

# France's *Biens Mal Acquis* Affair: Lessons from a Decade of Legal Struggle

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This paper is the eleventh in a series examining the challenges and opportunities facing civil society groups that seek to develop innovative legal approaches to expose and punish grand corruption. The series has been developed from a day of discussions on the worldwide legal fight against high-level corruption organized by the Open Society Justice Initiative and Oxford University's Institute for Ethics, Law and Armed Conflict in June 2014.

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## I. Introduction

On June 19, 2017, trial proceedings will open in Paris in a money laundering case that has become perhaps the preeminent example of how determined civil society groups can take the lead in prosecuting international grand corruption.

The defendant, Teodoro Nguema Obiang Mangue, is vice president of the small central African state of Equatorial Guinea (widely known as Teodorin, or little Teodoro, to distinguish him from his father, the country's dictatorial ruler, Teodoro Obiang Nguema Mbasogo).

Teodorin is brought before the court on charges of diverting corruptly acquired funds into investments on French territory that included a €110 million mansion on Avenue Foch in the heart of Paris, a fleet of luxury sports cars, and a 76 meter luxury yacht, valued at around €100 million. The charges carry a prison sentence of up to ten years, and fines of millions of euros. Yet the initial criminal complaint was brought not by French criminal prosecutors, but by non-governmental organizations devoted to fighting corruption, including the French lawyers group Association Sherpa, which works on a range of global economic justice issues, and Transparency International France, which focuses on combating corruption.

The opening of the trial before the Paris Criminal Court (*Tribunal Correctionnel*) — with was initially scheduled on January 2 further proceedings but was postponed until June at the request of the defense— is in itself a remarkable development. France (like with many other countries) has traditionally avoided scrutinizing the wealth of politically-influential foreign investors, particularly when French foreign policy interests in Africa may be at stake. Equatorial Guinea, while small, is a significant oil producer.

It is unlikely that the trial would ever have happened without a remarkable legal effort that began some ten years previously, in what has become known in France as the *Affaire des Biens Mal Acquis* (sometimes, “BMA”), or Ill-Gotten Gains Affair. Initially, few would have bet that a case brought by Sherpa would succeed in overcoming the numerous political and legal obstacles associated with the prosecution of a high-ranking foreign public official, and in arraigning him before the French courts. How this eventually came about was the result of a mix of dogged persistence and political change that included a battle for legal standing that went all the way to France's top appellate court and set an important legal precedent for future action.

## II. History of the Case

The *Biens Mals Acquis* Affair had its origins in a report published in 2007 by a French NGO, the Comité Catholique contre la Faim et pour le Développement (CCFD), which set out to assess the value of the accumulated assets in Western countries of 23

dictators and former dictators and their families.<sup>1</sup> Based solely on public sources of information, the research was necessarily non-exhaustive, but its findings were still startling: by CCFD's estimates, the value of foreign assets accumulated by the 23 leading families covered in the report totaled some 200 billion dollars.<sup>2</sup>

Concerned by the findings of this survey and especially by the volume of assets accumulated on French territory, and refusing to let this report disappear into oblivion (like so many others once they have fallen out of the media spotlight), Sherpa and its allies decided to take action.

In March 2007, Sherpa, together with two other associations (Survie and Fédération des Congolais de la Diaspora) filed a criminal complaint (*notitia criminis*) against the presidents of Congo-Brazzaville (Denis Sassou Nguesso), Gabon (Omar Bongo Ondimba, now deceased) and Equatorial Guinea (Teodoro Obiang Mbasogo, the father of Teodorin), as well as the members of their respective entourages (family members and close associates). The complainants claimed, based on CCFD's research work, that these individuals held considerable real estate assets on French soil that could not have reasonably been acquired through their salaries and emoluments alone. The complainants also alleged that, given the existence of serious suspicions of misappropriation of public funds surrounding these same individuals, these property investments likely involved money laundering.

