



Failed recovery

How Switzerland released the funds of a famous Egyptian crony

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**Dedicated to journalist DAPHNE GALIZIA, killed in Malta on October 16, 2017
just because she investigated corrupt practices.**

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Cover picture Protesters hold up a caricature of ousted president Hosni Mubarak carrying "people's money" in Tahrir Square, Cairo, April 8, 2011. © Asmaa Waguih/Reuters.

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Executive Summary

On February 11, 2011, Egyptian President Hosni Mubarak resigned. A key factor in the Egyptian revolution, which brought him down, was the huge volumes of money amassed by him, his entourage, and officials of the former regime throughout their lengthy and undemocratic reign. On the streets, Egyptian demonstrators sang chants such as “Mubarak, how did a pilot make USD 70 billion?” when an article published in *The Guardian* in the UK estimated the size of Mubarak’s fortune. The sheer size of the estimates was seen as proof that the money had simply been stolen. The end of the Mubarak regime raised huge hopes among the Egyptian population that this money would quickly be seized, returned, and used for the public good. The same year, 2011, in Egypt, many initiatives emerged to trace these assets and to recover them. Media, civil society, and even government were buzzing with talk of Mubarak’s loot and corruption.

The Arab Spring impacted far beyond Tunisian, Libyan, and Egyptian borders. In Switzerland and other European countries,

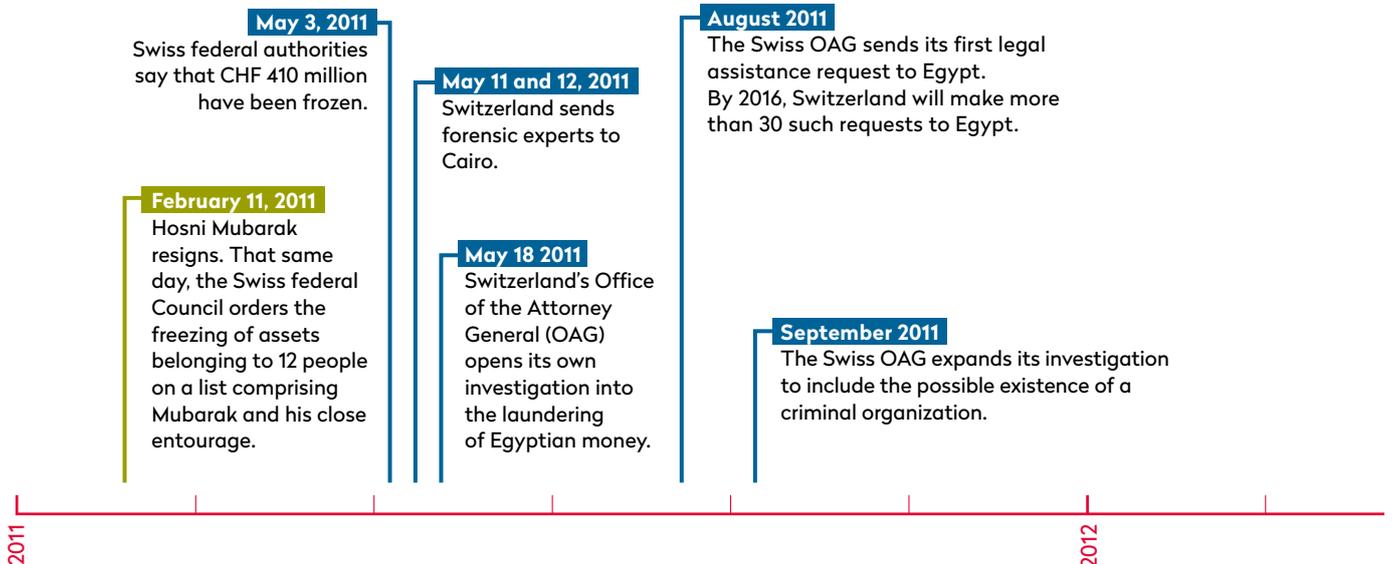
media and public opinion carefully followed the events, hoping that social movements and new governments would give birth to a greater democracy. The sheer scale of corruption was seen as the major factor, which brought these governments down. And for many months it made the headlines.

The Swiss government acted rapidly. On the same day that Mubarak was ousted, the Swiss Federal Council issued an order to freeze all assets belonging to 12 people including the former president and his close entourage.¹ It had done the same in the Tunisian case some weeks before. Soon after, media began hinting that Mubarak and his cronies had used Swiss bank accounts to store as much as 700 million Swiss francs (about USD 650 million at the time). The revelations showed that top Egyptian officials and businessmen close to them had been storing their wealth for decades in Switzerland’s banks.

Switzerland was not the only country to be implicated. And nor was it the only one to freeze the money of Mubarak and his

TIMELINE

■ Switzerland ■ Egypt



cronies. The UK, for example, identified and froze assets worth at least USD 135 million.² Canada, Cyprus, France, Hong Kong, and Spain also discovered and froze assets.³ The total amount of these assets exceeded USD 1 billion, and this was probably just the tip of an iceberg. In grand corruption cases, potentially ill-gotten assets tend to round-trip through bank accounts in the world's major financial centres, often hidden in webs of off-shore companies and other secrecy tools.

Yet, in Switzerland, the taste of the Arab Spring was especially bitter. For more than a decade, Swiss authorities and banking representatives had been cleaning the country's reputation as a haven for black money. They had tried to paint the Swiss anti-money laundering system as "one of the most rigorous in the world".⁴ In January 2011, a few weeks before Mubarak's resignation, for example, James Nason, spokesperson for the Swiss banker's association (SwissBanking), told the *Financial Times*: "No Swiss Bank would knowingly accept funds from a corrupt head of state – the reputational risk would simply be too high."⁵ Of course, these declarations were undermined by the vast amounts of money that flowed in from Egypt and elsewhere in the Middle East, then frozen during the Arab Spring. The gap between official statement and reality prompted major political debates in the following years about Switzerland's financial politics, its banking secrecy, and money laundering.

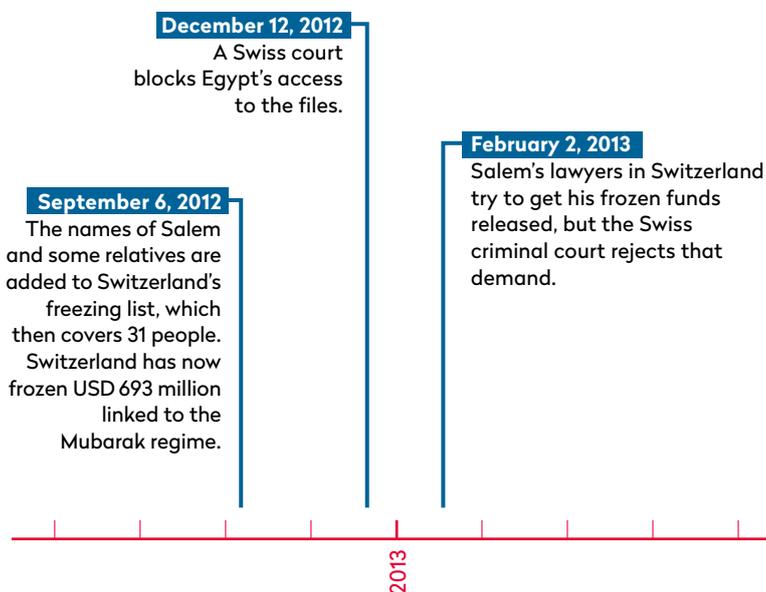
But what happened to Egyptian money frozen in Swiss bank accounts? Despite all the hopes of 2011, nothing went as planned. Criminal procedures were launched in Egypt and Switzerland. These are complex, may last for years and are still ongoing to date. But as time went by, political priorities changed in Egypt and Switzerland. Popular interest gradually declined. Six years after the Arab Spring, the first disappointment was made public. In December 2016, Switzerland's Office of the Attorney General (OAG) announced the release of 180 million

Swiss francs (roughly USD 183 million), which had been frozen during the Arab spring in relation with Egypt. Unlike the coverage in 2011, this news received virtually no media attention.

The release of almost a quarter of the Egyptian money, which had been frozen in Switzerland, left quite a bitter taste, too. This was especially so, since there were no convictions either of the individuals that stashed this money in Swiss bank accounts nor the financial intermediaries that had helped them hide it. It showed that the outcome of the proceedings launched after the Arab Spring might yet disappoint. And today, the situation looks even worse. In September 2017, the Swiss Embassy in Cairo told media that mutual legal assistance with Egypt, opened in the aftermath of spring 2011, had been closed "without any material result".⁶ Under the international principles governing the collaboration between criminal authorities, the Swiss ones need to prove that the frozen assets are illegal in order to seize and return them. That is, the Swiss authorities need to get sufficient information from their Egyptian counterparts through the mutual legal assistance-process (MLA) to prove the illegal origin of the frozen money, or an Egyptian Court criminal conviction. The implications of the September note are clear. It will be almost impossible – through these usual mechanisms – to seize the remaining Egyptian assets still frozen in Switzerland. And since no alternative ways exist, Switzerland will quite probably release the other 400 million Swiss Francs still frozen too.

So, what went wrong? This question is crucial, not just for Egypt or Switzerland, but at a more general level too. For more than 20 years, international consensus has been growing that grand corruption should be tackled, and that responsibility is shared between the countries of origin and the countries that receive the illicit funds. Swiss Foreign Minister Didier Burkhalter made an exemplary statement to that effect just one week

■ Switzerland ■ Egypt



But what happened to Egyptian money frozen in Swiss bank accounts? Despite all the hopes of 2011, nothing went as planned.

after the UK 2016 Anti-Corruption Summit in London. He said: “Corruption money, which comes from the South to the North is not only the dictator’s responsibility, but also a shared responsibility because economically developed countries have insufficient legislation to prevent it from happening.”⁷ Usually, Swiss authorities are prone to depict their politics on asset recovery as a very progressive one, even sometimes escalating its success to an argument proving that “no dirty money” is welcome in Switzerland anymore.⁸ Despite this, high profile cases in the Middle East, Ukraine, Nigeria, Brazil or Malaysia made headlines in recent years and most of them still implied Swiss bank accounts.

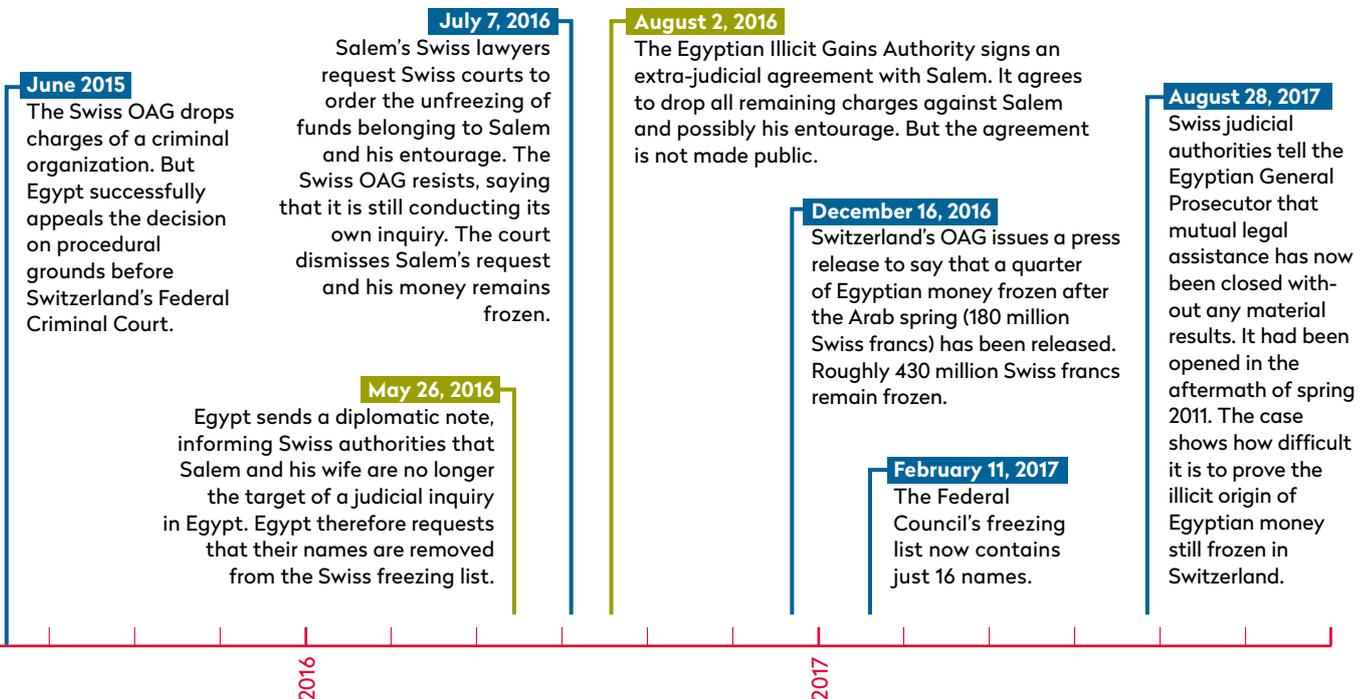
In recent years, asset recovery has emerged as an important topic in international discussions. International summits discuss the best ways to seize and return assets from kleptocratic regimes. But when it comes to putting these words into reality, the results are disappointing. Only a very tiny part of the estimated 20 to 40 billions of corruption related financial flows that escape yearly their country of origin have been seized in the past ten years, and even a smaller part has been recovered. In most countries involved as on the international level, basic information is missing about existing policies, the processes, and their results. This report provides a case study that should help to fill that gap. We believe that the high-profile Egyptian-Swiss asset recovery process launched after Mubarak’s ouster offers the opportunity to understand better the challenges of asset recovery and to learn the lessons.

