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Give Back Stolen Cash? Not So Easy

By DEBORAH BALL

ZURICH—Weeks after the overthrow of Haitian dictator Jean-Claude "Baby Doc" Duvalier in 1986, Haiti asked Switzerland to freeze $5 million it alleged Mr. Duvalier had stolen and stashed in Swiss bank accounts.

Associated Press

Jean-Claude Duvalier in 1980.

Switzerland has been trying to give the money back to Haiti for nearly 24 years. But the simple act of returning allegedly ill-gotten gains has proven harder than it sounds. The money sits frozen in Swiss banks, held up by Haiti's inability to mount a case against Mr. Duvalier and the former dictator's own drive to reclaim the money.

Next month, Switzerland's lower house will vote on a bill that could pave the way for the return of the money to Haiti—and potentially clean up its reputation as banker to the world's strongmen. The law would make it easier for Switzerland to return money to countries known to be corrupt. In the case of Haiti, it would override a January court ruling that found the statute of limitations on Mr. Duvalier's alleged crimes was up, and ordered the money be returned to him. The ruling came just hours before a devastating earthquake in Haiti killed as many as 220,000 people and caused an estimated $7 billion in damages.

"We don't want this money," said Swiss Foreign Minister Micheline Calmy-Rey in an interview. "It belongs to Haiti."

But if the law doesn't pass, Switzerland will have to hand the money back to Mr. Duvalier. In an email to The Wall Street Journal, Mr. Duvalier, who lives in exile in France, denied any wrongdoing and said the money belongs to him and his family. And he's livid that the money remains frozen despite the January court ruling.

"Not even a banana republic would dare such a thing," he wrote in the email. "This unprecedented move calls into question the entire Swiss financial system."

The tale of Switzerland's efforts to return the Haitian funds is emblematic of the difficulty it and other global financial centers face in dealing with the money alleged kleptocrats have salted away in banks across the globe. Since 1986, financial centers have returned a total of $5 billion of stolen assets to developing countries, according to the World Bank. But that is a fraction of the $20 billion to $40 billion the bank says is stolen each year by corrupt public officials in those countries.

The proposed Swiss law, called Lex Duvalier, is seen by some as a paltry response to recent attacks on Switzerland's bank-secrecy laws, which have helped foreigners escape taxes in their own countries and sheltered the assets of criminals. While the proposed law could theoretically be applied to other autocratic leaders in regions like Sub-Saharan Africa and Central Asia, critics say it doesn't go nearly far enough, applying only to "failed states."

Keeping Funds From a Former Dictator

In 1986, Haiti asked Switzerland to freeze $5 million former dictator Jean-Claude "Baby Doc" Duvalier had stashed in Swiss bank accounts. See what Switzerland has done to try to return the money to Haiti.

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"When a state is really at rock bottom, it helps," says Mark Pieth, a Swiss criminal law professor and head of the Organization for Economic Cooperation and Development's working group on bribery. Mr. Pieth was one of the advisors who worked with the Swiss government on the bill. "But are Thailand or Indonesia or the Philippines failed states? No. This law will be shown to be very ineffective quite soon."

For decades, Switzerland accepted stolen booty from the likes of Philippine President Ferdinand Marcos, Chilean President Augusto Pinochet, Nigerian leader Sani Abacha and Zaire's President Mobutu Sese Seko, among others, who hid behind the country's bank-secrecy laws.

Pressure on the Swiss to stop the inflow of stolen assets rose in the wake of spectacular cases exposing the huge amounts held in the Alpine country, starting with the 1986 Marcos case. Swiss banks ultimately disgorged $684 million of Mr. Marcos' holdings to the Philippines, though he is thought to have stolen between $5 billion and $10 billion.

Today, Switzerland is believed to be sitting on the world's largest cache of stolen money—more than $150 billion, according to Global Financial Integrity, a Washington group that tracks corruption in the developing world. Neither the Swiss Bankers Association nor the Swiss Finance Ministry would comment on the figure.

The Swiss say they've returned more money—$1.6 billion in all—than any other country. Some say that's not enough.

"On a global scale, $1.6 billion is likely the tip of the iceberg," says Daniel Thelesklaf, former head of the Swiss Financial Intelligence Unit and current director of the Basel Institute on Governance, which gives legal assistance to developing countries pursuing asset-recovery cases.