A preliminary police investigation was undertaken in **June 2007**. This investigation corroborated most of Sherpa's allegations and further revealed the existence of a number of other assets, both real and moveable. It thus appeared that the "Bongo circle" owned at least 39 properties in France—17 of them in the name of Omar Bongo Ondimba (now deceased)—most of them located in the very well-to-do 16th *arrondissement* of Paris; the "Sassou Nguesso circle" (11 individuals) held no fewer than 112 bank accounts; and Teodoro Nguema Obiang Mangue, the son of the head of state of Equatorial Guinea, enjoyed an automobile fleet consisting of at least eight vehicles, valued at a total of over €4 million.

In spite of these findings, on **November 12, 2007** the charges were dropped by the French Public Prosecutor on the ground that the "offences [were] insufficiently proven."

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<sup>1</sup> The report was updated in June 2009 under the title *Biens mal acquis : à qui profite le crime ?*, available at [http://ccfd-terresolidaire.org/IMG/pdf/BMA\\_totalBD.pdf](http://ccfd-terresolidaire.org/IMG/pdf/BMA_totalBD.pdf).

<sup>2</sup> A figure that, unfortunately, in view of the developments in the BMA affair, now seems to be very short of the mark.

On **July 9, 2008**, Transparency International France (TI France), convinced by Sherpa to join this unprecedented legal initiative,<sup>3</sup> filed another complaint with the Paris Public Prosecutor. This complaint set out exactly the same facts as those that had been filed 16 months earlier by Sherpa and had no purpose other than to satisfy the procedural conditions for admissibility of its application to join the proceedings as a civil party (*constitution de partie civile*), pursuant to the then new Article 85 of the French Code of Criminal Procedure.<sup>4</sup> Thus, it was no great surprise when the Public Prosecutor decided not to pursue the case.

On **December 2, 2008**, TI France, represented by Paris attorney William Bourdon, Chairman of Sherpa, filed a criminal complaint with the Presiding Magistrate of the Examining Judges of the Paris Court (*Tribunal de Grande Instance de Paris*) petitioning to join the case as a civil party, in hopes of obtaining the commencement of a judicial investigation—which the Paris prosecuting authorities (*Parquet*) publicly, and in completely unprecedented fashion, opposed in a press release dated April 20, 2009.

Before ruling on whether or not to commence a judicial investigation, the Presiding Magistrate of the Examining Judges had to determine first whether TI France had the required legal standing: did TI France have a sufficient legal interest to justify its participation in the case, thereby allowing it to file a complaint?

In an order dated **May 5, 2009**, the Presiding Magistrate of the Examining Judges of the Paris Court accepted TI France's application to join the case as a civil party—a decision that should have allowed the commencement of a judicial investigation, had the prosecuting authorities not hastened to file an appeal. We note in this regard that the relentless opposition of the prosecuting authorities at that time towards this case was such that it ended up raising questions in parliament by Socialist Deputy André Vallini. In fact, on May 12, 2009, during the questions to the government, the Deputy asked the then-Minister of Justice Rachida Dati: “Did you intervene with the Paris prosecuting authorities in this case? If yes, in what capacity? If not, did other government authorities intervene in this case?”<sup>5</sup> In a decision handed down **October 29, 2009**, the Examining Chamber of the Paris Court of Appeals reversed the decision of the presiding magistrate of the examining judges and ruled, affirming the position

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<sup>3</sup> Sherpa proposed that TI France should file a petition to join the case as injured civil party: because of its anticorruption organizational purpose, TI France had, it was believed, a greater chance of being deemed admissible as a civil party in the proceeding than did Sherpa (whose organizational mandate went beyond anticorruption).

<sup>4</sup> Under Article 85, the petition to join the case as injured civil party would only be admissible if the party had first filed a simple complaint with the Public Prosecutor and shown either a decision by the Public Prosecutor declining to prosecute, or the passage of a period of at least three months since the initial filing before this magistrate.

<sup>5</sup> [http://www.assemblee-nationale.fr/13/cr/2008-2009/20090238.asp#P221\\_36264](http://www.assemblee-nationale.fr/13/cr/2008-2009/20090238.asp#P221_36264)

of the Attorney General (*Procureur Général*), that TI France would not be allowed to join the case as a civil party.