This report reveals information that has not been published before. Specifically, this new information relates to Hussein Salem, one of Mubarak’s best known cronies and the major beneficiary of funds released in December 2016. The report looks at how his Swiss (shell) companies were used to syphon off Egyptian public money and at the lack of sanctions on Swiss finan-

cial intermediaries – mainly banks – involved in those deals so far. Besides bringing new information to light, this report also puts together a story that has never been told fully so far. This is not an easy task. Criminal proceedings are still open, and, partly linked to that, information remains in short supply. But this report follows its traces anyway, mostly by using courts document published both in Egypt and Switzerland. Despite being in anonymised form, or even if they only reveal small pieces of an even larger story, these judgements shed light on the disappointing outcomes of this specific asset recovery case so far.

Unless financial intermediaries receive the clear signal that by accepting such monies they can be prosecuted and sentenced adequately, then illegal assets will still flow in.

One of the most disappointing aspects of this process needs special emphasis. Under Swiss criminal law, financial intermediaries cannot be charged with money laundering, if the money they accepted cannot be proven to be illegal. This raises a huge problem. Unless financial intermediaries receive the clear signal that by accepting such monies they can be prosecuted and sentenced adequately, then illegal assets will still flow in. And this will be at the expense of those from whom it was stolen: the poorest populations in their country of origin.





Opposition protesters celebrate Egypt's President Hosni Mubarak's resignation, from their stronghold of Tahrir Square in Cairo, February 11, 2011. | © Reuters

2

Mubarak’s cronies prefer Switzerland

Some hours after Mubarak’s resignation on 11 February 2011, the Swiss government issued a decree to freeze the Swiss assets of 12 people, all of whom were closely linked to Mubarak, including himself.⁹ Under this order, all Swiss banks had to freeze immediately any assets belonging to anybody on that list and report to Switzerland’s federal authorities. The latter then communicated on 3 May 2011 that 410 million Swiss francs belonging to individuals on the government list had been identified and therefore frozen.¹⁰ Such news made the headlines, both because Swiss authorities acted so quickly, but also because it showed that once again a large quantity of potentially ill-gotten assets of an authoritarian regime had found their way into bank accounts in Switzerland.

However, this was far from being a surprise. The close ties between Egyptian officials and Switzerland were publicly known. Even before Mubarak resigned, on 31 January 2011 for instance, a press article described how some of “Mubarak’s chief handlers”¹¹ were operating with Swiss companies and had relationships to banks in Geneva. One of the bankers named in this article was – and still is – working as a Director of UBP, a Geneva-based bank. He was also sitting on the boards of two Geneva-based foundations, the “Suzanne Mubarak Women’s International Peace Movement” and “The Institute for Peace Studies”, where Suzanne Mubarak also had a seat.¹² This was all public available

information. While the bank described this as a private philanthropic engagement, a Swiss newspaper described the banker as the “servant of a dictator’s wife”.¹³ The article also revealed his ties to an important Egyptian investment bank, EFG-Hermès, in which Mubarak’s sons also had a stake.¹⁴

On 12 February 2011, the day after Mubarak’s resignation, another press article gave detailed information about Mubarak’s accounts with Swiss bank UBS¹⁵ and mentioned another bank account at the Swiss branch of French bank BNP-Paribas. With time, the Mubarak links to Switzerland were documented more precisely. Later in 2011, a senior Egyptian Justice Minister claimed that Mubarak’s two sons, Alaa and Gamal, held an estimated £ 215 million (worth approximately 300 million Swiss francs) in Swiss accounts.¹⁶ Mubarak’s Swiss lawyer did not deny the sum, but said it was “legal”.¹⁷ In 2012, Egyptian judicial authorities revealed that Mubarak’s two sons did indeed possess at least one Credit Suisse account in Geneva, where sums of up to USD 300 million (roughly 300 million Swiss francs) had been stashed. The account had been opened in 2005.¹⁸ The list goes on of Egyptian officials or former Egyptian cronies with bank accounts in Switzerland. In 2015, for example, The International Consortium of Investigative Journalists (ICIJ) SwissLeaks scandal showed that Egypt’s former minister of trade and industry Rachid Mohamed Rachid had bank accounts at HSBC’s Geneva branch worth a total USD 31 million in 2006/2007.¹⁹

But one name dominates the list of people close to Mubarak and closely tied to Switzerland: Hussein Salem, the Egyptian business mogul. On 17 February 2011, less than a week after Mubarak had resigned, press articles began describing Salem’s connections to Switzerland.²⁰ They even described how Salem had stayed briefly in Geneva just after the revolution, coming from Dubai and leaving via Germany. The articles suggested that he could have met with business partners in Switzerland, taking measures to protect his wealth.

Grand corruption stories often involve people who work as proxies for politically exposed persons or who manage to enrich themselves simply because they have the right connections. They benefit from political favours, which come at the expense of the State and potential competitors. One of the most egregious examples of this phenomenon is General Abacha, Nigeria’s president from 1993 to 1998. He was registered as the beneficial owner of just three of the 130 accounts used by his criminal

Box 1

SWISS FREEZING ORDERS

Since the 1980s, Swiss authorities have frozen foreign assets on several occasions. The first time it happened was in 1986 with money belonging to former Philippines president Marcos. The order was based on a specific provision in the Swiss Federal Constitution, which allowed the government to take special measures and bypass the parliament when “the interest of the state” requires it. Such freezing orders therefore did not rely on a specific law. In 2015, Parliament passed a new law codifying this practice (see box 2).

organization. The other accounts belonged to proxies, middlemen, relatives, or business partners who profited from their connections to the former Nigerian dictator.²¹ Sometimes, these proxies exist to mask the real owner of any stolen assets. In other cases, they do business on their own, sharing their gains with the right officials. Hussein Salem is a perfect example. A friend and confidant of Hosni Mubarak, he apparently started with nothing to become, by 2010, one of Egypt's most powerful businessmen. And his shady success came mainly through highly political – and suspicious – deals at the expense of the Egyptian public budget. In the years after the Arab Spring, Hussein Salem became a central target of investigations against Mubarak's cronies in Egypt and abroad. For a long time, Egyptian and international media covered the cases against him in Egyptian courts. And since he owns a significant amount of the Egyptian money that was unfrozen in 2016, we must first shed some light on the man, his business, and his trials.

2.1. – MEET HUSSEIN SALEM, WHO CAME FROM NOWHERE TO BECOME A BILLIONAIRE

The 2011 revolution blew open the well-sealed black box of the Mubarak regime and his cronies. And yet Hussein Salem remains a mysterious figure. Even basic information such as his place and date of birth is open to dispute. When journalists at *Al-Ahram*, Egypt's largest state-run newspaper, wrote a profile about him shortly after the revolution, they were also forced to acknowledge the difficulty of finding any information:

"We found out, for example, that no databases at any of our major newspapers had a file on Hussein Salem prior to the January 25 Revolution and before he fled the country in February 2011. Published by the government Information Agency, the 1992 second edition National Egyptian Encyclopaedia of prominent Egyptians contains the biographies of 4269 public figures, of which 64 are contemporary. But even this failed to mention Salem, a man at the peak of his financial and political prowess at the time.

*The man's name or the name of his son Khaled can be found with difficulty in news about golf or in some stories on oil and tourism, and only in a very limited number of newspapers. Miraculously, we were able to find one interview with Salem in an Egyptian paper, The Economic World Today, dated 17 March 2007. It is as if someone high in office had given strict orders to the media to keep Salem and his family out of the newspapers during that period."*²²

Many Egyptians imagine that Salem had been an intelligence officer (secret agent) in his youth before becoming a businessman. In fact, he has been a "civilian" all his life, but he may have had some connections to intelligence.²³ Salem was born 11 November 1933 in Cairo, but by 2011 had become one of the wealthiest Egyptians. British newspaper *The Telegraph* put his wealth and that of his family at a total of USD 4 billion.²⁴ Salem has variously been described as "one of the most secretive businessmen in Egypt" and as "Mubarak's double".²⁵ He graduated from the Cairo University commerce faculty in 1956. According

to *Al-Ahram*, he first worked at the Textile Support Fund for the modest monthly salary of LE 18 (worth USD 51 at the time or USD 445 today). This person, who would later become one of Egypt's richest figures, took his first baby steps into the circles of power in 1963. As the state-run newspaper tells the story, he then met Amin Huwiedi, Egypt's ambassador to Morocco at the time but later to become Minister of Defence then Chief Intelligence Officer. When Huwiedi was appointed ambassador to Iraq that same year, he took Salem with him, appointing him branch director of the Arab Company in Baghdad. He was quick to build strong links with embassy staff in Baghdad and it might have been there that he started his "business" activities.

When Huwiedi returned to Egypt to lead the General Intelligence, he took Salem with him again and then sent Salem on missions to countries in the Arabian Gulf. The connections established there might have been key to Salem's emergence as a wealthy individual. When Anwar Sadat took power in Egypt in 1970, Huwiedi was sentenced to house arrest as part of the crack-down on the outgoing Nasser regime. Salem is thought to have cut all connections with Huwiedi, eventually becoming part of Sadat's new regime. According to the *Al-Ahram* article, Salem then used his connections to land a job as CEO of the Arab Emirates Trade Company, importing food supplies into the UAE. It was probably then that Salem began to accumulate his colossal wealth.

Salem returned from the UAE to Egypt, possibly in 1977. Rumours suggest this may have been because the Egypt-Israel peace treaty that year raised tensions between Egypt and the other Arab states.²⁶ Salem still managed to get rich from the peace treaty, however. When the treaty was signed, the US began supplying Egypt with military equipment. Salem set up a company, EATSCO, which won a contract in 1979 to ship weapons from the US to Egypt. We don't know how he won this lucrative and highly sensitive deal. But it wasn't too long before he was involved in a US corruption case in the late 1970s and early 1980s for providing false invoices to the Pentagon. Salem pleaded guilty to overcharging the Pentagon some USD 8 million. According to US court documents, EATSCO had provided false invoices for 34 shipments between 1979 and 1981 (see annex 1).

The enormous political, social, and economic changes in Egypt during this period brought Salem other opportunities too.

2.2 – SALEM'S LUCRATIVE FRIENDSHIP WITH MUBARAK

Egypt's post-revolution corruption trials have revealed new information about Salem's lucrative deals, which had been quite secret at the time. The defining characteristic of these deals is that Salem made hundreds of millions of dollars without adding much value himself. This raises questions about Salem's real role, especially since most of his deals were linked to public assets, banks, and companies. Using Egyptian court documents, we were able to reconstruct three major operations in which Hussein Salem directly profited from his closeness to the Mubarak regime. The documents show how dubious his methods were, a conclusion that contrasts starkly with his acquittal during court cases in Egypt.

2.2.1 – THE MIDOR CASE

In 1994, Hussein Salem entered the energy sector with an Israeli partner, Youssef Bin Mayman. Together, they established a company called Midor in Alexandria with a decree from the Minister of Economy. At the time, Midor was running one of the most advanced oil refineries in Africa.²⁷ The company was set up with USD 300 million of capital, of which Salem's contribution was 40 percent through his Swiss-based company Maska. We shall come back to this company later. Between 1998 and 2001, Salem sold his Midor shares in four stages for about USD 50 million more than their nominal value despite the fact that the company had never made any profit since its establishment.²⁸ The shares were sold to NBF Cayman Ltd, a secret offshore subsidiary of the National Bank of Egypt, the oldest and largest public bank in Egypt, which had the status of Central Bank between 1951 and 1960.²⁹ Medhat Youssef, the former chairman of Midor, told Egyptian daily *al-Masry al-Youm* that after the second intifada, Saudi Arabia stopped providing crude oil to refineries with Israeli shareholders. He said the company's refinery lab had been designed for Saudi crude oil and the company had made losses as a result.³⁰ If the company owners were in such a vulnerable position, however, it remains unclear how they sold their shares to a state-owned bank. By doing so, they made huge profits at public expense without even starting operation.

