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AL JUZGADO DE INSTRUCCIÓN

DON DOMINGO JOSÉ COLLADO, Procurador de los Tribunales y de la acción popular ejercida por la **ASOCIACIÓN PRO DERECHOS HUMANOS DE ESPAÑA (APDHE)**, en representación de todos ellos que acredito mediante escritura de poder especial que debidamente bastantada en forma acompaño, ante el Juzgado comparezco y como mejor proceda en derecho, y bajo la dirección letrada del abogado del Ilustre Colegio de Abogados, **MANUEL OLLÉ SESÉ, y D I G O:**

Que por medio del presente escrito paso a formular **QUERELLA CRIMINAL** al amparo de lo dispuesto en los artículos 271 y siguientes de la Ley de Enjuiciamiento Criminal contra las personas que se indican en el ordinal III y contra quienes pudieran aparecer como responsables criminalmente a lo largo de la instrucción, por un **DELITO DE BLANQUEO DE CAPITAL**, a cuyo efecto, dando cumplimiento a lo que determina el Art. 277 y concordantes de dicha ley.

**I**

Se interpone esta querrela ante el Juzgado Central de Instrucción que por turno corresponda por ser éste competente para su instrucción.

**II**

El querellante, que ejerce la acusación popular, es la

**ASOCIACIÓN PRO DERECHOS HUMANOS DE ESPAÑA (APDHE)**, con domicilio en la calle José Ortega y Gasset, 77, 2º A, de Madrid (28006).

La APDHE ostenta interés legítimo y directo en la presente querrela. Los fines y/u objetivos estatutarios de la referida Asociación querellante popular se concretan en "defender los Derechos Humanos en todas sus vertientes y en todos los lugares, velando por el cumplimiento de los ya proclamados y promoviendo el reconocimiento y garantía de los que todavía no estuvieran reconocidos", y, entre los fines específicos de mi representada, está "defender, apoyar y proclamar, difundir y desarrollar por todos los medios de expresión la Declaración Universal de los Derechos Humanos y demás resoluciones, dentro de este espíritu, de Organismos Internacionales y Nacionales sobre la problemática de los Derechos Humanos, así como denunciar su violación" (art. 3 de los Estatutos de la APDHE).

La legitimación de la APDHE se fundamenta, por tanto, en lo que sigue. Guinea Ecuatorial es el tercer país del África Subsahariana productor de petróleo después de Nigeria y de Angola. Ingresa anualmente entorno a 3.000 millones de euros procedentes del mercado del petróleo, su economía crece a un ritmo del 20% y el PIB per cápita es de 17.000 euros anuales. Se estima que el actual régimen presidido por Teodoro Obiang ha manejado alrededor de 16.000 millones de euros desde que se hizo con el poder del país en 1979. Sirva de ejemplo que la lista que elabora cada año la conocida revista *Forbes* determinó en 2006 que el Presidente Obiang ocupaba el octavo puesto de los gobernantes con mayor riqueza personal, con una fortuna de 600 millones de euros. Se acompaña como **documento número 1** copia del artículo "*Fortunes of Kings, Queens and Dictators*", de 5

de mayo de 2006, en el cual se afirma que el dictador cuenta con el control de los fondos públicos del país y de los cerca de 700 millones de dólares depositados por Guinea Ecuatorial en fondos estadounidenses (en el **Banco Riggs**).

A pesar de los cuantiosos ingresos que percibe el Estado guineano, el 65% de la población vive en extrema pobreza, la esperanza de vida de los ciudadanos guineo ecuatorianos es de 50,4 años, el 56% de la población vive sin acceso a agua corriente, el 19% de los niños sufre de desnutrición, el gasto público en educación es del 4% y en salud ronda el 1,2% del PIB (datos extraídos del *Human Development Report 2007/2008*, [http://hdr.undp.org/en/media/HDR\\_20072008\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf)).

El prestigioso *Informe de Transparencia Internacional sobre Corrupción Global de 2008* sitúa a Guinea Ecuatorial en el puesto 171 en el ranking de los 180 países sometidos a examen ([http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2008/2008\\_09\\_23\\_cpi\\_2008\\_en](http://www.transparency.org/news_room/latest_news/press_releases/2008/2008_09_23_cpi_2008_en)).

Miembros del gobierno guineano y otros particulares en connivencia con aquellos, están desviando ilícitamente parte de estos cuantiosos fondos públicos provenientes del petróleo, para posteriormente proceder a su "lavado" en España. De esta forma se produce una vulneración continuada y sistemática no sólo de los derechos civiles, sino también de los económicos y sociales de la población guineana, al privarles de los mínimos imprescindibles de calidad en la supervivencia, sanidad o educación, entre otros. Vulneración que, sin duda, repercute directamente en la dignidad de sus ciudadanos al ser mermados deliberadamente sus derechos más básicos.

