"There is widespread understanding that the return of stolen assets to countries characterized by inadequate rule of law and non-robust anti-corruption standards is likely to lead to stolen assets falling back into the vicious circle of corrupt practices and money laundering," said independent researcher Alisher Ilkhamov in his article for CABAR.asia

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Brief overview of the article:

- Although the assets of Gulnara Karimova have long been frozen and await decisions on confiscation, the fate of these assets remains unclear.
- In June 2019, the Swiss Senate (the Council of States) agreed with the government that the latter commit to negotiating the modality of asset return to Uzbekistan to ensure these assets are not re-appropriated, but instead serve the people of Uzbekistan.
- According to a group of Uzbek civil society activists, the court hearings and respective judgments that were the basis of the government of Uzbekistan's conviction of Gulnara Karimova and her associates (and on which they demand the return of her assets) did not meet international standards of fair trial.
- While the Swiss government has committed to negotiations with Uzbekistan over the modalities of asset restitution, French authorities do not seem to be following suit, prompting concerns about what will transpire if the assets are returned.
- Repatriation issues must be dealt with in accordance with the requirements of international human rights law, in particular the right to development and the right to fair trial.

Swiss authorities arrested Gulnara Karimova's assets in bank accounts of 800 million francs. Photo: zakon.kz

The saga of illicit assets and the related judicial and prison misadventures of Gulnara Karimova, daughter of former president of Uzbekistan Islam Karimov, began in 2012, when Swiss authorities opened a money laundering case and froze her assets, most of which were in bank deposits amounting to 800 million francs (about 807 million USD).[1] Uzbek authorities opened their own case against Karimova in 2014, and a year later she received a five-year sentence, which was raised to ten years in 2017. All three court hearings on her case in Uzbekistan and those of her accomplices were held behind closed doors; the public was provided no access to the full-text indictment, the court ruling, or the hearing itself.

On the international level, legal proceedings were opened in Switzerland, the US, the Netherlands, France, Sweden, and Great Britain. Second largest, after Switzerland, was the forfeiture lawsuit case initiated in 2015 against her assets by the US Department of Justice,[2] which resulted in the seizure of Karimova's assets in Belgium, Luxembourg, and Ireland. In March 2019, this case evolved into a lawsuit against Gulnara Karimova herself,[3] on charges of bribery and money laundering.

The main source of all these illicit assets is multimillion-dollar bribes received by Karimova from foreign companies providing mobile communications in Uzbekistan, including PJSC Mobile TeleSystems (MTS), Telia Company (formerly Teliasonera), and OJSC Vympel-

Communications (known under the trademark 'Beeline'). The occurrence of bribery has been confirmed by the confession of these companies themselves and their consent to pay fines totaling $2.6 billion.[4] In addition, related real estate assets are frozen in France, the UK, Switzerland, and some other countries. The total size of frozen assets in Europe is approximately 1.2 to 1.3 billion dollars, mainly cash deposits in banks.

Although all these assets have long been under arrest and await decisions on confiscation, their future fate remains under question. While the UN Convention against Corruption provides for the return of stolen assets to the country of their origin, this framework does not offer specific mechanisms for such return; stipulation on this subject is limited to very general provisions. At the same time, there is widespread understanding that the return of stolen assets to countries characterized by inadequate rule of law and non-robust anti-corruption standards is likely to lead to said assets falling back into the vicious circle of corrupt practices and money laundering.

Switzerland is on the verge of asset repatriation, but…

Right now the fate of Karimova's assets frozen in Switzerland, totaling over 800 million francs,[5] is being decided. Of this amount, 130 million francs were registered in the name of Rustam Madumarov, a known Karimova accomplice, and 555 million were registered in the name of another accomplice, Gayane Avakyan. In addition, several deposit boxes arrested in a Swiss bank contain jewelry worth significant amounts, and Karimova's villa in Geneva is also frozen.

In May 2018, Swiss authorities made a preliminary decision that Gulnara Karimova's assets would be returned to Uzbekistan after confiscation.[6] However, this does not mean this outcome will occur automatically and immediately after confiscation. On 27 June 2019, in an interview with Gotham City, representatives of the Federal Department of Foreign Affairs said the department has yet to begin negotiations with the government of Uzbekistan to reach agreement about principles and modalities (conditions) of repatriation that would be in line with Switzerland's national strategy to block, confiscate, and repatriate ill-gotten assets owned by politically-exposed persons.[7]

The Swiss government's caution regarding asset recovery mechanisms intensified after British experts discovered the disturbing conditions and outcomes of stolen assets in the amount of $48 million returned to Kazakhstan.[8] It was revealed that some of the returned money financed pro-government propaganda organizations under the control of the family of former Kazakh President Nursultan Nazarbayev – with the connivance of the World Bank, the entity that administered the return process. Based on the results of this investigation,

the Swiss government had to answer unpleasant questions raised by Swiss MPs inquiries to the country's Foreign Ministry. After such a "Charcot's douche," Switzerland will likely be reluctant to become a new target of international criticism.

