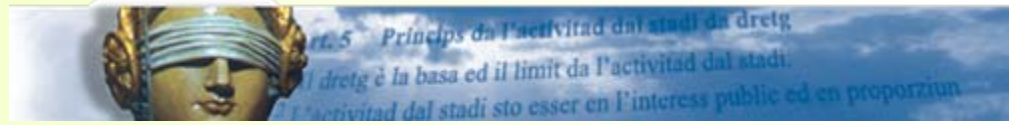


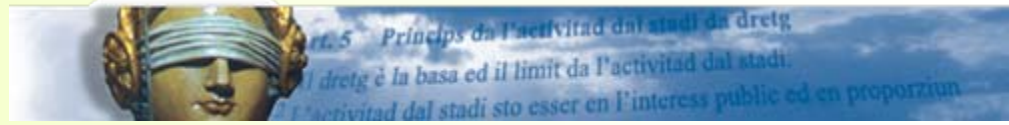
The return of the Abacha assets to the Federal Republic of Nigeria





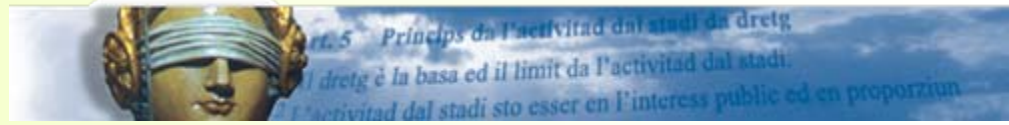
The Abacha criminal organisation

- In power from 17.11.1993 until 8.6.1998
- Misappropriation of public and private funds
- Several means used



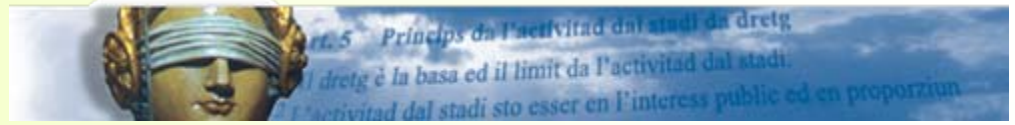
Chronology: 1993–2004 (evidences)

	1993-1998	1999	2000	2001	2002	2003
EVENTS	<ul style="list-style-type: none"> - 17.11. 1993: Military coup - 8.6.1998: Death of General Abacha 		March '00 – Febr. '01			
MUTUAL LEGAL ASSISTANCE PROCEDURE		<ul style="list-style-type: none"> -30.9.'99: Provisional MLA Request - 13.10.'99: FOJ freezes accounts - 20.12.'99: MLA Request 	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - 23.4. 03: Supreme Court approves the assistance - Aug. - Oct. '03: Transmission of documents to Nigeria
CRIMINAL PROCEDURE		Mai '99: Procedure opened in the Canton of Geneva	March '00 - Febr. '01: 9 charges	Gathering of information		



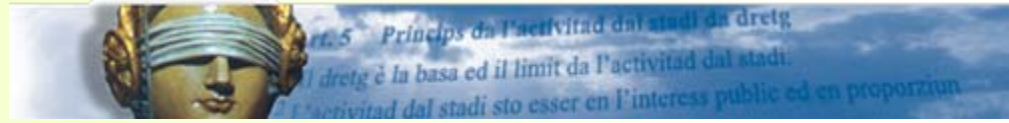
Criminal Proceeding Geneva in Numbers (1999-2003)

- **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 laundering, forgery)**
- **Fines for more than CHF 5 millions**
- **Return to Nigeria of more than CHF 216 millions**

