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**REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES SUBMITTED  
BY THE GOVERNMENT OF EQUATORIAL GUINEA**

[Translation]

**I. Introduction**

1. I have the honour to refer to the Application submitted to the Court on 13 June 2016 instituting proceedings in the name of the Republic of Equatorial Guinea (hereinafter “Equatorial Guinea”) against the French Republic (hereinafter “France”), and, pursuant to Article 41 of the Statute and Articles 73 to 75 of the Rules of Court, to seise the Court of an urgent request for the indication of provisional measures in order to preserve the rights of Equatorial Guinea under international law, pending a decision on the dispute presented in the Application.

2. This request for the indication of provisional measures is made in the light of the order handed down on 5 September 2016 by the investigating judges of the Paris *Tribunal de grande instance*<sup>1</sup> and the summons dated 21 September 2016 issued by the Financial Prosecutor<sup>2</sup>.

3. The order of 5 September 2016 referred to the Paris *Tribunal correctionnel* Mr. Teodoro Nguema Obiang Mangue, Vice-President of Equatorial Guinea in charge of National Defence and State Security<sup>3</sup>, who, up until 22 June 2016, had served as Second Vice-President of the Republic in charge of Defence and State Security. By Note Verbale of 12 September 2016, Equatorial Guinea protested most strongly against this order<sup>4</sup>, which was made in flagrant violation of international law, and requested that France take all necessary measures to terminate immediately all the criminal proceedings instituted against the Vice-President, including those affecting the premises of its diplomatic mission located at 42 avenue Foch in Paris.

4. On 21 September 2016, the Financial Prosecutor issued a summons to the Vice-President, ordering him to appear on 24 October 2016 before the 32nd *Chambre correctionnelle* of the Paris *Tribunal correctionnel* for a hearing on the merits.

**II. Prima facie jurisdiction of the Court**

5. As indicated in the Application instituting proceedings<sup>5</sup>, the Court has jurisdiction to entertain the dispute submitted to it, under Article 35 of the United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000 (hereinafter the “Palermo Convention”)<sup>6</sup>, and under the Optional Protocol to

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<sup>1</sup>Paris *Tribunal de grande instance*, Order for partial dismissal and partial referral of proceedings to the *Tribunal correctionnel*, Paris, 5 September 2016 (Ann. 1).

<sup>2</sup>Financial Prosecutor, Summons, Paris, 21 September 2016 (Ann. 2).

<sup>3</sup>Presidential Decree No. 55/2016 of 21 June 2016, appointing the Vice-President of the Republic in charge of National Defence and State Security, Mr. Teodoro Nguema Obiang Mangue (Ann. 3).

<sup>4</sup>Note Verbale of 12 September 2016 from the Embassy of Equatorial Guinea to the Ministry of Foreign Affairs and International Development of France (Ann. 4).

<sup>5</sup>Application instituting proceedings of Equatorial Guinea, 13 June 2016, paras. 4-10.

<sup>6</sup>United Nations Convention against Transnational Organized Crime, adopted by the United Nations General Assembly on 15 November 2000 (Ann. 5).

the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, done at Vienna on 18 April 1961<sup>7</sup>. These instruments constitute a basis for *prima facie* jurisdiction enabling the Court to indicate provisional measures.

### III. Facts in support of the request

6. The facts in support of this request for the indication of provisional measures, set out in the Application instituting proceedings, are, in summary, as follows: as of 2007, the French courts initiated criminal proceedings against certain African Heads of State and members of their families. In the case of Equatorial Guinea, the French criminal investigations focused on Mr. Teodoro Nguema Obiang Mangue, at the time State Minister for Agriculture and Forestry of the Republic of Equatorial Guinea. His position in the government of Equatorial Guinea subsequently changed. On 21 May 2012, as part of a major government reshuffle undertaken pursuant to an amendment to the Basic Law (Constitution), he was appointed Second Vice-President in charge of Defence and State Security. On 22 June 2016, on the occasion of a reorganization of the executive branch, following presidential elections in April 2016, he was appointed Vice-President of the Republic in charge of National Defence and State Security.

