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INTERNATIONAL COURT OF JUSTICE

CASE CONCERNING IMMUNITIES AND CRIMINAL PROCEEDINGS

(EQUATORIAL GUINEA *v.* FRANCE)

MEMORIAL OF
THE REPUBLIC OF EQUATORIAL GUINEA

VOLUME II

(Annexes 1-29)

3 January 2017

[Translation by the Registry]

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ANNEX 1

Basic Law of Equatorial Guinea (new text of the Constitution of Equatorial Guinea, officially promulgated on 16 February 2012, with the texts of the Constitutional Reform approved by referendum on 13 November 2011)

[Translation from https://www.constituteproject.org/]

constituteproject.org

Equatorial Guinea's Constitution of 1991 with Amendments through 2012

This complete constitution has been generated from excerpts of texts from the repository of the Comparative Constitutions Project, and distributed on **constituteproject.org**.

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• Source of constitutional authority
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Preamble

• God or other deities

We, the people of Equatorial Guinea, conscious of our responsibility before God and history;

Driven by the will to safeguard our independence, organize and consolidate our national unity;

Desirous of upholding the authentic African spirit of the positive tradition of family and communal organization, adapting it to new social and judicial structures consistent with modern life;

Conscious that the charismatic authority of the traditional family is the foundation of the Equatoguinean Society;

• International human rights treaties

Firmly supported by the principles of social justice and solemnly reaffirmed by the rights and liberties of men defined in the Universal Declaration of Human Rights of October 10, 1948;

• International human rights treaties

The African Charter of Rights of Man and of Peoples of June 26, 1981;

Adopt the following Fundamental Law of the Republic of Equatorial Guinea.

First Title: Fundamental Principles of the State

Article 1

• Type of government envisioned

1. Equatorial Guinea is a sovereign, independent, republican, social and democratic State, in which the supreme values are unity, peace, justice, freedom and equality.

2. Political pluralism is recognized.

3. Its official name is: Republic of Equatorial Guinea (República de Guinea Ecuatorial).

• Claim of universal suffrage

Article 2

Sovereignty belongs to the people, who exercise it by way of universal suffrage. From it emanate the public powers that are exercised in the conditions determined by this Fundamental Law and other laws. No fraction of the people or individual shall attribute itself the exercise of National Sovereignty.

Article 3

1. The territory of the Republic of Equatorial Guinea is comprised of the continental area known as Río Muni and the Bioko, Annobón, Corisco, Elobey Grande, Elobey Chico, Mbañe, Conga, Leva, Cocotero islands and adjacent islets, the fluvial waters, the maritime zone, the continental shelf determined by the Law and the air space that covers them.

• Ownership of natural resources

2. Over its territory the State fully exercises its sovereignty and can explore and exploit in an exclusive manner all resources and mineral wealth and hydrocarbons.

3. The national territory shall be unalienable and irreducible.

• Municipal government
• Subsidiary unit government

4. For administrative and economic purposes it is divided in Regions, Provinces, Districts, and Municipalities.

5. The law determines the limits and the denominations of the regions, provinces, districts, and municipalities. Equally, the law determines the space occupied by each of the zones mentioned before.

Article 4

• Official or national languages
• Protection of language use

1. The official languages of the Republic of Equatorial Guinea are Spanish, French, and the ones determined by the Law. Autochthonous languages are recognized as part of the national culture.

• National flag

2. The national flag is green, white and red, in three horizontal stripes of equal dimensions and a blue triangle at the extremity closest to the flagpole. The center of the flag is engraved with the seal of the Republic.

3. The Seal of the Republic is the one established by the Law.

• National motto

4. The motto of the Republic is Unity, Peace and Justice.

• National anthem

5. The national anthem is the one sung by the people on the day of the proclamation of independence on October 12, 1968.

Article 5

The fundamentals of the Equatoguinean society are:

• Human dignity

a. The respect to the human being, his dignity and freedom, and other fundamental rights.

• Right to found a family

b. The protection of the Family, the basis of the Equatoguinean society.

• Equality regardless of gender

c. The recognition of equality between men and women.

d. The protection of labor through which man develops its personality of creating wealth for the Nation in favor of social well-being.

e. The promotion of economic development of the Nation;

• Right to culture

f. The promotion of the social and cultural development of the Equatoguinean citizens to make real in them the supreme values of the State.

• Reference to art
• Right to culture
• Protection of environment
• Reference to science

Article 6

The State encourages and promotes culture, artistic creation, scientific and technological research and sees to the conservation of nature, cultural heritage of the artistic and historical riches of the Nation.

• Right to culture

Article 7

The State defends the sovereignty of the Nation, strengthens its unity and ensures respect of fundamental rights of man and the promotion of the economic, social and cultural progress of its citizens.

• International law
• International organizations

Article 8

The Equatoguinean State abides to the principles of International Law and reaffirms its attachment to the rights and obligations that arise from the Organizations and International Organizations to which it is a member.

Article 9

• Right to form political parties

1. Political parties are political organizations composed by persons that freely associate to participate in the political orientation of the State. They constitute the expression of political pluralism and democracy; they concur to the formation and manifestation of popular will, as fundamental instruments for political participation.

• Prohibited political parties
• Restrictions on political parties

2. Equatorial Guinea's political parties may not have identical names as those that pre-existed before October 12, 1968, and shall have national character and scope, thus shall not be based on tribe, ethnicity, region, district, municipality province, gender, religion, social condition nor profession or occupation. A Law will regulate their creation and functioning.

• Right to strike

Article 10

The right to strike is recognized and is exercised in accordance with the conditions provided by the law.

Article 11

The citizens, public powers, political parties, unions, associations, and other legal persons are subject to the Fundamental Law and the Judicial Order.

• Requirements for birthright citizenship

Article 12

1. The law determines the legal regime applicable to the right of nationality, citizenship and the condition of foreigner.

2. The majority of age of the Equatoguinean citizen is acquired at the age of 18.

Article 13

1. Every citizen enjoys the following rights and freedoms.

• Human dignity
• Right to life

a. The respect of his person, life, personal integrity, its dignity and his full material and moral development. The death penalty can only be imposed by a crime established by the law.

• Freedom of expression
• Freedom of opinion/thought/conscience

b. To the freedom of expression, thinking, ideas and opinions.

• General guarantee of equality
• Equality regardless of gender

c. To equality before the law. The woman, irrespective of her civil status, shall have the same rights and opportunities as men in all aspects of public, private and familiar life, in civil, political, economic, social and cultural life.

• Freedom of movement

d. To free circulation and residence;

• Right to protect one's reputation

e. To honor and a good reputation;

• Freedom of religion

f. To freedom of a religion and worship;

• Right to privacy

g. To the inviolability of the domicile and the privacy of all communications;

• Right of petition

h. To submit claims and petitions to the authorities;

• Right to amparo
• Protection from unjustified restraint

i. To the right of habeas corpus and amparo.

• Right to counsel
• Right to fair trial

j. To the right of defense before tribunals and to an adversarial process within the framework of the law.

• Freedom of assembly
• Freedom of association

k. To freedom of association, assembly and manifestation.

• Right to choose occupation

l. To freedom of working.

• Protection from unjustified restraint

m. To not being deprived of their freedom save by virtue of a judicial order, except in those cases provided by the Law and in flagrant crimes.

n. To be informed of the cause and reasons of their detention.

• Presumption of innocence in trials

o. To be presumed innocent until culpability has not been demonstrated.

• Protection from self-incrimination

p. To not testify in trial against oneself, or relatives within a fourth degree of consanguinity or second degree of affinity, or to be compelled to declare under oath against oneself in matters that may give rise to criminal responsibility.

• Prohibition of double jeopardy

q. To not be judged or condemned twice for the same acts.

• Right to counsel

r. To not be condemned without previous trial, nor to be deprived of the right of defense in any state or grade of the process.

• Principle of no punishment without law

s. To not be punished for an act or omission that in the moment that it took place was not characterized or punished as a criminal infraction; or to not be subjected to a penalty not provided by the law. In case of doubt, the Criminal Law is applied in the sense more favorable to the offender.

2. On the basis of the principle of equality of the women before the law, the public powers will adopt legal initiatives and mechanisms to favor the adequate representation and participation of the Woman in the performance of offices (cargos) and other functions in all institutions of the State.

3. The legislative provisions will define the conditions under which these rights and liberties will be exercised.

• Human dignity

Article 14

The enumeration of the fundamental rights recognized in this chapter does not exclude those guaranteed by the Fundamental Law, nor others of analogue nature and that are derived from human dignity, from the principle of sovereignty of the people or the social and democratic state of law and the republican form of government.

Article 15

• General guarantee of equality
• Equality regardless of gender
• Equality regardless of social status
• Equality regardless of tribe or clan
• Equality regardless of religion

1. Any act of partiality or discrimination duly found on the basis of tribe, ethnicity, gender, religion, social, political or other analogous motives is punishable by law.

2. Acts of corruption will also be punished by Law.

• Duty to serve in the military

Article 16

1. All Equatoguineans have the obligation to honor the Fatherland, defend its sovereignty, territorial integrity and national unity, as well as to contribute to the preservation of peace, national security, and the essential values of the Equatoguinean tradition and to protect national interests.

2. Military service is mandatory. It will be regulated by the law.

• Reference to fraternity/solidarity

Article 17

All citizens have the right and the obligation to live peacefully in the Republic of Equatorial Guinea, to respect the rights of others and contribute to the formation of a just, fraternal and caring (solidaria) society.

Article 18

All inhabitants of the Republic shall respect Equatorial Guinea, its national symbols, the Head of State, Government, and other institutions legally constituted.

Article 19

1. The State through the Tax Law, inspired by the basic principles of equality, generality and prosperity, establishes the taxes, encumbrances (gravámenes) and para-fiscal contributions and the special circumstances that concur in each tax type (figura impositiva) for its liquidation.

• Duty to pay taxes

2. All legal and physical persons, national or foreign, residents of the Republic of Equatorial Guinea have the obligation to pay taxes [imposed] by law.

Article 20

• Duty to pay taxes

1. Every Equatoguinean has the duty to proportionally bear to its contributive faculties the public financial burdens established by the law.
2. The revenues and expenses of the State and the investment program are written in each financial year in an annual budget made in accordance with the applicable legislation.

• Duty to obey the constitution

Article 21

Every citizen has the duty to respect, to comply and to defend the Fundamental Law and the Nation's Legal Framework.

Article 22

• Right to found a family

1. The State protects the family as the fundamental cell of society, it assures [to it] the moral, cultural and economic conditions that favor the achievement of its objectives.
2. It also protects every class of matrimony celebrated in accordance with the law, as well as maternity and familiar duties.

Article 23

• State support for children

1. The State protects the person from its conception and fosters the minor in order for him to develop normally and with security for his moral, mental, and physical integrity, as well as his life within the home.

• Right to health care

2. The State encourages and promotes primary attention to health care as the cornerstone for the development of such sector.

Article 24

• Compulsory education
• Free education

1. Education is the primordial duty of the State. Every citizen has the right to primary education, which is obligatory, free, and guaranteed.

• Free education

2. The extent of gratuity of education is established by law.
3. The State guarantees to every person, private entity or religious community, legally constituted, the right to found schools, provided that they are subject to the official pedagogical plan.
4. Official education permits the free election of the religious formation program, based on the freedom of conscience and religion protected by this Fundamental Law.
5. The officially recognized education cannot be oriented to program or propagate an ideological or partisan tendency.

Article 25

The State supports responsible paternity and the appropriate education to promote the family.

• Right to work
• Duty to work

Article 26

1. Work is a right and social duty. The State recognizes its constructive role in improving the well-being and the development of its national wealth. The State promotes the economical and social conditions to eradicate poverty, misery and ensures to all the citizens of the Republic of Equatorial Guinea with equality the possibilities of a useful occupation that allows them not to be threatened by necessity.
2. The law will define the conditions for the exercise of this right.

• Right to establish a business
• Right to competitive marketplace

Article 27

1. The economic system of the Republic of Equatorial Guinea is based on the principle of free markets and free enterprise.
2. The law regulates the exercise of these freedoms in accordance with the requirements of economic and social development.
3. The State protects, guarantees, and controls the investment of foreign capital that contributes to the development of the State.

Article 28

The economy of the Republic of Equatorial Guinea works through four basic sectors:

- **a.** The public sector, comprised by companies exclusively owned by the State, constituted mainly for the exploitation of resources and services enumerated under Article 29 of this Fundamental Law, as well as for any other economic activities.
- **b.** The sector of mixed economy, integrated by companies of public capital in association with private capital.
- **c.** The cooperative sector, which property and management belongs to the community of people that permanently work on them. The State dictates laws for the regulation and development of this sector;
- **d.** The private sector, integrated by companies owned by one or more physical or legal persons of private law and, in general, by companies that do not fall under the sectors enumerated above.

• Ownership of natural resources

Article 29

1. The following are resources and services reserved to the public sector:
    - **a.** The minerals and hydrocarbons.
    - **b.** The services of provision of potable water and electricity.
    - **c.** The mail services, telecommunications and transportation. (• Telecommunications)
    - **d.** Radio diffusion and television. (• State operation of the media • Radio • Telecommunications • Television)
    - **e.** Others determined by the law.
2. The State may delegate, concede or associate with private initiative for the development of any of the activities or services mentioned above, in the form and cases that the law establishes. (• State operation of the media)

• Right to own property

Article 30

1. The State recognizes property of public and private character.
2. The right of property is guaranteed and protected without any limitations other than those established in the law.
3. Property is inviolate, no person shall be deprived of his assets and rights, except for causes of public utility and upon the corresponded compensation. (• Protection from expropriation • Inalienable rights)

4. The State guarantees to farmers the traditional property of the lands that they possess.

5. The law will determine the legal regime of the assets of the public domain.

Second Title

Chapter I: Powers and Organs of the State

Article 31

1. The State exercises its sovereignty through the following powers: the Executive Power, the Legislative power, and the Judicial Power.

2. The law develops the faculties and functions of each of these powers.

Article 32

1. The State exercises its powers through the President of the Republic, the Vice-president of the Republic, the Council of Ministers, the Chamber of Deputies, the Senate, the Judicial Power, the Constitutional Tribunal, the Superior Council of the Judicial Power, the Council of the Republic, the National Council for the Economic and Social Development, the Accounts' Tribunal, the Defender of the People and other organisms created in accordance with the Fundamental Law and other laws.

2. The law develops the competencies and functioning of these organisms.

• Name/structure of executive(s)
• Head of government selection
• Head of government powers
• Eligibility for head of government

3. The President of the Republic may designate a Prime Minister from within the members of the Government to be in charge for the administrative coordination, presentation of laws and other provisions of the Executive before the Parliament, as well as other functions delegated to him.

Chapter II: Of the President of the Republic

Article 33

• Name/structure of executive(s)
• Secret ballot
• Head of state selection
• Claim of universal suffrage

1. The President of the Republic is the Head of State, he exercises the Executive Power as Head of Government. He incarnates national unity, defines the policy of the Nation, sees to the respect of the Fundamental Law, assures by his arbitration the functioning of public powers, represents the Nation, and is the guarantor of National Independence. He is elected by universal, direct, and secret suffrage by the simple majority of the votes validly emitted.

• Head of state selection

2. The law establishes the conditions of development of the electoral process.

• Deputy executive

3. The President of the Republic is assisted by a Vice-President of the Republic, to whom he may delegate some of his Constitutional faculties.

• Deputy executive
• Extraordinary legislative sessions
• Joint meetings of legislative chambers

4. Before carrying out his functions, the appointment of the Vice-President of the Republic is ratified by both Chambers of the Parliament in plenum (pleno) and by simple majority of their members in the course of one extraordinary session convoked to this effect by the President of the Republic.

• Head of state immunity

Article 34

The person of the Head of State is inviolable. The law regulates the privileges and immunities of the Head of State after their mandate.

• Eligibility for head of state

Article 35

To be president of the Republic it is required:

a. To be an Equatoguinean by origin.

b. To be in enjoyment of the right of citizenship.

c. To have lived in the Country for five uninterrupted years.

• Constitutional interpretation

d. To be able to interpret the Fundamental Law.

e. To have been elected in accordance with the Fundamental Law and other laws.

• Minimum age of head of state

f. To have forty years as a minimum.

g. To not have another nationality.

Article 36

• Head of state term length

1. The President of the Republic is elected for a term of seven years renewable with the possibility of being reelected.

• Head of state term limits

2. The mandate of the President of the Republic is limited to two consecutive periods, not being able to present himself for a third mandate until alternation is produced.

• Scheduling of elections

3. The presidential elections will be convoked on the seventh year of the mandate of the President of the Republic in a date set by decree adopted by the Council of Ministers.

• Scheduling of elections

4. The elections shall be held 40 days before the expiry of the term of office of the President of the Republic or later, but within 70 days after the announcement of the date.

Article 37

• Oaths to abide by constitution

1. The President [who is] elected in the maximum time of thirty days from the proclamation of the results of the elections, swears the oath of loyalty to the Fundamental Law and assumes the office before the Honor Court composed by the Boards of the Chamber of Deputies and the Senate, the Supreme Court of Justice in plenum (pleno) and the Constitutional Tribunal in plenum.

• Cabinet selection

2. Having celebrated the presidential elections, the elected President of the Republic will appoint a new Government.

• Head of state powers

Article 38

The President of the Republic determines the policy of the Nation, arbitrates and moderates the normal functioning of all institutions of the State. His authority extends over national territory.

• Head of state powers

Article 39

The President of the Republic exercises the regulatory power in the Council of Ministers.

• Approval of general legislation

Article 40

The President of the Republic sanctions and promulgates the laws, exercises the right to veto in the terms provided by this Fundamental Law.

• Head of state powers

Article 41

The President of the Republic equally exercises the following powers:

a. Guarantees the application of this Fundamental Law, the functioning of public powers and continuity of the State.

b. Convenes and presides the Council of Ministers.

• Head of state decree power

c. Dictates in the Council of Ministers, Law-Decrees and Decrees, in the terms established in this Fundamental Law.

• Designation of commander in chief

d. He is the Supreme Chief of the National Armed Forces and of the Security of the State. The President of the Republic guarantees the security of the State in the exterior.

• Power to declare/approve war

e. Declares war and concludes peace.

• Deputy executive

f. The President of the Republic freely appoints and dismisses the Vice-president of the Republic. The Vice-president of the Republic shall belong to the party of the President of the Republic.

g. Ratifies the decision of the Chamber of Deputies and the Senate regarding the election and termination of the Presidents and other members of their respective Boards in conformity with this Fundamental Law and the regulation of both Chambers.

• Selection of active-duty commanders

h. Appoints and dismisses the high civil and military officials, being able to delegate to the Vice-president of the Republic or the Prime Minster, the appointment of other civil and military officials.

• International law
• Treaty ratification

i. Negotiates and signs the international treaties in accordance with this Fundamental Law.

• Foreign affairs representative

j. Represents Equatorial Guinea in international relations, receives and accredits ambassadors authorizes the consuls in exercise of their rights.

k. Confers titles, honors and decorations of the State.

• Power to pardon

l. Exercises the right of pardon (gracia).

m. Convokes the general elections provided in this Fundamental Law.

• Referenda

n. Convokes the referendum in accordance with this Fundamental Law.

• Economic plans

o. Approves in the Council of Ministers the national development plans.

• Dismissal of the legislature

p. Decides upon the right to dissolve the Chamber of Deputies in the Senate in accordance with the provisions of this Fundamental Law.

q. Exercises the other attributions and prerogatives conferred to him by the law.

Article 42

With the purpose of seeing for the territorial integrity and preserving the public order, all the National Armed Forces, Security Forces of the State and Public Order Forces entirely depend for all effects on the President of the Republic.

• Emergency provisions

Article 43

In the event of imminent danger, when the declaration of state of exception (estado de excepción) or siege is declared, the President of the Republic may suspend for a maximum time of three months the rights and guarantees established in this Fundamental Law and take exceptional measures to safeguard the territorial integrity, the national independence, the Institutions of the State and functioning of the services and public powers, informing the people by message. The term of three months referred to will be extended until the causes that motivated such suspension disappear.

• Emergency provisions

Article 44

1. The President of the Republic, when the circumstances so demand, may declare through decree the state of emergency, the state of exception or siege, informing it to the Chamber of Deputies and the Senate.

2. The proclamation of the state of emergency, exception and siege shall expressly determine the effects of it and the territorial scope to which its duration is extended.

3. The law regulates the state of emergency, exception and siege, as well as the corresponding competencies and limitations.

4. [He] shall not proceed to dissolve the Chambers of the Parliament while any of the states provided in this article has been declared.

• Terrorism

5. The rights and guarantees recognized in this Fundamental Law can be suspended in individual or collective form for specific persons determined by the Law, due to the acts of armed bands or of terrorist elements, with the necessary judicial intervention and the adequate parliamentary control.

Article 45

• Head of government removal

1. The functions of the President of the Republic shall cease by:

   a. Resignation.

   b. Expiry of the mandate provided in the conditions established by this Fundamental Law

   c. Permanent physical or mental incapacity.

   d. Death.

• Head of state replacement

2. In the event of vacancy in power for the reasons a, c, and d the Vice-president of the Republic assumes the functions of the President of the Republic.

3. In the maximum time of twenty-four hours from the vacancy, the new President of the Republic takes the oath of fidelity to the Fundamental Law and assumes office before a Court of Honor composed by the Boards of the Chamber of the Deputies and of Senate, the Supreme Court of Justice in Plenum and the Constitutional Tribunal in Plenum, to finish the mandate of the substituted President of the Republic.

• Establishment of cabinet/ministers

Chapter III: Of the Council of Ministers

Article 46

For the exercise of the political and administrative function, the President of the Republic presides the Council of Ministers, first constituted by the Vice-president of the Republic in political and administrative matters.

• Powers of cabinet

Article 47

1. The Council of Ministers is the organ that exercises the general policy of the Nation as determined by the President of the Republic, ensures the application of the laws and permanently assists the President of the Republic in political and administrative matters.

2. The law determines the number of Ministries, their denominations as well as the competencies attributed to each one.

Article 48

The direction, management and administration of public services is trusted upon the Ministers in the matters of competence of the Departments of their respective branches.

• Powers of cabinet

Article 49

Aside from the cases expressly defined by this Fundamental Law and the ones determined by other laws, the Council of Ministers has the following attributions:

• Reference to science

a. To direct the general policy of the Nation as determined by the President of the Republic by organizing and executing economic, cultural, scientific, and social activities.

• Economic plans

b. To propose the socio-economic development plans of the State and once approved by the Chamber of Deputies and the Senate and signed by the President of the Republic, organize, direct and supervise their execution.

• Budget bills

c. Elaborate the project of the General Budget of the State and once approved by the Chamber of Deputies and signed by the president, see to its execution.

d. Adopt the monetary policy and take the measures to protect and strengthen the monetary and financial regime of the State.

e. Elaborate the Projects of Laws and submit them to the Chamber of Deputies and the Parliament for approval.

• Protection of stateless persons

f. Grant territorial asylum.

g. Direct the Administration of the State, coordinating and supervising (fiscalizando) the activities of the different Departments that integrate it.

h. See to the execution of laws and other provisions of general character that integrate the Judicial Order of the Nation.

i. Create the necessary commissions for the fulfillment of the attributions conferred to it.

Article 50

• Cabinet removal

1. The Vice-president of the Republic, the Prime Minister and the Members of the Government, are liable for their management in a joint way before the law, before the President of the Republic, before the Chamber of Deputies and the Senate, without prejudice of the individual liability of each one of them before the law.

• Cabinet removal
• Head of government removal
• Head of state removal

2. The civil and criminal responsibility of the President of the Republic and the Chief of Government, of the Vice-president of the Republic, the Prime Minister and Members of Government will be demanded in accordance.

3. Those who sign (refrenden) them will be responsible for the acts of the President of the Republic, the Chief of State and of the Government.

Article 51

The members of Government, together with the President of the Republic and Chief of Government are:

a. The Vice-president of the Republic.

b. The Prime Minister

c. The Vice Prime Ministers

d. The Ministers of State

e. The Ministers

f. The Delegated Ministers

g. The Vice-Ministers

h. The Secretaries of State

• Oaths to abide by constitution

Article 52

Before taking possession of his functions, the Vice-president of the Republic, the Prime Minister and other Members of the Government take the oath of fidelity before the President of the Republic, to his person and to this Fundamental Law.

Article 53

The Council of Ministers in Plenum and the Ministers separately may concur with voice and without vote to the debates of the Chamber of Deputies and the Senate. They also concur when they are invited to inform.

Chapter IV: Of the Parliament

Common Provisions of the Chambers

• Claim of universal suffrage

Article 54

The power to legislate resides in the people, who delegates it to the Parliament through universal suffrage and who exercises it within the framework of competencies provided by this Fundamental Law.

• Structure of legislative chamber(s)
• Joint meetings of legislative chambers

Article 55

The Parliament exercises the Legislative Power of the State. Two Chambers compose it: the Chamber of the Deputies and the Senate. Both Organs participate in the formulation of laws and act separately and jointly in the manner established by this Fundamental Law and other laws in the exercise of their respective functions and competencies.

• First chamber selection
• Second chamber selection

Article 56

• Scheduling of elections
• Secret ballot
• Term length for first chamber
• Term length of second chamber
• Claim of universal suffrage

1. The Deputies and Senators are elected for a mandate of five years through universal, direct, and secret suffrage in general elections that are held on one day and within sixty days before or after the termination of their mandate.

2. The seats of the Deputies and of the Senators are attributed to each list of candidacy by the system of representation determined by the law.

• Eligibility for first chamber
• Eligibility for second chamber

3. The Electoral Law determines the number of seats that correspond to each electoral circumscription, the regime of eligibility and ineligibility and of compatibility and incompatibility of the Deputies and Senators, and develops the other aspects of the electoral process.

Article 57

The Deputies and the Senators are not bound by imperative mandate.

Article 58

The Deputies and the Senators have the right to amendment and to vote. The vote is personal.

• Referenda

Article 59

The President of the Republic, after consulting with the Government and the Boards of both Chambers, may submit to popular consultation any question that requires the direct consultation of the People. The project adopted as such, is promulgated by the President of the Republic.

• Dismissal of the legislature

Article 60

The President of the Republic, in Council of Ministers may provide for the dissolution of the Chamber of Deputies and the Senate and order the convocation of the general anticipated elections. If the dissolution of the Chamber of Deputies and the Senate occurs during the last year of the period for which its members were elected, the election of their members takes place in accordance with the provisions of this Fundamental Law.

Article 61

The vacant seats that are produced in the Chamber of Deputies and the Senate are filled in accordance with the provisions of the Electoral Law.

• Immunity of legislators

Article 62

1. No Deputy or Senator may be persecuted or detained for the opinions that he has emitted during and after the exercise of his functions in the Chamber of the Deputies or in the Senate respectively.

2. No governmental or judicial authority may detain or prosecute a Deputy or Senator without the indispensable requirement of obtaining the previous permission of the Board of the respective Chamber expect in the event of a flagrant crime.

Article 63

1. The Chamber of the Deputies and the Senate meet in the full right on the first working day after thirty days have elapsed since the promulgation of the results of the General Elections.

2. The Agenda of the day for this first meeting will be dedicated exclusively to the election of the Presidents and other members of the respective Boards, unless the Government requests the inclusion of urgent matters.

Article 64

• Length of legislative sessions

1. The Chamber of Deputies and the Senate meet two times per year, once in the month of January and the other in the month of July, for a maximum time of five months per period of sessions.

• Quorum for legislative sessions

2. To hold sessions, the presence of half plus one of the members of the Chamber of the Deputies and the Senate is required, and the agreements are taken by simple majority of votes of those present.

Article 65

The opening and closing of each period of sessions [,] both ordinary and extraordinary [,] is established by the Decree of the President of the Republic, in accordance with the Boards of both Chambers.

• Public or private sessions

Article 66

The debates of the Plenary Sessions of the Chamber of Deputies and the Senate are public.

Article 67

By petition of the Government or through the three fourths of Deputies or Senators, the Chamber of Deputies and Senate can hold specific closed sessions for reasons of confidentiality or security.