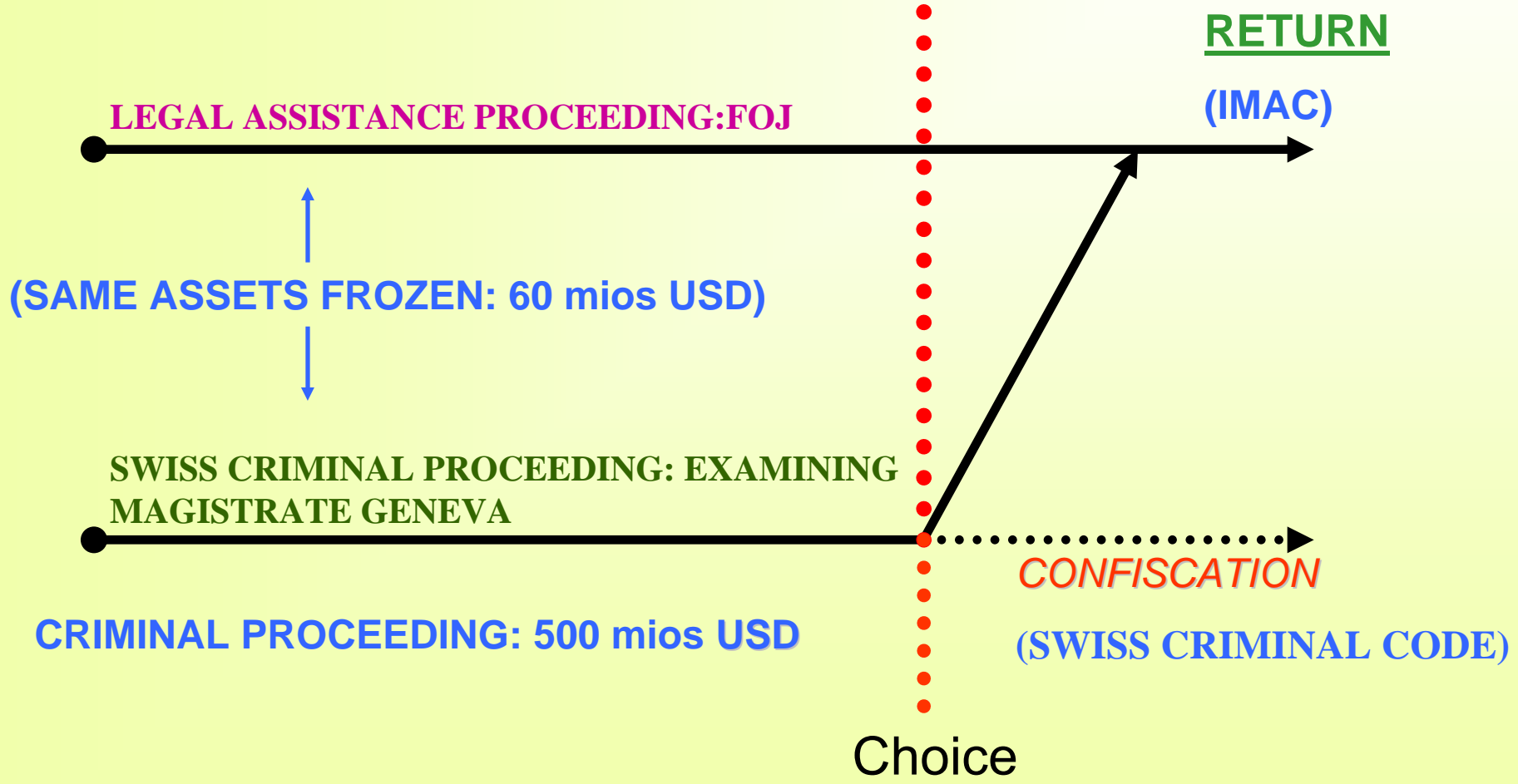


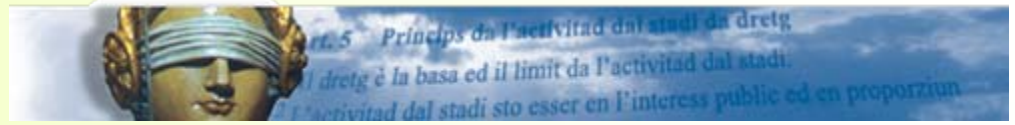
Restitutions of assets before 2004

- 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



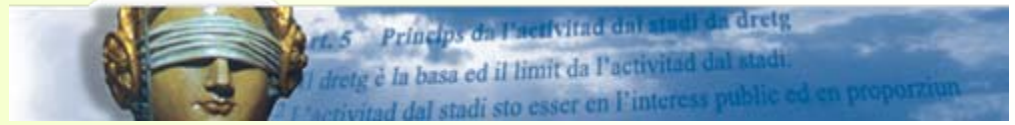


Art. 74a IMAC

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**



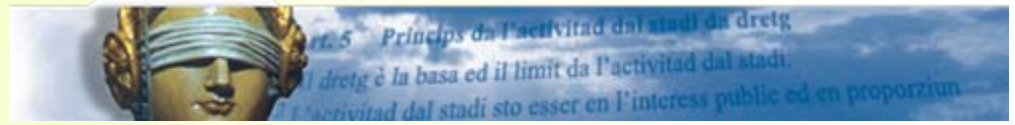
I. Supreme Court's Decision (7.2.2005)

1. Right to appeal

2. CH essential interest \neq refuge for dictators' funds

3. Paper-trail:

- 458 million USD: obviously of criminal origin \rightarrow Nigeria
