

### Ferdinand Marcos

Repatriation was a major issue in the case of former president Ferdinand Marcos of the Philippines, and his family. Only after protracted litigation did the Swiss authorities finally agree to assist the Presidential Commission on Good Governance (PCGG), a non-judicial authority investigating the Marcos family. The decision was taken though no charges had been brought against the Marcoses in the Philippines, where the authorities were awaiting evidence from the Swiss. After considering whether assets held in Swiss accounts would be returned to the Philippines, the Swiss supreme court ruled that the assets should indeed be returned, but subject to the following requirements:

- The government of the Philippines must file a criminal charge and/or bring forfeiture proceedings against the Marcoses within one year, failing which the assets would be unfrozen.
- A Philippine court with appropriate criminal jurisdiction must hand down final judgment confirming that the assets were stolen or illicit property to be confiscated and returned to their rightful owner, the government of the Philippines.
- Any criminal prosecution and forfeiture proceedings must comply with the procedural requirements of due process and rights of the accused under the Swiss constitution and the European Convention on Human Rights.

These stipulations prompted the PCGG's chairman to criticise the Swiss law on international legal assistance in criminal matters (EIMP) and to accuse the Swiss authorities of attempting to thwart countries' efforts to repatriate stolen funds. In the end, the PCGG signed an agreement with the Swiss under which the 'anticipatory restitution' provision of the EIMP was used to allow repatriation before final judgment was obtained in the Philippines.<sup>4</sup> The UN Convention would permit a similar step if the requested state waives the requirement of a final judgment in the requesting state.<sup>5</sup>

There was, however, a further sting in the tail of the supreme court decision: the transfer of assets, which amounted to some US \$657 million, had to be made to an account in the Philippine National Bank, over which the Zurich district attorney retained control, including the choice of investments made. In this way, the Swiss authorities ensured that the funds remained under their control until they were satisfied with the conduct of the government of the Philippines. In August 2003, the Zurich attorney finally announced the release of Marcos' frozen assets to the government, five years after they were deposited and 14 years after his death in Hawaii in 1989. The announcement followed a ruling by the Philippine supreme court in July 2003 that the Marcos family had 'failed to justify the lawful nature of their acquisition' of the Swiss funds.<sup>6</sup> This is a helpful ruling, the principle of which is incorporated in the UN Convention (see below).<sup>7</sup>

### Sani Abacha

General Sani Abacha was military dictator of Nigeria from 1993 to 10 June 1998, when he died suddenly of a heart attack. Estimates of the amount he looted during five years