The proposed Swiss law aims to remove one of the main obstacles financial centers face when trying to return illicit money: lack of cooperation from the victim country. Swiss law currently requires a country to launch a criminal investigation of a public official before any money can be returned.

But often, such nations' legal and political systems are corrupt or in shambles, or a deposed dictator remains so powerful that officials are reluctant to act against him even after he leaves office.

Under the new law, the Swiss government would only have to show that the amount in question is significantly larger than what someone could credibly have earned in office, and also that the country was known to be corrupt. The burden of proving that the money came from legal sources would lie with the official, rather than the Swiss state.

The Duvalier affair has become a textbook example of the trials involved in returning allegedly stolen assets. Mr. Duvalier succeeded his father as president of Haiti in 1971 until his overthrow by a popular uprising in 1986. Human rights groups such as Amnesty International say Mr. Duvalier's personal militia was responsible for the torture, deportation and murder of political opponents. He was also accused of skimming money from government enterprises and spiriting it out of the country, even as his compatriots lived in destitution. Mr. Duvalier has denied being involved in any criminal activity.

The $5 million in question (now $5.9 million with interest), while relatively small, is the only Duvalier money to have been frozen. The Haitian government believes he stole between $300 million and $900 million during his regime, says Salim Succar, a Haitian lawyer who was special advisor to the government for the Duvalier negotiations with the Swiss.

But after the regime fell, efforts to charge Mr. Duvalier with a crime never got off the ground, say Haitian and World Bank officials. "Any time the Ministry of Justice tried to initiate the criminal procedures [against Mr. Duvalier], it failed because of instability, changes in the government, the remaining power of the Duvalier regime or the arrival of military rule," says Claudy Gassant, Haiti's state secretary for criminal matters, who handled the Duvalier case on behalf of the current president's office.

For two decades, the Swiss government repeatedly extended the freeze by resorting to a blanket constitutional power to act in its national interest. Meanwhile, Mr. Duvalier filed several appeals with Swiss courts to get the money back.

In 2007, the political situation in Haiti shifted. The new president, Rene Preval, made fighting corruption one of his government's principal goals. In early 2007, Mr. Preval called Louis Joinet, a prominent French magistrate who was advising the Haitian government on human rights issues for the U.N.

"How about seeking Duvalier's extradition?" the president asked, according to Mr. Joinet's recollection. Mr. Joinet says he feared that would mobilize Mr. Duvalier's supporters in Haiti, and instead suggested he go after the money in Switzerland. The Haitian president agreed, according to Mr. Joinet. A Haitian government spokeswoman didn't respond to requests for comment.

In August 2007, Mr. Preval sent a letter to the Swiss president saying it was "the firm intention of the Haitian government" to pursue criminal charges against Mr. Duvalier so it could secure the return of the money. In response, the Swiss extended the freeze for another year and paid for a Geneva-based lawyer to work with World Bank and Haitian officials to put together a criminal case.

The following May, Port-au-Prince re-filed its request for the money with Bern, which approved it in February 2009. Mr. Duvalier promptly filed an appeal in Switzerland's Federal Criminal Court. The Haitian government was already mulling projects the money could go toward, such as new schools or a hydroelectric plant, according to Mr. Succar, the Haitian lawyer working with Mr. Preval's office on the case.