7. In the context of the criminal proceedings initiated in France, against which Equatorial Guinea has protested firmly and continuously, France has refused to give effect to the immunity from foreign criminal jurisdiction *ratione personae* enjoyed by Mr. Teodoro Nguema Obiang Mangue. He is accorded this immunity under international law, in view of the fact that, as Vice-President, he is the holder of high-ranking office in the State. The post of Vice-President is of particular constitutional importance within the executive branch of the government of Equatorial Guinea. In holding this office, Mr. Teodoro Nguema Obiang Mangue has exercised and continues to exercise important functions falling within the sovereign prerogatives of Equatorial Guinea, such as heading and controlling its armed forces, police and immigration authorities. In addition, he 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. As a senior representative of his country, he participates in international negotiations and intergovernmental meetings on a regular basis and frequently has to travel abroad in that capacity and for those purposes.

8. Furthermore, the French courts and the French Ministry of Foreign Affairs and International Development have not respected the building located at 42 avenue Foch as premises of the diplomatic mission of Equatorial Guinea in France, or as the property of Equatorial Guinea.

9. Notwithstanding the steps taken by Equatorial Guinea to ensure respect for the diplomatic status of the building located at 42 avenue Foch, the French police have intruded upon the premises on several occasions. Alleging that it is used for private purposes, despite proof to the contrary, the investigating judges subsequently ordered its attachment under the Code of Criminal Procedure. That order of attachment was upheld by the *Chambre d'instruction* of the *Paris Cour d'appel*<sup>8</sup>.

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<sup>7</sup>Optional Protocol to the Vienna Convention on Diplomatic Relations, concerning the Compulsory Settlement of Disputes, done at Vienna on 18 April 1961 (Ann. 6).

<sup>8</sup>See the Financial Prosecutor's final submissions of 23 May 2016, p. 31 (Ann. 1 to the Application instituting proceedings of 13 June 2016).

10. In her final submissions of 23 May 2016, the Financial Prosecutor requested the referral of Mr. Teodoro Nguema Obiang Mangue to the *Tribunal correctionnel* and maintained that the property located at 42 avenue Foch in Paris “does not enjoy any legal protection since it is not part of the diplomatic mission of the Republic of Equatorial Guinea”<sup>9</sup>.

11. By an order dated 5 September 2016, the investigating judges referred Mr. Teodoro Nguema Obiang Mangue to the Paris *Tribunal correctionnel*, in effect to stand trial for the alleged offences<sup>10</sup>.

12. Notwithstanding the Note Verbale of 12 September 2016 from the Embassy of Equatorial Guinea to the French Ministry of Foreign Affairs and International Development<sup>11</sup>, the Financial Prosecutor issued a summons to the Vice-President on 21 September 2016<sup>12</sup>. By this summons the Vice-President is ordered to appear at a hearing on the merits on 24 October 2016. The referral order and the summons have been issued in flagrant violation of international law.

#### **IV. The rights that Equatorial Guinea is seeking to protect**

13. The rights of Equatorial Guinea that form the subject of the dispute are as follows: its right to sovereign equality, including the right to respect for the immunity from foreign criminal jurisdiction enjoyed by its Vice-President, as well as the immunity of its property; its right to non-intervention in its internal affairs; and its right to the inviolability, protection and dignity of its diplomatic mission in France. The personal immunity of the Vice-President and the inviolability of the building located at 42 avenue Foch in Paris, the subject of this request for the indication of provisional measures, derive from the principles of the sovereign equality of States and non-interference in States’ internal affairs, which are fundamental principles of the international legal order and to which reference is explicitly made in the Palermo Convention. The immunity and inviolability of the diplomatic mission are well-established in customary international law, as codified by the Vienna Convention on Diplomatic Relations.

#### **V. Urgency and the risk of irreparable prejudice**

14. This request is genuinely urgent. The pursuit of criminal proceedings in France against the Vice-President and the property of Equatorial Guinea, and France’s refusal to respect the building located at 42 avenue Foch in Paris as premises of Equatorial Guinea’s diplomatic mission in France, create a real and imminent risk of irreparable prejudice to the rights of Equatorial Guinea. All the more so since the order of 5 September 2016 cannot be appealed. The Vice-President is now summoned to appear at a hearing on the merits on 24 October 2016. This clearly shows that Mr. Teodoro Nguema Obiang Mangue may be given a custodial sentence at any time, and the building confiscated. In the past, the French courts have had no hesitation in issuing an arrest warrant against Mr. Teodoro Nguema Obiang Mangue, despite him invoking his immunity, and may do so again.

