Note: This translation has been prepared by the Registry for internal purposes and has no official character

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13. Note Verbale to the Embassy of Equatorial Guinea dated 17 March 2016 from the French Ministry of Foreign Affairs and International Development

ANNEX 1

Paris *Cour d'appel*, National Financial Prosecutor's Office, Final submissions seeking separation of the complaints, and either their dismissal or their referral to the *Tribunal correctionnel*, 23 May 2016

Paris *Cour d'appel*, National Financial Prosecutor's Office, Final submissions seeking separation of the complaints, and either their dismissal or their referral to the *Tribunal correctionnel*, 23 May 2016

[Translation]

Paris *Cour d'appel*

National Financial Prosecutor's Office

FINAL SUBMISSIONS SEEKING SEPARATION OF THE COMPLAINTS, AND EITHER THEIR DISMISSAL OR THEIR REFERRAL TO THE *TRIBUNAL CORRECTIONNEL*

Prosecution No.: 08.337096017

Investigation No.: 2292/10/12

The Financial Prosecutor,

Having regard to the documents relating to the investigation of:

(1) Mr. Teodoro NGUEMA OBIANG MANGUE

Born 25 June 1969 in Akoakam Esangui, Mongomo District, Wele Nzas Province, Equatorial Guinea

Parents: Teodoro OBIANG NGUEMA MBASOGO and Constance MANGUE NSUE OKOMO

Equatorial Guinean national

Second Vice-President of the Republic in charge of Defence and State Security

Address: Malabo, Equatorial Guinea, choosing as his address for service the offices of Emmanuel MARSIGNY, Counsel, 203 bd Saint Germain, 750[0]7 Paris

ARREST WARRANT (Arrest warrant of 11 July 2012)

Under judicial examination for: laundering the proceeds of a felony or misdemeanour, in this instance misuse of corporate assets, misappropriation of public funds, breach of trust and corruption; (Questioning at first appearance of 18 March 2014, D. 1860, 1866)

Counsel: Emmanuel MARSIGNY, Thierry MAREMBERT, Patrick KLUGMAN, Jean-Marie VIALA;

(2) Mourad BAAROUN

Born 12 December 1967 in Tunis, Tunisia

Parents: Ahmed and Messaouda GMIR

Steward

Address: 27 B rue Louis Rolland, 92120 Montrouge

Tunisian national

***TEMOIN ASSISTE* (legally represented witness)**

In respect of: complicity in laundering misused corporate assets or the proceeds of breach of trust; (Questioning at first appearance on 19 December 2012, D. 895)

Counsel: Jean REINHART;

(3) Aurélie DELAURY, née DERAND

Born 4 January 1971 in L'HAY LES ROSES (Val-de-Marne)

Parents: Robert and Denise CRONIER

Chief executive (*gérante*) of a company

Address: c/o Ms Maud TOUITOU, Counsel, 25 rue du Louvre, 75001 Paris

French national

TEMOIN ASSISTEE

In respect of: complicity in laundering misused corporate assets or the proceeds of breach of trust, complicity in laundering misappropriated public funds; (Questioning at first appearance on 27 February 2013, D. 944)

Counsel: Maud TOUITOU;

(4) SOCIETE GENERALE (legal person)

Acting through its legal representative

Registered office: 29 boulevard Haussmann, 75009 Paris

Represented by Dominique BOURRINET, General Counsel for the Société Générale group

TEMOIN ASSISTE

In respect of: laundering the proceeds of a felony or misdemeanour; (Questioning at first appearance on 30 July 2015, D. 2801)

Counsel: Jean REINHART;

(5) Franco CANTAFIO

Born 27 September 1963 in Saint-Maurice (Val-de-Marne)

Parents: Rocci CANTAFIO and Carmela FRAIETTA

Chief executive (*gérant*) of a company

French national

Address: offices of Mr. Jean LAUNAY, 37 rue Jean-Baptiste Pigalle, 75009 PARIS

UNDER JUDICIAL SUPERVISION (Order of 20 February 2013)

Under judicial examination for: complicity in laundering misappropriated public funds, handling misappropriated public funds (Questioning at first appearance on 20 February 2013, D. 923)

Counsel: Jean LAUNAY;

(6) Martine DUMONT (formerly NICOLAS)

Born 19 August 1946 in the 12th arrondissement of Paris

Parents: Robert and Monique TAQUET

Chief executive (*gérante*) of a non-commercial property company (*société civile immobilière — SCI*)

French national

Address: 32 rue Princesse, 75006 Paris

AT LIBERTY

Under judicial examination for: Concealment of the laundering of misappropriated public funds (Questioning at first appearance on 11 April 2013, D. 1018)

Counsel: Céline LASEK;

(7) Robert FAURE

Born 15 August 1944 in Alger, Algeria

Parents: Albert and Maria Esther BONTHOUX

Retired

French national

Address: offices of Ms Karine MELCHER-VINCKEVLEUGER, 14 boulevard du Général Leclerc, 92527 Neuilly-sur-Seine Cedex

UNDER JUDICIAL SUPERVISION

Under judicial examination for: complicity in laundering misappropriated public funds, handling misappropriated public funds (Questioning at first appearance on 11 April 2013, D. 1019)

Counsel: Karine MELCHER-VINCKEVLEUGER;

(8) Daniel MENTRIER

Born 5 August 1945 in the 15th arrondissement of Paris

Parents: André and Suzanne LARTIGUAUD

Retired

Address: offices of Mr Marc Michel ROUX, 5 rue Grignan, 13005 Marseille

French national

AT LIBERTY

Under judicial examination for: complicity in laundering misappropriated public funds, handling misappropriated public funds (Questioning at first appearance on 4 September 2014, D. 2277)

Counsel: Marc-Michel LE ROUX;

(9) Bertrand GRANDJACQUES

Born 12 March 1954 in Solanches (Haute Savoie)

Parents: Jean and Andrée VITTET

Business management consultant

Address: 23 rue du Capitaine Baud, 74940 Annecy-le-Vieux

French national

TEMOIN ASSISTE

In respect of: complicity in laundering misappropriated public funds, handling misappropriated public funds (Questioning at first appearance on 29 July 2015, D. 2795)

Counsel: N/A

(10) Philippe CHIRONI

Born 27 April 1954 in the 17th arrondissement of Paris

Parents: Robert and Monique CORBEL

Chief executive (*directeur*) of a company

Address: offices of Mr HENRIQUET, 13 rue du docteur Lancereaux, 75008 Paris

French national

AT LIBERTY

Under judicial examination for: misappropriation of public funds (Questioning at first appearance on 1 September 2015, D. 2847)

Counsel: Michel HENRIQUET, 13 rue du docteur Lancereaux, 75008 Paris;

CIVIL-PARTY APPLICANTS:

— Transparency International France, represented by Daniel LEBEGUE

Counsel: William BOURDON

— **Gabonese Republic**, represented by the Minister for the Budget, Public Accounts and the Civil Service

Counsel: Pierre HAIK and Eric DUPOND-MORETTI.

*

Having regard to the notification order of 6 August 2015 requesting an opinion on the separation of the complaints concerning the Equatorial Guinean chapter (D. 2838);

Having regard to the submissions of 7 August 2015 seeking separation of the complaints in the chapter relating to Equatorial Guinea in the interest of the proper administration of justice (D. 2839);

Having regard to the notification order for partial determination of 11 August 2015 (D. 2841);

*

Whereas the investigation has established the following facts:

1. Origin of the proceedings

On 28 March 2007, the associations SHERPA and SURVIE, and the Fédération des Congolais de la Diaspora, filed complaints with the Paris Public Prosecutor against a number of African Heads of State and members of their families for acts of handling misappropriated public funds.

The complaints concern Omar BONGO, former President of the Gabonese Republic, who died on 8 June 2009, Denis SASSOU NGUESSO, President of the Republic of the Congo, Blaise COMPAORE, President of Burkina Faso, Teodore OBIANG, President of the Republic of Equatorial Guinea, Eduardo DOS SANTOS, President of the Republic of Angola, and several members of their families.

According to the complainants, these Heads of State, during or after their terms of office, acquired or procured the acquisition of immovable property on French territory and accumulated movable assets through the intermediary of French banks and/or foreign banks with operations in France. Their immovable assets in France, in Paris in particular, which are described as being of considerable value, could not have been financed by their official remuneration alone while, at the same time, their countries were facing systemic corruption. Therefore, these individuals and members of their families, who own assets or enjoy their use, can be suspected of handling misappropriated public funds (D. 2, 40).

A large number of documents — primarily press clippings — referring to several properties owned by these Heads of State in France, were filed in support of the complaints.

On 18 June 2007, a preliminary investigation was entrusted to the OCRGDF (the serious financial crime squad) with the aim of identifying the suspects' assets and determining the circumstances in which they had been acquired (D. 75, 79).

The initial investigations confirmed the existence of assets of considerable value in France.

For example, a collection of luxury vehicles was discovered, in the names of, among others, Wilfrid NGUESSO, nephew of the President of the Congo, and Teodoro NGUEMA OBIANG MANGUE, son of the President of Equatorial Guinea and Minister for Agriculture and Forestry in his country (D. 80).

In particular, it appeared that Teodoro NGUEMA OBIANG MANGUE had acquired some 15 vehicles in France for an estimated total of over €5.7 million. For example, he ordered three Bugatti Veyron vehicles, with a unit price of more than €1 million, from the manufacturer in Alsace. Two vehicles were purchased on 27 February 2007 (€1,196,000) and 20 December 2006 (€1 million), and a third vehicle, which was in production as at 30 July 2007, had been ordered (for €1 million) with a down payment of €300,000 (D. 147).

Similarly, he purchased a Rolls Royce Phantom Limousine (€381,000) in France on 11 February 2005, a Maserati Coupé F1 Cambiocorsa (€82,000) on 15 February 2005 and a Maserati MC12 (€709,000) on 2 July 2005 (D. 153).

The arrangements used to pay for these vehicles appeared unusual and were such as to be suspicious. Several of the vehicles were paid for by Teodoro NGUEMA OBIANG through transfers from SOMAGUI FORESTAL, a Guinean logging company.

During the preliminary investigation, substantial immovable assets were also discovered, in the names of individuals likely to be members of the families of Omar BONGO and Denis SASSOU NGUESSO.

Numerous active bank accounts were also identified in the names of individuals likely to be members of the families of the Heads of State concerned.

With regard to Teodoro NGUEMA OBIANG MANGUE, the investigators were informed that a criminal investigation had been opened in the United States, regarding the assets that he had accumulated in that country (D. 149, 151).

As regards the criminal status of the individuals concerned, the investigation confirmed that only incumbent Heads of State could claim inviolability and absolute immunity from criminal jurisdiction abroad (see above).

On 12 November 2007, the Paris Public Prosecutor, finding that the offences were not sufficiently established, decided to take no further action relating to the complaint (D. 3-25, 75, 154-1). By a notice of discontinuance issued on 13 November 2007, the complainants' counsel was notified that the investigations had not established any criminal offences, including, in particular, the offence of handling misappropriated public funds which had been cited in the complaint (D. 155).

On 2 December 2008, on the basis of the same facts, concerning only the Presidents of the Gabonese Republic, the Republic of the Congo and the Republic of Equatorial Guinea, Transparency International France and Grégory NGBWA MINTSA, a Gabonese national, filed a complaint with civil-party application before the senior investigating judge of the Paris *Tribunal de grande instance*.

With regard to the admissibility of its civil-party application, Transparency International France contended that, according to the *Cour de cassation*'s interpretation of the provisions of Article 2 of the Code of Criminal Procedure, the associations' civil-party applications, including those of the associations that were not accredited, were admissible in so far as the alleged offences undermined the collective interests that the associations aimed to defend. According to

Transparency International France, the alleged offences, which were characterized as the handling of misappropriated public funds and fell within the scope of corruption as defined by the United Nations, directly undermined the interests that it defended, since they were in direct opposition to its campaigns to fight corruption.

The association considered that its complaint with civil-party application was admissible and should be allowed, failing which the associations would be given unjustified differential treatment depending on the interests that they represented.

Grégory NGBWA MINTSA stated that he intended to file a civil-party application, first, in the place and stead of the Gabonese State, and, second, in respect of the personal harm he had suffered as a Gabonese taxpayer.

On 8 April 2009, the senior investigating judge requested an opinion of the Paris Public Prosecutor, who submitted that the complaint was inadmissible (D. 22).

By an Order of 5 May 2009, the senior investigating judge found Transparency International France's action admissible and dismissed that of Grégory NGBWA MINTSA. According to the judge, the documents produced by the association demonstrated — in respect of its work, in particular — that its objectives of preventing and fighting corruption were genuine. He highlighted the association's numerous activities, especially those aimed at ensuring restitution of the so-called "ill-gotten" gains, demonstrating that it was suffering personal, economic harm caused directly by the offences it alleged, which undermined the collective interests that it defended and that constituted the very foundation of its campaign.

The investigating judge considered that even though the fight against corruption was also one of the general interests of society for which redress was to be ensured by the Public Prosecutor's Office, this could not deprive an association that had been created specifically to fight corruption of the right to file a civil-party application if, as in the present case, the association demonstrated personal harm directly related to its purpose under its charter. He added that the ability to file a civil-party application was an even more effective means of ensuring this fight, by allowing legal action to be taken outside the countries that may have been directly concerned by the acts of misappropriation.

In contrast, however, the judge considered that Grégory NGBWA MINTSA had not demonstrated personal, direct harm, since any misappropriation of public funds deprived only the Gabonese State of resources, and that he had not been authorized to bring a civil action in the name of the State of Gabon (D. 28).

On 7 May 2009, the Paris Public Prosecutor appealed this decision, limiting the appeal to the admissibility of Transparency International France's civil-party application.

By a judgment of 29 October 2009, the *Chambre de l'instruction* of the Paris *Cour d'appel* overturned the senior investigating judge's decision and declared the association's civil-party application inadmissible. In the court's view, the association — a legal person separate from Transparency International — had not provided any supporting evidence permitting a finding that the alleged material harm might exist, and the only harm that it could claim as a result of the perpetration of the offences in question, against which it sought to campaign, was not personal harm as opposed to detriment caused to the general interests of society, which is redressed by means of criminal prosecution by the Public Prosecutor's Office. It also reasoned that the interpretation put forward by the contested civil-party applicant would have the effect of obviating the purpose of the French legislative and regulatory framework governing the accreditation of associations. Ultimately, in these circumstances, although the Public Prosecutor's Office did not have exclusive power to pursue criminal prosecution, and although the object of the association

was entirely legitimate, its civil-party application with respect to the defence of the general interests falling within the purview of the Public Prosecutor's Office was not admissible.

On 9 November 2010, ruling on the appeal lodged by the association, the *Cour de cassation* took a position in the latter's favour. It pointed out that the grounds set forth by the *Chambre de l'instruction* were in part inapplicable because of the broad definition of corruption, which, according to the civil-party applicant's charter, it sought to prevent and combat. In its view, assuming them to be established, the offences under investigation, in particular the handling and laundering in France of assets paid for out of misappropriated public funds, offences which were themselves facilitated by corrupt practices but which are distinct from the offence of corruption, would indeed be likely to cause direct and personal harm to Transparency International France, on account of the specific object and purpose of its mission.

It quashed the judgment of 29 October 2009 without referring it back (D. 30) and ordered the case to be returned to the investigating judge so that the investigation could be continued.

2. The investigation

On 27 January 2011, Daniel LEBÈGUE, the President of the association, was heard in his capacity as a civil-party applicant. He confirmed the terms of the complaint of 2 December 2008, specifying that his association had new information concerning, in particular, a building likely to belong to Teodoro NGUEMA OBIANG MANGUE, and demanding that provisional measures be taken to prevent the dissipation of the suspects' assets (D. 161).

On 1 February 2011, the association submitted further information, in particular concerning a building located at 42 avenue Foch in Paris (16th arrondissement) which belonged to the OBIANG family (D. 162-198).

On 4 July 2011, the Paris Public Prosecutor submitted an application for characterization. He recalled that the acts described by the association related to the acquisition and possession in France of movable and immovable assets which may have been paid for with monies derived from the "misappropriation" of foreign public funds, namely funds originating from the States of Gabon, the Congo and Equatorial Guinea. In his view, the characterization of misappropriation of public funds as provided for in Article 432-15 of the Penal Code was not applicable in so far as, assuming the facts to be established, they did not constitute misappropriation committed by persons in a position of public authority in France, but rather misappropriation of foreign public funds (Gabonese, Congolese and Guinean), committed by foreign authorities (Gabonese, Congolese and Guinean). He rejected that characterization and the characterizations of complicity in and concealment of that offence. He also asserted that the characterizations of breach of trust and complicity in breach of trust, which might be applied to the misappropriations complained of, could not be accepted, since the offences had been committed abroad, by foreign nationals, against foreign victims, acts to which French criminal law was not applicable, under the provisions of Articles 113-6 and 113-7 of the Penal Code, and that the offences of misuse of corporate assets and complicity in the misuse of corporate assets were not applicable because they concerned only commercial companies incorporated under French law.

He considered that the facts cited in the complaint could be characterized only as money laundering or handling offences, since even though the laundering or handling in France of an asset obtained through an offence committed abroad by a foreign national was not subject to French law, it was punishable in France, provided that the elements of the original offence were identified.

The Public Prosecutor's Office accordingly submitted that the investigation should concern only the facts that could be characterized as money laundering or handling offences (D. 319).

As the complaint with civil-party application and the application for characterization stood, the judicial investigation focused on the offences of complicity in the misappropriation of public funds, misuse of corporate assets and complicity in the misuse of corporate assets, breach of trust and complicity in breach of trust, money laundering and complicity in money laundering, handling of misappropriated public funds and of misused corporate assets, and concealing breach of trust.

The investigating judge requested the OCRGDF investigators to continue their investigations relating to the different chapters (Gabonese, Congolese and Equatorial Guinean) mentioned in the complaint with civil-party application.

Concerning the Equatorial Guinean chapter in particular, on 31 January 2012, following new evidence arising from the memorandums of 7 and 18 March 2011 from the TRACFIN intelligence unit, the memorandum of 7 March 2011 from the DNRED (the national directorate for intelligence and customs investigations) and the OCRGDF report of 4 October 2011, the scope of the investigation was extended to the new facts which could be characterized as the handling or laundering of the proceeds of an offence (D. 393).

In 2012, Teodoro NGUEMA OBIANG MANGUE, who was Minister for Agriculture and Forestry at the time the judicial investigation was opened and became Second Vice-President of Equatorial Guinea in charge of Defence and State Security during the proceedings, was summoned several times but never made an appearance.

On 13 July 2012, an arrest warrant was issued against him, and it was unsuccessfully challenged before the *Chambre de l'instruction*, which found that Teodoro NGUEMA OBIANG MANGUE could not claim any form of immunity from criminal process and noted that he had refused to appear and respond to the two summonses to a first appearance or for placement under judicial examination concerning acts committed in France in the context of his private life.

On 7 February 2014, owing to the nature of the offences and the great complexity of the facts at issue, the Paris Public Prosecutor relinquished the case to the Financial Prosecutor (D. 1859).

On 18 March 2014, in execution of an international letter rogatory, during a hearing held in Malabo (Equatorial Guinea) which the investigating judges attended via videoconference, Teodoro NGUEMA OBIANG MANGUE was placed under judicial examination for having in Paris and on national territory during 1997 and until October 2011, in any event for a period not covered by prescription, assisted in making hidden investments or in converting the direct or indirect proceeds of a felony or misdemeanour, in this instance offences of misuse of corporate assets, misappropriation of public funds, breach of trust and corruption, by acquiring a number of movable and immovable assets and paying for a number of services out of the funds of the firms EDUM, SOCAGE and SOMAGUI FORESTAL, acts characterized as laundering of the proceeds of the above-mentioned offences (D. 1860, 1866).

On 19 March 2014, a notice cancelling the warrant against him was issued by the investigating judge (D. 1864).

On 31 July 2014, in the context of these proceedings involving multiple appeals, Teodoro NGUEMA OBIANG MANGUE submitted an application to the *Chambre de l'instruction* seeking to have his placement under judicial examination annulled on the basis of his alleged immunity and to have the initial civil-party application declared inadmissible.

By a judgment of 11 August 2015, the application was rejected and the chapter of the investigation relating to Equatorial Guinea was closed and transferred for partial determination (D. 2838 and 2840).

On 10 November 2015, counsel for Teodoro NGUEMA OBIANG MANGUE filed a motion for the complaint with civil-party application filed on 2 December 2008 to be found partially inadmissible with respect to all facts unrelated to the misappropriation of public funds, the investigating judges' lack of jurisdiction over acts relating to the laundering of the proceeds of offences committed in the territory of a foreign State, and the personal immunity attached to Teodoro NGUEMA OBIANG MANGUE's functions.

On 7 December 2015, the investigating judge rejected all of those requests, taking the view that the *Cour de cassation* had already ruled on the admissibility of the civil-party application and that the other requests were not such as could be presented to the investigating judge at that stage of the investigation.

On 14 December 2015, Teodoro NGUEMA OBIANG MANGUE appealed the order (D. 3344).

The outcome of the proceedings hinged on the *Cour de cassation*'s decision on an appeal against the judgment of the Paris *Cour d'appel* of 11 August 2015, which had rejected the applications for annulment.

On 15 December 2015, the *Cour de cassation* confirmed the judgment of 11 August 2015, recognizing the regularity of the proceedings, including, in particular, the admissibility of the initial civil-party application and Teodoro NGUEMA OBIANG MANGUE's placement under judicial examination (document annexed hereto).

The judicial investigation identified the composition of the assets held in France by Teodoro NGUEMA OBIANG MANGUE, son of the President of the Republic of Equatorial Guinea, and determined that they had been financed out of the proceeds of offences committed in Equatorial Guinea (I). It also established that neither the individual concerned nor his assets were entitled to any form of immunity from criminal process (II).

2.1 Teodoro NGUEMA OBIANG MANGUE's assets in France — considerable assets financed out of the proceeds of offences committed in Equatorial Guinea

Nature and scope of the assets

The preliminary investigation and subsequent judicial investigation detected, identified, and enabled the seizure or attachment of at least some of the assets, which included movable assets and one immovable asset, of considerable value, financed out of the proceeds of corruption, misappropriation of public funds, misuse of corporate assets and breach of trust.

Whenever Teodoro NGUEMA OBIANG came to France — where he initially stayed at the finest luxury hotels before moving into a townhouse on avenue Foch in Paris, acquired through an equity investment in a number of Swiss companies — he spared no expense, accumulating high-end luxury movable assets (D. 242, 283, 350 to 362, 389).

Regarding the period from March 2000 to March 2011, the TRACFIN intelligence unit transmitted several memorandums relating to the unusual operation of his bank accounts (D. 242-285, 351-361).

At the sale of the Yves Saint-Laurent and Pierre Bergé collection, held by Christie's France on 23 to 25 February 2009, Teodoro NGUEMA OBIANG MANGUE acquired 109 lots for a total of €18,347,952.30. Contrary to standard practice, which requires payment within seven days of sale, which would have meant early March 2009, the first payments, which were partial, were not

made until a year later, in March 2010. They were made via two transfers of €1,665,638.67 each, sent to Christie's France on 30 and 31 March 2010.

It was particularly unusual that these transfers were sent from an account opened on the books of SOCIETE GENERALE de BANQUE de GUINEE EQUATORIALE (SGBGE) in the name of SOMAGUI FORESTAL, a logging company under the control of Teodoro NGUEMA OBIANG MANGUE, who was Minister for Agriculture and Forestry in his country at the time. Subsequently, several other identical transfers were sent: on 16 April 2010 (€1,665,638.67), 16 September 2010 (€1,665,638.67), 20 September 2010 (€1,665,638.67), 23 September 2010 (€1,665,638.67), 1 October 2010 (€4,251,847.10) and 28 October 2010 (€4,041,977.20) (D. 494).

Considering the buyer's public functions, and the peculiarity of having a company pay for works of art, the intelligence unit TRACFIN considered, in its memorandum of 18 March 2011, that stolen assets could be involved.

On 13 December 2010, the same company, SOMAGUI FORESTAL, through the intermediary of the same bank, SGBGE, transferred €599,965.05 to Didier Aaron et Cie Antiquités in connection with the sale of works of art. This transaction was the subject of a memorandum dated 18 March 2011 (D. 495).

Generally speaking, Teodoro NGUEMA OBIANG MANGUE made large purchases of audio equipment, furniture, jewellery and designer apparel (D. 500, 506).

Thus, he acquired audio-video equipment for €99,507.20 (Sony invoice), audio-video equipment primarily including a giant Panasonic screen for nearly €100,000 (Panasonic invoice), Dolce & Gabbana apparel for €69,740 (Dolce & Gabbana invoice sent to Mr. Teodoro NGUEMA), works of art for €600,000 (Didier Aaron invoice of 8 December 2010 sent to SOMAGUI FORESTAL, Avenida de la Indepedencia s/n Malabo, Equatorial Guinea, along with two photos of a pair of bronze sculptures), four luxury watches (Cartier, Piaget and Vacheron Constantin) for €710,000 (Dubail invoice of 23 October 2010 to SOMAGUI FORESTAL), several sets of cutlery for €1,469,280 tax inclusive, €157,328 tax inclusive and €247,296 tax inclusive, or a grand total of €1,873,904 tax inclusive (Christofle pro forma invoice of 2 February 2011), silverware including a caviar serving set and champagne bucket for €72,720 tax inclusive (Christofle pro forma invoice of 2 February 2011), silverware for €95,840 tax inclusive and €11,088 tax inclusive, or a grand total of €106,928 tax inclusive (Christofle pro forma invoice of 2 February 2011), porcelain items for €146,144 tax inclusive and €19,416 tax inclusive, or a grand total of €165,560 tax inclusive (Christofle pro forma invoice of 2 February 2011), and two brooches for €109,499.99 (Chaumet invoice of 30 June 2011).

Most of these invoices were made out to him at the address 42 avenue Foch in Paris.

During his stays in Paris, Teodoro NGUEMA OBIANG MANGUE frequented luxury hotels. From 2004 to 2009, for example, he paid €587,833 in cash to the Hôtel Crillon in Paris (€102,277 in 2004, €202,214 in 2005, €282,789 in 2006, €526 in 2007 and €26 in 2008) (D. 498).

He also invested in fine wines. In 2008, he purchased two cases of *premier cru classé* Bordeaux wine through Foch Service. In late 2008 or early 2009, another order totalling several hundred thousand euros was placed by his steward. In the first half of 2010, he purchased a lot of Romanée-Conti wine for €250,000, paid for by the aforementioned SOMAGUI FORESTAL (D. 499).

Between 2005 and 2011, he purchased jewellery for a total amount of €10,070,916, paid for either by himself (€3,699,837), by SOMAGUI FORESTAL (€2,320,833) or by SOCAGE/EDUM

(€1,189,972). In 2010, for example, he purchased €517,500 worth of jewellery from the Chaumet boutique at Place Vendôme in Paris (D. 504, 506, 508).

The total amount of his acquisitions of works of art, antiques and silverware between 2007 and 2009 has been estimated at €15,890,130 (€5.6 million for SARL Quere-Blaise, €2.9 million for Didier Aaron, €7.2 for Jean Lupu, €100,000 for Dominique Le Marquer and €20,130 for Marie-Pierre Boitard) (D. 505).

According to invoices obtained during a search, extravagant purchases totalling €5,545,927 were paid for either by Teodoro NGUEMA OBIANG MANGUE himself or by SOMAGUI FORESTAL or EDUM on his behalf (D. 500).

The investigations also confirmed the existence of an exceptional vehicle collection (D. 238, 239, 329, 407 to 433). On 7 March 2011, the DNRED transmitted to the investigating judges particularly valuable evidence in this regard (D. 239).

In November 2009, used cars and motorcycles valued at nearly US$12 million were transported to Vatry airport, sent from the United States via Schiphol airport in the Netherlands, to be re-exported to Equatorial Guinea. On the arrival of the different convoys, identification documents (registration certificates and transit documents) were discovered. The designated seller was Teodoro N. OBIANG, residing in the United States, and the recipient was declared to be Ruby HUGUENY, residing in Paris. The convoys comprised 26 luxury cars and eight luxury motorcycles, all registered in the United States (7 Ferrari cars, 4 Mercedes Benz cars, 5 Bentley cars, 4 Rolls Royce cars, 2 Bugatti cars, 1 Aston Martin car, 1 Porsche car, 1 Lamborghini car, 1 Maserati car, 5 Harley motorcycles, 2 Toiks motorcycles and 1 SPCNS motorcycle).

The majority of these vehicles were re-exported to Equatorial Guinea in December 2009. Two cars were sent to Germany for repair.

Teodoro NGUEMA OBIANG MANGUE had been in trouble with the customs authorities for importing vehicles from Switzerland without an import declaration, as discovered by the Paris Ney customs office in December 2006. At the time, an individual voluntarily came forward to clear a Ferrari Enzo vehicle imported from Switzerland on 24 December 2005 through customs in the name of Mr. NGUEMA OBIANG. The vehicle had been purchased on 17 October 2005 for 1,335,318 francs.

It was discovered that Vatry airport, where the re-exports to Equatorial Guinea took place, had been used regularly by the Office of the Guinean President for exports of material goods (furniture, plants, and vehicles intended for the police). In 2005 and 2006, these exports were ensured by the airline Equatorial Cargo, using an IL76 aircraft with a Russian crew. Since 2008, the Office of the Guinean President had exported goods via the airport 28 times through the intermediary of the declarant Euromulticourses 51, for an amount totalling €1,456,809. The majority of these operations concerned exports of luxury vehicles (D. 501, 502).

Searches conducted in the SIV (vehicle registration) database established that Teodoro NGUEMA OBIANG MANGUE was the owner of the following vehicles: a Lamborghini Diablo (registration number C/X 161 QFC 75), a Bentley vehicle of an unspecified model (registration number 734 TAC 75), a Bentley vehicle of an unspecified model (registration number 994 TAC 75), a Bentley Azure (registration number 143 QBK 75), an Aston Martin vehicle of an unspecified model (registration number 674 QAE 75), a Mercedes CL600FLA5 (registration number 707 WBE 75), a Maybach 62 (registration number 101 PXE 75), a Bentley Arnage (registration number 118 QGL 75), a Rolls-Royce Phantom (registration number 627 QDG 75), a Porsche Carrera (registration number 388 QQB 75), a Mercedes V 2.2 Long (registration number 565 QWP 75), a Bentley Brooklands (registration number 325 RKM), a Maserati MC12 (registration number 527 QGR 75), a Ferrari Enzo (registration

number 26 QXC 75), a Ferrari 599 GTO (registration number BB-600-SD), a Mercedes SL500 A5 (registration number F1 1033 WBE 78) and a Bugatti Veyron (registration number 616 QXC 75) (D. 407, 408).