TI France filed an appeal before the supreme court and, in a decision rendered on **November 9, 2010**, the Criminal Chamber of the Court of Cassation reversed the decision handed down by the appeals judges, and accepted the complaint filed by TI France on December 2, 2008. It was a historic decision: not only was an association combating corruption recognized for the first time, and outside of any statutory authorization<sup>6</sup>, as having legal standing to institute corruption proceedings;<sup>7</sup> but also, and above all, the decision of the Court of Cassation allowed (three years after the filing of the initial complaint) for the appointment of an examining judge and the commencement of a judicial investigation.

The examining magistrates quickly focused on Teodorin's lifestyle. This choice, which was eminently strategic, may be easily explained:

- Teodorin was at the time already the target of a separate investigation by the US Department of Justice (DoJ); in fact, the DoJ had sent a request for mutual legal assistance to France in early September 2007 (while the French preliminary inquiry was underway);
- Since the start of the judicial investigation, the French magistrates had gained access to a significant volume of information about Teodorin. Beyond the results of the magistrates' own preliminary inquiry, and the evidentiary materials sent by DoJ as part of its request for mutual legal assistance, TI France had also submitted a report prepared by Sherpa that identified Teodorin as the possible beneficial owner of a vast real estate complex located at 42 Avenue Foch in the very chic 16th *arrondissement* – an asset that would come to be the focus of breathtaking developments in the case (see below);
- Unlike the other public officials targeted in the complaint, Teodorin did not at that time hold any official positions likely to confer upon him any personal immunity from criminal prosecution by the French courts (he was then Minister of Agriculture and Forestry in the Equatoguinean government).

Thus, the investigation advanced quickly in respect of Teodorin who, in response, launched with the help of his lawyers a series of appeals and other blocking manoeuvres. Unable to justify Teodorin's conduct legally, the defense strategy consisted largely of trying to abuse international law on immunity to protect both his person and his assets. Following this strategy, his lawyers argued that Teodorin benefited from immunity from criminal prosecution in French courts; as to the assets, they were presented as linked to the Equatoguinean diplomatic mission in Paris. This

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<sup>6</sup> Contrary to other associations defending collective interests (such as environmental associations), anti-corruption groups were not at that time allowed to bring criminal prosecution.

<sup>7</sup> The principle reflected in the decision by the Court of Cassation would subsequently be enacted into statutory law (see below).

strategy ultimately failed.

### III. Highlights of the Legal Battle

**September 28 and October 3, 2011:** 18 vehicles belonging to Teodorin were seized following two searches carried out at 42 Avenue Foch and nearby parking facilities. The vehicles seized by the French police included two Bugatti Veyrons, one Maserati MC12, one Porsche Carrera GT, one Ferrari Enzo and one Ferrari 599 GTO. The photos and videos of this spectacular seizure were widely publicized on the [internet](#) and other media.<sup>8</sup> These seizures were unsuccessfully challenged by Teodorin's attorneys.

**October 13, 2011:** The Equatoguinean government announced that it had appointed Teodorin as Equatorial Guinea's Adjunct Permanent Delegate to UNESCO<sup>9</sup> – a highly strategic decision given that such a position confers immunity from criminal prosecution; the Equatoguinean government did not even bother to downplay its motives, as can be seen in the related press release, which stated that this appointment “[was decided] in view of the circumstances affecting Teodoro Obiang Mangué.” In response, Sherpa and its partners sent a series of letters protesting this development to [UNESCO](#)<sup>10</sup> as well as to the [French government](#)<sup>11</sup> (France being the host state of the UN organization), deploring this delaying tactic and requesting that they oppose this nomination by all available means. Ultimately, Teodorin did not take up a position at UNESCO, but was instead appointed Second Vice President of Equatorial Guinea (see below).