2.2.2 – THE EAST MEDITERRANEAN GAS PIPELINE CASE: BUYING CHEAP, SELLING HIGH

Salem was also involved in the "gas export" case. This was another high profile corruption case, in which government offi-

cial, including the former minister of petroleum, Sameh Fahmy, were accused of wasting public funds by selling underpriced natural gas. The gas was sold to East Mediterranean Gas (EMG), another company owned by Hussein Salem, which then resold it to the Israel Electric Corporation (IEC) by direct order without any public bids. It is not clear why EMG had to buy the gas from Egypt's public gas company before selling it to the IEC. Egypt's public gas company could have sold the gas directly to the IEC, cutting out the middleman and keeping the profit for itself. This is especially true, since the EMG was not running any real operation.

According to testimony from Abdelkhalek Ayyad, the former chairman of Egypt's general petroleum authority, Salem had requested authorization in April 2000 from Sameh Fahmy, then the minister of petroleum, to purchase Egyptian natural gas for export to Turkey and Israel at a fixed price of USD 1.5/million British Thermal Unit (BTU).³¹ Before Fahmy became the petroleum minister, he had been Salem's business partner in Midor. When he became petroleum minister, he was key in granting this lucrative deal to his former business partner, Salem; this is an obvious case of conflict of interest.

In another testimony Mohamed Kamel al-Essawy,³² the First Undersecretary of the Ministry of Petroleum for Gas Affairs, explained that he had been appointed to prepare a study that would value the cost of natural gas production. The study would help set the selling price to Salem's company, EMG. It concluded that the cost of production was USD 1.5/million BTU. He said the study was presented to the High Committee of Gas presided by Fahmy himself.

At a later stage, Salem's EMG made a new offer to buy the gas for USD 0.75/million BTU (half the price of production, ac-

A general view of Naama bay and of a hotel in the Red Sea resort of Sharm el-Sheikh. Egypt, November 7, 2015. | © Asmaa Waguih/Reuters





Egyptian businessman Hussein Salem, on February 21, 2009. On June 16, 2011, Egyptian officials said they wanted him for trial on charges of bribing Mubarak and his family and squandering public funds. | ©STR/AP

According to al-Essawy's report). On the same day as he made the offer, Fahmy assigned Hassan Akl, then the deputy director of the General Authority for Petroleum, to prepare another estimate. This time, the estimate would exclude fees and taxes paid by the authority during the process of production. It would also exclude the high cost of extracting the oil from the deep West Delta field. The new study came up with a radically new and lower cost of production, USD 0.68/million BTU, less than half the initial price.³³ By way of comparison, Russian natural gas, which is some of the cheapest in the world, cost USD 3.24/million BTU in April 2000 and about USD 12/million BTU in mid-2008. In other words, the prices of Russian natural gas were about 17 times higher than the prices that EMG had to pay when Egypt started pumping the gas to Israel.³⁴

The petroleum minister approved the second – strongly discounted – price, a decision confirmed by the prime minister in September 2000. The contract with EMG was signed five years later in June 2005, even though global prices for natural gas had generally risen since 2000 when the estimates were made. According to testimony from former vice-president and chief intelligence officer, Omar Sulieman in the “gas export” case, the government gas company sold the gas to EMG for USD 0.75–1.25/million BTU, and then EMG would sell it to the IEC for USD 2.25/million BTU. Thus, EMG cashed in on astronomical margins of between 33 to 55 per cent. Sulieman also testified that Salem had had a 20-year friendship with Mubarak. He said that, on the basis of Salem's previous experience with the Israelis in Midor, Mubarak had assigned Salem to establish the gas company and sell Egyptian gas to Israel.³⁵

2.2.3 – SWEET AND CHEAP. MUBARAK'S VILLAS IN SHARM AL-SHEIKH

However, Mubarak might have had other reasons for granting this lucrative gas deal to Salem than friendship and Salem's Israeli connections. In the late 1990s, Salem was also involved in “selling” underpriced villas to the Mubarak family, a detail which became part of Egypt's most high profile post-revolution corruption trials, “the trial of the century”. After Egypt regained control of the Sinai

Peninsula in the 1980s, the government wanted to develop tourism in the peninsula's south. It granted Salem vast areas of land to build many resorts before Sharm al-Sheikh became one of Egypt's – and the region's – biggest tourist attractions. For this reason, Salem became known as “the Father of Sharm al-Sheikh”.³⁶

In the year 2000, Salem “sold” five adjacent villas to Mubarak, his wife, and two sons. The villas had been built on a total area of 22,435 m² for a small nominal price in a prime spot in the tourist town of Sharm al-Sheikh. Ever since, the town had become Mubarak's favourite destination. This is where he lived in the period between his overthrow and his trial in Cairo. The Mubarak family paid an average LE 84/m² for the five villas. According to official “trial of the century” documents, the average market price of similar land during the same year was LE 1,697/m² or 54 times the rate paid by Mubarak and his family.³⁷ Put it another way, the Mubarak family paid less than half a million US dollars for five villas including an area of more than 20 square kilometres. When Mubarak resigned, an Egyptian court treated the “sale” of these five villas as a bribe. In the end, however, the case was dropped due to statute of limitation (see chapter 5 for more details on the case).³⁸

As the following chapters explain, some of these deals were channelled through bank accounts or companies in Switzerland. Part of Hussein Salem's assets were stored in Switzerland too.

2.3 – A MOGUL IN THE ALPS

Hussein Salem's connections with Switzerland date back to the 1970s. A bank document shows that in 1974 he and his wife opened a bank account at the Credit Suisse bank in Geneva (see annex 2). Apparently, this account was used in the late 1990s for the receipt and payment of corrupt commissions in a Midor project to build a gas plant in Egypt. A German trial, the “Flowtex case”, showed that German companies had used corruption to supply Midor with German machinery. In a German press article on the trial, the case was described as “one of Germany's biggest ever corruption cases”.³⁹

Interestingly enough, German prosecutors in the case were able to prove that Hussein Salem had paid undue commissions to German company directors for public contracts in Egypt. However, the prosecutors were never able to find out whether those payments were kickbacks for bigger commissions paid to the Egyptian officials who granted the contracts to those German companies. German prosecutors strongly believed this to be so, but they never tried to prosecute the corruption crime that might have happened in Egypt.⁴⁰ According to a 2012 newspaper article in *Le Matin Dimanche*,⁴¹ the Flowtex case raised a red flag inside Hussein Salem's bank – Credit Suisse. In 2002, Swiss prosecution authorities ordered Credit Suisse to share banking information with their German counterparts, who had made a request for mutual legal assistance on the Flowtex case. The bank's compliance department suggested ending their relationship with Hussein Salem. But as the 2012 article showed, the compliance department was overruled. This last point needs flagging, because it shows that Swiss banks may not be so diligent about protecting themselves from money laundering.

According to Emirati newspaper *The National*, which quotes official documents from the Egyptian Ministry of Justice dated 12 July 2012, Hussein Salem, his spouse, his son and his daughter would have had other bank accounts in Switzerland, namely at UBS and at the Raiffeisen Group of banks.⁴² We were never able to confirm or reject this assertion.

Salem had more than bank accounts in Switzerland. He also had stakes in Swiss companies. In 1975, Salem registered a company in Geneva called Maska with a capital of 250,000 Swiss francs. In 1989, Salem established another company in Geneva, called Galaxy Hotels. The activities of the latter remain largely unknown. But in 2011, both companies were administered by the same lawyers in Geneva, Pascal Erard and André Gillioz.⁴³ In 2012, the consortium of investigative journalists OCCRP also put Gillioz into the spotlight for having set up companies in Panama and the BVI on behalf of Hussein Salem and his family.⁴⁴

Maska was a very profitable business. It acted mostly in the 1990s as the main offshore entity for Salem's "investments" in the Egyptian energy sector. We were able to trace at least two investments by the Swiss-based company into energy companies in Egypt in the 1990s. Salem then switched to a different BVI-based vehicle, the East Mediterranean Gas Company, for his investments in the early 2000s.

The first investment that we traced went into Midor, the oil refinery company mentioned above (see section 2.2.1). According to a document published by the Egyptian Illicit Gains Authority, Midor's authorized capital at its creation in 1994, was USD 300 million, of which issued capital was worth USD 150 million, divided into 150,000 shares valued at USD 1,000 per share. At the time, Maska held 1,500 shares (1 percent) worth about USD 1.5 million.

Credit Suisse compliance department suggested ending their relationship with Hussein Salem. But they were overruled.

According to the same document, the authorized and issued capital of the company increased between 1994 and 2002 to USD 1.1 billion. The shareholding structure also changed in 1996 so that Maska then held a 40 per cent stake in the company. In 1998, Maska sold 7,200 shares in Midor to Egypt's state-owned Suez Canal bank for USD 1,400 per share. It sold 36,000 shares to the Cayman subsidiary of Egypt's largest national bank, the National Bank of Egypt (NBE), for USD 1,400 per share as well. Later that year, Maska sold 21,600 shares to the National Bank of Egypt for USD 2,100 per share. Finally, in 2001, Maska sold its last stake of 7,200 shares to the NBE for USD 2,200 per share. Calculating the difference between the nominal values of the shares and the price at which it was sold to public banks, the official report concludes that by selling

overpriced shares to public banks Maska would have made a profit of about USD 49.6 million. It could be argued of course that the company's value had increased between the time when it was established and the time when the shares were sold. But the same official reports notes that Midor was inoperative and therefore unprofitable during this period. It only started operating in 2004 after the shares had been sold.⁴⁵

Maska was involved in a similar scheme with another Egyptian company called Midtap. Midtap was established in 1992 with issued capital of USD 70 million divided into 70,000 shares with the same nominal value of USD 1,000 per share. Maska held about 14,000 shares, or 20 percent of the company. Maska's shares were also sold to the NBE between 1998 and 2001. This time, however, the shares were apparently sold at their nominal value without Salem making any profit. Similar schemes were repeated with other Egyptian energy companies using vehicles based in Ireland and the BVI.

2.4 – THE POST-REVOLUTION TRIALS AGAINST HUSSEIN SALEM

In 2012, Salem was arrested in Spain, a country where he lived and had citizenship. With more than 40 million Euros frozen in bank accounts plus real estate worth 14 million Euros, he faced charges for corruption.⁴⁶ Egyptian authorities had requested that he and his children be extradited. In 2012 Spain's Court of Appeal agreed, but the Constitutional Court of Spain postponed the extradition. Salem was then released on bail for 27 million Euros.⁴⁷

Apparently, Swiss authorities had opened an inquiry against Hussein Salem as early as 2011. And even though he was not on the Swiss government's official list, some of his assets were frozen. A subsequent court decision clarified the point.⁴⁸ Since 2011 Salem and his wife had been trying to get their funds released in Switzerland. On 6 September 2012 – probably at the request of the Egyptian authorities – Switzerland added the names of Salem and of close relatives to the official list issued some 17 months before. The move was probably more diplomatic than anything else, a (public) nod to Egypt's requests. But by that time, Salem's Swiss funds had already been frozen, not on the basis of the government decree but on the basis of a Swiss criminal investigation. So, from September 2012, Salem's funds were frozen under two separate orders. At that time, the Swiss freezing list totalled 31 persons.⁴⁹ A few days earlier, in August 2012, a Swiss newspaper had published a well-informed article, saying that Switzerland had now frozen USD 693 million linked to the Mubarak regime.⁵⁰ Authorities later acknowledged that the sum was in fact even higher, more than USD 700 million.⁵¹ It seems reasonable to conclude that some of these assets were linked to Salem and his entourage. At the end of 2012, it emerged that police had searched the office of the lawyers, Gillioz and Erard, who administrated Salem's Geneva companies.⁵² We do not know, however, who his entourage consisted of, which bank accounts were frozen, how many Swiss banks were involved, and which Swiss companies were linked. Salem's lawyer in Switzerland, Vincent Jeanneret, and Pascal Erard, one of the lawyers who managed his companies, both declined to answer our questions.



The Giza Pyramids are pictured behind the River Nile, houses and hotels on a cold day around in Cairo.
Egypt December 5, 2016. | © Abdallah Dalsh/Reuters

3

Swiss and Egyptian authorities struggle to collaborate

As we said already, in 2011, Swiss authorities quickly froze money belonging to Mubarak and his entourage. According to international law, freezing is a standard procedure during ongoing investigations. Legal owners cannot access their money while it is frozen, but the assets remain their property until a court formally validates the confiscation order or seizure. The freezing orders are important to prevent ill-gotten assets being vanished away with one click of a mouse through a chain of secretive offshore companies.