Through investigations with car dealerships, other vehicles (Bugatti and Bentley vehicles, in particular) were added to this already long list.

Certain vehicles were financed in full or in part by SOMAGUI FORESTAL — such is the case, for example, of a Maserati MC 12, registration number 527 QGR 75 (€709,000), a Bentley Azure, registration number 855 RCJ 75 (€347,010), a Rolls-Royce Phantom, registration number 627 QDG 75 (€395,000), a Ferrari 599 GTO Fi, registration number BB-600-SD (€200,000), a Bugatti Veyron, registration number 616 QXC 75 (€1,196,000), a Bugatti Veyron, registration number W-718-AX (€1,959,048) and a Mercedes-Maybach, registration number 101 PXE 75 (€530,000).

The address listed on the many invoices discovered during the investigation led investigators to 42 avenue Foch in Paris, where numerous luxury vehicles belonging to Teodoro NGUEMA OBIANG MANGUE — establishing a clear link between the person concerned, his vehicle collection and the townhouse — were discovered and seized (D. 483). Accordingly, on 28 September and 3 October 2011, 18 luxury vehicles stored in the courtyard of the property on avenue Foch and in car parks located in Paris (16th arrondissement) were seized (D. 416).

During this initial on-site inspection at 42 avenue Foch, the investigators learned that Teodoro NGUEMA OBIANG MANGUE was absent — he was abroad — and the keys to the luxury vehicles were in the possession of his right-hand man.

At the site, they received a visit from the Ambassador of Equatorial Guinea and a French lawyer introducing himself as the counsel representing that State; they arrived in a vehicle with diplomatic plates. They contested the inventory operation that was under way and the seizure of the vehicles, invoking the principle of the sovereignty of the State of Equatorial Guinea, notwithstanding Teodoro NGUEMA OBIANG MANGUE's capacity as owner (D. 421).

Continuing their operations, the investigators noted the presence of the following vehicles: a Peugeot 607 (217 QYY 75, 66,511 km), a Mercedes Viano CDI 2.2 (565 QWP 75, 56,851 km), a Ferrari Enzo (26 QXC 75, 1,435 km), a Bentley vehicle (325 RKM 75, 616 km), a Ferrari GTO (BB 600 SD, 596 km), another Bentley vehicle (855 RCJ 75, 616 km), a Maserati MC 12 (527 QGR 75, 2,327 km), a Bugatti vehicle (616 QXC 75, 2,782 km), another Bugatti vehicle (W 718 AX, 1,156 km, bearing the inscription "special edition 669 Made for Mr. Teodoro Nguema Obiang"), a Porsche Carrera GT (388 QQB 75, 969 km), and an Aston Martin vehicle (674 QAE 75, 3,946 km). These 11 vehicles were seized and removed from the premises (D. 416, 417, 418).

At a car park located at 181 avenue Victor Hugo in Paris (16th arrondissement), in the parking spaces leased by Teodoro NGUEMA OBIANG MANGUE, the presence of the following vehicles was discovered: a Rolls-Royce Phantom Coupé (registered in England under No. XB 59 AHP, with an insurance policy in the name of Theodore NGUEMA OBIANG), a Bentley Cabriolet (143 QBK 75, previously registered under 994 TAC 75, with a registration certificate in the name of Teodoro NGUEMA OBIANG), a Porsche Speedster (W 767 BS), a Bentley vehicle (118 QGL 75, with a copy of a registration certificate and a premium receipt in the name of NGUEMA OBIANG Theodore), and a Mercedes Maybach vehicle (101 PXE 75, 8,092 km, with a copy of the cheque in the amount of €376,822 provided as payment).

In the late afternoon, in possession of the keys, the investigators noted that the Porsche Speedster, which the car park security guard identified as belonging to Teodoro NGUEMA

OBIANG MANGUE, had been moved voluntarily. These five vehicles were seized and removed from the premises (D. 417, 419).

Noting that two vehicles were missing (a Porsche Cayenne Turbo, registration number 865 RKJ 75, and a Rolls-Royce Phantom, registration number 627 KDG 75), the investigators conducted additional investigations (D. 422). The vehicles were discovered in a car park located on avenue Marceau in Paris (16th arrondissement), were seized and removed from the premises (D. 423, 424).

By a judgment of 19 November 2012, the *Chambre de l'instruction* confirmed the seizure of the vehicles. On 19 July 2012, ten of the seized vehicles were handed over to the AGRASC (agency for the management and recovery of seized and confiscated assets) to be sold prior to judgment (D. 637, 708, 879).

The investigations also revealed the existence of an exceptional immovable asset in the form of a property located at 40-42 avenue Foch in Paris (16th arrondissement) — Teodoro NGUEMA OBIANG NGUEMA's place of residence in Paris — which address was listed on several invoices for the luxury items that he had purchased (D. 457, 458, 1480).

On verification with the *Direction générale des Finances Publiques* (the French tax authorities), it was established that the property was used for residential purposes, had been built in 1890, and comprised two main buildings with five upper floors plus a sixth floor with a mansard roof, as well as a building at the back of the plot, comprising garages at ground floor level, with accommodation above. The upper floors of the property form a triplex from the first to the third floors, with spacious volumes, and exceptional fixtures and fittings. They contain some 20 rooms, including four large living or dining areas, one master bedroom of approximately 100 m^2 with an impressive en-suite bathroom, a gym, a hammam, a discotheque with a movie screen, a bar, a middle-eastern style sitting room, a hair salon, two professional kitchens and several bedrooms with bathrooms.

The fittings and decoration are described as ostentatious (large wooden windows, hardwood floors, fireplaces, marble, mirrors, gold-plated taps, coral and a very large glass or hardwood table). The triplex has its own lift, a staircase with an entrance hall, and marble hallways. Between the ground floor and the entresol, a duplex has been created, along with a games room and a home theatre. The fourth and fifth floors contain classical apartments, and the sixth floor contains staff quarters, some of which have been renovated. The building at the back of the plot contains six garages opening onto a courtyard.

The total surface area recorded in the land registry documents is 2,835m^2. The building is described as being in an excellent location in the northern part of the 16th arrondissement, in the Chaillot neighbourhood, close to Place Charles de Gaulle. Considering the surface area of the triplex (approximately 1,900 m^2) and its sumptuous interior fixtures and fittings, the property was considered to be highly exceptional.

The acquisition of this property by Teodoro NGUEMA OBIANG MANGUE, through the intermediary of Swiss companies, has been clearly traced, in particular through the file transmitted by the tax authorities and the documents discovered during the searches of the premises of the trust companies in Switzerland which administered and managed the Swiss corporate co-owners (D. 434 to 493, sealed "Infinea"; D. 762, D. 765, wealth tax returns for years 2005 to 2011, sealed "ISF Nguema 1").

On 19 September 1991, the units of the building were first purchased by the Swiss companies:

— Ganesha Holding: units recorded in the land register as FA 60, units 401 to 410, 413 to 459, 501 to 543, 546 to 564, and 601 to 672, purchased on 19 September 1991 for 100,344,446 francs (that is, €15.3 million);

— GEP Gestion Entreprise Participation SA: units recorded in the land register as FA 60, units 502, 523, 524, 533 and 563, purchased on 19 September 1991 for 8 million francs (that is, €1.2 million);

— RE Entreprise SA: units recorded in the land register as FA 60, units 509, 510, 519, 534, 537 to 540, 549, 550, 553, and 601 to 605), purchased on 19 September 1991 for 9,900,000 francs (€1.5 million);

— Nordi Shipping and Trading Co. Ltd (land register reference FA 60, units 513, 514, 532, 541 and 562, purchased on 19 September 1991 for 16,500,000 francs (that is, €2.5 million);

— Raya Holding SA.

On 18 December 2004, Teodoro NGUEMA OBIANG MANGUE became the sole shareholder of these five Swiss companies, whose shares he acquired for €2,916,450. On 20 December 2004, he also acquired a claim against these companies in the amount of €22,098,595, a claim initially held by Opaline Estate Ltd, located in the British Virgin Islands. In 2004, in a personal capacity, he acquired the shares of the Swiss companies that owned the property for €25,015,000.

This acquisition is corroborated by a report prepared by the tax law firm CLC, which was seized during a search of the premises of FOCH SERVICE, an entity wholly owned (500 shares) by the Swiss company Ganesha Holding. According to that document, "Mr. X", a resident of Equatorial Guinea, has owned all of the shares of Ganesha Holding SA since 20 December 2004, and the owner of the building at 42 avenue Foch risks prosecution, namely for misuse of corporate assets, if it is demonstrated that Teodoro OBIANG NGUEMA is the *de facto* manager.

Heard on this point in the context of the Swiss authorities' execution of an international letter rogatory, the trustees of the Swiss companies (Guillaume de RHAM and Rodrigo LEAL) confirmed that the driving force behind the companies was indeed Teodoro NGUEMA OBIANG MANGUE.

According to Guillaume de RHAM, even though the shares were in bearer form, there is no doubt that the beneficial owner of these companies is actually Teodoro NGUEMA OBIANG MANGUE. He could not remember if he had been in physical possession of the shares from the beginning, but he handed them over to Mr. RAEBER upon termination of his final appointment. A Geneva-based lawyer — whose name Mr. de RHAM could no longer remember — who worked with a lawyer based in Paris, Mr. MEYER, briefly served as the depositary of the shares. Guillaume de RHAM specified that his actual assignment for the duration of his appointment, that is, from early 2005 to 16 December 2007, was to co-ordinate the different interior renovation works at the building at 42 avenue Foch (D. 762).

Rodrigo LEAL explained that, in January 2009, he was contacted by Miguel EDJANG, Teodoro NGUEMA OBIANG MANGUE's adviser, to manage the building at 42 avenue Foch in Paris through the intermediary of five companies governed by Swiss law, that is, Ganesha Holding, GEP Gestion Entreprise Participation SA, RE Entreprise SA, Nordi Shipping and Trading Co. Ltd, and Raya Holding SA. On 16 February 2009, at a meeting in Paris, they discussed a trust agreement for these companies. A month later, the agreement was signed. It covered management of the companies, the holding of the companies' shares in trust, bookkeeping and compliance with legal obligations, that is, registration with the *Registre du Commerce* (trade registry). According to him, Teodoro NGUEMA OBIANG MANGUE had indeed purchased the building in a personal

capacity, in order to host his guests, family, partners and friends. Teodoro NGUEMA OBIANG MANGUE himself called him if there were any problems relating to the building (D. 765).

On 10 May 2011, Jérôme DAUCHEZ — property manager and chief executive (*dirigeant*) of the property management firm DAUCHEZ, which had held management authorization to represent the owners of the units located at 42 avenue Foch — confirmed that the actual owner of the building, which had a total surface area of approximately 4,000-4,500m^2, was indeed Teodoro NGUEMA OBIANG MANGUE. From 2005 to the end of 2008, the DAUCHEZ firm held management authorization to represent the owners of the units located at 42 avenue Foch. The firm's contact person, who occupied the premises on a day-to-day basis, was Teodoro NGUEMA OBIANG MANGUE. Mr. DAUCHEZ remembered that major works had been carried out by the owner in 2005/2006, on two apartments on the ground floor, a triplex from the first to the third floors, and an apartment located on the four and fifth floors. The firm did not pay for the majority of the works directly, but did carry out the works on the two apartments located on the ground floor. The works on the triplex were carried out by the interior design firm PINTO. The works on the fourth and fifth floors were carried out by the interior designer Jacques GARCIA.

Jérôme DAUCHEZ explained that FOCH SERVICE was an entity created to pay the costs of staff (cleaners, driver, etc.) (D. 453).

The firm issued calls for advances to pay for certain expenses and fees. An analysis of the owner account statement confirmed that they were paid by bank transfers from the accounts of either the Swiss companies or, once again, SOMAGUI FORESTAL.

The service charges and management fees relating to the property were paid out of financial flows originating directly from Equatorial Guinea. From 2005 to 2007, these expenses were paid directly from Equatorial Guinea into bank accounts opened in the names of the Swiss companies through the DAUCHEZ property management firm.

From 2007 to 2011, FOCH SERVICE, whose purpose was to pay for the costs associated with managing the building and its staff, was financed by funds that also came from SOMAGUI FORESTAL.

Heard on 10 May 2011, Magali PASTOR, a property manager at DAUCHEZ who was responsible for managing the property located at 42 avenue Foch in Paris, confirmed Teodoro NGUEMA OBIANG MANGUE's capacity as the owner. Starting in 2005, and for more than a year, she first dealt with Guillaume de RHAM, the Swiss companies' trustee.

Ms PASTOR then dealt with Mr. RAEBER, followed by Rodriguo LEAL, the companies' new trustee. According to her, these individuals were mere intermediaries acting on behalf of Teodoro NGUEMA OBIANG MANGUE, who had purchased the apartments through the Swiss companies for approximately €30 million in 2005, with the sale taking place in Geneva. She remembered her first meeting with Teodoro NGUEMA OBIANG MANGUE in 2005, at the Hôtel Crillon. They discussed the nature of her work. He detailed the works that he planned to have carried out by Alberto PINTO. During this first meeting, they exchanged their contact details. She subsequently met with Teodoro NGUEMA OBIANG MANGUE several other times, at the Hôtel Crillon, Le Bristol or at 42 avenue Foch to monitor the works and manage the building. Teodoro NGUEMA OBIANG MANGUE paid Alberto PINTO for the renovation works either directly or through his companies. The contract was awarded for €12 million (D. 454).

Heard on 24 May 2011, Linda PINTO, co-manager of the interior design firm Alberto PINTO, confirmed that her firm had worked on the interior design of the building at 42 avenue Foch on behalf of Teodoro NGUEMA OBIANG MANGUE. In 2005, his house

manager had consulted them about having renovation works done. She situated this contact at the time Teodoro NGUEMA OBIANG MANGUE had purchased the property.

She could not remember the circumstances of their first meeting, but she later remembered that Teodoro NGUEMA OBIANG MANGUE had a specific idea of what he wanted. Among other things, he knew that they had carried out works for the previous owner and that they had the plans. Once the estimate had been drawn up, they worked in the building but only on the triplex. She met Teodoro NGUEMA OBIANG MANGUE about ten times while the works were being carried out (D. 456).

The documents seized from the premises of SARL Cabinet Alberto PINTO established that Teodoro NGUEMA OBIANG MANGUE made two €1 million down payments, on 3 May 2010 and 4 July 2011. The firm used these funds to purchase furniture and works of art on his behalf. By a decision of 16 April 2014, the investigating judge ordered that this furniture be seized without deprivation of title (D. 2045).

On 29 November 2011, Anne-Sophie METRAL, managing director (*directrice*) of the interior design firm Garcia, confirmed that she had been contacted, through DAUCHEZ, regarding renovation works to be carried out on an apartment located on the fifth floor of the building at 42 avenue Foch in Paris, on behalf of Teodoro NGUEMA OBIANG MANGUE. According to her, no further action was taken. In 2008, the firm was contacted again, this time by the chief executive (*gérante*) of FOCH SERVICE, which was owned by Teodoro NGUEMA OBIANG MANGUE. He wanted to meet Jacques GARCIA.

A project manager visited the fourth floor of the building and a business proposal was drawn up. Once again, no further action was taken (D. 490).

The investigation confirmed that FOCH SERVICE had been created to pay management and staff costs relating to the building. The banking investigations demonstrated that SOMAGUI FORESTAL had contributed €2.8 million. In that connection, Teodoro NGUEMA OBIANG MANGUE appeared to be the only link between these two companies — one which managed private property in Paris and the other, a Guinean company, which specialized in the production and marketing of timber (D. 483, 488). A search of the premises of FOCH SERVICE led to the discovery of documents revealing Teodoro NGUEMA OBIANG MANGUE's intention to make the financial ties between the different legal entities even more opaque by creating, in particular, a holding company in Singapore.

On 21 September 2011, Aurélie DELAURY, née DERAND, chief executive (*gérante*) of FOCH SERVICE, confirmed the company's purpose — to manage the apartment at 42 avenue Foch in Paris — and that the Swiss company Ganesha was its sole shareholder. She specified that Rodriguo LEAL was the former chief executive (*gérant*) of the company and that invoices for services were sent to SOMAGUI FORESTAL, adding that in 2011 two invoices had been sent to EDUM, which was also located in Equatorial Guinea.

She stated that she had crossed paths with Teodoro NGUEMA OBIANG MANGUE at 42 avenue Foch in Paris sometime in June or July 2011. According to her, the triplex apartment belonged to Ganesha (D. 468).

On 5 October 2011, the investigators returned to 42 avenue Foch in Paris for an on-site inspection. At the entrance porch, they noted the presence of two makeshift signs marked "*République de Guinée Équatoriale — locaux de l'ambassade*" (Republic of Equatorial Guinea — Embassy premises). The building's caretaker explained to them that, the previous day, a driver and two employees of the Embassy of the Republic of Equatorial Guinea had come to the premises in a Mercedes with diplomatic plates and had affixed the signs on all of the entrances to the upper floors and outbuildings belonging to Teodoro NGUEMA OBIANG MANGUE (D. 476).

The townhouse was searched. The operation lasted for several days, from 14 to 23 February 2012.

The investigators were greeted by the housekeeper employed by FOCH SERVICE, Paula FURTADO TAVARES, who explained that Teodoro NGUEMA OBIANG MANGUE was in Equatorial Guinea. They noted the presence of two other domestic staff members.

A French lawyer, proclaiming to represent the interests of the State of Equatorial Guinea, came forward to contest the conduct of the inspection on account of the protection that he claimed the premises enjoyed.

Continuing their inspection, the investigators discovered that the townhouse comprised 101 rooms located on five levels, with a total surface area of approximately 4,000m^2. Numerous pieces of furniture and works of art were seized (D. 555, 556, 557, 560, 563, 564, 565, 567 and 568, photograph album D. 584). Findings made at the site confirmed that Teodoro NGUEMA OBIANG MANGUE enjoyed free disposal of the property (D. 532, D. 533, D. 555 *et seq*., D. 1400, D. 1408 and photograph album in D. 584).

However, no official documents were discovered concerning the State of Equatorial Guinea or indicating that the building might serve as a venue for official representation.

The findings also made it possible to take stock of the extravagant purchases made by Teodoro NGUEMA OBIANG MANGUE in a personal capacity over several years, and to confirm that he did indeed occupy the premises. Among other things, men's clothing were found, including size-30 trousers (5 Gucci, 40 Dolce & Gabbana, 4 Prada, 3 Yves Saint Laurent, 3 Louis Vuitton, 1 Burberry, 2 Nice Collections, 1 True Religion and 5 others), size-52 or -54 jackets (7 Gucci, 24 Dolce & Gabbana, 2 Dior, 1 Prada, 1 Galliano, 1 Watanabe, 20 Yves Saint Laurent, 4 Louis Vuitton, 3 Burberry, 1 Balenciaga and 3 others), size-1 jumpers (6 Gucci, 11 Dolce & Gabbana, 6 Yves Saint Laurent, 4 Louis Vuitton, 5 Burberry, 1 GAP and 1 other), size-M or -L polo shirts (1 Versace, 6 Dolce & Gabbana, 7 Yves Saint Laurent, 1 Balenciaga, 1 Armani and 1 other), size-52 or -54 suits (4 Gucci, 3 Dolce & Gabbana, 1 Yves Saint Laurent, 2 Burberry, 4 Armani and 24 others), and 64 pairs of men's shoes in American size 8.5, 9 or 9.5, most of which were Dolce & Gabbana. These personal effects were all in the same sizes (clothing size 54 and shoe size 43) and some were monogrammed with Teodoro NGUEMA OBIANG's name or the initials TNO.

The statements provided by the FOCH SERVICE employees who worked at the townhouse confirmed that the building was used in a personal capacity by Teodoro NGUEMA OBIANG MANGUE, who enjoyed free disposal thereof.

Heard on 26 October 2011, Joël CRAVELLO, who had been employed as a chef from November 2006 to September 2008, explained that he had worked for Teodoro NGUEMA OBIANG MANGUE after being recruited through the specialist agency DIGAME in Neuilly-sur-Seine.

At his first meeting in April 2006, he first went to the agency and then to Hôtel Crillon, where he met Teodoro NGUEMA OBIANG MANGUE in person. Teodoro NGUEMA OBIANG MANGUE hired him directly. He did not begin work until early 2007, owing to the works that were under way in the building. He stated that the employees would generally stay with Teodoro NGUEMA OBIANG MANGUE for three weeks each month: an average of 2-3 days in Paris, then 15 days in Los Angeles, and the individual concerned would generally spend the last week in Equatorial Guinea. His employment was terminated in May 2008 as a result of his poor relations with the housekeeper, but he did not leave until September 2008.

He added that he had observed the presence of suitcases full of euros and dollars used to pay for extravagant purchases, in particular at the top fashion houses on avenue Montaigne, such as

Dior, Saint Laurent and LVMH. He knew that the suitcases came from Equatorial Guinea and estimated the cash they contained at approximately US$10 million. Teodoro NGUEMA OBIANG MANGUE paid for nearly everything in cash and took the suitcases with him to the United States. According to Mr. CRAVELLO, the money came from the oil business, in the unofficial sense, since Teodoro NGUEMA OBIANG MANGUE collected unofficial commissions from oil companies from many different countries (D. 532).

Heard on 26 October 2011, Didier MALYSZKO, Teodoro NGUEMA OBIANG MANGUE's former house manager, stated that he had worked for him from November 2006 to July 2009, having been recruited through the specialist agency DIGAME in Neuilly-sur-Seine. He attended to his baggage, performed services and handled his meals. Owing to an overly taxing job and strict new rules put in place by Teodoro NGUEMA OBIANG MANGUE, he was dismissed in July 2009. Having accompanied his employer to Switzerland on several occasions to meet with lawyers at a hotel in Geneva to discuss practical considerations and arrangements for setting up his Swiss companies, Mr. MALYSZKO confirmed that Teodoro NGUEMA OBIANG MANGUE was in fact the companies' decision-maker. Didier MALYSZKO specified that Teodoro NGUEMA OBIANG MANGUE led the same life in France, the United States and Brazil, which could be summed up in three words: "*alcool, pute, coke*" (alcohol, whores and coke). He too had observed suitcases full of euros and dollars used to pay for extravagant purchases, in particular at the top fashion houses on avenue Montaigne. He explained that his employer would return from Equatorial Guinea with, in general, two suitcases filled with cash. He spent it first in Paris and then in the United States. Once the money was spent, he would return to Equatorial Guinea about three times a year to collect two more suitcases.

Didier MALYSZKO estimated the cash at approximately US$10 million, with Teodoro NGUEMA OBIANG MANGUE using it to pay for nearly everything. He added that he would travel with Teodoro NGUEMA OBIANG MANGUE for several months each year and that his function of minister in his country was only a title that enabled him to obtain a diplomatic passport. He stated that he was paid €5,000 net through transfers from SOMAGUI. He did not have a payslip, only a contract, since they were abroad for more than six months each year. He stated that he thought that all of the operating expenses relating to the property at 42 avenue Foch were paid by FOCH SERVICE (D. 533).

On 16 February 2012, Paula and Teodora FURTADO TAVARES, domestic staff at the property at 42 avenue Foch in Paris, were heard.

Paula FURTADO TAVARES stated that she had worked on-site since 1 August 2007, first as a housemaid and, since February 2010, as a housekeeper, recruited by the agency DIGAME in Neuilly-sur-Seine (Hauts-de-Seine), which had put her in contact with the previous housekeeper, Catherina DURAND. Following an interview with Ms DURAND, Paula FURTADO TAVARES was hired. Her employment contract was signed by the chief executive (*gérant*) of FOCH SERVICE. She started with a salary of €2,200, which was raised to €2,300, paid by that company. Her salary is currently €4,000 net, still paid by FOCH SERVICE. She stated that she did not know the name of the owner of the building, but the person who used it was Teodoro NGUEMA OBIANG MANGUE, who stayed there three or four times a year, rarely for longer than a week (D. 558, 561).

Teodora FURTADO TAVARES, who had been a housemaid since June 2010 after having been recruited following an interview with the chief executive (*gérant*) of FOCH SERVICE, confirmed that Teodoro NGUEMA OBIANG MANGUE resided at the townhouse on a regular basis (D. 559).

Since FOCH SERVICE had been created to manage the building located at 42 avenue Foch in Paris, which was owned by Teodoro NGUEMA OBIANG MANGUE, and the company was

financed by commercial companies in Equatorial Guinea which had ties to him, investigators questioned its chief executives (*gérants*).

Mourad BAAROUN, who was arrested at his home, was questioned in custody (D. 883 *et seq*.) on 18 December 2012.

A search of his residence led to the discovery of various documents relating to Teodoro NGUEMA OBIANG MANGUE and the Republic of Equatorial Guinea, a bank card in the name of FOCH SERVICE and €1,950 in cash, which had been given to him by Teodoro NGUEMA OBIANG MANGUE for the purpose of buying a camera.

He explained that he had been an employee of FOCH SERVICE until June 2012. Since October 2012, he had been employed by SERENISSIMA, which was in charge of managing the assets of the President of the Republic of Equatorial Guinea. As a driver, he first had the opportunity to work for Teodoro NGUEMA OBIANG MANGUE, and in early 2007 he was recruited by FOCH SERVICE to oversee the vehicle collection, which included 18 luxury vehicles. He acknowledged that he had stood in as the company's chief executive (*gérant*) for a few months in 2009-2010, and that he had handled the payment of invoices on Teodoro NGUEMA OBIANG MANGUE's instructions.

He confirmed that the purpose of FOCH SERVICE was to manage the costs associated with the building at 42 avenue Foch in Paris, admitting that it was an empty shell which had no resources of its own but was financed exclusively by Guinean funds that primarily came from SOMAGUI FORESTAL. He acknowledged that there was no economic link between FOCH SERVICE and SOMAGUI FORESTAL, such that the invoices prepared by FOCH SERVICE were done so only for use as accounting documents.

When questioned about Teodoro NGUEMA OBIANG MANGUE's assets, he acknowledged that, between the search relating to the vehicles and the search of the building at 42 avenue Foch, several valuables and masterpieces had been taken away to be stored at the residence of the Ambassador of Equatorial Guinea in Paris.

He stated that he had had occasion to run errands for Teodoro NGUEMA OBIANG MANGUE but he denied having managed the other employees of FOCH SERVICE. He objected to being characterized as Teodoro NGUEMA OBIANG MANGUE's right-hand man and gofer, specifying that Teodoro NGUEMA OBIANG MANGUE did not trust anyone. He acknowledged that his role at FOCH SERVICE had exceeded that of merely the person in charge of the vehicle collection, specifying that he could not refuse to do what was asked of him and that he did not have any decision-making power in his employer's absence.

On 19 December 2012, during his questioning at first appearance, Mourad BAAROUN stood by the explanations that he had given to the police (D. 895). He enjoyed the status of *témoin assisté* in respect of complicity in laundering misused corporate assets or the proceeds of breach of trust and handling offences.

On 26 February 2013, Aurélie DELAURY, née DERAND, was questioned in custody (D. 929 *et seq*.). She explained that she had been hired in late 2010 as an assistant to Pierre-André WENGER, the chief executive (*gérant*) of FOCH SERVICE at the time. Her employment contract was signed by Mourad BAAROUN in January 2011 and had been pre-dated to October 2010 because Mr. BAAROUN was the chief executive (*gérant*) of FOCH SERVICE at that time.

She confirmed that FOCH SERVICE was in charge of the administrative management of the building located at 42 avenue Foch in Paris. Pierre-André WENGER had asked her to invoice SOMAGUI FORESTAL, which she knew was linked to Teodoro NGUEMA OBIANG MANGUE,

for the purpose of paying invoices and salaries. She quickly understood that Teodoro NGUEMA OBIANG MANGUE was "*le patron*" (the boss) of the company. In that capacity, she copied him on all of her e-mails. In performing her duties, she noted the existence of accounting anomalies, which she attempted to rectify.

In November 2010, by chance, after the existing manager had been suspected of embezzlement, she took his place. She could not refuse, or she would have risked losing her job as an assistant.

From that period on, she sent him her reports and handled the company's accounting. In January 2011, she met Teodoro NGUEMA OBIANG MANGUE for the first time, at the building at 42 avenue Foch. She served as chief executive (*gérante*) until May 2012, at which time FOCH SERVICE discontinued its operations.

She confirmed that the company's resources came from transfers from SOMAGUI FORESTAL and EDUM, whose corporate purposes were unknown to her. She could not explain why these companies paid the costs relating to the building. She did not attempt to find out if there was a contract between FOCH SERVICE and these companies, and she never thought that the origin of the funds was fraudulent. She followed the instructions that were given to her and never imagined that it was abnormal to invoice SOMAGUI FORESTAL and EDUM.

She acknowledged that in September 2011, following the search of her residence, she had contacted Mourad BAAROUN to ask him to move FOCH SERVICE's documents, explaining that she had acted out of fear.

She now works for SERENISSIMA, which is responsible for managing the assets belonging to the President of the Republic of Equatorial Guinea.

She claimed that she had done only minor secretarial work, and not handled Teodoro NGUEMA OBIANG MANGUE's personal affairs, and denied that she had assisted with operations to conceal and facilitate the false justification of the source of the financial transactions initiated by foreign companies with no ties to FOCH SERVICE.

During her questioning at first appearance on 27 February 2013, she maintained that she had become the chief executive (*gérante*) of FOCH SERVICE by chance and that she had focused on regularizing the company's tax situation, explaining that she had learned many things about how the company actually operated while in police custody (D. 944).

She enjoyed the status of *témoin assisté* in respect of complicity in laundering misused corporate assets and the proceeds of breach of trust and complicity in laundering misappropriated public funds.

The capital gains declaration prepared on behalf of Teodoro NGUEMA OBIANG MANGUE for the year 2011, that is, after the present proceedings were initiated, discovered during a search at CLC, shows that on 15 September 2011 the individual concerned allegedly sold his shares in the co-owning Swiss companies to the State of Equatorial Guinea for €35 million, which amount includes the sale price of the shares plus the purchase of debt. This sale appears to be a form of legal window-dressing intended to prevent the property from being attached.