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<sup>9</sup>See the Financial Prosecutor’s final submissions of 23 May 2016, p. 33 (Ann. 1 to the Application instituting proceedings of 13 June 2016).

<sup>10</sup>Ann. 1.

<sup>11</sup>Ann. 4.

<sup>12</sup>Ann. 2.

15. The imminence of criminal proceedings against the Vice-President of Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue, constitutes an impediment to the exercise of his functions in the interest of his country. As the Court has found, “even the mere risk that, by travelling to or transiting another State a Minister for Foreign Affairs might be exposing himself or herself to legal proceedings could deter the Minister from travelling internationally when required to do so for the purposes of the performance of his or her official functions”<sup>13</sup>. This applies equally to a Vice-President of the Republic, in charge of National Defence and State Security.

16. As regards the premises of the diplomatic mission at 42 avenue Foch in Paris, these are now open to confiscation by the courts, and the diplomatic mission to expulsion as a result of the judicial sale of the building. Furthermore, since they are not recognized as such by France, there is a constant risk of intrusion, either by the police and the French judicial authorities or by private individuals. This is affecting the ability of the Embassy of Equatorial Guinea to carry out its day-to-day activities. But as the Court has asserted, “there is no more fundamental prerequisite for the conduct of relations between States than the inviolability of diplomatic envoys and embassies”<sup>14</sup>.

17. This conduct by the French authorities is causing serious and continued prejudice to the honour and the international image of Equatorial Guinea, and to the dignity of its Vice-President and of its diplomatic mission in France. This further underlines the urgency of the requested measures.

18. The order referring the Vice-President to the *Tribunal correctionnel* and the summons to appear, both issued after the Court had been seised and which will necessarily lead to a trial, constitute an aggravation of the dispute. In view of the seriousness and the continuing nature of the acts imputable to France, there is urgency, because a real and imminent risk exists of irreparable prejudice being caused to the rights of Equatorial Guinea.

## VI. Submissions

19. The conditions required for the Court to indicate the requested measures are satisfied. On the basis of the facts and law set out above, in view of the urgency, and in order to avoid irreparable prejudice to its rights at issue in these proceedings, Equatorial Guinea respectfully asks the Court, pending its judgment on the merits, to indicate the following provisional measures:

- (a) that France suspend all the criminal proceedings brought against the Vice-President of the Republic of Equatorial Guinea, and refrain from launching new proceedings against him, which might aggravate or extend the dispute submitted to the Court;
- (b) that France ensure that the building located at 42 avenue Foch in Paris is treated as premises of Equatorial Guinea’s diplomatic mission in France and, in particular, assure its inviolability, and that those premises, together with their furnishings and other property thereon, or previously thereon, are protected from any intrusion or damage, any search, requisition, attachment or any other measure of constraint;

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<sup>13</sup>*Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium), Judgment, I.C.J. Reports 2002, p. 22, para. 55.*

<sup>14</sup>*United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Provisional Measures, Order of 15 December 1979, p. 19, para. 38.*

(c) that France refrain from taking any other measure that might cause prejudice to the rights claimed by Equatorial Guinea and/or aggravate or extend the dispute submitted to the Court, or compromise the implementation of any decision which the Court might render.

20. Given the urgency of the situation, Equatorial Guinea respectfully asks the Court to hold a hearing on this request as soon as possible, and the President of the Court, as provided for in Article 74, paragraph 4, of the Rules of Court, to call upon France to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effect.

The Hague, 29 September 2016

*(Signed)* Mr. Carmelo NVONO NCA,

Ambassador of the Republic of  
Equatorial Guinea to the Kingdom of  
Belgium and the Kingdom of  
the Netherlands  
Agent of the Republic of  
Equatorial Guinea.

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