Article 68

• Initiation of general legislation

1. The legislative initiative corresponds to the President of the Republic in the Council of Ministers and to the Deputies and Senators in the way that the law determines.
2. The proposals of laws emanating from the Deputies and Senators are deposited with the Board of the Chamber of the Deputies and of the Senate in accordance with what the respective Internal Regulations establish and are transmitted to the Government for their study.

Article 69

Aside from the cases expressly provided in other Articles of this Fundamental Law, the following are matters reserved to the Law.

a. The regulation of the exercise of the rights and duties of the citizens.

• Protection from expropriation

b. The regime of forced expropriation of assets taking into account their public utility.

c. The nationality, the state and capacity of persons, the matrimonial regimes and inheritances.

d. The judicial organization, the creation of new organs of jurisdiction and the statutes of the Magistrates and of the Public Ministry.

e. The penitentiary regime, amnesty and the determination of crimes, as well as the penalties that are applicable to them.

f. The regime of association, political parties, and unions.

g. The regime of issuance and printing of money, stamps and seals of the State.

h. The administrative and financial organization in general.

i. The conditions of participation of the State in mixed companies and the management of them.

j. The regime of public patrimony.

k. The regime of the freedom of persons, property, concessions, real rights and civil and commercial obligations.

l. The credits and fiscal obligations of the State.

m. The program of economic and social action.

n. The fundamental principles of education, culture, labor rights, and social security.

o. The regulation of weights and measures.

• Budget bills

Article 70

1. The General Budgets of the State [,] presented by the Government in the course of the second session [,] are voted by the Chamber of Deputies and Senate. In the case that they are not approved before the expiration of the current financial year, the President of the Republic can extend the Budgetary Law of the preceding year until the adoption of the new one.

• Extraordinary legislative sessions

2. On petition of the Government, the Chamber of Deputies and Senate are convoked ten days to meet in extraordinary session for a new deliberation.

3. In the event that the Budgets have not been adopted by the end of the extraordinary session, the Budgetary Law is definitively established by the President of the Republic.

• Extraordinary legislative sessions

Article 71

If the Budgets are not presented by the Government in the course of the second ordinary session of the Chamber of Deputies and Senate, the President of the Republic will convoke an extraordinary session to this end.

• Approval of general legislation

Article 72

Before promulgating the Law, the President of the Republic can demand a second or third reading of it to the Chamber of the Deputies and Senate.

Article 73

The President of the Republic can address by its own initiative the Chamber of the Deputies and the Senate or send written messages. These communications cannot give rise to any debate in his presence, except when the session is especially dedicated to this effect.

• Leader of first chamber
• Leader of second chamber

Article 74

The Agenda of the day of the Sessions of the Chamber of Deputies and Senate is established by the respective boards.

• Approval of general legislation

Article 75

The President of the Republic promulgates and sanctions the laws adopted by the Chamber of Deputies and Senate.

Article 76

The Chamber of Deputies and Senate approve their budgets of expenditures and communicate them to the Government for their consideration and inclusion in the General Budgets of the State.

Article 77

The Chambers communicate in writing between them and with the other Powers of the State through their respective Presidents.

• Outside professions of legislators

Article 78

The law establishes the regime of incompatibility of the Deputies and Senators in exercise of their functions.

Article 79

The common functions of the Chamber of Deputies and the Senate are the following:

• Leader of first chamber
• Leader of second chamber

a. To elect from their members their Presidents, Vice-presidents, and other members of the Boards of their respective Chambers.

b. To dictate their own internal Regulations

• Budget bills

c. To approve the Law of the Budget of Revenues, Expenses and Investments of the State.

d. To legislate in tax matters, suppress and create taxes and other encumbrances in accordance with every case.

e. To legislate concerning weights and measures.

f. To determine the bases of Civil, Commercial, Procedural, Criminal, and Labor Law.

g. To regulate the fundamental rights and all those related to matters of legal reserve.

h. Any other attributions conferred by the laws to them.

Of the Chamber of Deputies

• Scheduling of elections
• Secret ballot
• Size of first chamber
• First chamber selection
• Term length for first chamber
• Claim of universal suffrage

Article 80

The Chamber of Deputies, is the legislative organ of the State and of popular representation of the Nation. It is composed of 100 members that are elected for a mandate of five years through universal, direct, and secret suffrage in general elections that are held on one day and within sixty days before or following the expiration of their mandate.

Article 81

The Chamber of Deputies is competent:

• International law
• Treaty ratification

a. To approve the peace treaties, commercial treaties, those treaties that affect the National Sovereignty and the territorial integrity and all those treaties that refer to matters of legal reserve, and to submit them to ratification by the President of the Republic.

• Head of state decree power

b. To authorize the President of the Republic, during the interim of the Sessions, to issue Decree-Laws concerning matters of legal reserve. These Decree-Laws enter into force once they are published and may not be derogated except by another law. The government will inform the Chamber of Deputies and Senate of such Decree-Laws.

• Legislative oversight of the executive

c. To interpret to the Members of the Government matters concerning its competence and to have them appear before the Chamber to render explications concerning its general policy or concerning a specific matter under its responsibility.

• Legislative committees
• Legislative oversight of the executive

d. To appoint from within [,] commissions with the purpose of investigating any matter which concerns public interest. These commissions have free access to all Departments of the Administration except of the secrets of the State.

• First chamber selection

Article 82

The law determines the conditions for the election of Deputies.

Of the Senate

Article 83

The Senate is the organ of territorial representation and of the local corporations, in the manner determined by the law.

• Second chamber selection

Article 84

• Scheduling of elections
• Secret ballot
• Size of second chamber
• Term length of second chamber
• Claim of universal suffrage

1. The Senate is composed of seventy senators that are elected for a mandate of five years by universal, direct and secret suffrage in general elections that are held on one day and within sixty days before or after the expiration of their mandate.

2. The law determines the number of senators of free appointment by the President of the Republic among the seventy senators.

• Eligibility for second chamber

3. The Electoral Law defines the electoral circumscriptions and determines the number of seats corresponding to each one, the regime of eligibility and ineligibility and of compatibility and incompatibility of the senators and develops other aspects of the electoral process.

4. Seats are attributed to each territorial representation and to local corporations.

• Second chamber selection

Article 85

The Ex-Presidents of the Republic, the Ex-Vice Presidents of the Republic, the Ex-Presidents of the Chamber of Deputies and the Senate, are natural senators with all the rights, prerogatives and immunities, when conserving their political and social dignity and reputation.

• Second chamber reserved policy areas

Article 86

Only those matters that fall within its specific competences may be included in the agenda of the sessions of the Senate and those that the President of the Republic and the Chamber of Deputies expressly solicit for intervention.

• Head of state replacement

Article 87

1. In case of the simultaneous vacancy in the Presidency and the Vice-presidency of the Republic, the President of the Senate temporarily [interinamente] assumes the role of President of the Republic and shall convoke new presidential elections within a period of ninety days.

2. In the election convoked in accordance with the previous paragraph, the Interim President of the Republic may not present himself as a candidate.

3. During the period of transition until the election of the new President of the Republic, the Fundamental Law may not be modified and no organ of the State shall be dissolved.

Article 88

The following are functions of the Senate:

• Division of labor between chambers

a. To adopt in second reading the project of laws and other provisions submitted to its study and approval by the Chamber of the Deputies.

b. To accept or not the resignation of the President of the Republic.

c. Any others that the law determines.

Chapter V: Of the Judicial Power

General Provisions

• Judicial independence

Article 89

The Judicial Power is independent of the Legislative Power and of the Executive Power. It exercises the jurisdictional function of the State.

Article 90

1. Justice emanates from the People and is administered on behalf of the Head of State.

2. The Organic Law of the Judicial Power determines the organization and the attributions of the courts and the tribunals necessary for the efficient functioning of the Administration of Justice. The same Law establishes the statute of the Magistracy [Magistratura].

Article 91

The exercise of the jurisdictional power in any type of process, judging and executing what has been judged [,] corresponds exclusively to the courts and tribunals determined by the Law.

Article 92

The Head of State is the First Magistrate of the Nation and guarantees the independence of the jurisdictional function.

Article 93

The Judges and Magistrates are submitted only to the provisions of the Law in the exercise of their functions.

• Establishment of military courts

Article 94

The principle of jurisdictional unity is the basis of the organization and functioning of courts and tribunals. The Law establishes the juridical regime applicable to the Military Jurisdiction.

• Right to public trial

Article 95

The Trials are public, except for the cases that the law establishes, but the tribunals of justice deliberate in secret.

• Establishment of judicial council

Of the Superior Council of the Judicial Power

Article 96

1. The Superior Council of the Judicial Power is the organ of Government of it. It is composed of a President of the Republic and six members appointed by the Head of State among notable persons of recognized competence and moral solvency, for a period of five years.

2. An organic law shall regulate the structure of the Superior Council of the Judicial Power, its functioning and the juridical statute of its members.

Of the Supreme Court of Justice

• Structure of the courts

Article 97

The Supreme Court of Justice is the maximum jurisdictional organ of all the orders, save for that provided in matters of constitutional guarantees, [and] is composed of a President and eight Magistrates.

Article 98

• Supreme court selection
• Supreme court term length

1. The President of the Supreme Court of Justice and the Magistrates that compose of it, are appointed by the President of the Republic for a period of five years.

2. The career Magistrates and the officers of Administration of Justice are appointed and dismissed in accordance with the law.

• Attorney general

Of the Office of the Attorney General of the Republic

Article 99

The Office of the Attorney General of the Republic has its main mission to see the strict compliance with the legality and other provisions by all the organs of the State, the regions, provinces, districts, and municipalities, as well as the citizens and foreigners living in the Country.

Article 100

1. The Attorney General of the Republic and the Adjunct General Attorneys are appointed and dismissed by the President of the Republic.

2. The Office of the Attorney General of the Republic is governed by an organic statute.

• Establishment of constitutional court

Chapter VI: Of the Constitutional Tribunal

Article 101

• Constitutional court selection
• Constitutional court term length

1. The Constitutional Tribunal is composed of a President and four members appointed by the President of the Republic; two of them upon proposal of the Chamber of Deputies and the Senate respectively. The period of the Members of the Constitutional Tribunal will be of seven years.

• Constitutional court powers
• Constitutional interpretation

2. The Constitutional Tribunal is competent:

• Constitutionality of legislation

   a. To review the recourses [recursos] of unconstitutionality of the laws.

• Right to amparo

   b. To review the recourses of constitutional amparo against the provisions and acts that violate the rights and freedoms recognized in the Fundamental Law.

• Municipal government
• Referenda

   c. To proclaim the definitive results of the Presidential, Legislative, Municipal Elections and the Operations of Referendum.

   d. To declare the permanent physical or mental incapacity that constitute a legal impediment for the fulfillment of the functions of the President of the Republic, of the Vice President of the Republic, of the President of the Chamber of the Deputies and of the President of the Senate.

   e. To make decisions of binding character, in relation to the constitutional legality of the regulatory development of the institutional laws.

   f. To review the conflicts between the constitutional organs.

• International law
• Legal status of treaties

g. To review the declaration of unconstitutionality of international treaties.

h. For any other matters that the laws attribute to it.

• Constitutionality of legislation

Article 102

1. The legitimate organs to bring recourses of unconstitutionality are:

   a. The President of the Republic-Head of State.

   b. The Vice-president of the Republic and the Prime Minister

   c. The Chamber of Deputies and Senate with a qualified majority of the three fourths of their members

   d. The Attorney General of the Republic.

• Right to amparo

2. Any natural person or successors with a legitimate interest is entitled to file a recourse of amparo [recurso de amparo].

Article 103

The members of the Constitutional Tribunal cannot be Members of Government, the Chamber of Deputies, the Senate, the Judicial or Fiscal Career, nor can occupy any office of public election.

Article 104

Any organic law will regulate the functioning of the Constitutional Tribunal, the statute of its members and the procedure for the exercise of actions before it.

• Advisory bodies to the head of state

Chapter VII: Of the Council of the Republic

Article 105

The Council of the Republic is a consultative State Organ of political character, in charge of advising the President of the Republic in his management during his mandate and the other powers of the State.

Article 106

The matters that are subject of advice by the Council of the Republic are:

a. The defense and the safeguarding of the Fundamental Law of Equatorial Guinea and the supreme values of the State.

b. The maintenance of the internal and external security of the State.

c. The defense and the maintenance of national unity, the territorial integrity and the sovereignty of the State of the Republic of Equatorial Guinea.

• Right to culture

d. The defense of the values of autochthonous cultures, the Bantu and African identity, as well as universal civilization.

e. The defense and maintenance of the Rule of Law and the democratic system of the Republic of Equatorial Guinea.

f. Any other questions submitted to it.

Article 107

The Council of the Republic is composed of nine members elected among the Ex-Presidents of the Republic, the Ex-Presidents of the Chamber of Deputies, the Ex-Presidents of the Senate, the Ex-Presidents of the Supreme Court of Justice and the Ex-Presidents of the Constitutional Tribunal, who have exercised their offices with recognized honor and dignity, as well as other notable persons who by their proven honesty and dignity merit such designation.

Article 108

1. The members of the Council of the Republic will be appointed by the President of the Republic and have a term duration of five years, which may be renewed.

2. The Ex-Presidents of the Republic will be life-long members of the Council of the Republic.

Article 109

The condition of Member of the Council of the Republic is incompatible with the offices of members of other organs provided by this Fundamental Law, except for the Ex-Presidents of the Republic.

Article 110

The Members of the Council of the Republic cease to be in their functions in the following cases:

a. Due to the expiration of their mandate.

b. Due to death

c. Due to permanent mental incapacity.

Article 111

The Council of the Republic will be structured by:

- **a.** A President, who will preferentially be one of the Ex-Presidents of the Republic.
- **b.** A Vice President
- **c.** A Secretary.
- **d.** Spokesmen.

Article 112

A law shall develop the functions and competences of the Council of the Republic, as well as the immunities of its members.

Chapter VIII: Of the National Council for Economic and Social Development

Article 113

1. The National Council for Economic and Social Development, is the technical-consultative organ regarding the economic and social plans and programs, as well as any legislative provision or regulation with fiscal character; it can also proceed on the basis of a market economy to the analysis of the problems of development of Equatorial Guinea.
2. The National Council for Economic and Social Development issues its criteria and submits its conclusions concerning all questions related to matters that have been submitted to its study by the President of the Republic, the Chamber of Deputies, the Senate and other organs of the Administration of the State.
3. It follows the execution of the decisions of the Government relative to economic and social organization.

Article 114

1. The National Council for Economic and Social Development is composed by technicians, specialists, and persons responsible in questions of economic and social development. It is composed of 30 members, which are appointed by the President of the Republic for a period of five years.
2. The internal organization and the norms for the functioning of the National Council for Economic and Social Development are provided by the law.

Chapter IX: Of the Tribunal of Accounts

Article 115

1. Fiscal control is a public function that the Tribunal of Accounts of the Republic will exercise, which sees for the transparency of the fiscal management of the Administration and of the individuals of entities that handle funds or assets of the Nation. Such control will be exercised with subsequent selectiveness in accordance with the procedures, systems, and principles that the law establishes.

2. The Accounts' Tribunal is an entity of technical character with administrative and budgetary autonomy. It has no administrative functions distinct from those inherent in its own organization.

• Earnings disclosure requirement

Article 116

All the notable officers of the State, the salaried public persons and para-public persons must make a declaration of their patrimonial assets before exercising the functions for which they are appointed.

Article 117

1. The President and the members of the Accounts' Tribunal will be appointed by the President of the Republic.

2. The law establishes the number, duration of the mandate and the conditions of appointment of the President and the Members of the Accounts' Tribunal.

Article 118

The Accounts' Tribunal shall have the following attributions:

- **a.** To prescribe the methods and the form of accountability of those responsible for the handling of funds or assets of the Nation and to establish the criteria of financial, operative and results evaluations that must be the object of permanent monitoring.

- **b.** To review and to control the accounts that those responsible of the public treasury and to determine the grade of efficacy and efficiency shown by their conduct.

- **c.** To keep a register of the public debt of the Nation and of the local entities.

- **d.** To require reports concerning fiscal management from public employees of any order and from any person or public or private entity that administers funds or assets of the Nation.

e. To establish the responsibility derived from fiscal management, propose the corresponding pecuniary sanctions and exercise the coactive jurisdiction regarding the deduced extent of them.

f. To evaluate concerning the quality and efficiency of the internal fiscal control of the entities and organs of the State.

g. To present to the President of the Republic and to the Parliament an annual report concerning and fulfillment of its functions and certify with respect to the situation of the finances and accounts of the State.

h. To promote before the competent authorities, providing the respective evidence, criminal or disciplinary investigations against those that have caused prejudice to the patrimonial interests of the State. Under its responsibility, the Accounts' Tribunal can require, wise truth and good faith [verdad sabida y buena fe guardada], the temporary suspension of functionaries until the investigations or the respective criminal or disciplinary processes culminates.

i. To present projects of laws regarding the regime of fiscal control, the organization and the functioning of the Accounts' Tribunal.

j. Any other functions that the law attributes to it.

Article 119

The results of the preliminary investigations advanced by the Accounts' Tribunal will have evidentiary value before the Office of the Attorney General of the Republic and before the competent judge.

Article 120

The law will develop the structure and functioning of the Accounts' Tribunal.

Article 121

The law will determine the manner of exercising control and vigilance over the management of the Accounts' Tribunal.

• Ombudsman

Chapter X: Of the Defender of the People

Article 122

The Defender of the People is the high commissioned of the Chamber of Deputies and the Senate, designated by them for the defense of the rights of citizens included in this Fundamental Law, to which effect, he can supervise the activity of the Administration, giving notice to the Chamber of Deputies and the Senate.

Article 123

The Defender of the People will be elected by the Chamber of Deputies and the Senate, and will be ratified by the President of the Republic, for a period of five years.

• Legislative committees

Article 124

A mixed Chamber of the Deputies-Senate commission will be designated in the Parliament, in charge of doing relations with the Defender of the People and reporting to the respective plenums [plenos] on as many occasions as necessary.

• Right to amparo

Article 125

Any physical or legal person that, regarding a matter that concerns them, considers that a public organ has not functioned or acted in accordance with the mission of public service assigned to it, may file [interponer] a recourse of amparo before the Defender of the People.

Article 126

The functions of the Defender of the People are:

- **a.** To verify and mediate any irregular conduct in the relations between the public or private administration and the citizens.
- **b.** To inform and to denounce before the competent organs about conduct not conforming to the laws.
- **c.** To mediate the conflicts that can arise between the Administration and the administered [administrados], proposing the corresponding solutions to the competent organs, according to the cases.
- **d.** To review the recourses of amparo and protection against the provisions and acts that violate the rights and freedoms recognized In this Fundamental Law.

Article 127

1. The Defender of the People is accessible to all persons.
2. The report emitted by the Defender of the People must be accessible to the public except in exceptional circumstances determined by the law that require the confidential character of them.

Article 128

The law establishes the organic and functional structure of the Defender of the People.

Third Title: Of the Armed forces, Of the Forces of Security of the State, and Of the National Defense

Article 129

The Armed Forces and Forces of Security of the State constitute the national institution that has its main mission, to maintain the National Independence and the Territorial Integrity, to defend the National Sovereignty, to safeguard the supreme values of the Fatherland, the Security of the state, the Public Order and the normal functioning of the Public Powers. The Armed Forces and Forces of Security of the State are governed by their own regulations.

Article 130

1. The National Defense is the organization and participation of all the living forces and the moral and material resources of the Nation when the circumstances so require.
2. An organic regulation governs the National Defense.

• Municipal government
• Subsidiary unit government

Fourth Title: Of the Local Corporations

Article 131

The Local Corporations are institutions with their own legal personality, in charge of the government and administration of the regions, provinces, districts, and municipalities. They promote the plans and programs of economic and social development in their respective territories in accordance with the law.

Article 132

1. The Local Corporations contribute to the fulfillment of the functions of the objectives of the State [,] which are established by this Fundamental Law [,] and they may only be created, modified, or suppressed by law.
2. The law determines the competencies, the functioning, the jurisdiction and the composition of the Local Corporations.

Fifth Title: Of the Review of the Fundamental Law

• Constitution amendment procedure

Article 133

1. The initiative to reform this Fundamental Law corresponds to the President of the Republic or to the three-quarters of the members of the Chamber of Deputies or the Senate.

2. The projects of constitutional revision to which the previous paragraph refers are dealt with in accordance with that established for projects or proposals of laws.

3. The proposals of reform of the Fundamental Law will be adopted by the affirmative vote of the three-fourths of the members of the Chamber of Deputies and the Senate.

• Referenda

4. The approval of the proposal of revision of the Fundamental Law in accordance with what is established in the previous paragraph will become definitive, except when the President of the Republic decides to submit it to referendum, in which case the corresponding popular approval will make it definitive.

• Unamendable provisions

Article 134

The Republican and Democratic Regime of the State of Equatorial Guinea, the National Unity, and the Territorial Integrity may not be the object of any reform

Transitory Provisions

First

Until the new Institutions and Organs created by this Fundamental Law are placed in functioning, those actually existing remain in force.

Second

Until the Chamber of Deputies and Senate are constituted, the current Chamber of Representatives of the People will continue exercising the functions that the Fundamental Law recognizes to the Legislative Power of the State.

• Constitutionality of legislation

Derogatory Provision

Any provisions that oppose this Fundamental Law are derogated.

Final Provision

This Fundamental Law enters into force from its promulgation by the President of the Republic, once having been adopted by Referendum and its publication in the Official Gazette of the State [Boletín Oficial del Estado].

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ANNEX 2

Regulation No. 01/03-CEMAC-UMAC of the Central African Economic and Monetary Community

[Annex not translated]

ANNEX 3

Decree No. 64/2012, 21 May 2012

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.

____

ANNEX 4

Decrees Nos. 67/2012, 66/2012, 65/2012 and 63/2012, 21 May 2012

[Annex not translated]

ANNEX 5

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

<u>Institutional Declaration by the President of the Republic of Equatorial Guinea dated 21 October 2015</u>

[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 6

Presidential Decree No. 55/2016, 21 June 2016

Decree No. 55/2016, dated 21 June 2016, appointing the Vice-President of the Republic in charge of National Defence and State Security, Mr. Teodoro Nguema Obiang Mangue

[Translation]

Following the conclusion of the presidential elections held on 24 April this year, and having taken the oath of office and accepted the role of President of the Republic in accordance with the legal provisions in force and pursuant to Article 37, paragraph 2, of the Basic Law of the State,

Having regard to the circumstances relating to his person, and by virtue of the powers vested in me by Article 41, paragraph f, 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 NATIONAL DEFENCE AND STATE SECURITY**.

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

For a better Guinea,

OBIANG NGUEMA MBASOGO,

President of the Republic.

ANNEX 7

Paris *Tribunal de grande instance*, Order for partial dismissal and partial referral of proceedings to the *Tribunal correctionnel*, 5 September 2016 (regularized by order of 2 December 2016)

[Translation]

PARIS *COUR D'APPEL* PARIS *TRIBUNAL DE GRANDE INSTANCE* CHAMBERS OF ROGER LE LOIRE SENIOR JUDGE IN CHARGE OF THE INVESTIGATION CHARLOTTE BILGER JOINTLY ASSIGNED SENIOR JUDGE IN CHARGE OF THE INVESTIGATION STÉPHANIE TACHEAU JOINTLY ASSIGNED SENIOR JUDGE IN CHARGE OF THE INVESTIGATION	**ORDER FOR PARTIAL DISMISSAL AND PARTIAL REFERRAL TO THE *TRIBUNAL CORRECTIONNEL* (Article 179 of the Code of Criminal Procedure)** **CONTINUATION OF THE INVESTIGATION** Prosecution No.: **0833796017** Investigation No.: **2292/10/12** *CRIMINAL PROCEEDINGS*

We, Roger Le Loire, Charlotte Bilger and Stéphanie Tacheau, senior judges in charge of THE INVESTIGATION at the Paris *Tribunal de grande instance*,

Having regard to the investigation of:

— **Mr. Teodoro NGUEMA OBIANG MANGUE: At liberty**

Arrest warrant: 11 July 2012, end date: 19 March 2014

Born 25 June 1969 in Akoakan Esangui, Equatorial Guinea

Parents: Teodoro OBIANG NGUEMA and Constance MANGUE NSU OKOMO

Profession: Minister of Equatorial Guinea

Address declared at the offices of Mr. MARSIGNY, 203*bis* bd Saint Germain, 75007 Paris

Counsel: Mr. Emmanuel MARSIGNY and Mr. Thierry MAREMBERT

— **Mr. Franco CANTAFIO: Under judicial supervision**

Placement under judicial supervision: 20 February 2013

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

Parents: Rocco CANTAFIO and Carmela FRAEITTA

Profession: Chief executive (*gérant*) of a company

Address declared at the offices of Mr. Jean LAUNAY, 37 rue Jean-Baptiste Pigalle, 75009 Paris

Counsel: Mr. Jean LAUNAY

— **Ms Martine NICOLAS, née DUMONT: At liberty**

Placement under judicial supervision: from 11 April 2013 to 21 July 2014

Born 19 August 1946 in Paris (12th arrondissement)

Parents: Robert and Monique TAQUET

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

Address: 12 rue Princesse, 75006 Paris

Counsel: Ms Céline LASEK

— **Mr. Robert FAURE: Under judicial supervision**

Placement under judicial supervision: 11 April 2013

Born 15 August 1944 in Alger

Parents: Albert and Maria Esther BONTHOUX

Profession: Retired

Address declared at the offices of Ms Karine MELCHER-VINCKEVLEUGER,

14 bd du Général Leclerc, 92527 Neuilly-sur-Seine Cedex

Counsel: Ms Karine MELCHER-VINCKEVLEUGEL and Mr. Olivier SCHNERB

— **Mr. Daniel MENTRIER: At liberty**

Born 5 August 1945 in Paris (15th arrondissement)

Parents: André MENTRIER and Suzanne LARTIGAUD

Profession: Retired

Address declared at the offices of Mr. Marc Michel LE ROUX, attorney, rue Grignan 13006 Marseille

Counsel: Mr. Marc-Michel LE ROUX

— **Mr. Philippe CHIRONI: At liberty**

Born 27 April 1954 in Paris

Parents: Robert CHIRONI and Monique CORBEL

Profession: Director of companies

Address declared at the offices of Mr. HENRIQUET, 13 rue du docteur Lancereaux, 75008 Paris

Counsel: Mr. Michel HENRIQUET

— Persons under judicial examination –

— Mr. Mourad BAAROUN

Address: 27B rue Louis Rolland, 92120 Montrouge

Counsel: Mr. Jean-Pierre SPITZER

— **Ms Aurélie Sandrine Corinne DELAURY, née DERAND**

Address declared at the offices of Ms Maud TOUITOU, 25 rue du Louvre, 75001 Paris

Counsel: Ms Maud TOUITOU

— **SOCIÉTÉ GÉNÉRALE**

Legal person represented by Mr. Dominique BOURRINET

Address declared at 29 bd Haussmann, 75009 Paris

Counsel: Mr. Jean REINHART

— Mr. Bertrand GRANDJACQUES

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

— *Témoins assistés* (legally represented witnesses) –

CHARACTERIZATION:

Judgment of the *Chambre Criminelle* of the *Cour de Cassation* of 9 November 2010: 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, acts which are defined and punishable under Articles 321-1, 432-15, 324-1 and 314-1 of the Penal Code, Article L 241-3 of the Commercial Code, and Articles 121-6 and 121-7 of the Penal Code with regard to complicity;

— **Application to extend the investigation of 31 January 2012**: handling offences and money laundering, acts defined and punishable under Articles 321-1, 321-3, 321-4, 321-9, 321-10, 324-1, 324-3, 324-4, 324-5, 324-6, 324-7 and 324-8 of the Penal Code;

— **Application to extend the investigation of 2 March 2012**: handling offences and/or money laundering, in connection with renovation works on the building located at 109 boulevard du Général Koenig in Neuilly-sur-Seine, performed by SCI Les Batignolles until 31 July 2011, acts defined and punishable under Articles 321-1, 321-3, 321-4, 321-9, 321-10, 324-1, 324-3, 324-4, 324-5, 324-6, 324-7 and 324-8 of the Penal Code;

— **Application to extend the investigation of 19 February 2013**: complicity in handling misappropriated public funds, complicity in the misappropriation of public funds, money

laundering, breach of trust, misuse of corporate assets, complicity in and concealment of these offences, acts committed on national territory in 2010 and 2011, and in any event for a period not covered by prescription, acts defined and punishable under Articles 321-1, 432-15, 324-1, 314-1, 121-6 and 121-7 of the Penal Code, and Article L 241-3 of the Commercial Code;

— **Application to extend the investigation of 5 March 2013**: laundering the proceeds of the offence of corruption, acts defined and punishable under Articles 324-1, 324-3, 445-1 and 445-3 of the Penal Code;

— **Application to extend the investigation of 25 August 2014**: misappropriation of public funds and laundering the proceeds of this offence, referred to in the notification from TRACFIN (national anti-money laundering unit) dated 7 July 2014, acts defined and punishable under Articles 433-4, 433-22, 433-23, 324-1, 324-3, 324-4, 324-5, 324-6, 324-7 and 324-8 of the Penal Code;

— **Application to extend the investigation of 18 September 2014**: money laundering, acts referred to in the TRACFIN notifications of 22 May 2012 and 8 July 2014, acts defined and punishable under Articles 324-1, 324-3, 324-4, 324-5, 324-6 and 324-7 of the Penal Code;

— **Application to extend the investigation of 3 November 2014**: laundering misappropriated public funds, referred to in the official complaint of the Public Prosecutor of the Principality of Monaco dated 22 October 2014, acts defined and punishable under Articles 324-1, 324-3, 324-4, 324-5, 324-6 and 324-7 of the Penal Code;

— **Application to extend the investigation of 17 December 2014**: laundering misappropriated public funds and the proceeds of corruption of a foreign public official, referred to in the TRACFIN notification dated 6 November 2013, acts described and punishable under Articles 324-1, 324-3, 324-4, 324-5, 324-6 and 324-7 of the Penal Code.