But asset freezing does not guarantee their repatriation. A seizure must take place before restitution is discussed. To seize the assets, authorities must prove they are the proceeds of a crime. Criminal investigations authorities must provide sufficient evidence to show that a crime was committed, and then obtain a final court decision to recognise this. Judicial authorities in both the requesting and requested countries share responsibility for achieving this. In theory, therefore, they should both launch their own inquiries, exchange requests for mutual legal assistance (MLA) and reach convictions, linking the frozen money with offences considered criminal in both countries. In theory, this is the standard path for asset recovery procedures (the “MLA track”).

In the months just after the Arab Spring, Swiss judicial authorities tried to follow this MLA track. They provided support to the new Egyptian authorities by explaining what they needed to accept a request for Mutual Legal Assistance (MLA). On 11 and 12 May 2011, Swiss experts travelled to Cairo.⁵³ Then, on 18 May 2011, the Office of the Attorney General of Switzerland (OAG) – the independent judicial authority responsible for transnational criminal inquiries – opened its own procedures into the laundering of Egyptian money. It requested financial information from those banks, which had frozen Egyptian funds. It also tried to identify any undeclared bank accounts. In the beginning, these criminal investigations targeted at least 14 people, more than the 12 people listed in the original freezing order by the Federal Council in February 2012. The Swiss OAG also sent at least 30 legal assistance requests to Egypt,⁵⁴ according to an OAG press release in January 2016.⁵⁵ In September 2011, the OAG made an important decision, expanding its investigations to include the possible existence of a criminal organization.⁵⁶ Under Swiss criminal law, this is the only way to

enable a seizure on the basis of a reverse burden of proof. This makes it possible for investigations authorities not to have to prove that each cent of frozen money is the process of a crime, but it requires proof that it belongs to a criminal organization.⁵⁷

The OAG strategy was clear. It was trying to identify assets belonging to Egyptian cronies and to ensure – under Swiss laws – that these assets could be seized. To do so, Swiss prosecution authorities needed a conviction that linked the money to a predicate offence, that is, to a crime that had happened in Egypt several years before. And this is where they needed the support of Egypt’s judicial authorities. To boost this cooperation, the OAG travelled several times to Egypt,⁵⁸ and his counterpart came to Switzerland.

Despite this, MLA procedures became bogged down in both countries between 2012 and 2015, linked partly to major political turmoil in Egypt. The difficulties quickly showed that the MLA track would be a daunting process. In fact, collaboration between Egyptian and Swiss authorities became difficult, for four different sets of reasons.

First, the Swiss authorities found it hard to accept MLA requests from Egypt. MLA requests are not public, so it is hard to know precisely what went wrong. But we do know that it took months for Swiss authorities to accept Egyptian MLAs and that some of the requests were rejected, probably because they were not substantiated enough or because they did not meet the formal criteria. In August 2012, a Swiss newspaper published a well-informed article explaining that of 40 MLA requests sent to Swiss authorities by Egyptian authorities, only three had been accepted so far.⁵⁹

Second, Egyptian authorities had double status in Swiss procedures. On the one hand, they were requesting information as a foreign prosecution authority. On the other hand, they were acting as plaintiffs. This meant that, theoretically, through their lawyers in Switzerland, they had direct access to the files. This would have allowed them to bypass MLA-mechanisms to access the information they were seeking. The Swiss Criminal Court first recognized Egypt’s right to have this double status in 2011.⁶⁰ But a few months later, in light of Egypt’s political instability and the lack of judicial independence, a Swiss court blocked Egyptian access to the files. This required Egyptian authorities to wait for final decisions in the mutual legal assis-

tance process before getting the information they wanted.⁶¹ Egypt took the decision badly. Kamal Guirguis, head of international cooperation at the Egyptian prosecutor's office told a Swiss newspaper that the decision had "knocked them down" and "put an end to months of negotiations".⁶²

The third set of difficulties was more predictable. The Egyptian defendants and their lawyers did anything they could to block any progress in the Swiss inquiries. And they repeatedly requested that Switzerland unfreeze their funds.⁶³ As far as we can tell from judgements published later, these demands were dismissed. But they substantially slowed the process.

The fourth difficulty came in June 2015, when Switzerland's federal prosecutor decided to drop the charge of a criminal organization. Egypt successfully appealed the decision in the Federal Criminal Court,⁶⁴ obliging the OAG to keep the process open. But it was a very clear signal that the Swiss OAG was struggling to substantiate the charges. The possibility of using the reverse burden of proof quickly narrowed.

As the decisions became public, the situation became clearer and clearer: Swiss federal prosecutors were struggling to get the evidence from their Egyptian counterparts that would have al-

lowed funds frozen in Switzerland to be seized on the MLA track. The fact that Swiss courts also raised doubts about the independence of Egypt's judicial system made it even doubtful that a Swiss court would anyway recognise an Egyptian judgment, whatever the outcome.

It is hard to know how Egypt viewed the collaboration. Apparently, Egyptian authorities thought they could find a quicker and easier way than MLA and court convictions to seize the assets in Switzerland. Commenting on a draft asset recovery law that was about to go to Switzerland's parliament (see box 2), Kamal Guirguis expressed his hope that Switzerland would adopt the bill soon, because it would allow for the easier seizure of Egyptian assets. Guirguis even said he was happy that Swiss authorities would do so.⁶⁵ But there must have been a misunderstanding. Swiss authorities never intended to pass any law that would have facilitated the Egyptian investigations. And they continued to prioritize the MLA process. And anyway, even if Switzerland's parliament had accepted a stronger law, it could not have been used to seize Egyptian assets. That is because it was passed after the assets were frozen and would probably not have been applicable retroactively.

A statue of Ramses II outside the Museum of Egyptian Antiquities. In the background is the headquarters of former President Mubarak's party, the PND. The building was burned during anti-government protests on January 28, 2011. | © Alfredo Caliz/Panos Pictures



4

Five years after the Arab Spring: the defrost begins

In December 2016, a Swiss OAG press release explained that about 180 million Swiss francs, that is a quarter of the Egyptian assets frozen after the Arab Spring in Switzerland, had been released and that the OAG had had to “drop criminal proceedings against several persons in Switzerland”.⁶⁶ This was quite a cold shower. But the news attracted almost no attention in Swiss media. And of the little coverage there was, none of it explained the press release’s significance. In an understated tone, the press release said the OAG “takes account of the decisions of the Egyptian committee for the restitution of assets located abroad” and ended with a disclaimer in capitals that the OAG was “UNABLE TO PROVIDE ANY ADDITIONAL INFORMATION [...] AND WILL NOT RESPOND TO ANY FURTHER ENQUIRIES, WHETHER WRITTEN OR BY TELEPHONE”. The press release further said that “the Swiss criminal investigation into suspicions of supporting and/or participating in a criminal organization and money laundering was now being conducted against six [unnamed] persons” and that “assets amounting to around 430 million Swiss francs remain[ed] frozen.” A fair share of this money probably relates to Credit Suisse accounts belonging to Mubarak’s sons.

What happened? We don’t have all the facts. Prosecuting authorities tend not to comment on ongoing procedures. So, it is hard to have insights into what they do refer to. Usually, the relevant information only becomes public when an inquiry leads to a trial. But this case was dropped before it went in front of the judges, so there are no court documents to explain – if only partially – what happened. Nevertheless, Swiss judgments on procedural matters give us at least part of the answer. These judgments are clear that assets belonging to Hussein Salem and his entourage (we don’t know precisely to whom this word refers) were released. Why? We reconstruct that story for the first time in this chapter.

4.1 – EGYPTIAN IMMUNITY

It had been public since January 2013 at least that Hussein Salem had proposed a deal to Egyptian authorities. According to Egyptian newspaper *Egypt Independent*, his lawyers in Egypt had proposed a deal as early as 2012 in which Salem

would return 50 percent of all his wealth in exchange for the charges against him being dropped.⁶⁷ Also in 2012, his lawyers intervened for the first time in Switzerland, seeking the release of Salem’s frozen funds but with little success. In February 2013, the Swiss criminal court rejected that request.⁶⁸

But on 2 August 2016, the Egyptian Illicit Gains Authority did sign an extra-judicial agreement with Hussein Salem,⁶⁹ agreeing to drop all remaining charges against him and possibly his entourage too. In exchange, Salem made a public statement that he was ready to give 75 percent of his wealth to the Egyptian government. The existence of the deal was made public in Egypt, but the details were not (see chapter 6). In the summer of 2016, therefore, Hussein Salem’s Swiss lawyers asked the Swiss courts to unfreeze the funds belonging to Salem and his entourage. The OAG resisted at first, arguing that it was still conducting its own inquiry. It obtained a court decision for the sums in Switzerland to remain frozen.⁷⁰

According to Swiss court documents, Salem’s lawyers argued that: “Despite the fact that the procedure has been open for many years, the OAG is still not in a position to determine the acts with which [the defendants] are being charged, or to describe the crime in any way as to specify when it took place, or to explain in any understandable way the defendant’s action, possible participation, motives, or results obtained.” The lawyers added “answers from the Egyptian judicial authorities have so far been revealed as inaccurate, or even lies. [...] Moreover, the defendants blame the OAG for having been unable to link the frozen assets with any potentially illicit source.” Be it completely accurate or not, this statement tends to show how desperately empty the file the Swiss OAG had on HS was, 5 years after it had started collaborating with its Egyptian counterparts. Asked for comment, Egypt’s Swiss lawyers, Urs Feller and Marcel Frey, refused to answer our questions.

Hussein Salem’s lawyers were not the only ones pleading for the release of his money. Just a few days earlier, on 26 May 2016, the OAG had received a diplomatic note from the Egyptian government (note No. 85), saying that Hussein Salem and his wife were no longer the target of any judicial inquiry in Egypt, something that was not true at that time. The note argued that therefore both should be taken off Switzerland’s 2011 freezing list.⁷¹ According to Egyptian newspaper *Al-Ahram*,



Egypt's ousted President Hosni Mubarak sits inside a dock at the police academy on the outskirts of Cairo. April 15, 2013. | © Stringer/Reuters

Egypt's prosecutor general made the same demands. He requested judicial authorities in three countries, including Switzerland, to "unfreeze the assets and funds abroad of once-fugitive Egyptian business tycoon Hussein Salem and his family following a final reconciliation with the Egyptian government [...] after the business mogul gave USD 596.5 million to the government. The figure was claimed to account for 75 percent of his assets inside and outside of Egypt."⁷² We don't know for sure when the final deal was signed, because the note sent in May was actually released before the final deal had been concluded (August). As we shall see later, the court procedures against Hussein Salem were not stopped in Egypt until August 2017. Nor do we know for sure who, in the Egyptian government, authorized this agreement. Some sources say it was the Illicit Gains Authority, others cite the Ministry of Justice or the government. Nevertheless, a deal was clearly signed in some form during the summer of 2017.

4.2 – DECEMBER 2016, SWISS AUTHORITIES UNFREEZE SALEM'S MONEY

The Swiss OAG soon decided to unfreeze Salem's assets and to drop all charges against him. In such a situation, Swiss authorities have no control over what happens with the unfrozen money. It was not confiscated, so it does not belong to either the Swiss or the Egyptian States. The freezing order is simply cancelled. The individuals that controlled the accounts before the order was issued simply access their funds again. In such cases, no "asset recovery politics" are possible. Governmental authorities do not discuss use of the funds or how to prevent the funds from being diverted. As a result, it could very well be

that the funds are still sitting in the same Swiss bank account that Hussein Salem had opened in the 1970s. Swiss authorities are not even allowed to ask about it.

According to a press release in December 2016, the OAG still has some Egyptian cases open, but only against six individuals. By February 2017, therefore, the Federal Council's freezing list had shrunk to just 16 names,⁷³ almost half the number (29 persons) it had had a few months before.⁷⁴

The Swiss OAG soon decided to unfreeze Salem's assets and to drop all charges against him. In such a situation, Swiss authorities have no control over what happens with the unfrozen money.

As early as 2013, a Swiss official had warned one of this report's authors that: "If Egyptian courts clear the account holder, and if Swiss courts do not make a final conviction, then the freezing measures may be lifted in Switzerland."⁷⁵ Despite all the effort over six years, all the court proceedings, the judicial authority trips, the piles and piles of banking information, and all the hope that came in the aftermath of the Arab revolutions, that sad prediction became a reality. Switzerland unfroze one quarter of the Egyptian funds that had been frozen in 2011. And perhaps it will soon unfreeze some more.