On 19 July 2012, the investigating judge ordered the attachment of the property, which was valued at €107 million, under the Code of Criminal Procedure because it was the object of a transaction involving the investment, concealment and conversion of funds derived from offences (D. 706).

On 24 April 2014, a list of all of Teodoro NGUEMA OBIANG MANGUE's purchases was compiled, demonstrating that he had purchased, in a personal capacity and through the intermediary of companies (primarily SOMAGUI FORESTAL) or nominees, the following assets:

Vehicles with a total value of €7,435,938; immovable property at 42 avenue Foch in Paris, purchased in early 2005 for €25 million, with an additional €11 million in works (PINTO firm) paid between 2005 and 2007; a villa in Malibu, California, purchased for €29 million in April 2006; €90,512,878 in furniture, works of art and paintings; €11,832,356 in jewellery and clothing; and more than €6 million in miscellaneous services (D. 2134).

It was established that, in connection with these purchases, €158,639,322 was paid directly by Teodoro NGUEMA OBIANG MANGUE, €14,769,983 was paid by SOMAGUI FORESTAL, €1,593,964 was paid by SOCAGE and EDUM, €350,037 was paid in cash, €210,325 was paid by FOCH SERVICE and €20,130 was paid by Ganesha Holding (D. 2134).

The majority of these purchases were made between 2005 and 2007 (D. 2134).

The illicit financing of assets

Considering the extent of Teodoro NGUEMA OBIANG MANGUE's assets, which are valued at more than a hundred million euros and were accumulated over just a few years, it is not possible for them to have been financed by his own official salary alone.

According to the evidence collected by the American authorities, the individual concerned received approximately US$80,000 per year in his capacity as minister, and he was prohibited, by the law of his own country, from carrying out a commercial activity. The investigations established that the above assets were financed by the proceeds of criminal offences, beginning with the offence of corruption (D. 1025, 1032, 1035 to 1047, 1048 to 1116).

On 15 June 2012, the investigating judges sent an international letter rogatory to the judicial authorities in Spain, a country which had maintained close economic ties with Equatorial Guinea. In that connection, witnesses who had run companies which worked with that State, and with SOMAGUI FORESTAL in particular, were questioned.

Pedro TOMO, the chief executive (*dirigeant*) of a logging company, explained that in 1996 a tax was imposed when Teodoro NGUEMA OBIANG MANGUE became an adviser to the Minister for Forestry, first through the intermediary of a firm corresponding to a unit within the Ministry which was based at the port and signed loading permits. Taxes owed to the Government were paid to the Treasury. The receipt from the Treasury then had to be brought somewhere to obtain a signature for the loading permit. Prior to Teodoro NGUEMA OBIANG MANGUE's arrival, loading permits were issued once payment was made to the Treasury.

Subsequently, in addition to the payment to the Treasury, Teodoro NGUEMA OBIANG MANGUE, who had become a minister, required all logging companies to pay him 10,000 francs per cubic metre in order to conduct loading, or more specifically in order to obtain a signature for the loading permit for exports. He first received the assessment and payment of the taxes and duties imposed by law. He then collected cheques made out to SOMAGUI FORESTAL at CCI, a bank in Equatorial Guinea. Lastly, Teodoro NGUEMA OBIANG MANGUE directly collected cash or cheques made out to SOMAGUI.

Depending on his preference, and in his presence or not, the regional forestry officer requested that cheques be submitted in the name of CCI bank for the benefit of SOMAGUI FORESTAL. When he was there, Teodoro NGUEMA OBIANG MANGUE directly collected cash, which he brought home with him.

Pedro TOMO specified that the money paid to Teodoro NGUEMA OBIANG MANGUE for the timber taxes was not all that he collected, given that he received large sums of money. The majority of the money handled by Teodoro NGUEMA OBIANG MANGUE was related to SOMAGUI FORESTAL, which did not exist in reality.

False certificates had been drawn up to show that the company was building roads, which were never actually built. Teodoro NGUEMA OBIANG MANGUE also freely sold the forests of the national reserve to the Malaysian company Shimmer. For open forests, Teodoro NGUEMA OBIANG MANGUE granted concessions to Shimmer on the condition that payment was made to him directly.

These statements were corroborated by those of other heads of companies who directly witnessed the same acts. The information transmitted by the United States authorities also demonstrates this point (D3.25/244, 2480).

On 4 September 2007, the United States Department of Justice sent the French investigation authorities a "Request for Assistance in the Investigation of Teodoro Nguema OBIANG and his associates", which shows that the United States judicial authorities had evidence demonstrating Teodoro NGUEMA OBIANG MANGUE's engagement in transactions consistent with foreign official corruption. As Minister for Agriculture and Forestry, he was paid an annual salary of US$60,000. However, from April 2005 to 2006, at least US$73 million was invested in the United States in his name. These funds were utilized to purchase a luxury home in Malibu, California, valued at approximately US$35 million, and a luxury jet for approximately US$33.8 million. The home in Malibu was purchased in the name of Sweetwater Management Inc., a shell corporation, which listed Teodoro NGUEMA OBIANG MANGUE as its president. To purchase the aircraft, he also used another shell corporation, Ebony Shine International Ltd, which was registered in the British Virgin Islands.

Additional information available to the investigation had revealed the illicit origin of the funds controlled by Teodoro NGUEMA OBIANG MANGUE. The investigators were informed that, in his official capacity, Teodoro NGUEMA OBIANG MANGUE had instituted a large "revolutionary tax" on timber, insisting that the payments be made directly to him, either in cash or through cheques made out to SOMAGUI FORESTAL, a logging company owned by him.

Moreover, in August 2006, Teodoro NGUEMA OBIANG MANGUE filed an affidavit with the High Court of South Africa in a civil matter regarding whether funds held by him belonged to the Equatorial Guinea Government, a contention that he vigorously contested. In his affidavit, he admitted that cabinet ministers in Equatorial Guinea form private companies which act in consortia with foreign companies when obtaining government contracts and, as a consequence, "a cabinet minister ends up with a sizeable part of the contract price in his bank account".

Although he claimed that this practice was legal, the assertion also suggested that he was receiving bribes or funds in the form of a percentage of contract revenue. Moreover, given Equatorial Guinea's reputation in the international community, the enormous natural resource wealth of the country, and the dominance of the OBIANG MBASOGO family over the government and economy, there was no doubt that a large portion of Teodoro NGUEMA OBIANG MANGUE's assets originated from extortion, misappropriation of public funds, or other corrupt conduct.

In addition, a United States Senate investigation was the subject of a report which revealed the relationships between Teodoro NGUEMA OBIANG MANGUE and his companies SOMAGUI FORESTAL and SOCAGE. Between 2003 and 2006, he received transfers to his bank account totalling US$4.6 million from SOMAGUI FORESTAL and US$2.4 million from SOCAGE (D. 534).

The United States investigation of the activities of Teodoro NGUEMA OBIANG MANGUE and his associates identified numerous suspicious transactions involving the French financial system.

In April 2005, he was the originator on at least five separate wire transfers — each in the amount of US$5,908,400 — from SGBGE to Banque de France, account No. 20001935.28235, then to a correspondent account at Wachovia Corporation Atlantic, and to account No. 2000055333 at First American Trust FSB in the name of First American Title. As a result of these transactions, he was able to transfer at least US$29,542,000 to the United States in a single month. Some of these funds are believed to have been used to purchase the home in Malibu, California.

In April 2006, he was the originator on three wire transfers from SGBGE to Banque de France, account Nos. 2000193528235 and 000061000012, then to a correspondent account at Wachovia Corporation Atlantic, and to account No. 071601562059 in the name of McAfee & Taft.

The investigation carried out by the United States judicial authorities on the basis of these alleged offences led to the signing of a settlement agreement between the United States Attorney and Teodoro NGUEMA OBIANG MANGUE.

According to this agreement, which was approved by the United States judicial authorities, the individual concerned received an official government salary of less than US$100,000 and he used his position and influence as a government minister to amass more than US$300 million worth of assets through corruption and money laundering, in violation of both Equatorial Guinean and United States law.

Through intermediaries and corporate entities, he acquired numerous assets in the United States that he agreed to relinquish in the form of forfeiture and divestment to a charity for the benefit of the people of Equatorial Guinea. Under the terms of the settlement, he had to sell his US$30 million mansion located in Malibu, California, a Ferrari and various items of Michael Jackson memorabilia purchased with the proceeds of corruption. Of those proceeds, US$20 million had to be given to a charitable organization to be used for the benefit of the people of Equatorial Guinea. Another US$10.3 million was to be forfeited to the United States and used for the benefit of the people of Equatorial Guinea to the extent permitted by law.

He also had to disclose and remove other assets he owned in the United States, make a US$1 million payment to the United States, representing the value of the Michael Jackson memorabilia already removed from the United States for disbursement to the charitable organization. The agreement also provided that if other assets, including the Gulfstream Jet, were brought into the United States, they would be subject to seizure and forfeiture.

The investigations demonstrated that in addition to the corrupt payments received in exchange for granting export permits, Teodoro NGUEMA OBIANG MANGUE's purchases in France were also financed by the proceeds of misappropriation of public funds through funds that originated from the Treasury of Equatorial Guinea and transited through SGBGE, a subsidiary of the bank SOCIÉTÉ GÉNÉRALE based in Equatorial Guinea (D. 2052 to 2075, sealed "SGBGE 4", D. 1340, D. 1512 and D. 1513, D. 2801).

A detailed analysis of the SGBGE bank statements for the 2004-2013 period, seized during a search of the premises of SOCIÉTÉ GÉNÉRALE, revealed transactions relevant to the analysis of his assets.

For the 2004-2005 period, which corresponds to the purchase of the shares of the Swiss companies that owned the building at 42 avenue Foch in Paris, the following information was brought to light:

— credit transaction, in August 2004: transaction in the amount of 7,879,095,180 CFA francs, that is, €12,011,603, with the description "DEVOL FONDOS TRF17576", corresponding to a transfer of funds originating from the Treasury of Equatorial Guinea;

— debit transactions, in January 2005: four debit transactions on the account for a total of €6,253,750 each. Three of these transactions transited through Banque des États d'Afrique Centrale (BEAC) and then Banque de France before appearing as a credit to Opaline Estate Ltd.'s account with Crédit Lyonnais in Geneva.

Throughout the period from 2004-2011, some 110 million euros were thus credited to the personal account of Teodoro NGUEMA OBIANG MANGUE from the Treasury of Equatorial Guinea, before being partially redirected to bank accounts opened in the name of the Swiss companies through DAUCHEZ, the firm managing the property at 42 avenue Foch.

Christian DELMAS, the manager of SGBGE between 2003 and 2007, described how the bank account of Teodoro NGUEMA OBIANG MANGUE functioned. He explained that the latter had a personal account funded solely by transfers issued by the Treasury approximately every six months, after the Payment Committee had made all payments due to foreign or local companies with government contracts via the BEAC. These funds were held by the BEAC. He maintained that since the funds came from the Treasury and were held by the BEAC, it was difficult for him to refuse them because the BEAC was his bank's supervisor and the origin of the funds was supposed to be verified by the bank receiving them. In his view, the money that came from the Treasury was public money that Teodoro NGUEMA OBIANG MANGUE had used to make transfers to France. In those instances, he debited the BEAC account which was used to credit the accounts of the beneficiaries in France via the correspondent account held by the BEAC at the Banque de France. He noted that three quarters of those transfers were made to the same beneficiary, the firm PINTO, mainly for the purchase of assets.

His statements have been corroborated by those of Jean-Marie NAVARRO, his successor at the head of SGBGE, who confirmed that public funds had been transferred from the BEAC and credited to the account of Teodoro NGUEMA OBIANG MANGUE. As if to justify the absence of any opposition to these highly dubious financial transactions, he wished to make it clear that, in Equatorial Guinea, a refusal to execute a financial transaction concerning a member of the NGUEMA OBIANG family was considered as a lack of respect synonymous with imprisonment.

Pierre NAHUM, who held the same post from 2009, confirmed the above. He attempted to justify the absence of any opposition to these financial transactions. According to him, given Teodoro NGUEMA OBIANG MANGUE's instability, it was better not to oppose his requests because at any moment he could become aggressive and dangerous. He had been in contact with him on three occasions, having been summoned when he had refused to make transfers. During a trip to Morocco, he had threatened him with expulsion, although the situation had been defused through the intervention of the French Ambassador.

On 9 December 2013, the investigators conducted an on-site visit to the headquarters of the Banque de France in order to recover documents relating to its role as an intermediary bank. It then became clear that the alert had first been raised in June 2011, with a transaction dated 1 June 2011 from Teodoro NGUEMA OBIANG MANGUE in the amount of €100,000 in favour of the firm PINTO.

A proposal was made to file a suspicious transaction report, but due to "an internal human error" it was never carried through. A file containing all the bank transaction documents relating to Teodoro NGUEMA OBIANG MANGUE for the period 2005-2011 was recovered by the investigators (D. 2114).

In the light of these elements, the investigations focused on the nature of the relationship between SOCIETE GENERALE and its subsidiary SGBGE with regard to the unusual manner in which Teodoro NGUEMA OBIANG MANGUE's bank accounts functioned.

On 10 January 2014, Emmanuel PIOT, a "supervisor" in the Banque Hors France Métropolitaine ("banking outside metropolitan France" — BHFM) department of SOCIETE GENERALE, explained that exchanges between the various managers of SGBGE and the management of BHFM took place mostly by e-mail or by telephone and that he had been informed of certain problems. He had thus been in regular telephone contact with Jean-Marie NAVARRO and subsequently with Pierre NAHUM, approximately two or three times a week. He confirmed that the BHFM department monitored the situation on a regular basis. Regarding the transactions observed on the accounts of Teodoro NGUEMA OBIANG MANGUE, he explained that the situation had been analysed internally and that it had been tacitly agreed to validate those transactions as ones of which the manager of the subsidiary bank and the management of BHFM had been made aware (D. 2055).

The general inspection unit of the bank had been informed of the problems posed by the functioning of SGBGE and had consequently conducted an on-site inspection. Thereafter, Nicolas PICHOU, the inspector in charge of the case, had drafted a note, dated 23 March 2010, addressed to his superiors.

It is apparent from the evidence that came to light during this inspection that SGBGE was the source of financial flows to France and to the United States, as identified by the British NGO Global Witness and by an investigative committee of the United States Senate in reports raising questions about the source of the funds, given that they were disproportionate to Teodoro NGUEMA OBIANG MANGUE's official income in his capacity as minister. These suspicious flows did indeed derive from transfer orders made by Teodoro NGUEMA OBIANG MANGUE. In the course of the on-site inspection, the inspector observed that some of the funds in the accounts of Teodoro NGUEMA OBIANG MANGUE came from the Treasury of Equatorial Guinea for no known reason. Rather, the explanations provided in the transfer orders were not credible. In his report, the inspector added that the media had previously reported on the criminal origin of funds deriving from acts of corruption or of misappropriation of public funds that had gone to the son of the President of the Republic. It was indeed apparent, from invoices that were submitted, that SGBGE had carried out transfers enabling the acquisition of various buildings, a yacht, a private jet and a number of luxury cars, as well as other extravagant expenditure, which, in the inspector's view, might justifiably shock the public at large, given the level of development in the country.

The inspector noted in particular the acquisition of a building in Brazil, a villa in Malibu, a plot of land in Morocco and the building at 42 avenue Foch in Paris. He was able to examine the invoices and SWIFT receipts, held in the safe of the manager of SGBGE, in respect of each of these purchases. He recalled that, first, US$47 million had been transferred to the United States in 2006 for the purchase of a plane, although the transaction had not been finalized. He also noted extravagant spending by Teodoro NGUEMA OBIANG MANGUE for the purchase of antiques at an auction for the sale of the Saint Laurent/Bergé collection, and pointed to the fact that the tools for anti-money laundering checks had not been operational at SGBGE.

Pedro TOMO concluded that if the complaint concerning the "ill-gotten gains" were to succeed, or if the United States were to mount pressure, the group would quickly have to define a line of defence in respect of the transactions made and adopt a firmer position with regard to the OBIANG family, in the face of the media pressure the group might come under.

From 11 February 2014, Gérard LACAZE, Patrick LE BUFFE and Bruno MASSEZ, employees of SOCIETE GENERALE, were questioned in custody (D. 2076 to 2110).

On 13 February 2014, the headquarters of SOCIETE GENERALE were searched (D. 2108). The investigators conducted a further on-site visit on 20 February 2014 in order to recover the documents, working notes and files of Nicolas PICHOU, who had been in charge of the inspection undertaken at SGBGE in late 2009 and during 2010 (D. 2061).

On 6 May 2014, Nicolas PICHOU, then sales manager at SOCIETE GENERALE Ghana, provided details of the inspection he had carried out at SGBGE, SOCIETE GENERALE's smallest subsidiary. He stated that at first his inspection had not been supposed to cover the NGUEMA OBIANG family, but that he had done research beforehand and was aware of the American report mentioning the SGBGE subsidiary. He had been advised to be cautious because of the local context, but had gained access to the bank accounts of Teodoro NGUEMA OBIANG MANGUE and those of the company SOMAGUI. He had conducted his on-site inspection from 22 to 26 February 2010. On his return, he had informed his superiors of the particular situation he had encountered. He had returned to Equatorial Guinea on 24 May 2010 and continued his inspection until 9 July 2010. He confirmed the contents of his note of 23 March 2010, according to which he had discovered misappropriated funds originating from bank accounts in the name of Teodoro NGUEMA OBIANG MANGUE and SOMAGUI, and, more specifically, the existence of funds used to credit the account of Teodoro NGUEMA OBIANG MANGUE originating either from the Treasury, with no credible supporting documentation and/or transfer orders, or from transfers from logging companies used to credit the account of SOMAGUI (D. 2074).

On 30 July 2015, SOCIETE GENERALE was summoned for questioning at first appearance for having in Paris, between January 2005 and December 2011, and in any event on national territory for a period not covered by prescription, assisted in investing, concealing or converting the direct or indirect proceeds of a felony or misdemeanour, in this instance by allowing its subsidiary SGBGE to execute transfer orders from the account opened in the books of that subsidiary in the name of Teodoro NGUEMA OBIANG MANGUE for amounts estimated at approximately €65 million to the United States, Switzerland or eurozone countries.

The bank was questioned regarding the fact its BHFM department, which supervised the activity of subsidiaries outside metropolitan France and was headed by Jean-François MATTEI, a member of the executive committee from January 2008, could not have been unaware that the account was funded through transfers originating from the Treasury of Equatorial Guinea and from commercial companies, in particular the company under Equatorial Guinean law SOMAGUI FORESTAL and the Malaysian company SHIMMER, without these credit transactions appearing to be justified by any legitimate economic, commercial or financial transaction allowing the transfer of funds from public monies or of funds derived from breach of trust and corruption (D. 2801).

The general counsel representing the SOCIETE GENERALE group contested the facts and expressed his surprise, pointing to several pieces of evidence presented as background but which were important to take into account.

He recalled that all the suspicious transactions had taken place in Equatorial Guinea, in a company in which SOCIETE GENERALE had a shareholding but which was not under its control. SOCIETE GENERALE had acquired its shareholding in 1997 or 1998 at the request of the French Government. It was a small organization with only four expatriate members of staff. SOCIETE GENERALE was not a majority shareholder on the board of directors, and the chairman of the board was also the Minister for the Budget of Equatorial Guinea. He added that the State of Equatorial Guinea was represented by two deputy directors and the managing director of the organization, in whose appointment SOCIETE GENERALE was involved, although it was trapped between the chairman of the board and the deputy managing directors. The organization's supervisory authority, COBAC (the Central African Banking Commission), was also headed by an Equatorial Guinean governor.

He noted that from an operational standpoint, SOCIETE GENERALE did not have access to the accounts held by SGBGE and did not have the means to oversee the transactions undertaken by that organization, which, in his view, operated in a very particular context, marked by very strong interference from the local authorities in how the shareholding functioned, in addition to which the same authorities exerted pressure on the governance bodies. These factors had moreover led SOCIETE GENERALE to believe that the local organization was in reality under the *de facto* control of the local authorities.

More generally, SOCIETE GENERALE considered that it had no means to act on the suspicious movements that had been observed. Its general counsel noted that it emerged from the statements of the agents of the local organization that the suspicious transactions had been brought to their attention *a posteriori* and that, therefore, SOCIETE GENERALE, as a mere shareholder, could not have known about them. While the BHFM department was able, sporadically and at the express request of the local organization, to give recommendations on managing the anti-money laundering mechanism, SOCIETE GENERALE, in his view, could not be held accountable, as a shareholder, for those recommendations not being followed at local level. Since the local organization was under the governance and supervision of COBAC and AMIF, responsible for the anti-money laundering mechanism in the geographical area in which the local organization was based, it was not for SOCIETE GENERALE to substitute itself for the anti-money laundering authorities supervising the local organization.

Following the first appearance questioning, the bank was given the status of *témoin assisté* (D. 2801).

The investigations revealed that the assets of Teodoro NGUEMA OBIANG MANGUE had also been paid for with the proceeds from the misuse of corporate assets (D. 462, sealed FOCH SERVICE/CL, D465 sealed FOCH SERVICES CL PIECES). In parallel to the financing channels described, the expenditure and lifestyle of Teodoro OBIANG were funded in particular by the company SOMAGUI FORESTAL. The bank statements of FOCH SERVICES for the period 2007-2011 showed transfers originating from that company in the amount of some €2.8 million.

Further personal expenditure by Teodoro NGUEMA OBIANG MANGUE was paid, in full or in part, by SOMAGUI, such as the acquisition of a number of cars (Maserati MC 12 with registration number 527 QGR 75 valued at €709,000, Bentley Azure with registration number 855 RCJ 75 valued at €347,010, Rolls Royce Phantom with registration number 627QDG 75 valued at €395,000, Ferrari 599 GTO Fi with registration number BB-600-SD valued at €200,000, Bugatti Veyron with registration number 616 QXC 75 valued at €1,196,000, Bugatti Veyron with registration number W-718-AX valued at €1,959,048 and Mercedes Maybach with registration number 101 PXE 75 valued at €530,000).

Based on the documents transmitted by the American authorities, it has also been established that, in 2004, Teodoro NGUEMA OBIANG MANGUE's lawyer had assured the lawyer of the City National Bank in Beverly Hills that the sum of US$999,950 million came from a legal source, namely his companies SOMAGUI FORESTAL and SOFONA, based in Equatorial Guinea (D. 2135).

Aware of the fact that it would be difficult for him to explain away the mounting evidence showing that he had acquired and paid for a large number of movable and immovable assets in France out of the proceeds of offences committed in his country, in particular breaches of probity, Teodoro NGUEMA OBIANG MANGUE focused his defence exclusively on a criminal immunity that he claimed to enjoy and on the diplomatic protection attaching to those assets.

The judicial investigation confirmed that neither he nor his assets could claim to enjoy any immunity enabling him to evade judicial action in France.

2.2 The status of Teodoro NGUEMA OBIANG MANGUE and of his assets in France: absence of immunity

Teodoro NGUEMA OBIANG MANGUE, who was the Minister for Agriculture and Forestry when the judicial investigation opened, was appointed Second Vice-President of Equatorial Guinea, in charge of Defence and State Security, on 21 May 2012 (Decree No. 64/2012 dated 21 May 2012), shortly after he received his first judicial summonses.

Throughout the investigation, he has devoted his energy, through his French counsel, to avoiding any explanation as to the substance of the case and claiming to enjoy criminal immunity linked to his status as minister then second vice-president of his country. Similarly, he claimed that the seizure or attachment of property, including the townhouse, was unlawful.

On 10 October 2011, the investigating judges made enquiries with the Protocol Department of the Ministry of Foreign Affairs as to his potential immunity and the status of the building located at 42 avenue Foch in Paris (16th arrondissement) (D. 400). On 11 October 2011, the department indicated that Teodoro NGUEMA OBIANG MANGUE was not a diplomatic agent active in France and that he was not registered with the Protocol Department. He was therefore to be considered as being subject to ordinary law (D. 401). Furthermore, the building had never been recognized as forming part of the diplomatic mission of the Republic of Equatorial Guinea. It was also, therefore, to be considered as being subject to ordinary law (D. 401).

Seised by Teodoro NGUEMA OBIANG MANGUE, the *Cour d'appel*, and subsequently the *Cour de cassation*, emphatically set aside the alleged immunity behind which he believed he could shelter (D. 551, 695-702, 705, 1866, 2171, 2270).

He was summoned by the investigating judges a number of times, either directly or through diplomatic channels, and on each occasion failed to attend.

He was summoned on 23 January 2012 to a first appearance to be held on 1 March 2012, and failed to appear (D. 551).

He was summoned again to appear on 11 July 2012, and also failed to appear (D. 695, 705).

Following his failures to appear, on 13 July 2012, the investigating judges issued a warrant for his arrest. Teodoro NGUEMA OBIANG MANGUE contested the arrest warrant by means of an application for annulment.

Ruling on this application, the *Chambre de l'instruction* stated that, while international custom, in the absence of international provisions to the contrary, bars the prosecution of States before the criminal courts of a foreign State, a custom extending to organs and entities which are an emanation of that State, and to their agents, in respect of acts falling within the sovereignty of the State concerned, this principle is limited to the exercise of State functions (*Ch. Crim.* 19 January 2010, 14 May 2002 and 23 November 2004).

In this case, the acts of money laundering and/or handling offences committed on French national territory in respect of the acquisition of movable and immovable assets for solely personal use were considered to be separable from the exercise of State functions protected by international custom under the principles of sovereignty and diplomatic immunity.

Consequently, in the view of the *Cour d'appel*, there is no merit in the Republic of Equatorial Guinea's claim that the procedure was irregular with regard to its Head of State and its Minister for Agriculture and Forestry, who became Second Vice-President of the Republic the day he found out that he had been issued with a summons to appear before the investigating judge to

respond to a possible judicial examination and that he was the subject of an international arrest warrant.

The *Cour d'appel* further took the view that, by a judgment of 8 April 2010, the *Chambre criminelle* of the *Cour de cassation* had found that, regarding the scope of the diplomatic immunity granted by the Vienna Convention of 18 April 1961 and in light of the Headquarters Agreement of 2 July 1954 between France and UNESCO, diplomatic agents who are nationals of the receiving State enjoy immunity from jurisdiction and inviolability only in respect of acts performed in the course of their duties. However, this is not the situation in the present case, since the acts attributed to Teodoro NGUEMA OBIANG MANGUE fall exclusively within the scope of his private life in France.

According to the *Chambre de l'instruction*, the same analysis must prevail with regard to the distinct capacities of Minister for Agriculture and Forestry and Second Vice-President of the Republic of Equatorial Guinea, and it should be noted that the latter capacity was conferred on Teodoro NGUEMA OBIANG MANGUE on 21 May 2012, on which date the procedural measures, such as the initial summons of 22 January 2012, led the individual concerned to expect that he might be placed under judicial examination, or that an arrest warrant might be issued against him.

In the view of the *Cour d'appel*, the investigating judges were therefore justified in issuing an arrest warrant against him, since he had refused to appear or respond to the two summonses to a first appearance or for placement under judicial examination concerning acts committed in France in the context of his private life.

On 14 November 2013, the investigating judges sent an international letter rogatory to the judicial authorities of Equatorial Guinea, seeking the judicial examination of Teodoro NGUEMA OBIANG MANGUE, on the basis of the United Nations Convention against Transnational Organized Crime of 15 November 2000. It was executed by the authorities of Equatorial Guinea.

On 18 March 2014, at a hearing held in Malabo (Equatorial Guinea) which the investigating judges attended by videoconference, Teodoro NGUEMA OBIANG MANGUE was formally placed under judicial examination for having in Paris and on national territory during 1997 and until October 2011, in any event for a period not covered by prescription, assisted in making hidden investments or in converting the direct or indirect proceeds of a felony or misdemeanour, in this instance offences of misuse of corporate assets, misappropriation of public funds, breach of trust and corruption, by acquiring a number of movable and immovable assets and paying for a number of services out of the funds of the firms EDUM, SOCAGE and SOMAGUI FORESTAL, acts characterized as laundering of the proceeds of the above-mentioned offences (D. 1860, 1866, 2171).

He refused to answer the questions put to him, simply stating that, in his capacity as Second Vice-President of the Republic of Equatorial Guinea in charge of defence and State security since 21 May 2012, he enjoyed full jurisdictional immunity during the time he exercised his functions. Since he had not waived that immunity and it had not been removed by his government, he considered that it was impossible for him to answer the questions put to him (D. 1860, 1866).

On 31 July 2014, Teodoro NGUEMA OBIANG MANGUE submitted an application for annulment to the *Chambre de l'instruction* seeking to have the judicial examination annulled, on the grounds of his alleged immunity, and the initial civil-party application declared inadmissible.

This application was rejected by the court, which, after recalling that it was established jurisprudence that the international custom barring the prosecution of States before the criminal courts of a foreign State extends to organs and entities which are an emanation of the State, and to

their agents, in respect of acts falling within the sovereignty of the State concerned, found that the limits of this principle lay in the very nature of the acts forming the subject of the proceedings, it being necessary for those acts to be related to State functions in order to enjoy any particular protection. It decided that since the acts committed on French national territory consisted, in particular, in the acquisition of movable and immovable assets for solely personal use between 1997 and 2011, they were separable from the exercise of such State functions.

The *Chambre de l'instruction* further considered that the condition regarding the relationship between the alleged acts and the exercise of sovereignty also applied to the diplomatic immunity provided for in the Vienna Convention of 18 April 1961, and described the appointment of the individual concerned to the post of Second Vice-President as an "appointment of convenience".

Ruling on the appeal submitted by Teodoro NGUEMA OBIANG MANGUE, the *Cour de cassation* upheld the decision of the *Chambre de l'instruction* in a judgment of 15 December 2015. The *Chambre criminelle* rejected the ground of appeal which, *inter alia*, complained that the contested judgment had not applied personal immunity in due consideration of the functions exercised by the individual under examination. It endorsed the refusal to afford immunity from criminal jurisdiction, stating first, in respect of personal immunity, that "the functions of the applicant are not those of a Head of State, Head of Government or Minister for Foreign Affairs", and, second, regarding substantive immunity, upholding the analysis of the *Cour d'appel* on the grounds that it was clear from the judgment and the pleadings that all the alleged offences, the proceeds thereof having been laundered in France, and should they be established, had been committed for personal gain before he had taken up his current functions, at a time when he was performing the functions of the Minister for Agriculture and Forestry.