— **TRANSPARENCY INTERNATIONAL FRANCE**

Represented by Mr. Daniel LEBÈGUE

Counsel: Mr. William BOURDON

— **GABONESE REPUBLIC**

Represented by the Minister for the Budget, Public Accounts and the Civil Service

Counsel: Mr. Francis SZPINER

— Civil-party applicants –

Having regard to Article 175 of the Code of Criminal Procedure;

Having regard to the submissions of the Financial Prosecutor dated 23 May 2016;

Having regard to the faxing of those final submissions to the parties’ counsel;

Having regard to Articles 176, 179, 180, 183 and 184 of the Code of Criminal Procedure;

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 assets of those named in the complaint 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 senior 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.

By an application dated 1 December 2010, the Public Prosecutor requested that an investigating judge be assigned.

By an order dated the same day, two investigating judges were assigned.

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.

A letter rogatory was issued to the OCRGDF, requesting it to continue its 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 a request for international mutual assistance in criminal matters during a hearing held in Malabo, Equatorial Guinea, which the investigating judges attended via video conference, 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 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.

By order of 7 December 2015, all of these requests were denied on the grounds that the *Cour de cassation* had already ruled on the admissibility of the civil-party application, and that the other requests were not requests that 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.

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 SOCIÉTÉ GÉNÉRALE de BANQUE de GUINÉE 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 Indépedencia 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 produced 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 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 GUEMA'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, it was 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 in 2006, 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-36 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-L 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). By virtue of a judgment of the *Chambre de l'instruction* dated 13 June 2013, he enjoyed the status of *témoin assisté* with regard to the charges 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, Aurélie DELAURY, née DERAND, 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).

By virtue of a judgment of the *Chambre de l'instruction* dated 13 June 2013, she enjoyed the status of *témoin assisté* with respect to the charges 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.

Pursuant to the order issued on 19 July 2012, the property, which was valued at €107 million, was attached 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, a request for international mutual assistance in criminal matters was sent 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, [text apparently missing] 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, SOCIETE GENERALE, a legal person, was given the status of a *témoin assisté* (legally represented witness) (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.

On 10 October 2011, enquiries were made of 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 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).

On 13 July 2012, an arrest warrant was issued against him. 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 summoned to a first appearance before the investigating judges 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, a request for international mutual assistance in criminal matters was addressed 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, SODAGE 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, an attachment order was issued against the property 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.

On 22 June 2016, Mr. Emmanuel MARSIGNY, Teodoro NGUEMA OBIANG MANGUE's counsel, filed observations in response to the final submissions [of the Financial Prosecutor], stating that Mr. NGUEMA OBIANG MANGUE contests the acts of which he is accused, that he has always complied with the law of Equatorial Guinea, and that the judgment of the *Cour de cassation* refusing the individual under examination the benefit of jurisdictional immunity was entirely inconsistent with international law as defined by custom.

DISCUSSION

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, SODAGE 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.

Whereas 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 judgment of the *Chambre criminelle* of the *Cour de cassation* of 9 November 2010 and subsequent submissions, in respect of the chapter relating to Equatorial Guinea.

Whereas, consequently, those counts will be dismissed.

PARTIAL DISMISSAL

Whereas the investigation has produced insufficient evidence that any person has committed acts of: complicity in or concealment of misappropriation of public funds, complicity in laundering the proceeds of the offence of misuse of corporate assets, complicity in and concealment of the misuse of corporate assets, of breach of trust, complicity in and concealment of breach of trust, concealment of money laundering, which are liable to criminal proceedings in France and which are cited in the referral, pursuant to the complaint with civil-party application, the judgment of the *Chambre criminelle* of the *Cour de cassation* of 9 November 2010 and subsequent submissions, in respect of Equatorial Guinea.

We consequently find that there are no grounds to proceed against any person on these counts.

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, SODAGE and SOMAGUI FORESTAL,

acts defined and punishable under Articles 324-1, 324-3, 324-4, 324-5, 324-6, 324-7, 324-8, 314-1 and 314-10, 432-11 and 432-17, 432-15, 433-4, 433-22 and 433-23 of the Penal Code, and Articles L241-3 and L241-9 of the Commercial Code.

FOR THESE REASONS

We order the referral of Mr. Teodoro NGUEMA OBIANG MANGUE before the *Tribunal correctionnel* to be tried in accordance with the law.

Consequently, we order a certified copy of the case file, in digital format with the original of this order, to be transmitted to the Financial Prosecutor.

We shall continue our investigations in respect of all the acts referred to us and concerning:

Mr. Franco CANTAFIO, Ms Martine NICOLAS née DUMONT, Mr. Robert FAURE, Mr. Daniel MENTRIER, and Mr. Philippe CHIRONI, persons under judicial examination, Mr. Bertrand GRANDJACQUES, *témoin assisté*, and any others.

We inform Mr. Teodoro NGUEMA OBIANG MANGUE, the defendant, that, until final judgment in the case, he must inform the Prosecutor of any change in the address declared at the time he was placed under judicial examination, by registered letter with advice of delivery.

We further inform him that any summons, notification or notice shall be deemed served in his name.

Done at our office, 2 December 2016

The senior judges in charge of the investigation,

(Signed) Roger LE LOIRE,

Charlotte BILGER,

Stéphanie TACHEAU.

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ANNEX 8

**Paris *Tribunal de grande instance*, Public Prosecutor's Office,
Application for characterization, 4 July 2011**

Paris *Tribunal de grande instance*, Public Prosecutor's Office, Application for characterization, 4 July 2011

[Translation]

The Public Prosecutor at the Paris *Tribunal de grande instance*;

Having regard to the investigation of X on charges of:

— handling misappropriated public funds,

— complicity in the handling of 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,

— handling offences,

following a complaint with civil-party application by the association TRANSPARENCY INTERNATIONAL FRANCE;

Having regard to the letters from Mr. SASSOU N'GUESSO's counsel dated 10 December 2010 and 20 January 2011;

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 82 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.

Done at the Public Prosecutor's Office, 4 JULY 2011

Public Prosecutor

(Signed) François FOULON,

Assistant Prosecutor.

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ANNEX 9

Report of the Public Prosecutor of the Republic of Equatorial Guinea, 22 November 2010

Report of the Public Prosecutor of the Republic of Equatorial Guinea, 22 November 2010

[Translation]

As Public Prosecutor of the Republic of Equatorial Guinea, in exercising the powers conferred on that office by the Basic Law of the State to defend the law in force and general interests, and in relation to the acts which are the subject of the complaint filed by the association Transparency International France (TI) et al., found admissible by a judgment dated 5 May 2009, which was subsequently the subject of an appeal and annulled by a judgment dated 29 October by the *Chambre de l'instruction* of the Paris *Tribunal de grande* instance, which judgment was in turn quashed by the *Cour de cassation* in its judgment dated 9 November 2010, I inform you of the following:

FIRST. — Inquiries to date have been unable to determine the existence of any acts having a link or connection with those set forth in the complaint referenced above, which can be characterized as the criminal offence of misappropriation of public funds, which might be subject to prosecution or pending prosecution, having regard to the reports issued by the Ministry of Finance and the Budget.

SECOND. — It has further been ascertained that the logging company SOMAGUI SL has only private shareholders and trades in legal commercial products, it being noted that it is up to date with its tax obligations, such that the State of Equatorial Guinea need not claim any damages arising from the misappropriation of public funds.

Please hereby consider as duly submitted the report previously requested for the purpose of defending the interests of the Republic of Equatorial Guinea in the proceedings instituted in relation to the acts which are the subject of the complaint

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ANNEX 10

Summons to attend a first appearance, 22 May 2012

Summons to attend a first appearance, 22 May 2012

[Translation]

Paris *Cour d'appel*

Paris *Tribunal de grande instance*

Chambers of Mr. Roger Le Loire
Senior Judge in charge of the investigation

(Mr. René Grouman, Jointly assigned Senior Judge in charge of the investigation)

Prosecution No.: **08 337 9601/ 7**
Investigation No.: **2292/10/12**

The investigating judge

to

Mr. Teodoro NGUEMA OBIANG MANGUE

State Minister for Agriculture and Forestry

Ministry of Agriculture

MALABO

EQUATORIAL GUINEA

Paris, 22 May 2012

Dear Sir,

In accordance with Article 80-2 of the Code of Criminal Procedure, please be informed that I am considering placing you under judicial examination. To that end, I am summoning you to attend a first appearance, in an investigation opened:

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 INVESTING, CONCEALING OR CONVERTING THE DIRECT OR INDIRECT PROCEEDS OF A FELONY OR MISDEMEANOUR, IN THIS INSTANCE **OFFENCES OF MISUSE OF CORPORATE ASSETS, MISAPPROPRIATION OF PUBLIC FUNDS, THE UNLAWFUL TAKING OF INTEREST AND BREACH OF TRUST**, 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,

ACTS WHICH ARE DEFINED AND PUNISHABLE UNDER ARTICLES 432-12, 432-15, 324-1 AND 314-1 OF THE PENAL CODE AND ARTICLE L 241-3 OF THE COMMERCIAL CODE.

Pursuant to a judgment of the *Cour de Cassation* (*Chambre criminelle*) dated 9 November 2010 and the Public Prosecutor's application to extend the investigation dated 31 January 2012,

You are summoned to appear on 11 July 2012 at 3 p.m.

In my chambers at the Paris *TRIBUNAL de GRANDE INSTANCE*, 5/7 rue des Italiens 75009 Paris, Chambers No. 303.

VERY IMPORTANT

You have the right to be assisted by a lawyer.

You may choose the lawyer who will assist you or request that the Chairman of the Bar choose a lawyer registered with the Bar for you.

You must inform me of your choice as soon as possible.

(Signed) Mr. René GROUMAN,

Senior Judge in charge of the investigation.

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ANNEX 11

**French Ministry of Foreign Affairs, Note Verbale No. 2777/PRO/PID,
20 June 2012**

<u>Note Verbale from the Minister for Foreign Affairs, dated 20 June 2012, to the Minister of Justice, for the attention of the senior investigating judges at the Paris *Tribunal de grande instance*</u>

[Translation]

Re: Republic of Equatorial Guinea/Summons 11 July 2012

By Note dated 22 May 2012 (received on 7 June 2012), you sent to the Ministry of Foreign Affairs a summons for Mr. Teodoro NGUEMA OBIANG, the Minister of State for Agriculture and Forestry of the Republic of Equatorial Guinea, to be questioned at first appearance on Wednesday 11 July 2012 at 3 p.m., requesting that it be transmitted to the authorities of the Republic of Equatorial Guinea.

That request for transmission was examined by the appropriate departments of the Ministry of Foreign Affairs, which considered it desirable that the wording of the summons, as regards the functions performed by the person concerned, be amended to take into account the change that occurred on 21 May.

1. As I indicated in my Note No. 2617/PRO/PID dated 14 June 2012, Mr. Teodoro NGUEMA OBIANG M[A]NGUE, who was indeed Minister for Agriculture and Forestry, was appointed Second Vice-President in charge of Defence and State Security on 21 May 2012 by the President of the Republic of Equatorial Guinea (decree No. 64/2012 dated 21 May 2012).

The summons should therefore be amended as regards this particular point.

2. Regarding the procedure for the transmission of the summons (corrected as indicated above), the Ministry of Foreign Affairs considers that it would be appropriate to use the traditional channel of international mutual assistance in criminal matters by seeking the support of the judicial authorities of Equatorial Guinea, since it is indicated that the person to be contacted may be found on the territory of Equatorial Guinea. Indeed, the previous summons which, at your request, had been transmitted directly by the Protocol Department to the Embassy of the Republic of Equatorial Guinea in the month of February, culminated in a refusal by the government of that State to pursue the matter.

This is why, in this instance and contrary to what was done in February, in the absence of an agreement between France and the Republic of Equatorial Guinea, the Ministry of Foreign Affairs asks that you use the traditional channel of transmission, i.e., that you transmit the summons to the Public Prosecutor's Office and to the Principal Prosecutor's Office (*parquet general*) in Paris, which will forward it to the Ministry of Justice (copied on this letter), which will in turn transmit it to the Ministry of Foreign Affairs.

It will then be for that Ministry, in particular, the department in charge of mutual legal assistance at the Directorate for French Nationals Abroad and Consular Administration (DFAE), to transmit it to our Embassy, which will be responsible for delivering it to the Equatorial Guinean authorities. In parallel, and to ensure that the authorities of the requested State are fully informed, a copy of the said summons may be sent simultaneously to the Embassy of the Republic of Equatorial Guinea in Paris.

(Signed) Marie-Jeanne de COQUEREAUMONT,

Deputy Director of the Protocol Department.

cc: Ministry of Justice: Directorate for Criminal Matters and Pardons (Office of International Mutual Assistance in Criminal Matters)

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ANNEX 12

Letter from the investigating judges to the French Ministry of Foreign Affairs, 25 June 2012

Letter from the investigating judges, dated 25 June 2012, to the Deputy Director of the Protocol Department, French Ministry of Foreign Affairs

[Translation]

Re: Summons of Mr. Teodoro NGUEMA OBIANG M[A]NGUE

We received your Note dated 20 June 2012 by fax.

However, we consider that the procedure to be followed remains that provided for in Article 656 of the Code of Criminal Procedure, and we kindly request you to transmit the summons for Mr. Teodoro NGUEMA OBIANG M[A]NGUE to be questioned at first appearance on 11 July 2012 at 3 p.m.

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ANNEX 13

**French Ministry of Foreign Affairs, Note Verbale No. 2816/PRO/PID,
26 June 2012**

Note Verbale from the French Ministry of Foreign Affairs, dated 26 June 2012, to the French Minister of Justice, for the attention of Mr. Roger Le Loire and Mr. René Grouman, senior investigating judges at the Paris *Tribunal de grande instance*

[Translation]

Re: Republic of Equatorial Guinea/Summons for questioning

I hereby inform you that in light of your reply to my Note No. 2777/PRO/PID dated 20 June 2012, a Note Verbale was sent to the Embassy of the Republic of Equatorial Guinea transmitting to it the summons Mr. Teodoro NGUEMA OBIANG MANGUE to be questioned at first appearance on Wednesday 11 July 2012 at 3 p.m. in your chambers.

(Signed) Marie-Jeanne de COQUEREAUMONT,

Deputy Director of the Protocol Department.

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ANNEX 14

Embassy of Equatorial Guinea, Note Verbale No. 472/12, 9 July 2012, together with the letter of 6 July 2012 from the Equatorial Guinean Ministry of Foreign Affairs, International Co-operation and Francophone Affairs

Note Verbale from the Embassy of Equatorial Guinea, dated 9 July 2012, to the French Ministry of Foreign Affairs

[Translation]

The Embassy of the Republic of Equatorial Guinea in France presents its compliments to the Ministry of Foreign Affairs (Diplomatic Privileges and Immunities Sub-division) and, with reference to its Note Verbale No. 2812/PRO/PID of 25 June 2012 regarding the summons for Mr. Teodoro NGUEMA OBIANG MANGUE, Second Vice-President of the Republic, to appear before the Paris *Tribunal de grande instance* on 11 July 2012, has the honour to transmit to it the attached Note Verbale from the Ministry of Foreign Affairs of the Republic of Equatorial Guinea.

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Letter from the Equatorial Guinean Ministry of Foreign Affairs, International Co-operation and Francophone Affairs, dated 6 July 2012, to the French Minister for Foreign Affairs

[Translation]

To His Excellency the Minister:

Allow me to convey to you the deep concern of the Government of Equatorial Guinea arising from a communication whereby the French courts request the appearance on 11 July 2012 of His Excellency Mr. Teodoro Nguema Obiang Mangue, Second Vice-President of the Republic in charge of Defence and State Security, as transmitted by a Note Verbale from the Ministry of Justice through the Embassy of Equatorial Guinea in Paris.

In this regard, in light of the rank of His Excellency Mr. Teodoro Nguema Obiang Mangue, the Government of Equatorial Guinea considers it inappropriate for to appear before a foreign court in foreign territory.

However, in order to help clarify the facts and co-operate with the French courts, the Government of Equatorial Guinea considers it useful to send a letter rogatory to the country so that it might perform such tasks as are deemed appropriate.

Furthermore, the Government of Equatorial Guinea hopes that the excellent relations by which the two countries have traditionally been bound will not be disturbed by this difference of opinion.

The undersigned Minister wishes to convey his availability to meet with Your Excellency at your convenience in Equatorial Guinea or France to address this matter, and other matters which are of interest to both countries.

Please accept, Your Excellency the Minister, the expression of my highest consideration.

(Signed) The Minister for Foreign Affairs.

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ANNEX 15

Letters from counsel for Mr. Teodoro Nguema Obiang Mangue and Equatorial Guinea, 10 and 11 July 2012

Letter to the senior investigating judges at the Paris *Tribunal de grande instance*, dated 10 July 2012, from counsel for Mr. Teodoro Nguema Obiang Mangue

[Translation]

In our capacity as counsel for Mr. Teodoro Nguema Obiang Mangue, we wish to inform you that your request seeking to question him at first appearance in your chambers on 11 July at 3 p.m., which you sent to the Government of the Republic of Equatorial Guinea on the basis of Article 656 of the Code of Criminal Procedure, arrived in Malabo a few days ago.

In light of the reply to this request given by the Minister for Foreign Affairs of the Republic of Equatorial Guinea to his French counterpart, and the new functions of Mr. Teodoro Nguema Obiang Mangue, who was appointed to the post of Second Vice-President of the Republic of Equatorial Guinea in Charge of Defence and State Security on 21 May last, he cannot comply with your summons under the circumstances.

We are sending a copy of this letter to the Public Prosecutor.

Letter to the senior investigating judges at the Paris *Tribunal de grande instance* dated 11 July 2012 from counsel for Equatorial Guinea

[Translation]

As you are aware, we are the counsel for the Republic of Equatorial Guinea.

The Embassy of the Republic of Equatorial Guinea in Paris has transmitted to us a copy of your summons dated 22 May 2012, addressed to Mr. Teodoro Nguema Obiang Mangue.

Our client states that Mr. Teodoro Nguema Obiang Mangue was appointed Vice-President of the Republic of Equatorial Guinea in May 2012.

In that capacity, the Vice-President enjoys full immunity from criminal jurisdiction and inviolability, in accordance with the applicable law.

Exhibit No. 1: ICJ, 14 February 2002, Democratic Republic of the Congo *v.* Belgium
Exhibit No. 2: *Cour de Cassation, Chambre Criminelle,* 13 March 2001, No. 00-87215
Exhibit No. 3: *Cour de Cassation, Chambre Criminelle,* 13 November 2001, No. 01-82440

Under these circumstances, the Vice-President cannot be summoned for questioning at first appearance, or, *a fortiori*, be subject to any measure of constraint.

The Republic of Equatorial Guinea wanted this to be stressed to you very clearly.

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ANNEX 16

Paris *Cour d'appel*, *Chambre de l'instruction*, judgment of 13 June 2013 (Case No. 2012/08657)

Paris *Cour d'appel, Chambre de l'instruction*, judgment of 13 June 2013 (Case No. 2012/08657)

[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

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ANNEX 17

Letter from INTERPOL, 30 August 2013

<u>Letter from INTERPOL, dated 30 August 2013, to counsel for Mr. Teodoro Nguema Obiang Mangue</u>

[Translation]

Re: Your request concerning Mr. Teodoro NGUEMA OBIANG MANGUE

The procedure described in our correspondence of 27 August 2012 has been applied in processing your request.

We wish to inform you that the information communicated by France to which you referred in your correspondence has been deleted from INTERPOL's files.

Furthermore, the General Secretariat of INTERPOL has so informed all members of the organization.

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ANNEX 18

Letter from the Minister of State for Missions, 10 July 2013

Letter from the Minister of State for Missions, dated 10 July 2013, to the senior investigating judge at the Paris *Tribunal de grande instance*

[Translation]

I have the honour to inform you that His Excellency the President of the Republic is sending you this invitation through me to travel to Malabo on a date that is convenient for you in order to learn at close hand the actual facts in respect of the dispute faced by his son, His Excellency Mr. Teodoro Nguema Obiang Mangue, the Second Vice-President of the Republic.

The purpose of this courtesy invitation is to provide the Paris investigating judge with clarification and to impart all the relevant unknown information so that judgment can be reached with all the requisite impartiality and justice.

I have been personally instructed by the Head of State to welcome you and ensure your physical and professional safety in Equatorial Guinea.

This communication is made in the strictest confidentiality.

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ANNEX 19

Letter from the President of Equatorial Guinea to the investigating judge, 16 September 2013

Letter from the President of Equatorial Guinea, dated 16 September 2013, to the investigating judge at the Paris *Tribunal de grande instance*

[Translation]

I have the honour to inform you that my Government was pleased to learn that the investigating judge of the Financial Sector of Paris decided to entrust the execution of the "letter rogatory" to a judge of Equatorial Guinea for the purpose of hearing His Excellency the Second Vice-President of the Republic of Equatorial Guinea, regarding the so-called "ill-gotten gains" case in the French Republic.

For that purpose, we would like to inform you of the appointment of the Honourable Judge Anatolio NZANG NGUEMA, First Investigating Judge of Malabo, to perform that task, the results of which will be transmitted to you in the course of this week.

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ANNEX 20

Record of questioning at first appearance and placement under judicial examination, 18 March 2014

Record of questioning at first appearance and placement under judicial examination, 18 March 2014

[Translation]

REPUBLIC OF EQUATORIAL GUINEA

JUDICIAL BRANCH

SUPREME COURT OF JUSTICE

CRIMINAL DIVISION

Proceeding: **Letter rogatory of 14 November 2013**

Matter No. 2292/10/12

Offences: Misappropriation of public funds, misuse of corporate assets, breach of trust, corruption, money laundering, handling offences and complicity, Articles 321-1, 3, 4, 9 and 10; 324-1, 3, 4, 5, 6, 7 and 8; 432-15; 314-1; 445-1 and 3; of the French Penal Code.

L241-3 of the French Commercial Code; 121-6 and 7 of the French Penal Code for complicity.

Accused: Mr. Teodoro Nguema Obiang Mangue

Petitioners: Mr. Roger Le Loire and Mr. René Grouman, senior investigating judges at the Paris *Tribunal de grande instance* (French Republic)

Enforcer: Criminal Chamber of the Supreme Court of Justice

In Malabo, on 18 March in the year two thousand fourteen

Before the Honourable Magistrate of the Supreme Court of Justice of Malabo, Republic of Equatorial Guinea, in the capacity of investigating judge, for the enforcement of the judicial assistance granted by ruling of 4 March 2014, for the enforcement of said assistance the Honourable Judge José Maria Nsue Nchama, and assisted by the Secretary of the Second Chamber of the same body.

Identification data:

According to his papers, he is a national of Equatorial Guinea born on 25 June 1969 in Akaokam Esangui, District of Mongomo, Province of Wele Nzas; son of Mr. Teodoro Obiang Nguema Mbasogo and Ms Constancia Mangue Nsue Okomo; residing in Malabo; title: Second Vice-President of the Republic, Personal Identification No. D0004699.

Mr. Teodoro Nguema Obiang Mangue and his attorney, Mr. Emmanuel Marsigny, attorney with the Paris Court, Law Society number 03493746, authorized in this writ by the Law Society of Equatorial Guinea, via professional release, signed by the Dean of the same Law Society, after being given an appointment on the sixth of the current month, the first appearance of the same is carried out for the enforcement of the letter rogatory of 14 November 2013, it being specified that the advising attorney has had the contents of the file available to him.

The French judges in charge of investigating the matter and whose names are listed at the beginning attended the execution of the letters rogatory via videoconference.

You are hereby informed that as a result of the ruling of the *Cour de Cassation — Chambre Criminelle* dated 9 November 2010 and the application to extend the investigation of the Public Prosecutor dated 31 January 2012, 19 February 2013 and 5 March 2013, you are accused of the following acts:

> 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, SODAGE and SOMAGUI FORESTAL, acts characterized as laundering of the proceeds of the above-mentioned misdemeanours which are defined and punishable under Articles 324-1; 432-15; 314-1 of the French Penal Code and Article L1241-3 of the French Commercial Code.

After this statement, the 2nd Vice-President of the Republic in charge of Defence and State Security added the following:

> Honourable Judge,
>
> In execution of the request for mutual assistance of 14 November 2013, sent to the Republic of Equatorial Guinea by the French authorities on 13 February 2014 on the basis of the United Nations Convention against Transnational Organized Crime adopted in New York on 15 November 2000, called the "Palermo Agreement", I have been asked to appear today so that a questioning at first appearance, as provided for by the French Penal Code, can be conducted by videoconference with the French judges who envisage placing me under judicial examination for acts characterized as money laundering, allegedly committed on French territory between 1997 and October 2011.
>
> In my capacity as Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security since 21 May 2012, and in accordance with international custom, I enjoy full jurisdictional immunity before foreign civil and criminal courts for the duration of my time in office.
>
> Since the Government of the Republic of Equatorial Guinea has not lifted or waived that immunity, it is impossible for me to respond to questions of any kind.

The Magistrate: Pursuant to the letter rogatory, statements were taken of the first appearance of Mr. Teodoro Nguema Obiang Mangue, in the presence of his lawyer, and he was questioned as follows:

<u>Concerning his assets and ties to the company</u>

What are the various political positions that you held in Equatorial Guinea?

Can you provide us with the composition of your immovable assets in France?

Do you hold any interests in companies in France?

Do you hold any interests in companies in Equatorial Guinea?

If so, which ones?

What can you tell us about SOMAGUI FORESTAL? (Review the history of that company from the date it was formed until the end of 2011)

What are its purpose, its bank accounts, and its turnover?

Are you or have you been the *de facto* or *de jure* chief executive of that entity? Are you or have you been a shareholder of that company?

Does that company hold any equity interests in other companies in Equatorial Guinea, France, or other countries?

