

Sani Abacha / Swiss Mutual Legal Assistance Treaty Case

Case ID:

ARW-167

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Nigeria

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

President (1993-1998)

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:

1998

Asset Recovery End:

2007

UNCAC Offenses Implicated:

Art.16

Art.17

Art.19

Art.20

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Actions Initiated by Foreign Jurisdiction

Intl.Cooperation: MLAT/Letter of Request?:

MLAT

Basis for Intl Cooperation:

MLAT

Contributing Factors in Asset Recovery:

"Thanks to the thorough investigation in the Geneva domestic criminal proceedings, the criminal origin of the funds was clearly demonstrated." (Source: Enrico Monfrini, "The Abacha Case," in Mark Pieth, ed., Recovering Stolen Assets [Peter Lang, 2008]).

Status of Asset Recovery :

Completed

Stage in Asset Recovery Chain:

Assets Returned to Victim or Requesting Jurisdiction

Agreement for Returned Assets:

Yes

Agreement for Returned Assets - Description:

Part of worldwide settlement with recovered funds to be used to fund projects in the health, education, water, electricity and road sectors; monitoring responsibility held by the World Bank. (Source: "Utilization of Repatriated Abacha Loot, Results of the Field Monitoring Exercise," Report Prepared by the World Bank with Cooperation from the Federal Ministry of

Finance (December 2006)).

Case Summary:

According to the Swiss Ministry of Foreign Affairs, \$700 million were returned to Nigeria. (Source: Swiss Ministry of Foreign Affairs, September 30, 2009; see also, The Federal Authorities of the Swiss Confederation, "Out-of-court settlement in the Abacha case - Nigeria to receive more than a billion USD; The countries concerned cooperate in the implementation of the settlement," April 17, 2002.) In 2001, the Abacha family and associates reached an agreement with the Nigerian government to release \$1.3 billion frozen in Switzerland, Liechtenstein and Luxembourg in exchange for being able to keep \$100 million. According to Attorney Enrico Monfrini (lawyer for Nigeria), "Thanks to the thorough investigation in the Geneva domestic criminal proceedings, the criminal origin of the funds was clearly demonstrated...On 19 August 2004, the Federal Office of Justice agreed to transmit to Nigeria all the assets in Switzerland beneficially owned by the Abacha family, waiving the condition of a prior judicial forfeiture decision in Nigeria," This decision was upheld for the most part by the Swiss Supreme Court in February 2005. The Abacha family did not "attempt to reverse the presumption by proving that the balance of the attached funds was not of criminal origin." (Source: Enrico Monfrini, "The Abacha Case," in Mark Pieth, ed., Recovering Stolen Assets [Peter Lang, 2008]; See also, Chronology and related court documents in the Abacha case in ICC FraudNet, at <http://www.icc-ccs.org/home/resources/118-leading-cases/697-abacha-case>).

Update (December 2017): According to the MOU between Nigeria, Switzerland, and the World Bank, signed in December 2017, Switzerland had returned \$723 million to Nigeria by 2005. Based on this, the total amount of retruned assets for this case entry was updated from \$700 million to \$723 million. Also see ARW-250.

Disposition of Criminal Case(s):

According to a 2008 article by Attorney Enrico Monfrini, an appeal was pending before the Nigerian Supreme Court in the criminal cases arising from charges filed in 2000 and 2001 against Mr. Abacha's sons and associate. (Source: Enrico Monfrini, "The Abacha Case," in Mark Pieth, ed., Recovering Stolen Assets (Peter Lang, 2008), accessed at http://www.mcswisslaw.com/pages_e/2008%20Monfrini%20-%20The%20Abacha%20C....

Jurisdiction of Origin: Investigative Agency:

Special Panel established to investigate Abacha looting

Jurisdiction of Asset Recovery: Investigative Agency:

Federal Office of Justice

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

Monfrini Crettol & Partners (Attorneys Enrico Monfrini and Yves Klein) - asset recovery

Jurisdiction of Asset Recovery: Courts Involved:

Geneva Canton Courts

Documents:

Abacha_Switzerland_127_II_198_Jun_5_2001.pdf

Abacha_Switzerland_Accounts_Frozen_Federal_Office_Justice_PR_Oct_14_1999.pdf

Abacha_Switzerland_Anti-Corruption_Newsletter_Nov_2009.pdf

Abacha_Switzerland_Assets_Handed_Over_Federal_Office_Justice_Feb_16_2005.pdf

Abacha_Switzerland_Monfrini_Art_2008.pdf

Documents:

Attachment

Size



Abacha_Settlement_Switzerland_Press_Rel_Apr_17_2002.pdf 109.37 KB

Documents Links:

http://www1.worldbank.org/finance/star_site/documents/arw/Abacha_Switzer...
http://www1.worldbank.org/finance/star_site/documents/arw/Abacha_Switzer...
http://www1.worldbank.org/finance/star_site/documents/arw/Abacha_Switzer...
http://www1.worldbank.org/finance/star_site/documents/arw/Abacha_Switzer...
http://www1.worldbank.org/finance/star_site/documents/arw/Abacha_Switzer...

Other Sources:

Swiss Ministry of Foreign Affairs, September 30, 2009; The Federal Authorities of the Swiss Confederation, "Out-of-court settlement in the Abacha case - Nigeria to receive more than a billion USD; The countries concerned cooperate in the implementation of the settlement," April 17, 2002, at <http://www.admin.ch/aktuell/00089/index.html?lang=en&msg-id=23391>.

Swiss Federal Office of Justice Press Releases: "Abacha assets to be handed over to Nigeria, Switzerland doesn't provide refuge for funds of criminal origin," February 16, 2005; "Abacha's accounts frozen as provisional measure," October 14, 1999, and others at <http://www.ejpd.admin.ch/ejpd/en>;

Enrico Monfrini, "The Abacha Case," in Mark Pieth, ed., *Recovering Stolen Assets* (Bern: Peter Lang AG, 2008) and also available at http://www.mcswisslaw.com/pages_e/2008%20Monfrini%20-%20The%20Abacha%20C.... Among the Swiss court decisions cited by Mr. Monfrini are: ATF 1A.157/2001 and 1A.158/2001 (December 7, 2001); ATF 1A.49-54/2002 (April 23 2003), ATF 115 1b 517; ATF 123 II 134; ATF 123 II 268; ATF 123 II 595; ATF 1A.215/2004 (February 7, 2005). See also, 127 II 198, extract from Judgment of Cour de droit public [Court of Public Law], June 5, 2001, in the case of Abacha and Bagudu, Chambre d'accusacion du canton de Geneva (administrative appeal) [challenge of right to inspect files on bank records pursuant to MLAT request by Nigeria].

Chronology and related court documents in the Abacha case can be accessed at ICC FraduNet, at <http://www.icc-ccs.org/home/resources/118-leading-cases/697-abacha-case>.