

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Berlin, 12 August 2014

Global settlement of corruption-related cases involving more than \$70 million in alleged proceeds of corruption held by Teodorin Nguema Obiang

Dear Attorney General Holder:

I am writing to you on behalf of the UNCAC Coalition to express our concerns about the pending global settlement of corruption-related forfeiture actions involving more than \$70 million in real estate and luxury goods held by Teodorin Nguema Obiang (TNO). The UNCAC Coalition is a global network of over 350 civil society organisations (CSOs) in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC).

We laud the U.S. government's enforcement initiatives to counter grand corruption and impunity and would like to encourage you to ensure that in the above-referenced cases the right message is being sent.

The UNCAC Coalition has been following closely the forfeiture cases in question since their announcement by the Justice Department in October 2011. "We are sending the message loud and clear: the United States will not be a hiding place for the ill-gotten riches of the world's corrupt leaders" then declared Assistant Attorney General Lanny A. Breuer of the Justice Department's Criminal Division.¹

Made in the wake of the Arab Spring, this announcement further coincided with the 3rd Conference of States Parties (CoSP) to the UNCAC in Marrakesh where governments renewed their commitments to deny safe haven to the proceeds of corruption and to enhance asset recovery efforts.

The enforcement action was a major breakthrough in the global fight against grand corruption and impunity that gave concrete teeth to the U.S. Kleptocracy Asset Recovery Initiative, which, as you stated during the 2010 African Union Summit, aims at "combating large-scale foreign official corruption and recovering public funds for their intended – and proper – use: for the people."²

¹ Department of Justice, "Department of Justice Seeks to Recover More Than \$70.8 Million in Proceeds of Corruption from Government Minister of Equatorial Guinea" (October 25, 2011), available at <http://www.justice.gov/opa/pr/2011/October/11-crm-1405.html>.

² Department of Justice, "Attorney General Holder at the African Union Summit" (July 25, 2010), available at <http://www.justice.gov/ag/speeches/2010/ag-speech-100725.html>.

Since the launch of the proceedings, several civil forfeiture complaints have been filed and/or amended. All of these complaints contain detailed and astonishing allegations of massive corruption and money-laundering practiced by TNO—including alleged extortion, misappropriation, and bribery—that the Department of Justice asserts underlay his extravagant lifestyle.

The UNCAC Coalition salutes the genuine effort that the Department of Justice has made in pursuing these cases so far, as well as the transparency of the proceedings through the regular publication of court documents.

While recognizing the difficulties encountered in the cases and the enforcement benefits of settlements, the UNCAC Coalition fears that the contemplated settlement may, if not properly framed, send the wrong message and set a harmful precedent. Such an outcome would be a major and regrettable step backwards that would undermine both the global anti-corruption fight and the U.S. Kleptocracy Initiative.

To prevent this from happening, the UNCAC Coalition urges you to ensure that the final outcome truly serves justice by considering the following measures:

1. The settlement should **provide clear, detailed and accurate accounts of the facts and evidence.**
2. The settlement should include **forfeiture of any and all the assets identified in the course of the proceedings that are believed to be the proceeds of corruption pursuant to the internationally agreed standards set out in the UNCAC.** This is in line with the Asset Recovery Resolution that was adopted during the last CoSP in Panama: *Taking into account the need to hold corrupt officials accountable by depriving them of their stolen assets.*³
3. The settlement should be in accordance with Chapter V of the UNCAC, which provides for the **repatriation of illicit property to the country from which it was taken.** In particular, and bearing in mind the “particular importance of the recovery of stolen assets for sustainable development” (Cf. Asset Recovery resolution adopted in Panama), the Department of Justice should take necessary measures to 1) ensure that assets are returned for the sole and exclusive benefit of the Equatoguinean people and 2) prevent said assets from being misused/recycled through corruption.⁴ This may include establishing a trust fund for the Equatoguinean people into which the forfeited funds would be placed and subsequently disbursed for their benefit.
4. The settlement should further **address all the consequences of corruption** in line with Article 34 of the UNCAC.

³ Resolution 5/3-Facilitating International Cooperation In Asset Recovery, available at <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session5-resolutions.html>

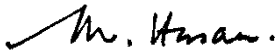
⁴ In that regard, allow us to remind you of the operative clause that the US delegation attempted to include in the AR resolution while in Panama: *[12bis. States requested to repatriate funds of illicit origin (...) have a responsibility towards societies affected by corruption to make every effort to achieve the repatriation of funds of illicit origin to the countries of origin in order to diminish the negative impact of non-repatriation, including on the enjoyment of human rights, in particular economic, social, and cultural rights in the countries of origin]*

5. The settlement should **not preclude further enforcement action**, whether by criminal or civil proceedings, against TNO himself or against the alleged accomplices and those who have allegedly engaged in, aided or abetted the laundering of proceeds of corruption in the U.S.
6. The settlement should be **subject to a judicial hearing and court approval** in the U.S.
7. The final agreement should be **made publicly available** by the Department of Justice.

Such measures are critical for the effective and proper resolution of the cases and for the overall fight against corruption. Moreover, they are in line with both the objectives of the U.S. Kleptocracy Asset Recovery Initiative and the international commitments the U.S. made under the UNCAC. The UNCAC Coalition hopes the United States government will live up to its commitments.

We thank you for taking the time to consider the views of the UNCAC Coalition on this important matter. We would welcome an opportunity to discuss our letter with you further.

Yours sincerely,



Dr. Manzoor Hasan
Chair, UNCAC Coalition