What can you tell us about SOCAGE? (Review the history of that company from the date it was formed until the end of 2011)

What are its purpose, its bank accounts, and its turnover?

Are you the chief executive of that company? Are you a shareholder of that company?

Does that company hold any equity interests in other companies in Equatorial Guinea, France, or other countries?

Is it purely a holding company, or does it trade?

Who is the beneficial owner of that company?

What can you tell us about EDUM SL? (Review the history of that company from the date it was formed until the end of 2011)

What are its purpose, its bank accounts, and its turnover?

Are you the chief executive of that entity? Are you a shareholder of that company?

Does that company hold any equity interests in other companies in Equatorial Guinea, France, or other countries?

Is it purely a holding company, or does it trade?

Who is the beneficial owner of that company?

Are there any equity ties between SOMAGUI FORESTAL, SOCAGE and EDUM SL?

If not, what is the link between these three entities?

What can you tell us about ELOBA CONSTRUCCION? (Review the history of that company from the date it was formed until the end of 2011)

What are its purpose, its bank accounts, and its turnover?

Are you the chief executive of that company? Are you a shareholder of that company?

Does that company hold any equity interests in other companies in Equatorial Guinea, France or other countries?

Is it purely a holding company, or does it trade?

Do these four companies (SOCAGE, SOMAGUI, EDUM and ELOBA) have, or have they had, financial ties between them?

Have you received any funds from those four companies in your personal bank accounts?

Are you the owner of the building located at 42 Avenue Foch, 75016 Paris?

Do you own an apartment at 47 Boulevard Lannes, 75016 Paris?

What can you tell us about a townhouse located at 71 Rue de Sèvres, Ville d'Avray? Who occupies those premises?

Do you own real estate in other countries?

What are your sources of income (official sources, as a minister, and other sources?)

Do you have or have you had bank accounts in France?

If so, can you list them in detail?

Concerning the purchase of his luxury vehicles

Can you provide us with a list of your vehicles registered in France?

Did you purchase those vehicles personally, or within the framework of your official duties?

How then do you explain that they are registered in France but are not fitted with diplomatic number plates?

How do you explain the fact that most of the vehicles attached during our operations were parked at your private residence at 42 Avenue Foch, 75016 Paris?

We should like to point out that most of the vehicles that were attached are sports cars and luxury vehicles which are collectors' items, and that you are a great fan of those vehicles in your private capacity. They cannot under any circumstances be official vehicles used by the staff of the Embassy of Equatorial Guinea in Paris. What is your view?

What payment methods did you use to purchase those vehicles?

Which bank accounts did you make those payments from?

The investigation has shown that a certain number of luxury vehicles were paid for in whole or in part by SOMAGUI FORESTAL:

— Maserati MC 12 registration 527 QGR 75. The purchase price is estimated at €709,000;

— Bentley Azure registration 855 RCJ 75. The purchase price is €347,010;

— Rolls Royce Phantom registration 627 QDG 75. The purchase price is €395,000;

— Ferrari 599 GTO F1 registration BB-600-SD. The purchase price is €200,000;

— Bentley Arnage registration 118 QGL 75. The purchase price is €290,700;

— Mercedes V3.2 Viano registration 565 QWP 75. The purchase price is €41,078;

— Bugatti Veyron registration 616 QXC 75. The purchase price is €1,196,000;

— Bugatti Veyron registration W-718-AX. The purchase price is €1,959,048;

— Mercedes Maybach registration 101 PXE 75. The purchase price is €530,000.

How do you explain that a Guinean company specialized in the production and marketing of timber paid more than €5 million for purchases that were personal in nature, here, luxury vehicles?

You tell us that you are the owner of that company and that in that capacity you have the right to use the company's funds as you wish. Are there not one or more articles of the Penal Code of Equatorial Guinea that provide that a person holding a public office cannot have private interests in a private company?

The Code further provides that:

> "A public official shall not take advantage of his position to become directly or indirectly involved with associations or private companies with the intention of profiting therefrom (Art. 198).
>
> A public official shall not use public funds or assets under his control for private purposes (Art. 396).
>
> A public official shall not have a direct or indirect interest in any contract or transaction whatsoever if he is involved in it by reason of his position (Art. 401).
>
> When he receives his assignments, a manager of government or the economy shall not directly or indirectly participate in commercial transactions or transactions for profit which fall within the scope of his jurisdiction or authority and which involve objects which are not the proceeds of his own property." (Art. 404)

You are both the Minister for Agriculture and Forestry and the owner of a company specialized in the production and marketing of timber.

You testified before the South African Court of Justice in 2004 and acknowledged that this practice was unlawful, all things considered, but was a practice under customary law. Do you deny your statement?

You tell us that SOMAGUI FORRESTAL is a private company with shareholders and that you no longer have any ties to it. However, in April 2009, during the CHRISTIE'S sale of the Pierre Bergé/Yves Saint Laurent collection, documents clearly show that you authorized SOMAGUI to make payments at the time of the sale. We should like to remind you that you spent a total of nearly €18 million on purchases. What do you have to say to that?

Concerning Foch Service and the Swiss companies

Who is the owner of the townhouse at 42 Avenue Foch, 75016 Paris?

You tell us that it is the State of Equatorial Guinea. Can you develop your argument? Since when? Can you review the history since 2005?

Do you have any ties whatsoever to the aforementioned entities?

Did you not purchase the shares of those Swiss companies in 2005? For how much, and using which bank accounts?

Could you communicate to us the bank accounts of those Swiss companies?

The investigation clearly showed through witness testimony as well as physical evidence that you are the owner of 42 Avenue Foch, but also the *de facto* chief executive of the above-mentioned Swiss companies. What is your explanation?

The search conducted at 42 Avenue Foch revealed that it was in no way an official building, but that the 101 rooms constituting your triplex were purely private in nature: numerous items of designer men's clothing and shoes, no or very little women's clothing, no official documents but only documents of a private nature. What do you have to say to that?

What can you tell us about FOCH SERVICE?

Do you have any direct or indirect ties to that company?

What are the objects of that company?

Are there any financial ties between FOCH SERVICE and SOMAGUI?

If so, for what reasons?

How do you explain that a company that produces and markets timber in Equatorial Guinea finances a company whose sole purpose is to pay the staff at 42 Avenue Foch?

The explanation could be that you have ties to SOMAGUI and that it is used in part to pay personal expenses in connection with your townhouse. What are your thoughts?

The investigation showed, through examination of SARL FOCH SERVICE's bank accounts, that SOMAGUI made payments totalling nearly €3 million between 2007 and 2010. How do you explain this?

On his lifestyle

The investigation revealed a luxurious lifestyle characterized by numerous purchases of luxury goods. Here are a few examples listed in this proceeding:

— Sale of works of art at the Yves Saint Laurent sale at Christie's in 2009 for **€18 million.**

— Purchases of luxury watches at DUBAIL BIJOUTERIE, Place Vendôme: **€11 million**.

— Purchase of antiques from DIDIER AARON Antiquaires: €600,000.

— **Cash** payments during his stays at LE CRILLON hotel between 2004 and 2007 totalling **€587,833,** and payments by **SOCAGE** and **SOMAGUI** in 2007 of **€272,000 and €238,739.50**, respectively.

— **€250,000 in bottles of wine from ROSMANEE CONTI paid by SOMAGUI (invoice in the name of APG, sent to FOCH SERVICES).**

The figure of **€30 million**, all of which was paid by companies, primarily SOMAGUI and SOCAGE, has been clearly established. Those companies are only used to finance your extravagant expenditures. Moreover, certain items were identified during the search of your townhouse. What do you have to say to that?

If we add expenditures at various antique shops in Paris, an additional **€15 million** have been identified.

In 2007, Mr. GODECHOUX, a valuer with AG OBJET D'ART valuers of movables, valued all of the movable assets at 42 Avenue Foch at €110 million for insurance purposes. What do you say about that?

On 30 May 2012, the Regional Public Finance Department valued the building located at 42 Avenue Foch at €107 million. What do you say about that?

If we refer to your purchases of real property in France and your extravagant expenditures, we largely exceed a figure of €100 million. The United States investigation also showed substantial assets and an exorbitant lifestyle led by you. What is the source of these funds?

On the use of Somagui and Socage

Do you confirm that SOMAGUI and SOCAGE actually had a genuine business activity?

Do you confirm that you are still the owner of those companies?

Do you receive, or have you received, commissions from the sale of timber in your personal capacity?

Are not SOMAGUI and SOCAGE supposed to receive the proceeds of those commissions or tax in their bank accounts?

How are funds credited to the bank accounts of SOCAGE, SOMAGUI FORESTAL, and EDUM?

Is it not with funds from the Treasury of Equatorial Guinea?

Two former ambassadors of France to Equatorial Guinea, Messrs. Guy SERIEYS and Henri DENIAUD explained in their testimony that Teodoro, the President's son, had a monopoly of the production and marketing of timber and that it was well known that a commission of approximately 20 per cent was levied by the authorities. How do you explain this?

How then do you explain that certain executives or persons who worked in Equatorial Guinea in the timber sector declared in their testimony that a commission and tax system was imposed by yourself on the export and sale of timber and that they had paid these unlawful commissions, which were 10,000 CFA francs and then 15,000 CFA francs per cubic metre of exported timber?

In their respective testimony, the executives who testified — Gervais MOKIKI and Pedro TOMO MANGUE, among others — specifically explained that in addition to the payment of official taxes, they also had to pay commissions in cash or by cheque to the bank accounts of SOMAGUI and SOCAGE for the son of President NGUEMA OBIANG. What do you have to say to that?

They state that at the present time, SHIMMER, which has secured a quasi-monopoly on the production of timber in Equatorial Guinea, paid a commission of 45,000 CFA francs per cubic metre of exported timber. How do you explain that?

Have you not personally appropriated your country's resources (timber, as well as oil)?

Did you receive commissions from foreign companies that produce oil in your country?

If so, were some of those funds also deposited into the bank accounts of the above-mentioned companies?

Would that not be a plausible explanation to justify funds that were used not only to purchase numerous properties in France, but in the rest of the world as well (Brazil, United States, etc.) and ensure a luxurious lifestyle in terms of extravagant spending for more than a decade?

We draw your attention to the existence of five transfers during the month of April 2006, each for an identical amount, i.e., US$5,908,400, from SGBE to the final recipient, FIRST AMERICAN TRUST ACCOUNT OF WACHOVIA, an American bank. Those sums passed through the Banque de France, via BEAC. What can you tell us about those five transactions?

The investigation revealed that these amounts, which represent approximately US$30,000,000, were used to finance the purchase of your villa in Malibu. What do you have to say to that?

Our investigation also made it possible to identify six other transfers from the SGBG account in Equatorial Guinea to BEAC, into the Banque de France account, for a correspondent at WACHOVIA CORPORATION ATLANTIC, in the name of INSURED AIRCRAFT TITLE SERVICE with UBS in London. Those transactions enabled you to transfer US$33,799,850 to the United States, and thus to purchase a luxury GULFSTREAM jet. What can you tell us about that?

What is the source of that money?

The investigation — notably the testimony of the directors of SGBE — has revealed that those funds came from the Treasury of Equatorial Guinea. Is that correct?

The interview with Mr. Christian DELMAS, who held the post of Director of SGBE in Equatorial Guinea, revealed that twice a year the Treasury of Equatorial Guinea paid millions of euros worth of CFA into your account. Is that correct?

ANSWER OF MR. TEODORO NGUEMA OBIANG MANGUE, SECOND VICE-PRESIDENT OF THE REPUBLIC: For the reasons set forth at the outset, that is, the immunity that I enjoy as Second Vice-President of the Republic in charge of Defence and State Security, and by reason of the fact that my Government has not lifted or waived my immunity, it is impossible for me to respond to questions of any kind.

The Judge allowed the lawyer of the person making the statement to speak, who then made the following allegations, which we summarize as follows:

> "The duties of Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security, currently performed by Mr. Teodoro Nguema Obiang Mangue, grant him absolute immunity from the civil and criminal jurisdiction of foreign courts, as provided for by customary international law. This principle, which recognizes the absolute jurisdictional immunity of Heads of State and the highest-ranking state officials, is unambiguously provided for and affirmed by the

> International Court of Justice, as well as by the *Chambre Criminelle* of the *Cour de Cassation*.
>
> In the absence of a contrary international convention, which does not exist in this case, no limitation or restriction on this immunity is provided for by international customary law with regard to the envisaged placement under judicial examination. Accordingly, notice of the latter cannot properly be given without violating that rule of international law, which is a matter of international public policy."

Following the allegations of the assisting attorney, I ask the aforementioned French senior investigating judges to tell us if it is necessary to bring charges or if the person making the statement is to remain a *témoin assisté* (legally represented witness).

The French judges in attendance ask us to retain the prior charges.

Accordingly, we hereby notify the party concerned that he is being placed under judicial examination for the acts notified previously.

We notify the person placed under judicial examination of his right to request an investigative procedure or make an application for annulment on the basis of Articles 81, 82-1, 82-2, 82-3, 156 and 173 of the Code of Criminal Procedure during the conduct of the judicial investigation and prior to the expiry of the applicable time period, depending upon whether he is in custody on that date, of one month or three months provided for by the third paragraph of Article 175 of the Code of Criminal Procedure, subject to the provisions of Article 173-1.

We notify the person placed under judicial examination that he has a right to choose a lawyer for the remainder of the proceeding and that if that choice was not made, and he so requests, we shall have one appointed automatically.

The person placed under judicial examination declares: I request the assistance of:

— Mr. EMMANUEL MARSIGNY, first designated lawyer;

— Mr. THIERRY MAREMBERT;

— Mr. PATRICK KLUGMAN;

— Mr. JEAN-MARIE VIALA.

Lawyers selected for the continuation of the proceeding.

We inform the person placed under judicial investigation that the foreseeable time period for completion of the investigation is ONE YEAR, and we notify him that at the expiry of the said time period he may request that the proceeding be closed pursuant to the provisions of Article 175-1 of the Code of Criminal Procedure.

We notify the person placed under judicial examination:

— that he must declare an address that may be his own address or that of a third party responsible for receiving the documents intended for him provided that he at the same time produces the written consent of that person;

— that the declared address must be located within a department of metropolitan France.

The person placed under judicial examination declares the following address:

203 *bis* Boulevard Saint Germain, 75007 Paris.

That address is the address of my lawyer, Mr. EMMANUEL MARSIGNY.

We further advise the person placed under judicial examination:

— that until the judicial investigation is closed, he must report any change in the declared address by means of a new declaration or by letter sent by recorded delivery, with acknowledgment of receipt;

— that any notification or service effected at the last declared address shall be deemed to have been received by him.

We invite the person placed under judicial examination to re-read the statements as recorded and sign them if he declares that he stands by them.

Having performed the prior procedures and after reading and approval by the French judges in charge of the investigation, this procedure was closed, was signed by the person making the statement, his assisting attorney and the acting judge, in witness whereof as secretary.

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ANNEX 21

French Ministry of Foreign and European Affairs, Note Verbale No. 778/PRO/PID, 16 February 2012

Note Verbale No. 778/ PRO/PID from the Minister for Foreign and European Affairs, dated 16 February 2012, to the Minister of Justice, for the attention of the senior investigating judges at the Paris *Tribunal de grande instance*

[Translation]

Re: Republic of Equatorial Guinea/building located at 42 avenue Foch, 75016 Paris

Please find enclosed a copy of Note Verbale No. 185/12 dated 15 February 2012 from the Embassy of the Republic of Equatorial Guinea which was transmitted today by the Minister Delegate for Foreign Affairs, International Co-operation and Francophone Affairs of that country at a meeting at the Ministry of Foreign and European Affairs with the Director for Africa and the Indian Ocean.

The French party reiterated at that time that the building referred to above was subject to ordinary law.

(Signed) Marie-Jeanne de COUQUEREAUMONT,
Deputy Director of the Protocol Department.

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Copy of Note Verbale No. 185/12 of 15 February 2012 from the Embassy of the Republic of Equatorial Guinea

The Embassy of the Republic of Equatorial Guinea in France presents its compliments to the French Ministry of Foreign Affairs (Protocol Department) and has the honour to inform it that His Excellency, Mr. Eustaquio NSENG ESONO, Minister Delegate for Foreign Affairs, International Co-operation and Francophone Affairs, and Mr. Siméon OYONO ESONO, Secretary-General of the Ministry of Foreign Affairs, wish to go to the property of the Government of Equatorial Guinea at 42 avenue Foch in Paris and for that purpose, by this note, it respectfully requests police protection for their travel.

The Embassy of the Republic of Equatorial Guinea in France thanks the French Ministry of Foreign Affairs (Protocol Department) in advance for its kindly intervention and avails itself of this opportunity to renew to it the assurance of its high consideration.

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ANNEX 22

Embassy of Equatorial Guinea, Note Verbale No. 340/12, 25 April 2012

Note Verbale No. 340/12 from the Embassy of Equatorial Guinea, dated 25 April 2012, to the senior investigating judges at the Paris *Tribunal de grande instance*

[Translation]

The Embassy of the Republic of Equatorial Guinea presents its compliments to the senior investigating judges.

The Embassy of the Republic of Equatorial Guinea encloses the letter sent to the Paris Public Prosecutor for the attention of the investigating judges.

ANNEX 23

Embassy of Equatorial Guinea, Note Verbale No. 339/12, 25 April 2012

Note Verbale No. 339/12 from the Embassy of Equatorial Guinea, dated 25 April 2012, to the Paris Public Prosecutor

[Translation]

The Embassy of the Republic of Equatorial Guinea in France is pleased to enclose for your attention a copy of the most recent Note Verbale sent to the French Ministry of Foreign Affairs.

The Public Prosecutor will note that the premises belonging to the Republic of Equatorial Guinea and located at 42 avenue Foch in Paris are indisputably diplomatic in nature.

The Public Prosecutor will also note that, in disregard of the provisions of the Vienna Convention, the French Ministry of Foreign Affairs refuses to offer its protection to the said premises.

Accordingly, the Embassy of the Republic of Equatorial Guinea in France asks the Public Prosecutor to take all the appropriate measures to ensure the protection of the said premises.

The Embassy of the Republic of Equatorial Guinea in France is at the disposal of the Public Prosecutor for that purpose.

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ANNEX 24

Embassy of Equatorial Guinea, Note Verbale No. 338/12, 25 April 2012

<u>Note Verbale No. 338/12 from the Embassy of Equatorial Guinea, dated 25 April 2012, to the French Ministry of Foreign Affairs</u>

[Translation]

The Republic of Equatorial Guinea presents its compliments to the Minister for Foreign and European Affairs, Protocol Department, Diplomatic Privileges and Immunities Sub-division and again refers to its Note No. 134/PRO/PID of 28 March 2012.

The Embassy of the Republic of Equatorial Guinea recalls the gist of its reply of 28 March 2012 No. 294/12 to the Note from the above-mentioned Ministry:

— On 4 October 2012, the Republic of Equatorial Guinea declared its building located at 42 avenue Foch, Paris, as diplomatic premises.

— The Ministry did not challenge the claim that the protection of diplomatic premises was declaratory in nature, arising under the Vienna Convention of 18 April 1961.

— However, in order to deny protection, the Ministry of Foreign Affairs indicated that in accordance with a "constant practice of France", the official recognition of the status of diplomatic premises would be determined on the date of the "effective" assignment of the said premises to the offices of the diplomatic mission, notified by Note Verbale.

— The Republic of Equatorial Guinea recalled that the international treaties by which France is bound, including the Vienna Convention of 18 April 1961, take **<u>precedence</u>** over French statutes and regulations, and therefore over French practice.

— Accordingly, the Republic of Equatorial Guinea also recalled that that "practice" invoked by the Ministry did not stand as an obstacle to the diplomatic protection of the premises located at 42 avenue Foch in Paris as from 4 October 2011, the date of the declaration by the Republic of Equatorial Guinea to the Protocol Department.

— In any event, in the Note Verbale of 4 October 2011 in which it advised the Protocol Department that it had premises located at 42 avenue Foch, Paris, for which it was requesting diplomatic protection, **<u>the Republic of Equatorial Guinea expressly stated that the premises had already been effectively assigned to the diplomatic mission of Equatorial Guinea.</u>**

It follows from the foregoing that:

— The premises located at 42 avenue Foch in Paris should necessarily have had the benefit of diplomatic protection as from 4 October 2011.

— As the Ministry did not believe that it had to ensure that protection, measures of spoliation of the property of the Republic of Equatorial Guinea occurred, denying it the enjoyment of the said property.

— The justifications provided by the **Ministry to refuse its protection set mere practice up against an international Convention and therefore cannot be accepted by the Republic of Equatorial Guinea.**

Accordingly,

— The Republic of Equatorial Guinea reiterates that its premises at 42 avenue Foch are indeed assigned for the use of its diplomatic mission; it persists in its request for the application of the law and for protection by the Ministry and advises that, in the meantime, it will itself ensure the said premises are protected.

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ANNEX 25

Order of attachment of real property (*saisie pénale immobilière*), 19 July 2012

Order of attachment of real property (*saisie pénale immobilière*), 19 July 2012

[Translation]

FRENCH REPUBLIC

PARIS COURT OF APPEAL

PARIS *TRIBUNAL DE GRANDE INSTANCE*

Prosecution reference: 0833796017

Judicial Investigation reference: 2292/10/12

ORDER OF ATTACHMENT OF REAL PROPERTY

We, Roger LE LOIRE, Senior Judge in charge of the investigation on the *Tribunal de Grande Instance* of Paris,

Having regard to the investigation into:

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, acts which are defined and punishable under Articles 321-1, 432-15, 324-1, 314-1 of the Penal Code, L 241-3 of the Commercial Code, and 121-6 and 121-7 of the Penal Code with regard to complicity,

— application to extend the investigation of 31 January 2012: handling offences and money laundering, acts defined and punishable under Articles 321-1, 321-3, 321-4, 321-9, 321-10, 324-1, 324-3, 324-4, 324-5, 324-6, 324-7 and 324-8 of the Penal Code,

— application to extend the investigation of 2 March 2012: handling offences and/or money laundering in connection with the renovation works on the building located at 109 boulevard du Général Koenig in Neuilly sur Seine, performed by SCI Les Batignolles until 31 July 2011, acts defined and punishable under Articles 321-1, 321-3, 321-4, 321-9, 321-10, 324-1, 324-3, 324-4, 324-5, 324-6, 324-7 and 324-8 of the Penal Code,

Against X

Mr. Teodoro NGUEMA OBIANG MANGUE

Born 25 June 1969 in Akoakan Esangui, Equatorial Guinea

Parents: Teodoro OBIANG NGUEMA and Constance MANGUE NSU OKOMO

residing in Malabo, Equatorial Guinea

Address for service at 42 avenue Foch 75016, Paris

Named in an arrest warrant dated 11 July 2012, which resulted in a record of unsuccessful searches being prepared by the OCRDGF (serious financial crime squad) on 12 July 2012,

Having regard to Article 131-21 of the Penal Code,

Having regard to Articles 706-141 to 706-147 and 706-150 to 706-152 of the Code of Criminal Procedure,

Whereas, investigations demonstrated that the building located at 42 avenue Foch, Paris 16th arr., owned by six French and Swiss companies, was wholly or partly paid for out of the proceeds of the above-mentioned offences and thus represents the laundered proceeds of the offences of misuse of corporate assets, breach of trust, and misappropriation of public funds,

Whereas, the above-mentioned Teodoro NGUEMA OBIANG MANGUE, son of the President of Equatorial Guinea, enjoys free disposal of the said building,

Whereas, examination of the file transmitted by the tax authorities and, more specifically, the wealth tax returns for the years 2005 to 2011 (SEALED ITEM ISF NGUEMA ONE) has resulted in the discovery of documents handed over by the firm of CLC, 65 avenue Marceau 75116 Paris, which state that Mr. NGUEMA OBIANG MANGUE, a resident of Equatorial Guinea, was the sole shareholder of five Swiss companies since late 2004: Ganesha Holding, Nordi Shipping & Trading Co. Ltd., GEP Gestion Entreprise Participation RE Entreprise and Raya Holding, the last of which holds the share capital of the following companies: 42 avenue Foch and SCI avenue du Bois. These six companies are recorded in the mortgage registry of Paris (8th Office) (*Conservation des hypothèques*) as the co-owners of the building located at 42 avenue Foch, Paris 16th arr.

Whereas, in addition, a report from the same law firm notes that a certain "Mr. 'X', a resident of Equatorial Guinea, has been the owner of all of the shares of GANESHA HOLDING SA since 20 December 2004." Whereas the report also notes "that the owner of the building at 42 avenue Foch is also exposed to a risk under the criminal law, i.e., the misuse of corporate assets, if it were shown that Mr. Teodoro OBIANG NGUEMA was the de facto manager". The CLC law firm further notes that the Swiss companies agreed to waive the rent in favour of Mr. "X", who occupies the property that is registered under the company's assets free of charge, and that the amount of the rent which those companies normally should have charged should be incorporated into their results.

Whereas, the various interviews, including but not limited to that of Ms PASTOR of the Dauchez firm, the property manager at the time, Ms Linda PINTO from the PINTO company, an interior décor firm, as well as the interviews of former employees who worked for Mr. Teodoro NGUEMA OBIANG MANGUE also revealed that the person in question took all decisions concerning the building, supervised all of the works, and had always conducted himself as the owner of the said building. Based on documents seized during a search of the premises of FOCH SERVICE, which was in charge of managing the building at 42 avenue Foch, it was found that the manager, Ms DELAURY, sent most of her memoranda and reports to Mr. Teodoro NGUEMA OBIANG, who was the only person taking decisions.

Whereas, recent investigations conducted in execution of an international letter rogatory sent to the Swiss judicial authorities, and in particular the searches of the premises of the trust companies that managed and administered the Swiss companies that owned 42 avenue Foch, resulted in the discovery of documents that unambiguously showed that Mr. Teodoro NGUEMA OBIANG MANGUE was the sole shareholder and the beneficial owner under Swiss law. Moreover, those companies have had no bank accounts since they were purchased in late 2004 by the new owner, Mr. Teodoro NGUEMA OBIANG MANGUE.

Whereas, the search of the premises at 42 avenue Foch also revealed that the purpose of the works carried out at that address was to bring together all of the rooms and all of the floors so that it

would henceforth constitute a single, vast property in which all of the rooms could be reached from inside, which meant that it was no longer possible to identify a unit by the company that owned it. Thus, unit 512, belonging to SCI Avenue du Bois, represents a portion of an apartment located on the 4th floor, with an approximate surface area of 150 m^2, while the other part of that same apartment formed unit 511, which belonged to the 42 avenue Foch company.

Whereas, the management of the aforementioned companies is conducted with funds that come directly from Equatorial Guinea and, more specifically, from SOMAGUI FORRESTAL SL. Two time periods must be distinguished:

The period from 2005 to 2007, in which funds were transferred directly from Equatorial Guinea to bank accounts opened in the names of Swiss companies through Dauchez, the firm managing the property at 42 avenue Foch.

From 2007 until today, SARL Foch Service, a company incorporated under French law whose purpose is to pay for the costs associated with managing the building and the expenses of the staff assigned to the building's maintenance and to receiving guests, is financed by funds that also come from SOMAGUI FORRESTAL.

Thus, examination and analysis of the bank accounts of Foch Service show financial ties between Foch Services and SOMAGUI FORRESTAL, a Guinean company, in an amount of almost €2.8 million, coming from SOMAGUI FORRESTAL. It should be noted that the purpose of SOMAGUI FORRESTAL, which is specialized in growing and selling timber, is totally different to that of SARL FOCH SERVICES.

Whereas, the cost of the works which made it possible to completely transform the property located at 42 avenue Foch by Mr. Teodoro OBIANG NGUEMA was estimated at nearly €11 million, and was paid in part by SOMAGUI FORRESTAL, whilst a very large portion was paid by debiting an account labelled, "Teodoro NGUEMA OBIANG, Presidency, Malabo". This method of financing, which is unusual to say the least since the building is for private use, is used once again to purchase costly works of art (€20 million) and luxury vehicles (€7 million or €8 million), most of which, moreover, were attached in the interior courtyard and apartments at 42 avenue Foch.

