



# Request relating to the return of property confiscated in criminal proceedings

**(Equatorial Guinea v. France)**

Committee: ICJ

Student Officer: The Presidency



**Forum:** The International Court of Justice (ICJ)

**Issue:** Request relating to the return of property confiscated in criminal proceedings

**Parties:** Equatorial Guinea v. France

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**Position:** President and Deputy President

## Introduction

The ICJ case of the Request relating to the Return of Property Confiscated in Criminal Proceedings (Equatorial Guinea v. France) arose from French criminal proceedings initiated against Teodoro Nguema Obiang Mangue in 2010, formerly the second vice president, and then promoted to vice president in 2016. He is also the son of the president; Teodoro Obiang Nguema Mbasogo. The case was contentious, meaning that each state involved recognised the ICJ's jurisdiction. The following case will be explained and elaborated on in this report.

## Definition of Key Terms

### Jurisdiction

The extent of a Court's power and ability to make legal decisions, such as issuing orders of adjudicating cases.

### Provisional Measures

The issuing of an official order by the ICJ, towards a nation.

### Immunity

A tool that prevents the prosecution of an Independent State or its agents from being prosecuted before foreign courts- striving to protect a State's independence and sovereignty.

### Vienna Convention on Diplomatic Relations

A UN treaty was formed in 1961, defining a crucial framework for diplomatic relations on an international level.



### **Article 22 of the Vienna Convention on Diplomatic Relations**

An important article within the treaty declares: 'The receiving state may not enter the sending State's premises unless the head of the sending state mission has consented to it. The receiving State is under a special duty to protect the premises of the mission of intrusion, damage, disturbance of the peace and impairment of its dignity.'

### **Prima Facie Jurisdiction**

An expression used to describe the test of First Impression, specifically in International Adjudication.

### **Preliminary Objection**

The formal procedure in which the respondent raises a question which it argues should be addressed separately, before any proceedings.

### **Money Laundering**

The illegal process of deceiving authorities and banks to make large sums of money, generated through criminal activity, seemingly generated through legal means.

### **Corruption**

Criminal fraudulent and dishonest behaviour by governmental authorities who hold power to make political decisions.

### **Interpol**

An international organization that strives to facilitate police cooperation on a global level, founded on the 7th of September, 1923.

### **Ordinary Law**

'Normal Law', which is created and enforced by authorities of the State, determines the relations of citizens to the state.

### **Diplomatic Building**

A governmental building in which recognized diplomats reside, and work.

### **Inviolability (With regard to Diplomatic Premises)**

This means that premises may not be entered unless the head of the mission has legitimately provided their consent. This consent, crucially, must be provided and not implied, an exception to no cases, even in the event of an emergency.

### **The Transparency International France**

A Non-Profit Organisation which strives to end government corruption through legal action.

## **General Overview**

### **Prior to the Case**

Starting in 2007 a number of associations and private individuals lodged complaints against certain African Heads of State, for misappropriation of public funds. In 2008 Transparency International France filed a complaint against Mr. Obiang Mangue together with the Paris public prosecutor, which was deemed admissible, leading to a criminal investigation. This particular investigation focused on discovering the methods of financing the acquisition of movable and immovable assets in France. Mr. Obiang Mangue's family and himself had previously been investigated by the US Senate, on the premise of allegations of money laundering and corruption, reaching a settlement of 30 million USD.

The investigation led by France was completed in 2016, where the Paris prosecutor laid criminal charges, and accused Mr. Obiang Mangue of crimes such as misappropriation of state funds. He was referred to trial for alleged money laundering offenses committed in France. The prosecutor requested the seizing of properties and luxury vehicles. The property on 42 avenue Foch in Paris is very relevant to the case, which was estimated to be worth 100 million dollars. Through further investigation by France, it was discovered that the residence had been purchased by Mr. Obiang Mangue using the proceeds of his alleged crimes.

## An Overview of the Case

During the investigation and while charges were laid Equatorial Guinea moved the official residence of the Equatoguinean Permanent Delegate to 42 avenue Foch. In 2016 France issued an arrest warrant for Mr. Obiang Mangué through Interpol, which was validated by the International Court of Justice. Although he was indicted he constantly challenged the measures taken against him and he invoked the immunity from jurisdiction to which he believed he was entitled on account of his functions.

