



February 7, 2012

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-5546

Re: Disclosure of Payments by Resource Extraction Issuers, File No. S7-42-10

Dear Secretary Murphy:

We appreciate the opportunity to comment on the proposed rules related to the implementation of Section 1504 of the Dodd-Frank Act.¹ The enclosed comments supplement the comments previously submitted on behalf of EG Justice in our letter of March 29, 2011.² The following provides an update on the importance of strong and robust rules for the people of Equatorial Guinea and responds to the exemption issue raised by other commentators in letters addressed to the Commission.

We commend the Commission for the hard work it has invested in drafting the final rules, especially given the other demands and constraints on the Commission's finite resources. We stand ready to provide additional information as necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tutu Alicante".

Tutu Alicante
Executive Director,
EG Justice

A handwritten signature in black ink, appearing to read "Joseph Kraus".

Joseph Kraus, Ph.D.
Program & Development Director,
EG Justice

¹ EG Justice is a member of the Publish What You Pay Coalition and the leading international non-governmental organization solely dedicated to promoting human rights, the rule of law, transparency, and civic participation in Equatorial Guinea.

² EG Justice's March 29, 2011 comment is available on the Commission's website at <http://sec.gov/comments/s7-42-10/s74210-77.pdf>.

1. Events in Equatorial Guinea Demonstrate Urgent Need for Strong Rules

A series of events since the submission of our previous comment highlight the urgent need for the Commission to issue strong and robust rules to enforce provision 1504.

In recent months, there have been developments in multiple corruption investigations in both France and the United States into the activities of members of the government of Equatorial Guinea, the fourth largest Sub-Saharan African supplier of oil to the United States.³ These investigations highlight the very real possibility that **the country's finite resource revenues are being siphoned off by government officials** and used for personal profit rather than to benefit the country's citizens. In September 2011, French authorities seized 11 "supercars" worth at least **\$5 million** from the residence of President Obiang's family in Paris as part of an ongoing corruption investigation into President Obiang's eldest son Teodoro Nguema.⁴ In October 2011, the United States Department of Justice filed two forfeiture claims to seize more than **\$70 million** in assets belonging to Teodoro Nguema based on its determination that they were acquired using funds obtained from "extortion and/ or the misappropriation, theft, or embezzlement of public funds."⁵ According to a December 2011 report by Global Financial Integrity, Equatorial Guinea lost **\$6.27 billion** in illegal financial outflows between 2000 and 2009.⁶ Greater transparency of resource revenue flows could help stymie such illicit outflows by placing pressure on the government to account for the money it receives.

EG Justice has documented **the construction of more than a dozen presidential palaces** in Equatorial Guinea, a country the size of Maryland with a population of 700,000. We have learned that the government, without consulting the will of the people (elections are routinely marred by widespread voter fraud and other irregularities), is spending an untold amount of money to construct an entirely new capital city in the middle of the rainforest, where only dirt roads and small villages existed previously. **Meanwhile, residents in the country's existing cities go without reliable access to running water, quality schools, affordable healthcare, or electricity.**

³ U.S. Energy Information Administration. 2011. http://www.eia.gov/dnav/pet/pet_move_impcus_a2_nus_epc0_im0_mbbldpd_a.htm.

⁴ EG Justice. 2011. "Cars Seized," <http://www.egjustice.org/post/cars-seized>.

⁵ U.S. Department of Justice. 2011. "Complaint for Forfeiture in REM," <http://www.egjustice.org/sites/default/files/DOJ%20Forfeiture%20Complaint%20-%20Gulfstream%20Jet.pdf>.

U.S. Department of Justice. 2011. "First Amended Verified Complaint for Forfeiture in REM," <http://www.egjustice.org/sites/default/files/DOJ%20Forfeiture%20Complaint%20-%20House%20+%20Car.pdf>.

⁶ Global Financial Integrity. 2011. "Illicit Financial Flows from Developing Countries Over the Decade Ending 2009," <http://iffdec2011.gfintegrity.org/>.

