The return of the Abacha assets to the Federal Republic of Nigeria
The Abacha criminal organisation

- In power from 17.11.1993 until 8.6.1998
- Misappropriation of public and private funds
- Several means used
## Chronology: 1993–2004 (evidences)

|----------------|-----------|---------------|---------------|------------|------------|------------|
| **EVENTS**     | - 17.11. 1993: Military coup  
- 8.6.1998: Death of General Abacha | March ‘00 – Febr. ’01 |              |            |            |            |
| **MUTUAL LEGAL ASSISTANCE PROCEDURE** | - 30.9.’99: Provisional MLA Request  
- 13.10.’99: FOJ freezes accounts  
- 20.12.’99: MLA Request | - 20.1.’00: FOJ grants assistance  
- 21.5.’00: Suppl. MLA Request  
- 20.7.’00: 2nd decision granting assistance | Gathering of information | 24.1.’02: nine conclusive decisions | - 23.4. 03: Supreme Court approves the assistance  
| **CRIMINAL PROCEDURE** | Mai ‘99: Procedure opened in the Canton of Geneva | March ’00 - Febr. ’01: 9 charges | Gathering of information |            |            |            |

• Staff: 6 persons (Examining magistrate /clerks/accountants /investigators)
• Work load: 7000 hours
• 12 Suspicious Transaction Reports (last one in 2002…)
• Search orders to all Swiss banks
• 25 banks subjects to a search warrant
• 140 bank accounts under review
• 12 requests for assistance in 8 different States
• 10 charges brought (organized crime, forgery,fraud,corruption, money laundering)
• 8 condemnations (organized crime,money laudering, forgery)
• Fines for more than CHF 5 millions
• Return to Nigeria of more than CHF 216 millions
Restitutions of assets before 2004

- Before 2003: 66 million USD (cantonal proceeding)
- November ‘03: 20 million USD (settlement agreement)
- December ‘03: 80 million USD (cantonal proceeding)
- April ‘04: 50 million USD (settlement agreement)
Judicial return of assets

LEGAL ASSISTANCE PROCEEDING: FOJ

(SAME ASSETS FROZEN: 60 mios USD)

SWISS CRIMINAL PROCEEDING: EXAMINING MAGISTRATE GENEVA

CRIMINAL PROCEEDING: 500 mios USD

RETURN (IMAC)

CONFISCATION (SWISS CRIMINAL CODE)

Choice
Art. 74a IMAC

Possibility to hand over property for purpose of forfeiture or return to entitled person

→ Rule: based on a final and enforceable order of the requesting State.
→ Exception: obvious criminal origin of the assets
I. Supreme Court’s Decision (7.2.2005)

1. Right to appeal

2. CH essential interest ≠ refuge for dictators’ funds

3. Paper-trail:
   - 458 million USD: obviously of criminal origin → Nigeria
   - 40 million USD: probably from corruptive acts → not object of the Nigerian procedure → no restitution.
   - 7 million USD: not object of the decision
II. Supreme Court’s Decision (7.2.2005)

4. Abacha organisation = criminal organisation

5. Presumption of Swiss Criminal Code applicable to MLA proceeding
   - Assets of members of criminal organisation presumed to be submitted to organisation’s power of disposal
   Exception: evidence of legal origin
Restitution of the remaining assets

- **40 million USD** → no arguments about legal origin
  → FOJ decision → no appeal → returned to Nigeria 2006

- **7 million USD** → new decision → no appeal → assets
  also returned to Nigeria
NEXT STEPS

• Confiscation order in Geneva in 2009 of the Abacha assets seized in Luxemburg (USD 400 millions). Order challenged
ABACHA WORLDWIDE STATUS 2011
1999: alleged amount of illicit proceeds: 4-10 billions USD

RESTRAINED
LUXEMBURG: USD 400 mios
JERSEY: USD 300 mios?
LIECHTENSTEIN: USD 200 mios

RETURNED
SWITZERLAND: USD 700 mios
JERSEY: USD 130 mios
UK: GBP 5 mios

LOST ?: several hundreds of millions USD WHERE ?
Lessons learnt

Increase of the efficiency of the restitution proceeding by

- Effective legislation leading to a quick and resistent freeze of asset (narrow possibility to appeal) + efficient KYC rules
- the refusal to grant to the Abacha standing to appeal in relation with bank accounts opened under a false identity
- the use of the organised crime provisions of the Swiss Criminal Code in order to reverse the burden of proof
- the use of the information obtained in the domestic criminal proceeding in order to establish the link between the assets and the offences
And don’t forget

• To set up a good and decided team (the whole chain of actors must works toward the same goal) in the requesting and requested State: Prosecuting authorities, State officials, Courts)