- 40 million USD: probably from corruptive acts \rightarrow not object of the Nigerian procedure \rightarrow no restitution.
- 7 million USD: not object of the decision



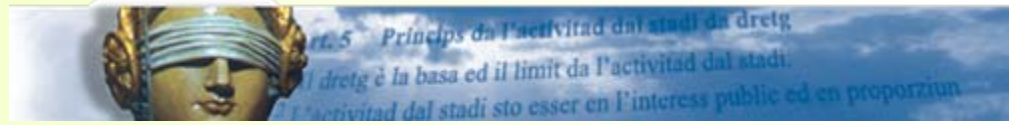
II. Supreme Court's Decision (7.2.2005)

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

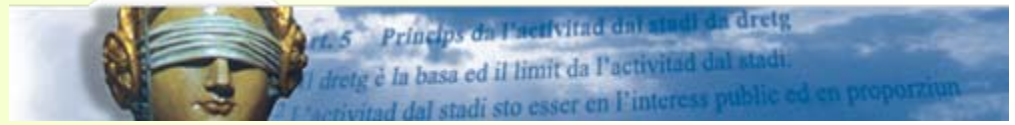
Exception: evidence of legal origin



Restitution of the remaining assets

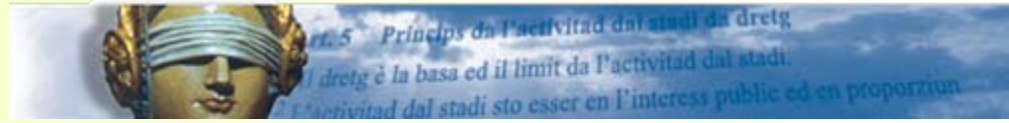
- **40 million USD** → no arguments about legal origin
→ FOJ decision → no appeal → returned to Nigeria 2006