Following the order Equatorial Guinea filed a case in the ICJ against France, challenging the legality of the actions of French authorities. Equatorial Guinea accused France of breaching diplomatic immunity. They seek suspension of criminal proceedings for Mr. Obiang Mangué, and the Embassy of Equatorial Guinea argued that the property on 42 avenue Foch in France was a diplomatic building. The application by Equatorial Guinea alleged France was failing to comply with the asset recovery obligations as seen in the 2003 United Nations Convention against Corruption (UNCAC). In late 2016 the court ordered diplomatic inviolability for the property, preventing France from seizing it, until the conclusion of the international judicial proceedings on the basis of the Vienna Convention. Equatorial Guinea's argument relies on article 4 of the Organized Crime Convention (also known as the Palermo Convention). It was argued that France was not consistent with the principles of sovereign equality and non-intervention referred to in Article 4.

France's counterargument to Equatorial Guinea was that they had abused their rights by promoting Mr. Obiang Mangué to vice president to grant him immunity *ratione personae*, and that they moved the embassy to 42 avenue Foch after the beginning of the criminal investigation. The French Ministry of Foreign Affairs refused to recognise the property as diplomatic property on the grounds that it was within the private domain, therefore subjecting it to ordinary law.

Equatorial Guinea had three main goals through the application of the ICJ court case, including the termination of french criminal proceedings of issues deemed to be under equatorial Guinean jurisdiction, and recognition of immunity for both Mr. Obiang Mangué and the property on 42 avenue Foch

## Judgment and Verdict of the Case

A preliminary decision was made on June 6 2018, regarding the case as a whole. The judge decided that the only admissible claim made by Equatorial Guinea was the status of the property on 42 avenue Foch in France, regarding the diplomatic premises of Equatorial Guinea under the Vienna Convention. The judge found a lack of *prima facie* jurisdiction on the basis of the Palermo Convention regarding the claim on the immunity of Mr Obiang.

The final verdict of the case was announced on December 11, 2020, in a 45-minute hearing which ended the 12-year affair. 9 to 7 votes were that the claims of immunity for 42 avenue Foch in France were to be dismissed as the property never acquired the status of a diplomatic mission under the Vienna Convention. 12 to 4 votes were that France had breached none of its obligations under Vienna Convention Article 1, and all other submissions of Equatorial Guinea were dismissed.

### Timeline of Key Events

<b>Date</b>	<b>Event</b>
13 <sup>th</sup> of June 2016	The Republic of Equatorial Guinea institutes proceedings against the French Republic, with regard to a dispute concerning the immunity (from criminal jurisdiction) of Mr Teodoro Nguema Obiang Mangue, and the legal status of the Embassy of Equatorial Guinea in France's building.
29 <sup>th</sup> of September 2016	Equatorial Guinea files a request for the indication of provisional measures. Furthermore, requested the President of the Court to exercise his power.
3 <sup>rd</sup> of October 2016	Through a letter, the Vice-President of the Court (emulating the President) draws France's attention, and mandates a response.
7 <sup>th</sup> of December 2016	The Court orders France to ensure the building housing the Equatorial Guinean Embassy receives the appropriate legislative treatment, by Article 22 of the Vienna Convention

on Diplomatic Relations securing their inviolability. However, in regards to the immunity claim, by The Republic of Equatorial Guinea, the Court determined it did not have *prima facie* jurisdiction to entertain the claim at the time.

31<sup>st</sup> of March 2017

France files preliminary objections on the jurisdiction of the Court.

February 2018

Public hearings held.

6<sup>th</sup> of June 2018

The Court delivers its judgment on French preliminary objections, ruling that it did, in fact, hold the jurisdiction to entertain the Application of Equatorial Guinea, concerning the status of the building.

February 2020

Public hearings held.

11<sup>th</sup> of December 2020

The Court issues judgment on the case's merit, concluding that the building considered in Equatorial Guinea's Application hadn't acquired the status referenced in the Vienna Convention on Diplomatic Relations. Consequently, France had not breached its obligations in this regard.

## Major Parties Involved

### Equatorial Guinea

Equatorial Guinea in this case is the applicant party. Equatorial Guinea's argument is that due to Mr. Obiang Mangué's high-ranking status as vice president during the application of the case, should be granted immunity under international law. They also claim that the property on 42 Avenue Foch should not be seized due to its supposed diplomatic status and that France is not following the Vienna Convention.