Regarding the admissibility of the civil-party application, contested on the basis of an alleged violation of Article 85 of the Code of Criminal Procedure, the *Chambre criminelle* simply recalled the scope of the jurisdiction of the *Chambre de l'instruction* when it is seised of an application for the annulment of procedural measures. It reproached the latter court for ruling on the request of the individual under examination to annul the investigative measures in respect of the alleged inadmissibility of the civil-party application, but took the view that the judgment was not liable to censure "since that objection had to be submitted to the investigating judge so that he could issue a decision by means of an appealable order".

Nor were the arguments put forward by Teodoro NGUEMA OBIANG MANGUE in his attempt to protect his assets from judicial seizure successful.

The Protocol Department of the Ministry of Foreign Affairs issued an opinion on the status of the building located at 42 avenue Foch in Paris (D. 400, 401, 537-541, 543), stating clearly that the building is not included among those covered by the Vienna Convention of 18 April 1961 on Diplomatic Relations, and that it was assigned neither to the chancellery of the Republic of Equatorial Guinea, nor to the residence of the Ambassador or of an agent of the Embassy.

By Note Verbale, the Embassy of the Republic of Equatorial Guinea informed the Protocol Department that "the Embassy ha[d] for a number of years had at its disposal a building located at 42 avenue Foch, Paris (16th arr.)" which it used for the performance of the functions of its diplomatic mission without having given official notification thereof. Referring to Article 22 of the Vienna Convention cited above, and stating that the building formed part of the premises of the diplomatic mission, it then officially requested the French authorities to ensure the protection of the said premises.

The Protocol Department replied, by Note Verbale, that the building did not form part of the premises of the Republic of Equatorial Guinea's diplomatic mission, that it fell within the private domain and was, as such, subject to ordinary law. It advised the authorities of Equatorial Guinea that it was unable to grant the Embassy's request.

It further recalled that a building with diplomatic status had to be declared as such to the Protocol Department, with a specific date of entry into the premises. Once it had been verified that the building was actually assigned to a diplomatic mission, the Protocol Department would inform the French Government that it had been officially recognized in accordance with the relevant provisions of the Vienna Convention of 18 April 1961 on Diplomatic Relations. In this instance, the building at 42 avenue Foch in Paris has never been recognized by the Protocol Department as forming part of the diplomatic mission of the Republic of Equatorial Guinea.

A search of the premises was conducted as of 14 February 2012. A number of valuable items were seized.

In a letter of 25 April 2012 addressed to the investigating judges and the Paris Public Prosecutor, subsequent to the investigators' search, the Embassy of the Republic of Equatorial Guinea claimed that the premises at 42 avenue Foch in Paris should enjoy diplomatic protection since they had been declared as diplomatic premises on 4 October 2011. The Embassy contested the assessment of the Ministry of Foreign Affairs, taking the view that official recognition of the status of diplomatic premises was determined once the premises had been effectively assigned to the services of the diplomatic mission. It had no hesitation in characterizing the attachment measures as the "plundering of Equatorial Guinea's assets" (D. 631).

All the converging evidence gathered during the investigation points to the fact that these steps were taken in an attempt to protect the private assets of the son of the President of the Republic of Equatorial Guinea from the judicial attachment measures undertaken in the building, which is the private property of Teodoro NGUEMA OBIANG MANGUE and is for his personal use, by claiming that it should enjoy diplomatic protection.

On 19 July 2012, after the premises had been searched, the investigating judges duly issued an attachment order under the Code of Criminal Procedure, on the grounds that the investigations had demonstrated that the building at 42 avenue Foch in Paris (16th arr.), owned by six Swiss and French companies, had been wholly or partly paid for out of the proceeds of the offences under judicial investigation and represented the laundered proceeds of the offences of misuse of corporate assets, breach of trust and misappropriation of public funds. The order further noted that Teodoro NGUEMA OBIANG MANGUE enjoyed free disposal of the said building, setting out all the evidence from the investigations showing that he was the real owner of the building and enjoyed free disposal thereof within the meaning of Article 131-21 of the Penal Code. The building could therefore be confiscated as the product of the investment, concealment or conversion of proceeds of the offences of misappropriation of public funds, misuse of corporate assets and breach of trust.

Hearing the appeal of Teodoro NGUEMA OBIANG MANGUE, the *Chambre de l'instruction* upheld the order.

DISCUSSION

All the appropriate steps having been undertaken to determine the truth with regard to the acts which took place on national territory relating to original offences committed in Equatorial Guinea, this chapter of the judicial investigation was rightly considered to have ended.

Regarding the facts relating to Teodoro NGUEMA OBIANG MANGUE

In this part of the investigation, Teodoro NGUEMA OBIANG MANGUE was placed under judicial examination for laundering the proceeds of the misuse of corporate assets, laundering the proceeds of the misappropriation of public funds, laundering the proceeds of breach of trust and

laundering the proceeds of corruption, by having in Paris and on national territory during 1997 and until October 2011, in any event for a period not covered by prescription, assisted in making hidden investments or in converting the direct or indirect proceeds of a felony or misdemeanour, in this instance offences of misuse of corporate assets, misappropriation of public funds, breach of trust and corruption, by acquiring a number of movable and immovable assets and paying for a number of services out of the funds of the firms EDUM, SOCAGE and SOMAGUI FORESTAL.

His placing under judicial examination for the offence of money laundering assumes that it has been established that he assisted in an investment, concealment or conversion transaction through acts of investing, concealing or converting the funds.

It must then be established that those funds derive from predicate or "initial" offences, in this instance from corruption, misappropriation of public funds, breach of trust and misuse of corporate assets, which offences it must be possible to characterize.

In accordance with the principle of autonomy of the offence of money laundering, it is recalled that the fact that the initial offences were committed abroad does not bar proceedings when the money laundering offence was committed on the territory of the [French] Republic. Since money laundering is a separate offence, the place where the initial offence was committed is irrelevant. It is sufficient simply to demonstrate that the acts of money laundering were committed on the territory of the [French] Republic in order to establish French legal and judicial jurisdiction.

Similarly, it is of little importance to verify the double criminality of the initial offences, since it is irrelevant, again because of the principle of autonomy of the offence of money laundering.

The criminal law texts defining the offence of money laundering thus require neither that the offences which were the source of the laundered sums occurred on national territory, nor that the French courts have jurisdiction to prosecute them. The characterization of the initial offences must be undertaken under French law, once again because of the autonomy of the offence of money laundering. In other words, the original act committed abroad must be characterized as if it had been committed on the territory of the [French] Republic.

Consequently, French law alone is competent to characterize not only the act of money laundering, but also the initial offence.

In these proceedings, the judicial investigation has established that, while he was Minister for Agriculture and Forestry of his country, Teodoro NGUEMA OBIANG MANGUE, son of Teodoro OBIANG NGUEMA, President of the Republic of Equatorial Guinea, acquired in France, between 2007 and 2011, either directly or through nominees or shell companies, movable and immovable assets valued at several tens of millions of euros. These assets have been identified, and some have been seized.

The methods whereby these assets were acquired have been clearly established.

— Teodoro NGUEMA OBIANG MANGUE invested in *a collection of high-end luxury vehicles*. Following the discovery in Paris of his collection of cars, a number of these vehicles were seized and even sold before judgment.

— He also invested in the purchase of furniture, works of art, paintings, jewellery and luxury clothing.

These purchases were paid for directly in his name but also through the Equatorial Guinean companies SOMAGUI FORESTAL, SOCAGE and EDUM.

— In January 2005, he also acquired for the sum of 25 million euros, through the purchase of shares in Swiss companies, the official owners, a *property located at 42 avenue Foch* in Paris, valued at 110 million euros.

Major work was carried out on the property between 2005 and 2007 for a sum estimated at 12 million euros, which for the most part came from a bank account in his name, but also from the bank account of SOMAGUI FORESTAL.

Even if the Swiss companies are the official owners of the property, Teodoro NGUEMA OBIANG MANGUE is the real owner, occupying it on a private basis and clearly conducting himself as the owner of the premises.

The purchase agreement of 18 December 2004 for the shares in the Swiss companies for an amount of €25,015,000 was found in Switzerland and shows that he is indeed the private buyer of the property.

The service charges and management fees for the property were paid out of financial flows from Equatorial Guinea, more specifically from SOMAGUI FORESTAL.

It is apparent from a capital gains declaration for 2011 that Teodoro NGUEMA OBIANG MANGUE transferred his shareholder's rights in the co-owning Swiss companies to the State of Equatorial Guinea. This transaction has all the marks of legal window-dressing intended as an attempt to protect the building from an attachment measure.

The investigations have thus established that the building is private property and is in no circumstances a diplomatic mission in French territory.

This building, the property of Teodoro NGUEMA OBIANG MANGUE and of which he enjoys free disposal, does not enjoy any legal protection since it is not part of the diplomatic mission of the Republic of Equatorial Guinea. It was attached, on reasonable grounds, as part of the present judicial investigation.

The investigations have also made it possible to determine the manner in which he was able to finance his assets. It has thus been established that the funds used to pay for them derived from offences committed in the Republic of Equatorial Guinea.

Teodoro NGUEMA OBIANG MANGUE, in his capacity as minister from 1996 to 2012, accumulated his wealth by investing in France the proceeds of the misappropriation of public funds, corruption and the misuse of corporate assets, offences committed in Equatorial Guinea, as demonstrated by analysis of the various financial flows and by the testimony of a number of witnesses which has made it possible to establish the manner in which he illegally captured funds in his own country that were subsequently invested in France.

Teodoro NGUEMA OBIANG MANGUE enriched himself by taking payments from private companies in return for administrative authorizations, by misappropriating public funds from the Treasury of Equatorial Guinea and by using funds belonging to a number of Equatorial Guinean companies for personal purposes.

These acts constitute offences of corruption, misappropriation of public funds, misuse of corporate assets and breach of trust.

He subsequently invested, concealed and converted those funds in France by accumulating wealth consisting of luxury movable and immovable assets, thus laundering in France the proceeds of those offences committed in Equatorial Guinea.

That he is the perpetrator of the predicate offence does not exclude him from being the perpetrator of the consecutive offence of money laundering. He enjoys no immunity that might bar prosecution.

In the light of all of the evidence gathered during the proceedings, Teodoro NGUEMA OBIANG MANGUE should be referred for trial for laundering the proceeds of a felony or misdemeanour, in this instance of the misuse of corporate assets, misappropriation of public funds, breach of trust and corruption.

Regarding the facts relating to SOCIETE GENERALE

SOCIETE GENERALE was given the status of *témoin assisté* for having in Paris, between January 2005 and December 2011, and in any event on national territory for a period not covered by prescription, assisted in investing, concealing or converting the direct or indirect proceeds of a felony or misdemeanour, in this instance by allowing its subsidiary SGBGE to execute transfer orders from the account opened in the latter's books in the name of Teodoro NGUEMA OBIANG, for amounts estimated at approximately €65 million, to the United States, Switzerland or eurozone countries.

It transpired that SGBGE, a subsidiary of SOCIETE GENERALE, had played a major role in the transfer of financial flows abroad from bank accounts used by Teodoro NGUEMA OBIANG MANGUE, either on a personal basis or in the names of the companies SOMAGUI FORESTAL, EDUM and ELOBA.

The investigations raised questions about the manner in which SOCIETE GENERALE had allowed its subsidiary SGBGE to execute transfer orders from the account opened in the latter's books in the name of Teodoro NGUEMA OBIANG, for amounts estimated at approximately *€65 million, to the United States, Switzerland or eurozone countries, whereas its Banque Hors France Métropolitaine ("banking outside metropolitan France" — BHFM) department, which supervised the activity of subsidiaries outside metropolitan France and was headed by Jean-François MATTEI, a member of the executive committee from January 2008, could not have been unaware that the account was funded through transfers originating from the Treasury of Equatorial Guinea, and in particular the company under Equatorial Guinean law SOMAGUI FORESTAL and the company SHIMMER, without these credit transactions appearing to be justified by any legitimate economic, commercial or financial transaction allowing the transfer of funds from public monies or of funds derived from breach of trust and corruption*.

The particular circumstances in which this subsidiary of SOCIETE GENERALE operated in Equatorial Guinea, more specifically with regard to the bank accounts of the son of the President of the Republic of that country, and the absence of any genuine means of action or oversight on the part of SOCIETE GENERALE, led the investigating judge to grant this legal person the status of *témoin assisté* in respect of the acts in question, which were characterized as laundering of the proceeds of the offences of corruption, misappropriation of public funds and breach of trust.

In the light of these elements, there is insufficient evidence that SOCIETE GENERALE itself willingly assisted or took part in money laundering activity involving the funds transferred by Teodoro NGUEMA OBIANG MANGUE and subsequently invested in movable and immovable assets in France.

Regarding the facts relating to Mourad BAAROUN and Aurélie DELAURY née DERAND, as chief executives (*gérants*) of FOCH SERVICE

Mourad BAAROUN and Aurélie DELAURY were questioned in their capacity as chief executives of FOCH SERVICE, an entity set up in France by Teodoro NGUEMA OBIANG MANGUE, financed by fraudulently derived funds originating from Equatorial Guinean commercial companies, to pay for the costs relating to the property located at 42 avenue Foch in Paris.

They both enjoyed the status of *témoin assisté* in respect of complicity in money laundering.

The investigation established that they effectively handled the administrative and financial management of FOCH SERVICE from 2010 to 2012.

Even though numerous signs should have alerted them to the manner in which the company operated, in particular the fact that invoices were sent to companies with no economic ties to the company they managed, it became apparent that they had been placed in the position of chief executive without necessarily having the skills or the means to have a detailed understanding of everything involved.

In any event, it has not been demonstrated that they were aware of the fraudulent origin of the funding of FOCH SERVICE's accounts and that, in their capacity as chief executives of that company, they therefore knowingly assisted Teodoro NGUEMA OBIANG MANGUE in a money laundering operation.

The judicial investigation has not established in respect of Mourad BAAROUN and Aurélie DELAURY acts of complicity in laundering misused corporate assets or the proceeds of breach of trust or complicity in laundering misappropriated public funds, which acts were notified to them at the time of their questioning at first appearance.

More generally, apart from Teodoro NGUEMA OBIANG MANGUE himself, the judicial investigation has not been able to establish, in respect of any person, acts of complicity in or concealment of misappropriation of public funds, complicity in money laundering, misuse of corporate assets, complicity in and concealment of the misuse of corporate assets, breach of trust, complicity in and concealment of breach of trust, which are liable to criminal proceedings in France and which are cited in the referral, pursuant to the complaint with civil-party application, the application to open an investigation and the application to extend the investigation, in respect of the chapter relating to Equatorial Guinea.

It will therefore be requested that these counts be dismissed.

The evidence gathered against Teodoro NGUEMA OBIANG MANGUE appears sufficient to order the partial referral of the proceedings against him, following separation of the complaints in the interest of the proper administration of justice concerning the chapter relating to Equatorial Guinea.

INFORMATION CONCERNING THE PERSON

Teodoro NGUEMA OBIANG MANGUE, an Equatorial Guinean national, was born on 25 June 1969 in Akoakam Esangui, Mongomo District, Wele Nzas Province, Equatorial Guinea, to Teodoro OBIANG NGUEMA MBASOGO and Constancia MANGUE NSUE OKOMO.

Son of the President of the Republic of Equatorial Guinea, he served as Minister for Agriculture and Forestry in his country before being appointed Second Vice-President of the Republic in charge of Defence and Security in 2012.

He lives in Malabo, Equatorial Guinea.

REQUEST FOR PARTIAL DISMISSAL

Whereas the investigation has produced insufficient evidence that any person has committed acts of complicity in and concealment of misappropriation of public funds, complicity in money laundering, misuse of corporate assets, complicity in and concealment of misuse of corporate assets, breach of trust, complicity in and concealment of breach of trust, which are liable to criminal proceedings in France and which are cited in the referral, pursuant to the complaint with civil-party application, the application to open an investigation and the application to extend the investigation, concerning the Republic of Equatorial Guinea.

Having regard to Articles 175 and 177 of the Code of Criminal Procedure, the senior judge in charge of the investigation is requested to find that there are no grounds to proceed against any person on these counts;

REQUEST FOR SEPARATION OF THE COMPLAINTS AND PARTIAL REFERRAL BEFORE THE *TRIBUNAL CORRECTIONNEL*

Whereas the investigation has produced sufficient evidence that Teodoro NGUEMA OBIANG MANGUE:

In Paris and on national territory, during 1997 and until October 2011, in any event for a period not covered by prescription, assisted in making hidden investments or in converting the direct or indirect proceeds of a felony or misdemeanour, in this instance offences of misuse of corporate assets, misappropriation of public funds, breach of trust and corruption, by acquiring a number of movable and immovable assets and paying for a number of services out of the funds of the firms EDUM, SOCAGE and SOMAGUI FORESTAL;

Having regard to Articles 175, 176, 179 and 182 of the Code of Criminal Procedure;

Consequently, the senior judges in charge of the investigation are requested to order the separation of the complaints and to refer Teodoro NGUEMA OBIANG MANGUE before the Paris *Tribunal correctionnel* to be tried in accordance with the law.

Done at the National Financial Prosecutor's Office, 23 May 2016

Financial Prosecutor

(Signed) Jean-Yves LOURGOUILLOUX

Assistant Financial Prosecutor

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ANNEX 2

Institutional Declaration by the President of the Republic of Equatorial Guinea dated 21 October 2015

Institutional Declaration by the President of the Republic of Equatorial Guinea dated 21 October 2015

[Translation]

In accordance with the provisions of Article 33, paragraph 3, of the Basic Law of Equatorial Guinea and by virtue of Decree No. 64/2013 of 21 May 2013, His Excellency the Second Vice-President of the Republic, in charge of Defence and State Security, represents the State of Equatorial Guinea and has the capacity to act on behalf of the State before other States and international organizations in respect of matters falling under the sectors of which he is in charge.

For all legal intents and purposes, I sign the present Institutional Declaration in the city of Malabo, capital of the Republic of Equatorial Guinea, this twenty-first day of October two thousand and fifteen.

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ANNEX 3

Note Verbale to the United Nations Office of Protocol and Liaison Service from the Permanent Mission of the Republic of Equatorial Guinea to the United Nations, 7 October 2015

ANNEX 4

Paris *Cour d'appel*, judgment on the application for annulment, 13 June 2013

Paris *Cour d'appel*, judgment on the application for annulment, 13 June 2013

[Translation]

EXTRACT FROM THE RECORD OF THE REGISTRY

Case No. 2012/08657

Prosecution No.: P083379601/7

Judgment of 13 June 2013

PARIS *COUR D'APPEL*

DIVISION 7

SECOND *CHAMBRE DE L'INSTRUCTION*

JUDGMENT ON APPLICATION FOR ANNULMENT

(No. 5, 21 pages)

Delivered in closed session on the thirteenth of June, two thousand and thirteen

Proceedings initiated in respect of complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money laundering, complicity in money laundering, misuse of corporate assets, complicity in the misuse of corporate assets, breach of trust, complicity in breach of trust, and concealment of each of these offences, against:

Persons under judicial examination

Mourad BAAROUN: released under judicial supervision

Born 12 December 1967 in Tunis, Tunisia

Address: 27B rue Louis Rolland, 92120 Montrouge

Counsel: Mr. SPITZER, 9 rue d'Anjou, 75008 Paris

Franco CANTAFIO: released under judicial supervision

Born 27 September 1963 in Saint Maurice

Counsel: Mr. LAUNAY, 37 rue Jean-Baptiste Pigalle, 75009 Paris, whose offices he chooses as his address for service

Aurélie Sandrine C. DELAURY, née DERAND: released under judicial supervision

Born 4 January 1971 in L'Haÿ-les-Roses

Counsel: Ms TOUITOU, 25 rue du Louvre, 75001 Paris, whose offices she chooses as her address for service

Teodoro NGUEMA OBIANG MANGUE: subject of an arrest warrant

Born 25 June 1969 in Akokam-Esangui, Equatorial Guinea

Address: c/o Mr. Emmanuel MARSIGNY, 100 rue de l'Université, 75007 Paris

Counsel:

— Mr. HERZOG, 3 place Saint Michel, 75005 Paris;

— Mr. MARSIGNY, 100 rue de l'Université, 75007 Paris;

— Mr. MAREMBERT, 260 boulevard Saint Germain, 75007 Paris;

— Mr. KLUGMAN, 132 rue de Courcelles, 75017 Paris.

Civil-party applicants

TRANSPARENCY INTERNATIONAL FRANCE

Counsel: Mr. BOURDON, 156 rue de Rivoli, 75001 Paris, whose offices the association chooses as its address for service

GABONESE REPUBLIC (MINISTER FOR THE BUDGET, PUBLIC ACCOUNTS AND THE CIVIL SERVICE)

Address: Mr. Pierre HAIK, 27 boulevard St Michel, 75005 Paris

Counsel:

— Mr. HAIK, 27 boulevard Saint Michel, 75005 Paris;

— Mr. MAISONNEUVE, 232 boulevard Saint-Germain, 75007 Paris;

— Mr. DUPOND-MORETTI, 5 terrasse Sainte Catherine, 59800 Lille;

— Mr. ARAMA, 44 avenue des Champs Elysées, 75008 Paris.

Contested civil-party applicant: the Republic of Equatorial Guinea

Composition of the court

During the proceedings and the deliberations:

Ms BOIZETTE, presiding judge;

Ms DUPONT-VIET, judge appointed by order of the first president of the Paris *Cour d'appel* dated 13 March 2013;

Mr. GUIGUESSON, judge.

All three of whom were appointed under the provisions of Article 191 of the Code of Criminal Procedure.

During the delivery of the judgment: Ms BOIZETTE, presiding judge, read the judgment in accordance with the provisions of the fourth paragraph of Article 199 of the Code of Criminal Procedure.

Clerk: during the deliberations and the delivery of the judgment, Ms MARCHAL

Public Prosecutor's Office: during the proceedings, Mr. WALLON, Advocate General, and during the delivery of the judgment, Mr. BARRAL, Advocate General

Proceedings

At the hearing in closed session on 4 April 2013, the following persons were heard:

Ms BOIZETTE, presiding judge, on her report;

Mr. WALLON, Advocate General, on his submissions;

Mr. MAREMBERT, Mr. KLUGMAN and Mr. MARSIGNY, counsel for Teodoro NGUEMA OBIANG MANGUE, applicant;

Mr. BOURDON, counsel for Transparency International France, civil-party applicant, on his observations;

Mr. CHAMPETIER DE RIBES, taking the floor last as counsel for Mourad BAAROUN, who is under judicial examination;

Mr. CHAMPETIER DE RIBES, standing in for Mr. SPITZER, Mr. LAUNAY, Ms TOUITOU and Mr. ARTHUPHEL, standing in for Mr. HAIK, and Mr. LEBORGNE, Mr. Antonin LÉVY and Mr. HUC-MOREL, who are also counsel for the parties, were present at the hearing but did not take the floor during the proceedings.

At the end of the proceedings, the decision was reserved for 13 June 2013.

Procedural history

By a reasoned application filed with the registry of the *Chambre de l'instruction* on 22 November 2012, Mr. MARSIGNY, counsel for Mr. Teodoro NGUEMA OBIANG MANGUE, who is the subject of an arrest warrant, asked the court to rule on the possible nullity of procedural measures.

The presiding judge of the *Chambre de l'instruction* transmitted the application to the Public Prosecutor for referral to the *Chambre de l'instruction* on 17 January 2013.

The date on which the case was to be heard was notified to the parties and their counsel by registered letters dated 19 March 2013.

The file containing the Public Prosecutor's written submissions dated 24 January 2013 was filed with the registry of the *Chambre de l'instruction* and made available to counsel for the parties.

On 27 March 2013, Messrs. SPITZER and CHAMPETIER, counsel for Mourad BAAROUN, who is under judicial examination, filed with the registry of the *Chambre de l'instruction* a written statement which was countersigned by the registrar, transmitted to the Public Prosecutor's Office and included in the case file.

On 3 April 2013, Mr. BOURDON, counsel for Transparency International France, civil-party applicant, filed with the registry of the *Chambre de l'instruction* a written statement which was countersigned by the registrar, transmitted to the Public Prosecutor's Office and included in the case file.

On 3 April 2013, Mr. MARSIGNY, counsel for Teodoro NGUEMA OBIANG MANGUE, the applicant, filed with the registry of the *Chambre de l'instruction* a written statement which was countersigned by the registrar, transmitted to the Public Prosecutor's Office and included in the case file.

On 3 April 2013, Ms TOUITOU, counsel for Aurélie DELAURY, née DERAND, who is under judicial examination, filed with the registry of the *Chambre de l'instruction* a written statement which was countersigned by the registrar, transmitted to the Public Prosecutor's Office and included in the case file.

Decision

Taken following deliberations in accordance with Article 200 of the Code of Criminal Procedure.

As to the procedure

The application, which falls within the scope of Article 170 *et seq*. of the Code of Criminal Procedure and was filed in the form and within the time-limits set out in Articles 173, 173-1 and 175 of the same Code, is procedurally admissible.

As to the merits

In May 2007 and July 2008, three associations — Sherpa, Survie and Fédération des Congolais de la Diaspora — which are not recognized as being in the public interest, filed a complaint with the Paris Public Prosecutor's Office concerning the conduct of five foreign Heads of State, accusing them primarily of misappropriation of public funds in their country of origin, the proceeds of which have allegedly been invested in France. One of the persons named was Teodoro Nguema Obiang Mangue, Minister of the Republic of Equatorial Guinea, Minister for Agriculture and Forestry, for acts characterized as handling misappropriated public funds (Articles 321-1 and 432-15 of the Penal Code). The Paris Public Prosecutor's Office opened a preliminary investigation but decided to take no further action, on the grounds that the offence was not sufficiently established.

Transparency International France took the same step; the Public Prosecutor's Office decided to take no further action with regard to the first complaint. On 2 December 2008, Transparency International France, an association governed by the Law of 1 July 1901, whose headquarters are located at 2 *bis* rue de Villiers, 92230 Levallois-Perret, acting through its President, Daniel Lebègue, filed a complaint with civil-party application with the senior investigating judge in Paris against the incumbent Presidents of Gabon, the Congo and Equatorial

Guinea, and individuals in their entourage, for handling misappropriated public funds, and against persons unnamed for complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money laundering, complicity in money laundering, misuse of corporate assets, complicity in misuse of corporate assets, breach of trust, complicity in breach of trust and concealment of each of these offences.

Transparency International France claimed that the Heads of State in question, and members of their families and entourage, owned substantial assets in France, acquired over many years through monies derived from the misappropriation of funds in their countries of origin.

The complaint with civil-party application raised questions about the financial resources that the individuals concerned had used to finance such assets on a personal basis. In particular, it questioned the role played by Somagui Forestal, a logging company located in Equatorial Guinea and run by Teodoro Nguema Obiang, the son of the Head of State. It speculated that the vehicles purchased by Edith and Pascaline Bongo had been paid for with cheques from the Treasury of Gabon. The complaint referred to information collected in 2007 by the OCRGDF (serious financial crime squad) and Tracfin (national anti-money laundering unit), as a result of a preliminary investigation launched by the Paris Public Prosecutor's Office.

The opening of the investigation based on this complaint was upheld by the *Chambre criminelle* of the *Cour de cassation* in a decision dated 9 November 2010, ruling on an appeal by Transparency International France, in which it recognized that it was possible for this type of private association, depending on its purpose, to report and pursue prosecution of the type of offences in question, of which it did not appear to be a direct victim.

On 1 December 2010, two investigating judges were appointed, the judicial investigation being considered open against a person or persons unknown, for handling misappropriated public funds, complicity in the misappropriation of public funds, misuse of corporate assets and complicity in the misuse of corporate assets, and concealment of each of these offences.

The initial investigations launched at the request of the Paris Public Prosecutor's Office were the subject of a report that was filed on 9 November 2007 and included in the investigation file (D81).

Five countries were named in the complaint: Gabon, the Congo, Burkina Faso, Equatorial Guinea and Angola. The investigation file included all of the records of the investigations carried out in 2007 regarding:

— Gabon, its President, Omar Bongo, and his family (D81 to D114);

— Congo-Brazzaville and the family of Sassou Nguesso (D115 to D142);

— The Republic of Equatorial Guinea and the family of Teodoro Nguema Obiang (D149 to D153-D238).

The mission entrusted to the OCRGDF's criminal asset identification platform (PIAC) identified the natural persons concerned, their family members and some of their very considerable movable assets (a very large number of luxury vehicles) and immovable assets, particularly in Paris.

More specifically, the [PIAC] investigation revealed, in particular, that Wilfrid NGUESSO, nephew of the President of the Congo, and Teodoro NGUEMA, son of the President of Equatorial Guinea, were involved. Teodoro NGUEMA had, *inter alia*, purchased some fifteen vehicles in France for an amount estimated at more than €5,700,000. For example, he ordered three Bugatti

Veyron vehicles from the manufacturer in Alsace for a unit price of more than €1,000,000 (see record No. 132/2007/D/5 of 6 August 2007).

The financing of certain vehicles appeared unusual, to say the least: in 2006, Pascaline BONGO, who is believed to be the daughter of the President of Gabon, purchased a Mercedes vehicle paid for with three cheques drawn on the bank accounts of Ms Joannie ARTIGA, Mr. François MEYER and the Treasury Office of Gabon in France (see record No. 132/2007/A/4 of 20 July 2007). Similarly, some of the vehicles purchased by Teodoro NGUEMA were paid for through transfers from SOMAGUI FORESTAL (see records No. 132/2007/D/5 of 6 August 2007 and No. 132/2007/D/8 of 26 October 2007). Wilfrid NGUESSO paid the balance of an Aston Martin DB9 vehicle through a transfer made by MATSIP CONSULTING (see record No. 132/2007/B/28 of 5 November 2007).

Substantial immovable assets were also identified, in particular in the names of individuals who were likely to be members of the families of Omar BONGO and Denis SASSOU NGUESSO:

— Concerning the President of Gabon, a property in his name was discovered at 3 boulevard Frédéric Sterling in Nice (Alpes-Maritimes). The property is not mentioned in the letter of 10 July 2007 from Mr. François MEYER to the Paris Public Prosecutor, which provides a summary of Omar BONGO's assets. The property comprises two apartments (170 m^2 and 100 m^2), three houses (67 m^2, 215 m^2 and 176 m^2) and a swimming pool (see record No. 132/2007/A/8 of 17 September 2007).

