

Mr. Laurent Stefanini,
Chief of Protocol
Office of Protocol
Ministry of Foreign and European Affairs
37 Quai d'Orsay
75007 PARIS
France

Paris, March 16, 2012

Re: Appointment of Teodoro Nguema Obiang Mangue as Deputy Permanent Delegate of Equatorial Guinea to UNESCO.

Mr. Chief of Protocol,

We write to express our deep concern about the surrounding circumstances and the potential consequences of the decision made on October 13, 2012 by the government of Equatorial Guinea to appoint Mr. Teodoro Nguema Obiang to the post of Deputy Permanent Delegate of Equatorial Guinea to UNESCO.¹

We are particularly anxious to ensure that this appointment not serve to dangerously undermine the global norms relating to diplomatic privileges and immunities, which are universally recognized as existing to enable the proper functioning of international diplomacy and international organizations, and not to benefit any individual personally. In light of France's obligations to the international community to promote and strengthen measures to prevent and combat corruption and support international cooperation for these objectives, including with respect to the recovery of illicitly diverted assets, we urge you not to permit any abuse of diplomatic status to thwart lawful judicial process.

Taken only a few days after the seizure of some fifteen of Mr. Nguema Obiang's automobiles by the French police in connection with a judicial investigation into suspected receipt and laundering of the proceeds of corruption,² the decision to appoint Mr. Nguema Obiang to the post of Deputy Permanent Delegate of Equatorial Guinea to UNESCO raises important questions suggesting the possibility that the appointment might involve an attempt to hinder the investigation. Specifically, the circumstances of this appointment reveal troubling similarities with those surrounding the appointment of Mr. Pierre Falcone. As you will remember, on June 10, 2003, Mr. Falcone was "opportunistically named"³ Minister Plenipotentiary Representative of the Republic of Angola to UNESCO, which then allowed him to evade the judicial supervision measures to which he was subject in France as part of the investigation into arms sales to Angola (the "Angolagate" affair). Even if, after several months of proceedings, the privileges and immunities that Mr. Falcone sought to rely on were held inapplicable and a criminal conviction was successfully secured against him,⁴ there is no doubt that this appointment had seriously hampered the proper course of justice in France.

A number of factors lead us to fear that the motives of the Equatoguinean government may not be very different from those inducing the appointment of Mr. Falcone - namely the desire to use diplomatic immunity to thwart the course of justice in

¹ See the press release dated October 19, 2011 issued by the government of Equatorial Guinea:

<http://www.guineaecuatorialpress.com/noticia.php?id=1994>

² On September 28, 2011, the magistrates in charge of the investigation conducted a search of 42 Avenue Foch, 75008 Paris, and on that occasion seized about fifteen luxury vehicles. As part of that same criminal investigation, between February 14 and 23, 2012, the investigating judges conducted a second search in what appears to be the Paris residence of Mr. Nguema Obiang; and seized a number of personal property items of great value. It is worth noting that French authorities are not the only ones interested in Mr. Nguema Obiang's lifestyle. Indeed, last October, American authorities announced their commencement of civil proceedings seeking to confiscate assets of Mr. Nguema Obiang alleged to be the proceeds of corruption and to have been laundered in the United States. The proceedings target more than \$70 million of real and personal property. See the press release dated October 25, 2011 issued by the U.S. Department of Justice: <http://www.justice.gov/opa/pr/2011/October/11-crm-1405.html>

³ These are the words of the Cour de cassation characterizing the appointment of Pierre Falcone as Minister-Counselor at the Permanent Delegation of the Republic of Angola to UNESCO in the context of the "Angolagate" affair: Cass. Ch Crim., April 8, 2010, No. 09-88675.

⁴ Mr. Falcone was sentenced to 30 months in prison and a €375,000 fine (CA de Paris, April 29, 2011).

