



INTERNATIONAL COURT OF JUSTICE

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Summary

Unofficial

Summary 2025/6

12 September 2025

Request relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea v. France)

Request for the indication of provisional measures

History of the proceedings (paras. 1-18)

The Court begins by recalling that, on 29 September 2022, Equatorial Guinea filed in the Registry of the Court an Application instituting proceedings against France concerning alleged violations by the latter of obligations arising under the United Nations Convention against Corruption adopted by the General Assembly on 31 October 2003 (hereinafter the “Convention against Corruption” or the “Convention”). Together with the Application, Equatorial Guinea submitted a Request for the indication of provisional measures, which it subsequently withdrew.

On 3 July 2025, Equatorial Guinea filed a new Request for the indication of provisional measures “in order to preserve its rights under the [Convention against Corruption]”, and particularly its right to the return of the building located at 42 avenue Foch. At the end of its written pleading on that Request, Equatorial Guinea asked the Court to indicate the following provisional measures:

- “(a) France must take all necessary measures to ensure that the building is not offered for sale;
- (b) France must ensure that Equatorial Guinea has immediate, full and unimpeded access to the entire building;
- (c) France must refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.”

I. FACTUAL BACKGROUND (PARAS. 19-35)

On 2 December 2008, the organization Transparency International France filed a complaint with the Paris Public Prosecutor against certain African Heads of State and members of their families in respect of allegations of misappropriation of public funds and related offences in their country of origin, the proceeds of which had allegedly been invested in France. This complaint was declared admissible by the French courts and a judicial investigation was opened in 2010 in respect of multiple offences. The investigation focused, in particular, on the methods used to finance the acquisition of movable and immovable assets in France by several individuals, including Mr Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea, who was at the time Minister of State for Agriculture and Forestry of Equatorial Guinea and who was subsequently appointed Second

Vice-President and then Vice-President of Equatorial Guinea in charge of National Defence and State Security.

The judicial investigation opened in France in 2010 concerned, more specifically, the acquisition, by Mr Teodoro Nguema Obiang Mangue, of various assets of considerable value, including a building located at 42 avenue Foch in Paris. On 19 July 2012, one of the investigating judges of the Paris *Tribunal de grande instance* ordered the “attachment of the building” located at 42 avenue Foch (*saisie pénale immobilière*). The investigating judge found, in that instance, that the building located at 42 avenue Foch had been wholly or partly paid for out of the proceeds of the alleged offences under investigation and that its owner was Mr Teodoro Nguema Obiang Mangue. The decision ordering the “attachment of the building” was upheld on 13 June 2013 by the *Chambre de l’instruction* of the Paris *Cour d’appel*, before which Mr Teodoro Nguema Obiang Mangue had lodged an appeal.

In a judgment rendered on 27 October 2017, the Paris *Tribunal correctionnel* found Mr Teodoro Nguema Obiang Mangue guilty of money laundering offences committed in France between 1997 and October 2011. The tribunal ordered, *inter alia*, the confiscation of the building at 42 avenue Foch, a decision confirmed by the Paris *Cour d’appel* on 10 February 2020 and rendered final by the *Cour de cassation* on 28 July 2021. The French authorities did not, however, take possession of the building, to which Equatorial Guinea retained what it described as “full and unimpeded access”.

On 29 July 2022, the French Agency for the Management and Recovery of Seized and Confiscated Assets (hereinafter referred to by its French acronym “AGRASC”) wrote to the occupants of the building at 42 avenue Foch, explaining that it was responsible for executing the decision of the Paris *Cour d’appel* of 10 February 2020 rendered final by the *Cour de cassation* on 28 July 2021 and that it was required to proceed with the sale of the property, which was therefore to be “vacated of all occupants”.