Equatorial Guinea is an oil-rich resource in Western Africa, yet it has an incredibly high rate of poverty where the majority of the wealth is distributed to the minority of the population. Roughly 60% of the population lives in extreme poverty surviving on less than 1 dollar a day, with extremely poor sanitation, a crumbling education system, disease, and chronic hunger. The nation has a high GDP per capita, greater than countries such as Italy yet many live in poverty without access to basic necessities such as running water, despite the abundance of natural resources. This brings the question of what is happening to all the money brought in through trade if it isn't used for the benefit of the citizens. The issue stems from the fact that the government and legal system are controlled by members in power, such as the president, and his son the vice president Mr. Obiang Mangué. Equatorial Guinea is a corrupt nation with the misappropriation of state funds and resources being used for the people in power's benefit, making the country an example of a kleptocracy.

## France

France in this case acts as the respondent party. The message that indicted Mr. Obiang Mangué, by prosecuting him, sends to the public a demonstration of how foreign governments can help to ensure the financial integrity of other countries' governments. France is attempting to hold Mr. Obiang Mangué accountable for actions such as money laundering, specifically abroad. In this case, France highlights the consequences of governments using diverted public funds in order for personal gain. They argue that they followed the Vienna Convention and that Equatorial Guinea committed fraudulent acts by promoting Mr. Obiang Mangué to vice president and changing the status of the property after prosecuting him and seizing luxury items and properties. France's involvement in the case present in the ICJ is that many years prior they had been trying to indict Mr. Obiang Mangué for fraud and money laundering, but were only able to make an admissible case when Transparency International France presented a complaint.

France's relationship with Equatorial Guinea extends to trading relations, and began through the bilateral cooperation of the two nations, before expanding under the Franc Zone. France has a highly developed economic market, with a high GDP per capita. French is one of the official languages of Equatorial Guinea.

## United States of America



On June 11, 2012, the United States Department of Justice (US DoJ) filed a complaint against Mr. Obiang Mangué, stating that he had spent about 315 million dollars between 2004 and 2011 on properties and luxury goods. They found that his expenditures were inconsistent corresponding with his earnings, as he had an annual 100,000 dollar salary plus some extra generated income from his companies. Eventually, a settlement was reached by the US DoJ of 30 million dollars. Most of the money was pledged to be used to benefit Equatorial Guinean citizens, yet later on, no records were found of any of the funds being sent to benefit citizens nor to support the infrastructure.

### The International Court of Justice

The International Court of Justice (ICJ), located in the Hague in the Netherlands, is one of the six main organs of the United Nations, which was established in 1945 by the UN charters. Its primary function is to settle disputes between states using international law. The court consists of 15 judges which are elected by the UN General Assembly and Security Council. The judges have to be from different countries and they serve nine-year terms. Unlike other courts like the International Criminal Court (ICC), the ICJ does not prosecute individuals.

### Possible Solutions

#### For Advocates

If you are the **applicant party** a recommendation would be to prepare a witness that is not directly related to Mr Obiang Mangué or in the high ranks to create an authentic and unbiased argument. An argument that could be made in order to justify the diplomatic status of the property on 42 avenue Foch is that the transaction between France and Equatorial Guinea of the purchasing of the building was done legally, therefore Equatorial Guinea had the right to designate the building for the purpose it wished.

If you are the **respondent party** it would also be reasonable to bring up past cases of other states' investigations on Equatorial Guinea relating to funds embezzlement and money laundering. Consider bringing witnesses from other countries, such as from the USA who never received records of Equatorial Guinea using the settlement for the population's benefit. Another argument would be that the property on 42 avenue Foch is dismissible for diplomatic status due to Equatorial Guinea

only establishing that status after prosecution by France, therefore meaning that the property falls under regular jurisdiction. You might also argue that the evidence directs you to the fact that the property was purchased by Mr Obiang Mangué. A recommendation would be to prepare a witness that is an expert on the Vienna Convention in order to create an argument where the property on 42 avenue Foch never acquired the status of ‘premises of the mission’ under the Vienna Convention.

### For Judges

During the deliberations as a Judge make sure to examine the evidence and witness credibility. If you feel as though the advocates have not been able to explain their argument, make sure to ask questions. If the evidence presented by the advocates is not credible or authentic, weigh it as less relevant to the final verdict. Questions questioning the witnesses' authenticity such as date of birth are recommended, however, it is advised to not be too reliant on that.

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