Whereas the building located at that address is a private property and in no circumstances a diplomatic mission in French territory, as has been recalled by the Minister for Foreign Affairs. That fact was verified during the search, since it resulted in the discovery of objects, clothing and other personal effects belonging exclusively to Mr. Teodoro NGUEMA OBIANG.

Whereas, the agreement relating to the transfer of the shares of the Swiss companies, dated 18 December 2004, which was discovered in Switzerland, for an amount of €25,015,000, specifies Teodoro NGUEMA OBIANG MANGUE, Malabo, Equatorial Guinea, as the private purchaser. At no time does that agreement mention any official post or title whatsoever.

Whereas, moreover, during a search of the premises of SARL FOCH SERVICES, documents that were seized reveal that Mr. Teodoro OBIANG NGUEMA MANGUE and his counsel sought to make the financial ties between the various legal persons even more opaque, in particular through the formation of a holding company in Singapore.

Whereas, in the course of the search of the CLC tax firm, the capital gains tax return for 2011, filed on behalf of Teodoro NGUEMA OBIANG MANGUE, was seized. Whereas the tax return, dated 15 September 2011, is subsequent to the transfer of his shareholder rights in the Swiss company that co-owned 42 avenue Foch to the State of Equatorial Guinea.

Whereas, however, this event appears to be legal window-dressing aimed at preventing any attachment or seizure. The amount of that transaction is allegedly some €35 million (including the

sale price of the shares and the purchase of debt), which appears absurdly low and reflecting little or no thought, since France Domaine valued the building at €107 million in June 2012.

Whereas, several inconsistencies show that the document was drafted urgently in an effort to block the measures taken by the court: the vehicles belonging to Mr. OBIANG NGUEMA MANGUE were attached on 28 September 2011. In the days following those measures, a sign indicating "Annex of the Embassy of Equatorial Guinea" was placed on the entrance to 42 avenue Foch. It seems rather odd that the deed of sale of 15 September (thus, before those measures were taken) was not produced at that time.

Whereas, moreover, the search conducted at 42 avenue Foch in February 2012, and hence after that event, revealed that Mr. Teodoro NGUEMA OBIANG MANGUE's personal effects, furniture and documents were still on the premises.

Whereas, the American investigation shows revenue for Mr. Teodoro NGUEMA OBIANG MANGUE, the Minister for Agriculture and Forestry, in the amount of $80,000 per year, and mentions articles of the Guinean Penal Code (Article 399 of the Penal Code) which prohibit a Minister from carrying out any commercial activity.

The costs of purchasing the building at 42 avenue Foch, renovating it, maintaining it, and decorating the interior, which are assessed at more than €100 million, are on an altogether different scale from his known income.

Whereas, all of this information shows that Mr. Teodoro NGUEMA OBIANG MANGUE is the actual owner of the building at 42 avenue Foch, and that he enjoys free disposal of it within the meaning of Article 131-21 of the Penal Code.

Whereas that building may 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.

Whereas, in addition, Teodoro NGUEMA OBIANG MANGUE is charged with acts of money laundering and subject to the confiscation of some or all of his movable or immovable assets, held separately or through undivided interests, in accordance with Article 324-7 (12) of the Penal Code. The investigations that have been conducted show that it is Teodoro NGUEMA OBIANG MANGUE, a natural person, who enjoys free disposal of the real estate complex fictitiously ascribed to legal persons.

Whereas, if the property is not attached, a loss in the value of that property would have the effect of denying the adjudicating court any prospect of confiscation,

It is therefore appropriate to attach this property in order to ensure the penalty of confiscation.

FOR THESE REASONS

We order the attachment of a property located in the municipality of **Paris, 16th arrondissement, 40-42 avenue Foch**, the details of which are as follows:

(1) The building entered in the land register as follows:

Municipality	Section	No.	No. of Units
Paris 16th	FA	60	501 513 514 532 541 562

The common areas attached to those units are broken down as follows:

Unit No. 501: 262/10,253rd

Unit No. 513: 7/10,253rd

Unit No. 514: 8/10,253rd

Unit No. 532: 9/10,253rd

Unit No. 541: 17/10,253rd

Unit No. 562: 2/10,253rd

Property purchased on **19 September 1991** by a deed drafted by Mr. Bernard MERLAND, a Notary in **Paris 8th**, and recorded on **18 November 1991** at the Paris mortgage registry — 8th Office — under reference vol. 1991 P No. 5436.

A building that is covered by a commonhold community statement containing the community plan established by a deed recorded by Mr. BELLET, a Notary in Paris, on 23 February 1949, recorded with the 3rd La Seine mortgage registry on 4 March 1949, volume 1621 No. 2.

Amended:

— by a deed recorded by the same Notary on 29 June 1959, recorded in the 3rd La Seine mortgage registry on 18 July 1959, volume 3418 No. 13.

— by a deed recorded by Mr. MOREAU, Notary in Paris on 30 April 1965, recorded in the 3rd La Seine mortgage registry on 14 June 1965, volume 5251, No. 1.

— by a deed recorded by Mr. Jourdain, a Notary in Partnership in Paris, on 9 June 1976. The commonhold community statement and community plan were reworked. That deed was recorded in the 8th Paris mortgage registry on 20 January 1977, volume 1817, No. 5 and on 28 June 1977, *per procurationem*.

— by a deed recorded by Mr. Vincent, a Notary in Partnership in Paris, on 17 June 1977, recorded in the 8th Paris mortgage registry on 28 June 1977, volume 1952, No. 3.

— by a deed recorded by Mr. Gautier, a Notary in Thury-Harcourt on 26 December 1981, 4 January and 12 February 1982, recorded in the 8th Paris mortgage registry on 8 March 1982, volume 3425, no. 15

— by a deed recorded by Mr. Merland, a Notary in Partnership on 12 September 1984, recorded in the 8th Paris mortgage registry on 11 October 1984, volume 4219, No. 6.

Immovable property encumbered by a statutory lien in an amount of €230,209 (principal amount) and €23,201 (incidental costs) in favour of the **TRESOR PUBLIC (SIE CHAILLOT of Paris 16th, 146 avenue de Malakoff Paris 16th)**.

Owned by:

"**Nordi Shipping & Trading Co. SA**", identified in the immovable property register by the company name: "Nordi Shipping & Trading Co., LTD"

a public limited company *(société anonyme)* with its registered office at: 14 Grand-Places, c/o Comptabilité et Gestion S.A. Fribourg, 1700 Fribourg

Identified in the Geneva Commercial Register on 10 November 1981 under number 7099/1981,

Represented by Roland FRIEDEN, domiciled at 4 rue d'Aoste, 1204 Geneva, Switzerland

(2) The building is entered in the land register as follows:

Municipality	Section	No.	Unit No.
Paris 16th	FA	60	503 504 505 506 507 508 551 552 554 555 556 557 558 560 561 564 670 671 672

The common areas attached to those units are broken down as follows:

Unit No. 503: 402/10,253rds

Unit No. 504: 218/10,253rds

Unit No. 505: 402/10,253rds

Unit No. 506: 218/10,253rds

Unit No. 507: 402/10,253rds

Unit No. 508: 218/10,253rds

Unit No. 551: 2/10,253rds

Unit No. 552: 2/10,253rds

Unit No. 554: 2/10,253rds

Unit No. 555: 2/10,253rds

Unit No. 556: 2/10,253rds

Unit No. 557: 2/10,253rds

Unit No. 558: 2/10,253rds

Unit No. 560: 2/10,253rds

Unit No. 561: 2/10,253rds

Unit No. 670: 131/10,253rds

Unit No. 671: 133/10,253rds

Unit No. 672: 122/10,253rds

Unit No, 564: 10/10,253rds

Property purchased on **19 September 1991** by a deed recorded by Mr. Bernard MERLAND, a Notary in **Paris 8th**, and recorded on **18 November 1991** at the Paris mortgage registry — 8th Office — under reference vol 1991 P No. 5440,

and, having regard to units 667, 668, 669 and 564, which were purchased pursuant to a deed recorded by Mr. Chardon a Notary in Paris, 8th, on 16 February 2005 and recorded on 23 March 2003 in the 8th office of the Paris mortgage registry under reference volume 2005 P No. 2097.

A building that is the subject of a commonhold community statement containing the community plan established in a deed recorded by Mr. BELLET, a Paris Notary on 23 February 1949, recorded in the 3rd La Seine mortgage registry on 4 March 1949, volume 1621 No. 2.

Amended:

— by a deed recorded by that same Notary on 29 June 1959, recorded in the 3rd La Seine mortgage registry on 18 July 1959, volume 3418 No. 13.

— by a deed recorded by Mr. MOREAU, a Notary in Paris on 30 April 1965, recorded in the 3rd La Seine mortgage registry on 14 June 1965, volume 5251, No. 1.

— by a deed recorded by Mr. Jourdain, a Notary in Partnership in Paris, on 9 June 1976. The commonhold community statement and community plan were reworked. This deed was recorded in the 8th Paris mortgage registry on 20 January 1977, volume 1817, No. 5 and on 28 June 1977, *per procurationem*.

— by a deed recorded by Mr. Vincent, a Notary in Partnership in Paris, on 17 June 1977, recorded in the 8th Paris mortgage registry on 28 June 1977, volume 1952, No. 3

— by a deed recorded by Mr. Gautier, a Notary in Thury-Harcourt on 26 December 1981, 4 January and 12 February 1982, recorded in the 8th Paris mortgage registry on 8 March 1982, volume 3425, no. 15

— by a deed recorded by Mr. Merland, a Notary in Partnership on 12 September 1984, recorded in the 8th Paris mortgage registry on 11 October 1984, volume 4219, No. 6.

— And by a deed recorded by Mr. Chardon, a Notary in Partnership on 16 February 2005, recorded in the 8th Paris mortgage registry on 23 March 2005, volume 2005P No. 2097, a deed which amended the commonhold community statement and the community plan prepared by Mr. Bellet, a Notary in Paris on 23 February 1949 and transmitted to the 3rd la Seine mortgage registry on 4 March 1949, volume 1621 number 2 concerning the building or real estate complex located in Paris at 40 and 42 avenue Foch.

The original community plan mentions one hundred and sixty three units (163 units). In the above-mentioned deed dated 16 February 2005, the community plan was amended as follows:

<u>Creation of the following four units:</u>

— unit No. 667: on the second floor of Building C, a passageway leading to unit 622 to 628, a common toilet for those units and a floor built at that level and 50/10,157ths of the ownership of the floor and general common areas,

— unit No. 668: on the third floor of Building C, a passageway leading to units 649 to 655, a common toilet for those units and a floor built at that level, and 61/10,157ths of the ownership of this floor.

— unit No. 669: on the fourth floor of Building C, a passageway leading to units 658 to 664, a common toilet for those units and a floor built on that level, and 46/10,157ths of the ownership of the floor and the general common areas.

— unit No. 564: in Building B, stairway B on the mezzanine level, the floor occupied by the equipment room for the private lift, the lift shaft serving unit No. 503 and the equipment duct.

On the first floor, the area filled by the equipment room for the private lift, the lift shaft opening for the lift serving unit No. 505 and the equipment duct.

On the second floor, the space occupied by the equipment room for the private lift, the lift shaft opening serving unit 507, and the equipment duct.

On the second floor, the space occupied by the equipment room for the private lift, the lift machinery and the space occupied by the equipment duct.

And 10/10,167ths of the ownership of the floor and the general common areas.

Amendment to the Community Plan:

- Units 622-623-624-625-626-627-628-667 are combined into a single unit with the number 670,
- Units 649, 650, 651, 652, 653, 654, 655, 668 are combined into a single unit with the number 671
- Units 658, 659, 660, 661, 662, 663, 664, 669 are combined into a single unit with the number 672.

As a result of which:

- Units 622 to 628 and 667 are eliminated and replaced by unit No. 670, described as follows: in building C, second floor, access via unit No. 504 of Building B, and 131/10,167ths of ownership of the floor and the general common areas.
- Units 649 to 655 and 668 are eliminated and replaced by unit 671, described as follows: on the third floor of Building C, access via unit No. 506 in Building B, an apartment and 133/10,167ths of ownership of the Floor and general common areas.
- Units Nos. 658 to 664 and 669 are eliminated and replaced by unit No. 672, described as follows: on the fourth floor of Building C, accessed via unit No. 508 in Building B, and No. 671, an apartment and 122/10,167ths of ownership of the floor and general common areas.
- Units 503 to 508 and 670 to 672 form a single dwelling unit.

The owner of which is:

"Ganesha Holding SA"

A public limited company *(société anonyme)* whose registered office is located at: 5 rue Faucigny, c/o Multifiduciaire Fribourg S.A., 1700 Fribourg,

Identified in the Fribourg Commercial Register on 14 April 1988 under number 5878, represented by Roland FRIEDEN, domiciled at 4 rue d'Aoste, 1204 Geneva, Switzerland

Struck out on 1 February 2012

(3) The building entered in the land register as follows:

Municipality	Section	No.	Unit No.
Paris 16th	FA	60	502 523 524 533 563

The common areas attached to those units are broken down as follows:

Unit No. 502: 256/10,253rds

Unit No. 523: 8/10,253rds

Unit No. 524: 7/10,253rds

Unit No. 533: 7/10,253rds

Unit No. 563: 2/10,253rds

Property purchased on **19 September 1991** by a deed recorded by Mr. Bernard MERLAND, a Notary in **Paris 8th**, and recorded on **18 November 1991** at the Paris mortgage registry — 8th Office — under reference vol 1991 P No. 5438.

The building is the subject of a commonhold community statement containing the community plan established pursuant to a deed recorded by Mr. BELLET, a Notary in Paris on 23 February 1949, transcribed at the 3rd La Seine mortgage registry, 4 March 1949, volume 1621, No. 2.

Amended:

- by a deed recorded by that same Notary on 29 June 1959, recorded in the 3rd La Seine mortgage registry on 18 July 1959, volume 3418 No. 13.

- by a deed recorded by Mr. MOREAU, a Notary in Paris on 30 April 1965, recorded in the 3rd La Seine mortgage registry on 14 June 1965, volume 5251, No. 1.

- by a deed recorded by Mr. Jourdain, a Notary in Partnership in Paris, on 9 June 1976. The commonhold community statement and community plan have been reworked. This deed was recorded in the 8th Paris mortgage registry on 20 January 1977, volume 1817, No. 5 and on 28 June 1977, *per procurationem*.

- by a deed recorded by Mr. Vincent, a Notary in Partnership in Paris, on 17 June 1977, recorded in the 8th Paris mortgage registry on 28 June 1977, volume 1952, No. 3

- by a deed recorded by Mr. Gautier, a Notary in Thury-Harcourt on 26 December 1981, 4 January and 12 February 1982, recorded in the 8th Paris mortgage registry on 8 March 1982, volume 3425, no. 15

- by a deed recorded by Mr. Merland, a Notary in Partnership on 12 September 1984, recorded in the 8th Paris mortgage registry on 11 October 1984, volume 4219, No. 6.

A property encumbered by a statutory lien in an amount of €228,657 (principal amount) in favour of the TRESOR PUBLIC ADM RD PARIS OUEST PARIS CEDEX 15 pursuant to Article 1929 ter of the General Tax Code *(CGI)* and the notice of collection on 14/11/2005. Date of deposit as per the formal requirement: 16/08/2006 (document of 07/08/2006) registered under No. 2006V1950. Final effective date: 07/08/2016.

Whose owner is:

"GEP Gestion, Entreprise, Participation SA"

A public limited company *(société anonyme)* with its registered office at: 14 Grand-Places, c/o Comptabilité et Gestion S.A., Fribourg 1700, Fribourg,

Identified in the Geneva Commercial Register on 9 August 1984 under number 6147/1984,

Represented by Roland FRIEDEN, domiciled at 4 rue d'Aoste, 1204 Geneva, Switzerland

(4) The building appearing in the land register as follows:

Municipality	Section	No.	Unit No.
Paris 16th	FA	60	509 510 519 534 537 538 539 540 549 550 553 601 602 603 604 605

The common areas attached to those units are broken down as follows:

Unit No. 509: 402/10,253rds

Unit No. 510: 218/10,253rds

Unit No. 519: 8/10,253rds

Unit No. 534: 8/10,253rds

Unit No. 537: 10/10,253rds

Unit No. 538: 8/10,253rds

Unit No. 539: 8/10,253rds

Unit No. 540: 8/10,253rds

Unit No. 549: 2/10,253rds

Unit No. 550: 2/10,253rds

Unit No. 553: 2/10,253rds

Unit No. 601: 14/10,253rds

Unit No. 602: 25/10,253rds

Unit No. 603: 20/10,253rds

Unit No. 604: 14/10,253rds

Unit No. 605: 14/10,253rds

Property purchased on **19 September 1991** by a deed recorded by Mr. Bernard MERLAND, a Notary in **Paris 8th**, and recorded on **18 November 1991** at the Paris mortgage registry — 8th Office — under reference vol 1991 P No. 5439.

A building covered by a commonhold community statement containing the community plan established by a deed recorded by Mr. BELLET, a Paris Notary on 23 February 1949, entered in the 3rd La Seine mortgage registry on 4 March 1949, volume 1621 No. 2.

Amended:

— by a deed recorded by that same Notary on 29 June 1959, recorded in the 3rd La Seine mortgage registry on 18 July 1959, volume 3418 No. 13.

— by a deed recorded by Mr. MOREAU, a Notary in Paris on 30 April 1965, recorded in the 3rd La Seine mortgage registry on 14 June 1965, volume 5251, No. 1.

— by a deed recorded by Mr. Jourdain, a Notary in Partnership in Paris, on 9 June 1976. The community plan and the commonhold community statement were reworked. This deed was recorded in the 8th Paris mortgage registry on 20 January 1977, volume 1817, No. 5 and on 28 June 1977, *per procurationem*.

— by a deed recorded by Mr. Vincent, a Notary in Partnership in Paris, on 17 June 1977, recorded in the 8th Paris mortgage registry on 28 June 1977, volume 1952, No. 3

— by a deed recorded by Mr. Gautier, a Notary in Thury-Harcourt on 26 December 1981, 4 January and 12 February 1982, recorded in the 8th Paris mortgage registry on 8 March 1982, volume 3425, no. 15

— by a deed recorded by Mr. Merland, a Notary in Partnership on 12 September 1984, recorded in the 8th Paris mortgage registry on 11 October 1984, volume 4219, No. 6.

Whose owner is:

"RE ENTREPRISE SA"

A public limited company *(société anonyme)* with its registered office at: 14 Grand-Places, c/o Comptabilité et Gestion S.A., Fribourg 1700, Fribourg,

Identified in the Fribourg Commercial Register on 28 April 1987 under number 5582. Represented by Roland FRIEDEN, domiciled at 4 rue d'Aoste, 1204 Geneva, Switzerland.

<u>(5) The building entered in the land register as follows:</u>

Municipality	Section	No.	Unit No.
Paris 16th	FA	60	511 535 536 515 546 547

The common areas attached to those units are broken down as follows:

Unit No. 511: 369/10,253rds

Unit No. 535: 6/10,253rds

Unit No. 536: 8/10,253rds

Unit No. 515: 16/10,253rds

Unit No. 546: unknown

Unit No. 547: unknown

Property purchased on **14 April 1949** by a deed recorded by Mr. Henri BELLET and Mr. Etienne CORPECHOT, Notaries in **Paris 9th**, and recorded in the 3rd La Seine mortgage registry.

A building which is the subject of a Commonhold Community Statement containing the Community Plan pursuant to by a deed recorded by Mr. BELLET, a Notary in Paris, on 23 February 1949, transcribed in the 3rd La Seine mortgage registry on 4 March 1949, volume 1621 No. 2.

Amended:

- by a deed recorded by the same Notary on 29 June 1959, recorded in the 3rd La Seine mortgage registry on 18 July 1959, volume 3418 No. 13.

- by a deed recorded by Mr. MOREAU, a Notary in Paris on 30 April 1965, recorded in the 3rd La Seine mortgage registry on 14 June 1965, volume 5251, No. 1.

- by a deed recorded by Mr. Jourdain, a Notary in Partnership in Paris, on 9 June 1976. The commonhold community statement and community plan were reworked. This deed was recorded in the 8th Paris mortgage registry on 20 January 1977, volume 1817, No. 5 and on 28 June 1977, *per procurationem*.

- by a deed recorded by Mr. Vincent, a Notary in Partnership in Paris, on 17 June 1977, recorded in the 8th Paris mortgage registry on 28 June 1977, volume 1952, No. 3

- by a deed recorded by Mr. Gautier, a Notary in Thury-Harcourt on 26 December 1981, 4 January and 12 February 1982, recorded in the 8th Paris mortgage registry on 8 March 1982, volume 3425, no. 15

- by a deed recorded by Mr. Merland, a Notary in Partnership on 12 September 1984, recorded in the 8th Paris mortgage registry on 11 October 1984, volume 4219, No. 6.

Which is owned by:

“SOCIETE DU 42 AVENUE FOCH”

A single-person private limited company *(SARL)* registered on 22 February 1955 in the Paris Trade and Companies Register under SIREN: 552 028 912, with its registered office at 14 Av d’Eylau, Paris 16th arrondissement.

Represented by its manager, Roland FRIEDEN, domiciled at 4 rue d’Aoste, 1204 Geneva, Switzerland

6) The building appearing in the land register as follows:

16th arrondissement, at 42 avenue Foch, appearing in the land register as follows:

Municipality	Section	No.	Unit No.
Paris 16th	FA	60	512 516 517 518 548 634 635

The common areas attached to those units are broken down as follows:

Unit No. 512: 196/10,253rds

Unit No. 516: 8/10,253rds

Unit No. 517: unknown

Unit No. 518: 8/10,253rds

Unit No. 548: unknown

Unit No. 634: 24/10,253rds

Unit No. 635: 39/10,253rds

Property purchased on **14 April 1949** pursuant to a deed recorded by Mr. Henri BELLET and Mr. Etienne CORPECHOT, Notaries in **Paris 9th**, and recorded in the 3rd La Seine mortgage registry.

A building covered by a commonhold community statement containing the community plan prepared pursuant to by a deed recorded by Mr. BELLET, a Notary in Paris, on 23 February 1949, transcribed in the 3rd La Seine mortgage registry on 4 March 1949, volume 1521 No. 2.

Amended:

— by a deed recorded by the same Notary on 29 June 1959, recorded in the 3rd La Seine mortgage registry on 18 July 1959, volume 3418 No. 13.

— by a deed recorded by Mr. MOREAU, a Notary in Paris on 30 April 1965, recorded in the 3rd La Seine mortgage registry on 14 June 1965, volume 5251, No. 1.

— by a deed recorded by Mr. Jourdain, a Notary in Partnership in Paris, on 9 June 1976. The Community Plan and the commonhold community statement were reworked: this deed was recorded in the 8th Paris mortgage registry on 20 January 1977, volume 1817, No. 5 and on 28 June 1977, *per procurationem*.

— by a deed recorded by Mr. Vincent, a Notary in Partnership in Paris, on 17 June 1977, recorded in the 8th Paris mortgage registry on 28 June 1977, volume 1952, No. 3

- by a deed recorded by Mr. Gautier, a Notary in Thury-Harcourt on 26 December 1981, 4 January and 12 February 1982, recorded in the 8th Paris mortgage registry on 8 March 1982, volume 3425, no. 15
- by a deed recorded by Mr. Merland, a Notary in Partnership on 12 September 1984, recorded in the 8th Paris mortgage registry on 11 October 1984, volume 4219, No. 6.

Whose owner is:

"SOCIETE DE L'AVENUE DU BOIS"

A single-person private limited company *(SARL)* registered on 22 February 1955 in the Paris Trade and Companies Register under SIREN: 552 028 904 having its registered office at 14 Av d'Eylau, Paris 16th arrondissement.

Represented by Roland FRIEDEN, its manager domiciled at 4 rue d'Aoste, 1204 Geneva, Switzerland.

We recall that pursuant to Article 706-145 of the Code of Criminal Procedure, no one may validly dispose of assets attached in a criminal proceeding and that, in addition, once the attachment has been recorded in the competent mortgage registry, the attachment is binding on third parties and suspends or prohibits any and all civil execution proceedings in respect of that property.

Let us also recall that pursuant to Article 706-143 of the same Code, the owner or, failing which, the person in possession of the property is responsible for its maintenance and preservation, and bears the cost thereof with the exception of which costs for which the State is responsible, and that any act the consequence of which is to transform or materially modify the property or reduce its value is subject to prior authorization by the judge who ordered the attachment. That judge also has jurisdiction to rule on any and all applications relating to the execution of the attachment, as provided for by Article 706-144 of the Code of Criminal Procedure.

Finally, we recall that pursuant to Article 706-151 of the Code of Criminal Procedure, the recordation formalities for the criminal attachment of a building are performed by the agency for the management and recovery of attached and confiscated assets (AGRASC) and that in addition, the attachment includes the total value of the building.

NOTIFICATIONS

Order notified to the Public Prosecutor by fax on 19 July 2012

Order notified to Mr. Teodoro NGUEMA OBIANG MANGUE, 42 avenue Foch, Paris 16th, by letter sent by recorded delivery on 20 July 2012

Order notified to NORDI SHIPPING & TRADING CO SA, 14 Grand-Places, c/o Comptabilité et Gestion SA Fribourg, 1700 Fribourg, Switzerland by recorded delivery on 20 July 2012

Order notified to GANESHA HOLDING SA, 5 rue Faucigny, c/o Multifiduciaire Fribourg SA, 1700 Fribourg, Switzerland, by recorded delivery on 20 July 2012

Order notified to GEP GESTION ENTREPRISE PARTICIPATION SA, 14 Grand-Places, c/o Comptabilité et Gestion SA Fribourg, 1700 Fribourg, Switzerland, by recorded delivery on 20 July 2012

Order notified to RE ENTREPRISE SA, 14 Grand-Places, c/o Comptabilité et Gestion SA Fribourg, 1700 Fribourg, Switzerland, by recorded delivery on 20 July 2012

Order notified to SOCIETE DU 42 AVENUE FOCH, 14 avenue d'Eylau, Paris 16th arrondissement, by recorded delivery on 20 July 2012

Order notified to SOCIETE DE L'AVENUE DU BOIS, 14 avenue d'Eylau, Paris 16th arrondissement, by recorded delivery on 20 July 2012

Order notified to the TRESOR PUBLIC SIE CHAILLOT of Paris 16th, 146 avenue de Malakoff, Paris 16th, by recorded delivery on 20 July 2012

Order notified to TRESOR PUBLIC ADM RD PARIS OUEST PARIS CEDEX 15 by recorded delivery on 20 July 2012

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ANNEX 26

Paris *Cour d'appel*, *Chambre de l'instruction*, judgment of 13 June 2013 (Case No. 2012/08462)

Paris *Cour d'appel*, *Chambre de l'instruction*, judgment of 13 June 2013 (Case No. 2012/08462)

[Translation]

Case No. 2012/08462

Prosecution No.: **P083379601/7**

Judgment of 13 June 2013

Paris *Cour d'appel*

Division 7

Second *Chambre de l'instruction*

Appeal of an order finding a civil-party application inadmissible

Judgment

(No. 4, 13 pages)

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

Proceedings initiated in respect of handling and laundering misappropriated public funds, and misuse of corporate assets (see the application for characterization dated 4 July 2011 and the applications to extend the investigation).