**February 14 to 23, 2012:** An extensive search was carried out by agents of the Central Office for the Suppression of Major Financial Crimes (*Office Central pour la Répression de la Grande Délinquance Financière*) (OCRGDF) at 42 Avenue Foch, which then confirmed that Teodorin was actually the beneficial owner of the property. With total floor space of approximately 5,000 square meters distributed across five floors, Teodorin's Parisian “*pied-à-terre*” – valued at €110 million – boasted no fewer than 101 rooms, including a sports room, a discothèque with cinema screens, an oriental salon, a Turkish bath, and a hairdressing salon.

The search, which lasted for over an extraordinary 10-day period, mobilized some 20 investigators and resulted in the seizure of the equivalent of three containers of high-value objects. The Equatoguinean government denounced these actions as a violation of diplomatic privileges, claiming that the residence was the property of the Equatoguinean government, and was used for diplomatic purposes. In response, the

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<sup>8</sup> <http://gtspirit.com/2011/09/29/11-supercars-of-teodoro-obiang-nguema-mbasogo-seized-by-french-police/>

<sup>9</sup> See the [press release](#) published by the Equatoguinean government on October 19, 2011, <http://www.guineaecuatorialpress.com/noticia.php?id=1994>

<sup>10</sup> [https://asso-sherpa.org/sherpa-content/docs/newsroom/UNESCO\\_TNO\\_16%2003%2012\\_Final.pdf](https://asso-sherpa.org/sherpa-content/docs/newsroom/UNESCO_TNO_16%2003%2012_Final.pdf)

<sup>11</sup> [http://ccfd-teresolidaire.org/IMG/pdf/mae\\_tno\\_09.05.12.pdf](http://ccfd-teresolidaire.org/IMG/pdf/mae_tno_09.05.12.pdf)

French Ministry of Foreign Affairs maintained that the building was not at that time formally registered as a diplomatic residence. Appeals to oppose these seizures were also unsuccessful.

**May 21, 2012:** The President of Equatorial Guinea appointed Teodorin as Second Vice President of the Republic responsible for defense and security.<sup>12</sup>

**July 13, 2012:** An arrest warrant was issued against Teodorin following the latter's refusal to respond to a summons issued by the examining magistrates for purposes of examining him—a measure that was, once again, unsuccessfully challenged by his attorneys.

**July 19, 2012:** The examining magistrates ordered the seizure of the residence at 42 Avenue Foch. In response, the Equatoguinean government decided to hang the flag of Equatorial Guinea on the façade of the residence, affix a diplomatic plaque on the gate, and transfer a portion of its staff to the premises. Once again, in vain, the Equatoguinean government challenged the legality of the examining magistrates' actions before the French courts.

**March 18, 2014:** The examining magistrates issued an indictment against Teodorin, which was opposed by his attorneys, who claimed that he enjoyed immunity from criminal prosecution.

**April 16, 2015:** The Examination Chamber of the Paris Court of Appeals rejected the application for nullification filed by Teodorin's attorneys, ruling on this occasion that his nomination to the position of vice president was “*a nomination of circumstance.*” Teodorin's attorneys filed an appeal to the Court of Cassation.

**December 15, 2015:** The Court of Cassation rejected the immunity claim, stating that Teodorin could not claim the benefits of any personal immunity because his duties “were not those of Chief of State, Head of Government or Minister of Foreign Affairs”; nor could he benefit from functional immunity (to which all public officials are entitled) because “all the offences of which he was accused (...) were committed for personal purposes,” and bear no relation to his official functions.

**May 23, 2016:** The Financial Crimes Public Prosecutor (*Procureur de la République Financier*) prepared its final determination, ruling in favor of Teodorin's referral to the Criminal Court of Paris.