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



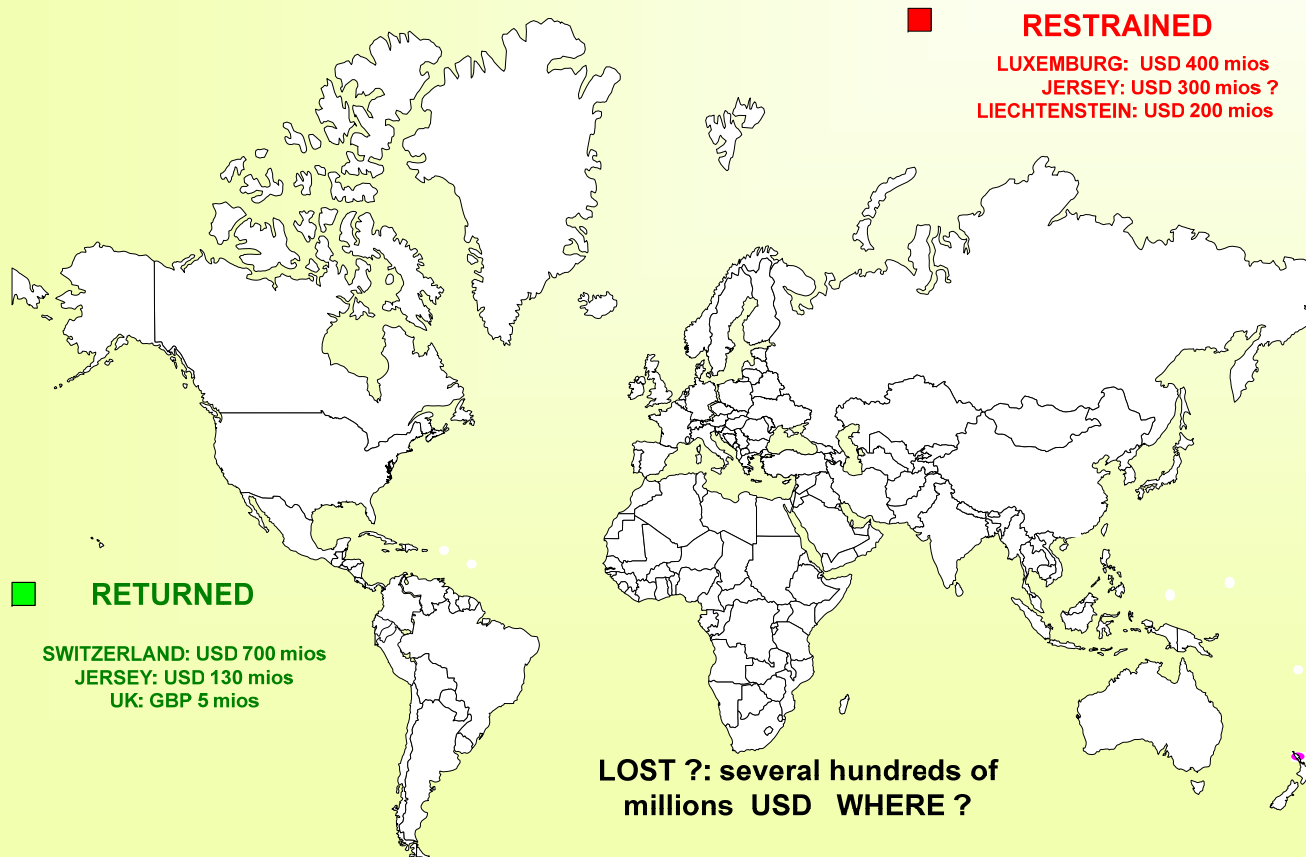
NEXT STEPS

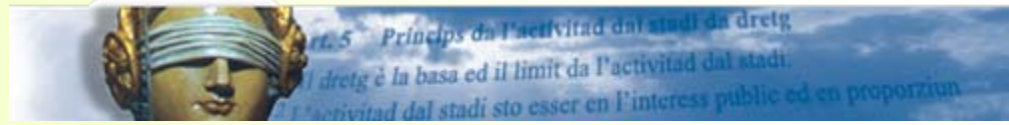
- Confiscation order in Geneva in 2009 of the Abacha assets seized in Luxemburg (USD 400 millions).
Order challenged



ABACHA WORLDWIDE STATUS 2011

1999: alledged amount of illicit proceeds: 4-10 billions USD

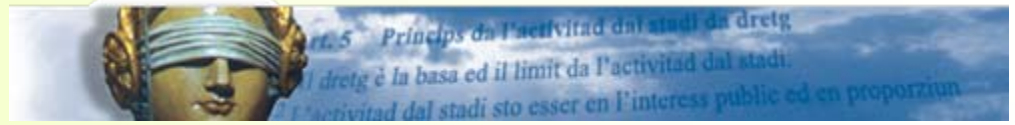




Lessons learnt

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 work toward the same goal) in the requesting and requested State: Prosecuting authorities, State officials, Courts)