5

Egyptian trials and their shortcomings

We tracked 40 Egyptian corruption cases that emerged from the 2011 revolution against 16 Mubarak regime members. As of 6 April 2017, at least 14 of these 16 defendants have walked free. In at least 10 cases, the defendant was acquitted after conviction. In at least 4 cases, the defendant was convicted in a first-instance ruling then reached reconciliation. Another five charges were settled by reconciliation before a verdict was reached. Since the defendants were willing to settle the charge by payment in these cases, it suggests they were expecting to be convicted. Two charges reached a verdict in absentia. One case ended due to a statute of limitation. Just three charges (in the same court case) have ended with a final conviction. And six are still ongoing. Seven out of the 40 charges ended with first-instance acquittals.⁷⁶

The above statistics show two things. Firstly, Egyptian law makes it hard to convict somebody for corruption by offering several avenues for walking free. It entrenches impunity in grand corruption cases. It also makes harder to recover stolen assets (which requires conviction). The law allows for an easy settlement in corruption cases. And while Transparency International recommends that the statute of limitation should be counted on the day the public official leaves office and loses immunity, Egypt counted this until recently as the day the crime was committed.⁷⁷ This statute of limitation rule allowed the acquittal of one of the most high-profile corruption cases involving Mubarak and Salem in the Sharm al-Sheikh villas case.⁷⁸ Between reconciliation and the statute of limitation, it is very difficult to reach a final conviction in a corruption case in Egypt. Therefore, it is hard for an MLA procedure of asset recovery to yield any effective results. In his verdict on the “Trial of the Century case”, the judge recommended that the law be changed accordingly.

Secondly, there is little doubt that the trials were – and still are – influenced by general politics at the time. There is also little doubt that any of these charges would have been brought if the Mubarak regime had stayed in power. Under massive revolutionary pressure in 2011 and 2012, most courts convicted the Mubarak regime defendants. But as the situation developed and political pressure eased on the courts, most trials in appeal ended with an acquittal. Moreover, many court rulings were heavy with political sentiments and statements, sometimes

even conspiracy theories. Take this judge’s verdict to acquit Mubarak and Salem of all corruption charges in the “Trial of the Century”:

Under massive revolutionary pressure
in 2011 and 2012, most courts
convicted the Mubarak regime defendants.
But as political pressure eased
on the courts, most trials in appeal ended
with an acquittal.

“This is indeed proven by the existence of America’s international Hebraic scheme, which established the political order known as the Greater Middle East Project and which briefly requires the division of larger Arab countries into a number of smaller states, in order to preserve the Zionist entity’s hegemony over the Middle East. [The Zionist entity] achieves its numerous dreams and loots the natural resources that Allah bestowed, by provoking a fear of al-Qaeda and of groups disguised in the robes of religion, both of which are thirsty for power and rule. Some of these groups built financial empires, though only the Almighty knows their origin. The axis of evil between America, Israel, Iran, Turkey, and Qatar, took two scheming routes in the Arab world. First, the 2003 military invasion of Iraq using lies about the existence of nuclear weapons. Second, to justify the military costs and its human toll [...] they entered through the door and hid behind what they called the US program of “democracy and good governance”. They described this as the war of the fourth generation, by claiming the non-violent change of authoritarian ruling regimes, by provoking religious, sectarian, ethnic, or tribal differences.”⁷⁹

It is hard to imagine that such kind of judgments would have met the standards to be recognized valid in front of a Swiss court.



A mural depicting a combination of the faces of Egypt's former president Hosni Mubarak and Field Marshal Mohamed Hussein Tantawi. Cairo, June 14, 2012. | © Ahmed Jadallah/Reuters

6

The mysterious deal

In December 2015, Egypt's administrative court ruled in a case brought by the Association for Freedom of Thought and Expression (AFTE) and the Egyptian Initiative for Personal Rights (EIPR).⁸⁰ Its decision obliged the council of ministers to regulate the right of citizens to access information and data relating to settlements between the state and investors over privatization and public funds. According to this decision, the government is obliged to disclose information about such settlements in a way that the standards, reasons, and basis for each settlement will be clear.

However, the deal that was finally concluded apparently stipulated that Salem would give up 75 percent of all his wealth in return for all charges against him being dropped. And his assets would be unfrozen.

signed. According to the media, it should have led to all charges being dropped against Salem. But the Cairo Criminal Court was still passing judgement in April and in August 2017, almost a year after the agreement was signed.⁸² Needless to say, Hussein Salem was acquitted in those judgments.

Rumours of negotiations and a possible reconciliation deal with Hussein Salem date back quite a few years. Apparently the agreement was the result of a long process. Most news talked about him giving up half his fortune in return for dropping all charges.⁸³ However, the deal that was finally concluded apparently stipulated that Salem would give up 75 percent of all his wealth in return for all charges against him being dropped. And his assets would be unfrozen. One news website published a copy of the agreement (see annex 4 for the agreement in Arabic). This one available version of the agreement, and the statements of officials and Salem's lawyers, confirmed that Salem had indeed committed to give up 75 percent of all his assets, a sum that his lawyers said would be worth some LE 5.5 bn, worth USD 311 million (using August 2017 exchange rates). Some media reports claimed that this amount was nowhere near 75 percent of Salem's wealth, at most 20 percent of it.⁸⁴ Nor is it clear whether any of his assets frozen in Switzerland and elsewhere have actually been returned to the Egyptian government. Nor do we know what they should have been used for.

Despite the clarity of this ruling, all reconciliation deals relating to Hussein Salem took place in almost total secrecy. The full text of the agreement between Hussein Salem and Egyptian authorities, for example, was never officially published. The institutions that executed the settlement never released a public statement to explain it. We only know about it through disparate news and statements given to the media. Since such cases directly involve public funds, this is a breach of the government's constitutional and international commitments, and of the administrative court ruling. On the basis of the December 2015 judgment, we repeatedly asked the Egyptian Ministry of Justice to provide details about the agreement with Hussein Salem,⁸¹ but to no avail. This agreement is enforced in mysterious ways. It is hard to see how it affected the various proceedings still ongoing in Egyptian courts when the agreement was



A reflection of Paradeplatz, the symbolic centre of the Swiss banking industry, in the window of a private bank.
The building in the background is Credit Suisse's historical headquarters. | © Mark Henley/Panos Pictures

7

And the winners are... Switzerland's banks!

Between 2000 and 2010, Swiss authorities and banking sector representatives had tried to improve Switzerland's reputation by describing Swiss anti-money laundering mechanisms as "the most rigorous in the world".⁸⁵ But the sheer amounts of money in Swiss banks after the Arab Spring throw such statements into suspicion. The revelations have let doubts arise about the way financial intermediaries are applying their anti-money laundering duties. They also might show that a lack of punishment – or lack of a deterrent effect – was still leading them to accept dubious money. The Arab Spring had raised hopes in Switzerland too: after years of taking money from dubious sources, some hoped the banks that had contributed to Egyptian pillage would be condemned and sanctioned appropriately. At the very least, it was hoped, new measures would stop this from happening again and again.

The results are disappointing from that perspective. In theory, Swiss financial intermediaries are scrutinized in two different ways, which should be complementary. Firstly, FINMA, the Swiss financial markets supervision authority, is responsible for ensuring that banks and other financial intermediaries (fiduciaries, family offices, etc.) apply due diligence procedures to prevent money laundering as required by law. If they do not, administrative sanctions can be taken, including, for example, the withdrawal of a banking licence. This is not a criminal issue. Secondly, criminal prosecution authorities are responsible for investigations into money laundering. As a rule, they prosecute individuals. That is, the charge of "money laundering" needs a predicate offence. Money is not laundered unless it comes from another crime. In the Egyptian case, as far as we can tell from the publicly available information, both the administrative and the criminal proceedings are meagre.

In 2011, FINMA analysed the application of money laundering duties by those financial intermediaries, which had accepted funds frozen after the Arab Spring. The analysis led to a report, but unlike the Abacha case 11 years earlier, this report was not initially made public. Under pressure from Switzerland's civil society, FINMA did eventually release a short report, but did not name the banks in their inquiry.⁸⁶ The report noted "most financial institutions have fulfilled their particular due diligence obligations 'satisfactorily' to 'well'". FINMA found wrongdoings in "only" four cases of the 20 investigated. But it did not detail

the wrongdoings in any of these four cases nor communicate the results, nor the sanctions that were potentially taken in some of those cases. We do not even know precisely when the procedures were concluded. However, we believe that this was between 2013 or 2014 at the very latest. This is a swift process when compared to criminal procedures still running three years later. All in all, given the scarcity of the information available, we cannot judge the deterrent effect of such procedures.

No clear signal has been sent to banks.
And some may interpret this
to mean that, in the future,
they will be able to accept such funds
with limited risk.

We do not know whether any financial intermediaries are still the subject of Swiss criminal procedures. What is clear, however, is that when funds are unfrozen as they were in December 2016, there is no predicate offence anymore. Therefore, there is no money laundering either. As a result, the asset recovery politics advertised so proudly by Swiss authorities was rather disappointing in this specific case. No clear signal has been sent to banks. And some may interpret this to mean that, in the future, they will be able to accept such funds with limited risk.



An anti-government protester defaces a picture of Egypt's President Hosni Mubarak in Alexandria, January 25, 2011. | © Stringer/Reuters

8

Lessons and recommendations

Since the Arab Spring, asset recovery processes have occupied a growing space on the international agenda. But data is limited. Precise figures or even estimates that would allow to assess the results of this development are lacking. According to 2011 World Bank figures, some USD 5 billion have been seized and returned since the end of the 1990s – almost half of it by Switzerland. But this represents a very small part of the USD 20 to USD 40 billion worth of estimated illicit money outflowing out of countries each year, linked to bribery, misappropriation of funds, and other corrupt practices.⁸⁷

There are many reasons to explain the poor results of asset recovery cases. The cases are complex, and there is no single, simple remedy to the wide range of obstacles they face. Analysis of these barriers based on concrete cases is scarce, because among other reasons the basic information is unavailable. As a result, no consensus exists on how best to meet shared international commitments such as “tackling corruption” or repatriating illicit assets stashed abroad. In that respect, any conclusions drawn from this case study are worth taking into account. We have reached three major conclusions.

1) FINDING ALTERNATIVE WAYS WHEN MUTUAL LEGAL ASSISTANCE PROCEDURES ARE INSUFFICIENT

The mutual legal assistance track, the reigning paradigm of asset recovery, has huge shortcomings, since it requires the judicial authorities in the country of origin of the money to be functional, to be able to send and respond adequately to Mutual legal assistance demands and to reach final court convictions. The difficulties of this MLA-track can be summarized as follows:

It can be difficult to link frozen money with a criminal offence. For instance because it often takes years to track the path of assets that are the proceeds of a crime, when they have been round-tripping through an extensive spiderweb of offshore companies and bank accounts in various jurisdictions. Or because illicit money might have been mixed with “licit” money. It might therefore be really difficult to prove that the frozen money is indeed the proceeds of crime.

It might also be difficult to determine what crime had been committed when the money had been plundered by plutocrats or civil servants working in “legal” manner. It might prove difficult to find out about things that took place a long time ago or that took place after the statute of limitations had expired. Moreover, the “crime” has to be considered as such in both jurisdictions. This last provision makes it impossible, for instance, to get assistance for offenses that do not exist in Switzerland’s criminal laws, including breaches of currency exchange controls, tax evasion, or illicit financing for political parties or campaigns.

But the list of difficulties related to this MLA track are not just of a technical nature. They might be more political. Some asset recovery cases are opened when the same regime is still in power. And even when the regime has changed, judicial authorities might be in a poor situation, lack capacity, or even the political will to conduct such inquiries. Perhaps they are still linked to the former authorities, because they are corrupt or have been threatened. Various authorities might be competing to take the lead on asset recovery, sometimes with different aims in mind. Sometimes, a country’s judicial system might not be considered independent enough. Its convictions might not be seen as valid in the country where the money is frozen, or they might not conform to European Court of Human Rights (ECHR) requirements. Such difficulties hampered almost every one of the Egyptian asset recovery cases.

This does not mean that countries should not first try criminal procedures. On the contrary, it would be undiplomatic for any country to say at the start that another country’s judicial authorities are unable to do their job. But it does mean that alternative ways are needed when this path leads to a dead-end. The lack of such alternatives leads to the release of highly suspicious funds not because they were recognized as licit but because a malfunctioning judicial authority made it impossible to prove anything else.

Clear about the difficulties of the “MLA track” that has been acknowledged in similar cases related for instance to Haiti or to the Mobutu money in Switzerland, Public Eye has been advocating for a long time for alternative mechanisms. These would reduce the high burden of proof in such contexts and help cases like the Egyptian one. For more than ten years, we’ve been high-

Box 2

A LAW MADE FOR (ALMOST) NOTHING?