**June 13, 2016:** Equatorial Guinea filed legal action against France with the International Court of Justice (ICJ) in hopes of gaining legal recognition of Teodorin's

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<sup>12</sup>See the press released published by the Equatoguinean government on May 22, 2012, <http://www.guineaecuatorialpress.com/noticia.php?id=2668>



alleged immunity from criminal prosecution, along with the diplomatic status of the building located at 42 Avenue Foch.<sup>13</sup>

**June 22, 2016:** Teodorin was appointed “Vice-President of the Republic, Charged with National Defence and State Security.”<sup>14</sup>

**September 5, 2016:** The examining magistrates ordered Teodorin to be referred to the Criminal Court of Paris to respond to accusations of money laundering with respect to misappropriation of corporate assets, misappropriation of public funds, misappropriation of entrusted assets, and acts of corruption committed on French soil between 1997 and 2011. More precisely, according to the French magistrates, Teodorin illegally enriched himself by demanding improper payments from private companies seeking to do business in Equatorial Guinea; by diverting public funds – from 2004 to 2011 alone, some €110 million from the Equatorial Guinea Public Treasury had allegedly been diverted to Teodorin’s personal accounts; and by spending for personal purposes funds from several Equatoguinean companies; he then allegedly diverted the proceeds of these various offences to France (through transactions involving real estate and moveable assets).

**September 29, 2016:** In light of the imminent commencement of Teodorin’s trial, Equatorial Guinea called upon the ICJ to issue a provisional order (i.e. pending final decision from the ICJ on the merits), instructing France to suspend all criminal proceedings underway against the Vice-President of the Republic of Equatorial Guinea and to ensure the inviolability of the “diplomatic premises” located at 42 Avenue Foch (presumably, against a potential French decision to confiscate the property).<sup>15</sup>

**December 7, 2016:** The ICJ ruled on the provisional claims filed by Equatorial Guinea.<sup>16</sup> Concerning the dispute relating to the premises at 42 Avenue Foch, in anticipation of a final decision on the case brought before the ICJ, the Court ordered France to ensure that the premises being presented as hosting the diplomatic mission of Equatorial Guinea should enjoy treatment equivalent to that required by the Vienna Convention. It further ordered that France suspend the *execution* of any confiscation measure prior to final resolution of the case by the ICJ—a measure that would not, however, in any way deprive the French judges of the possibility of *issuing* an order of confiscation.

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<sup>13</sup> <http://www.icj-cij.org/docket/files/163/19028.pdf>

<sup>14</sup> <http://www.guineaecuatorialpress.com/noticia.php?id=8030&lang=en>

<sup>15</sup> <http://www.icj-cij.org/docket/files/163/19126.pdf>

<sup>16</sup> <http://www.icj-cij.org/docket/files/163/19282.pdf>

With regard to the request from Equatorial Guinea concerning Teodorin's immunity, the Court declared itself incompetent to hear it. Therefore, there were no more obstacles to prevent Teodorin from being brought before the Paris Criminal Court.

**December 15, 2016:** In the run-up to the scheduled January 2017 opening of the Teodorin trial, the government of Equatorial Guinea announced that it had detained and questioned 5 employees of the Société Générale Bank of Equatorial Guinea, including three French citizens, for allegedly handing over secret banking details to the French investigation.<sup>17</sup>

## IV. Impact of the Case

At the time of writing, the eventual outcome of the Paris trial remains unknown. Yet it is possible to identify several ways in which the *Biens Mal Acquis* affair has already had an impact that goes beyond the specific case of the Obiang family and Equatorial Guinea.

In France, the expression *Biens Mal Acquis* has now largely passed into common usage, and the affair has played a significant role in raising public awareness of the extent to which France and other European countries have provided a safe haven for the proceeds of corruption. This awareness has been highlighted by external developments, such as the widely reported events of the Arab Spring<sup>18</sup> and the fall of Victor Yanukovych's corrupt regime in Ukraine. Internationally, the case has contributed to growing momentum in the battle against corruption, and the related efforts around the recovery of illicit assets.

The case also brought about changes in French positive law in France on three important issues:

**1) It enabled anti-corruption groups to be granted the status of injured parties before the courts, thus enabling them to institute criminal proceedings relating to crimes of corruption.** The major decision handed down by the Court of Cassation on November 9, 2010 was finally codified in the Law of December 6, 2013: since then, anti-corruption associations are allowed to act in court and a large number of corruption cases have also been filed at the initiative of Sherpa, TI France and Anticor (the largest anti-corruption groups in France).