What undermines the legitimacy of the current repatriation process?

According to the group of civil society activists in Uzbekistan that in July 2019 released a formal statement,[9] the main obstacle to resolving the issue of returning stolen assets to Uzbekistan is the country's failure to comply with international norms of justice, rule of law, and human rights, and there are legitimate concerns about the lack of transparency around decisions regarding the fate of Gulnara Karimova and her assets. As mentioned, all court hearings and judgments in the case of Karimova failed to meet international norms of fair trail and due process. The hearings on her case were held behind closed doors and observers were not allowed to analyze the arguments of the prosecutor's office or establish the judges' compliance with national and international law.

These court decisions de facto relieved all officials of Uzbekistan who were complicit in the corrupt transactions of Gulnara Karimova from any judicial responsibility. Apparently, this is the main reason Uzbek authorities hide from observers the contents of the indictment, the verdict, and the arguments of both parties during the trial. These court decisions cannot be trusted by international observers, and this is why activists demand repeat court hearings that will be consistent with international standards of justice. Without observing this condition, the entire construction of the case against Gulnara Karimova, which is also the basis of the current demand for asset return, is illegitimate.

The same problem occurs in Switzerland. A case of money laundering was opened there, not a case of corruption, because Karimova is not a permanent resident of that country. Nevertheless, in order to prove the fact of money laundering, Swiss authorities need to prove *predicate offence*, that is, the assets' criminal origin. There is no other way to prove *predicate offence* than relying on the results of a criminal investigation and an appropriate court decision in the country of asset origin where the crime occurred. However, as noted above, the lawsuit and consequent trail in Uzbekistan is completely inconsistent with the international norms of justice and, for this reason, cannot be accepted by Switzerland. Among other potential conflicts, acceptance would certainly conflict with the provisions of the International Covenant on Civil and Political Rights, the 14th article of which provides for the right to fair trail for all citizens of countries that have ratified this document.

What did Swiss judicial authorities do to resolve this legal conflict? They decided to pass over it, taking the case beyond the framework of open trial to rest narrowly on the

confessions of Gayane Avakyan and Rustam Madumarov about their participation in money laundering and their consent to return the assets to Uzbekistan. Since the ultimate beneficiary of the assets and the conductor of the money laundering process is Gulnara Karimova, this extrajudicial process cannot be completed unless she also admits her guilt and consents to the repatriation of money to Uzbekistan. She and her two accomplices would then get off with a relatively small fine.

This scenario, however, ignores the fact that Gulnara, Gayane, and Rustam are imprisoned and under pressure from the Uzbek authorities – and will likely enter any extrajudicial agreement that might ease their conditions or ensure their early release from prison. This behind-the-scenes bargaining looks quite suspicious and has very doubtful standing in light of international law. Truth and justice have become commodities for exchange.

Uzbek activists thus urge Swiss authorities to demand that Uzbekistan re-try the case of Karimova and her accomplices to comply with the international standards of justice. Such a trial will simultaneously signal Uzbekistan's progress towards establishing the rule of law, an independent judiciary, and respect for human rights, and would also be the foundation for guarantees and safeguards against abuse when Karimova's assets are ultimately returned. There are otherwise no such guarantees.

What sort of example does France set in the question of asset repatriation?

The same problem arises in France, where the authorities have already decided to return to Uzbekistan revenues from the sale of Karimova's real estate in that country.[10] The situation in France is even more problematic. While the Swiss government claims to be committed to negotiations with Uzbekistan on the appropriate conditions for the return of assets frozen in that country, French authorities do not even speak about the subject, which raises concerns about the fate of those returned assets.

Reports from Uzbekistan suggest that Karimova's confiscated residence in the picturesque highlands of Tashkent region was transferred to the Triathlon Federation, an organization headed by Otabek Umarov, son-in-law of current president Shavkat Mirziyoyev.[11] This elite property appears to have been transformed into a suburban residence for members of the presidential family. It is noteworthy that this decision was made behind the scenes, without open tender for the best use of this facility or coordination with civil society.