Swiss asset recovery processes since the late 2000s show how difficult it can be to reach criminal convictions, even when the frozen money was unlikely to have been legal. The most prominent cases were those of Mobutu and Duvalier, Haiti's former president. The latter's money has been frozen in Switzerland since 1986, but he has never been convicted. In 2007, the Swiss government committed to adapt the law in cases "where it was clear that the dysfunctional judicial system in the country of origin made it impossible for it to seek judicial assistance".⁹² The Swiss parliament then adopted a new law in 2010⁹³ enabling seizures on the basis of an administrative process (similar to a "non-conviction based forfeiture") when a former Politically Exposed Person (PEP) is unable to prove that their money was legally acquired (reverse burden of proof). This new law was recognized internationally as being a pioneering step, and Swiss authorities are keen on referring to it to show how progressive they are in asset recovery politics.

Nevertheless, the use of this law is restricted by conditions that are hard to meet. In fact, these conditions made it almost impossible for this law to be applied. In 2015, this law was amended and renamed.⁹⁴ The thresholds were softened a bit, but conditions to use it remain hard to meet. So far, no seizure has been made under any of the versions of the law, apart in the Haitian case. With regards to the Egyptian case, Swiss authorities wrote in their communication to Egyptian media released in September 2017 that this law would not be of any use, since mutual legal assistance between Switzerland and the Arab Republic of Egypt was not impossible as such.

lighting the need for additional laws that would allow the money of heads of states and their entourage to be seized, when their countries are renowned for endemic corruption, when public officials or their relatives have enriched themselves during their time in charge, and when they have done so to such an extent that it is almost impossible for them to have acquired their wealth in any legitimate way, unless they can demonstrate they did so (reverse burden of the proof).⁸⁸ Renowned experts in Swiss Criminal law recommended such propositions,⁸⁹ which they found to be consistent with principles of the European Court of Human Rights.⁹⁰

Such solutions would have a considerable deterrent effect. They would also help to bypass another difficulty in the seizure process: that each cent of the frozen money must be proven to be the product of a crime committed abroad. As the lawyer responsible for the confiscation of Abacha's loot in Switzerland

said in 2008, "in many confiscation proceedings [proving] the criminal origin of the assets to the last cent is virtually impossible in cases of such magnitude".⁹¹

To a certain extent, our arguments have been heard. Even before the Arab Spring, Swiss authorities had adopted a new law to allow – under certain conditions (see box 2) – the seizure of assets belonging to kleptocrats without needing to prove their illegality. But even if these conditions were broadened in 2014, they remain difficult to meet. And this law therefore was impossible to use in the Egyptian context.

2) FIGHT IMPUNITY – DON'T GO FOR THE MONEY FIRST

The haunting issue in grand corruption cases is not the horrendous amounts of money that disappear every year. It is that the money continues to disappear. Or, to put it differently, for every case that reaches a more or less happy ending, many others are probably not even detected. Unfortunately, governments such as the current Egyptian one often prefer to get a share of the money quickly rather than to fight against impunity. There might be understandable reasons for this. Sometimes, money is desperately needed in times of political unrest, for example when a regime has just fallen. There might also be much questionable reasons. An official might want to say that "he brought the money back" just because he wants the popularity. Sometimes, such settlements are a way to win the protection of an old and powerful clan. Or sometimes... it is just corruption. In the case of Egypt, and partly because the deal with Hussein Salem was totally opaque, we were never able to assess the reasons behind the settlement.

What we can say, however, is that from a systemic point of view, the costs of such settlements are potentially extremely high for at least three different reasons. First, they strengthen the idea, for most of the citizenry, that the law doesn't apply equally to everyone and that some individuals are in fact too big to jail. It undermines the fight against impunity and trust in the State. In the worst case scenario, such deals allow former crooks to appear as "respectable donors", willing to contribute a share of "their" fortune to the country, a generosity that could also be used as a political asset. Second, such deals pose several challenges to good governance. One of these is the decision process about how funds are used when given back to the state. In the Egyptian case, we were utterly unable to learn in any way how much Hussein Salem and his entourage "gave back" to the Egyptian State. Nor did we learn what this money was meant for and how it was used. In fact, we have no way of knowing whether or not that money has actually been given back at all. Such opaque deals considerably reinforce the likelihood that the money will be diverted again. Third, such deals have considerable consequences for the "money launderers", that is the financial intermediaries that accepted the money in countries such as Switzerland. Since there is no criminal conviction and no predicate offense, they can't be prosecuted for money laundering anymore. Here too, the deterrent effect is almost non-existent.

3) ASSET RECOVERY POLITICS ARE GOOD, BUT EFFECTIVE ANTI-MONEY LAUNDERING FRAMEWORKS ARE BETTER

Of the vast amounts of illicit financial flows, a tiny fraction is identified, an even tinier part is frozen, and only the very smallest portion is seized and recovered (and no precise statistics nor even reliable estimates of these respective proportions do exist). This should be proof enough that asset recovery processes are long, complicated, seldom transparent and often disappointing. The best way to prevent grand corruption is prevention, which means making sure that financial intermediaries apply their anti-money laundering duties correctly and don't accept any illicit money. More remains to be done in that respect. Since the Arab Spring, major new cases appeared – the Ukrainian Spring, Petrobras case, Karimov case, 1 MDB case – all suggesting that illicit money has continued to enter Switzerland's banks as in previous years. Bearing in mind that we can probably only see the tip of the iceberg, let's sum up quickly what this case study has taught us.

As far as is publicly known, none of the Swiss banks that accepted money from Mubarak's cronies ever reported any suspicions they may have had to the money laundering office before the Revolution. And this is despite both the incredibly high amounts of money involved and the high-ranking character of their owners, all of whom were politically exposed persons. Under Swiss law, this should have been enough to qualify them for thorough due diligence. Switzerland's supervisory authorities suspected irregularities in at least four of the 20 cases (or

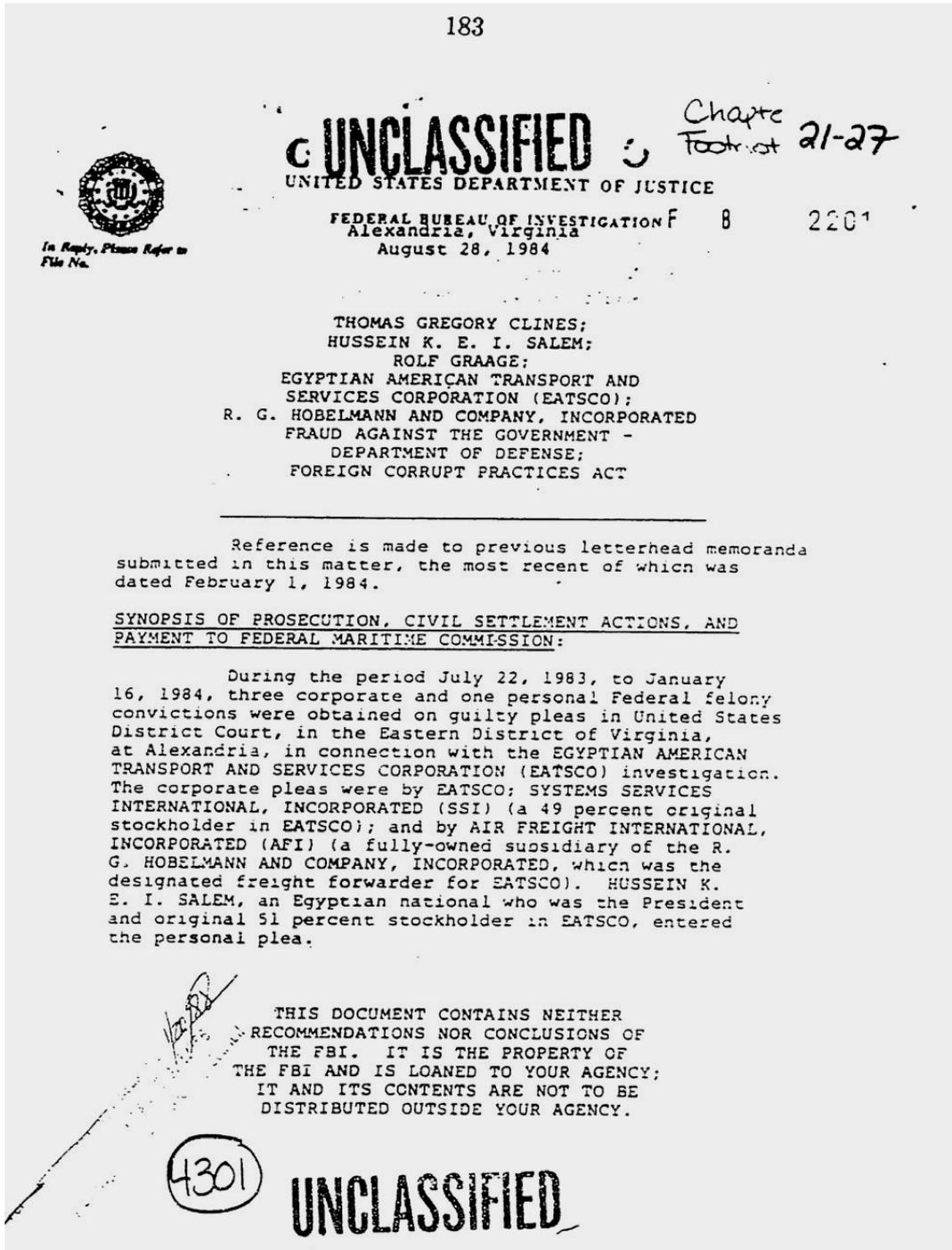
20 per cent) investigated in 2011 and relating to the Arab Spring. In one case, that of Hussein Salem's bank, suspicious transactions and former criminal convictions in the US or in Germany should have been red flags years earlier. In the second case, we know that the compliance department was not powerful enough to persuade the bank to interrupt its relationships with Salem. How much due diligence did those banks really conduct? Did they really check the economic background of their client's transactions as the law requires? Did they really conclude that the money was legal? Or did they merely bet on the fact that it would be difficult to prove the money was ever illegal (in which case, they won their bet)? Since no information is available on the results of the administrative procedures opened against those banks, none of those questions can be answered.

And what did the banks say? A few weeks before the Arab Spring, one of their major lobbyists, the spokesperson of the Swiss bankers association, said "no Swiss bank would knowingly accept funds from a corrupt head of state – the reputational risk would simply be too high". There might perhaps be some truth in this, but it is problematic: what if they "don't know"? Is it sufficient to prove that they did everything right? What if they don't want to know? And what if it's not a head of State, but, as in Egypt's case, his sons, his entourage, or as in most of the cases, the proxies or businessmen close to him? This is what happens in reality. Of course, bank representatives will still say that everything went according to law. But if it is really so, is the law strict enough? Until such questions are answered, the taste of the Arab Spring will remain very sour, and we will be hearing the same kind of stories again and again.



9

Annexes



ANNEX 1

FBI Report dated August 28, 1984 in case Hussein Salem et al – Fraud against the [US] Government.
This document can be downloaded here: www.publiceye.ch/FailedRecovery

R. 750.191

CREDIT SUISSE

SWISS CREDIT BANK



**Contract for the opening of a current account
and / or safe custody account**

Between

Mr Hussein Kamal Eddine I. SALEM
Mrs Nazima Abdel Magid Ismail SALEM

Depositor(s)

hereinafter called "Depositors"

on the one side

and SWISS CREDIT BANK

hereinafter called "Bank"

on the other side

the following agreement has been concluded:

1. Current Account(s)

The Depositors remit to the Bank funds for credit to current account(s) to be opened in the name of

R. 750.191

said account(s) to be subject to the terms and conditions communicated by letter.

2. Safe Custody Account

If the Depositors, at the same time or later, deliver to the Bank securities or other valuables for safe custody, these items are to be placed into a safe custody account carried in the same name as the current account(s).

3. Accounting

In the absence of instructions to the contrary, transactions executed on behalf of the Depositors will be passed over the current account(s) referred to under cipher 1; the same account(s) to be credited also with the income derived from securities lodged in safe custody, as well as with all remittances received in favour of the Depositors in other currencies, provided the conversion is possible.

4. More than one Depositor

In the case of two or more Depositors they enjoy the rights of joint creditors within the meaning of Art. 150 of the Swiss Federal Code of Obligations.

Consequently, each Depositor is entitled, individually and independently from the other(s),

- a) to dispose of the cash funds in the current account(s) in whole or in part,
- b) to operate the safe custody account on his sole signature, namely to place securities and other valuables into, to withdraw all or part of the securities or other valuables from the safe custody account, to pledge these items, etc.