**2) It ordered the referral of an incumbent foreign public official to a criminal court in order to respond to accusations of corruption.** While other jurisdictions

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<sup>17</sup> <https://www.ft.com/content/1e896c2a-c8fc-11e6-8f29-9445cac8966f>

<sup>18</sup> Note that in 2011, Sherpa and TI France engaged in a new series of "BMA"-type proceedings against Hosni Mubarak (Egypt), Zine el-Abidine Ben Ali (Tunisia), Muammar Gaddafi (Libya) and Bashar al-Assad (Syria), as well as a number of members of their respective entourages. These various complaints allowed for the rapid commencement of judicial investigations into these new cases of large-scale corruption.

had already ruled that corruption could not be considered as official acts enjoying functional immunity from prosecution (see, for example, the proceedings filed in the United States and in Switzerland against former Ukrainian Prime Minister Paul Lazarenko), this is however, to our knowledge, the first time such a determination has been made in respect of an *incumbent* public official (up to then, only former officials had been targeted).

**3) It strengthened the independence of justice in France.** Public disapproval of the numerous efforts by the prosecuting authorities to block progress in the BMAS Affair appears to have played an important role in passage of the law of July 25, 2013, which provides that the Minister of Justice can no longer specifically instruct public prosecutors with respect to their handling of individual cases.

These various victories – judicial, legal and political – are the result of a combination of **three principal factors**:

**(1) The legal framework**

French law—both substantive and procedural—was particularly propitious to the favorable development of the *Biens Mal Acquis* Affair. Two aspects specifically deserve to be highlighted.

The possibility afforded to NGOs to join a case as a civil party and thus to overcome the inertia of the prosecuting authorities: without TI France’s petition to join the case as a civil party (and, of course, the Court of Cassation’s decision to accept it), the *Biens Mal Acquis* Affair would, in fact, have ended on November 12, 2007, with the prosecuting authorities’ decision to drop the case.

TI France’s role was all the more valuable in this case, in which the prosecuting authorities not only tried to block the commencement of the judicial investigation, but also, at least up until 2012,<sup>19</sup> obstructed progress in the investigation by specifically refusing to grant the examining magistrates the necessary authorization to investigate the new facts that were uncovered in the course of the investigation. Even though it should only have been a mere formality, the prosecuting authorities did, in fact, refuse on at least two occasions to follow up on such requests from the investigating magistrates, thus forcing TI France to overcome the prosecution office by filing additional complaints.

It is further worth noting that, the status of civil party confers a certain number of rights (right of access to the case files, right of appeal, right to submit observations and right to request additional investigative measures)—rights which TI France

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<sup>19</sup> In fact, we note that the prosecuting authorities’ attitude did not change until the election of François Hollande, leader of the Socialist Party, as President of France in 2012.

made sure to exercise and which also advanced the investigation by the examining magistrates (see below).

More generally, in light of the *Biens Mal Acquis* Affair (as well as the case filed in the Spanish courts by the NGO Asociación Pro Derechos Humanos de España (APDHE)<sup>20</sup>), it is clear that the ability of civil society actors to file criminal complaints as civil parties is a valuable weapon in effectively combating corruption in “sensitive” political-financial cases.

The manner in which money laundering is understood under French law: money laundering can be pursued in France as long as the illegal conduct that generated the illicit wealth (the predicate offences) would constitute a criminal offence under the French criminal code if it were committed in France. It does not matter where this illegal conduct took place, nor whether it has ever been pursued nor whether the offender has been convicted; it does not matter if the conduct constitutes a criminal offence in the foreign country where it took place (no dual criminality requirement applies<sup>21</sup>).

This autonomy of the offence of money laundering specifically countered the argument raised on numerous occasions by Teodorin’s attorneys, who fallaciously sought to establish that the predicate offences (and specifically the numerous misappropriations of corporate assets) did not constitute offenses under Equatoguinean law (and, accordingly, could not be prosecuted in France) – an argument that, to be sure, did not prevail in the courts.

