

Jean Claude "Baby Doc" Duvalier (Switzerland)

Case ID:

ARW-87

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Haiti

Position of Public Official(s) (yrs in office):

President (1971-1986)

Jurisdiction of Asset Recovery:

Switzerland

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort, Location of Recovery Effort, Asset Location / Alleged Asset Location

Asset Recovery Start:

1986

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.17

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Criminal Prosecution and Forfeiture

Intl.Cooperation: MLAT/Letter of Request?:

MLAT

Basis for Intl Cooperation:

International Mutual Assistance on Criminal Matters (ended January 2010)

Contributing Factors in Asset Recovery:

Ongoing Case

Status of Asset Recovery :

Ongoing

Stage in Asset Recovery Chain:

On Appeal

Assets Frozen or Seized (USD):

\$6,556,090

Agreement for Returned Assets:

Ongoing

Agreement for Returned Assets - Description:

N/A

Case Summary:

According to a Federal Administrative Court (FAC) press release, on September 23, 2013, the FAC ruled against Mr. Duvalier and co-complainants and upheld the freezing of their assets ordered by the Federal Council in 2002. In its decision of September 24, 2013, the FAC also upheld the asset forfeiture proceedings launched by the Federal Department of Finance (FDF) on behalf of the Swiss Confederation on April 29, 2011. The press release stated, "In its

decision of 24 September 2013, the FAC confirmed that these asset forfeiture proceedings were valid because the assets in question had been obtained illicitly. Specifically, the FAC felt that Jean- Claude Duvalier and his entourage did not demonstrate that the increase in their assets had resulted from activities unrelated to their role as public officials. Moreover, the level of corruption of the Haitian state was notoriously high during the period in which they had held public office. It was therefore concluded that the conditions determining the illicit origin of the assets in question were met." These assets have been frozen since 2002. Both decisions may be subject to appeal before the Federal Supreme Court, but barring an appeal, the way is now clear for the restitution procedure of these seized assets to be launched (Source: Federal Administrative Court press release, "FAC confirms freezing and forfeiture of Duvalier assets", September 25, 2013; See also text of decision: "Extrait de l'arrêt de la Cour III dans la cause Département fédéral des finances contre Fondation Brouilly, Jean-Claude Duvalier, hoirie de feu Simone Ovide Duvalier, composée de Jean-Claude Duvalier, Nicole Duvalier, Marie-Denise Duvalier et Simone Duvalier, et Michèle Bennett-Duvalier C?2528/2011 du 24 septembre 2013," BVGE 2013/40).

According to the Swiss Federal Department of Foreign Affairs, the funds were frozen by a 2010 Federal Council decision of, which followed the January 2010 judgment by the Federal Court "which put an end to the mutual legal assistance between Haiti and Switzerland, this freezing order has avoided a return of the assets to the Duvalier family. The freezing remained in force until the entry into force of the Act on the Restitution of Illicit Asset (LRAI). This law was accepted by Parliament in the autumn session 2010 and is entered into force on 1 February 2011. The Duvalier assets have then been frozen on the basis of article 14 RIAA. The Confederation took legal action before the Federal Administrative Court to enable frozen assets to be forfeited in April 2011, further to the decision of the Federal Council to ask the Federal Department of Finance (FDF) to initiate proceedings for the forfeiture of the Duvalier funds frozen in Switzerland. (Source: Swiss Federal Department of Foreign Affairs, "Illicit assets of politically exposed persons (PEPs)," last modification March 20, 2012, at <http://www.eda.admin.ch/eda/en/home/topics/finec/intcr/poexp.html>.)