Persons under judicial examination

Mourad BAAROUN: released under judicial supervision

Born 12 December 1967 in Tunis, Tunisia

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: arrest warrant

Born 25 June 1969 in Ako[a]kam-Esangui, Equatorial Guinea

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

Address for service: c/o Mr. William BOURDON, 156 rue de Rivoli, 75001 Paris

Counsel: Mr. BOURDON, 156 rue de Rivoli, 75001 Paris

Gabonese Republic (Minister for the Budget, Public Accounts and the Civil Service)

Address for service: 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 and Appellant

The Republic of Equatorial Guinea

Address for service: Me Metzner et Associes, 100 rue de l'Université, 75007 Paris

Counsel:

— Mr. Jean-Yves LE BORGNE, 116 Bd Saint Germain, 75006 Paris

— Metzner et Associes, 100 rue de l'Université, 75007 Paris

— Mr. PARDO, 74 avenue de Wagram, 75017 Paris

Contested civil-party applicant

Ministry of Foreign Affairs of Equatorial Guinea

Address for service: Mr. Franck ZEITOUN, 20*bis* rue de la Porte de Paris 78460 Chevreuse

Counsel:

— Mr. Franck ZEITOUN, 20*bis* rue de la Porte de Paris 78460 Chevreuse;

— Mr. Roger TUDELA, 33 rue de la République 6900 Lyon.

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. LEBORGNE, counsel for the Republic of Equatorial Guinea, civil-party applicant and appellant, on his observations;

— Mr. BOURDON, counsel for Transparency International France, on his observations.

Mr. MARSIGNY, Mr. MAREMBERT and Mr. KLUGMAN, Mr. CHAMPETIER DE RIBES, standing in for Mr. SPITZER, Mr. LAUNAY, Ms TOUITOU, Mr. ARTUPHEL, standing in for Mr. HAIK, Mr. Antonin LEVY 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 order of 26 September 2012, the investigating judge of the Paris *Tribunal de grande instance* declared inadmissible the civil-party application of the Republic of Equatorial Guinea [and] its Ministry of Foreign Affairs and Co-operation.

That same day, the said order was notified to the contested civil-party applicant and its counsel in accordance with the provisions of Article 183, paragraphs 2, 3 and 4 of the Code of Criminal Procedure.

On 5 October 2012, Mr. ANDINE, standing in for Mr. METZNER, lodged an appeal against the order with the registry of the Paris *Tribunal de grande instance*.

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

That same day, the case file containing the Public Prosecutor's written submissions dated 23 November 2012 was filed with the registry of the *Chambre de l'instruction* and made available to counsel for the parties.

On 3 April 2013, Mr. HUC MOREL, counsel for the Republic of Equatorial Guinea, contested civil-party applicant, filed a written statement, which was countersigned by the clerk, 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

Whereas this appeal, which is in due form, was lodged within the time-limit set out in Article 186 of the Code of Criminal Procedure; whereas it 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 sq m and 100 sq m), three houses (67 sq m, 215 sq m and 176 sq m) 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.

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

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).

The terms of the appeal in case No. 2012/08462

By letter addressed to the investigating judges on 20 August 2012, the appellants, through their counsel, Messrs. ZEITOUN and TUDELA, on behalf of the Republic of Equatorial Guinea and the Equatorial Guinean Ministry of Foreign Affairs and Co-operation, filed a civil-party application "subject to the admissibility and merits of the alleged offences", claiming direct and personal harm, because the Republic of Equatorial Guinea allegedly owns the building that was attached (42 avenue Foch in Paris) and the associated movable assets, and because the Equatorial Guinean Ministry of Foreign Affairs and Co-operation is said to have its Embassy in the said building.

In view of the Public Prosecutor's submissions to the same effect dated 5 September 2012, the investigating judges, by an order of 26 September 2012 (D868), found the civil-party application inadmissible on the grounds that neither the Republic of Equatorial Guinea nor the Equatorial Guinean Ministry of Foreign Affairs and Co-operation had demonstrated that they had suffered personal, direct harm related to the offences under judicial investigation, since the only harm claimed was that caused by the attachment of immovable property located at 42 avenue Foch in Paris (16th arr.) and associated movable assets, whereas they do not actually own them and the property in question is not assigned for diplomatic use;

Whereas, with particular regard to the building located at 40-42 avenue Foch in Paris (16th arr.), owned by six Swiss and French companies, whose sole shareholder is Mr. Teodoro OBIANG, the investigation revealed that the property fell within the private domain, the French Ministry of Foreign Affairs having indicated that the said building did not come under

the 1961 Vienna Convention on Diplomatic Relations and was assigned neither to the chancellery of the Republic of Equatorial Guinea nor as the residence of the Ambassador or an Embassy official;

Whereas, moreover, the investigations established that the property was exclusively reserved for the personal, private use of Mr. Teodoro NGUEMA OBIANG MANGUE;

Whereas, furthermore, as indicated in the order of attachment (*ordonnance de saisie pénale immobilière*) dated 19 July 2012, the transfer of the Swiss companies' shares to the Equatorial Guinean State could be seen as legal window-dressing aimed at preventing any attachment;

Whereas, as regards the offences of money laundering, complicity in the misappropriation of public funds and complicity in handling misappropriated public funds, the dignitaries of the Equatorial Guinean State at the origin of the civil-party application are named in the complaint filed by Transparency International and may have been involved in all of these acts.

The Public Prosecutor notes that, in the context of an application for annulment of procedural measures filed on 24 September 2012, the appellants, whose action is admissible as long as a ruling has not been issued on the present appeal, claim that because of international norms, no criminal offence can exist in the factual situation being investigated.

Thus, according to the appellants' own submissions, their civil-party application — an action which presupposes an allegation of possible harm resulting from a criminal offence — appears entirely baseless.

In any event, however, the reasoning that they put forward in support of their civil-party application shows that they have confused possible harm caused by a criminal offence with harm caused by one or more provisional attachment measures decided by the investigating judges. In view of these elements, the Public Prosecutor submits that the order that was issued should be upheld.

The appellants indeed state (D 863) "that the Republic of Equatorial Guinea has suffered direct and personal harm because it has owned the building located at 40-42 avenue Foch in Paris (16th arr.) and the associated movable assets since 15 September 2011", and "the same can be said of the Equatorial Guinean Ministry of Foreign Affairs and Co-operation, which has its embassy on those premises . . .".

Thus, the harm claimed was not caused by one or more of the offences being investigated, which is a necessary condition for filing a civil-party application, but by the provisional attachments ordered by the investigating judges. However, these measures are decided subject to the rights of third parties, and their legal framework offers third parties specific remedies designed to safeguard their interests (Articles 706-148 and 706-150 of the Code of Criminal Procedure).

By its written statement of 3 April 2013, the Republic of Equatorial Guinea requested that the order of 16 September 2012 be reversed on the grounds that it is inapplicable in view of the criteria governing the admissibility of civil-party applications, which are established only under Article 2, paragraph 1, of the Code of Criminal Procedure and jurisprudence. In the present case, the building at 42 avenue Foch has indeed been owned by the Republic of Equatorial Guinea since 15 September 2011, it was effectively assigned to diplomatic use as notified to the French State by Note Verbale of 4 October 2011, and the Embassy is established on those premises for that purpose.

It is also claimed that the harm suffered by the Republic of Equatorial Guinea was caused by the mere opening of the judicial investigation in France, as provided for in Article 432-15 of the Penal Code, for complicity in handling misappropriated public funds and complicity in the

misappropriation of public funds, yet the direct victim of the offence is always the public person whose funds have been misappropriated, who would also be entitled to file a civil-party application relating to the handling of misappropriated public funds, as previously recognized by the French judicial authorities.

The Republic of Equatorial Guinea concludes that, as a legal person under public law whose funds — according to the French judicial authorities — were misappropriated, its civil-party application is admissible, as the harm it suffered can therefore be recognized as possible, as was the case for the Republic of Gabon.

Having regard to the foregoing,

Whereas, by its letter of 20 April 2012, the Republic of Equatorial Guinea expressed its intention to file a civil-party application on the grounds that it had suffered direct and personal harm caused by the attachment of the building located at 40-42 avenue Foch in Paris (16th arr.), since it had declared itself to be the owner of the property and its movable assets since 15 September 2011 and, moreover, it had established its embassy and diplomatic premises there in October 2011;

Whereas a distinction should be made between the overall harm caused by one or more offences — which the judicial proceedings in question aim to prove or disprove — and the harm caused by a provisional measure, such as, in the present case, the attachment (*saisie pénale*) of immovable property, which could result in separate, limited harm caused by a decision that is subject to appeal by any third party which deems itself a victim of the measure, in accordance with the provisions of Article 706-150 of the Code of Criminal Procedure — which remedy could indeed be usefully exercised in respect of the said attachment ordered of 19 July 2012, as this was done by means of separate appeals registered on 30 July 2012 in case No. 2012/09047;

Whereas, consequently, the Republic of Equatorial Guinea has no grounds to file a civil-party application in respect of this possible element of harm.

Whereas, in accordance with the provisions of Article 2 of the Code of Criminal Procedure, it is recognized that it is possible for a State as a legal person and the community it represents to suffer harm — particularly moral harm — as a result of lower government revenues if it is established that acts such as the misappropriation of public funds were perpetrated against it; and whereas the possibility of such harm is sufficient for the civil-party application to be recognized as admissible before the investigating judge, regardless of any specific harm caused by an investigative measure taken on a provisional basis;

Whereas, however, the Republic of Equatorial Guinea made it known, by the above-mentioned Note Verbale dated 2 February 2012 and by the letter from its Public Prosecutor, that it denied that acts of misappropriation of public funds corresponding to the allegations made in Transparency International France's complaint had been committed in its territory, and rejected the idea of having to claim damages (see D537 to D541);

Whereas, moreover, the possible harm to a person — natural or legal — does not derive from the opening of a judicial investigation per se, but rather from any possibly wrongful acts that the investigation is intended to prove or disprove;

Whereas, accordingly, it must be recognized that the Republic of Equatorial Guinea has officially declared that, in the absence of a punishable offence committed in its own national territory, it has suffered no harm; whereas the challenged order should be upheld on alternative grounds.

THE COURT,

Having regard to Articles 177, 183, 185, 186, 194, 198, 199, 200, 207, 216, 217 and 801 of the Code of Criminal Procedure,

As to the procedure,

Declares the appeal admissible;

As to the merits,

Finds that it is ill-founded,

Upholds the order previously issued, on alternative grounds,

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

ANNEX 27

Statement of case of 16 September 2015

Statement of case submitted on behalf of Mr. Teodoro Nguema Obiang Mangue to the *Chambre criminelle* of the *Cour de cassation*, 16 September 2015

[Translation]

In support of appeal No. X 15-83.156
Reporting judge: Mr. Bernard Germain

FACTS

I. On 16 February 2012, the President of the Republic of Equatorial Guinea enacted a constitutional reform adopted by referendum on 13 November 2011, in the form of a Basic Law, and subsequently, by several decrees dated 21 May 2012, appointed the State's highest representatives, including Mr. Teodoro Nguema Obiang Mangue, appellant, who had held office as Minister for Agriculture and Forestry until then and was, at that time, promoted to Second Vice-President of the Republic in charge of Defence and National Security.

By decrees dated the same day, the Prime Minister, in the person of Mr. Vicente Ehate Tomi, the First Vice-Prime Minister, in the person of Clemente Engonga Nguema Onguene, and the Second Vice-Prime Minister, in the person of Mr. Alfonso Nsue Monkuy, were also appointed.

As the holder of one of the highest positions, next to that of the Head of State himself, Mr. Teodoro Nguema Obiang Mangue, as part of his functions as Vice-President in charge of Defence and State Security, is called upon to perform functions that are indispensable for the exercise of the sovereignty of the Republic of Equatorial Guinea.

In his capacity as Second Vice-President of the Republic, his missions include representing the State of Equatorial Guinea abroad, heading official missions and meeting with Heads of foreign States on those occasions (see documents adduced).

In addition, since he is in charge of defence and State security, he travels to foreign territories to represent the Republic of Equatorial Guinea in the context of military co-operation, in particular by visiting Equatorial Guinean army contingents located in foreign territories as a result of the State's participation in certain peacekeeping operations, namely in the Central African Republic (see documents adduced).

II. In this context that — having been seised of a complaint with civil-party application filed by Transparency International on 2 December 2008 for misappropriation of public funds, breach of trust, misuse of corporate assets, money laundering and complicity in these offences, and investigating in that connection with regard to the possession, in France, of a certain number of assets belonging to Equatorial Guinean nationals, among others, which the *Cour de cassation* has already dealt with and which need not be discussed in greater detail — on 22 May 2012, the investigating judges of the Paris *Tribunal de grande instance*, following a first attempt on 23 January 2012, which failed because of the objection of the Republic of Equatorial Guinea, summoned Mr. Teodoro Nguema Obiang Mangue to questioning at first appearance.

Since Mr. Nguema Obiang Mangue was unable to comply with the summons on account of his status as Second Vice-President of the Republic of Equatorial Guinea, the investigating judges issued an arrest warrant against him.

Mr. Teodoro Nguema Obiang Mangue challenged the legality of the arrest warrant before the *Chambre de l'instruction* of the Paris *Cour d'appel*, albeit unsuccessfully, since it was argued that he did not have the status of a party to the proceedings, both before the *Chambre de*

l'instruction and subsequently in the context of an appeal which was dismissed by the *Chambre criminelle* by a judgment of 5 March 2014 (Appeal No. 13-84705, Bull. crim. No. 66).

Under a request for international mutual assistance of 14 December 2013 addressed by the French authorities to the Republic of Equatorial Guinea on 14 February 2014 on the basis of the United Nations Convention against Transnational Organized Crime adopted in New York on 15 November 2000, Mr. Teodoro Nguema Obiang Mangue participated in a videoconference from Malabo which constituted questioning at first appearance in the eyes of the French authorities, but he refused to make any statement other than to recall the jurisdictional immunity attaching to his position as Second Vice-President, following which, on 18 March 2014, he was placed under judicial examination for acts characterized as laundering the proceeds of the offences of misappropriation of public funds, misuse of corporate assets, breach of trust and corruption, and the arrest warrant was lifted.

Having thus acquired the status of a party to the proceedings, on 1 August 2014 Mr. Teodoro Nguema filed an application for annulment and asserted, first, that the criminal proceedings were not validly instituted with respect to all of the alleged offences, since the complaint with civil-party application was not preceded by an ordinary complaint for all of the acts cited, which is a condition for admissibility under Article 85, paragraph 2, of the Code of Criminal Procedure; second, that the judges exceeded the scope of the case referred to them by investigating facts which allegedly constituted predicate offences for the offence of money laundering; and lastly — and above all — that he could not legally be prosecuted, owing to the personal jurisdictional immunity attaching to his functions as a high-ranking representative of the Republic of Equatorial Guinea for the period in which he performed them.

By a judgment dated 16 April 2015, the *Chambre de l'instruction* of the Paris *Cour d'appel* dismissed the application and found that there were no grounds for annulling any procedural documents up to reference number D 2272.

That is the judgment which is contested, with the presiding judge of the *Chambre criminelle* having ordered the consideration of the appeal by an order dated 27 July 2015.

<u>DISCUSSION</u>

FIRST GROUND OF APPEAL

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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue, 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. 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 having been acquired by Mr. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue; 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue 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;

Whereas, first, 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. Teodoro Nguema Obiang Mangue 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;

Whereas, second, and 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. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue barred prosecution, the *Chambre de l'instruction* deprived its decision of a legal basis under international custom and the aforementioned articles and principles;

Whereas, moreover, 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. Teodoro Nguema Obiang Mangue 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;

Whereas, lastly, 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. Teodoro Nguema Obiang Mangue, 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.

* *

On the first two limbs of the ground of appeal

III. It is well established that custom is a distinctive and important source of international law. Along with international treaties, it constitutes one of the two main sources of law which are mentioned in Article 38 of the Statute of the International Court of Justice and can be used by the Court to decide such disputes as are submitted to it.

In this regard, in domestic law, paragraph 14 of the preamble to the Constitution of 1946 provides that "[t]he French Republic, faithful to its traditions, shall observe the rules of international public law" and is echoed, with regard to international conventions, in Article 55 of the Constitution of 1958.

Consequently, considering the role of custom as a source of international law, and the direct effect that custom has on domestic law under the above-mentioned Article 14, the *Chambre criminelle* of the *Cour de cassation* has found that, even though international custom cannot be a criminalization norm, it applies in criminal matters through its rule relating to the jurisdictional immunity of foreign States and their representatives (*Crim*. 23 November 2004, appeal No. 04-84265, Bull. crim. No. 292; 19 January 2010, appeal No. 09-8481, Bull. crim. No. 9; 19 March 2013, appeal No. 12-81676, Bull. crim. No. 65; see also M. Massé, *La coutume internationale dans la jurisprudence de la Chambre criminelle*, RSC 2003, 894).

IV. With regard more specifically to the substance of this custom, the jurisdictional immunity of States and their representatives can be divided into two types of immunity, which are complementary with regard to the principle of sovereignty, but distinct in terms of their basis and régime: immunity *rationae materiae* (substantive immunity) and immunity *ratione personae* (personal immunity).

The purpose of substantive immunity is to protect the activity of a State. It thus concerns acts performed by the State through the intermediary of any of its representatives, regardless of their rank, but only those acts which relate to the exercise of its sovereignty.

This immunity is thus limited solely to acts falling within the sovereignty of the State, but it is permanent in nature, since it survives the end of the term of office held by the person who performed the alleged offences.

In this context, the *Cour de cassation* has held that "international custom which bars the prosecution of States before the criminal courts of a foreign State extends to the 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 jurisdiction of the State concerned" (*Crim*. 23 November 2004, appeal No. 04-84265, Bull. crim. No. 292; 19 January 2010, appeal No. 09-84818, Bull. crim. No. 9).

For example, in the case concerning the sinking of the *Joola*, which gave rise to the judgment dated 19 January 2010 cited above, the persons who held office as Prime Minister and Minister of the Armed Forces of Senegal at the time of the events were found to have jurisdictional immunity owing to the nature of the acts relating to the commissioning of a ship with military vessel status, and not the nature of the offices they held, since they were no longer in office at the

time of the proceedings. It was the acts and their relation to the exercise of State sovereignty which justified granting jurisdictional immunity to persons who were no longer high-ranking representatives of the State at the time of the proceedings (*Crim.*, 19 January 2010, cited above).

V. The purpose of personal immunity, in contrast, is to protect the very person of the Head of State and the State's high-ranking representatives. It concerns only a specific category of persons — the definition of which is the crux of the present case — but applies regardless of the nature of the alleged offences and when they were committed, be it while in office or before taking office.

In the present case, immunity concerns the very person of the Head of State and the State's high-ranking representatives and it is analogous to inviolability. It is unlimited in its material scope but lasts only as long as the functions are performed.

The *Cour de cassation* has applied this rule in the past, in respect of the Head of State himself, finding in the so-called *Gaddafi* case that "international custom bars the prosecution of incumbent Heads of State, in the absence of any contrary international provision binding on the parties, before the criminal courts of a foreign State" (*Crim.*, 13 March 2001, appeal No. 00-87215, Bull. crim. No. 64; see also *Crim.*, 13 November 2001, appeal No. 01-82440, relating to the proceedings against the President of the Republic of [Libya]).

The first basis for personal immunity is the embodiment of the State by the person who is regarded, under international law, as the Head thereof, and by persons who permanently represent the State abroad: diplomatic and consular staff, whose customary immunity is codified in the Vienna Convention of 18 April 1961 on Diplomatic Relations. In this regard, it satisfies the imperative of international comity, which is essential for maintaining peace.

But this is not the only basis.

Indeed, changes in the organization of States' activity in the international sphere, characterized by the de-personification of the State and the expansion of the role assigned under international law to the Minister for Foreign Affairs, in particular, have given personal immunity another dimension — this time functional — linked to the need for the State not to be precluded from being represented abroad by constraints on the very person of its representatives. It is not comity that is at issue here, but equality in the exercise of State sovereignty, in that it requires that international relations should be able to be freely developed through travel by certain high-ranking representatives of States to foreign territories.

This was the direct effect of the Judgment of 14 February 2002 in the [*Arrest Warrant*] case between the Democratic Republic of the Congo and Belgium (ICJ, 14 February 2002, *Democratic Republic of the Congo* v. *Belgium*, paras. 51 *et seq.*), in which the International Court of Justice — starting from the principle that "certain holders of high-ranking office in a State, such as the Head of State, Head of Government and Minister for Foreign Affairs" enjoy immunity, and examining whether that immunity, with respect to the Minister for Foreign Affairs, is personal and analogous to inviolability — made its determination with regard to what it sees as a vital need to enable such representatives to perform their functions (representing the State and supervising the activity of its diplomatic and consular services) by travelling freely on the territory of foreign States:

> "51. The Court would observe at the outset that 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. For the purposes of the present case, it is only the immunity from criminal jurisdiction and the inviolability of an incumbent Minister for Foreign Affairs that fall for the Court to consider.

> 52. A certain number of treaty instruments were cited by the Parties in this regard. These included, first, the Vienna Convention on Diplomatic Relations of 18 April 1961 [and] the New York Convention on Special Missions of 8 December 1969 . . .
>
> These conventions provide useful guidance on certain aspects of the question of immunities. They do not, however, contain any provision specifically defining the immunities enjoyed by Ministers for Foreign Affairs. It is consequently on the basis of customary international law that the Court must decide the questions relating to the immunities of such Ministers raised in the present case.
>
> 53. In customary international law, the immunities accorded to Ministers for Foreign Affairs are not granted for their personal benefit, but to ensure the effective performance of their functions on behalf of their respective States. In order to determine the extent of these immunities, the Court must therefore first consider the nature of the functions exercised by a Minister for Foreign Affairs. He or she is in charge of his or her Government's diplomatic activities and generally acts as its representative in international negotiations and intergovernmental meetings. Ambassadors and other diplomatic agents carry out their duties under his or her authority. His or her acts may bind the State represented, and there is a presumption that a Minister for Foreign Affairs, simply by virtue of that office, has full powers to act on behalf of the State (see, for example, Article 7, paragraph 2 (a), of the 1969 Vienna Convention on the Law of Treaties). In the performance of these functions, he or she is frequently required to travel internationally, and thus must be in a position freely to do so whenever the need should arise. He or she must also be in constant communication with the Government, and with its diplomatic missions around the world, and be capable at any time of communicating with representatives of other States. The Court further observes that a Minister for Foreign Affairs, responsible for the conduct of his or her State's relations with all other States, occupies a position such that, like the Head of State or the Head of Government, he or she is recognized under international law as representative of the State solely by virtue of his or her office. He or she does not have to present letters of credence: to the contrary, it is generally the Minister who determines the authority to be conferred upon diplomatic agents and countersigns their letters of credence. Finally, it is to the Minister for Foreign Affairs that chargés d'affaires are accredited.
>
> 54. The Court accordingly concludes that the functions of a Minister for Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties."

Seen from that angle, personal immunity constitutes an instrument of international law which is intended to achieve a specific purpose, not an attribute that is inherent to the person of the Head of State or to pre-identified representatives under international law. The purpose is the exercise of State sovereignty through the intermediary of persons whose high rank and functions are such that their mission abroad is indispensable to the State.

In other words, personal immunity stems from the need to ensure that States can effectively conduct their international relations; it thus reflects an approach that is purpose-based, and no longer merely intrinsic, intended to enable sovereign equality and international and inter-State relations that encourage stability and peace in the world.

VI. This change in the International Court of Justice's basis for and approach to personal immunity has three consequences. First, the list of high-ranking representatives liable to enjoy personal immunity is explicitly presented by the International Court of Justice as non-exhaustive ("certain holders of high-ranking office in a State, such as . . .").

Second, it is neither the embodiment of the State, nor even the representation of the person who constitutes such an embodiment — the Head of State — which justifies granting personal immunity to high-ranking representatives. If personal immunity is conferred, it is done so in order to serve a specific purpose, which is to enable the State to conduct international relations through the free travel of certain high-ranking representatives on the territory of other States.

Third, it is not the identification of a function under international public law — Head of State, Head of Government or Minister for Foreign Affairs — which is the determining factor, but rather a practical examination of the missions carried out abroad and the level of the rank held. The International Court of Justice did not make its determination with regard to the capacity of Minister for Foreign Affairs but rather with regard to the imperative of protecting the functions that are conferred on that Minister and which he is effectively led to perform.

This evolution of personal immunity has inevitably led the stakeholders of international custom to adapt it to recent changes in the organization of States' activities in the field of international relations.

VII. Indeed, after the first change mentioned above, characterized by the de-personification of the State and the expansion of the role assigned to the Head of Government and the Minister for Foreign Affairs, the organisation of States' activity in the international sphere is now influenced by the specialization of international and inter-State co-operation and the intensification of sector-specific co-operation — military, technological, commercial, environmental, etc. Organs and agents other than those of the troika formed by the Head of State, Head of Government and Minister for Foreign Affairs are now called on to represent the State in the field of contemporary international relations.

In this regard, the International Court of Justice has observed that:

> "other persons [than the Head of State, the Head of Government and the Minister for Foreign Affairs] represen[t] a State in specific fields [and are] authorized by that State to bind it by their statements in respect of matters falling within their purview. This may be true, for example, of holders of technical ministerial portfolios exercising powers in their field of competence in the area of foreign relations, and even of certain officials" (ICJ, 3 February 2006, *Armed Activities on the Territory of the Congo (New Application: 2002)*, para. 59).

The first special rapporteur appointed to this subject in connection with the work of the International Law Commission also noted a link between the evolution of international relations and the scope of personal immunity:

> "The functions of administering a contemporary State and ensuring its sovereignty and representation in international relations used to be concentrated in the person of the Head of State, but now belong to a significant degree to the Head of Government, members of the Government and, in particular, ministers for foreign affairs. In many countries, the Head of Government plays a larger role than the Head of State in the administration of the State. Hence the need to ensure the maximum independence and maximum security from interference by other States in the activity not only of the Head of State <u>but also of some other officials who are very significant for the State, thereby protecting the sovereignty of the State itself in its relations with other States</u>"

(Roman Kolodkin, Preliminary report on immunity of State officials from foreign criminal jurisdiction, 2008, A/CN.5/601, p. 59, para. 100).

This has resulted in court decisions and positions from which it follows that the international custom relating to personal immunities must apply where the missions performed abroad by high-ranking representatives of a State are inherent to their functions and indispensable to the international relations of the State they represent.

As regards court decisions, three British decisions and two Swiss decisions can be identified, with this list clearly not purporting to be exhaustive:

— in 2004, the Bow Street Magistrates' Court, in a case against General Shaul Mofaz, Israel's Defence Minister at the time, found that "the use [in the decision of the Court of Justice] of the words 'such as' the Head of State, the Head of Government and Minister for Foreign Affairs indicates to me that other categories could be included. In other words, those categories are not exclusive", and subsequently found that, given States' current organization, the functions of Defence Minister justify the application of personal immunity (Bow Street Magistrates' Court [court of first instance], 12 February 2004, Re General Shaul Mofaz, International Law Reports vol. 128, pp. 709-713, see documents adduced);

— in 2005, the Bow Street Magistrates' Court granted personal immunity to Mr. Bo Xilai, Minister for Trade of the People's Republic of China, after noting that the portfolio entrusted to him included international trade (Bow Street Magistrates' Court, 8 November 2005, *Re Bo Xilai*, International Law Reports vol. 128, pp. 713-715, see documents adduced);

— in a decision of 2011, the British High Court of Justice found that it is possible to apply to other high-ranking representatives the solution adopted by the International Court of Justice with respect to the Minister for Foreign Affairs, and denied the immunity claimed by the defendant only because of his low rank within the State concerned — head of internal security of the State of Mongolia — which the British court considered equivalent to a mere director (High Court of Justice/ [Queen's Bench Division Administrative Court], 29 July 2011, *Khurts Bat* v. *Investigating Judge of the German Federal Court*, [2011] EWHC 2029 [Admin.], International Law Reports, especially paras. 59 and 60, see documents adduced);

— in the *Evgeny Adamov* case, the Swiss Federal Supreme Court recognized the principle that high-ranking representatives other than the Minister for Foreign Affairs could enjoy personal immunity (Swiss Federal Supreme Court, 22 December 2005, *Evgeny Adamov* v. *Federal Office of Justice*, ATF 132 II 81, para. 3.4.2, see documents adduced);

— and, lastly, the Swiss Federal Criminal Court, in a decision of 25 July 2012 in the *Nezzar* case, which involved a former Algerian Defence Minister, denied the immunity claimed by the latter only in so far as his functions had ended, incidentally allowing personal immunity to be extended to representatives who hold that rank and perform those functions (Swiss Federal Criminal Court, 25 July 2012, *Nezzar*, BB.2011-140, especially para. 5.4.2: "immunity *rationae personae* during a term of office does not concern the triad [Head of State, Head of Government and Minister for Foreign Affairs] exclusively. The incumbent Defence Minister also enjoys such immunity", see documents adduced).