The right to act individually and independently will continue in the event of death, or loss of capacity to act of one of the Depositors. The Bank, when fulfilling its obligations towards one of the Depositors, is legally released towards all of them.

Each Depositor may confer power of attorney on any third person or persons who will then be entitled to act as agent or agents for all Depositors.

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ANNEX 2

Credit Suisse contract for the opening of a current account on the name of Hussein Salem and Nazima Salem, concluded August 14, 1974. This document can be downloaded here: www.publiceye.ch/FailedRecovery

بسم الله الرحمن الرحيم
سرى جدا
ملكرة

١٤٠٣
٢٠١١

بشأن فحص الشكوى رقم ٢٩ لسنة ٢٠١١
كسب غير مشروع والبلاغات أرقام ٩٩٩، ٩٢١، ٦٠
لسنة ٢٠١١ بلاغات النائب العام

عام:

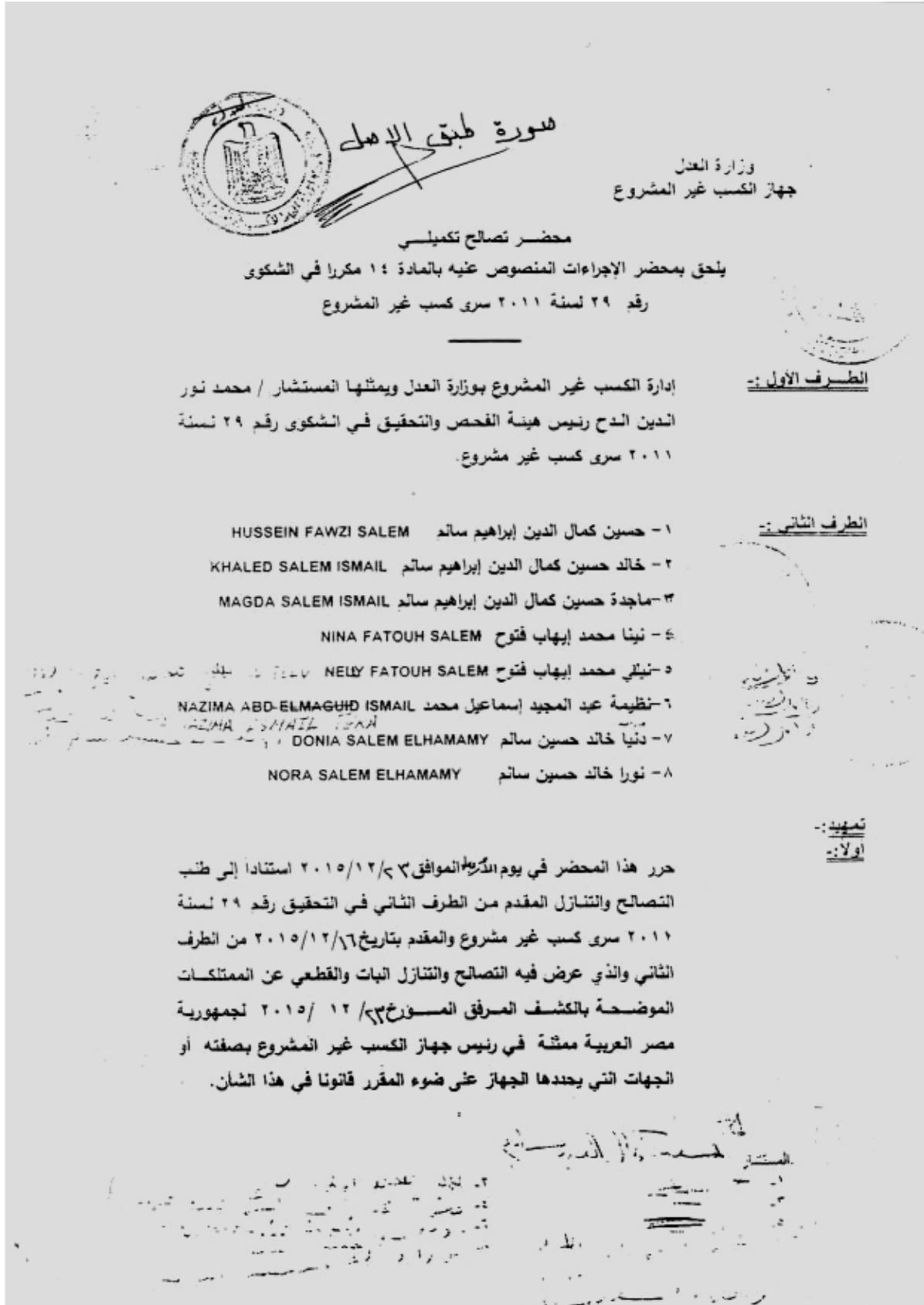
بتاريخي ٢٠١١/٢/٢٨، ٢٠١١/٣/٩ ورد كتابي السيد/ النائب العام مرفقا به صور البلاغات أرقام ٩٩٩، ٩٢١، ٦٠ لسنة ٢٠١١ بلاغات النائب العام المقدمة ضد وزير البترول السابق وآخرين من المسنولين بالوزارة وكذا رجل الأعمال/ حسين سالم، السيد/ مساعد وزير العدل لشئون الكسب غير المشروع رقم ٢٣٦ وقد تضمننا الآتي:

- ١ - تضخم ثروات رجل الأعمال/ حسين سالم من خلال إمتلكه للعديد من الشركات السياحية ومساهمته في بعض شركات البترول منها ميدور والتي تحصل عليها بطرق غير مشروعة.
- ٢ - وجود بعض المخالفات القانونية التي ارتكبتها بعض المسنولين بوزارة البترول في إسناد تصدير الغاز لدولة إسرائيل من خلال شركة شرق البحر المتوسط للغاز EMG.
- ٣ - تخصيص الحكومة المصرية جزيرة التمساح بمدينة الأقصر لشركة التمساح للمشروعات السياحية والمملوكة للسيد/ حسين سالم بمبلغ ٤٠ مليون جنيه (تسعة ملايين جنيه) بالرغم من أن سعرها الحقيقي يفوق ذلك.

نتيجة الفحص:

- ١ - السيد/ حسين كمال الدين ابراهيم سالم من مواليد ١٩٣٣/١١/١١ - حلوان - القاهرة حاصل على بكالوريوس تجارة " شعبة محاسبية " جامعة القاهرة عام ١٩٥٦ لديه محل إقامة في ٣٨ شارع الثورة - مصر الجديدة - القاهرة وآخر كانن في - فيلا ٢٩ منتجع الجولف مدينة شرم الشيخ متزوج من السيدة/ نظيمة عبدالمجيد إسماعيل محمد من مواليد ١٩٣٦/٧/٩ بورسعيد - ربة منزل - ولديه ابن/ خالد حسين سالم من مواليد ١٩٦١/٨/٤ وابنة/ ماجدة من مواليد ١٩٦٣/٣/٤.
- ٢ - تدرج السيد/ حسين سالم في العديد من الوظائف المختلفة كالاتي: (مرفق ١)
أ - عين في وظيفة مراجع بصندوق دعم صناعة الغزل والمنسوجات القطنية إعتباراً من ١٩٥٦/١٠/٣ براتب ١٨ جنيه (ثمانية عشر جنيه) شهرياً.

ANNEX 3



ANNEX 4

Supplementary Reconciliation Record attached to the record of the proceedings provided for in Article 14 bis of Complaint No. 20 of 2011 Illicit Gains, 23.12.2015. This document can be downloaded here: www.publiceye.ch/FailedRecovery

Endnotes

- 1 “Ordonnance instituant des mesures à l’encontre de certaines personnes originaires de la République arabe d’Égypte”, RO [Swiss official law registry], 2.2.2011. This decree entered into force on 11th of Feb. 2011.
- 2 “William Hague offers lawyer to Egypt in Mubarak asset row”, *BBC news*, 11.09.2012.
- 3 EIIPR, “How to best utilize our frozen assets”, September 2014, p. 4.
- 4 DFF, “Produit de la corruption: dispositif suisse particulièrement rigoureux”, 19.11.2003.
- 5 “Foreign leaders favour Switzerland”, *Financial Times*, 25.01.2011.
- 6 See official communication From the Swiss embassy in Cairo, issued beginning of September, 2017.
- 7 “Avoirs de potentats: mobiliser nos énergies pour faire reculer la corruption dans le monde”, *Le Temps*, 30.06.2016.
- 8 As reflects the title of a leaflet published by Swiss authorities: *No Dirty Money, The Swiss Experience in Returning Illicit Assets*, Swiss Federal Department of Foreign Affairs, Presence Switzerland, 2016.
- 9 “Ordonnance instituant des mesures à l’encontre de certaines personnes originaires de la République arabe d’Égypte”, RO, 2.2.2011. This decree entered into force on 11th of Feb. 2011. [cf. note 1] This list was amended on several occasions during the following years. See below.
- 10 Quoted in: “Potentats arabes: 830 millions de francs gelés”, *Le Temps*, 3.5.2011. That sum was confirmed some days later in a press release from federal authorities in the context of the first visit of Swiss forensic experts to Cairo: Press release of the Swiss foreign ministry (Département fédéral des affaires étrangères – DFAE), 11.05.2011 “délégation suisse d’experts au Caire”.
- 11 “The wealthy leave Egypt taking money with them”, *Economic Voice*, 31.1.2011.
- 12 The first foundation was renamed shortly after Mubarak’s fall “End Human trafficking now” and was liquidated in 2014. To our knowledge, the details of that liquidation process were not revealed. The second one was liquidated on 30 May 2013. According to documents we were able to see, the funds it still had were wired by liquidators to another foundation, the Geneva Center for the democratic control of armed forces, which has no link to the former Egyptian regime.
- 13 “Diener der Despotin”, *Handelszeitung*, 3.2.2011.
- 14 “Egyptian bank EFG Hermes says Mubarak state minor”, Reuters, 13.2.2011.
- 15 “Hosni Mubarak used last 18 days in power to secure his fortune”, *The Telegraph*, 12.2.2011.
- 16 “Hosni Mubarak sons have £215 million in Swiss banks”, *The Telegraph*, 17.10.2011.
- 17 “The pharaoh’s lawyer”, *Foreign Policy*, 2.11.2011.
- 18 The Egyptian document was published on the website of Swiss newspaper *Le Matin Dimanche*, that revealed the story. See: “Les 300 millions des frères Moubarak sont au Credit Suisse”, *Le Matin Dimanche*, 30.12.2012.
- 19 Swissleaks, The International Consortium of Investigative Journalists (ICIJ), 2015.
- 20 “Hussein Salem, l’énigmatique homme d’affaires dans l’ombre de M. Moubarak”, *Le Monde*, 19.2.2011. “Le double de Moubarak a fait fortune à Genève”, TSR info.ch, 17.2.2011.
- 21 Enrico Monfrini, “The Abacha case”, in: Pieth, Mark, (éd), *Recovering stolen assets*, Bern, Lang, 2008, p. 55.
- 22 Yehia, K., “Hussein Salem: A businessman from the times of crony capitalism”. *Al-Ahram*, 2011.
- 23 This belief was namely shared by CIA agents, as reported by the Washington Post: “Carrier Pleads Guilty in Arms Deal”, *Washington Post*, 2.9.1983. See also: J. Trento, *Prelude to Terror: the Rogue CIA, The Legacy of America’s Private Intelligence Network the Compromising of American Intelligence*, Carroll and Graf, 2005.
- 24 “Hosni Mubarak sons’ have £215 million in Swiss banks”, *The Telegraph*, 17.10.2011. See also: *Le Temps*, 18.10.2011.
- 25 “Hussein Salem, l’énigmatique homme d’affaires dans l’ombre de M. Moubarak”, *Le Monde*, 19.2.2011. “Le double de Moubarak a fait fortune à Genève”, TSR info.ch, 17.2.2011. See also: “Egypt’s pursuit of Mubarak’s cronies falters”, *The National*, 7.5.2013.
- 26 Yehia, K., “Hussein Salem: A businessman from the times of crony capitalism”, *Al-Ahram*, 21.6.2011.
- 27 al-Wakea, M. (2016). *al-masry al-youm takshif asrar Midor: al-hokouma tufadil al-qitaa’ al-khas’ ala nafsiha. ahyanan (al-Masry al-Youm reveals the secrets of Midor: the government favours the private sector over itself, sometimes)*. Last accessed 1st May 2017.
- 28 Ibid.
- 29 National Bank of Egypt. (Official Website). *About Us*. Last accessed 1st May 2017.
- 30 al-Wakea, M. (2016). *al-masry al-youm takshif asrar Midor: al-hokouma tufadil al-qitaa’ al-khas’ ala nafsiha. ahyanan (al-Masry al-Youm reveals the secrets of Midor: the government favours the private sector over itself, sometimes)*. Last accessed 1st May 2017.
- 31 Case No. 1061 for 2011 documents – Cairo Criminal Court. Court documents in Egypt are not publicly available online, and copies can only be obtained from the court in physical form by special request; therefore, it was not possible for us to provide a link to an existing online source. We did, however, upload the relevant parts for the reader’s reference on this address. <https://eipr.org/files/5700>.
- 32 Ibid.
- 33 Ibid.
- 34 Russian Natural Gas Monthly Price, Index Mundi, accessed 9.10.2017.
- 35 Case No. 1061 for 2011 documents – Cairo Criminal Court.
- 36 Ibid. Cf. also: “Egypt’s pursuit of Mubarak’s cronies falters”, *The National*, 7.5.2013.
- 37 Official report by the illicit gains authority for the Cairo Criminal Court case against former president Hosni Mubarak and his aides known as the “trial of the century”. This report (in Arabic) can be downloaded here: <https://eipr.org/file/5701>
- 38 Egyptian Initiative for Personal Rights. (2014). “The Trial of the Century’s” verdict on the Gas Case: Impunity in Corruption Cases Continues. Last accessed 27th Mar 2017.
- 39 Meinrad Heck, “Im Schatten der Korruption”, Mai 2011, actualised in Aug. 2013. Available here.
- 40 Meinrad Heck, *Der Flowtex-Skandal*. Frankfurt, Fischer, 2006, p. 181. On Salem, see pp. 177–185.
- 41 See: “Les 300 millions des frères Moubarak sont au Credit Suisse”, *Le Matin Dimanche*, 30.12.2012.
- 42 Bradley Hope, “Hussein Salem and Family assets”, *The National*, 24.10.2012. We never managed to find the version of the paper this article refers to. Nevertheless, we do have an older version that doesn’t include the Swiss bank account. See Annex 3.
- 43 According to Swiss official’s business registry’s entries. Salem was also listed as an administrator of the second company.
- 44 OCCRP, *The hunt for Egypt’s money*, 6.2.2012.
- 45 “Report on the complaint Number 29 for the year 2011 – illicit gains” Submitted to prosecution authorities No. 60 and 921 and 999 by the Egyptian illicit gains authority, on 28th of March 2011.

