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联合国教育、  
科学及文化组织

## Note on the UNESCO-Obiang Nguema Mbasogo International Prize for Research in the Life Sciences Obiang Prize

March 2, 2012

1. The Legal Office has been asked by the Executive Board for advice regarding the legal implications of recent communications from the Government of Equatorial Guinea (“the Government”) on the implementation of “the UNESCO-Obiang Nguema Mbasogo International Prize for Research in the Life Sciences” (hereinafter “the Obiang Prize”).

2. Before examining the Obiang Prize in particular, it is important to understand the current framework for the operation of UNESCO prizes. On March 9, 2005, the Executive Board examined and approved a report by the Director General providing an Overall Review of UNESCO Prizes. (See 171 EX/Decision 24, ¶16). This report included model prize statutes and financial regulations and provided, notably, that “[t]he statutes and financial regulations for each existing and future UNESCO prize shall conform to the provisions of the standard model texts contained in Annexes I and II of the present document.” (*Id.* at ¶15(r) (emphasis added)). In 171 EX/Decision 24, the Executive Board endorsed those model statutes and financial regulations, thereby making them the framework for all UNESCO prizes.

3. In accordance with this framework, prize statutes must name the donor for the prize in question. (See Report by the Director General on the Overall Review of UNESCO Prizes, 171 EX/19). Thus, the source of funding is a key element in the establishment of any UNESCO prize.

4. On September 29, 2008, in its decision 180 EX/57, the Executive Board established the Obiang Prize, by approving the statutes of the Obiang Prize (“the Prize Statutes”), which were formulated in accordance with the model statutes. The statutes constitute the sole legal text governing the prize. Article 2.2 of the Prize Statutes provided that “[t]he Prize shall be funded by *the Obiang Nguema Mbasogo foundation for the preservation of life* and shall consist of payment of US\$ 3 million...” (emphasis added).

5. In a letter dated February 9, 2012, the Minister of Education and Science of Equatorial Guinea, Mr. Joaquín Mbana Nchama, informed the Chairperson of the Executive Board that the prize funds came from the Public Treasury of Equatorial Guinea. Specifically, the letter stated:

*The 3,000,000 USD donated by Equatorial Guinea to UNESCO in April 2009 to finance the Prize comes from the Public Treasury of the republic of Equatorial Guinea, the same Public Treasury that pays regularly the contributions of Equatorial Guinea to UNESCO...*

6. Ten days later, on February 22, 2012, the Permanent Delegation of Equatorial Guinea sent to the Executive Board a *note verbale* in which it stated that the “donor of the Prize is *from now on* the Government of Equatorial Guinea.” (emphasis added)

7. In light of these two recent communications from the Government, it is clear that the Obiang Foundation is not – or is no longer – the donor of the Prize funds, as required by the Prize Statutes adopted by the Executive Board. Accordingly, there is a material discrepancy between the Prize Statutes and the Government’s explanations in its recent communications with respect to the source of the funding of the prize. Under these circumstances, the Legal Office could not advise the Director General to use the funds currently in UNESCO accounts for the implementation of the prize.

8. During the debates of the Working Group, questions were raised by delegates as to whether the Prize Statutes could be amended. The Prize Statutes, like any UNESCO prize statutes, may indeed be amended. Specifically, Article 10 of the Prize Statutes provides that “[a]ny amendment to the present Statutes shall be submitted to the Executive Board for approval.”

9. Although the Prize Statutes may be amended, it would not be possible in this case to simply delete and replace the name of the donor. In other words, one could not simply delete the reference to the Obiang Nguema Mbasogo Foundation in Article 2.2 and replace it with a reference to the Government. As with any UNESCO prize, a change of the donor is a material change and would require undertaking a feasibility study with respect to this new donor and consultation with the original donor, in this case, the Obiang Foundation. Indeed, in the Executive Board’s decision 182 EX/Decision 25 of November 26, 2009, it requested that the Director-General submit to it a feasibility study before it considers any proposal for the creation of any new UNESCO prize. Thus, as a practical matter, even if the Executive Board and the Government wished to amend the Obiang Prize Statutes rather than create a new prize, there would be no difference. Whether the statutes are amended or a new prize is established, a feasibility study considering the possibility of a prize funded by the Government while at the

same time negotiating with the Obiang Foundation a termination of the prize that was to be funded by it, would have to be undertaken.

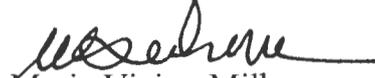
10. During the Working Group's debates, a delegate also raised the question of the meaning of Article 4 of the Annex to the Prize Statutes. The Prize Statutes contain one Annex, which is entitled "Financial Regulations of the Special Account for the UNESCO-Obiang Nguema Mbasogo International Prize for Research in the Life Sciences." Article 4 of this Annex states in part that "[t]he income of the Special Account shall consist of: (a) voluntary contributions from States, international agencies and organizations, as well as other entities." Thus, under the prize's Financial Regulations, entities other than the primary donor (the Obiang Foundation) may *also* contribute to the prize. However, since it has been recently made clear that the Obiang Foundation never contributed the required US\$3 million, the requirements of the Prize Statutes were never met. Accordingly, additional contributions from entities other than the donor cannot be accepted. In any event, Article 4 of the Financial Regulations may not be invoked in order to change the donor of the prize because this would be tantamount to an amendment and as stated above, this would not be in and of itself sufficient. As discussed above, a feasibility study would have to be undertaken if the prize donor were to be changed from the Obiang Foundation to the Government.

11. Finally, the question has also been raised as to the possibility and the implications of amending the name of the Obiang Prize and as to whether a change of the prize name could remedy the obstacles described above. As a general proposition, the name of any UNESCO prize must appear in the prize statutes. (*See* the Report of the Director General on the Overall Review of UNESCO Prizes, Document 171 EX/19 at 3, and the Model Statutes for UNESCO Prizes, Article 2.1). The name of a prize cannot be changed unilaterally by the donor or any other party, but rather must be approved by the Executive Board and by the original donor (in this case, the Obiang Foundation).

12. In this case, Article 2.1 of the Prize Statutes provides that "[t]he Prize shall be entitled 'the UNESCO-Obiang Nguema Mbasogo International Prize for Research in the Life Sciences.'" On November 7, 2011, the Permanent Delegation of Equatorial Guinea sent a *note verbale* stating that the "President of the Republic of Equatorial Guinea, His Excellency Obiang Nguema Mbasogo, has decided that the UNESCO-Obiang Nguema Mbasogo International Prize for Research in the Life Sciences should be called the UNESCO-Equatorial Guinea International Prize." Even if the Executive Board were willing to consider this proposal, a mere

change in the name of the Obiang Prize would not alone suffice to remedy the difficulties outlined above. If the name of the prize were changed so as to refer to the Government rather than the Obiang Foundation, the problem would remain that the donor of the prize has changed. As discussed above, a feasibility study would have to be undertaken to consider the possibility of a prize offered by the Government, rather than the Obiang Foundation. Furthermore, the original donor would have to be consulted.

13. In sum, in light of the recent communications from the Government, the Prize Statutes as currently drafted are no longer implementable.

  
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