La APDHE, dentro de sus planes estratégicos, siempre ha

tenido una especial observancia por la situación de los Derechos Humanos en Guinea Ecuatorial.

### III

Los querellados son: (1) **MARCELINO OWONO EDU**, al parecer, recientemente nombrado Ministro de Minas, Industria y Energía; (2) **CONSTANCIA NCHAMA ANGÜE**, mujer de Marcelino Owono Edu; (3) **MIGUEL ABIA BITECO**, ex Primer Ministro de Guinea Ecuatorial 2004-2006; (4) **DOROTEA ANITA ROKA ELOBO**, mujer de Miguel Abia Biteco; (5) **GABRIEL NGUEMA LIMA** (hijo del Presidente Obiang, también conocido como Gabriel M. Obiang Lima), ex Viceministro de Minas, Industria y Energía hasta 2006 y, al parecer, recientemente nombrado Viceministro de Minas, Industria y Energía; (6) **VIRGINIA ESTHER MAYE MBA**, mujer de Gabriel Nguema Lima; (7) **TEODORO BIYOGO NSUE**, embajador de Guinea Ecuatorial en Brasil y ex embajador en EEUU y en Naciones Unidas, cuñado del Presidente Obiang; (8) **ELENA MENSA**, mujer de Teodoro Biyogo Nsue; (9) **PASTOR MICHA ONDO BILE**, Ministro de Asuntos Exteriores, Cooperación Internacional y Francofonía; (10) **MAGDALENA AYANG**, mujer de Pastor Micha Ondo Bile; (11) **ATANASIO ELA NTUGU**, ex Ministro de Minas, Industria y Energía; y contra quienes puedan aparecer como responsables criminalmente a lo largo de la instrucción por un delito de **BLANQUEO DE DINERO**, así como cualquier otro derivado de la conducta de los querellados.

### IV

#### HECHOS

Paso a exponer la relación circunstancial de los hechos:

**PREVIO: SÍNTESIS.**

En julio de 2004, el Subcomité Permanente de Investigaciones del Senado de los Estados Unidos de América (*United States Senate, Permanent Subcommittee on Investigations*) presentó un informe sobre blanqueo de dinero y corrupción extranjera cuyo objeto de estudio fue la actividad de la entidad estadounidense **Banco Riggs** (*Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act. Case study involving Riggs Bank*). En el transcurso de las investigaciones, se descubrieron una serie de cuentas en este banco cuya titularidad era del Gobierno de Guinea Ecuatorial, de altos cargos del mismo y de algunos de sus familiares.

El Subcomité concluyó que el **Banco Riggs** había incumplido sus obligaciones anti-blanqueo de capitales en relación con ciertas transacciones relacionadas con las cuentas de Guinea Ecuatorial y que, sin género de dudas, tenían su origen ilícito penal en la corrupción (malversación) practicada en ese país.

En el transcurso de esta investigación se descubrió cómo, a lo largo de tres años, se habían realizado diferentes transferencias desde la **Cuenta de Petróleo de Guinea Ecuatorial en el Banco Riggs No. 17-164-642** a una cuenta a nombre de la empresa **KALUNGA COMPANY S.A. domiciliada en una sucursal del Banco Santander en Madrid por un valor de 26.483.982'57 de dólares americanos.**

Este dinero "lavado" habría sido utilizado por personalidades guineo-ecuatorianas y sus familias en beneficio propio para la adquisición de fincas en distintas

provincias españolas.

**PRIMERO.- MARCO GENERAL DE LA SITUACIÓN DE CORRUPCIÓN Y VIOLACIÓN DE DERECHOS HUMANOS.**

Guinea Ecuatorial es uno más de los casos existentes de corrupción de un gobierno autoritario. Es un régimen en el cual la mayor parte de la riqueza que pertenece a los guineo ecuatorianos se saquea para el beneficio personal del presidente Teodoro Obiang Nguema Mbasogo, los miembros de su familia (lo que se denomina localmente el *clan Mongomo*) y sus allegados, con el asentimiento, la ayuda y la participación de las corporaciones que operan en los sectores de materias primas y financieros del país. Los ingresos de las exportaciones de gas y petróleo deberían teóricamente situar a Guinea Ecuatorial entre uno de los países más ricos y prósperos del mundo. El actual nivel de bienestar de muchos guineo ecuatorianos, sin embargo, sitúa al país entre los muchos subdesarrollados y pobres. Las causas son, fundamentalmente:

1.- La extensa corrupción, inducida por las multinacionales, directa o indirectamente sobornando a un gran número de funcionarios guineo ecuatorianos y miembros del gobierno y sus familiares, facilitando la sistemática malversación de fondos del presupuesto nacional.