In addition to these foreign court decisions, on 16 June 2009 the Paris *Cour d'appel* rendered a judgment in the above-mentioned case concerning the sinking of the *Joola* (*Crim.*, 19 January 2010, appeal No. 09-84818, Bull. crim. No. 9) which, based on grounds that the *Cour de cassation* was not required to examine in so far as the applicable immunity was actually substantive, found that:

"international custom, which bars States from being prosecuted by a foreign State, applies to certain holders of high-ranking office in a State, such as the Head of State and Head of Government, regardless of whether or not they enjoy immunity from criminal jurisdiction in their own country; that this custom also applies to those ministers whose office is such that, like the Head of State and Head of Government, they are recognized by international law as having the capacity to represent a State solely by virtue thereof; that, throughout their time in office, they enjoy total immunity from criminal jurisdiction and inviolability abroad . . . ; that in this instance, at the time of the acts, Mame L . . . M . . . and N . . . I . . . held the offices of Prime Minister and Minister for the Armed Forces of the Republic of Senegal respectively, and were no longer performing those functions at the time that an arrest warrant was issued against them by a French investigating judge; that, while it appears that those two persons did not have direct responsibility for the operation of the *Joola*, there is information to suggest that they gave instructions relating thereto in the performance of their political duties . . . ; that the same immunity must be accorded to N . . . I . . . , as the former Armed Forces Minister of Senegal, performing the functions of a minister for defence; that, given the specific nature of his duties and the international focus of his activities, the Minister must be able to perform his functions freely on behalf of the State which he represents; that he frequently has to travel abroad to represent the Head of State, who is the head of the armed forces, on visits to troops from his country who are stationed abroad, as well as during the incessant armed conflicts between States, in particular on the African continent, and in connection with participation in multinational forces, which requires regular contact with his counterparts from other States . . ." (emphasis added).

In addition to these court decisions, the representatives of certain States have voiced positions before a number of international courts.

For example, at hearings before the International Court of Justice in the case concerning *Certain Questions of Mutual Assistance in Criminal Matters*, counsel for France asserted that:

"immunities are not granted to officials of the State simply because, in the exercise of their functions, they may, fairly occasionally, or even regularly, have to make trips abroad. This only applies if such immunities are indispensable to those missions being carried out and provided they are inherent to the functions concerned" (ICJ, CR 2008/5, 25 January 2008, p. 46, para. 63, emphasis added).

International legal doctrine, which has regarded the Judgment of the International Court of Justice in the [*Arrest Warrant*] case between the Democratic Republic of the Congo and Belgium as opening the way for personal immunity to be extended to representatives outside the troika of the Head of State, Head of Government and Minister for Foreign Affairs (see, for example: A. Cassese, When May Senior Officials be Tried for International Crimes? Some Comments on the *Congo* v. *Belgium* Case, European Journal of International Law, vol. 13 [2002], pp. 853-875, especially pp. 863-864), considers that immunity not restricted to acts "is conferred on offices whose function is so important to the maintenance of international relations that they require a broad conferral of immunity", and mentions in this regard ministers for defence or permanent under-secretaries for foreign affairs (K. Parlett, Immunity in Civil Proceedings for Torture: The Emerging Exception, European Human Rights Law Review, No. 1 [2006], p. 59).

And even though, as regards the immunity of Heads of State, scholars and some of the above-mentioned courts have raised the question of possible exceptions, this concerns only exceptions relating to serious crimes under international law — genocide, crimes against humanity and war crimes. And even with respect to these crimes, Professor Delmas-Marty, summarizing several reports on the issue of "national courts and international crimes", noted the reservations expressed by national courts and scholars with regard to lifting immunity for incumbent leaders,

cautioning against justice which would become incompatible with the functioning of States and the maintenance of diplomatic relations (M. Delmas-Marty, *in Juridictions nationales et crimes internationaux*, under the direction of M. Delmas-Marty and A. Cassese, PUF, p. 637 *et seq*.). Some of the decisions cited above have moreover proved her right: Mr. Mofaz was prosecuted for war crimes, Mr. Bo Xilai for crimes of torture and President Gaddafi for terrorism — all of which are offences that differ in terms of their gravity and nature from those that might relate to high-ranking representatives' management of the funds or powers that they hold in their own countries.

International custom relating to the personal immunity of Heads of State and high-ranking representatives of the State thus reflects a functional rationale — what matters is that essential functions can by freely performed through travel abroad — and requires a practical approach, which requires carrying out a case-by-case assessment of the functions performed by a high-ranking official, the nature of those functions and the importance of travel abroad for the person concerned in performing his or her functions.

Under a functional rationale and practical approach, immunity cannot be restricted solely to constitutional organs, and the rank held in the State must be taken into account, since, as the International Court of Justice found in the [*Arrest Warrant*] case between the Democratic Republic of the Congo and Belgium, "certain holders of high-ranking office in a State" (cited above) are concerned.

Rank in itself must also be taken into account in a practical assessment, as it factors into the seriousness of the harm that prosecution causes to the quality of international relations between the two States concerned, which international law, and jurisdictional immunities in particular, specifically aim to safeguard.

VIII. In this regard, a high-ranking State representative who has the rank of Vice-President, who carries out a mission in which he represents the State abroad and who, moreover, is in charge of State affairs in the area of national defence, holds a rank and functions which cannot be realistically exercised without the possibility of travelling abroad and which, consequently, require personal immunity to be applied.

In the *Bo Xilai* case cited above, the British court made its determination with regard to the circumstance that the person concerned, who was the Minister for Trade, carried out missions in which he represented the State abroad, making freedom of movement indispensable (cited above).

Similarly, as regards functions involving national defence, military co-operation is of such high importance, in particular given the spread of international terrorism, that State representatives in that area cannot perform their functions if they do not enjoy freedom of movement abroad. Not to mention the constant increase in international or regional peacekeeping operations, with military contingents being sent abroad and State representatives needing to visit those contingents, in the same way as — as the International Court of Justice bore in mind in its Judgment in the [*Arrest Warrant*] case between the Democratic Republic of the Congo and Belgium — the missions carried out by a Minister for Foreign Affairs involve visiting diplomatic and consular representations.

In the *Shaul Mofaz* case cited above, the British court found that "[a]lthough travel [in the case of a Defence Minister] will not be on the same level as that of a Foreign Minister, it is a fact that many States maintain troops overseas and there are many United Nations missions to visit in which military issues do play a prominent role between certain States, it strikes me that the roles of defence and foreign policy are very much intertwined, in particular in the Middle East" (cited above). The same solution was adopted by the Swiss Federal Supreme Court in the *Nezzar* case (cited above).

IX. In sum, according to the most recent developments in international custom, personal immunity should be granted to high-ranking representatives who perform functions that involve representing the State abroad and are essential for State sovereignty, with due regard to their rank and/or the substance of their functions, in particular where the said functions concern national defence.

This new approach invalidates the solution that the *Cour de cassation* adopted in an unpublished judgment of 29 May 2009 (appeal No. 08-84591), in a case which moreover concerned only the status of the public official — the President of the island of Anjouan, which belongs to the Union of the Comoros — not the nature of his functions and the importance of his missions abroad, from which it seems to follow that personal immunity is reserved for Heads of State alone.

X. In the present case, to begin with, Mr. Teodoro Nguema Obiang Mangue holds a *very* high rank within the Republic of Equatorial Guinea, with the title of Second Vice-President.

As suggested by the title of the person concerned, his function is to assist, along with the First Vice-President, the President of the Republic of Equatorial Guinea in managing the State and representing it internationally.

Representation of the State abroad is an especially important component of Mr. Teodoro Nguema Obiang Mangue's functions as Vice-President given that it occupies an important place in domestic institutional and political life.

In that regard, the person concerned frequently travels abroad to make official visits as a high-ranking representative of the Republic of Equatorial Guinea.

For example, this includes — and is clearly not limited to — the following official visits:

— to South Africa and Swaziland in July 2012 (see documents adduced);

— to Côte d'Ivoire in August 2013: met with the President of the National Assembly and the Head of Government; received by the Head of State to transmit a message from the President of the Republic of Equatorial Guinea (see documents adduced);

— to Angola in October 2013: received by the Head of State to transmit a message from the President of the Republic of Equatorial Guinea (see documents adduced);

— to South Africa in November 2013: received by the Head of State; met with the Defence Secretary and discussion of co-operation in the area of defence and security (see documents adduced);

— to China in November 2013: met with his counterpart, Li Yuancho, Vice-President of the People's Republic of China, and concluded co-operation agreements in certain sectors with 3,800 million CFA francs in funding from China (see documents adduced);

— to São Tomé and Príncipe in July 2015: met with the Head of State of São Tomé and Príncipe and concluded an agreement concerning air links between the two countries (see documents adduced).

As demonstrated by the discussions on defence co-operation which took place during at least one of those meetings, Mr. Teodoro Nguema Obiang Mangue is also in charge of affairs relating to defence and State security.

Also in that regard, he represents the State, *inter alia*, when Equatorial Guinean army or marine contingents are deployed abroad:

— November 2013: attended the departure of a navy contingent in the Gulf of Guinea as part of the Security Council actions in the Gulf of Guinea, which involve eight States in the region (see documents adduced);

— September 2014: served as the head of Equatorial Guinea's official delegation, which also included the Minister for Defence, to the Central African Republic to assist with the repatriation of the Equatorial Guinean troops that had participated in the African Union's international peace and stabilization mission in the Central African Republic (MISCA), and met with the Central African Head of State (see documents adduced).

In view of his very high rank and the missions that the position of Second Vice-President involves in terms of representing the State abroad, in particular in the area of military co-operation, Mr. Teodoro Nguema Obiang Mangue is a high-ranking representative who carries out missions abroad which are essential to the sovereignty of the Republic of Equatorial Guinea.

The nature of his functions and the importance of his missions are such that he must be able to travel abroad without the threat of prosecution, which would affect not only his own person but also the Republic of Equatorial Guinea's ability to conduct its international relations.

What is more, taking into account Mr. Teodoro Nguema Obiang Mangue's high rank and the his central role as Second Vice-President, judicial interference clearly undermines the quality of relations between the Republic of Equatorial Guinea and the French Republic, and international relations in general.

Consequently, 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. Teodoro Nguema Obiang Mangue must enjoy personal immunity from all prosecution, regardless of the offences of which he stands accused.

XI. Accordingly, in considering only the implementation of the substantive immunity enjoyed by the State itself and its agents, which is limited to acts falling within the sovereignty of the State, without applying international custom proper to the status of the Head and certain high-ranking representatives of a foreign State, the *Chambre de l'instruction* violated the said custom, together with the aforementioned articles and principles.

There is no doubt that the judgment must be quashed, without being referred back (**first limb**).

XII. In the alternative, if the *Cour de cassation* deems that it is unable to determine whether the offices held by Mr. Teodoro Nguema Obiang Mangue fall within the scope of international custom, because of the limits inherent to reviews of appeals on points of law, or if it deems that it lacks information on the factual situation, it should be noted that it was for the *Chambre de l'instruction* to carry out that research, especially since a ground to that effect was referred to it (application for annulment, p. 16 *et seq*.).

Mr. Teodoro Nguema Obiang Mangue indeed specifically asserted in support of his application that a distinction should be made between the immunity attached to certain acts (substantive immunity) and immunity of jurisdiction (personal immunity), he pointed out that the latter applies during the term of office, regardless of whether the acts are related to the performance

of the functions (cited above, p. 18), and he insisted that he was called on to represent the State on account of his functions as Second Vice-President and the specific nature of his missions in the areas of defence and national security (cited above, p. 19).

Therefore, in applying only the substantive immunity from jurisdiction attaching to acts carried out by the State and its representatives, without responding to the argument that, given the rank of Mr. Teodoro Nguema Obiang Mangue 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. Teodoro Nguema Obiang Mangue barred prosecution, the *Chambre de l'instruction* deprived its decision of a legal basis under international custom and the aforementioned articles and principles.

The judgment must be quashed for this reason (**second limb**).

On the third limb of the ground of appeal

XIII. The reasons for which the *Chambre de l'instruction* deemed that it could judge the motives for Mr. Teodoro Nguema Obiang Mangue's appointment as Second Vice-President of the Republic of Equatorial Guinea, and conclude that prosecution could not be precluded on the basis that his appointment entailed immunity from jurisdiction, are also flawed by an error of law.

The constitutional autonomy of States, which flows directly from the principle of sovereignty, is one of the most well-established principles of international law (Resolution 2625 [XXV] of the United Nations General Assembly of 24 October 1970, known as the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States; ICJ, Advisory Opinion, 1[6] October 1975, *Western Sahara* case, *I.C.J. Reports 1975*, pp. 43-44, para. 94; ICJ, 27 June 1986, *Military and Paramilitary Activities in and against Nicaragua*, *I.C.J. Reports 1986*, p. 133), and implies that international law — and *a fortiori* the law or a court of a State — in no way determines the motives for a State's appointment of the authorities who speak and act on its behalf, but instead merely recognizes a State's exercise of that freedom.

Acts involving the appointment of authorities representing the State are thus presumed to comply with international law and the law of the State concerned; doing otherwise would essentially deprive the State concerned of its constitutional capacity at the cost of interfering in its internal affairs, in direct violation of international law.

And even if, in extreme circumstances, a State's decisions may be inoperative, this could be decided only at the international level, by means of a diplomatic claim or by referring the matter to an international court. It is clearly not for the State that considers itself to have been wronged, and even less for one of its courts, ruling in purely domestic proceedings, to intervene in the matter.

In judging the motives of Mr. Teodoro Nguema Obiang Mangue's appointment as Second Vice-President of the Republic of Equatorial Guinea, and in putting forward an analysis that is both baseless and defamatory with regard to the Republic of Equatorial Guinea, the *Chambre de l'instruction* disregarded the principle of sovereignty and international custom.

The judgment must also be quashed for this reason (**third limb**).

On the fourth limb of the ground of appeal

XIV. The last ground is sufficient in itself, given how evident it is that 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 who are nationals of the receiving State.

In finding that Mr. Teodoro Nguema Obiang Mangue, who is a foreign national and who 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.

There is thus no alternative but to quash the judgment (**fourth limb**).

SECOND GROUND OF APPEAL

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 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; 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. Teodoro Nguema Obiang, 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;

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;

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;

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;

Whereas, furthermore, 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;

Whereas, lastly, 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. Teodoro Nguema Obiang Mangue 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.

* *

<u>On all the limbs of the ground of appeal</u>

XV. In support of his application, Mr. Teodoro Nguema Obiang Mangue asserted that the investigative measures relating to the use of funds from private establishments operating in the Republic of Equatorial Guinea, presented as having been obtained through breach of trust or misuse of corporate assets perpetrated on the territory of that State, were null and void in so far as the investigating judges were not seised of them, despite the said private funds and their allegedly fraudulent origin having been mentioned in the complaint with civil-party application filed by Transparency International France.

Indeed, the case file suggests, as asserted in the application, that the prior complaint filed by the association with the Public Prosecutor in accordance with Article 85 of the Code of Criminal Procedure was limited to the possession and use of property derived from alleged misappropriation of funds and acts of corruption and did not concern the use of funds misappropriated from private establishments through breach of trust or misuse of corporate assets. Therefore, the complaint with civil-party application is inadmissible because it concerns these facts, because the investigating judges were never seised of these facts and because the measures intended to establish them are absolutely null and void.

This discussion is crucial in so far as, aside from the investigating judges' inability to file any serious charge in this regard, it is highly unlikely that the characterizations of laundering misappropriated public funds and laundering the proceeds of corruption could be adopted, given that foreign funds cannot be included in the characterization of public funds, and the passive corruption of a foreign official is not a criminal offence.

The reasons for which the *Chambre de l'instruction* dismissed this ground of nullity are open to censure in view of the arguments below.

<u>On the first three limbs of the ground of appeal</u>

XVI. The *Chambre de l'instruction* dismissed the ground that the initial complaint with civil-party application concerned facts that were not submitted for prior examination by the Public Prosecutor by means of an ordinary complaint, as required by Article 85 of the Code of Criminal Procedure, based on the finding that criminal proceedings had been duly instituted by means of an application to open an investigation.

This is completely inaccurate.

The complaint with civil-party application was effectively followed by an application to have the complaint with civil-party application declared inadmissible (D22/1), and no application to open an investigation was filed following the judgment rendered by the *Cour de cassation* on 9 November 2010 on the admissibility of the said complaint. It was not until 4 July 2011 that the Public Prosecutor's Office filed its first submissions relating to the criminal proceedings, and this was only to seek a recharacterization of the facts cited in the complaint with civil-party application (D319/1). These submissions, moreover, only reference the complaint with civil-party application of 2 December 2008. They were followed on 31 January 2012 by an application to extend the investigation on account of a new fact (D392/1).

What is more, in the reasons in which the proceedings are described, the *Chambre de l'instruction* notes *(i)* the filing of the complaint with civil-party application, followed by *(ii)* the judgment of the *Chambre criminelle* finding the civil-party application admissible, *(iii)* the appointment of two investigating judges — "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", *(iv)* the application for recharacterization dated 4 July 2011 and, lastly, *(v)* applications to extend the investigation dated 31 January 2012 and 2 March 2012.

Therefore, no application to open an investigation was filed, contrary to what is subsequently stated in the contested judgment.

It follows that the regularity of the proceedings could be challenged on account of the inadmissibility of the complaint with civil-party application as a result of the misconstruance of the provisions of Article 85, paragraph 2, of the Code of Criminal Procedure.

XVII. It should further be noted that the application for recharacterization and the applications to extend the investigation cannot have the effect of instituting criminal proceedings with regard to the offences alleged in the complaint with civil-party application filed on 2 December 2008 or even of inviting the investigating judges to investigate the facts cited in that complaint.

The solution is clear as regards the applications to extend the investigation, since, by definition, they concern facts that are different from those which have already been referred to the investigating judge.

It is equally clear as regards the application for recharacterization — which is not even identified as such in the Code of Criminal Procedure — in so far as the application is limited to an opinion of the Public Prosecutor regarding a given characterization, and neither gives rise to criminal proceedings in respect of specific facts, nor asks the investigating judges to investigate. The terms of the contested application, dated 4 July 2011, explicitly confirm this: after noting that "the acts, as described by the complainant, relate to . . . " and justifying the application of a characterization other than those adopted at the time, the Public Prosecutor "request[ed] the investigating judges to find that the facts under investigation may be characterized only as money laundering or handling offences, as provided for under . . . and punishable thereunder"; this is proof if ever it was needed that the Public Prosecutor, who could have asked the investigating judges "to investigate the facts under the characterization of . . . " but simply proposed a new characterization instead, in no way intended to adopt the facts already referred to the investigating judges and institute criminal proceedings in that regard.

In any event, it is entirely irrelevant to discuss the precise scope to be assigned to these different applications, since, assuming that these measures could have set criminal proceedings in

motion in respect of the facts cited in the complaint with civil-party application, they could not have done so retroactively, thus, the earlier proceedings — along with all ensuing and subsequent measures — were bound to be annulled in full.

XVIII. Consequently, in finding that an application to open an investigation had been filed and that it precluded the admissibility of the ground based on the misconstruance of the formalities imposed by the second paragraph of Article 85 of the Code of Criminal Procedure, the *Chambre de l'instruction* violated the texts cited in the ground.

There is no doubt that the judgment must be quashed (**first limb**).

XIX. In any event, if it were inferred from the contested judgment that the *Chambre de l'instruction* viewed the application for recharacterization of 4 July 2011 as an application to open an investigation or as requesting the investigating judges to investigate, censure would be in order for two reasons.

First, the terms of the measure of 4 July 2011 clearly show that the Public Prosecutor merely proposed a new characterization of the facts already referred to the investigating judges, without pursuing criminal proceedings against them or even asking the investigating judges to investigate them.

As has been seen, the application is limited to the Public Prosecutor's opinion on a given characterization. Although he could have asked the investigating judges "to investigate the facts under the characterization of . . . ", the Public Prosecutor instead merely "request[ed] the investigating judges to find that the facts under investigation may be characterized only as money laundering or handling offences, as provided for under . . . and punishable thereunder".

This application cannot be viewed as setting criminal proceedings in motion, or even as requesting the investigation of facts for which a recharacterization was sought, and, by ruling to the contrary, the *Chambre de l'instruction* distorted the clear and precise terms thereof and, in any event, misconstrued Article 80, paragraphs 1 and 4, and Article 86 of the Code of Criminal Procedure (**second limb**).

The judgment must consequently be quashed.

Second, as previously mentioned, an application to open an investigation and submissions requesting to open an investigation do not have a retroactive effect. Their filing therefore 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 at the time, given the inadmissibility of the complaint with civil-party application.

Therefore, 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 Article 80, paragraphs 1 and 4, and Article 86 of the Code of Criminal Procedure.

It is therefore established that the judgment must be quashed (**third limb**).

On the last two limbs of the ground of appeal

XX. It would be futile to challenge the reasons set forth in the contested judgment which assert that the *Cour de cassation*, by a judgment of 9 November 2010 (appeal No. 09-88272), declared "Transparency International France's civil-party application admissible in its current form".

XXI. First, the judgment of the *Cour de cassation* dated 9 November 2010 is in no way *res judicata* as regards the *procedural* admissibility of *the complaint* with civil-party application filed by Transparency International France.

It is worth recalling in this regard that the decision recognizing the civil-party application's "admissibility in its current form" was made within the specific framework of the provisions of Article L. 411-3 of the Code of Judicial Organization, under which the *Cour de cassation* may, "in quashing [a decision] without referring it back, put an end to the dispute where the facts, as the trial court itself has found and assessed, enable it to apply the appropriate rule of law".

The issue adjudicated by the *Cour de cassation* in the context of a final determination of a dispute must thus be assessed with regard to the trial court's findings and assessments and the rule of law that could be applied as a result.

However, as regards the judgment of 9 November 2010, the trial court's findings and assessments concerned only the existence of personal, direct harm justifying the admissibility of the complaint with civil-party application filed by Transparency International France and the application of Article 2 of the Code of Criminal Procedure.

A final determination therefore could concern only the admissibility of the association's civil-party application as to the merits, namely compliance with the provisions of Articles 2 and 3 of the Code of Criminal Procedure.

And the operative part of the judgment of 9 November 2010 itself confirms that the issue adjudicated does not concern the procedural admissibility of the complaint with civil-party application.

First, the *Cour de cassation* declared the civil-party application admissible "in its current form". This implies that admissibility could be challenged in the light of the findings of the investigations carried out by the investigating judges — the unlikelihood that the facts were related to the object and purpose of the mission entrusted to the association. It concerns only the admissibility of the civil-party application as to the merits — the existence of personal, direct harm — and excludes the possibility that procedural admissibility, which is immutable, could be considered to have been established.

Second, the *Cour de cassation* declared admissible the "civil-party application", which concerns the institution of proceedings, not the measures that enabled the proceedings to be instituted, which could be a complaint with civil-party application, or a simple statement in the case of a civil-party application filed by way of intervention.

Thus, no decision addressed the procedural admissibility of the *complaint* with civil-party application.

Therefore, it follows from both the reasons and the operative part of the aforementioned judgment of 9 November 2010 that the issue adjudicated by the *Cour de cassation* concerns only the admissibility of the civil-party application as to the merits, not the procedural admissibility of the complaint with civil-party application.

Accordingly, in relying on the aforementioned judgment of the *Cour de cassation* as a basis for dismissing the ground relating to the inadmissibility of the complaint with civil-party application, the *Chambre de l'instruction* misconstrued the texts cited in the ground.

There is no doubt that the judgment must be quashed (**fourth limb**).

XXII. Second, and in any event, even if it does concern the procedural admissibility of the complaint with civil-party application, the issue adjudicated in the judgment of 9 November 2010

cannot be invoked against Mr. Nguema Obiang Mangue and cannot preclude his right to challenge the regularity of the institution of criminal proceedings, in so far as the person concerned was not a party to the proceedings on the date the decision was issued.

Just as a waiver of nullities resulting, *erga omnes*, from a judgment of the *Chambre de l'instruction* ruling on an application for annulment cannot be invoked against a person who is placed under judicial examination if he or she has not been notified of those proceedings (*Crim*., 30 May 1996, appeal No. 95-85954, Bull. crim. No. 226), a person who is placed under judicial examination cannot be denied the right to challenge the regularity of the institution of criminal proceedings by means of a complaint with civil-party application whose admissibility the person contests on the grounds that a decision was issued on that admissibility at a time when the person in question, having failed to appear at the proceedings, was unable to exercise his rights of defence.

The opposite approach would entail a violation of the rights of the defence and the right to a fair trial, as it would deprive the person being prosecuted of his right to have the regularity of the proceedings reviewed, for the sole reason that he was not placed under judicial examination until after the judgment was rendered on the matter at issue.

The *Chambre de l'instruction* thus misconstrued Article 6 of the European Convention on Human Rights, together with the texts and principles cited in the ground.

There is no alternative but to quash the judgment (**fifth limb**).

* *

FOR THESE REASONS, and any others which may be put forward, inferred or substituted, even *proprio motu*, as appropriate, the appellant submits that the *Cour de cassation* should:

QUASH AND SET ASIDE the contested judgment, with all legal consequences.

On behalf of S.C.P. Anne SEVAUX et Paul MATHONNET

Documents adduced:

1. Bow Street Magistrates' Court [court of first instance], 12 February 2004, *Re General Shaul Mofaz*, International Law Reports vol. 128, pp. 709-713

2. Bow Street Magistrates' Court, 8 November 2005, *Re Bo Xilai*, International Law Reports vol. 128, pp. 713-715

3. High Court of Justice [Queen's Bench Division Administrative Court], 29 July 2011, *Khurts Bat* v. *Investigating Judge of the German Federal Court*, [2011] EWHC 2029 [Admin.], International Law Reports

4. Swiss Federal Supreme Court, 22 December 2005, *Evgeny Adamov* v. *Federal Office of Justice*, ATF 132 II 81

5. Swiss Federal Criminal Court, 25 July 2012, *Nezzar*, BB.2011-140

6. “Second Vice President visits South Africa and Swaziland”, official website of the Government of the Republic of Equatorial Guinea, 6 July 2012

7. “Visit of the Second Vice President to Ivory Coast”, official website of the Government of the Republic of Equatorial Guinea, 10 August 2013

8. “The Second Vice President in Angola”, official website of the Government of the Republic of Equatorial Guinea, 23 October 2013

9. “The Second Vice President visits South Africa”, official website of the Government of the Republic of Equatorial Guinea, 7 November 2013

10. “The Second Vice President met with his counterpart from China”, official website of the Government of the Republic of Equatorial Guinea, 15 November 2013

11. “China will fund more projects with Equatorial Guinea”, official website of the Government of the Republic of Equatorial Guinea, 22 November 2013

12. “La Guinée équatoriale et Sao Tomé et Principe envisagent d'établir des liaisons aériennes et maritimes”, Panapress, 15 July 2015

13. “An Equatorial Guinean contingent on a mission against piracy”, official website of the Government of the Republic of Equatorial Guinea, 12 November 2013

14. “Teodoro Nguema Obiang Mangue attends the repatriation of the troops posted in the Central African Republic”, official website of the Government of the Republic of Equatorial Guinea, 13 September 2014

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ANNEX 28

Paris *Cour d'appel*, *Chambre de l'instruction*, judgment of 16 April 2015

Paris *Cour d'appel, Chambre de l'instruction*, judgment of 16 April 2015

[Translation]

Case No. 2014/04610

Prosecution No.: P083379601/7

Judgment of 16 April 2015

PARIS *COUR D'APPEL*

DIVISION 7

SECOND *CHAMBRE DE L'INSTRUCTION*

APPLICATION FOR ANNULMENT

JUDGMENT

(No. 1, 16 pages)

Delivered in closed session on **16 April 2015**

Appellant and person under judicial examination

Teodoro NGUEMA OBIANG MANGUE, born 25 June 1969 in Akoakam Esangui, Equatorial Guinea

At liberty

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

Counsel: Mr. MARSIGNY, 203 bis Boulevard Saint Germain, 75007 Paris; Mr. MAREMBERT, 260 boulevard Saint Germain, 75007 Paris, Mr. VIALA, 1 avenue Niel, 75017 Paris

Other persons under judicial examination

Franco CANTAFIO, born 27 September 1963 in Saint Maurice

Released under judicial supervision

c/o Mr. Jean LAUNAY, 37 rue Jean-Baptiste Pigalle, 75009 Paris

Counsel: Mr. LAUNAY, 37 rue Jean-Baptiste Pigalle, 75009 Paris

Martine DUMONT, former married name NICOLAS, born 19 August 1946 in Paris (12th arr.)