## (2) Teodorin’s personality

Teodorin’s appetite for flamboyant and extravagant luxury consumption significantly assisted our efforts to mobilize both public and official interest in this case from the start. In fact, his personal profligacy stands in marked contrast to the impoverished social and economic conditions prevailing in his homeland, where most of the population of some 750,000 has seen only limited benefits from the country’s oil wealth. It also underlined the obvious gap between his supposed official salary (less than \$100,000) and his personal consumption habits that would make even the most uninformed observer wonder about the source of the funds.

In addition, his apparent indifference to the proceedings filed against him, and his readiness to maintain his lifestyle unchecked, fueled the impression that he believed he was above the law. [An article from the daily newspaper \*Le Monde\*](#), for instance, reported in June 2011 that *in 2009* – two years after the BMA proceedings had

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<sup>20</sup> See article in this volume by Nuria Garcia Sanz.

<sup>21</sup> Note that numerous jurisdictions – importantly, including the United States – *do* require dual criminality as a condition for prosecution of the laundering of proceeds of an underlying offense committed abroad.

commenced – Teodorin had chartered an airplane that made a stopover in France with 26 luxury cars on board (including seven Ferraris and five Bentleys). According to this same article, Teodorin spent no less than €18 million at the auction sale of the collection of Yves Saint-Laurent and Pierre Bergé that was held in Paris in February 2009.

This impression of arrogance, combined with the various delaying tactics employed to thwart the judicial process, most certainly encouraged the French magistrates (both the examining magistrates and the judges who heard the various appeals filed by Teodorin’s and Equatorial Guinea’s attorneys) to demonstrate tenacity and, it must be said, a certain audacity in handling this case.

### **(3) Civil Society Support for the Proceedings**

Sherpa and TI France did not limit themselves to filing the case; they actively supported it, primarily in two different ways:

Supporting the judicial investigation: Although not formally a party to the proceeding, Sherpa nevertheless actively contributed to the successful progress of the judicial investigation. Sherpa’s legal experts performed important research work on various points of law likely to impede the successful outcome of the proceeding (research into judicial precedents and other relevant decisions). This specialized work supported the magistrates, who would not have been able to assign sufficient resources to this effort given their overall case load.

Sherpa also supported the judicial investigation by collecting information and potential evidence,<sup>22</sup> both from sources who contacted the group, and from allies involved in legal actions underway in both Spain and the United States<sup>23</sup>. This material was then forwarded to the magistrates responsible for the investigation through the intermediation of TI France in its capacity as civil party.<sup>24</sup> All this research largely supported the work of the magistrates;<sup>25</sup> most notably, the discovery

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<sup>22</sup> By expanding the media coverage of the initial complaint, Sherpa received enormous volumes of testimonies and information from various sources: witnesses, members of the opposition, members of civil society, etc. We note in this regard that for many people it is much less intimidating to approach an NGO than judicial authorities, which once again demonstrates the advantages of civil society participation in judicial processes.

<sup>23</sup> Sherpa worked closely with the Open Society Justice Initiative and APDHE, which enabled Sherpa to monitor the development of proceedings filed in the United States and Spain.

<sup>24</sup> TI France also requested that the magistrates undertake a certain number of additional investigations (hearings, etc.) which facilitated the progress of the examining magistrates.

<sup>25</sup> It goes without saying that neither Equatorial Guinea, Congo-Brazzaville or Gabon provided support to the French judicial authorities.

of the property located at 42 Avenue Foch resulted from a detailed investigation carried out by Sherpa.<sup>26</sup>

Raising media awareness: Sherpa and TI France remained active throughout the process, to denounce the prosecuting authorities' initial lack of action, as well as their various blocking attempts, and Teodorin's own delaying tactics (particularly his attempt to join UNESCO), or simply to highlight specific developments in the matter. The numerous media reports about the case (both in France and abroad) certainly kept the magistrates aware of the importance of the stakes in question, which undoubtedly encouraged them in their tenacity and audacity.

