



# EG JUSTICE

March 11, 2020

Vanessa A. Countryman, Secretary  
Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

CC:

Mr. William Hinman, Director, Division of Corporate Finance  
Mr. Barry Summer, Associate Director, Division of Corporation Finance  
Ms. Elizabeth Murphy, Associate Director, Division of Corporate Finance  
Mr. Elliot Staffin, Special Counsel, Division of Corporation Finance

**RE: Dodd-Frank Section 1504, File No. S7-24-19**

Dear Secretary Countryman,

We thank you for the opportunity to comment on the newly proposed Dodd-Frank 1504 rule. Equatorial Guinea is one of the world's most extreme examples of the resource curse. We hope that the Commission learns from our country's misfortune and takes this opportunity to pass a strong Dodd-Frank 1504 rule that can help Equatoguineans and citizens in other developing countries benefit from their countries' quickly diminishing resource wealth.

There are several major US-listed companies that control the vast majority of oil extraction in Equatorial Guinea: Exxon Mobil Corporation, Marathon Oil Corporation, Kosmos Energy, Noble Energy, China National Offshore Oil Corporation, China National Petroleum Corporation, and Japan's Mitsui & Co. Thus, we stand to benefit greatly from a strong rule that will provide us with critical information about oil payments to our government.

### **Equatorial Guinea's Experience with Natural Resources**

The president of Equatorial Guinea, Teodoro Obiang Nguema Mbasogo, is the longest-serving elected ruler in the world. With a net worth of more than \$600 million, he is one of the wealthiest country leaders in the world.<sup>1</sup> His 40-year presidency has been a blatant kleptocracy through which he and his family have personally profited from our country's oil wealth. His son and vice president, Teodoro Nguema Obiang Mangue ("Teodorin") has been the subject of

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<sup>1</sup> It is difficult to estimate President Obiang's net worth, but in 2011, Forbes estimated his net worth to be \$600 million. Mfonobong Nsehe, "Who Were Africa's Richest Dictators?" *Forbes*, 8 Nov 2011, <https://www.forbes.com/sites/mfonobongnsehe/2011/11/08/who-were-africas-richest-dictators/#65727e441708>.

numerous legal battles on charges of money laundering and embezzlement investigations around the world.

Lawmakers and law enforcement authorities from the USA have been working relentlessly to crack down on corruption in Equatorial Guinea and its spillover to the US. For the past decade, the Senate and the Department of Homeland Security have investigated the Obiang family, and the Department of Justice (“DOJ”) has brought corruption charges against Teodorin. According to court documents, he amassed more than \$300 million worth of assets through corruption and money laundering, in violation of both Equatoguinean and U.S. law. In October 2014, the DOJ found that Teodorin illegally acquired more than \$1.8 million worth of Michael Jackson memorabilia, a \$38.5 million Gulfstream G-V jet, a \$30 million mansion in Malibu, California, and close to a dozen luxury cars. Ultimately, the DOJ and Mr. Nguema agreed to settle the case for approximately \$33 million—he was permitted to keep assets he removed from the United States in violation of US laws, such as his Gulf Stream jet and Michael Jackson memorabilia.<sup>2</sup> Though this settlement was reached six years ago, the money, which was supposed to be channeled through charitable organizations for the benefit of the people, has yet to be returned to Equatoguineans.<sup>3</sup>

On October 27, 2017,<sup>4</sup> and upheld by an appeals court on February 10, 2020, Teodoro Nguema Obiang Mangue was convicted and given a three-year suspended prison sentence for embezzlement and laundering millions of Euros in France. The court seized his assets valued well over 150 million euros. In February 2019, Swiss authorities settled a corruption case<sup>5</sup> against him, in which he agreed to the sale of 25 luxury cars that had been seized previously. There are ongoing corruption investigations against him in Brazil.

The publicly-available payment data generated by a Dodd-Frank 1504 rule would be of great value to the DOJ and other international law enforcement agencies in similar corruption investigations. Moreover, it seems counterintuitive for the US to work so hard to prosecute corruption after it has already happened—the DOJ settlement will only return a fraction of lost wealth to Equatoguineans—while not implementing a strong rule to create greater transparency at the source of the problem to prevent further corruption.