At liberty

12 rue Princesse, 75006 Paris

Counsel: Ms LASEK, 10 rue Lincoln, 75008 Paris

Robert FAURE, born 15 August 1944 in Alger, Algeria

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Counsel: Mr. SCHNERB, 6 rue Thénard, 75005 Paris, Ms MELCHER VINCKEVLEUGEL, Cabinet FIDAL (law firm), Tour Prisma, 4-6 Avenue d'Alsace, 92982 Paris La Défense Cedex

Daniel MENTRIER, born 5 August 1945 in Paris (15th arr.)

At liberty

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Counsel: Mr. LE ROUX, 5 rue Grignan, 13006 Marseille

Civil-party applicants

TRANSPARENCY INTERNATIONAL FRANCE

c/o Mr. William BOURDON, 156 rue de Rivoli, 75001 Paris

Counsel: Mr. BOURDON, 156 rue de Rivoli, 75001 Paris

GABONESE REPUBLIC REPRESENTED [BY THE] MINISTER FOR THE BUDGET, PUBLIC ACCOUNTS AND THE CIVIL SERVICE

c/o 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, Entrée 5, Terrasse Ste Catherine, 27 rue Royale, 59800 Lille, Mr. ARAMA, 44 avenue des Champs Elysées, 75008 Paris

Counsel: Georges ARAMA, 44 avenue des Champs Elysées, 75008 Paris

Témoins assistés (legally represented witnesses)

Mourad BAAROUN, born 12 December 1967 in Tunis, Tunisia

At liberty

27 B rue Louis Rolland, 92120 Montrouge

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

Aurélie Sandrine, Corinne DELAURY, née DERAND, born 4 January 1971 in L'Haÿ les Roses

At liberty

c/o Ms Maud TOUITOU, 25 Rue du Louvre, 75001 Paris

Counsel: Ms TOUITOU, 25 rue du Louvre, 75001 Paris

Composition of the court

During the proceedings, the deliberations and the delivery of the judgment:

Ms BOIZETTE, presiding judge;

Ms HEYTE, presiding judge;

Ms THOMAS, judge;

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

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

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

Proceedings

At the hearing in closed session on **5 February 2015**, the following persons were heard:

Ms BOIZETTE, presiding judge, on her report;

Mr. ALDEBERT, Advocate General, on his submissions;

Ms. CAGNAT, standing in for Mr. BOURDON, counsel for Transparency International France, civil-party applicant;

Ms LAYANI, standing in for Mr. LE ROUX, counsel for Daniel MENTRIER, who is under judicial examination;

Ms Negar HAERI, standing in for Mr. MARSIGNY, Mr. VIALA and Mr. MAREMBERT, counsel for Teodoro NGUEMA OBIANG MANGUE, who is under judicial examination;

Mr. LAUNAY, counsel for Franco CANTAFIO, who is under judicial examination, excused by letter dated 4 February 2015, did not appear.

Counsel for the persons under judicial examination took the floor last.

At the end of the proceedings, the decision was reserved for 12 March 2015, then postponed until 16 April 2015.

Procedural history

By a reasoned application filed with the registry of the *Chambre de l'instruction* on 1 August 2014, Ms Haeri, standing in for Mr. Marsigny, counsel for

Teodoro Nguema Obiang Mangue, who is under judicial examination, 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 2 September 2014.

The date on which the case was to be heard was notified to the persons under judicial examination, the civil-party applicants, the *témoins assistés* (legally represented witnesses) and counsel for the parties by registered letters dated 2 December 2014.

The file containing the Public Prosecutor's written submissions dated 17 September 2014 was filed with the registry of the *Chambre de l'instruction* and made available to counsel for the parties.

On 4 February 2015, 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 clerk, transmitted to the Public Prosecutor's Office and included in the case file.

On 4 February 2015, Mr. Marsigny, counsel for Teodoro Nguema Obiang Mangue, who is under judicial examination, filed with the registry of the *Chambre de l'instruction*, a written statement which was countersigned by the clerk, 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 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).

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).

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 (D 151/43 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 (D 242). 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 (D 329). 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 D 143 to D 153 (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 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).

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.

On 14 November 2013, by means of an international letter rogatory, the investigating judges requested of the Republic of Equatorial Guinea that Teodoro Nguema Obiang Mangue, born on 25 June 1969, be heard via videoconference in the presence of his counsel, Mr. Marsigny, on the basis of the United Nations Convention against Transnational Organized Crime adopted in New York on 15 November 2000, for the purpose of possibly placing him under judicial examination for acts characterized as money laundering, corruption, misappropriation of public funds, misuse of corporate assets and breach of trust, allegedly committed on French territory between 1997 and October 2011:

Mr. Teodoro Nguema Obiang Mangue asserted his capacity as Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and State Security, since 21 May 2012, in order to claim, under international custom, full jurisdictional immunity before foreign civil and criminal courts during the period in which he performed his functions (D2171).

The list of questions in French and Spanish that the French judges wanted to ask him was set out in a record (D2171/2 to 2171/18), and the defence was heard on its observations recalling the scope of absolute jurisdiction for Heads of State and the highest-ranking representatives of States, a principle affirmed in unequivocal terms by the International Court of Justice and the *Chambre Criminelle* of the *Cour de cassation*, without restriction or limitation.

Following the hearing, the investigating judges informed the person concerned of his placement under judicial examination, of his rights and the relevant legal formalities. Teodoro Nguema Obiang Mangue chose four French counsel registered with the Paris Bar.

<u>The terms of the application for annulment</u>

Having acquired the status of party to the proceedings when he was placed under judicial examination, Teodoro Nguema Obiang Mangue seeks to raise three grounds of nullity:

- the criminal proceedings were not validly instituted, since Article 85 of the Code of Criminal Procedure was not respected with respect to all of the alleged offences;

— by not limiting their investigative measures to the offence of money laundering, but rather extending them to the alleged underlying offences, which were not referred to them, the investigating judges exceeded the specific scope of the case referred to them;

— in his capacity as Second Vice-President of the Republic of Equatorial Guinea, Teodoro Nguema Obiang Mangue enjoys full and absolute jurisdictional immunity and cannot face criminal prosecution by the French courts during the exercise of his functions; accordingly, his placement under judicial examination on 18 March 2014 must be annulled.

I. On the inadmissibility of the complaint with civil-party application with regards to the violation of the provisions of Article 85 of the Code of Criminal Procedure

The appellant recalls that an initial complaint was filed with the Paris court, and more specifically the Public Prosecutor's Office, by the associations Sherpa, Survie and the Fédération des Congolais de la Diaspora on 28 March 2007, and another was filed by Ms Miakakela and other natural persons and the association TIF on 9 July 2008. The alleged offences concerned the accumulation of substantial movable and immovable assets in France through the misappropriation of public funds. The only characterization cited was the handling of misappropriated public funds (D3/D28). The complaints were dismissed.

On 2 December 2008, Mr. Ngbwa Mintsa and the association TIF filed a complaint with civil-party application (D2) in respect of acts of handling misappropriated public funds, and, in the light of the Paris Public Prosecutor's preliminary investigation, the complaint mentioned the alleged role of private commercial companies, such as Somagui Forestal, before ultimately, in the absence of any revelations relating to the misappropriation of public funds, denouncing acts of misappropriation of the funds of private companies, namely, that the assets of the persons concerned were actually derived from the offences of misuse of corporate assets or breach of trust, committed against commercial companies governed by private law. In the view of the appellant, these are new and separate acts, which should have been the subject of a prior ordinary complaint filed with the Public Prosecutor's Office.

In the absence of such a complaint, the complaint with civil-party application is partially inadmissible with respect to the second set of acts, pursuant to Article 85 of the Code of Criminal Procedure, as the initial ordinary complaint that was previously filed concerned only acts of handling misappropriated public funds. The investigating judges were therefore validly seised only of these acts and did not have jurisdiction to investigate the other acts, and, therefore, the searches and seizures carried out on the basis of the misappropriation of private funds originating from Somagui Forestal (see p. 9 of the application), in particular, should be annulled in accordance with Article 80 of the Code of Criminal Procedure.

II. On the nullity of the investigative measures relating to the original offences

The appellant recalls a judgment by this court of 13 June 2013 (No. 2012/07413), which confirmed the scope of the referral to the investigating judges, as defined [in the judgment] dated 19 November 2012 (No. 2012/04175).

In the view of the appellant, the application of 4 July 2011, which adopted only the characterization of money laundering and handling offences, excluded the misappropriation of public funds — which, under Article 432-15 of the Penal Code, could concern only acts committed in France, by persons in a position of public authority in France — and the offences of breach of trust and misuse of corporate assets.

The investigating judges investigated beyond the scope of the case referred to them, by conducting questioning relating to the alleged original offences, such as, for example, the misappropriation of public or private funds or corruption (D 1427-1449, D1488, see p. 12 of the application), and by questioning two former French ambassadors (D 1488-86) and bankers (D1498-1340-1512-1513), and continued in the same way, by sending to the Spanish judicial authorities, on the basis of a newspaper article, a request for international mutual assistance dated 15 June 2012 in order to obtain, among other things, any commercial, legal, bank or financial documents that showed the existence of corruption in Equatorial Guinea with regard to Spanish companies.

The investigating judges were not seised of corruption, but rather only of the derivative offences of money laundering and handling offences; therefore, they could not investigate the original offences.

The appellant puts forward the following reasoning:

The texts defining the offence of money laundering require neither that the original offence should take place in national territory, nor that the French courts should have jurisdiction to prosecute it, as the offence of money laundering — as a derivative offence — is autonomous and separate from the original offence, and, according to jurisprudence, the original offence must be "established", or "the constituent elements of a predicate felony or misdemeanour must be precisely identified by the court seised of the merits" (*Crim*, 25 June 2003).

This requirement does not, however, authorize investigating judges who have been seised only of acts of money laundering and handling offences to carry out investigative measures relating to original offences in the aim of establishing the constituent elements thereof if they have not been seised of those offences.

As recalled in the application of 4 July 2011, the French judges were not seised of original offences which have no link to France (acts committed abroad, by foreign nationals, without any French victims or harm suffered in France). Seised only of acts of money laundering, the judges could establish the original offences based on pre-existing elements that were already in their possession prior to their investigations. They could not seek out those elements. Therefore, all of the investigative measures carried out in that respect should be annulled (see p. 15 of the application).

III. <u>On the absolute jurisdictional immunity and inviolability enjoyed by Mr. Teodoro Nguema Obiang Mangue</u>

The appellant relies on the international custom which bars holders of high-ranking office in a State, namely incumbent Heads of State, from prosecution before the criminal courts of a foreign State, citing the decision of the International Court of Justice of 4 April 2002, two decisions of the *Chambre criminelle* of 13 March 2001 (No. 00-87.215) and 13 November 2001 (No. 01-82.440), and the judgment of this court of 19 January 2010 (No. 09-84.818).

A distinction must be made between jurisdictional immunity and the immunity attached to certain acts. The first, protected by customary international law, protects beneficiaries from prosecution abroad for the duration of their term of office, regardless of whether the acts done relate to the exercise of their functions. The second depends on the nature of the acts performed and, after the term of office, concerns only acts carried out in the exercise of their functions.

Given that Mr. Teodoro Nguema Obiang Mangue was appointed Second Vice-President in charge of defence and security on 21 May 2012 — functions which unquestionably gave him a very high rank in the State of the Republic of Equatorial Guinea — and considering the specific nature of these functions, the Court has no alternative but to find that he has enjoyed absolute

jurisdictional immunity since 21 May 2012, without it being necessary to distinguish, during his exercise of these functions, between acts that are separable from the functions and acts that are not separable from them.

* *

As regards the three grounds of nullity — the partial inadmissibility of the initial complaint with civil-party application, the nullity of the investigations relating to offences of which the investigating judges were not seised, and the absolute jurisdictional immunity and inviolability allegedly enjoyed by the appellant — the Public Prosecutor, in his submissions of 17 September 2014, considers that these three grounds should be dismissed, recalling that in order for a case to be referred to the *Chambre de l'instruction* based on the provisions of Articles 173 *et seq*. of the Code of Criminal Procedure, there must be a violation of a procedural text that is expressly sanctioned by nullity in the event of non-compliance or a violation of substantive rules of public policy concerning the organization and jurisdiction of the courts.

1. <u>The partial inadmissibility of the initial complaint with civil-party application</u>

It does not appear that the arguments put forward by the appellant should be accepted in these proceedings with regard to which, by judgment of 9 November 2010, the *Chambre criminelle*, reversing the position originally taken by the *Chambre de l'instruction*, found the complaint with civil-party application of 2 December 2008 admissible and "ordered the continuation of the judicial investigation opened . . . for misappropriation of public funds, misuse of corporate assets, money laundering, complicity in these offences, breach of trust and handling offences".

It should also be recalled 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). It has also 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).

Thus, in limiting his grievance to the consequences of the partial inadmissibility which he refrained from raising by means of the remedies available to him, the appellant fails to draw the logical conclusions from his own observations.

It would appear that these observations, which concern the apparent differences between the initial complaints and the complaint with civil-party application which was followed by an application to open an investigation, do not fall within the scope of procedural nullities but rather within the scope of an at least partial challenge to the admissibility of the civil-party application.

2. <u>The nullity of investigations relating to offences of which the investigating judges were not seised</u>

The appellant asserts that, despite the limits of the case referred to them, the investigating judges carried out investigations relating to offences that were the "source" of the derivative offences which led to his placement under judicial examination.

His grievances concern, for example, questioning and the collection of documents relating to the misappropriation of public funds or acts of corruption committed outside the national territory which could be attributed to the appellant.

As the appellant himself points out in his submissions, and as mentioned above, in his application of 4 July 2011 the Public Prosecutor narrowed the case referred to the investigating judges to acts of money laundering and handling the proceeds of offences liable to have been committed outside national territory.

The appellant was placed under judicial examination on 18 March 2014 for the offence of laundering the proceeds of the offences of misappropriation of public funds, misuse of corporate assets, breach of trust and corruption.

In such a situation, the Code of Criminal Procedure does not contain any provision that bars the judge from collecting specific information or evidence relating to the "original" offences which gave rise to the offences cited as a basis for his placement under judicial examination. It is indeed the judge's duty to collect any useful evidence relating to the circumstances of the criminal acts of which he or she is seised. The judge was thus free to carry out the challenged investigations and gather information without these actions being rendered void.

3. The absolute jurisdictional immunity and inviolability allegedly enjoyed by the appellant

The appellant, who held the positions of Minister of State for Agriculture and Forestry of the Republic of Equatorial Guinea and Deputy Permanent Representative of the Republic of Equatorial Guinea at UNESCO at the time of the events, and who later became Second Vice-President of the Republic of Equatorial Guinea on 21 May 2012, claims that, as such, he enjoys absolute jurisdictional immunity under customary international law and, consequently, his questioning at first appearance dated 18 March 2014 must be annulled.

However, assuming such immunity to be established, it should be noted that this bars criminal prosecution of the person who enjoys it. The *Chambre criminelle* of the *Cour de cassation* (*Crim.* 5 March 1985, B.101) found that "notwithstanding the absence of legal provisions, the investigating judge was obliged to respond to the requests seeking a finding that immunity exists, and that his order was open to appeal". The argument raised thus falls within the scope of specific proceedings and appears to fall outside the scope of procedural nullities.

In the view of the Public Prosecutor, there are no grounds for annulling any procedural measure or document.

* *

In its written statement of 4 February 2015, the civil-party applicant Transparency International France recalls that a definitive determination of the validity of its civil-party application was made by the *Chambre criminelle* in its judgment of 9 November 2010, the court having declared admissible the civil-party application relating to misappropriation of public funds, money laundering, misuse of corporate assets and complicity in these offences. The question of the admissibility of the complaint with civil-party application does not fall within the scope of nullity proceedings.

The complaint with civil-party application merely adds facts revealed by the preliminary investigation, and the complainant is not required to notify the said facts to the Public Prosecutor in advance as if they were new facts, which facts were known to the Public Prosecutor's Office when

it decided to take no further action. The complaint with civil-party application fully complies with the provisions of Article 85 of the Code of Criminal Procedure and is admissible.

As regards the validity of the investigative measures relating to the original offences, the Code of Criminal Procedure does not contain any provision that bars the investigating judge from collecting specific information or evidence relating to the original offences, as recalled by the Public Prosecutor in his application for characterization of 4 July 2011 (D319). Investigating original offences does not mean prosecuting them; consequently, the investigating judges' measures relating to these original offences are not subject to annulment.

On the absence of absolute jurisdictional immunity and inviolability with respect to Mr. Teodoro Nguema Obiang Mangue

In the view of the civil-party applicant, this ground does not fall within the scope of nullity proceedings, as noted by the Public Prosecutor. In any event, the appellant is not justified in raising this ground. Under the Vienna Convention of 18 April 1961, the appellant is not justified in claiming diplomatic immunity of any kind, since the acts of which he stands accused fall squarely outside the scope of his functions. Under international treaties, diplomatic immunity is functional and applies only to acts performed as part of a function, constituting acts of political authority.

The *Cour de cassation*, interpreting Article 38 of the above-mentioned Convention, limits jurisdictional immunity and inviolability to official acts performed in the exercise of one's functions (*C. Crim*, 8 April 2010). In its judgment of 19 March 2013 (No. 12.81.676), it recalled that the investigating judge's duty to investigate is not, in principle, at odds with the jurisdictional immunity of foreign States and their representatives. This interpretation is in line with international custom and identical to that of the International Court of Justice (ICJ Judgment of 14 February 2002).

In the present case, the actions of which Teodoro Nguema Obiang Mangue stands accused clearly do not fall within the scope of the exercise of his duties; instead, they are mutually incompatible.

The civil-party applicant points out that this court settled the matter in no uncertain terms in its judgment of 13 June 2013 (No. 2012/08657).

The civil-party applicant also contends that the appellant cannot claim diplomatic immunity, which has been obtained by contravening the law, either through a unilateral ploy involving the modification of his status in order to bypass French rules of criminal procedure. For all of these reasons, the civil-party applicant asks the court to dismiss the entire application for annulment.

*   *

In his duly filed written statement, the appellant's counsel asserts that it is erroneous to claim that none of the provisions of the Code of Criminal Procedure prohibit the judge from gathering specific information or evidence relating to the original offences, and that the investigating judges do not have jurisdiction to investigate acts committed abroad by foreign nationals, citing as proof the provisions of Article 80 of the Code of Criminal Procedure and the application for characterization of 4 July 2011, which clearly recalls the scope of the case referred to the judges. Identifying an offence does not authorize the judges, who were seised only of derivative offences, to investigate, and, moreover, the placement under judicial examination of 18 March 2014 relates only to acts characterized as laundering the proceeds of the offences of misappropriation of public funds, breach of trust, misuse of corporate assets and corruption.

Jurisdictional immunity does indeed fall within the scope of nullity proceedings; the judgment cited by the Public Prosecutor (*Cass Crim*, 5 March 1985) does not settle the question of whether jurisdictional immunity comes under the exclusive jurisdiction of the investigating judge or within the scope of nullity proceedings. To oppose this point, the defence relies on the provisions of Articles 83-2 and 171 of the Code of Criminal Procedure. The question of the violation of the immunity enjoyed by a person placed under judicial examination depends on the customary international law applicable to the present case, as mentioned in Article 171. Mr. Teodoro Nguema Obiang Mangue's placement under judicial examination represents a disregard for a formality which has unquestionably undermined his interests.

As regards the scope of criminal immunity, criticizing the judgment of this court dated 13 June 2013, the appellant asserts that, in the present case, immunity is personal, not substantive. He draws a distinction between the former, or immunity *rationae personae*, linked to the performance of duties, regardless of whether the acts are related to the exercise of his functions, and functional immunity, or immunity *rationae materiae*, which is instead linked to the nature of the acts performed by its beneficiary, and, even after his or her term of office has ended, protects only those acts which can be linked to the exercise of official functions.

The appellant claims that he enjoys personal immunity during the exercise of his functions, without it being possible to make a distinction as to whether or not the acts prosecuted are separable from his functions. International custom precludes holders of high-ranking office in a State, namely incumbent Heads of State, from being prosecuted before the criminal courts of a foreign State for the duration of their functions. In this regard, the appellant cites the ICJ Judgment dated 14 February 2002 and the principle of temporal immunity justified by the duties of the incumbent Head of State or government, a position upheld by the same Court in its Judgment of 4 June 2008, which, moreover, took into account the notion of a constraining act of authority.

The *Chambre criminelle*, on the basis of absolute personal immunity recognized by customary international law, took the same position (*Cass crim* 13 March 20[0]1 No. 00-87-215 and *Crim* 13 November 2011 No. 01-81.440) and made the same finding in its judgment of 19 January 2010 (No. 09-84.818), which ordered the annulment of arrest warrants.

In the view of the appellant, Article 3, paragraph 2, of the 2004 United Nations Convention on Jurisdictional Immunities of States and Their Property supports the idea that the immunity granted to Heads of State is *rationae personae*, a principle enshrined by the ICJ in its decisions of 14 February 2002 (paragraphs 54, 55 and 58) and 4 June 2008, cited above. The court thus has no alternative but to find that Mr. Teodoro Nguema Obiang Mangue has enjoyed absolute jurisdictional immunity since 21 May 2012 by virtue of his functions as Second Vice-President of the Republic of Equatorial Guinea, and must consequently annul his placement under judicial examination.

WHEREUPON, THE COURT,

I. On the inadmissibility of the complaint with civil-party application owing to the violation of the provisions of Article 85 of the Code of Criminal Procedure

Whereas, on 2 December 2008, Transparency International France, acting through its President, Daniel Lebègue, filed a complaint with civil-party application with the senior investigating judges 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;

Whereas this 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. It also raised the question of the role played by Somagui Forestal, a logging company located in Equatorial Guinea and run by Teodoro Nguema Obiang, son of the Head of State. The complaint referred to information collected in 2007 by the OCRGDF and Tracfin, as a result of a preliminary investigation launched by the Paris Public Prosecutor's Office;

Whereas 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 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;

Whereas, 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;

Whereas 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;

Whereas, 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 D[R]NED (the national directorate for intelligence and customs inquiries) on 7 March 2011 and a report from the OCRGDF dated 4 October 2011;

Whereas, 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 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;

Whereas, 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;

Whereas, 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 a civil-party application by a party intervening in the investigation proceedings at a later point (*Crim.* 14 December 1982, B. 288); whereas 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);

Whereas the Public Prosecutor's Office rightly submits, and for reasons that this court endorses, that such grounds of nullity must be found inadmissible;

II. On the nullity of the investigative measures relating to the original offences

Whereas the Republic of Equatorial Guinea considers that in order to prosecute money laundering offences committed in France, the French judges, which have no standing or jurisdiction to characterize original offences (misappropriation of public funds, misuse of corporate assets and breach of trust) also have no element of fact or of law allowing them to characterize the original offences;

Whereas, in order to prosecute the offence of money laundering as defined in and punished under Articles 324-1 *et seq*. of the Penal Code, it must be possible to objectively characterize the initial criminal act as a felony or misdemeanour, but it is by no means necessary for the perpetrator of the original offence to have previously been prosecuted or convicted;

Whereas, by judgment of 24 February 2010, the *Chambre Criminelle* of the *Cour de Cassation* found, after identifying the initial conduct of the suspect considered by the first judges with regard to the predicate offence, that 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 the jurisdiction to prosecute it, since the offence of money laundering is a general, separate, autonomous offence (*Ch. Crim*. 24 February 2010, 09-82-857), but whereas it must be acknowledged that the investigating judge has a duty to collect the essential physical evidence constituting the original offence, without which the offence of money laundering could not be prosecuted;

Whereas, in view of the investigations carried out since 2007 by a number of services, including the OCRGDF and Tracfin, at the request of the Paris Public Prosecutor, the records of which are included in the investigation file, the investigating judge was justified in pursuing the investigations that he deemed necessary — investigations carried out by means of national or international letters rogatory, questioning, requisitions or any other legal channels — to gain a better understanding of the original acts;

Whereas it is rather contradictory for the defence to claim both that the texts defining the offence of money laundering require neither that the original offence should take place on national territory, nor that the French courts should have jurisdiction to prosecute it, as the offence of money laundering — as a derivative offence — is autonomous and separate from the original offence, and that, according to jurisprudence, the original offence must be "established", or "the constituent elements of a predicate felony or misdemeanour must be precisely identified by the court seised of the merits" (*Crim*, 25 June 2003);

Whereas, consequently, this grounds of nullity cannot be accepted;

III. On the absolute jurisdictional immunity and inviolability enjoyed by Mr. Teodoro Nguema Obiang Mangue

Whereas, in the view of the Public Prosecutor, assuming such immunity to be established, it should be noted that this bars criminal prosecution of the person who enjoys it, and that the *Chambre criminelle* of the *Cour de cassation* (*Crim*. 5 March 1985, B.101) found that "notwithstanding the absence of legal provisions, the investigating judge was obliged to respond to the requests seeking a finding that immunity exists, and that his order was open to appeal". The argument raised thus falls within the scope of specific proceedings and appears to fall outside the scope of procedural nullities;

Whereas the challenge raised by one of the parties, seeking a finding that the prescription of criminal prosecution is provided for in a specific text — Article 82-3 of the Code of Criminal Procedure; whereas, as regards the territorial jurisdiction of a French court, no text sets out the specific procedural requirements of such a challenge with regard to the judicial investigation phase; whereas, it can thus be concluded that the violation of the principle of immunity of foreign Heads of States may be contested by means of an application for annulment and, therefore, this ground shall consequently be declared admissible;

Whereas, 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. Teodoro Nguema Obiang Mangue was summoned for questioning at first appearance. Complying with the questioning, which took place on 18 March 2014 via videoconference from Malabo, Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue 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;

Whereas Teodoro Nguema Obiang Mangue became Second Vice-President of the Republic of Equatorial Guinea in charge of Defence and Security as of 21 May 2012; whereas he previously performed the functions of Minister for Agriculture and Forestry;

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 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);

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;

Whereas, 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 Teodoro Nguema Obiang Mangue, 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;

Whereas 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 report 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 having been acquired by Teodoro Nguema Obiang Mangue 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 Teodoro Nguema Obiang Mangue;

Whereas, 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 Teodoro Nguema Obiang Mangue 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;

Whereas 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, and whereas 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);

Whereas, as regards his functions as Second Vice-President of the Republic of Equatorial Guinea, it should be noted that this 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, 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;

Whereas 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; whereas the situation of Teodoro Nguema Obiang Mangue 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 Teodoro Nguema Obiang Mangue 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; whereas, 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;

Whereas, consequently, the State and diplomatic immunity claimed by Teodoro Nguema Obiang Mangue 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; whereas, therefore, this ground for annulment must be dismissed;

Whereas, given that the court has not found any other grounds for annulling the said proceedings, they shall be declared to be in order up to reference number D2272.

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,

FINDS the referral of the case admissible;

As to the merits,

FINDS IT ILL-FOUNDED;

FINDS that there are no grounds for annulling any documents of the proceedings examined up to reference number D 2272;

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.

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ANNEX 29

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

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

[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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