The confiscated residence of Gulnara Karimova in the picturesque highlands of Sidzhak (Tashkent region) is transferred to the Triathlon Federation, which is headed by the son-in-law of the current president, Shavkat Mirziyoyev, Otabek Umarov. Photo: minbar.uz

There are well-founded fears that assets returned by France will be similarly transferred to the control of persons close to the presidential family, under pretext of their use for 'social programs'.

Indeed, Uzbekistan has not even established a transparent system of free and open tenders for the distribution of public funds and resources. The policy on conflict of interest has also not been adopted, and there is no established practice of identifying which companies would participate in tenders if such tenders were held. Instead the emerging practice is the allocation of profitable contracts on an exclusive basis based on decisions made behind closed doors. As such, there is little doubt that assets returned from France (and Switzerland) will be channeled in such ways and thus be highly susceptible to re-laundering. Future arrests of illicit assets and litigation for their confiscation and repatriation would, of course, place new burdens on law enforcement agencies in the same countries, or others.

Transfer of assets without proper conditions by France would also undermine the process of enacting legislation on responsible repatriation of stolen assets confiscated in France already approved by the French Senate[12] and lobbied by the French chapter of

Transparency International; draft legislation has already gotten Senate approval and reportedly has government support. Any decision to return assets to Uzbekistan without civil society coordination casts a shadow on France's readiness to follow the letter and spirit of international laws on human rights and corruption.

From general to specific, and back to general

Failure to address general issues makes it difficult to solve specific issues arising from general rules. What does international law tell us about repatriation procedures? The excessive brevity of the section in the UN Convention against Corruption that deals with restitution of stolen assets has already been mentioned. However, this Convention is not the only appropriate source of governance related to asset return, a process interwoven with international law on human rights, particularly the rights to development and the right to fair trial. Repatriation issues must be dealt with in accordance with adherence to these rights. This acknowledgement is gradually maturing among civil society organizations specializing in human rights and anti-corruption, and more comprehensive approaches are thus being discussed among governments that find themselves destinations for assets stolen from countries with poorly developed institutions and governance structures.

With respect to particulars, assets of Gulnara Karimova frozen in Switzerland and France must be preceded by foundational changes that will ensure sufficient legitimacy around decisions about asset return. More precisely, the problem is not whether to return or not return ill-gotten assets to Uzbekistan. The UN Convention against Corruption gives a definite answer to this question: return. The question is how and in what way. It seems Swiss authorities are better prepared than French authorities to begin to answer this question. Swiss law requires the government to negotiate the process and conditions for repatriation to countries known for their dictatorial regimes.

In France, on the other hand, a formal policy on responsible asset repatriation has not yet been adopted. Any such policy should take into account the interests of victims of corruption in any country of asset origin, and guarantee that returned assets do not disappear through predictable corruption and money laundering schemes after their return.

The European Union has also not yet adopted such a policy of responsible repatriation of stolen assets to countries that are not member states. EU Directive No. 42 of 3 April 2014 on the seizure and confiscation of assets of criminal origin is completely silent about what to do with such assets after their confiscation.[13] By default, it is assumed that such assets are appropriated into the treasury of the country that confiscates them. This was the case, in principle, with 140 million Swedish krona ($30 million) of Karimova's assets frozen[14]

and confiscated by the Swedish government. Instead of following the UN Convention Against Corruption, the Swedish government transferred this amount to its treasury, sharing it with the Dutch government.[15] In the Netherlands, as in Sweden, a case was opened to investigate bribes paid by the Swedish-Finnish telecommunications company TeliaSonera (now Telia) to Gulnara Karimova. At the same time, the Swedish justice system absolved from criminal responsibility the managers of TeliaSonera, against whom the Swedish Prosecutor's Office had initiated a bribery case.[16]

Such an approach exacerbates injustice in the context of global North–South dynamics and contradicts the EU's UN Convention Against Corruption obligations and international law on human rights.

Multi-million-dollar bribes in the Uzbek telecommunications sector should be qualified as grand corruption. This category of corruption, as a rule, is transnational in nature and involves representatives of international corporate business and banks with international reputations, leading to money laundering on a huge scale. Accountable for grand corruption are thus the corrupt regimes that steal from their people, as well as international stakeholders and, in some cases, implicated respective Western governments. Not only are the latter often unable to stop money laundering through their territories, they have too often failed to ensure justice for the victims of grand corruption – the citizens enduring corrupt regimes in places such as Uzbekistan. This pattern continues because political will in some Western countries and in the European Union is lacking to make potentially challenging l but fair decisions about how to responsibly repatriate stolen assets.