- 46 "The Spanish Police Arrest a Mubarak Associate", *New York Times*, 16.06.2011.
- 47 "Cairo Criminal Court acquits Hussein Salem", *Daily news Egypt*, 18.05.2017.
- 48 Swiss criminal Court's decision of 21.02.2013, "Tribunal pénal fédéral, décision du 21 février 2013" BB.2012-138-139. For a more detailed analysis of those attempts, see chapter 4 below.
- 49 "Ordonnance de blocage instituant des mesures à l'encontre de certaines personnes originaires de la République arabe d'Egypte", RO, 6.9.2012.
- 50 "Sur la piste des millions de Mubarak", *Le Matin Dimanche*, 12.8.2012.
- 51 According for instance to declarations of the Egyptian ambassador at the UN in Geneva, Wafaa Bassin, published in "L'Egypte loue le travail de la Suisse", *La Liberté*, 7.11.2012
- 52 "Les 300 millions des frères Mubarak sont au Credit Suisse", *Le Matin Dimanche*, 30.12.2012.
- 53 Press release of the DFAE, issued on 11.05.2011 "délégation suisse d'experts au Caire".
- 54 According to later press articles, the first letter rogatory was sent to Egypt in August 2011, the second in December the same year. See: "Les fonds Mubarak toujours bloqués en Suisse", *Le Matin*, 9.2.2012.
- 55 Press release of the Swiss OAG, issued on 16.01.16, "Visite du Procureur général de la Confédération au Caire".
- 56 Information about that decision is sourced in a later Court decision: Swiss criminal Court's decision BB.2015.68 dated 7th of July 2016.
- 57 Usually, judicial authorities need to trace down the origin of every single cent they want to seize and prove that it is of illegal origin. The major exception according to Swiss law is when this money belongs to a criminal organization. Then, it can be seized unless its owners prove that it was not acquired illegally (= "reverse burden of the proof"). In fact, this provision was not tailor-made for asset recovery processes of grand corruption, but as a tool allowing seizure of assets belonging to a criminal organization like the Mafia, for instance. Nevertheless, it was on the basis of that provision that the Swiss Supreme Court rendered a decision in February 2005 that allowed the seizure of Abacha's funds in Switzerland. As far as we know, this "creative" interpretation was not repeated in another judgment related to an asset recovery case since then. On this story, see: Enrico Monfrini "The Abacha case" in Mark Pieth (ed), *Recovering stolen assets*, Bern, P. Lang, 2008.
- 58 Some of those visits were publically reported. See for instance the press releases of the OAG issued on 17.12.2013, 16.01.2016, 17.12.2016, available [here](#).
- 59 "Sur la piste des millions de Mubarak", *Le Matin Dimanche*, 12.8.2012.
- 60 Swiss Criminal Court's decision of 30.04.2012, "Tribunal pénal fédéral, décision du 30 avril 2012", BB.2011.107-108. All Swiss court decisions referred to in this paper can be accessed online on the [website](#) of the Swiss Criminal Court. They can be found easily by entering the court case number (in this example, BB.2011.107-108). Those decisions are in French or in German. They are anonymized. It is therefore difficult to understand precisely which individuals are concerned. From the context however, it is clear that this judgment refers to Hussein Salem and to his entourage – even if we weren't in a position to outline precisely who were the individuals that belonged to this "entourage".
- 61 Swiss Criminal Court's decision of 12.12.12, "Tribunal pénal fédéral, décision du 12 décembre 2012", RR.2012.122 ss.
- 62 "L'Egypte veut une loi Mubarak", *Le Courrier/La Liberté*, 31.01.2013.
- 63 For instance, see following Swiss criminal Court's decisions: BB.107-108 and 110 of 28.10.2011, BB.2011.91-93 of 19.12.2011, BB.2011.127 of 20.02.2012, or BB.2012.138-139 of 21.02.2013.
- 64 Swiss criminal Court's decision of 7.7.2016, "Tribunal pénal fédéral, décision du 7 juillet 2016", BB.2015.68.
- 65 "Il est urgent que la Suisse mette en place un cadre juridique pour aider les pays à retrouver les fortunes spoliées par leurs dictateurs. [...] La Suisse a accepté notre proposition." quoted in "L'Egypte veut une loi Mubarak", *Le Courrier/La Liberté*, 31.01.2013.
- 66 "Printemps arabe: Le Procureur général de la Confédération rencontre les autorités égyptiennes au Caire", Press release published on 16th December 2016.
- 67 "Hussein Salem offers half of his properties for dropped charges", *Egypt Independent*, 20. January 2013.
- 68 Swiss criminal Court's decision of 21.02.2013, "Tribunal pénal fédéral, décision du 21 février 2013" BB.2012-138-139.
- 69 With regards to the date, we rely on an article published on 22nd August 2017 by the *Egypt Independent*: "Mubarak business tycoon acquitted of money laundering charges".
- 70 Swiss criminal Court's decision of 18.08.2016, "Tribunal pénal fédéral, décision du 18 août 2016" BB.2015.73-75.
- 71 Swiss criminal Court's decision of 7.7.2016, "Tribunal pénal fédéral, décision du 7 juillet 2016", BB.2015.68.
- 72 "Egypt requests unfreezing of HS's assets abroad", *Ahramonline*, 23.08.2016.
- 73 "Ordonnance de blocage instituant des mesures à l'encontre de certaines personnes originaires de la République arabe d'Egypte", RO, 11.02.2017.
- 74 "Ordonnance de blocage instituant des mesures à l'encontre de certaines personnes originaires de la République arabe d'Egypte", RO, 1.12.2016.
- 75 Email Valentin Zellweger to Osama Diab, 4.2.2013.
- 76 This survey was conducted on the basis of the information that was available in Egyptian press about those various proceedings. The results of that survey were already presented earlier in a previous paper. See: Osama Diab, "No corruption committed, or no justice delivered", *Perspectives*, Issue 8, June 2015. The survey was updated for this report.
- 77 Osterhaus, A. (2010). *Timed out: statutes of limitations and prosecuting corruption in EU countries*. Last accessed 1st May 2017.
- 78 Egyptian Initiative for Personal Rights. (2014). "The Trial of the Century's" verdict on the Gas Case: Impunity in Corruption Cases Continues. Last accessed 27th Mar 2017.
- 79 Quoted in: Egyptian Initiative for Personal Rights. (2014). "The Trial of the Century's" verdict on the Gas Case: Impunity in Corruption Cases Continues. Last accessed 27th Mar 2017.
- 80 Egyptian Initiative for Personal Rights. (2015). *al-qada' al-idari yulzim al-hokouma bil ifsaah 'al-taswiyat alati tugra 'ala' uquod al-dawla al-muta'aliqa bil mal al-'aam (the administrative court obliges the government to disclose information on settlements of state contracts related to public funds)*. Last accessed 1st May 2017.
- 81 Our email to the Justice ministry of Egypt dated 6th of June 2017. This request was also sent by letter. We sent it again twice, in July and August 2017 with no result.
- 82 "Mubarak business tycoon acquitted of money laundering charges", *Egypt Independent*, 22. August 2017. See also: "Cairo Criminal Court acquits Hussein Salem", *Daily news Egypt*, 18.05.2017.
- 83 Trew, B. & Diab, O. (2014). *The Crooks Return to Cairo*. Available: <http://foreignpolicy.com/2014/02/07/the-crooks-return-to-cairo>. Last accessed 18th Apr 2017.
- 84 Mohie, M. (2016). *Hussein Salem's wealth: What's hidden is more important*. Last accessed 25th Apr 2017.
- 85 DFF, "Produit de la corruption: dispositif suisse particulièrement rigoureux", 19.11.2003.
- 86 See FINMA's press release dated 9th of November, 2011 (available [here](#)) and the link to the report.
- 87 Jean-Pierre Brun, Larissa Grey et al, *Asset recovery handbook : a guide for practitioners*, Washington, World Bank et al (ed), 2011.
- 88 The "reverse burden of the proof" is a legal provision that switches the burden of proof from the prosecution authorities to the defendants. See box 2 and chapter 4, footnote 57.
- 89 Mark Pieth, "Der Einfluss des internationalen Rechts auf das Schweizer Strafrecht", *Zeitschrift für Schweizerisches Recht*, Band. 131 II, Heft 2, 2012, S. 284. Ursula Cassani, "Les avoirs mal acquis avant et après la chute du "potentat", *Schweizerische Zeitschrift für internationales und europäisches Recht*, 4, 2010, pp. 478 sq., Marnie Dannacher, *Diktatorengelder in der Schweiz. Einziehung und Herausgabe von unrechtmässig erworbenen Vermögenswerten politisch exponierter Personen*, Basel, 2012, p. 176 sq.
- 90 *Judgment Phillips vs. the United Kingdom* of 5 July 2001 (application No. 41087/98), para 35 and 40.
- 91 Enrico Monfrini "The Abacha case" in Mark Pieth (ed), *Recovering stolen assets*, Bern, P. Lang, 2008, p. 60.
- 92 Federal Council's answer to the question asked by MP Felix Gutzwiller (07.3336) on 14.6.2007.
- 93 *Loi sur la restitution des avoirs illicites (LRAI)* [Federal act on the restitution of stolen assets] adopted 2010.
- 94 *Loi sur le blocage, la saisie et la restitution de valeurs patrimoniales illicites (LBRV)*, [Federal act on the freezing and restitution of illicitly acquired assets of foreign politically exposed persons] adopted 2015.

In the aftermath of the Arab Spring, in 2011, Switzerland froze 700 million Swiss francs belonging to former Egyptian president Mubarak and his entourage. The move raised huge expectations among the Egyptian population that this money would be quickly seized and returned to their country. But six years after the Arab Spring, this high profile asset recovery case has produced almost nothing. In 2016, Swiss authorities released a significant part of the frozen Egyptian money – and more will probably follow. Using new information, this report reconstructs the story of the asset recovery process in Switzerland and Egypt following Mubarak’s ouster. It provides a case study to examine the difficulties that might arise in any asset recovery process and to learn the lessons.



PUBLIC EYE (formerly the Berne Declaration) is a non-profit, independent Swiss organisation with around 25,000 members. Public Eye has been campaigning for more equitable relations between Switzerland and underprivileged countries for almost fifty years. Among its most important concerns are the global safeguarding of human rights, the socially and ecologically responsible conduct of business enterprises and the promotion of fair economic relations.

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