On 27 May 2025, AGRASC submitted an application to the President of the Paris *Tribunal judiciaire*, requesting the appointment of a court enforcement officer authorized to enter the building at 42 avenue Foch. AGRASC’s application was granted by an order of 3 June 2025, whereby the Vice-President of the Paris *Tribunal judiciaire* authorized a designated court enforcement officer to “enter the premises located at 42 avenue Foch . . . with the assistance of law enforcement and a locksmith if necessary” and to

“check the names on the mailbox and make a record of the identity of all the occupants; to determine the means, origin, date and conditions of entry to the premises and, if applicable, the title on the basis of which the premises were entered; [and] to conduct an inventory of the confiscated units”.

On the morning of 18 June 2025, the designated court enforcement officer went to the building at 42 avenue Foch, accompanied by law enforcement officials, AGRASC officials, private security personnel and locksmiths, and gained access to various areas of the premises. Based on the information provided by the court enforcement officer, AGRASC arranged for the installation later that day of new locks on the parts of the building it considered vacant.

On 3 July 2025, Equatorial Guinea filed the Request for the indication of provisional measures now before the Court.

II. EXAMINATION OF THE REQUEST (PARAS. 36-52)

I. Introduction (para. 36)

The Court recalls that, pursuant to Article 41, paragraph 1, of its Statute, it has “the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party” pending a final decision in the case. The Court further recalls that it has identified, in its jurisprudence, conditions for the indication of provisional measures. These conditions are cumulative and provisional measures may only be indicated when each of them is met. Among these conditions is the plausibility of the rights whose protection is sought. The Court also recalls that it is not bound to follow any particular sequence in examining these conditions and, in the present circumstances, the Court considers it appropriate to begin with the question whether the rights whose protection is sought by Equatorial Guinea are plausible.

2. Plausibility of the rights whose protection is sought (paras. 37-52)

The Court then recalls that its power to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the rights claimed by the parties in a case, pending the final decision of the Court. It follows that the Court must be concerned to preserve, by such measures, the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may exercise its power to indicate provisional measures only if it is satisfied that the rights asserted by the party requesting provisional measures are at least plausible. At this stage of the proceedings, however, the Court is not called upon to determine definitively whether the rights which the Applicant wishes to see protected exist.

The Court notes that the right for which Equatorial Guinea seeks protection through the present Request is the right it allegedly possesses, under Article 57, paragraph 3 (c), of the Convention against Corruption, to the return of the building located at 42 avenue Foch in Paris. The Court recalls that the building was confiscated in accordance with a decision of the Paris *Tribunal correctionnel* of 27 October 2017, confirmed by the Paris *Cour d'appel* on 10 February 2020, and rendered final by the *Cour de cassation* on 28 July 2021.

Article 57 of the Convention, which governs the return and disposal of confiscated assets, reads as follows:

“1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

- (b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;
- (c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

5. Where appropriate, States Parties may also give special consideration to concluding agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property.”

The Court notes that Article 57, paragraph 3 (c), of the Convention provides that a requested State party “shall . . . give priority consideration” to three possibilities: (i) the return of such property to the requesting State party; (ii) the return of such property to its prior legitimate owners; or (iii) the provision of compensation to the victims of the crime. The phrase “shall . . . give priority consideration”, read in conjunction with the listing of three possibilities, suggests that the requested State party has some discretion as to the course of action ultimately adopted. The Court observes that the return of the confiscated property to the requesting State party is, as a general rule, only one of the possibilities to which the requested State party “shall . . . give priority consideration” in performing the obligation incumbent upon it under Article 57, paragraph 3 (c).

After closely examining the arguments of the Parties, the Court concludes that Equatorial Guinea has not demonstrated, in the course of these incidental proceedings concerning the indication of provisional measures, that it possesses a plausible right to the return of the building located at 42 avenue Foch in Paris on the basis of the provision it invokes in that respect.

In addition, the Court does not consider that the other provisions invoked by Equatorial Guinea, namely Article 4, paragraph 1, and Article 51 of the Convention, contain separate rights that are of such a nature as to require protection, in the circumstances of the present case, pending the final decision of the Court.