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<sup>2</sup> The United States Department of Justice, Second Vice President of Equatorial Guinea Agrees to Relinquish More Than \$30 Million of Assets Purchased with Corruption Proceeds, October 10, 2014  
<https://www.justice.gov/opa/pr/second-vice-president-equatorial-guinea-agrees-relinquish-more-30-million-assets-purchased>

<sup>3</sup> Matthew Stephenson, “It’s Time for Plan B on Disbursing the Obiang Settlement Money to the People of Equatorial Guinea,” The Global Anticorruption Blog, 16 May 2019,  
<https://globalanticorruptionblog.com/2019/05/16/guest-post-its-time-for-plan-b-on-disbursing-the-obiang-settlement-money-to-the-people-of-equatorial-guinea/>.

<sup>4</sup> EG Justice, Teodorin’s Conviction: Landmark Victory in Fight against Corruption, October 31, 2017  
<https://www.egjustice.info/content/teodorins-conviction-landmark-victory-in-fight-against-corruption>

<sup>5</sup> EG Justice, Open Letter: Switzerland’s Appalling Decision to Return Seized \$100 million Yacht to Known Kleptocrat, March 20, 2019  
<https://www.egjustice.info/content/open-letter-switzerlands-appalling-decision-to-return-seized-100-million-yacht-to-known-kleptocrat>

While our leaders live in luxury, the vast majority of our people struggle to make ends meet. According to Human Rights Watch, Equatorial Guinea has the world's widest gap between per capita wealth (\$17,796) and its human development score (.588).<sup>6</sup> Its development has lagged behind other comparable sub-Saharan African countries while the government invests the country's mineral resource wealth into wasteful and corruption-riddled infrastructure projects instead of meaningful social welfare programs.<sup>7</sup>

When our country first discovered oil in 1991, we saw the promise of a brighter future. If invested well, we thought, the oil revenues could lift our citizens out of poverty, extend our life expectancies, and build the infrastructure our country so desperately needs. Our country's total income went from a mere \$132 million (in 1991) to \$19 billion (at its peak in 2012). We were rich...or at least our president and his family were.

Now, it seems that our country has already hit peak oil. Since 2012, oil production has been in decline. Unless more oil is discovered, our supply could run out as soon as 2035. Our opportunity to develop our country might have been wasted. Vast oil revenues have been lost to corruption, and our leaders have even sought a loan from the IMF.<sup>8</sup>

Transparency International's Perceptions of Corruption Index rates Equatorial Guinea as one of the most corrupt countries in the world (ranked 173/180 in 2019).<sup>9</sup> To begin tackling corruption, we need the US-listed companies operating in our country to model transparency by giving us the detailed project data necessary to build a framework for accountability.

The IMF \$283 million loan includes some important anticorruption benchmarks. For instance, it requires audits of state-owned energy companies, the regular publication of data relevant to the hydrocarbon sector, and disclosure of beneficial ownership information for companies established in Equatorial Guinea.<sup>10</sup> Implementation of these criteria in Equatorial Guinea will be challenging, and experts are concerned that the country will enact reforms on paper that look good but are never enforced.<sup>11</sup> The United States government and its companies could make a

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<sup>6</sup> "Briefing note for countries on the 2019 Human Development Report," UNDP, 2019, [http://hdr.undp.org/sites/all/themes/hdr\\_theme/country-notes/GNQ.pdf](http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/GNQ.pdf)

<sup>7</sup> "'Manna from Heaven?': How Health and Education Pay the Price for Self-Dealing in Equatorial Guinea," Human Rights Watch, 15 June 2017, <https://www.hrw.org/report/2017/06/15/manna-heaven/how-health-and-education-pay-price-self-dealing-equatorial-guinea>.

<sup>8</sup> "IMF approves \$280m loan to Equatorial Guinea despite NGO criticism," *Financial Times*, 19 Dec 2019, <https://www.ft.com/content/1525c2ee-225b-11ea-92da-f0c92e957a96>.

