Switzerland's Experience in Repatriating Illicitly Acquired Assets by Politically Exposed Persons (PEP)

Non-paper

Illicitly acquired assets of PEP that manage to enter Switzerland despite comprehensive precautionary measures have to be identified and repatriated to their country of origin. This so-called restitution is an important instrument in Switzerland's policy of combating illegal monies. Switzerland has returned about USD 2 billion to the countries of origin, which is more than any other financial centre in the world. In the last 30 years, Switzerland has gained significant experience in this field and has learned important lessons from its efforts. One of the main observations is that in order for the restitution process to succeed, a close and lasting partnership between the state of origin (requesting state) and the requested state is essential. In the framework of such cooperation, the question of the use of the assets is being discussed and examined. Experience shows that appropriate solutions can be found on a case-by-case basis through constructive dialogue between the requesting and the requested state. The solution must meet both national and international expectations as well as those of the governments concerned and the civil society. The concerted aim of the restitution process is to return illicitly acquired assets to those from whom they were taken.

This document, which is not meant to be exhaustive, presents several recent and representative examples of Swiss restitution cases.

1. Philippines

In the end of the 1990s, the Swiss Federal Supreme Court determined that the assets held by the former president of the Philippines Ferndinand Marcos and his entourage were of criminal origin and the Court ordered their transfer to escrow accounts in the Philippines. An enforceable judgement by a Philippine Court finally brought the mutual legal assistance procedure to an end and the restituted USD 684 million could be used to compensate victims of human rights violations under the Marcos regime.

2. Peru

In 2002, Switzerland restituted about USD 92 million to Peru based on a ruling in a money-laundering case against Vladimiro Montesinos, the former head of the Peruvian National Intelligence Service (SIN). Subsequently, Peru created a special national fund for the administration of forfeited corruption proceeds (FEDADOI). Its purpose was to provide a framework for the government to manage the recovered assets transparently and appropriately. The FEDADOI board determined how the assets would be used. The result of this process was not entirely satisfactory as some of the assets were used for leisure activities for state officials. The Peruvian authorities were sharply criticized for this by the civil society.

3. Angola

a. Angola I

Criminal procedures in Geneva led to the seizure of embezzled funds in the amount of USD 24 million. At the request of Angola, discussions were subsequently held between the Swiss and the Angolan authorities in order to determine the use of the funds. In 2005, the two governments signed an agreement providing for a restitution program called the Social-Humanitarian Program (SHP). It was agreed that Switzerland would be responsible for managing the assets. The SHP contributed to the mine-removal process in Angola following the end of the civil war. An independent evaluation of the mine-removal component of the SHP was conducted in 2012 by the Geneva International Centre for Humanitarian Demining (GICHD). The GICHD concluded that the demining operations of the program resulted in the clearance of an area of about 260 km^2. This directly impacted the local communities because houses and municipal buildings had subsequently been constructed in the cleared areas.

b. Angola II

In 2012, Switzerland and Angola signed a second asset restitution agreement involving USD 43 million. It called for a joint mechanism under which the Swiss and Angolan parties would define together both the orientations of the program aimed at supporting Angola's development and the projects that would be financed. Since 2014 the Angolan and Swiss sides work closely together on the implementation of projects in the field of education and agriculture. The restitution process is being managed transparently under the watchful eye of the civil society.

4. Nigeria

a. Abacha I

In 2005, the Swiss Federal Supreme Court ruled that former President of Nigeria Sani Abacha's assets frozen in Switzerland were of criminal origin and could be restituted to Nigeria even though the country had not issued a forfeiture order (advanced restitution). Switzerland and Nigeria agreed that the use of the assets (USD 700 million) would be monitored by the World Bank. The monitoring system ran into a problem when the government included the assets in its 2004 budget even though they were not restituted until 2005. The World Bank could therefore only proceed with a posteriori review. This operation was nevertheless recognized as a breakthrough since it was the first time a monitoring system of this kind had been put in place.

b. Abacha II

In July 2014 a comprehensive settlement (*Repatriation Agreement*) between the Nigerian government and the Abacha family was reached concerning the assets seized in several countries. The parties agreed that the funds be returned to the Nigerian state while simultaneously dropping criminal proceedings against Abba Abacha, son of Sani Abacha. The latter in turn waived claims to the assets. On December 11th 2014 the Public Prosecutor's Office of Geneva (MPG) ordered the confiscation of USD 321 million recovered from Luxembourg via international mutual legal assistance and its subsequent restitution to Nigeria under the monitoring of the World Bank. A tripartite agreement on the modalities of the restitution of the funds was signed by Nigeria, Switzerland and the World Bank at the Global Forum on Asset Recovery in December 2017. The agreement outlines that the restituted funds are used for a project in the field of social security to the benefit of the poorest segments of Nigerian society. Furthermore, the disbursement of the funds are transferred in tranches and monitored by the World Bank.

5. Kazakhstan

a. Kazakhstan I

The first restitution case concerning the Republic of Kazakhstan (Kazakhstan I) involved around USD 115 million. In 2007, an agreement was reached between the United States, Switzerland and Kazakhstan under which the assets were restituted to the Kazakh people through an independent Kazakh foundation called BOTA Kazakh Child and Youth Development Foundation. Having an international financial institution like the World Bank oversee the restitution process proved to be the right solution in this case. The BOTA program, which was designed to support underprivileged Kazakh children and adolescents and their families improved the health of more than 208,000 young people while reducing poverty levels among them. This case shows that a restitution mechanism involving the civil society is possible and proves sustainable.

b. Kazakhstan II

Kazakhstan II, which refers to the restitution process for the second tranche of assets frozen in Switzerland, came under the jurisdiction of the judicial authorities in Geneva. The parties to the dispute agreed in 2012 that the assets, amounting to USD 48 million, would be used for World Bank projects in the areas of youth development and energy efficiency. The World Bank has assumed fiduciary responsibility regarding the use of the funds allocated to development projects in Kazakhstan. Because the World Bank is subject to strict internal controls, it will regularly review how the funds are spent. This solution offers the benefit of using an existing monitoring system while significantly reducing the administrative burden on the governments concerned.