Let us hope the cases described in this article will be the tipping point that pushes the European Union and its member states holding assets belonging to Uzbekistan (France, Great Britain, Belgium, Ireland, and Luxembourg) to adopt appropriate, fair legislation. It is our aim to see these countries make decisions about the fate of the assets of Gulnara Karimova that reflect the interests of the Uzbek people, who have seen their national wealth looted and appropriated by corrupt rulers.

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[1] La fille du président ouzbek dans la ligne de mire de la justice Suisse, The Federal Council, 12.03.2014, https://www.admin.ch/gov/fr/start/dokumentation/medienmitteilungen.msg-id-52278.html

[2] VimpelCom Limited and Unitel LLC Enter into Global Foreign Bribery Resolution of More Than $795 Million; United States Seeks $850 Million Forfeiture in Corrupt Proceeds of Bribery Scheme, US Department of Justice, February 18, 2016, https://www.justice.gov/opa/pr/vimpelcom-limited-and-unitel-llc-enter-global-foreign-bribery-resolution-more-795-million

[3] Mobile Telesystems Pjsc and Its Uzbek Subsidiary Enter into Resolutions of $850 Million with the Department of Justice for Paying Bribes in Uzbekistan, US Department of Justice, March 7, 2019, https://www.justice.gov/opa/pr/mobile-telesystems-pjsc-and-its-uzbek-subsidiary-enter-resolutions-850-million-department

[4] Uzbek Corruption Scandal Settled, Russian Companies Fined, OCCRP, 11 March 2019, https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/9332-uzbek-corruption-scandal-settled-russian-companies-fined

[5] Switzerland Says $133 Million Belonging To Gulnara Karimova To Be Sent To Uzbekistan, RFERL, June 24, 2019, https://www.rferl.org/a/swiss-authorities-seize-133-million-belonging-to-gulnara-karimova/30017188.html

[6] Usbekistan soll eingefrorenes Geld erhalten, Luzerner Zeitung, 24.6.2018, https://www.luzernerzeitung.ch/schweiz/usbekistan-soll-eingefrorenes-geld-erhalten-ld.1031649

[7] L'Ouzbékistan touchera 130 millions grâce à des aveux dans les geôles de Tchirtchik, *Gotham City*,

27 June, 2019, https://gothamcity.ch/2019/06/27/louzbekistan-touchera-130-millions-grace-a-des-aveux-dans-les-geoles-de-tchirtchik/

[8] A Case of Irresponsible Asset Return?, Corruption and Human Rights Initiative, July, 2018, https://corruptionandhumanrights.org/app/uploads/2018/07/A-Case-of-Irresponsible-Return-Summary-Report.pdf

[9] Appeal for justice in the return of Gulnara Karimova's ill-gotten assets, Association for Humna Rights in Central Asia, 25.07.2019, https://ahrca.eu/uzbekistan/rule-of-law/1019-civil-society-activists-of-uzbekistan-call-for-justice-in-the-return-of-gulnara-karimova-s-ill-gotten-assets

[10] Франция вернет Узбекистану деньги от продажи недвижимости Гульнары Каримовой, Fergana.agency, 09.07.19, https://www.fergana.agency/news/108837/?fbclid=IwAR3XOsmjrLqOyov_ql9ZGWEymcoIZ8sZrLMNBlwcG1M6pUhBEOhDkLiNnsA

[11] The confiscated residence of Gulnara Karimova will be handed over to the Federation of Mirziyayev's son-

in-law, Ozodlik Radio, July 25, 2019, https://rus.ozodlik.org/a/30074760.html?fbclid=IwAR07sp3sO4saH7I8a_8iOCzCzjNdO-XV38C4NMRCdRnahoUKTjP2Z22nu-U

[12] Affectation des avoirs issus de la corruption transnationale, Senate, https://www.senat.fr/dossier-legislatif/ppl18-109.html

[13] Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042

[14] US Asks Sweden to Freeze Assets Linked to Uzbek President's Daughter, OCCRP, 01 April 2015, OCCRP, https://www.occrp.org/en/daily/3826-us-asks-sweden-to-freeze-assets-linked-to-uzbek-president-s-daughter

[15] This information was obtained privately from the Swedish journalist Ola Westerberg, who was investigating the case of TeliaSonera and, in turn, received it from the Swedish Ministry of Justice.

[16] Three Ex-Telia Executives Acquitted In Uzbek Bribery Case, February 15, 2019, https://www.rferl.org/a/three-ex-telia-executives-acquitted-in-uzbek-bribery-case/29772426.html