— Concerning the members of the BONGO and SASSOU NGUESSO family, the tax authorities found a *société civile immobilière* (non-commercial property company), SCI De la Baume, whose shareholders include Edith SASSOU NGUESSO, who is the daughter of Denis SASSOU NGUESSO and wife of Omar BONGO. On 15 June 2007, the company purchased a townhouse located at 4 rue de la Baume in the 8th arrondissement of Paris for €18,875,000 (see record No. 132/2007/B/9 of 17 September 2007).

Lastly, it would appear that the majority of the immovable property owned by the individuals identified is located in high-end neighbourhoods: the 16th and 7th arrondissements of Paris for Omar BONGO and his wife, the 16th arrondissement of Paris and Neuilly-sur-Seine (Hauts-de-Seine) for Jeff BONGO, Le Vésinet (Yvelines) for Denis SASSOU NGUESSO's brother, Courbevoie (Hauts-de-Seine) for Wilfrid NGUESSO, and the 16th arrondissement of Paris for Chantal CAMPAORE.

Numerous active bank accounts were identified in the names of natural persons likely to be members of the families of the Heads of State concerned. A list for each person is set out in a record. It states the account number, the date on which the account was opened, the type of account, the exact address of the bank and branch office, and the address of the account holder.

With regard to the possible immunities enjoyed by the persons appearing in the file, the Protocol Department of the Ministry of Foreign Affairs sent a letter stating that only incumbent Heads of State enjoy inviolability and absolute immunity from criminal jurisdiction when abroad. Their family members may enjoy immunity if they accompany the Head of State on a visit that is official (see record No. 132/2007/7 of 24 October 2007) and duly authorized (see D147).

A copy of a letter rogatory sent by the United States of America, via the Department of Justice, to the French judicial authorities (D151) was included in the case file. This request for mutual assistance cites acts of money laundering by Teodoro Nguema Obiang (Riggs Bank) on United States territory via banks and offshore companies, which purportedly resulted in prosecution and convictions. Teodoro Nguema Obiang's annual salary is estimated at US$60,000. The document mentions that Teodoro Nguema Obiang imposed a heavy tax on wood, which had to be paid in cash or by cheque to Somagui Forestal or directly to its chief executive (*dirigeant*). It

also refers to certain financial transactions which passed through France before terminating in the United States (D151/43 and 24), hence the request for mutual assistance and international co-operation sent to France on 4 September 2007.

The mission entrusted to PIAC led, *inter alia*, to an investigation into the assets of Teodoro NGUEMA OBIANG MANGUE and Denis SASSOU NGUESSO, and to the observation that both individuals — but especially the former, who is the son of the President of the Republic of Equatorial Guinea — had, on national territory, substantial movable and immovable assets which were likely to have been paid for out of public funds from their countries. In particular, a property located at 40-42 avenue Foch in the 16th arrondissement of Paris, owned by Swiss and French companies whose sole shareholder was Teodoro NGUEMA OBIANG MANGUE, was reserved for his own personal and private use, and the sale of the Swiss companies' shares in the property to the Guinean State appeared to be an artifice intended to prevent the property from being attached. Provisional attachment measures were ordered in the course of the investigation.

On 7 March 2011, Tracfin transmitted to the Public Prosecutor's Office a memorandum which was included in the case file (D242). It listed Teodoro NGUEMA OBIANG MANGUE's six residences, including three in France, and his functions, including Minister for Agriculture and chief executive (*directeur*) of Somagui Forestal, which was used to finance the purchase of assets in France (purchases from the YSL collection totalling €18,347,952.30 — D273 to 280).

These revelations were corroborated by the investigations carried out by the OCRGDF, pursuant to a letter rogatory of 9 December 2010, in particular regarding the purchase of two vehicles — a Bugatti Grand Sport for €350,000 paid for by Somagui Forestal and a Ferrari GTO — [and] extravagant spending, such as the purchase of 300 bottles of Château Petrus for €2.1 million, paid for by the same company (D329). These facts led to the filing, on 31 January 2012, of an application to extend the investigation to acts of handling and money laundering (see 393).

The assets of the Teodoro Obiang family are itemized and examined under reference numbers D143 to D153 (Vol. 2).

The assets of the Sassous Nguesso family are listed under reference numbers D116 to D142 (Vol. 2).

At the request of the investigating judges on 20 October 2011, memorandums drafted by Tracfin and originally intended for the Paris Public Prosecutor's Office (D351) — including the memorandum of 25 May 2010 (D361), the memorandum concerning Mr. Meyer and his ties to Gabon (D359/3 and 4) and [that concerning] other purchases made in the name of Teodoro Obiang Nguema (works of art — D358) — were included in the case file.

A memorandum dated 22 September 2008 (D357) was also included, in addition to those of October 2007 and April 2008 concerning transactions involving funds transferred by Somagui Forestal (D357/3 and 4) during the period from 10 February 2006 to 31 March 2008.

On 25 November 2011, Tracfin transmitted to the Paris Public Prosecutor a memorandum concerning Mr. Nguema Obiang Mangue (born in 1969), the President's son, and the financial transactions — primarily relating to expensive watches purchased between 2004 and 2007 — of EDUM SL, which was based in Equatorial Guinea and whose chief executive (*dirigeant*) was Mr. Nguema Obiang Mangue (D385).

In accordance with the letter rogatory issued on 9 December 2010, all of the investigative measures relating to spending in the name of Teodoro Nguema Obiang in France between 2004 and 2007, including, among other things, purchases of expensive watches (D508/3 and 4) paid for by Somagui Forestal via Société Générale de Banques en Guinée, or made by the Bongo family (D494 to 515), were included in the case file.

An application for characterization was submitted on 4 July 2011 (D317-319) in the following terms:

The acts, as described by the complainant, relate to the acquisition and possession in France of movable and immovable property, which may have been paid for with monies derived from the misappropriation of foreign public funds, namely those of the States of Gabon, the Congo and Equatorial Guinea; the characterization of misappropriation of public funds as provided for in Article 432-15 of the Penal Code is applicable only to the misappropriation of French public funds, committed by persons in a position of public authority in France; these proceedings, assuming the facts to be established, concern the misappropriation of foreign public funds of Gabon, the Congo and Equatorial Guinea, committed by foreign authorities of Gabon, the Congo and Equatorial Guinea;

The Article 432-15 offence is therefore inapplicable, and likewise the characterizations of complicity in and concealment of that offence; that being so, the characterizations of breach of trust and complicity in breach of trust, which might be applied to the misappropriations complained of, cannot be accepted, since the alleged offences were committed abroad, by foreign nationals, against foreign victims, acts to which French criminal law is not applicable, under the provisions of Articles 113-6 and 113-7 of the Penal Code;

Moreover, the prosecution of offences committed outside the territory of the French Republic may be initiated only upon application by the Public Prosecutor's Office, pursuant to Article 113-8 of the Penal Code; and whereas in these proceedings the Public Prosecutor's Office submitted that the complaint with civil-party application was inadmissible.

The application notes that the offences of misuse of corporate assets and complicity in the misuse of corporate assets are applicable only to commercial companies incorporated under French law; and whereas the alternative characterizations of breach of trust and complicity in breach of trust cannot be applied for the reasons already set forth;

Consequently, in the view of the Paris Public Prosecutor, the facts under investigation, assuming them to be established, may be characterized only as money laundering or handling offences; and whereas the laundering or handling in France of an asset obtained through an offence committed abroad by a foreign national and not subject to French law is punishable in France, provided, however, that the elements of the original offence are identified;

The Public Prosecutor's Office requested the investigating judges to find that the facts under investigation may be characterized only as money laundering or handling offences, as provided for in Articles 324-1 and 321-1 of the Penal Code and punishable thereunder.

The customs and tax authorities provided numerous pieces of information, which were gradually added to the case file and gave rise to applications to extend the investigation, on account of facts that did not appear in the initial complaint with civil-party application, which new facts gave rise to an application to extend the investigation dated 31 January 2012 (D393), for handling offences and/or money laundering, in view of the memorandums transmitted by Tracfin on 7 March 2011 and 18 March 2011, the memorandum prepared by the DN[R]ED (the national directorate for intelligence and customs inquiries) on 7 March 2011 and a report from the OCRGDF dated 4 October 2011.

On 2 March 2012, a second application to extend the investigation was submitted for handling offences and/or money laundering in connection with renovation works performed until 31 July 2011 by SCI Les Batignolles on a property located at 109 boulevard du Général Koenig in Neuilly-sur-Seine — facts not cited in the original complaint with civil-party application — on the basis of a notification from Tracfin dated 26 May 2011 and two reports from the OCRGDF dated 7 and 29 February 2012.

On 14 December 2012, the Gabonese Republic, through its counsel (Messrs. Maisonneuve and Arama), filed a civil-party application (D37) which did not elicit any observations from the Public Prosecutor's Office.

On 1 February 2011, Mr. David Djaka Gondi filed a civil-party application in his capacity as *Roi du Parord*. On 23 February 2011, this complaint was declared inadmissible; the individual concerned appealed the decision and the *Chambre de l'instruction* confirmed the inadmissibility of the complaint.

Mr. Gregory Ngbwa Minsta, a Gabonese national, filed a civil-party application in his capacity as a taxpayer.

On 8 May 2009, the senior investigating judge declared the application inadmissible, which decision is final (judgment of this court dated 19 October 2009).

On 2 February 2012, a Note Verbale from the Ambassador of Equatorial Guinea in France and a letter from the Public Prosecutor of that State were produced, with the letter certifying:

(1) that the existence of facts relating to those declared in Transparency International France's complaint, which could be characterized as the criminal offence of misappropriation of public funds, had not been established;

(2) that it had been verified that the logging company Somagui, which is composed entirely of private shareholders, focused on commercializing legitimate commercial products, which is the reason why the State of Equatorial Guinea had not claimed damages arising from the misappropriation of public funds. A copy of a letter dated 28 April 2011, sent to the Minister for Foreign Affairs, was also produced for the purpose of challenging the French courts' jurisdiction to entertain a case in violation of international law and the essential principles deriving therefrom (sovereignty and non-interference).

Olivier La Chapelle, General Manager of the insurance brokerage ASCOMA, was heard on 3 May 2012 (D755). The company ASCOMA JUTHEAU insured Mr. Teodoro NGUEMA OBIANG's collection of vehicles, and, in this connection, had 18 contracts for his personal vehicles; the most recent payment was made by its client on 21 February 2011, with Foch Service handling these payments, although in November 2009 and June 2010, payments of €61,515.31 and €101,732,796 were made by SOMAGUI.

The OCRGDF's investigations showed that Mr. NGUEMA OBIANG (son) used the bank accounts of SOCAGE, SOMAGUI FORESTAL and EDUM SL to pay for his own personal expenses.

After the Spanish newspaper El País published, in June 2012, an article on corruption in Equatorial Guinea — in the logging industry in particular — several Spanish nationals identified as having founded SOMAGUI FORESTAL were heard in November 2012 pursuant to an international letter rogatory (D947/3). However, to date, the documents produced in response to the request for mutual assistance have not been returned for inclusion in the case file.

The testimony of Didier MALYSKO (D533), Teodoro NGUEMA OBIANG's house manager from November 2006 to July 2009, was revealing with regard to Mr. NGUEMA OBIANG's lifestyle, extravagant spending and assets. His employment contract shows that he was employed by the Ministry of Agriculture and Forestry of Equatorial Guinea. One of his bank statements shows that he received a transfer in the amount of €4,963.15 from SOMAGUI FORESTAL on 12 March 2009 (D533/11). Both he and the chef, Joël CRAVELLO (D532), state that they saw suitcases filled with cash that was spent in Paris or the United States, where the two domestic employees would accompany Mr. NGUEMA OBIANG.

In execution of the letter rogatory of 9 December 2010, the investigations into SARL Foch Service, located at 14 avenue d'Eylau in the 16th arrondissement of Paris, with its business address formerly at 42 avenue Foch in the 16th arrondissement of Paris, established that: Foch Service is a single member SARL (limited liability company) with a capital of €10,000, created in June 2007, whose purpose is to provide business and management consulting, and its chief executive (*gérante*) is [Aurélie] DERAND (D434/1). All 500 shares of the company are held by GANESHA HOLDING, which is governed by Swiss law (D437). The records of Foch Service were found at the premises of INFINEA, at 30 boulevard Pasteur in the 15th arrondissement of Paris (D470/2 to D470/6), in the presence of Ms DELAURY and Mr. BAAROUN.

The investigations relating to Mourad BAAROUN established that he was born in Tunisia in 1967, that he lives in Montrouge, that he owns a Peugeot 206, which was searched, and that he handled the insurance policies for the Porsche and Mercedes vehicles in the name of Teodoro NGUEMA OBIANG (D471).

Ms DELAURY was born in 1971, is married and has one child, who was born in 2010. She was appointed as SARL Foch Service's chief executive (*gérante*) and company secretary.

As an employee of the company, she earned €5,037 per month for these two functions, which salary was paid by a Swiss bank. She was unemployed and registered at the national employment agency when she was hired in 2010 by the actual chief executive (*gérant*) of Foch Service, Mr. WENGER, who would order transfers to be made and would instruct her by telephone to prepare quotes for works. She did not manage the domestic staff. She did not have powers of attorney on bank accounts. She succeeded Mr. WENGER following his removal from the company for embezzlement, after he left with a company chequebook and debit card. Her functions as chief executive (*gérante*) were actually those of an administrative secretary and they effectively made up for Mr. Wenger's shortcomings in managing the accounting and the administrative and tax matters relating to the property located at 42 avenue Foch, the company's sole shareholder being the Swiss company GANESHA, which paid the employees' salaries and handled the financing of the company, which was in liquidation.

With regard to SOMAGUI FORESTAL, Ms D[EL]AURY stated that it rented premises in the property's triplex to GANESHA. In sum, Ms D[EL]AURY received instructions for running and managing Foch Service from GANESHA, which was represented by the firm PYTHON & PETER, which was itself represented by Mr. HOFFMAN, it being further specified that her employment contract had been signed by Mr. BAAROUN, who served as chief executive (*gérant*) for two to three months (D468).

On 27 February 2013, by virtue of an application to open an investigation dated 1 December 2010 and an application to extend the investigation dated 19 February 2013, Ms Aurélie DELAURY, néé DERAND, as the chief executive (*gérante*) of SARL Foch Service, was placed under judicial examination (D944) for complicity in laundering misused corporate assets or the proceeds of breach of trust or misappropriated public funds, in relation to acts committed by Teodoro NGUEMA OBIANG against the companies SOMAGUI FORESTAL and EDUM.

She stood by the statements she had made to the police and challenged the validity of her placement under judicial examination (D943-944).

On 1 December 2012, by virtue of an application dated 1 December 2010 and applications to extend the investigation dated 31 January and 2 March 2012, Mourad BAAROUN was placed under judicial examination for complicity in laundering misused corporate assets or the proceeds of breach of trust, and concealment of that offence (D895). He stood by the statements he had made while in police custody (D895).

He was placed under judicial supervision with bail set at €7,500, which he paid.

While in custody, he confirmed that Teodoro NGUEMA OBIANG (son) led a luxurious lifestyle in Paris and abroad. He did not dispute the fact that SOMAGUI and EDUM paid for expenses incurred by Teodoro NGUEMA OBIANG in France and made payments in cash.

He was the chief executive (*gérant*) of FOCH SERVICE for a few months following the departure of Mr. WENGER, but did not give any orders or carry out any acts of management […] which received several million euros from Guinean companies, in particular SOMAGUI, whose functioning he knew nothing about. He did not believe that he was in a position to question his boss, Teodoro NGUEMA OBIANG, about the source of the funds received or how his companies were managed.

FOCH SERVICE managed all of the expenses relating to the property at 42 avenue Foch, and paid Mr. BAAROUN wages of €3,500 per month. He ran errands, became a driver and was responsible for the collection of vehicles.

Mr. BAAROUN and ASCOMA had entered into a referral agreement providing for a 20 per cent referral fee (D755/5).

In its report of 30 January 2013, the OCRGDF noted that this same extravagant spending, arising from the presumed continuation of the fraudulent activities, continued in 2010 and 2011. With regard to acts concerning the SASSOU NGUESSO family, a search conducted at FRANK EXPORT (carriage of goods from France to Africa) and the discovery of invoices and bank documents suggested that, from 2005 to the end of 2011, the company had acted as a bank by paying invoices that were inconsistent with its company purposes — for example, an invoice dated 17 September 2011 from an upholsterer, Mr. BELLET, relating to the restoration of the SCI Les Batignolles property, which was the residence of Mr. and Ms JOHNSON. Similar discoveries were made during investigations with a notary in Nice, through the interior decorating firm ATELIER 74, which, on behalf of the late Omar BONGO, had purchased townhouses for approximately €50 million and financed their restoration (D897).

These facts gave rise to the application to extend the investigation dated 19 February 2013.

In a letter dated 28 March 2012 (D609), Teodoro NGUEMA OBIANG MANGUE's counsel expressed their astonishment at the investigating judges' intention to issue an arrest warrant against their client —who had been duly summoned through them and whose address for service was at the offices of one of them — in his capacity as State Minister for Agriculture and Forestry and, since 13 October 2011, Deputy Permanent Delegate of the Republic of Equatorial Guinea to UNESCO, and they argued that such a warrant was possibly illegal and irregular, given that their client had not absconded but rather was precluded from complying with a summons to attend a first appearance because of his status and because of the refusal of the Republic of Equatorial Guinea in this regard, as expressed in a letter dated 27 February 2012.

On 22 May 2012, the investigating judges sent Mr. Teodoro NGUEMA OBIANG MANGUE, via the Ministry of Foreign Affairs, in accordance with Article 656 of the Code of Criminal Procedure, a summons to attend a first appearance on 11 July 2012, in view of the judgment of the *Chambre criminelle* of the *Cour de cassation* dated 9 November 2010 and an application to extend the investigation dated 31 January 2012, in order to be heard on counts of laundering the proceeds of the offences of misuse of corporate assets, misappropriation of public funds, the unlawful taking of interest and breach of trust.

On 20 June 2012, the Ministry of Foreign Affairs informed the judges of the difficulties encountered in transmitting the summons — given that the status of the person concerned had changed, since the President of the Republic of Equatorial Guinea had appointed him as Second

Vice-President in charge of Defence and State Security — and notified them that the summons should be sent by means of international mutual assistance in criminal matters, using diplomatic channels.

In a letter dated 10 July 2012, the counsel confirmed, in reference to the previous letter, that it was impossible for Teodoro NGUEMA OBIANG MANGUE to comply with the summons.

On 11 July 2012, the counsel for the Republic of Equatorial Guinea reminded the investigating judges that Teodoro NGUEMA OBIANG MANGUE enjoyed full immunity, producing copies of two decisions of the *Cour de cassation*, dated 31 March and 13 November 2001, in support of his argument. That same day, the judges made a record of Teodoro NGUEMA OBIANG MANGUE's failure to appear, and, on 13 July 2012, they issued a warrant for his arrest.

The terms of the application for annulment

A. On its admissibility

Teodoro NGUEMA OBIANG MANGUE seeks to demonstrate the admissibility of this application for annulment and the nullity of the arrest warrant issued against him, on the grounds that, as Vice-President of the Republic of Equatorial Guinea, he enjoys full immunity from jurisdiction, which precludes any prosecution before French courts.

According to the defence, the first and foremost consideration is the plea of immunity under customary international law. The provisions of Article 173 of the Code of Criminal Procedure must be set aside, because the issuance of an arrest warrant violates international public policy. Reasoning by analogy, the defence contends that the *Chambre criminelle* of the *Cour de cassation* accepted an extended right of appeal in respect of pleas based on diplomatic immunity (*Crim*. 5 March 1985, No. 84-92.155) or parliamentary immunity (*Crim*. 5 July 1983, No. 82-92.777). Moreover, the same court, on the basis of the absolute immunity from jurisdiction afforded to holders of high-ranking office in a State under customary international law, found that prosecution was not possible, particularly for reasons of international public policy (*Crim*. 21 March 2001, 13 November 2001 and 19 January 2010), and cited the judgment of the *Chambre criminelle* of the Paris *Cour de cassation* of 16 June 2009, which reached a finding of nullity under Article 206 of the Code of Criminal Procedure. Reference is also made to the Judgment of the International Court of Justice of 14 February 2002.

The requirement to consider this application is based on Articles 6 (1) and 13 of the European Convention on Human Rights (ECHR), which reserve the possibility of access to a judge within a reasonable time and the right to an effective remedy before a national court, that Convention being directly applicable in domestic law. It is recalled that the ECtHR has held that there was a breach of Article 6 (1) of the Convention in connection with the inadmissibility of an appeal on points of law, on grounds connected with the applicant's having absconded, which amounted to a disproportionate sanction, having regard to the signal importance of the rights of the defence and of the principle of the rule of law in a democratic society (ECtHR, 23 November 1993, *P[oi]trimol* v. *France*).

The Law of 9 March 2004 made it possible for legally represented witnesses to bring an action for annulment, and the *Chambre criminelle* has accepted that a person placed in detention in a foreign country, pending extradition pursuant to an international arrest warrant issued by a French judge, may contest its validity by means of an application for annulment (*Crim*. 7 November 2000).

Furthermore, the *Chambre criminelle* has found that arrest warrants constitute a prosecution measure, in so far as they enable the investigating judge to make a subsequent determination in a

case as it stands (*Crim*. 19 January 2010, No. 09-84.818), and the provisions of Article 134 of the Code of Criminal Procedure are similar, in that they state that if the wanted person cannot be taken into custody, he or she will be deemed to be under judicial examination pursuant to Article 176 of the Code of Criminal Procedure.

B. On the absolute immunity from jurisdiction and inviolability enjoyed by Mr. Teodoro NGUEMA OBIANG MANGUE

After outlining the various stages of the proceedings up to the judgment of the *Chambre criminelle* of the *Cour de cassation* of 9 November 2010, the applicant, Mr. Teodoro NGUEMA OBIANG MANGUE, born on 25 June 1968, Minister of State and Deputy Permanent Representative of the Republic of Equatorial Guinea at UNESCO, states that, on 23 January 2012, he was summoned for questioning at first appearance on 1 March 2012, the investigating judges applying the provisions of Article 656 of the Code of Criminal Procedure and requesting, via the Ministry of Foreign Affairs, the consent of the Government of the Republic of Equatorial Guinea, which was denied in a letter from its Embassy dated 27 February 2012.

On 13 and 23 February 2012, the investigating judges searched the premises of the property at 40/42 avenue Foch in Paris, which were designated as being for diplomatic use.

On 21 May 2012, Mr. Teodoro NGUEMA OBIANG MANGUE was appointed Second Vice-President of the Republic of Equatorial Guinea, in charge of Defence and State Security.

Notwithstanding this status, he was issued a second summons on 22 May 2012 for questioning at first appearance on 11 July 2012.

On 10 July 2012, citing the provisions of Article 656 of the Code of Criminal Procedure, the Embassy of Equatorial Guinea responded that the person summoned was unable to comply with the summons.

On 13 July 2012, an arrest warrant was issued against Teodoro NGUEMA OBIANG MANGUE.

International custom bars the prosecution of holders of high-ranking office in a State — incumbent Heads of State, in particular — before the criminal courts of a foreign State (see the Judgment of 14 February 2002 of the International Court of Justice in *Democratic Republic of the Congo* v. *Belgium*); the *Chambre criminelle* of the *Cour de cassation* issued a decision to the same effect (*Cass. Crim*. 13 March 2001, 13 November 2001 and 19 January 2010, No. 09-84.818).

In the present case, Mr. Teodoro NGUEMA OBIANG MANGUE was appointed Second Vice-President in charge of Defence and State Security on 21 May 2012. The specific nature and exercise of those functions clearly mark them out as those of a high-ranking official, akin to those of a Head of State or Head of Government. Consequently, he must enjoy absolute immunity of jurisdiction, whereas the arrest warrant issued against him on 13 July 2012, which allows for investigations and detention, runs counter to these principles of immunity. The only course open to the court is to annul the arrest warrant that was issued in violation of international customary rules and rules of public policy.

The Public Prosecutor argues that this application is inadmissible, since Mr. Teodoro NGUEMA OBIANG MANGUE is the subject of an arrest warrant in these proceedings and he therefore does not have the status of a party to the proceedings (*C. Crim*. 19 January 2010, BC No. 9, and *C. Crim*. 28 April 2011, BC No. 86).

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In a written statement duly filed on 3 April 2013, Mr. William Bourdon, counsel for Transparency International France, maintains that the arrest warrant issued against Mr. Teodoro Nguema Obiang Mangue on 13 July 2012 is valid.

He contends that Mr. Teodoro Nguema Obiang Mangue is not a party to the proceedings within the meaning of Article 173 of the Code of Criminal Procedure and cannot therefore invoke the nullity of the arrest warrant issued against him (*Cour de cassation*, 19 January 2010); consequently, his application must be declared inadmissible.

He notes that, as regards corruption, the Merida Convention of 31 October 2003, to which Equatorial Guinea is not a party, departs from custom by strictly limiting absolute immunity from jurisdiction. This Convention should be taken into account for Heads of States which are not parties thereto, with regard to immunities arising from international custom.

The civil-party applicant then cites the judgment of the *Chambre criminelle* of 19 March 2013, arguing that the investigating judge must investigate all of the facts set out in the complaint and that this duty does not conflict with the immunity from jurisdiction enjoyed by foreign States and their representatives (*Cass. crim.*, 19 March 2013, No. 1086 — Exhibit 1).

Lastly, Transparency International France considers that the diplomatic immunity obtained by Teodoro Nguema Obiang Mangue is a ploy intended to enable him to avoid prosecution. The association cites two judgments of the *Cour de cassation* of 8 April 2010 (No. 09-88.675), which rejected the argument that a country's permanent representative at UNESCO could be protected by the inviolability of that status.

By the written statement of her counsel constituting an application for annulment, Ms DELAURY contests her placement under judicial examination. At the age of 42, with a vocational training certificate (BTS) as an administrative assistant, a two-year undergraduate degree (DEUG) in English, and having been unemployed for several months, she found the job in question through the postings at the national employment agency. She was interviewed by Pierre-André WENGER, in his capacity as chief executive (*gérant*) of FOCH SERVICE. Subsequent to Mr. WENGER's acts of embezzlement and removal from the company, Ms DELAURY was offered the possibility of taking over the functions of chief executive, which she did from January to December 2011.

In the main, the defence considers that her placement under judicial examination must be annulled, because it violates international law and stems, in particular, from multiple violations of the immunities granted to the Head of State (of the Republic of Equatorial Guinea) and two representatives of a sovereign State. The Defence stands behind the applications of the principals concerned in asserting that they cannot be prosecuted, that the proceedings against them must be annulled in full and that, consequently, the judicial examination of Ms DELAURY must also be annulled, with regard to whom there is, moreover, no strong corroborating evidence to justify her placement under judicial examination on 27 February 2013 (D944) for complicity in laundering misused corporate assets, the proceeds of breach of trust or misappropriated public funds, since the misuse of corporate assets was committed against SOMAGUI FORESTAL or EDUM, or the State of Equatorial Guinea.

The facts referred to the investigating judges concern only the offences of handling and laundering in France of assets paid for out of misappropriated public funds, offences which were themselves facilitated by corrupt practices but which are distinct from the offence of corruption, according to Transparency International France's complaint with civil-party application — an argument which, in itself, can justify its *locus standi*, as held by the *Cour de cassation*.

However, SOMAGUI FORESTAL and EDUM are companies governed by the private law of Equatorial Guinea; the investigating judges cannot investigate the handling and laundering of

misused corporate assets or the proceeds of breach of trust, which are, in essence, original offences relating to private funds. Therefore, Ms DELAURY's placement under judicial examination could only be based on facts involving public funds; the only possible finding for the court is that this was not so, having regard to the aforementioned judicial examination and the order of attachment under the Code of Criminal Procedure dated 19 July 2012, in respect of the property on avenue Foch, since its operating costs were paid for by SOMAGUI FORESTAL, a private company.

Lastly, the element of intent is lacking: Ms DELAURY was never aware, nor did she know, that the funds at FOCH SERVICE's disposal were derived from any form of money laundering, supposing it to be established; she never had to attend to the company's management or accounting.

By a duly filed written statement constituting an application for annulment, counsel for Mr. BAAROUN asks the court to annul his judicial examination.

Mr. BAAROUN was employed by SARL FOCH SERVICE and indirectly worked for each of the principal applicants in these proceedings. He was hired as a driver and to oversee Mr. Teodoro NGUEMA OBIANG MANGUE's collection of vehicles. As a favour to the latter, Mr. BAAROUN twice agreed to serve as the interim chief executive (*gérant*) of SARL FOCH SERVICE, for a total period of less than one year. In reality, he acted only as an attendant. Any prosecution against him as an accomplice would be unfounded in the absence of prosecution against the principal perpetrator.

By a written statement of 3 April 2013, Teodoro Nguema Obiang Mangue, through his counsel, recalls the course of the proceedings: his summons of 23 January 2012 for questioning at first appearance, even though he is the Permanent Representative of the Republic of Equatorial Guinea at UNESCO; the letter of 27 February 2012 from his Embassy stating that he will not respond to the summons; the search of the property on avenue Foch; his appointment on 21 May 2012 as Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and Security; the second summons of 22 May 2012, sent in violation of that status, for an appearance on 11 July 2013; and the letter from his counsel dated 10 July 2012, informing the investigating judges that Teodoro Nguema Obiang Mangue could not comply with the summons.

The defence refers to its application in arguing that the court has an imperative duty to consider the plea of immunity under customary international law, which has been violated in the present case, given that the *Cour de cassation* accepted an extended right of appeal in respect of pleas based on diplomatic immunity (5 March 1985), as did the *Conseil constitutionnel* (decision No. 2011/153, application for a priority preliminary ruling on an issue of constitutionality, 13 July 2011). According to the defence, by analogy, this legal rationale can be applied to Article 173 of the Code of Criminal Procedure.