While civil society contribution was extremely important for the case, it was not without cost or risk. Any civil society organization preparing to engage in this kind of high level effort against powerful and influential political figures must keep in mind that the confrontation does not only take place in court, but can expose those involved to very serious risks outside the courtroom. As essential as it might be, the involvement of individuals or organizations from local civil society should only be contemplated if their safety can be assured.

These risks were painfully underlined by two incidents in 2008 and 2009. On December 30 and 31, 2008, several Gabonese militants who had publicly expressed their support for the *Biens Mal Acquis* Affair<sup>27</sup> were arrested in the capital Libreville. Accused of "attempts to destabilize the regime", they were detained in violation of all regular procedures and under particularly worrying conditions for 12 days —a duration that could have been even longer without the mobilization of Sherpa and its partners, who immediately denounced these arrests through press releases, and organized legal assistance on site.

We also note the tragic loss of Bruno Ossebi and his family. On December 3, 2008, the day after TI France's petition to institute a judicial investigation, Bruno Ossebi, a Franco-Congolese activist who ran a blog denouncing the misappropriations of the Congolese regime, contacted Sherpa with the idea of joining in the proceedings. On January 21, 2009, the house that Bruno Ossebi occupied with his companion and the latter's two small children was the scene of a terrible fire. Ossebi's companion and her two children died in the blaze; as for Bruno, he was transported to the Brazzaville military hospital. Even though his medical condition appeared to be stable and the French Foreign Affairs Ministry was preparing his repatriation to France, Bruno died

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<sup>26</sup> We note in this regard that it is not strictly necessary to have the investigative powers of law enforcement authorities nor to resort to necessarily costly private investigation services to establish the *prima facie* existence of acts of corruption: the information is there (witnesses, press articles, reports from civil or international organizations, company records, etc.): all that is needed is to exploit them skillfully.

<sup>27</sup> Including Gregory Ngbwa Mintsu, who tried to join the BMA proceeding, and Marc Ona, coordinator of "*Publiez ce que vous payez*" [Publish what you pay] (PCQVP), Gabon.

suddenly on the night of February 1-2. According to [the investigation carried out by Reporters sans Frontières](#),<sup>28</sup> Bruno's home was razed fewer than 14 hours after the fire, even though no investigation was made of the scene. No autopsy was performed on Bruno Ossebi's body. All the evidence that might have contributed to understanding what happened during the nights of January 20 and February 1 was thus destroyed.

On a much lower scale, Sherpa, TI France and their respective chairmen faced numerous disinformation campaigns aimed at discrediting them. Sherpa, for example, was at one point accused of being financed by the CIA. Most recently, after Teodorin's referral to the Criminal Court for trial, several African websites carried an online statement supposedly issued by a previously unknown coalition of 1,800 unnamed African NGOs, accusing Sherpa's director William Bourdon of seeking to destabilize Africa.<sup>29</sup>

Although these attacks did not affect the course of the judicial proceeding (at least not directly), fending them off consumed a great deal of energy, since it was essential to ensure that false allegations did not take root among local public opinion. In addition, the lengthy judicial proceedings and numerous related legal actions for slander could have been a financial black hole for Sherpa and TI France. This risk was offset part by the low cost of access to the courts and investigative magistrates in France, and to the provision of *pro bono* legal services by the lawyers involved, in particular the leading attorneys, Sherpa's Bourdon and Emmanuel Piwnica of TI France.

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<sup>28</sup> <https://rsf.org/fr/rapports/rapport-denquete-sur-la-mort-du-journaliste-franco-congolais-bruno-jacquet-ossebi>

<sup>29</sup> [“‘Destabilisation de l’Afrique’: 1,800 ONG vont porter plainte contre Sarkozy!”](#) [“Destabilization of Africa: 1,800 NGOs file complaint against Sarkozy!”] (*La Tribune Afrique*: November 30, 2016).