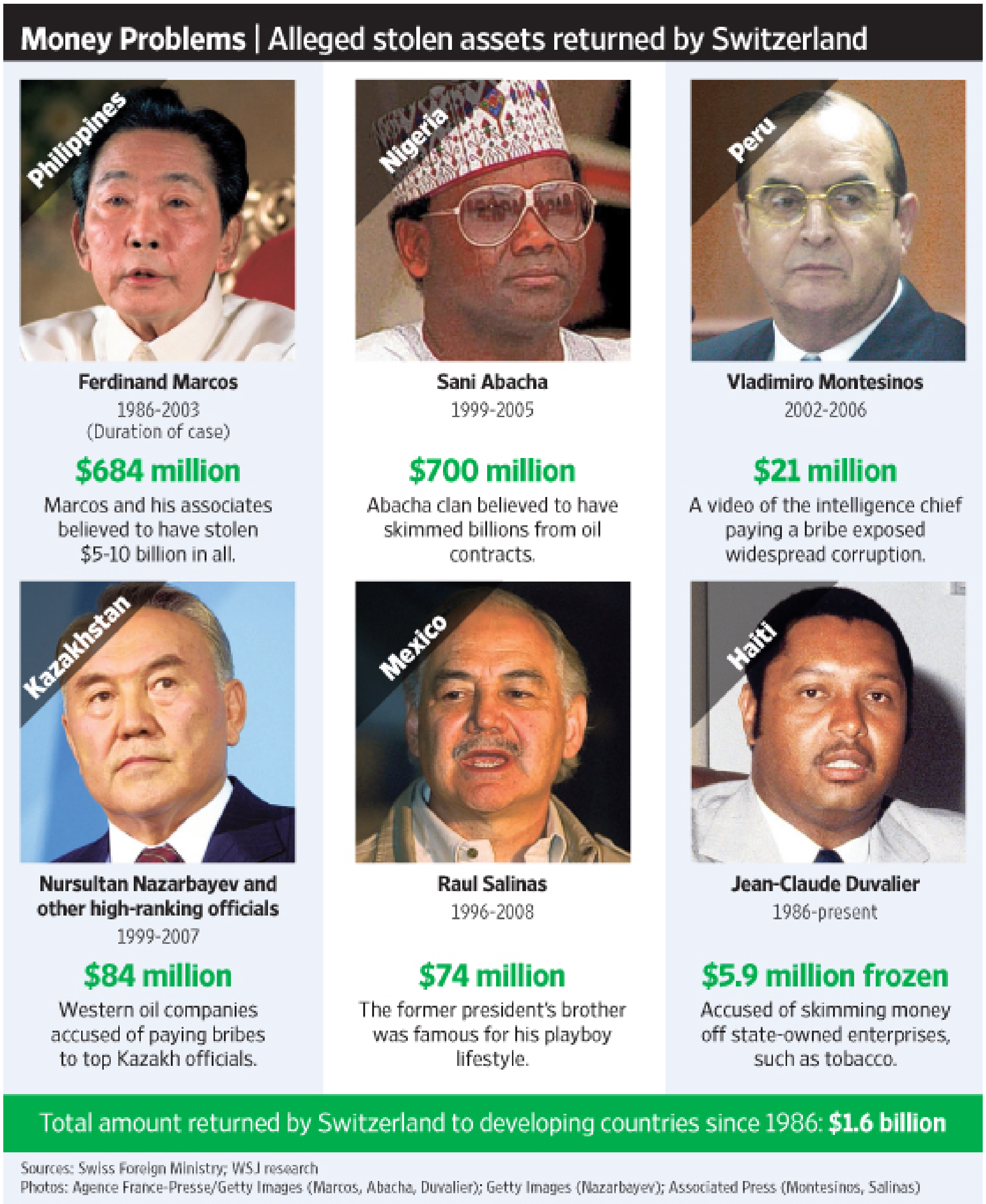
Then, on Jan. 12 of this year, just hours before the earthquake struck Haiti, Switzerland's highest court ruled that the money had to be returned to Mr. Duvalier because the statute of limitations on his alleged crimes had expired. Even amidst the chaos of the earthquake, the news from Switzerland was a blow. "It was a great disappointment," says Mr. Succar. "We had dedicated considerable efforts to the case and we were expecting to get the money back."

Mr. Duvalier's win followed a similar court decision last summer involving money allegedly stolen by Mr. Mobutu, the former leader of Zaire (today known as the Democratic Republic of Congo). The Swiss froze 8.4 million francs ($5.5 million at the time) in 1997 on a request from the Congolese government that took power after Mr. Mobutu's fall.

But Mr. Mobutu died soon after, and Kinshasa never pursued criminal charges against his associates or family, according to Swiss government officials. After extending the freeze repeatedly and offering to pay for Swiss lawyers to help Kinshasa build a case, Switzerland finally had to return the money to Mr. Mobutu's heirs. A Congolese official familiar with the matter says it became politically difficult to pursue criminal charges against Mr. Mobutu because his son later joined the government.

After the Duvalier ruling, the Swiss government once again froze the money to give it time to write the new bill. The Swiss Senate passed the bill in June and the lower house will vote on it in September. If it passes, Bern could return the money to Haiti next January.

In an emailed statement, Mr. Duvalier said should the law pass, he intends to "use every possible recourse, including an appeal to the European Court of Human Rights." If the funds were returned to him, he would donate them to the American Red Cross for disaster relief in Haiti, he added.



—David Gauthier-Villars, Jose DeCordoba, Jeanne Whalen and David Enrich contributed to this article.

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