Disposition of Criminal Case(s):

On October 4, 2014, Mr. Duvalier passed away. Prior to his death, the charges against him in Haiti had been voided on grounds of expiration of statute of limitations. (Source: The Economist, "Obituary: Baby Doc Duvalier," October 11, 2014). On January 18, 2013, Haitian prosecutors charged Mr. Duvalier with corruption and embezzlement, and he was taken into police custody (Source: New York Times, Jean-Claude Duvalier, accessed at http://topics.nytimes.com/top/reference/timestopics/people/d/jeanclaude_...) According to an Amnesty International press release, after three failures to appear to court hearings, the latest on February 21, 2013, the Court of Appeal had asked the Public Prosecutor to issue a warrant ordering the former president to appear before the court on February 28, 2013. Mr. Duvalier had appeared in court on February 28, 2013 and entered a plea of not guilty. (Sources: Amnesty International press release, "Haiti: Jean-Claude Duvalier's presence in Court brings hope to victims," March 1, 2013 accessed at <http://www.amnesty.org/en/news/haiti-jean-claude-duvalier-s-presence-cou...> NBCnews.com, "Ex-Haiti dictator 'Baby Doc' Duvalier faces corruption charges for first time since revolt," February 28, 2013, accessed at http://worldnews.nbcnews.com/_news/2013/02/28/17136615-ex-haiti-dictator...

According to an April 2011 report by Human Rights Watch, criminal proceedings had been instituted in Haiti against Mr. Duvalier on charges of financial crimes, after he left Haiti in

1986. These pending proceedings were reinstated when Mr. Duvalier returned to Haiti in January 2011. (Source: Haiti's Rendezvous with History, "The proceedings against Duvalier," Human Rights Watch, April 14, 2011, accessed at <http://www.hrw.org/en/node/97889/section/4> .)

Jurisdiction of Origin: Investigative Agency:

Investigating Judge (Juge d'instruction)

Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):

State Prosecutor (Commissaire du gouvernement)

Jurisdiction of Origin: Courts Involved:

Unknown

Jurisdiction of Asset Recovery: Investigative Agency:

Le juge d'instruction du canton de Geneve

Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):

Office federal de la justice; Monfrini Crettol & Partners (Attorneys Enrico Monfrini and Yves Klein)

Jurisdiction of Asset Recovery: Courts Involved:

Chambre d'accusation genevoise; Tribunal federal, Federal Administration Court

Documents:

Duvalier_Haiti_Charges_Filed_HRW_Apr_14_2011.pdf

Duvalier_Switzerland_136 IV 4_Jan_12_2010.pdf

Duvalier_Switzerland_Fed_Ct_Decision_Jan_2010_ICAR.pdf

Duvalier_Switzerland_Return_Illicit_Assets_Act.pdf

Duvalier_Switzerland_UN_News_Feb_13_2009.pdf

Documents:

Attachment	Size
 Duvalier_Swiss_Fed_Admin_Court_PR_25_Sep_2013.pdf	61.88 KB
 Duvalier_Swiss_Fed_Admin_Court_Decision_Sept_2013_40.pdf	329.91 KB
 Duvalier_Obituary_Economist_Oct_11_2014.pdf	345.39 KB

Documents Links:

Other Sources:

Swiss Federal Administrative Court Press Release, "FAC confirms freezing and confiscation of Duvalier assets," September 25, 2013; Swiss Federal Department Foreign Affairs, "Illicit assets of politically exposed persons (PEPs)";

Swiss Federal Administrative Court, "Extrait de l'arrêt de la Cour III dans la cause Département fédéral des finances contre Fondation Brouilly, Jean-Claude Duvalier, hoirie de feu Simone Ovide Duvalier, composée de Jean-Claude Duvalier, Nicole Duvalier, Marie-Denise Duvalier et Simone Duvalier, et Michèle Bennett-Duvalier C?2528/2011 du 24 septembre 2013," BVGE 2013/40, at <http://www.bvger.ch/?lang=en>;

Swiss federal court decision 136 IV 4 (January 12, 2010), accessed at <http://www.bger.ch/index/jurisdiction/jurisdiction-inherit-template/juris...>

Text of the Swiss "Return of Illicit Assets Act," accessed at website of the Swiss Federal Department of Foreign Affairs, <http://www.eda.admin.ch/etc/medialib/downloads/edazen/topics/finec/intcr...>

Haiti's Rendezvous with History, "The proceedings against Duvalier," Human Rights Watch, April 14, 2011, accessed at <http://www.hrw.org/en/node/97889/section/4>;

The Economist, "Obituary: Baby Doc Duvalier," October 11, 2014, at <http://www.economist.com/news/obituary/21623568-jean-claude-baby-doc-duv...>