As noted in our previously submitted comment,⁷ **Equatorial Guinea is an example of where the Extractive Industries Transparency Initiative (EITI) has thus far failed.** The country was delisted from the EITI in 2010 after failing to meet the initiative’s benchmarks for transparency and civic participation. The country’s citizens, therefore, remain in the dark about the amount of money their government receives each year for the sale of the country’s natural resources. The government does not publish its budgets. No companies are voluntarily reporting data. As a result, it is impossible for citizens to assess what proportion of the country’s natural resource revenues are being allocated to development projects. The government points to the infrastructure projects currently under construction across the country as proof that all resource revenues are being invested into the country’s future, but **it is impossible for citizens or watchdog groups to verify the government’s assertions without access to basic information about how much money the government receives from the sale of the country’s natural resources.** Improvements in fiscal governance and accountability are impossible without evidence or data to conduct a reconciliation of accounts, file a complaint, or bring a suit.

2. The Risk of Exemptions

Allowing company exemptions in instances where host country laws prevent disclosure would create a perverse incentive for governments to create exemption-inducing laws to negate the impact of Section 1504 in their own countries. Allowing exemptions would effectively create a “race to the bottom,” undermining the intent of the law passed by Congress, and would have a potentially devastating effect in Equatorial Guinea.

There is no evidence in the public record that convincingly demonstrates the need for such exemptions.⁸ As our March 2011 comment noted, the official Production Sharing Contract of the government of Equatorial Guinea states that companies are permitted to share information relating to the Contract or Petroleum Operations when required to do so by home country rule.

Statements and actions by the government of Equatorial Guinea, however, strongly suggest that it would issue a law or decree that would enable companies to claim exemptions from Section 1504 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, if such exemptions are included in the final rules being considered by the SEC.

⁷ EG Justice’s March 29, 2011 comment is available on the Commission’s website at <http://sec.gov/comments/s7-42-10/s74210-77.pdf>.

⁸ Munilla, Isabel, Publish What You Pay US. 2011. PWYP Supplementary Comments—Exemptions. <http://sec.gov/comments/s7-42-10/s74210-118.pdf>.

In his annual New Year's address to the nation on December 31, 2011, President Obiang labeled as "enemies" those who suggest that the government diverts the country's oil wealth. In the past, he has referred to the country's oil wealth as a "state secret".⁹

Just 15 days after French authorities seized the luxury cars of his son Teodoro Nguema in Paris, potentially signaling an escalation of France's corruption investigation, President Obiang appointed his son as the country's Permanent Assistant Delegate to UNESCO, a seemingly blatant attempt to evade prosecution for corruption and money laundering in the French courts by providing his son with diplomatic immunity. This has allowed his son to continue enjoying his luxurious lifestyle in France.¹⁰

In 2005, in response to the U.S. Senate Permanent Subcommittee on Investigation's inquiry into corruption and money laundering by Equatoguinean government officials into the United States, the government of Equatorial Guinea stated that:

"Foreign legislation, such as that of the United States of America, is not in force and does not apply to Equatorial Guinea, and as a result can in no way prohibit the President of the Republic, Ministers, Civil Servants, Citizens, or foreign residents in Equatorial Guinea from undertaking business initiatives."¹¹

This should serve as a cautionary note for the Commission when considering the issue of exemptions. Since Section 1504 disclosures, at this point, represent the only chance for Equatorial Guinea's citizens to hold their governments to account, providing an exemption for host government disclosure prohibitions would create a direct invitation for Equatorial Guinea to put just such an exemption in place. This would represent a devastating blow to the citizens of Equatorial Guinea, who have no other way of obtaining accurate information about the amounts of natural resource revenues received by their government. As such, **should the SEC provide such an exemption, the Commission would be complicit in future uses of that exemption to deny Equatorial Guinea's citizens access to the only reliable and legitimate source of information on crucial public assets.**

⁹ Global Witness. 2004. *Time for Transparency: Coming Clean on Oil, Mining and Gas Revenues*. p. 55, http://www.globalwitness.org/sites/default/files/pdfs/oil_061.04.04.pdf.

¹⁰ The Government of Equatorial Guinea. 2011. "The Minister of Agriculture, the New Permanent Assistant Delegate of Equatorial Guinea to UNESCO," <http://www.guineaecuatorialpress.com/noticia.php?id=1994>.

¹¹ Government of Equatorial Guinea. 2005. "Statement of the People & Government of Equatorial Guinea in Response to the Report on Riggs Bank of the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs of the Senate of the United States of America," http://www.egjustice.org/sites/default/files/EG_Response_to_Riggs.pdf.