The defence recalls that the *Chambre criminelle* of the *Cour de cassation* has established that, having regard to international public policy, the prosecution of officials is impossible (*Crim.* 13 March 2001 No. 00-87215, 13 November 2001 No. 01-82 440 and 19 January 2010 No. 09-84818). Under Article 206 of the Code of Criminal Procedure, the *Chambre d[e l]'instruction* has the right or duty to consider the regularity of proceedings. The issuance of the arrest warrant violated customary international law and Article 6 (1) of the ECHR (ICJ, 14 February 2002, *DRC* v. *Belgium*). Under Article 13 of the same Convention, immediate consideration of the present appeal is possible. This appeal seeking annulment is *a fortiori* possible from a legal standpoint, since Law No. 2004-204 of 5 March 2004 enables a *témoin assisté* (legally represented witness) to submit an application for annulment, in the same way as the *Chambre criminelle* of the *Cour de cassation* recognized that a person placed in detention in a foreign country pending extradition pursuant to an arrest warrant issued by a French investigating judge had the same right, pursuant to Article 5 (4) of the ECHR (*Crim*. 7 November 2000). The defence

notes that the *Cour de cassation* took the opposite position in its judgment of 19 January 2010 (No. 09-84818), even though it deems an arrest warrant to be a prosecution measure.

Concerning the merits, as regards the nullity of the proceedings, the defence refers to its application: any procedural measure that violates State sovereignty or diplomatic immunity must be annulled, without it being necessary to demonstrate the existence of a grievance, and international custom bars the prosecution of States before the criminal courts of a foreign State, this immunity extending to organs and entities which are an emanation of that State, and to their agents, in respect of acts which, as in the present case, fall within the sovereignty of the State concerned. It should be noted that treaties and agreements take precedence over domestic laws. Under the Vienna Convention, the *Chambre d[e l]'instruction* has a duty to annul the arrest warrant, as the *Chambre criminelle* of the *Cour de cassation* has ruled on several occasions (5 March 1958, 13 March 2001 and 23 November 2004).

In the present case, the Republic of Equatorial Guinea is a victim of the violation of Article 2, paragraph 1, of the United Nations Charter, cited in the applications, resolution 2131 (XX) of 20 December 1965 and resolution 2625 (XXV) of 24 October 1970 of the United Nations General Assembly establishing the principle of non-interference in the internal affairs of other States — a violation arising from the opening of a judicial investigation in France to prosecute public acts of another sovereign State, with the result that any prosecution or investigative measures relating to the Head of State of Equatorial Guinea or its high-ranking representatives must be annulled.

The immunity of the Head of State and high-ranking State representatives was violated by the opening of the investigation. Those proceedings violate the rules of international custom established by the Judgment of [14] February 2002 of the International Court [of Justice]; the same applies for a Minister for Foreign Affairs. Unless an international convention provides otherwise, this immunity is absolute with regard to foreign Heads of State and holders of high-ranking office in a State, regardless of the gravity of the crime alleged. Article 2 of the Merida Convention signed on 9 December 2003, which Equatorial Guinea has neither signed nor ratified, cannot be invoked against this principle. The principle of full immunity is also laid down in the resolution of 26 August 2001 adopted [by the Institut de droit international] at the Vancouver session.

The preliminary investigation and subsequent judicial investigation, which were opened following complaints in which Teodoro OBIANG NGUEMA MBASOGO was specifically named, violated the immunity from criminal process he enjoys as Head of State. Although the *Cour de cassation* reaffirmed the investigating judges' duty to investigate (*C. Crim*. 19 December 2012 and 19 March 2013) — regardless of whether the person is a foreign or French Head of State — they nonetheless cannot carry out investigative measures, the purpose or consequence of which is to undermine the immunity enjoyed by foreign Heads of State, as envisioned by legal scholars and the French Constitution; and yet the President of Equatorial Guinea was investigated regarding his property in Ville d'Avray.

This same immunity — as regards its principle and scope — must be enjoyed by Teodoro NGUEMA OBIANG MANGUE, the son of the Head of State and, more importantly, the Second Vice-President of the Republic of Equatorial Guinea. However, he has been and is currently the subject of investigative measures, including the issuance of an arrest warrant against him. The *Cour de cassation* has upheld international custom and annulled two arrest warrants issued against high-ranking Senegalese representatives in pursuance of that immunity, which they continued to enjoy after leaving office (*C. Crim*. 19 January 2010). In the present case, Teodoro OBIANG NGUEMA MBASOGO, who has served as Minister for Agriculture and Forestry since 1997 and Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security since 21 May 2012, must enjoy the same immunity, in accordance with the same rules.

Nonetheless, the summons for judicial examination, which paves the way for placement under judicial supervision or even placement in pre-trial detention, and is already inconsistent with these rules, constituted a serious violation of the aforementioned principles, and the same can be said of the issuance of an arrest warrant on 13 July 2012, in the absence of any response to a second summons to appear on 21 May, that is, the day after the person concerned was appointed to his new office, even though the *Cour de cassation* (sitting in plenary on 10 October 2001) ruled that an investigating judge could not summons the President of France as a witness, on account of the immunity attached to his office. The arrest warrant in question must therefore be annulled.

Lastly, the premises of a diplomatic mission and the property thereon also enjoyed immunity, which was also violated in the present case, in breach of the provisions of Article 22 of the Vienna Convention; these premises were searched, the movable property was seized and the immovable property was also attached, even though the building at 40-42 avenue Foch had become the property of the Republic of Equatorial Guinea on 15 September 2011 and that State's Embassy had, by Note Verbale of 4 October 2011, officially notified the French Ministry of Foreign Affairs that it was using the premises for the purposes of its diplomatic mission.

The refusal of the Ministry's Protocol Department is contrary to the Vienna Convention, since the designation of the premises is subject to a declaratory régime. Accordingly, the court must annul all of the search and attachment measures relating to the building or the movable property thereon, as well as the order of attachment under the Code of Criminal Procedure dated 19 July 2012.

Lastly, the defence contends that the investigating judges exceeded the scope of the case referred to them with regard to the characterizations set forth in their order of 26 September 2012, which were taken up by the Public Prosecutor in his submissions for that hearing. The investigating judges are considered to be investigating two sets of facts:

— the handling and laundering of public funds (misappropriation of public funds);

— the handling and laundering of private funds (misuse of corporate assets and breach of trust) originating from SOMAGUI FORESTAL.

Recalling the Public Prosecutor's submissions, the sole purpose of which was to note the inadmissibility of the civil-party application, the absence of submissions from the Public Prosecutor requesting or declining to open an investigation, and the judgment of 9 November 2010 of the *Chambre criminelle* defining the scope of the case in the following supporting reason: "assuming them to be established, the offences under investigation, in particular the handling and laundering in France of assets paid for out of misappropriated public funds, offences which were themselves facilitated by corrupt practices but which are distinct from the offence of corruption, are likely to cause direct and personal harm to the association Transparency International France, on account of the specific object and purpose of its mission", the defence is of the view that the scope of the case is limited to the facts relating to the misappropriation of public funds or the use in France of misappropriated public funds. Transparency International France's civil-party application is said to be inadmissible with regard to the use of misappropriated private funds, and yet the investigating judges primarily focused and carried out their investigations in respect of facts relating to the use of misappropriated private funds, such as those originating from SOMAGUI FORESTAL, and they relied on those facts alone as grounds for the order of attachment under the Code of Criminal Procedure dated 19 July 2012, which order should be annulled.

In the submissions, the court is requested:

— to find that the applicant enjoys absolute immunity from jurisdiction as Second Vice-President of the Republic of Equatorial Guinea;

— to find that the judicial investigation opened in France by the Paris *Tribunal de grande instance* violates the principle of non-interference in the internal affairs of another State and the principle of the sovereignty of that State, and violates the principle of sovereign equality of States;

— to declare the nullity of all of the prosecution and investigative measures relating to Teodoro NGUEMA OBIANG MANGUE and, consequently, the nullity of the arrest warrant issued against him.

Having regard to the foregoing

1. On the admissibility of an application for annulment of an arrest warrant, submitted by the person who is the subject of the warrant

Whereas it is established case law (*C. Ch. Crim*. 27 September 2002 and 17 December 2002) that, under the third paragraph of Article 134 of the Code of Criminal Procedure, a person against whom an investigating judge has issued an arrest warrant, prior to any questioning, does not have the status of a person placed under judicial examination; whereas, moreover, the purpose of such a warrant is not to determine a criminal charge, but only to ensure that the person named in the arrest warrant obtains legal representation, so that, *inter alia*, the person can be questioned; whereas it follows that, in so far as he or she is not deprived of his or her liberty as a result of the arrest warrant, the person concerned does not, under domestic legislation or under the provisions of Articles 5, 6 or 13 of the European Convention on Human Rights, have the right to submit an application for annulment of the said warrant to the *Chambre de l'instruction*;

Whereas it follows from the provisions of the same text that a person who has absconded and cannot be found during the investigation does not have the status of a party within the meaning of Article 175 of the Code of Criminal Procedure;

Whereas Teodoro NGUEMA OBIANG MANGUE did not have the status of a party to the proceedings either on the date the arrest warrant was issued against him, that is, 13 July 2012, or on the date the application for annulment of the arrest warrant was filed, that is, 22 November 2012; whereas, therefore, the application under Article 173 of the Code of Criminal Procedure must be declared inadmissible, the applicant's reasoning by analogy not being acceptable in criminal proceedings; whereas, moreover, Articles 5, 6 (1) and 13 of the ECHR are not applicable in the case of an appeal against an arrest warrant, the sole purpose of which is to ensure that the person concerned obtains legal representation; whereas, in the present case, the order closing the investigation and, more specifically, the ultimate fate of the applicant, are unknown; and whereas, lastly, since the person has not been deprived of his liberty, Article 5 (4) of the Convention is also not applicable (*Ch. Crim*. 17 December 2002);

2. On the regularity of the procedural measures, including, in particular, the issuance of the arrest warrant against Teodoro NGUEMA OBIANG MANGUE

Whereas the *Chambre d[e l]'instruction*, under the provisions of Article 106 of the Code of Criminal Procedure, subject to the provisions of Articles 173-1, 174 and 175 of the same code, has the power to consider and rule on pleas for nullity submitted to it by one or more parties to the proceedings;

Whereas in challenging the regularity of the arrest warrant issued against Teodoro NGUEMA OBIANG MANGUE on 13 July 2012, his counsel relies on the principle of absolute immunity from jurisdiction and the inviolability he enjoys in his triple capacity as Minister for Agriculture and Forestry, Deputy Permanent Representative of the Republic of Equatorial Guinea at UNESCO and, since 21 May 2012, Second Vice-President of that State, in charge of

Defence and State Security, which functions are clearly high ranking, with the aim of precluding all prosecution before the criminal courts of a foreign State, as established by custom and international law;

Whereas, with regard to this argument, the court responded in a separate judgment delivered this day (No. 2012/07413) in the following terms:

As regards the violation of the principle of immunity of foreign Heads of State and of high-ranking representatives of the same State, having regard to custom and international law, and more specifically in respect of Mr. Teodoro OBIANG NGUEMA MBANGO, President of the Republic of Equatorial Guinea, and his son Mr. Teodoro NGUEMA OBIANG MANGUE, Minister for Agriculture and Forestry from 1997 to 26 May 2012 and subsequently Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and Security as from 21 May 2012;

Whereas, while international custom, in the absence of international provisions to the contrary, bars the prosecution of States before the criminal courts of a foreign State, a custom extending to organs and entities which are an emanation of that State, and to their agents, in respect of acts falling within the sovereignty of the State concerned, this principle is limited to the exercise of State functions (*Ch. Crim.* 19 January 2010, 14 May 2002 and 23 November 2004);

Whereas in the present case, the acts of money laundering and/or handling offences committed on French national territory in respect of the acquisition of movable and immovable assets for solely personal use are separable from the exercise of State functions protected by international custom under the principles of sovereignty and diplomatic immunity;

Whereas, consequently, there is no merit in the Republic of Equatorial Guinea's claim that [the procedure was irregular with regard to] its Head of State and its Minister for Agriculture and Forestry, who became Second Vice-President of the Republic the day he found out that he had been summoned to appear before the investigating judge to respond to a possible judicial examination and that he was the subject of an international arrest warrant;

Whereas, moreover, by a judgment of 8 April 2010, the *Chambre criminelle* of the *Cour de cassation* had found that, regarding the scope of the diplomatic immunity granted by the Vienna Convention of 18 April 1961 and in light of the Headquarters Agreement of 2 July 1954 between France and UNESCO, diplomatic agents who are nationals of the receiving State enjoy immunity from jurisdiction and inviolability only in respect of acts performed in the course of their duties; whereas this is not the situation in the present case, since the acts attributed to Teodoro NGUEMA OBIANG MANGUE fall exclusively within the scope of his private life in France as set out above;

Whereas the same analysis must prevail with regard to the distinct capacities of Minister for Agriculture and Forestry and Second Vice-President of the Republic of Equatorial Guinea, and whereas it should be noted that the latter capacity was conferred on Teodoro NGUEMA OBIANG MANGUE on 21 May 2012, on which date the procedural measures, such as the initial summons of 22 January 2012, led the individual concerned to expect that he might be placed under judicial examination, or that an arrest warrant might be issued against him, as stated by his counsel on 28 March 2012;

Whereas the investigating judges were therefore justified in issuing an arrest warrant against Teodoro NGUEMA OBIANG MANGUE on 13 July 2012, since he had refused to appear or respond to the two summonses to a first appearance or for placement under judicial examination concerning acts committed in France in the context of his private life;

Whereas, as regards the regularity of the search conducted on the premises of the property at 40/42 avenue Foch, the court ruled on this point in a separate judgment delivered this day (No. 2012/07413);

3. As regards the judicial examination of Ms Delaury, née Derand

Whereas Ms DELAURY, née DERAND, was placed under judicial examination on 27 February 2013 for complicity in handling and laundering misused corporate assets or the proceeds of breach of trust, in her capacity as chief executive (*gérante*) of SARL Foch Service from January to December 2011;

Whereas, while the *Chambre criminelle* of the *Cour de cassation*, in its judgment of 29 November 2010, found that it was possible that Transparency International France had suffered moral harm in respect of the misappropriation of public funds that may have been committed by foreign nationals in the Republic of Equatorial Guinea against the nationals of that State, and authorized a judicial investigation to be opened in Paris; and whereas, on 4 July 2011, the Paris Public Prosecutor's Office limited the scope of the case referred to the investigating judges to handling offences and money laundering, that same Office, by applications to extend the investigation dated 31 January 2012 and 2 March 2012, extended the scope of the case referred to the judges;

Whereas, more specifically, the application of 31 January 2012 to extend the investigation to handling offences and money laundering was submitted after the filing of the OCRGDF report of 25 October 2011 and the Tracfin memorandum of 25 November 2011, relating to the discovery of new evidence concerning Teodoro NGUEMA OBIANG MANGUE and SOMAGUI FORESTAL, a company governed by Swiss law which is based in the Republic of Equatorial Guinea, the movable and immovable assets acquired by Teodoro NGUEMA OBIANG MANGUE and his father in France and, in particular, the acquisition of numerous luxury vehicles between 1990 and 2000 financed by the State company in question, which is specialized in the production and export of timber, and whose chief executive (*dirigeant*) was Teodoro NGUEMA OBIANG MANGUE;

Whereas, in view of a report from the OCRGDF of 30 January 2013 which stated that SOMAGUI had been the sole source of funding of SARL Foch Service, which managed the building at 40/42 avenue Foch, on 19 February 2013 the Paris Public Prosecutor's Office filed a new application to extend the investigation, having regard to a notification order from the investigating judge of 6 February 2013, which expressly referred to the said report;

Whereas, consequently, the scope of the case referred to the investigating judges was duly extended to include the aforementioned facts;

Whereas, moreover, as determined in a separate judgment delivered this day (No. 2013/07413), the French courts' lack of jurisdiction to entertain these facts should have been the subject of an objection to jurisdiction, to which the judges should have responded in the form of an order subject to appeal; whereas this principle applies to Ms DELAURY, who has no grounds to raise this issue by means of an application for annulment;

Whereas, however, on the merits, the factual arguments put forward by her defence to contest her judicial examination are relevant; whereas in light of the fortuitous circumstances in which Foch Service hired Ms DELAURY for secretarial, administrative, accounting and fiscal functions in respect of the property on avenue Foch, the functions of manager being performed by GANESHA, which, among other things, handled payments of all kinds using funds from SOMAGUI FORESTAL, in respect of which the investigation did not establish that she was aware of its activity, the identity of its chief executive or the source of the funds used to make these

payments, while Teodoro NGUEMA OBIANG MANGUE made the investment decisions relating to the property, the court notes that she did not perform executive or management functions;

Whereas, consequently, the judicial examination ordered against Ms DELAURY, née DERAND, on 27 February 2013 must be annulled, this person therefore holding the status of *témoin assisté* (D944/1 to D944/3), the term *mise en examen* being replaced with *témoin assisté* (D944/3); whereas the judicial supervision measure ordered that same day shall be lifted and annulled;

4. As regards the judicial examination of Mr. Mourad BAAROUN

Whereas, having been held in police custody on 18 and 19 December 2012, Mourad BAAROUN was placed under judicial examination for complicity in laundering misused corporate assets or the proceeds of breach of trust for acts committed by Teodoro NGUEMA OBIANG MANGUE against the Equatorial Guinean company SOMAGUI FORESTAL between 2007 and 2011, in his capacity as the *de facto* or *de jure* chief executive (*gérant*) of SARL Foch Service, for making payments or having payments made to employees and suppliers and for service charges and costs of domestic staff assigned to the property at 40/42 avenue Foch, for a total of €2.8 million originating from SOMAGUI FORESTAL (D895);

Whereas, according to his statements, he made those payments with the authorization of Teodoro NGUEMA OBIANG MANGUE, after receiving approval by e-mail, and did not make the financial links between SOMAGUI FORESTAL and those payments, noting only the transfer of funds;

Whereas it follows from the description of his functions on the whole, as recounted above, that he did not perform any actual executive, supervisory or management functions at SARL Foch Service; whereas he did not know what SOMAGUI FORESTAL was and that the funds originated from there; and whereas his statements reflect the existence of a relationship of subordination between Mr. BAAROUN and his actual employer, Teodoro NGUEMA OBIANG MANGUE, which removes any moral element of complicity from his actions;

Whereas, consequently, the judicial examination ordered against Mr. BAAROUN on 19 December 2012 must be annulled, Mr. BAAROUN therefore holding the status of *témoin assisté*, the terms *mise en examen* being replaced with *témoin assisté* (D895/2 and 895/3); whereas the judicial supervision measure ordered that same day shall be lifted and annulled, and the sum of €7,500 paid on 24 December 2012 shall be returned to Mr. BAAROUN;

5. On the delimitation of the facts referred to the investigating judges

Whereas contrary to what the defence claims in its application and written statement, the facts referred to the investigating judges are not limited to the misappropriation of public funds and derivative offences as stated by the *Chambre criminelle* in its judgment of 19 November 2010, and as established by the Paris Public Prosecutor in his application for characterization of 4 July 2011 (see above);

Whereas, on the contrary, the aforementioned applications of 31 January, 3 March 2012 and 19 February 2013 seeking to extend the investigation, in light of the reports by the Central Directorate of the Judicial Police (DCPJ) or Tracfin, extended the scope of the judicial investigation to the facts that were cited in those reports but not mentioned in Transparency International France's complaint with civil-party application, including, in particular, the facts characterized as handling and/or laundering the proceeds of the offences of misuse of corporate

assets or breach of trust committed in France using funds originating from SOMAGUI FORESTAL (see No. 2012/07413, page 18);

Whereas, consequently, the investigating judges acted in a proper manner in the context of the case of which they were seised, while the regularity of the order of attachment under the Code of Criminal Procedure dated 19 July 2012 will be considered in proceedings No. 2012/09047.

FOR THESE REASONS,

THE COURT,

Having regard to Articles 170, 171, 172, 173, 174, 194, 197, 199, 200, 206, 209, 216, 217, 801 and 802 of the Code of Criminal Procedure,

As to the procedure,

DECLARES the application for annulment submitted by Teodoro NGUEMA OBIANG MANGUE inadmissible for lack of standing;

DECLARES the applications for annulment of their judicial examination submitted in the form of written statements by Ms DELAURY and Mr. BAAROUN admissible;

As to the merits,

In accordance with Article 206 of the Code of Criminal Procedure, THE COURT FINDS that there are no grounds for annulling the arrest warrant issued against Teodoro NGUEMA OBIANG MANGUE on 13 July 2012;

DECLARES the application for annulment of the judicial examination of Ms DELAURY well-founded;

DECLARES its annulment and ORDERS the cancellation of the term "*mis en examen*" in document number D.944/3;

FINDS that Ms DELAURY holds the status of *témoin assisté*;

ORDERS the annulment of the order for judicial supervision issued against her on 27 February 2013;

DECLARES the application for annulment of the judicial examination of Mourad BAAROUN well-founded;

DECLARES its annulment and ORDERS the cancellation of the term "*mis en examen*" in document numbers D.815/2 and 895/3.

FINDS that Mourad BAAROUN holds the status of *témoin assisté*;

ORDERS the annulment of the order for judicial supervision issued against him on 19 February 2013 and the return of the sum of €7,500 paid as bail.

ORDERS the annulled measures to be removed from the investigation file and placed on file at the registry of the court and DECLARES that it shall be prohibited to use any information from them against the parties to the proceedings;

FINDS that there are no grounds for annulling any other procedural documents, which are in order up to reference number D960;

ORDERS the file to be returned to the investigating judge to whom the case has been referred, for continuation of the investigation;

ORDERS this judgment to be enforced at the initiative of the Public Prosecutor.

Clerk	**Presiding Judge**
(Signed)	*(Signed)*

Certified true copy

Clerk

_____

ANNEX 5

***Cour de cassation*, judgment of 9 November 2010**

Cour de cassation, judgment of 9 November 2010

[Translation]

The French Republic

in the name of the French people

The *Cour de cassation, Chambre criminelle*, at a public hearing at the *Palais de justice* in Paris, delivered the following judgment:

Ruling on the appeal lodged by:

— The association Transparency International France, civil-party applicant,

against the judgment of the *Chambre de l'instruction* of the Paris *Cour d'appel*, 2nd division, dated 29 October 2009, which declared inadmissible the association's civil-party application in respect of misappropriation of public funds, money laundering, misuse of corporate assets, complicity in each of these offences, breach of trust and concealment;

The court, ruling after a hearing in open court on 26 October 2010, where the proceedings and deliberations were attended, in accordance with the composition provided for under Article 567-1-1 of the Code of Criminal Procedure, by Mr. Louvel, presiding judge, Mr. Straehli, reporting judge, and Mr. Blondet, divisional judge:

Advocate General: Mr. Lucazeau;

Divisional clerk: Ms Krawiec;

On the basis of the report of reporting judge Mr. STRAEHLI, the observations of the *société civile professionnelle* (private law firm) PIWNICA ET MOLINIÉ, counsel before the court, and the submissions of Advocate General Mr. LUCAZEAU, with the counsel of the appellant speaking last;

Having regard to the statement of appeal produced;

On the single ground of appeal, based on the violation of Article 6 of the European Convention on Human Rights; the preamble and Article 35 of the United Nations Convention against Corruption of 11 December 2003; and Articles 2, 591 and 593 of the Code of Criminal Procedure: insufficient and conflicting reasons, and lack of legal basis;

> *"in that the contested judgment declared the civil-party application of the association Transparency International France inadmissible;*
>
> *"on the grounds that, in accordance with Article 2 of the Code of Criminal Procedure: 'a civil action seeking reparation for harm caused by a felony, misdemeanour or petty offence may be initiated by anyone who has suffered personally from the harm directly caused by the offence'; that the civil-party application of an association which is not officially recognized as being in the public interest and has not received special legal accreditation may be admitted if the association can prove that it has suffered personal and direct harm in connection with the alleged offences; that, with regard to the alleged harm, the association Transparency International France, which, under French law, is a legal entity separate from Transparency International, has provided no information on the number of members it has, the origin of its resources or the level of its spending on the*

activities that it claims to pursue, or on its ties to Transparency International Berlin, whereas its charter contains a single article which provides that, in the event of dissolution, the assets of the association will be transferred to Transparency International; that, in these circumstances, none of the evidence allows for an assessment to be made of the rights or obligations it might have with respect to the 90 other accredited national associations or the international secretariat, or of its potential role in the activities carried out abroad by other associations; that the only anti-corruption activities, mentioned primarily in press releases, which can be attributed to the contested civil-party applicant include the dissemination of a newsletter and the organization of a symposium in 2007; that it should be noted that the October 2007 newsletter, distributed by unspecified means, essentially recounts the activities carried out by associations other than Transparency International France and provides information in connection with the normal and ordinary functioning of any association that publishes a bulletin or newsletter; that, with regard to the symposium organized in 2007, no concrete information has been provided on the number of participants, or the expenses incurred and how they were financed; that the document produced in evidence is a summary of various contributions on the topic of the rights of victims of corruption, with an overview of French law and the activities undertaken by other associations, in particular the aforementioned association Sherpa, and that it cannot be determined from the document whether the symposium led to concrete actions involving the association Transparency International France to 'combat and prevent corruption'; that, consequently, the contested decision cannot be approved with respect to this point in so far as there is no evidence that the association Transparency International France commits all of its resources to its fight against corruption and has suffered personal, economic harm caused directly by the offences it alleges; that the absence of supporting evidence does not permit a finding that it is possible that the alleged material harm exists; that the only harm that the association Transparency International France may claim as a result of the perpetration of the offences which are the subject of these proceedings, against which it seeks to campaign, is not personal harm as opposed to detriment caused to the general interests of society, which is redressed by means of criminal prosecution by the Public Prosecutor's Office; that the admissibility of the civil-party application of the association Transparency International France must also be analysed with respect to the specific object and purpose of its mission; that it should be noted that, by sole virtue of the contractual intent of the founders of the association Transparency International France, the association's purpose is to prevent and fight corruption in a very broad sense which encompasses all breaches of probity, in France and abroad, in every sphere of human activity — in particular, politics, public life, the economy, social life and sporting activities — and in the many relationships that may exist between natural and legal persons, whether governed by private or public law; that the association Transparency International France is accordingly seeking to pursue criminal prosecution in this broad area of competence and to obtain authorization to substitute itself for the States concerned and for the legal authority to defend the general interests of society, which, in France, has been assigned to the Public Prosecutor's Office; that the notion of linkage that has been established by the Chambre criminelle *is incompatible with the approach taken by the contested civil-party applicant and supported by the opinions of the distinguished legal experts on which the applicant has based its claims; that, if indeed the notion of linkage is to apply, the admissibility of the action depends on the specific object and purpose of its mission, which presupposes a proximity and relevance that establish a strong and specific link between the association and a category of unlawful conduct that undermines the object and activity of the association; that this is the meaning which should be ascribed to the decisions of the* Chambre criminelle *accepting, for example, the civil-party application of an association for the protection of the environment in a*

limited geographical area, or that of an anti-smoking association with respect to a specific offence that is directly related to its area of activity; that the interpretation put forward by the contested civil-party applicant would have the effect of obviating the purpose of the French legislative and regulatory framework governing the accreditation of associations; that, consequently, although the Public Prosecutor's Office does not have exclusive power to pursue criminal prosecution, and although the object of the association Transparency International France is entirely legitimate, the civil-party application of the association Transparency International France with respect to the defence of the general interests falling within the purview of the Public Prosecutor's Office is not, in these circumstances, admissible; that it is of little importance that the association Transparency International France deemed that it could make assumptions about the forthcoming final decision; that the court rules solely on the basis of the considerations of fact and law concerning the contested civil-party applicant, which is not in the same situation as the civil parties whose applications have been declared admissible by other courts; that the claim relating to alleged discrimination is therefore unfounded; that, lastly, the position of the court does not contravene the international commitments undertaken by France, in so far as the international conventions cited by the contested civil-party applicant — in particular the United Nations Convention against Corruption and the African Union Convention on Preventing and Combating Corruption — trust the signatory States to take action to prevent and fight corruption and to take appropriate and possibly concerted measures that are not limited to legal action;

"1) whereas the civil-party application of an unaccredited association, whose purpose under its charter is to protect collective interests, is admissible if the association has suffered personal harm caused directly by the offence, in accordance with the provisions of Article 2 of the Code of Criminal Procedure; whereas the Chambre de l'instruction *of the* Cour d'appel *noted that the association, whose 'purpose [was to] prevent and fight corruption, encompassing all breaches of probity, in France and abroad, in every sphere of human activity — in particular, politics, public life, the economy, social life and sporting activities — and in the many relationships that may exist between natural and legal persons, whether governed by private or public law', was seeking to defend collective interests and was substituting itself for the legal authority assigned to the Public Prosecutor's Office to defend the general interests of society; whereas in declaring the civil-party application of the association Transparency International France inadmissible because the association defends collective interests, the* Chambre de l'instruction *deprived its decision of a legal basis;*

"2) whereas the legislation does not require an association to obtain express legal accreditation in order for its action to be admissible; whereas such accreditation merely enables associations that have received it to avoid having to prove the existence of harm in order for their action to be admissible; whereas, in order for an unaccredited association's civil-party application to be admissible, it is necessary and sufficient that the alleged offence undermine the interests that the association defends; whereas, in stating that admitting the application of an unaccredited anti-corruption association 'would have the effect of obviating the purpose of the French legislative and regulatory framework governing the accreditation of associations', the Chambre de l'instruction *misconstrued the aforementioned provisions;*

"3) whereas the admissibility of a civil-party application submitted by an association is determined on the basis of the association's purpose and the alleged offence; whereas the Cour d'appel *merely stated 'that if the notion of linkage is to apply, the admissibility of the association's action depends on the specific object and*

purpose of its mission, which presupposes a proximity and relevance that establish a strong and specific link between the association and a category of unlawful conduct that undermines the object and activity of the association'; whereas in ruling on the basis of this general reason without determining the specific unlawful conduct in question, or how it might or might not undermine the purpose of the association, the Chambre de l'instruction *did not justify its decision;*

"4) whereas the admissibility of an association's civil-party application is determined on the sole basis of the purpose of that particular association; whereas it is of little importance whether or not other associations have similar objectives; whereas, in declaring the civil-party application of Transparency International France inadmissible because none of the evidence allows for an assessment to be made of the rights or obligations it might have with respect to 90 other associations, the Chambre de l'instruction *ruled on the basis of inapplicable grounds;*

"5) whereas the Chambre de l'instruction *of the* Cour d'appel *noted that among the activities associated with the fight against corruption, the dissemination of a newsletter and the organization of a symposium were attributed to the civil-party applicant, from which it is inferred that the association was engaged in anti-corruption activities; whereas the* Cour d'appel *nonetheless concluded that the association had not demonstrated its anti-corruption activities, and that the absence of supporting evidence did not permit a finding that the existence of harm was possible; whereas, in ruling on the basis of these conflicting reasons, the* Chambre de l'instruction *did not provide legitimate grounds for its decision;*

"6) whereas fighting and preventing corruption, within the accepted meaning of the United Nations Convention against Corruption, ratified by France, constitute a specific object that is not only incumbent upon States, but necessitates the support and participation of non-governmental organizations, which must be reflected in domestic law through the possibility for lawfully established associations that have such a purpose to submit civil-party applications with respect to the offences listed in that Convention; whereas, in declaring the civil-party application of the association Transparency International France inadmissible, the Chambre de l'instruction *misconstrued these provisions";*

Having regard to Article 2, together with Articles 3 and 85 of the Code of Criminal Procedure;

Whereas, for a civil-party application to be admissible before the investigating jurisdiction, it is sufficient that the circumstances on which the application is based enable the court to accept that it is possible that the alleged harm exists and is directly related to a criminal offence;

Whereas the contested judgment and the related procedural documents show that, on 2 December 2008, the association Transparency International France filed a complaint with civil-party application against three foreign Heads of State and certain individuals in their entourage, for misappropriation of public funds, misuse of corporate assets, money laundering, complicity in those offences, breach of trust and concealment; whereas the civil-party applicant claims that assets derived from the alleged offences, which are themselves forms of corruption, are held by the persons concerned on French territory;

Whereas the investigating judge, having noted that the association Transparency International France — which was duly registered at the *Préfecture* in 1995 — is not authorized to bring a civil action under Articles 2-1 to 2-21 of the Code of Criminal Procedure, held that the

purpose of the association under its charter is to combat and prevent corruption at the national and international levels, in relations between States, between States and natural or legal persons, whether public or private, and between such persons themselves, and, to that end, to undertake any activities aimed at identifying, reporting and ending all forms of corruption;

Whereas the investigating judge concluded that the complaints, in so far as they concern the presence in France of assets potentially derived from the misappropriation of public funds, relate to the activities carried out by the association in question, which, since it commits all of its resources to those activities, suffers personal, economic harm caused directly by the offences in question, which undermine the collective interests that it defends and that constitute the very foundation of its activity; whereas the investigating judge declared the civil-party application admissible;

Whereas, in reversing this decision, on an appeal by the Public Prosecutor's Office, the judgment holds in particular that only the dissemination of a newsletter and the organization of a symposium, in 2007, can be attributed to the contested civil-party applicant, and that it has not demonstrated that it has suffered personal, economic harm caused directly by the offences it alleges; whereas the bench adds that the purpose of the association Transparency International France is to prevent and fight corruption in a very broad sense; whereas it infers from this that the association is seeking to substitute itself for States in pursuing criminal prosecution, even though the admissibility of an action brought by an association presupposes a proximity and relevance that establish a strong and specific link between the association and a category of unlawful conduct that undermines the object and purpose of its mission;

Whereas in so ruling, however, on grounds that are in part inapplicable because of the broad definition of corruption which, according to its charter, the civil-party applicant seeks to prevent and combat, even though, assuming them to be established, the offences under investigation, in particular the handling and laundering in France of assets paid for out of misappropriated public funds, offences which were themselves facilitated by corrupt practices but which are distinct from the offence of corruption, are likely to cause direct and personal harm to the association Transparency International France, on account of the specific object and purpose of its mission, the *Chambre de l'instruction* misconstrued the meaning and scope of the principle recalled above;

The judgment is therefore quashed; and is not referred back, since the *Cour de cassation* is able to apply the rule of law directly and put an end to the dispute, pursuant to Article L 411-3 of the Code of Judicial Organization;

For these reasons:

Quashes and sets aside all of the provisions of the aforementioned judgment of the *Chambre de l'instruction* of the Paris *Cour d'appel* dated 29 October 2009;

Declares admissible, in its current form, the civil-party application of the association Transparency International France;

Orders the case to be returned to the investigating judge of the Paris *Tribunal de grande instance* so that the investigation may be continued;

Orders this judgment to be printed, transcribed in the records of the registry of the *Chambre de l'instruction* of the Paris *Cour d'appel* and noted in the margin or at the end of the judgment that has been set aside;

So done and adjudicated by the *Cour de cassation*, *Chambre criminelle*, and pronounced by the presiding judge this ninth day of November, two thousand and ten;

In witness whereof, this judgment has been signed by the presiding judge, the reporting judge and the divisional clerk.

