate Swiss policy.

#### **EFFORTS AT THE INTERNATIONAL LEVEL**

At the international level, Switzerland works towards closer collaboration between the financial centres and the countries of origin. Adoption of the United Nations Convention against Corruption in 2003 was an important step in this direction. It sets forth an obligation to return illicit assets to the countries of origin and provide compensation to the victims.

In partnership with the ICAR in Basel and the World Bank (StAR), Switzerland is leading the development and the consolidation of international guidelines for efficient restitution of plundered assets as part of a UN mandate. Some 30 countries and organisations are involved in this process. The work is being done in seminars given by Switzerland in Lausanne since 2001. ●

# “SWITZERLAND DESERVES RESPECT”

By Sri Mulyani Indrawati

Corruption is theft from the poor. Corruption keeps children from being immunised, blocks access to clean water and destroys the hopes of women, children and men for a better life. When PEPs enrich themselves, they deprive people of the chance to escape poverty and misery. For all those who enrich themselves and for those who aid them, there must be no impunity and no safe havens.

Assets must be returned to their rightful owners, the people and governments of the countries impacted. At issue is not just money, but also the strengthening of people’s trust in their institutions, and sending a clear signal that the bad practices of previous politicians will no longer be tolerated.

But all too often stolen assets go missing in the course of lengthy judicial proceedings. Switzerland has proven that this can be prevented through prompt, creative action. Take the case of Nigerian military dictator Sani Abacha, for example: in 2005 the Swiss Federal Supreme Court decided to return over USD 500 million to Nigeria – without insisting (as is customary) that the accused first be convicted by a court in the country. Switzerland proceeded in similar fashion in the case of former Haitian dictator Jean-Claude Duvalier.

Since 2006 Switzerland has restituted some 40% of all illicitly acquired assets of PEPs which have made their way to OECD countries. Switzerland shares its experience with the whole world: for more than ten years it has organised meetings in Lausanne where official representatives and experts from around the world can discuss practical issues in restitution of illegally acquired assets.

Switzerland must also continue to ensure that its financial sector cannot be abused as a safe haven for dirty money. In recent years it has taken measures to guarantee that banks meet their obligations under anti-money-laundering provi-

sions still more effectively. Switzerland has also drawn lessons from the Arab uprisings. For all this Switzerland deserves our respect.

## RESTITUTION WORKS

Restitution of assets can work even under complex circumstances involving multiple jurisdictions. For example, two aircraft from Switzerland and France, two yachts from Italy and Spain and USD 29 million from an account in Lebanon have been returned to Tunisia. Success stories like this are encouraging. Still, it is clear that much remains to be done – and financial centres (including Switzerland) can and should do still more. This applies not only from a legal standpoint but also in implementation. Stolen assets must be prevented from finding their way to financial centres in the first place – and experience shows us how much remains to be done in this respect.

Without the generous assistance of donor countries like Switzerland, the Stolen Asset Recovery Initiative (StAR) would not be able to fulfil its purpose. Switzerland is an important partner for StAR and for the World Bank as a whole. It is a partner from whom we expect still more engagement to achieve still better results so that we can return still more stolen assets to their rightful owners. Together we intend to work towards the goal of ending corruption and impunity and thereby fighting poverty. ●



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#### Illicitly acquired assets of foreign politically exposed persons (PEPs)

[www.eda.admin.ch](http://www.eda.admin.ch) > Foreign policy > The financial centre and the economy

#### International mutual legal assistance in criminal matters

##### Federal Office of Justice

[www.bj.admin.ch](http://www.bj.admin.ch) > Security > International Mutual Legal Assistance in Criminal Matters

#### Mutual Assistance Act

[www.bj.admin.ch](http://www.bj.admin.ch) > Security > International Mutual Legal Assistance in Criminal Matters > Legal basis

### International

#### The Stolen Asset Recovery Initiative (StAR)

World Bank and United Nations Office on Drugs and Crime (UNODC)  
<http://star.worldbank.org/star/>

#### International Centre for Asset Recovery (ICAR)

[www.baselgovernance.org/icar/](http://www.baselgovernance.org/icar/)

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