<sup>9</sup> "Perceptions of Corruption Index 2019: Equatorial Guinea," Transparency International, 2019, <https://www.transparency.org/country/GNQ>.

<sup>10</sup> "Equatorial Guinea: Promoting Inclusive Growth, Improving Governance and Transparency," IMF, 18 Dec 2019, <https://www.imf.org/en/News/Articles/2019/12/13/na121319-equatorial-guinea-promoting-inclusive-growth-and-improving-governance-and-transparency>

<sup>11</sup> Richard Messick, "Will an IMF Loan End Equatorial Guinea's Grand Corruption?" The Global Anticorruption Blog, 15 Jan 2020, <https://globalanticorruptionblog.com/2020/01/15/will-an-imf-loan-end-equatorial-guineas-grand-corruption-part-i/>.

strong statement in support of transparency in places like Equatorial Guinea by disclosing project-level oil, gas, and mining payments.

## **Our Data Gap**

President Obiang has publicly referred to and treated our country's oil resources as a "state secret."<sup>12</sup> In 2007, Equatorial Guinea applied to join the Extractive Industries Transparency Initiative (EITI), but in 2010 the country was delisted for failure to meet benchmarks for transparency and civic participation. In 2019, prompted by the IMF preconditions, Equatorial Guinea again applied to join the EITI. Thus far those efforts have been deemed unsatisfactory, but even if it is eventually accepted as a candidate country, and our government engages in transparent reporting of payment receipts, which is far from guaranteed based on previous experience, it will be years before the process yields any data.

As such, for us, Equatoguineans committed to using dwindling oil revenues to develop our nation, a strong Dodd-Frank 1504 rule constitutes our best hope for data that is not otherwise available. This rule stands to have a tremendous and immediate impact for the country's citizens. As the singular mechanism for providing citizens with credible information about what the government receives from the country's hydrocarbons, it will be a necessary tool for curbing corruption and beginning to hold the government accountable for its use of our natural resources.

Implementing a strong Dodd-Frank 1504 rule could also help the foreign oil, gas, and mining companies operating in Equatorial Guinea. When our government first applied to join the EITI, the multinational companies responsible for most of the extraction in the country supported efforts to become more transparent.<sup>13</sup> If Dodd-Frank 1504 existed, these companies would have a graceful way to sidestep pressures from Equatorial Guinean officials to enter into nontransparent and potentially unscrupulous agreements, which would attack corruption at its root.

## **The Need for Publicly Available Disaggregated Data**

Equatorial Guinea has inadequate laws to regulate conflict of interest between government officials' private and public duties and procurement processes for public contracts are informal and opaque. The oil dollars that fuel corruption in Equatorial Guinea today would likely not fall under the US' Foreign Corrupt Practices Act. Oil companies are likely not explicitly paying bribes to the ruling elites, but rather the Obiang family transfers funds from the public treasury into their personal bank accounts directly. Also, government officials require foreign companies to retain and pay companies that their family owns.

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<sup>12</sup> Global Witness, *Time for Transparency: Coming Clean on Oil, Mining and Gas Revenues*, 2004, p. 55, [http://www.globalwitness.org/sites/default/files/pdfs/oil\\_061.04.04.pdf](http://www.globalwitness.org/sites/default/files/pdfs/oil_061.04.04.pdf).

<sup>13</sup> US-listed Exxon Mobil Corporation, Marathon Oil Corporation, Hess Corporation, Noble Energy, and Japan-listed Mitsui & Co produce the vast majority of oil in Equatorial Guinea and supported the country's EITI effort.

Until recently, Equatorial Guinea had a law requiring that at least 35 percent of company shares operating in our country must be owned by Equatoguineans. A measure meant to ensure local economic participation, which instead was abused by the elites for self-dealing and corruption.<sup>14</sup> Foreign oil companies are often required to contract with local companies, such as security firms, that are owned by members of the ruling family, thus funneling money to them. For example, our research shows that the government required a joint partnership of Marathon Oil (US), Sonagas (Equatorial Guinea), Mitsui (Japan), and Marubeni (Japan) to spend \$100 million on local content projects when constructing a Liquefied Natural Gas plant.<sup>15</sup> Because some of the companies benefiting from those projects are owned by members of the ruling family, the investment became a way to funnel money into their pockets.