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ANNEX 6

Decree No. 64/2012, dated 21 May 2012, appointing H.E. Mr. Teodoro Nguema Obiang Mangue to the post of Second Vice-President of the Republic in charge of Defence and State Security

Decree No. 64/2012, dated 21 May 2012, appointing H.E. Mr. Teodoro Nguema Obiang Mangue to the post of Second Vice-President of the Republic in charge of Defence and State Security

[Translation]

Having regard to the circumstances relating to his person, and by virtue of the powers vested in me by Article 41, paragraph h, of the Basic Law of the State, I hereby appoint **H.E. Mr. TEODORO NGUEMA OBIANG MANGUE** to the post of **VICE-PRESIDENT OF THE REPUBLIC** in charge of Defence and State Security.

So ordered by the present Decree done at Malabo, this twenty-first day of May two thousand and twelve.

For a better Guinea,

OBIANG NGUEMA MBASOGO,

President of the Republic.

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ANNEX 7

***Cour de cassation*, judgment of 15 December 2015**

<u>*Cour de cassation*, judgment of 15 December 2015</u>

[Translation]

References

Cour de cassation

Chambre criminelle

Public hearing of Tuesday 15 December 2015

Appeal No.: 15-83156

Published in the *Bulletin*

Dismissal

Mr. Guérin, presiding judge

Mr. Germain, reporting judge

Mr. Bonnet, Advocate General

SCP Piwnica et Molinié and SCP Sevaux et Mathonnet, counsel

Full text

The French Republic

In the name of the French people

The *Cour de cassation*, *chambre criminelle*, delivered the following judgment:

Ruling on the appeal lodged by:

— Mr. Teodoro X,

against the judgment of the *Chambre de l'instruction* of the Paris *Cour d'appel*, 2nd division, dated 16 April 2015, which, with regard to the investigation against him for money laundering, corruption, misappropriation of public funds, misuse of corporate assets and breach of trust, ruled on his applications for the annulment of procedural measures;

The court, ruling after a hearing in open court on 25 November 2015, where the following persons were present: Mr. Guérin, presiding judge, Mr. Germain, reporting judge, Mr. Soulard, Mr. Steinmann, Ms de la Lance, Ms Chaubon, Mr. Sadot and Ms Zerbib, divisional judges, Ms Chauchis and Ms Pichon, auxiliary judges;

Advocate General: Mr. Bonnet;

Clerk: Ms Hervé;

On the basis of the report of Judge GERMAIN, the observations of the *société civile professionnelle* (private law firm) SEVAUX et MATHONNET and the *société civile professionnelle* PIWNICA et MOLINIÉ, counsel before the court, and the submissions of Advocate General BONNET, with the parties' counsel speaking last;

Having regard to the order of the presiding judge of the *Chambre criminelle* dated 27 July 2015, ordering immediate consideration of the appeal;

Having regard to the written statements of the appellant and the respondent and the additional observations produced;

Whereas the contested judgment and the related procedural documents show that, following the civil-party application of the association Transparency International France in respect of misappropriation of public funds, money laundering, misuse of corporate assets, complicity in each of these offences, breach of trust and concealment, Mr. Teodoro X, who, at the time the proceedings were instituted, was Minister for Agriculture in the Government of the Republic of Equatorial Guinea, and was subsequently appointed by President Y as Second Vice-President of the Republic in charge of Defence and State Security, was placed under judicial examination on 18 March 2014; whereas he submitted an application directly to the *Chambre de l'instruction* seeking, in particular, to have the civil-party application declared inadmissible and to have his placement under judicial examination annulled on the basis of the personal immunity he claims to enjoy; whereas that application was dismissed;

In these circumstances,

On the first ground of appeal, based on the violation of Articles 80-1, 174, 206 and 593 of the Code of Criminal Procedure: insufficient reasons, lack of legal basis, violation of international custom relating to the immunity and inviolability of the Head and high-ranking representatives of a foreign State, violation of the principle of sovereignty, and excess of authority;

> "in that the *Chambre de l'instruction* found that there were no grounds for annulling any procedural documents up to reference number D2272;
>
> on the grounds that, in execution of a request for international mutual assistance of 14 November 2013, addressed on 13 February 2014 by the French authorities to the Republic of Equatorial Guinea on the basis of the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, Mr. X . . . was summoned for questioning at first appearance; that, complying with the questioning, which took place on 18 March 2014 via videoconference from Malabo, Equatorial Guinea, Mr. X was, at the end of the questioning, placed under judicial examination for acts characterized as money laundering (laundering of the proceeds of the offences of misappropriation of public funds, misuse of corporate assets, breach of trust and corruption), and the arrest warrant issued against him was lifted (D 2171/3 and 18) in respect of acts allegedly committed on French territory between 1997 and October 2011; that Mr. X became Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and Security as of 21 May 2012; that he previously performed the functions of Minister for Agriculture and Forestry; that while international custom, in the absence of international provisions to the contrary, bars the prosecution of States before the criminal courts of a foreign State, a custom extending to organs and entities which are an emanation of the State, and to their agents, in respect of acts falling within the sovereignty of the State concerned, this principle is limited to the exercise of State functions (*Ch. Crim.* 19 January 2010, 14 May 2002 and 23 November 2004); that whereas the principle of immunity from criminal jurisdiction and inviolability, established and recognized by international custom, whereby the right to such immunity of a foreign Head of State or an official

with the rank of Head of State, as officially designated, derives directly from the immunity enjoyed by all foreign States by virtue of the principle of the sovereignty of their acts, which cannot be contested by another foreign State in any way, as set forth in the preamble and Article 3 of the Vienna Convention of 18 April 1961; that, nonetheless, as regards the violation of the principle of immunity of foreign Heads of State and high-ranking representatives of the same State, having regard to custom and international law, and more specifically in respect of Mr. X, Minister for Agriculture and Forestry from 1997 to 20 May 2012 and subsequently Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and Security as of 21 May 2012, in the present case, the acts of money laundering and/or handling offences committed on French territory in respect of the acquisition of movable and immovable assets from 1997 to 2011 for solely personal use are separable from the exercise of State functions protected by international custom under the principles of sovereignty and diplomatic immunity; that it may also be recalled that the application of 31 January 2012 to extend the investigation to handling offences and money laundering was submitted after the filing of the OCRGDF (serious financial crime squad) report of 25 November 2011, relating to the discovery of new evidence concerning Mr. X and Somagui Forestal, a company governed by Swiss law which is based in the Republic of Equatorial Guinea, the movable and immovable assets having been acquired by Mr. X and his father in France, including, in particular, the acquisition of numerous luxury vehicles in 1990 and 2000 financed by the State company in question, which is specialized in the production and export of timber, and whose chief executive (*dirigeant*) was Mr. X; that, moreover, by a judgment of 8 April 2010, the *Chambre criminelle* of the *Cour de cassation* found that, regarding the scope of the diplomatic immunity granted by the Vienna Convention of 18 April 1961 and in light of the Headquarters Agreement of 2 July 1954 between France and UNESCO, diplomatic agents who are nationals of the receiving State enjoy immunity from jurisdiction and inviolability only in respect of acts performed in the course of their duties, whereas this is not the situation in the present case, since the acts attributed to Mr. X fall exclusively within the scope of his private life in France, as set out above, and were committed over a period preceding his new functions; that the same analysis must prevail with regard to the distinct capacities of Minister for Agriculture and Forestry, which office he held during the period in which the offences were committed; that the Ministry of Foreign Affairs stated that he was not a diplomatic agent in France, that he was not registered with the Protocol Department and that he was therefore subject to ordinary law (D2252/7); that, as regards his functions as Second Vice-President of the Republic of Equatorial Guinea, it should be noted that this capacity was conferred on Mr. X on 21 May 2012, on which date the procedural measures, such as the initial summons of 22 January 2012, could have led the individual concerned to expect that he might be placed under judicial examination, or that an arrest warrant might be issued against him; that decision No. 09-84.818 dated 19 January 2010, cited by the defence in support of its argument, does not apply to the present case, since the annulled arrest warrants had been issued against a Prime Minister and a Minister of the Armed Forces of a foreign State who were in office at the time of the acts, which were committed in the context of a public service mission; that the situation of Mr. X at the time of the alleged offences, and even after 21 May 2012, is entirely different, since, by their very nature, the acts of which he is accused do not contribute to the exercise of sovereignty or public authority, or to the public interest, it being noted, moreover, as pointed out by the civil-party applicant, and by this court in its decision of 13 June 2013 (No. 2012/08657), that the appointment of Mr. X to his new functions of Second Vice-President appeared to be concomitant with the first summonses sent by the French investigating judges to the individual concerned, suggesting an appointment of convenience, liable to prevent the present criminal proceedings from continuing; that, while the ICJ, in its Judgment of 14 February 2002 (paras. 45-71), held that immunity from jurisdiction may indeed bar

prosecution for a certain period of time, it can be inferred that the principle of absolute criminal immunity attaching to the person cannot continue indefinitely; that, consequently, the State and diplomatic immunity claimed by Mr. X did not preclude his placement under judicial examination at the time of his questioning on 18 March 2014 in connection with acts of money laundering committed in the context of his private life, before he took up his functions; that, therefore, this ground for annulment must be dismissed;

(1) whereas, under international custom, like Heads of State, certain agents of a foreign State who, on account of their rank and functions, carry out missions in which they represent the State abroad in connection with the exercise of its sovereignty, enjoy personal immunity which protects them from all prosecution while they are in office, for any act whatsoever committed while in office or before taking office, regardless of whether the act is related to the exercise of the State's sovereignty; whereas, owing to his rank as Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security and the functions attaching thereto, which do indeed lead him to carry out missions in which he represents that State abroad and which are directly related to the exercise of its sovereignty, in the context of inter-State co-operation, namely military, and, for example, in places where the State has military contingents dedicated to peacekeeping operations, by virtue of international custom and for however long he performs these functions, Mr. X enjoys personal immunity from all prosecution, regardless of the offences of which he stands accused; whereas, in considering only the implementation of the substantive immunity attaching to acts of the State and of its agents without applying international custom proper to the status of the Head and high-ranking representatives of a foreign State, the *Chambre de l'instruction* violated the said custom, together with the aforementioned articles and principles;

(2) whereas, in any event, in applying only the substantive immunity from jurisdiction attaching to acts carried out by the State and its agents, without responding to the argument that, given the rank of Mr. X as Second Vice-President of the Republic of Equatorial Guinea, the functions he performs in the area of national defence, and the missions that the individual concerned is led to carry out abroad on account of that rank and those functions, the immunity from jurisdiction attaching to the very person of Mr. X barred prosecution, the *Chambre de l'instruction* deprived its decision of a legal basis under international custom and the aforementioned articles and principles;

(3) whereas the principle of State sovereignty prohibits domestic courts from judging a foreign State's motives in appointing an individual as a high-ranking representative and from finding, with regard to those motives, that the appointment does not preclude prosecution, in so far as the appointment entails immunity from jurisdiction; whereas in judging the motives of the appointment of Mr. X as Second Vice-President of the Republic of Equatorial Guinea and consequently considering that the appointment was ostensibly one of convenience and that it therefore did not preclude prosecution, the *Chambre de l'instruction* violated the aforementioned principle, together with international custom;

(4) whereas the provisions of Article 38 of the Vienna Convention of 18 April 1961, which limit immunity from jurisdiction to official acts performed in the exercise of one's functions, concern only members of diplomatic missions and, of those members, only those who are nationals of the receiving State; whereas, in finding that Mr. X, who is a foreign national and enjoys immunity from jurisdiction in his capacity as a high-ranking representative of the Republic of Equatorial Guinea,

cannot claim immunity from jurisdiction under those provisions, the *Chambre de l'instruction* violated the provisions by misapplying them";

Whereas Mr. X Mangue, Second Vice-President of the Republic of Equatorial Guinea, cannot complain that the *Chambre de l'instruction* denied him the benefit of immunity from criminal jurisdiction for the reasons set out in the argument, of which some, relating to the circumstances of his appointment, are irrelevant but overabundant;

Whereas, indeed, the judgment and the related procedural documents show that, first, the functions of the applicant are not those of a Head of State, Head of Government or Minister for Foreign Affairs, and, secondly, all the alleged offences, the proceeds thereof having been laundered in France, and should they be established, were committed for personal gain before he took up his current functions, at a time when he was performing the functions of the Minister for Agriculture and Forestry;

This ground of appeal must therefore be dismissed;

On the second ground of appeal, based on the violation of Article 6 of the European Convention on Human Rights, Article 1351 of the Civil Code, Article L. 411-3 of the Code of Judicial Organization, Articles 80, 85, 86, 87, 206 and 593 of the Code of Criminal Procedure: insufficient reasons, lack of legal basis and violation of the principle of adversarial proceedings;

"in that the *Chambre de l'instruction* found that there were no grounds for annulling any procedural documents up to reference number D2272;

on the grounds that, with regard to the inadmissibility of the complaint with civil-party application because it violated the provisions of Article 85 of the Code of Criminal Procedure, on 2 December 2008, Transparency International France, acting through its President, Mr. Daniel D, filed a complaint with civil-party application with the senior investigating judge in Paris against the incumbent Presidents of Gabon, the Congo and Equatorial Guinea, and individuals in their entourage, for handling misappropriated public funds, and against persons unnamed for complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money laundering, complicity in money laundering, misuse of corporate assets, complicity in misuse of corporate assets, breach of trust, complicity in breach of trust and concealment of each of these offences; that the complaint with civil-party application raised the question of the financial resources used by the individuals concerned to amass, on a personal basis in France, sumptuous movable and immovable assets; that it also raised the question of the role played by Somagui Forestal, a logging company located in Equatorial Guinea and run by Mr. X, son of the Head of State; that the complaint referred to information collected in 2007 by the OCRGDF and Tracfin (national anti-money laundering unit), as a result of a preliminary investigation launched by the Paris Public Prosecutor's Office; that the investigation was opened on the basis of this complaint, which was upheld by the *Chambre criminelle* of the *Cour de cassation* in a decision dated 9 November 2010, ruling on an appeal by Transparency International France, in which it found it admissible for this type of private association, depending on its purpose, to have the possibility of reporting and pursuing prosecution of the type of offences in question, of which it did not appear to be a direct victim; that having regard to that judgment, on 1 December 2010, two investigating judges were appointed, the judicial investigation being considered open against a person or persons unknown, for handling misappropriated public funds, complicity in the misappropriation of public funds, misuse of corporate assets and complicity in the misuse of corporate assets, and concealment of each of these offences; that an application for characterization was submitted on 4 July 2011, and the Public Prosecutor's Office requested the investigating judges to find that the facts under

investigation could be characterized only as money laundering or handling offences, as provided for in Articles 324-1 and 321-1 of the Penal Code and punishable thereunder; that, subsequently, the customs and tax authorities provided numerous pieces of information, which were gradually added to the case file — new facts which did not appear in the initial complaint with civil-party application and which gave rise to an application to extend the investigation dated 31 January 2012 (D393), for handling offences and/or money laundering, in view of the memorandums transmitted by Tracfin on 7 March 2011 and 18 March 2011, the memorandum prepared by DN[R]ED (the national directorate for intelligence and customs inquiries) on 7 March 2011 and a report from the OCRGDF dated 4 October 2011; that, on 2 March 2012, a second application to extend the investigation was submitted for handling offences and/or money laundering in connection with renovation works performed until 31 July 2011 by the *société civile immobilière* (non-commercial property company) Les Batignolles on a property located in Neuilly-sur-Seine — facts not cited in the original complaint with civil-party application — on the basis of a notification from Tracfin dated 26 May 2011 and two reports from the OCRGDF dated 7 and 29 February 2012; that, consequently, it was in view of both the application to open an investigation and the applications to extend the investigation that the scope of the case referred to the investigating judge was determined, as a result of both the complaint with civil-party application of Transparency International France and the steps taken by the Paris Prosecutor's Office to extend the scope of the investigation; that, nevertheless, it should be noted, as the Public Prosecutor has done in his submissions, that the challenge to the admissibility of the civil-party application is in keeping with the specific rules provided for by Articles 85 and 87 of the Code of Criminal Procedure, since they apply not only to civil-party applications filed by way of intervention, that is, which have been made during an open investigation, but also to challenges to an initial civil-party application by a party intervening in the investigation proceedings at a later point (*Crim*. 14 December 1982, B. 288); that the Public Prosecutor adds that it has been held that an "accused" person is not allowed to rely on alleged irregularities in the institution of criminal proceedings to support a challenge to the admissibility of a civil-party application, since such proceedings arise out of an application by the Public Prosecutor's Office (*Crim*. 4 February 1982, B. 41); that the Public Prosecutor's Office rightly submits, and for reasons that this court endorses, that such grounds of nullity must be found inadmissible;

(1) whereas the findings of the judgment itself and the documents in the case file reveal the absence of an application to open an investigation or submissions requesting to open an investigation which allow the proceedings to remain valid, notwithstanding the inadmissibility of the complaint with civil-party application; whereas, by ruling to the contrary, and thus concluding that the ground based on the misconstruance of the formalities imposed by the second paragraph of Article 85 of the Code of Criminal Procedure was inadmissible, the *Chambre de l'instruction* misconstrued the aforementioned texts;

(2) whereas, in the alternative, the clear and precise terms of the application for characterization submitted on 4 July 2011, inviting the investigating judges to "find that the facts under investigation may be characterized only as money laundering or handling offences, as provided for under [Articles 324-1 and 321-1 of the Penal Code] and punishable thereunder", show that, at the time, the Public Prosecutor merely proposed a new characterization of the facts already referred to the investigating judges, without pursuing criminal proceedings or requesting to open an investigation of the facts; whereas, in describing the application for characterization as an application to open an investigation and in finding that the application for characterization rendered valid the proceedings instituted through

the complaint with civil-party application, the *Chambre de l'instruction* distorted its clear and precise terms and misconstrued the aforementioned texts;

(3) whereas, in the final alternative, the filing of an application to open an investigation or submissions requesting to open an investigation does not have a retroactive effect and cannot preclude the annulment of the measures which the investigating judge has already carried out and which concern facts that were not validly referred to the judge, given the inadmissibility of the complaint with civil-party application; whereas, in declaring the ground inadmissible with respect to all of the measures carried out by the investigating judges, including those preceding the filing of the so-called application to open an investigation of 4 July 2011, the *Chambre de l'instruction* misconstrued the aforementioned texts;

(4) whereas, having declared Transparency International France's "civil-party application" admissible "in its current form", in the context of a final determination of the dispute and by applying the appropriate rule of law with regard to the trial courts' findings and assessments of fact at the time, which concerned only the existence of personal, direct harm justifying the admissibility, as to the merits, of the civil action, the judgment rendered by the *Cour de cassation* on 9 November 2010 did not rule on the admissibility, as to form, of the complaint with civil-party application filed by the association; whereas by ruling to the contrary, the *Chambre l'instruction* misconstrued the aforementioned texts;

(5) whereas, in ruling that the admissibility of the complaint with civil-party application was definitively confirmed by the judgment of the *Cour de cassation* dated 9 November 2010, even though Mr. X did not have the status of a party on that date and therefore still had the right to challenge the regularity of the proceedings as a whole, even as regards the measures or the admissibility of a civil-party application approved before he was placed under judicial examination by a final decision, the *Chambre de l'instruction* misconstrued the aforementioned texts";

Whereas, while the *Chambre de l'instruction* erred in ruling on the request of the individual under examination to annul the investigative measures in respect of the alleged inadmissibility of the civil-party application, the judgment is nonetheless not liable to censure, since that objection had to be submitted to the investigating judge so that he could issue a decision by means of an appealable order;

This ground therefore cannot be accepted;

And whereas the judgment is in due form;

DISMISSES the appeal;

So done and adjudicated by the *Cour de cassation*, *Chambre criminelle*, and pronounced by the presiding judge this fifteenth day of December, two thousand and fifteen;

In witness whereof, this judgment has been signed by the presiding judge, the reporting judge and the divisional clerk.

ECLI:FR:CCASS:2015:CR0624S

Analysis

Publication:

Decision contested: Paris *Cour d'appel*, *Chambre de l'instruction*, 16 April 2015

Headings and summaries: IMMUNITY — State immunity — International custom — Criminal proceedings against organs and entities constituting the emanation of the State in respect of acts falling within its sovereignty (or not) — Entities — Definition — Head of State, Head of Government or Minister for Foreign Affairs — Insufficiency — Scope

The appellant, Second Vice-President of a Republic, placed under judicial examination for money laundering, corruption, misappropriation of public funds, misuse of corporate assets and breach of trust, cannot complain that the contested judgment denies him the benefit of immunity from criminal jurisdiction, in so far as the contested judgment and the related procedural documents show that the acts, assuming them to be established, were committed while he was not serving as Head of State, Head of Government or Minister for Foreign Affairs, and partly in France, for personal gain before he took up his current functions, at a time when he was Minister for Agriculture and Forestry

IMMUNITY — State immunity — International custom — Criminal proceedings against organs and entities constituting the emanation of the State in respect of acts falling within its sovereignty (or not) — Exclusion — Acts committed for personal gain

Texts applied:

— International custom relating to the immunity and inviolability of the Head and high-ranking representatives of a foreign State

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ANNEX 8

Note Verbale to the French Ministry of Foreign and European Affairs dated 4 October 2011 from the Embassy of Equatorial Guinea

Note Verbale to the French Ministry of Foreign and European Affairs dated 4 October 2011 from the Embassy of Equatorial Guinea

[Translation]

The Embassy of the Republic of Equatorial Guinea presents its compliments to the Ministry of Foreign and European Affairs, Protocol Department, Diplomatic Privileges and Immunities Division, and has the honour to inform it that the Embassy has for a number of years had at its disposal a building located at 42 avenue Foch, Paris (16th arr.), which it uses for the performance of the functions of its diplomatic mission, a fact which it has hitherto not formally notified to your Department.

Since the building forms part of the premises of the diplomatic mission, pursuant to Article 1 of the Vienna Convention on Diplomatic Relations of 18 April 1961, the Republic of Equatorial Guinea wishes to give you official notification so that the French State can ensure the protection of those premises, in accordance with Article 22 of the said Convention.

The Embassy of the Republic of Equatorial Guinea in France avails itself of this opportunity to renew to the Ministry of Foreign and European Affairs, Protocol Department, Diplomatic Privileges and Immunities Division, the assurances of its highest consideration.

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ANNEX 9

Note Verbale to the Embassy of Equatorial Guinea dated 11 October 2011 from the French Ministry of Foreign and European Affairs

Note Verbale to the Embassy of Equatorial Guinea dated 11 October 2011 from the French Ministry of Foreign and European Affairs

[Translation]

The Ministry of Foreign and European Affairs, Protocol Department, presents its compliments to the Embassy of the Republic of Equatorial Guinea and, referring to the Embassy's Note Verbale No. 365/11 of 4 October 2011, has the honour to advise it of the following:

1. The Embassy has informed the Protocol Department that a building located at 42 avenue Foch, Paris (16th arr.), is used for the performance of the functions of its diplomatic mission, a fact which has hitherto not been formally notified to the Protocol Department.

   The Embassy, invoking Article 22 of the Vienna Convention on Diplomatic Relations of 18 April 1961, has officially requested that the French State ensure the protection of that building.

2. The Protocol Department recalls that the above-mentioned building does not form part of the premises of Equatorial Guinea's diplomatic mission.

   It falls within the private domain and is, as such, subject to ordinary law. The Protocol Department thus regrets that it is unable to grant the Embassy's request.

The Ministry of Foreign and European Affairs, Protocol Department, which thanks the Embassy of the Republic of Equatorial Guinea for taking account of the above, avails itself of this opportunity to renew to it the assurances of its highest consideration.

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ANNEX 10

Note Verbale to the Embassy of Equatorial Guinea dated 6 August 2012 from the French Ministry of Foreign Affairs

Note Verbale to the Embassy of Equatorial Guinea dated 6 August 2012 from the French Ministry of Foreign Affairs

[Translation]

The Ministry of Foreign Affairs, Protocol Department, presents its compliments to the Embassy of the Republic of Equatorial Guinea and, referring to the Embassy's Note Verbale No. 501/12 of 27 July 2012, has the honour to advise it of the following:

1. The Embassy has informed the Protocol Department that "*as from Friday 27 July 2012, the Embassy's offices are located at 42 avenue Foch, Paris (16th arr.), a building which it is henceforth using for the performance of the functions of its diplomatic mission in France*".

2. The Protocol Department draws the Embassy's attention to the fact that the building located at 42 avenue Foch, Paris (16th arr.), was the subject of an attachment order under the Code of Criminal Procedure, dated 19 July 2012. The attachment, recorded in the mortgage registry (*Conservation des hypothèques*), was entered on 31 July 2012.

3. The Protocol Department is thus unable officially to recognize the building located at 42 avenue Foch, Paris (16th arr.), as being the seat of the chancellery as from 27 July 2012.

   The seat of the chancellery thus remains at 29 boulevard de Courcelles, Paris (8th arr.), the only address recognized as such.

The Ministry of Foreign Affairs, Protocol Department, which thanks the Embassy of the Republic of Equatorial Guinea for taking account of the above, avails itself of this opportunity to renew to it the assurances of its highest consideration.

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ANNEX 11

Note Verbale to the French Ministry of Foreign Affairs and International Development dated 6 January 2016 from the Embassy of Equatorial Guinea

Note Verbale to the French Ministry of Foreign Affairs and International Development dated 6 January 2016 from the Embassy of Equatorial Guinea

[Translation]

The Embassy of the Republic of Equatorial Guinea in France presents its compliments to the Ministry of Foreign Affairs and International Development and has the honour to renew the firm commitment of the Government of Equatorial Guinea to finding, with the Government of the French Republic, a lasting diplomatic solution to the dispute between them arising from the so-called "ill-gotten gains" case currently pending before the Paris *Tribunal de grande instance*.