France. Aside from the virtual simultaneity between the seizure of Mr. Nguema Obiang's vehicles by the French police and the decision of the Equatoguinean government to appoint him as Deputy Permanent Delegate of Equatorial Guinea to UNESCO, the appointment decree states very clearly that the President of the Republic of Equatorial Guinea had decided to make the appointment "in response to the circumstances of Teodoro Obiang Mangué."⁵

Like the government of Equatorial Guinea, as it seems, you are aware, Mr. Chief of Protocol, that if your Office were to issue to Mr. Nguema Obiang a special residence permit, it could negatively impact the criminal investigation mentioned above.

It is unacceptable that an international organization such as UNESCO should be exploited for the purpose of thwarting the course of a judicial inquiry duly initiated in France. We note that the United Nations Convention on the Privileges and Immunities of the Specialized Agencies,⁶ the Headquarters Agreement between the French Government and UNESCO,⁷ and the Vienna Convention on Diplomatic Relations⁸ all expressly state that diplomatic privileges and immunities are granted to representatives in the interest of the Organization and not for their personal benefit.

To prevent a repetition of the Falcone precedent and to allow the magistrates to continue their investigation without hindrance, we ask you, Mr. Chief of Protocol, to refuse to endorse this appointment, as you are empowered to do under international law. Under Articles 7 and 9 of the Vienna Convention, and in accord with its rights as a sovereign, the receiving State has the power to limit the freedom of choice of the sending State by declaring the latter's representative *persona non grata*, or unacceptable - without having to explain its decision.⁹

Such a decision would in no way prevent Equatorial Guinea's representation to UNESCO since the Equatoguinean government could still be represented by others.¹⁰ This is precisely the position that the Cour de cassation upheld in the Angolagate case, finding, with respect to the indictment of Mr. Falcone, that "in such circumstances, nothing prevents a foreign State from maintaining its representation in international organizations" (see reference above).

This position is, moreover, the only one capable of ensuring France's compliance with its international obligations in the fight against corruption and money laundering – first and foremost of which being the United Nations Convention against Corruption.

Looking forward to hearing your responses to these issues, we assure you, Mr. Chief of Protocol, of our respectful consideration.

⁵ See the press release dated October 19, 2011 issued by the government of Equatorial Guinea:

<http://www.guineaecuatorialpress.com/noticia.php?id=1994>

⁶ "Privileges and immunities are accorded to the representatives of members, not for the personal benefit of the individuals themselves, but in order to safeguard the independent exercise of their functions in connexion with the specialized agencies." (Section 16)

⁷ "The immunities provided for in Articles 18 and 19 are accorded in the interests of the Organization and not for the personal benefit of the individuals themselves." (Article 21)

⁸ "[T]he purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States." (Preamble).

⁹ In practice, this option will take the form of a denial of accreditation or refusal to issue a special residence permit. See Commission du droit international, Projets d'articles sur les missions spéciales et commentaires (1967), page 387: http://untreaty.un.org/ilc/texts/instruments/francais/commentaires/9_3_1967_francais.pdf

¹⁰ In this regard see the list of members of the Equatoguinean delegation to UNESCO at:

<http://www.unesco.org/eri/portal/PermanentDelegations.asp?region=&language=fr&contr=&type=#G>

Signatory organisations on May 9, 2012 :



William Bourdon
William Bourdon
Président



Jean-Marie Fardeau
Jean-Marie Fardeau
Director France



Daniel Lebègue
Daniel Lebègue
President



Fabrice Tarrit
Fabrice Tarrit
President



Bernard Pinaud
Bernard Pinaud
Executive director



Tutu Alicante
Tutu Alicante
Executive director



Souhayr Belhassen
Souhayr Belhassen
President



Gladwell Otieno
Chairperson



Guillaume Grosso
Director France



Emmanuel Poilane
Emmanuel Poilane
Director



Emira Woods
Co-Director



James A. Goldston
Executive director



Miles Litvinoff
Miles Litvinoff
Coordinator



Nuria García
Vice-secretary



Simon Taylor
Director



Jonas Sewanou
Jonas Sewanou, Director (Benin)



Andrew Feinstein
Co-Director