A strong Dodd-Frank 1504 rule that requires disaggregated data would allow us to at least see the starting point of these financial flows and how much our government is receiving at the project level, which is the most important first step in detecting and ultimately stopping corruption. Our country's oil wealth has been divided up among the Obiang family and other political elites as their personal possession. Thus, the task of detecting corruption is quite difficult and involves tracking a large number of transactions within a network of government entities, shell companies and high net-worth individuals. Because different sets of political elites benefit from each individual project using some of the tactics described above, project-level information is most valuable to us because we can follow up on payments for each project to different government entities and payees and most efficiently detect corruption. If we can track each payment made at the project level to various government entities, we have the basic ingredients necessary to most effectively follow the money. Aggregation of payments would make this task significantly more difficult and would only aid in our government's attempts to obfuscate the receipt of individual payments.

### **Exemptions for Conflicts with Foreign Law**

We understand that the proposed version of the Dodd-Frank 1504 rule makes exemptions for companies operating in countries where disclosure would conflict with the national law. Currently, the official Production Sharing Contract of the government of Equatorial Guinea explicitly states that companies are permitted to share all information relating to the Contract or Petroleum Operations in the following instances:

- "To the extent that such data and information is required to be furnished in compliance with any applicable laws or regulation." (Article 20.1.c)

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<sup>14</sup> "'Manna from Heaven?': How Health and Education Pay the Price for Self-Dealing in Equatorial Guinea," Human Rights Watch, 15 June 2017, <https://www.hrw.org/report/2017/06/15/manna-heaven/how-health-and-education-pay-price-self-dealing-equatorial-guinea>.

<sup>15</sup> Joseph Kraus, *THE "BUSINESS" OF STATE-BUILDING: THE IMPACT OF CORPORATE SOCIAL RESPONSIBILITY ON STATE DEVELOPMENT IN EQUATORIAL GUINEA*, 2010, [https://www.egjustice.org/sites/default/files/publication/file/2012\\_02/krausj-2012-02-14.pdf](https://www.egjustice.org/sites/default/files/publication/file/2012_02/krausj-2012-02-14.pdf).

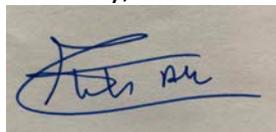
- “Where any data or information forms part of the public domain.” (Article 20.1.f)<sup>16</sup>

We understand that the currently-proposed version of the rule allows exemptions, not only from/for laws that are currently in existence, but also from/for those passed in the future. We worry that under this rule, our government will be incentivized to enact such laws in order to avoid transparency. To have its intended effect, Dodd-Frank 1504 must be strong and comprehensive measure. When kleptocrats are confronted with meaningful transparency reforms, they will seize opportunities and loopholes to continue their corruption. The proposed rule as it is currently written provides one such loophole.

Because US-listed companies dominate our extractives sector in Equatorial Guinea, you have a unique opportunity to truly improve our country’s future. While it will take years to overcome the entrenched culture of corruption and move past the stranglehold that the ruling family has on our country, a strong Dodd-Frank 1504 rule could serve as a chink in the armor of otherwise impenetrable oil-fueled corruption.

As you make your decision, we implore you to keep the people of Equatorial Guinea in mind. There is little time left for us to use our natural resource wealth to eradicate poverty in our country. Without transparency reforms, we’ll soon be left with nothing but Michael Jackson memorabilia to show for our lost natural resources.

Sincerely,

A handwritten signature in blue ink on a light-colored background. The signature appears to read 'Tutu Alicante'.

Tutu Alicante, Executive Director - EG Justice  
P.O. Box 57297 - Washington, DC 20037

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

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<sup>16</sup> Republic of Equatorial Guinea, *Production Sharing Contract between the Republic of Equatorial Guinea and Noble Energy EG Ltd and Glencore Exploration Ltd for Block O Offshore the Island of Bioko* ” (2004), p. 50, <http://eiti-ge.org/wp-content/uploads/2020/02/Block-O-PSC.pdf>