The Court recalls that the conditions for the indication of provisional measures identified in its jurisprudence are cumulative. Therefore, having found that one such condition has not been met, the Court is not required to examine whether the other conditions are satisfied.

III. CONCLUSION (PARA. 53)

The Court concludes that the circumstances, as they now present themselves to it, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures.

The Court reaffirms that the decision given in the present proceedings in no way prejudices the question of its jurisdiction to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of Equatorial Guinea and France to submit arguments in respect of those questions.

OPERATIVE CLAUSE (PARA. 55)

The full text of the operative clause of the Order reads as follows:

“For these reasons,

THE COURT,

By thirteen votes to two,

Rejects the Request for the indication of provisional measures submitted by the Republic of Equatorial Guinea on 3 July 2025.

IN FAVOUR: *President* Iwasawa; *Vice-President* Sebutinde; *Judges* Tomka, Abraham, Xue, Bhandari, Nolte, Charlesworth, Brant, Gómez Robledo, Cleveland, Aurescu, Tladi;

AGAINST: *Judge* Yusuf; *Judge ad hoc* Elias.”

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Judge TOMKA appends a declaration to the Order of the Court; Judge YUSUF appends a separate opinion to the Order of the Court; Judge NOLTE appends a declaration to the Order of the Court; Judge TLADI appends a separate opinion to the Order of the Court; Judge *ad hoc* ELIAS appends a dissenting opinion to the Order of the Court.

Declaration of Judge Tomka

In his declaration, Judge Tomka states that the circumstances did not warrant the exercise of the Court's power to indicate provisional measures, as there is no immediate risk of irreparable prejudice to the rights claimed by Equatorial Guinea. He takes issue, however, with the course adopted by the Court, in which it concludes that Equatorial Guinea has not demonstrated a "plausible right" to the return of the building in question.

Judge Tomka expresses concern that the Court, at this preliminary stage, has addressed the interpretation of Article 57 of the United Nations Convention against Corruption, an issue central to the merits of the case. In his view, it would have been more prudent for the Court to refrain from opining on this provision until full consideration of the Parties' submissions on jurisdiction and merits.

Separate opinion of Judge Yusuf

1. Judge Yusuf voted against the operative paragraph of the Order due to its legally unsound approach. In his view, two reasons stand out. First, the Court's approach is regrettably arbitrary in passing over the necessary decision on its *prima facie* jurisdiction. Secondly, the finding of the Court that Equatorial Guinea does not possess a plausible right to the return of the building misinterprets Article 57, paragraph 3 (c), of the Merida Convention, prejudices the merits and prematurely disposes of the entire case presented by Equatorial Guinea.

2. Judge Yusuf first addresses the absence of decision on *prima facie* jurisdiction. For him, when the requested provisional measures are rejected because of the absence of one of the conditions for their indication, a discussion of *prima facie* jurisdiction remains indispensable, as it is a precondition for the Court's exercise of its power under Article 41, paragraph 1, of the Statute of the Court. Notwithstanding that different conditions for provisional measures are cumulative, there are some interrelationships among the conditions. In particular, *prima facie* jurisdiction is a precondition for the determination of all other conditions and must be ascertained in the first place.

3. Judge Yusuf then turns to the plausibility of the right to the return of the building. He finds it surprising that the Court misinterprets a clear obligation in the Convention as "possibilities" and, on that basis, rejects Equatorial Guinea's right to request the return of the building under Article 57, paragraph 3 (c). In his view, this provision does not prescribe "possibilities". Instead, it establishes the elements of the obligation for the requested State party, and the latter is under an obligation to give priority to at least one of them. This misinterpretation has resulted in a decision which prejudices the merits and prematurely disposes of the entire case. In Judge Yusuf's view, an order on provisional measures should not have been used by the Court to dismiss the most important substantive right claimed by an applicant not only in its request for such measures but also in its application. Judge Yusuf therefore asks: is this a judicial "innovation" or a temporary glitch in the jurisprudence of the Court? Time will tell.