The Government of Equatorial Guinea accordingly reiterates its earlier offer of conciliation and arbitration, made to the French authorities on 26 October 2015 by means of a Memorandum by its counsel (attached), on the basis of Articles I and II of the Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, and Article 35 of the United Nations Convention against Transnational Organized Crime of 15 November 2000, ratified by both States.

The Embassy would be grateful if the Ministry of Foreign Affairs and International Development would kindly acknowledge receipt of the attached Memorandum.

The Embassy notes that the letter from the Minister for Justice of Equatorial Guinea to the French authorities, dated 31 December 2015 (attached), is part of the same renewed commitment to achieving a diplomatic solution.

The Embassy of the Republic of Equatorial Guinea in France avails itself of this opportunity to renew to the Ministry of Foreign Affairs and International Development the assurances of its highest consideration.

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ANNEX 12

Note Verbale to the French Ministry of Foreign Affairs and International Development dated 2 February 2016 from the Embassy of Equatorial Guinea and Memorandum No. 2

Note Verbale to the French Ministry of Foreign Affairs and International Development dated 2 February 2016 from the Embassy of Equatorial Guinea

[Translation]

The Embassy of the Republic of Equatorial Guinea in France presents its compliments to the Ministry of Foreign Affairs and International Development and has the honour to transmit to it the attached Memorandum No. 2, concerning the offer to settle through diplomatic channels the dispute between the Republic of Equatorial Guinea and the French Republic with regard to certain criminal proceedings, in accordance with Articles I and II of the Optional Protocol to the Vienna Convention on Diplomatic Relations and Article 35 of the United Nations Convention against Transnational Organized Crime adopted in New York on 15 November 2000.

The Embassy would be grateful if the Ministry of Foreign Affairs and International Development would kindly acknowledge receipt of the attached Memorandum No. 2.

The Embassy of the Republic of Equatorial Guinea in France avails itself of this opportunity to renew to the Ministry of Foreign Affairs and International Development the assurances of its highest consideration.

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Memorandum No. 2 from the Republic of Equatorial Guinea to the French Republic

[Translation]

The case of the so-called "ill-gotten gains": the Equatorial Guinean chapter

Subject: Renewal of notification of a dispute with regard to internationally wrongful acts, and reiteration of the offer of settlement through conciliation and arbitration

BACKGROUND

1. On 2 December 2008, the association Transparency International France filed a complaint with civil-party application before the senior investigating judge of the Paris *Tribunal de grande instance* against the serving Heads of State of Gabon, Congo-Brazzaville and Equatorial Guinea, and individuals in their entourage, for misappropriation of public funds, misuse of corporate assets, money laundering, complicity in those offences, breach of trust and concealment.

2. A judicial investigation was therefore launched on the basis of the civil-party application, which was declared admissible by a judgment of 9 November 2010 of the *Cour de cassation*, *Chambre criminelle*, on the grounds that:

> "assuming them to be established, the offences under investigation, in particular the handling and laundering in France of assets paid for out of misappropriated public funds, offences which were themselves facilitated by corrupt practices but which are distinct from the offence of corruption, are likely to cause direct and personal harm to the association Transparency International France, on account of the specific object and purpose of its mission" (Annex 1). *[This and subsequent translations from this document are by the Registry.]*

Thus, the case of the so-called "ill-gotten gains" came before the French courts.

3. Commenting on that judgment, however, Professor Gabriel Roujou de Boubée was to observe that:

> "a strict interpretation of Article 2 of the Code of Criminal Procedure would probably have led to the dismissal of the action brought by Transparency International France, but such interpretations have today given way to ones that are much more favourable" (Recueil Dalloz 2009, p. 1520, Annex 2). *[This and subsequent translations from this document are by the Registry.]*

4. On 1 December 2010 two investigating judges were appointed, the judicial investigation having been opened against a person or persons unknown, for handling misappropriated public funds, complicity in the misappropriation of public funds, misuse of corporate assets and concealment of each of these offences.

5. Throughout the investigation, which now appears to be completed, according to a communication from the investigating judges dated 11 August 2015, the Republic of Equatorial Guinea took the view that the French courts were violating its interests that are protected under

international law, by undertaking a number of actions and issuing a number of decisions that the Republic of Equatorial Guinea regards as internationally wrongful acts.

6. Consequently, the Republic of Equatorial Guinea is obliged to notify the French Republic officially of the existence of a dispute between the two States and to make an offer of settlement through conciliation and arbitration, as it has previously informed the Presidency of the French Republic and the French Ministry of Foreign Affairs on 26 October 2015 by way of a first Memorandum drafted by its duly instructed counsel, and by a Note Verbale from its Ambassador in Paris dated 6 January 2016 and received by the French Ministry of Foreign Affairs on 7 January (Annexes 3 and 4).

SUBJECT-MATTER OF THE DISPUTE

There are four aspects to the dispute between the Republic of Equatorial Guinea and the French Republic: the violation of the principles of the sovereign equality of States and non-interference in the domestic affairs of other States; the refusal to recognize the immunity from jurisdiction *ratione personae* of the Second Vice-President of Equatorial Guinea in charge of Defence and State Security; the violation of the principle of immunity from execution which protects foreign State property not used for private-law activities; and the attachment of a building assigned to the diplomatic mission of Equatorial Guinea in France.

1. Violation of the principles of the sovereign equality of States and non-interference in the domestic affairs of other States

7. Although in its judgment of [9] November 2010, cited above (see paragraph 2), the French *Cour de cassation* declared the civil-party application of the association Transparency International France to be admissible, it has never authorized the judges in charge of the investigation to disregard either the rules governing the territorial jurisdiction of French criminal courts or French criminal laws.

8. And yet this is undeniably what has occurred in this case, since it is plain to see that the investigating judges were only able to conduct their investigations by making numerous encroachments on the territorial jurisdiction of the State of Equatorial Guinea, notwithstanding the application for characterization *(réquisitoire aux fins de qualification)* addressed to them by the Paris Public Prosecutor on 4 July 2011 in the following terms:

> "Whereas the acts, as described by the complainant, relate to the acquisition and possession in France of movable and immovable property, which may have been paid for with monies derived from the misappropriation of foreign public funds, namely those of the States of Gabon, the Congo and Equatorial Guinea;
>
> Whereas the characterization of misappropriation of public funds as provided for in Article 432-15 of the Penal Code is applicable only to the misappropriation of French public funds, committed by persons in a position of public authority in France;
>
> Whereas these proceedings, assuming the facts to be established, concern the misappropriation of foreign public funds of Gabon, the Congo and Equatorial Guinea, committed by foreign authorities of Gabon, the Congo and Equatorial Guinea;
>
> Whereas the Article 432-15 offence is therefore inapplicable, and likewise the characterizations of complicity in and concealment of that offence;

Whereas, that being so, the characterizations of breach of trust and complicity in breach of trust, which might be applied to the misappropriations complained of, cannot be accepted, since the alleged offences were committed abroad, by foreign nationals, against foreign victims, acts to which French criminal law is not applicable, under the provisions of Articles 113-6 and 113-7 of the Penal Code; whereas, moreover, the prosecution of offences committed outside the territory of the French Republic may be initiated only upon application by the Public Prosecutor's Office, pursuant to Article 113-8 of the Penal Code; and whereas in these proceedings the Public Prosecutor's Office submitted that the complaint with civil-party application was inadmissible;

Whereas the offences of misuse of corporate assets and complicity in the misuse of corporate assets are applicable only to companies incorporated under French law; and whereas the alternative characterizations of breach of trust and complicity in breach of trust cannot be applied for reasons already set forth;

Whereas, consequently, the facts under investigation, assuming them to be established, may be characterized only as money laundering or handling offences; and whereas the laundering or handling in France of an asset obtained through an offence committed abroad by a foreign national and not subject to French law is punishable in France, provided, however, that the elements of the original offence are identified;

Having regard to Article 2 of the Code of Criminal Procedure;

Requests the senior investigating judges to find that the facts under investigation may be characterized only as money laundering or handling offences, as provided for in Articles 324-1 and 321-1 of the Penal Code and punishable thereunder" (Annex 5). *[Translation by the Registry.]*

9. The very least we can say is that the investigating judges chose to ignore the nonetheless legally relevant terms of this application by the Public Prosecutor, who, in French law, is regarded as the principal prosecuting authority for criminal cases.

10. Addressing the question of the jurisdiction of French courts in his commentary on the judgment of the *Cour de cassation* of [9] November 2010 (cited above in paragraph 2), Professor Gabriel Roujou de Boubée notes, moreover, that:

"the jurisdiction of the French court would have been entirely questionable with regard to the actual misappropriation of public funds, since the offence was committed abroad and concerned funds belonging to foreign public bodies" (Recueil Dalloz, cited above in paragraph [3]).

11. It will be observed that, regarding the offence of misuse of corporate assets allegedly committed against companies incorporated under Equatorial Guinean law, the reasoning of the Paris Public Prosecutor is legally valid, since it is consistent with the jurisprudence of the *Cour de cassation*, which has had occasion to recall that:

"the definition of the offence of misuse of corporate assets cannot be extended to companies in respect of which there is no provision in the law, such as a company incorporated under foreign law, which may only be charged with breach of trust" (judgment of 3 June 2004, Annex 6). *[Translation by the Registry.]*

12. Lastly, even having assumed jurisdiction — as they have insisted on doing — over alleged offences of laundering misused corporate assets, misappropriated public funds and the proceeds of breach of trust, the investigating judges were obliged to characterize the original offences (misuse of corporate assets, misappropriation of public funds, breach of trust).

13. Money laundering is what is known as a "derivative" offence, in that it presupposes that the original offence — from which, we repeat, it merely derives — has been established to exist.

14. For example:

— by a judgment dated 25 June 2003, the *Cour de cassation* found that for the trial court to justify a conviction for money laundering, it must "identify precisely the constituent elements of the predicate crime or offence that has profited the perpetrator directly or indirectly" (*Cour de cassation, Chambre criminelle,* 25 June 2003, Annex 7). *[Translation by the Registry.]*

— by another judgment dated 24 February 2010, ruling in a case concerning the laundering of the proceeds of corruption which had taken place abroad, the *Cour de cassation* found that "in France such acts constitute the punishable offence of corruption on the part of a person in a position of public authority . . . the texts defining the offence of money laundering require neither that the offence which enabled the acquisition of the laundered sums should have taken place on national territory nor that the French courts should have jurisdiction to prosecute it" (*Cour de cassation, Chambre criminelle,* 24 February 2010, Annex 8). *[Translation by the Registry.]* However, the *Cour de cassation* was only able to accept the characterization of money laundering in this case because, as it noted, the defendant, who was the former oil minister of his country, had admitted that he had received money from commissions.

15. In sum, according to the French *Cour de cassation*, criminal proceedings for acts of money laundering committed in France are legally possible, regardless of the place where the predicate offence was committed and regardless of whether the French courts have jurisdiction to prosecute it. However, the offence of money laundering legally and necessarily assumes the existence of a predicate offence, without which it cannot be said to exist.

16. In the present case, however, the French courts refuse to take account of the findings of the investigations carried out by the judicial authorities of the State of Equatorial Guinea, which found no indication of the predicate offences under investigation in France having taken place on Equatorial Guinean territory.

17. Indeed, according to the findings of an inquiry contained in an official report by the Public Prosecutor of the State of Equatorial Guinea, dated 22 November 2010 — which the investigating judges have received and which is included in their file under reference number D538 — the Equatorial Guinean judicial authority states that the investigations conducted in Equatorial Guinea establish that none of the predicate offences under judicial investigation in France has been found to have taken place on the territory of Equatorial Guinea, against either natural or legal persons, and still less against the State of Equatorial Guinea, in relation to what the French courts have characterized as the misappropriation of public funds (Annex 9).

18. Ignoring this official report by Equatorial Guinea's judicial prosecuting authority, however, the French investigating judges continue to encroach on the territorial jurisdiction of the Equatorial Guinean courts, even though the alleged predicate offences do not concern any French

national, either as the perpetrator or as the victim, any more than the French State, in respect of the alleged misappropriation of public funds.

19. The Republic of Equatorial Guinea thus contends that the actions of the French courts, which, in this case, have felt obliged to extend their jurisdiction to Equatorial Guinea's territory, are in breach of the principle of the sovereign equality of States.

20. It should be recalled in this respect that Article 4 (the "Protection of sovereignty") of the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000, invoked by the investigating judges and to which Equatorial Guinea and France are parties, provides that:

> "1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.
>
> 2. Nothing in this Convention entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law."

21. And the Legislative Guide for the Implementation of that Convention provides a useful clarification on the interpretation of Article 4 in these terms:

> "Article 4 is the primary vehicle for protection of national sovereignty in carrying out the terms of the Convention. Its provisions are self-explanatory." (Paragraph 33 of the Guide.)

22. Furthermore, by assuming jurisdiction to investigate alleged offences of misappropriation of public funds said to have been committed against the State of Equatorial Guinea, contrary to the official view of Equatorial Guinea and notwithstanding the fact that the State of Equatorial Guinea, which in no way sees itself as a victim of such offences, did not file a civil-party application, the French courts are in breach of the principle of the permanent sovereignty of the State of Equatorial Guinea over its economic resources, as enshrined by international law and, in particular, by the Charter of Economic Rights and Duties of States of 12 December 1974, contained in resolution 3281 of the United Nations General Assembly.

23. It is to be noted that Article 2, paragraph 1, (Chapter II) of the said Charter provides that "[e]very State has and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities" (Annex 10).

24. It should be recalled that the International Court of Justice recognizes the customary nature of the principle of permanent sovereignty of a State over its economic resources.

> "The Court recalls that the principle of permanent sovereignty over natural resources is expressed in General Assembly resolution 1803 (XVII) of 14 December 1962 and further elaborated in the Declaration on the Establishment of a New International Economic Order (General Assembly resolution 3201 (S.VI) of 1 May 1974) and the Charter of Economic Rights and Duties of States (General Assembly resolution 3281 (XXIX) of 12 December 1974). While recognizing the importance of this principle, which is a principle of customary international law . . ." (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment of 19 December 2005*, para. 244).

2. The refusal to recognize the immunity from jurisdiction *ratione personae* of the Second Vice-President of Equatorial Guinea in charge of Defence and State Security

25. In spite of the fact that, by Presidential Decree No. 64/2012 of 21 May 2012, Mr. **Teodoro Nguema Obiang Mangue** was appointed Second Vice-President in charge of Defence and State Security — at the same time as other officials were appointed, namely the Vice-President of the Republic, the Prime Minister, the First Vice-Minister and the Second Vice-Prime Minister — the French courts, through the French Ministry of Foreign Affairs, felt able to send him a summons on 22 May 2012 to attend a first appearance on 11 July 2012 for questioning on charges of laundering the proceeds of the offences of misuse of corporate assets, misappropriation of public funds, the unlawful taking of interest and breach of trust.

26. Despite being informed by Mr. **Teodoro Nguema Obiang Mangue's** counsel that it was not possible for him to appear before a foreign court because of his immunity from jurisdiction *ratione personae*, arising from his status as Second Vice-President of Equatorial Guinea in charge of Defence and State Security, the investigating judges saw fit to issue an international arrest warrant against him on 13 July 2012.

However, on 30 August 2013, having received a request from Mr. **Teodoro Nguema Obiang Mangue**, Interpol informed him that it had deleted from its files information about him "communicated by France" (Annex 11).

27. Thereafter, on 14 November 2013, the French investigating judges saw fit to send a letter rogatory to the authorities of Equatorial Guinea, not seeking permission to go to Equatorial Guinea for the purposes of the inquiry, as they should in principle have done, but requesting that the Second Vice-President of Equatorial Guinea in charge of Defence and State Security appear by videoconference; the letter rogatory stated that this request had been made on the basis of the United Nations Convention against Transnational Organized Crime, adopted in New York on 15 November 2000.

28. Following his hearing held on 18 March 2014, during which Mr. **Teodoro Nguema Obiang Mangue** invoked his immunity from jurisdiction *ratione personae* before foreign civil and criminal courts, on account of his status as a high-ranking official of the State of Equatorial Guinea participating in his country's international activities, the investigating judges nevertheless notified him that he was under judicial examination for the acts described above.

29. Since then, the French courts have refused to recognize the immunity from jurisdiction of Mr. **Teodoro Nguema Obiang Mangue**, even though by virtue of his office as Second Vice-President of Equatorial Guinea in charge of Defence and State Security, in which capacity he is called upon to represent his country internationally, he is entitled under international law to

complete personal jurisdictional immunity before foreign courts in respect of acts carried out in a private or an official capacity before and during his term of office.

30. That is the substance of a judgment delivered by the *Cour de cassation* on 15 December 2015, which, without responding to Mr. **Teodoro Nguema Obiang Mangue's** very detailed arguments, supported by various pieces of evidence, declined to grant him the privilege of immunity on the grounds that:

> "first, the functions of the applicant are not those of a Head of State, Head of Government or Minister for Foreign Affairs, and, secondly, all the alleged offences, the proceeds thereof having been laundered in France . . . were committed for personal gain before he took up his current functions, at a time when he was performing the functions of the Minister for Agriculture and Forestry" (Annex [12]). *[This and subsequent translations from this document are by the Registry.]*

31. The Republic of Equatorial Guinea contends that by this judgment the French court, which in this case fails to draw a distinction between the legal régime of personal immunity — the only one applicable to Mr. **Teodoro Nguema Obiang Mangue** — and that of substantive immunity, adopted a stance that clearly runs counter to international law, as indicated by the International Court of Justice in its Judgment of 14 February 2002 (Case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium)*).

32. According to the International Court of Justice,

> "in international law it is firmly established that, as also diplomatic and consular agents, certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs, enjoy immunities from jurisdiction in other States, both civil and criminal" (paragraph 51 of the Judgment).

33. All legal experts and a number of national courts agree that the Court's use of the words "such as" means that the list of officials cited is not restrictive but merely illustrative. In other words, immunity is not restricted to the three officials referred to — known as the "triad" or "troika" — but extends to other high-ranking officials of a State who, by virtue of their functions, are called upon to represent the State abroad.

34. The International Court of Justice further held that:

> "In this respect, no distinction can be drawn between acts performed by a Minister for Foreign Affairs in an 'official' capacity, and those claimed to have been performed in a 'private capacity', or, for that matter, between acts performed before the person concerned assumed office as Minister for Foreign Affairs and acts committed during the period of office" (*ibid.*, paragraph 55).

35. And it is precisely in order to be consistent with this Judgment of the International Court of Justice, and with international law, that a number of national courts, notably in Europe (i.e., in Great Britain and Switzerland), have granted personal immunity from jurisdiction to a Minister for Defence (Bow Street Magistrates' Court, case of *General Shaul Mofaz*, judgment of 12 February 2004), and even to a Minister for International Trade (Bow Street Magistrates' Court, case of *Bo Xi Lai*, judgment of 8 November 2005; case of *General Nezzar*, Swiss Federal Criminal

Court, judgment of 25 July 2012, which stated that, in general, an incumbent Defence Minister enjoys immunity *ratione personae* with regard to foreign criminal courts, but did not grant this immunity because General Nezzar was no longer in office and the crimes were international in character).

36. In the present case, however, the immunity from jurisdiction of the Second Vice-President of Equatorial Guinea in charge of Defence and State Security is legally incontestable, given that, in addition, by an "Institutional Declaration" dated 21 October 2015 and submitted to the *Cour de cassation*, the President of the Republic of Equatorial Guinea stated:

> 37. "In accordance with the provisions of Article 33, paragraph 3, of the Basic Law of Equatorial Guinea and by virtue of Decree No. 64/2013 of 21 May 2013, His Excellency the Second Vice-President of the Republic, in charge of Defence and State Security, represents the State of Equatorial Guinea and has the capacity to act on behalf of the State before other States and international organizations in respect of matters falling under the sectors of which he is in charge" (Annex 12).

38. Numerous documents attest to the high-ranking status of the Second Vice-President in charge of Defence and State Security and to his function of representing the State before other foreign States, notably through his representation of the State of Equatorial Guinea as head of a delegation of 26 officials, in which the Equatorial Guinean Minister for Foreign Affairs ranked third in the order of protocol, at the last Heads of State summit on sustainable development in New York, during which he delivered two speeches on behalf of the Republic of Equatorial Guinea in the UN General Assembly and was received by a number of Heads of State, including the President of the United States of America, as well as the United Nations Secretary-General (Annexes 13, 14, 15).

39. The French court therefore had an obligation to take account of the "Institutional Declaration" by the President of the Republic of Equatorial Guinea regarding the function of the Second Vice-President, particularly since it was issued by the State of Equatorial Guinea, which alone has the prerogative to determine the extent to which the functions exercised by a high-ranking representative of this kind are reflected in terms of its sovereignty, but also because, in this case, the immunity in question directly concerns the international relations and interests of the State, and not those of Mr. **Teodoro Nguema Obiang Mangue**.

3. The third aspect of the dispute relating to the violation of the principle of immunity from execution which protects foreign State property not used for private-law activities

40. In the course of the judicial investigation, by an order of 19 July 2012, the investigating judges saw fit to seize a building located at 42 avenue Foch in the 16th arrondissement of Paris, on the grounds that it belonged to Mr. **Teodoro Nguema Obiang Mangue** and had been paid for out of the proceeds of the offences alleged against him.

41. However, this contention is clearly incorrect: on the date of its attachment, the building in question had been the property of the State of Equatorial Guinea for ten months, the latter having acquired it on 15 September 2011 following the transfer of the shares of Mr. **Teodoro Nguema Obiang Mangue**, the sole shareholder of the companies which had originally owned the building, to the State of Equatorial Guinea, its sole proprietor since that date.

42. It is apparent from documents which are manifestly not included in the case file that the deed of transfer for the said building was duly declared and registered with the non-residents department of the French tax authority at 10 rue de Centre, 93160 Noisy-le-Grand, and that the **€1,145,740** of capital gains tax sought by the French tax authorities in relation to this transfer was paid in full on 20 October 2011, further to a capital gains declaration dated the same day (Annex 16).

43. Furthermore, it is plainly established that since the date they were acquired, these premises, which belong to the State of Equatorial Guinea, have never been used for private-law activities or for acts *jure gestionis*.

44. Thus, by attaching this building which is not used for private-law activities, the French courts have violated the principle of immunity from execution which the State of Equatorial Guinea is entitled to claim under international law: a principle enshrined in the United Nations Convention on Jurisdictional Immunities of States and Their Property — which, although not yet in force, was ratified by France on 12 August 2011 — and invoked by the International Court of Justice.

45. In a Judgment of 12 February 2012, the International Court of Justice found that "the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by taking measures of constraint against Villa Vigoni" (Annex 17, summary of the Judgment in the *Germany* v. *Italy* case, paragraph 2 of the operative clause).

46. The attachment of the property owned by the State of Equatorial Guinea is all the more contrary to international law, given that, in addition, it has been assigned to the diplomatic mission of the Republic of Equatorial Guinea in France since 2011.

4. The fourth aspect of the dispute concerning the attachment of a building assigned to the diplomatic mission of Equatorial Guinea in France

47. The judicial attachment of the property of the State of Equatorial Guinea was made possible only because the French Ministry of Foreign Affairs refused to recognize its diplomatic status and informed the investigating judges of its refusal, as recalled by the latter in their order of attachment.

48. By Note Verbale dated 4 October 2011, the Ambassador of Equatorial Guinea in France informed the Protocol Department, Diplomatic Privileges and Immunities Division, that the building located at 42 avenue Foch in the 16th arrondissement of Paris had been assigned to the diplomatic mission of Equatorial Guinea in France.

49. However, by Note Verbale of 11 October 2011, the Protocol Department notified the Embassy of its refusal to consider the building as part of the diplomatic mission, claiming that "[i]t falls within the private domain and is, as such, subject to ordinary law". Since the Protocol Department maintained its refusal despite repeated notifications from the Embassy in a number of letters, the judges not only carried out the attachment, but also had the premises searched and movable property seized from inside the building by the police on the basis of letters rogatory issued by those judges.

50. And yet, for four years now — that is, since 2011 — the building located at 42 avenue Foch in the 16th arrondissement of Paris has indeed been occupied by the Ambassador and all the members of Equatorial Guinea's diplomatic mission; there is a sign on it indicating that it is the Embassy, and the flag of Equatorial Guinea is raised there.

51. Ultimately, because of the difference in positions between the two States regarding the legal status of the building in question, the diplomatic mission of Equatorial Guinea in France is being deprived of the protection to which it is entitled under Article 22 of the Vienna Convention on Diplomatic Relations and according to relevant practice.

52. With regard to this, as well as other aspects of the dispute, the Republic of Equatorial Guinea remains convinced that it can be resolved through conciliation between the two States, since it contends that it is free to establish its diplomatic mission at the address of its choosing, without requiring the express permission of the receiving State, as long as it does not move its mission outside Paris, the capital of the French Republic, in which case it would require permission as provided for in Article 12 of the Vienna Convention cited above.

53. Indeed, in their analysis of the Vienna Convention and the question of free choice of address for a diplomatic mission, specialists in diplomatic law maintain that:

> "Contrary to consular posts, the Convention does not require the express consent of the receiving State with regard to the seat of the mission. According to established practice, the seats of such missions are almost always located in the capital of the receiving State . . . The sending State's choice of the seat of its mission is thus not subject to the approval of the receiving State and does not even have to be notified to that State" (Annex 18, excerpt from *Droit international des relations diplomatiques et consulaires*, Anna Smolinska, Maria Boutros, Frédérique Lozanorios and Mariana Lunca, ed. Bruylant). *[Translation by the Registry.]*

54. Similarly, Professor Jean Salmon writes the following regarding the choice of premises for the mission:

> "Does the sending State have a choice as to where to establish the mission in the receiving State? Such freedom appears to be limited by the following obligations:
>
> — First, it is established practice for the diplomatic corps and members of the mission to be located in the same city as the government and sovereign of the receiving State. This is a traditional rule. And if the government of the receiving State were to change its seat, the diplomatic missions accredited to the Head of State must follow if so requested.
>
> — Secondly, the receiving State can group embassies together in the same area, which greatly facilitates the task of protecting them." *[Translation by the Registry.]*

55. Professor Salmon adds:

> "The Vienna Convention does not specify at which point the premises acquire the status of premises of the mission. There is no provision for a notification procedure for premises such as the one in Article 11 for people. However, as soon as

the premises are assigned, their protection is ensured." (Annex 19, excerpt from *Manuel de droit diplomatique*, ed. Bruylant, pp. 188-192.) *[Translation by the Registry.]*

56. It thus follows from the above that the measures of constraint applied to the property of Equatorial Guinea and the judicial attachment thereof constitute a violation of the rights of Equatorial Guinea as recognized by international law, notably by the Vienna Convention on Diplomatic Relations.

57. Therefore, with a view to settling the dispute between the two States, arising from the internationally wrongful acts caused by the judicial proceedings pending at the Paris *Tribunal de grande instance* under the references Prosecution No. 0833796017, Investigation No. 2292/1012, which are likely to engage the international responsibility of the French Republic, the Republic of Equatorial Guinea officially notifies the French Republic of the existence of a dispute between the two States and of an offer of settlement through conciliation and arbitration, under the auspices of the Permanent Court of Arbitration in The Hague, in accordance with that Court's Optional Conciliation Rules and Optional Rules for Arbitrating Disputes between two States.

58. The Republic bases its request for settlement on:

— Article 35 of the United Nations Convention against Transnational Organized Crime adopted in New York on 15 November 2000, ratified by France on 29 October 2002 and by Equatorial Guinea on 7 February 2003, which provides that:

> "1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.
>
> 2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court."

— Articles II and III of the Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, ratified by France on 30 January 1971 and by Equatorial Guinea on 4 November 2014, which state that:

> Article II "The parties may agree, within a period of two months after one party has notified its opinion to the other that a dispute exists, to resort not to the International Court of Justice but to an arbitral tribunal. After the expiry of the said period, either party may bring the dispute before the Court by an application."
>
> Article III "Within the same period of two months, the parties may agree to adopt a conciliation procedure before resorting to the International Court of Justice."

The Republic of Equatorial Guinea looks forward to receiving the position of the French Republic through the customary official channels.

For the Republic of Equatorial Guinea,

The Ambassador Extraordinary and Plenipotentiary

Miguel OYONO NDONG MIFUMU.

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2. Commentary by Professor Gabriel Roujou de Boubée

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4. Note Verbale of 6 January 2016

5. Application for characterization *(réquisitoire aux fins de qualification)*, 4 July 2011

6. Judgment of the *Cour de cassation, Chambre criminelle*, 3 June 2004

7. Judgment of the *Cour de cassation, Chambre criminelle*, 25 June 2003

8. Judgment of the *Cour de cassation, Chambre criminelle*, 24 February 2010

9. Official Report of the Public Prosecutor of Equatorial Guinea, 22 November 2010

10. Charter of Economic Rights and Duties of States

11. Letter from Interpol

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13. List of members of the delegation of Equatorial Guinea headed by the Second Vice-President

14. Newspaper article on the Second Vice-President of Equatorial Guinea at the UN

15. Speech made by the Second Vice-President of Equatorial Guinea at the UN

16. Capital gains tax return, 20 October 2011

17. Summary of the Judgment of the International Court of Justice of 12 February 2012

18. Excerpt from *Droit international des relations diplomatiques et consulaires*

19. Excerpt from *Manuel de droit diplomatique*

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ANNEX 13

Note Verbale to the Embassy of Equatorial Guinea dated 17 March 2016 from the French Ministry of Foreign Affairs and International Development

Note Verbale to the Embassy of Equatorial Guinea dated 17 March 2016 from the French Ministry of Foreign Affairs and International Development

[Translation]

The Ministry of Foreign Affairs and International Development, Protocol Department, presents its compliments to the Embassy of the Republic of Equatorial Guinea and acknowledges receipt of the Embassy's Note Verbale No. 062/16, dated 2 February 2016, and of the document entitled Memorandum No. 2, appended thereto.

The Ministry recalls the attachment of France to its bonds of friendship with the Republic of Equatorial Guinea.

It further recalls that the facts mentioned in the Embassy's Note Verbale have been the subject of court decisions in France and remain the subject of ongoing legal proceedings.

It draws the Embassy's attention to the fact that the French authorities cannot challenge those decisions or influence those proceedings.

They are, therefore, unable to accept the offer of settlement by the means proposed by the Republic of Equatorial Guinea.

The Ministry of Foreign Affairs and International Development, Protocol Department, avails itself of this opportunity to renew to the Embassy of the Republic of Equatorial Guinea the assurances of its highest consideration.

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