2.- El sistema es apoyado por el hecho de que las compañías de gas y petróleo o sus filiales han participado desde el principio en la explotación de los vastos recursos del país en calidad de socios o compañeros del Presidente Obiang o de compañías que él controla, siendo el resultado que la mayoría de los ingresos que las compañías consiguen son desviados para beneficio personal del Presidente y de otros



allegados al mismo. Ciertas corporaciones financieras han jugado aquí un papel fundamental en la gestión de dicha estructura.

3.- El sistema trabaja en un marco de dictadura, violación de Derechos Humanos, persecución de opositores políticos, inestabilidad política, e inaplicación de la ley. La impunidad es absoluta.

4.- Actualmente la situación de la industria del petróleo y gas es extremadamente próspera, y su potencial y futuro es enorme. Tomando en cuenta los ingresos por exportaciones de petróleo y gas, considerando el precio de los Estados Unidos (su mayor cliente), los ingresos per cápita en Guinea Ecuatorial colocarían a este país como el segundo del mundo, solo detrás de Luxemburgo, y antes que Noruega y EEUU. Considerando los factores de medición del nivel de desarrollo humano, en Guinea Ecuatorial éste debería ser equivalente a un país de desarrollo medio dentro de los de la Unión Europea, precisamente entre Grecia y Portugal, y debería encontrarse sobre el puesto 25 en la lista mundial, entre los países con mayor desarrollo humano. Sin embargo, es un país miserable que se encuentra en el puesto 127, con la mayoría de la población sobreviviendo en condiciones de subdesarrollo.

En síntesis, los tres aspectos principales de la situación del país son:

1.- Corrupción: el gobierno de Guinea Ecuatorial está saqueando la riqueza de su país con la aquiescencia y cooperación de sus socios, las multinacionales petroleras y las corporaciones financieras. Malversando gran parte de la riqueza que le quedaba al país de forma sistemática. Los

sobornos son una forma habitual de trabajo entre las autoridades guineo ecuatorianas. El presidente Obiang y su gran familia (*Clan Mongomo*) controlan casi toda la riqueza del país.

2.- Opresión: Guinea Ecuatorial es una de las peores dictaduras. El régimen es despiadado y violador constante de los Derechos Humanos. El presidente y su *clan* aglutinan todo el poder político, controlando el Gobierno y las Instituciones.

3.- Miseria: la mayoría de la población vive en condiciones de extrema pobreza. El nivel de muerte infantil y femenina es terrible. La esperanza de vida al nacer es de 50,4 años, cuando, de acuerdo a la riqueza del país, debería ser de 78 años.

Los tres hechos anteriormente señalados no son independientes sino que están relacionados. Corrupción, con letras mayúsculas, es la palabra que define a Guinea Ecuatorial, pero la opresión no es un problema diferente. En Guinea Ecuatorial, la opresión es un instrumento de la corrupción. El extenso marco de corrupción a través del que el país es regido sólo puede ser mantenido con un sistema de represión de la población y de la oposición política. La pobreza no es tampoco un hecho aislado: es necesaria consecuencia del enorme nivel de corrupción que sitúa a Guinea Ecuatorial en el noveno puesto de los países con mayor corrupción a nivel mundial.

La relación instrumental entre la corrupción y la opresión, por un lado, y la relación causa-efecto entre la corrupción y la miseria, por otro lado, son cruciales a los efectos de esta querrela: las corporaciones multinacionales están

implicadas evidentemente en la corrupción de Guinea ecuatorial. Las corporaciones son responsables de la represión porque la están induciendo, sabiendo y aceptando que es la única manera de preservar su *status quo* abusivo y extremadamente provechoso. Las corporaciones, por tanto, se deben también considerar responsables de las condiciones de vida miserables de la población de Guinea Ecuatorial. Los guineo ecuatorianos están muriendo, y su muerte es la consecuencia previsible y necesaria de la expoliación de la riqueza de este país.

**SEGUNDO.- EL BANCO RIGGS Y EL INFORME DEL SUBCOMITÉ PERMANENTE DE INVESTIGACIONES DEL SENADO DE LOS EEUU.**

En el año 1995, se abrieron en el **Banco Riggs** en los Estados Unidos de América las primeras cuentas de la Embajada de Guinea Ecuatorial. En los siguientes ocho años, se abrieron en dicho banco cincuenta cuentas más y se realizaron, al menos, una docena de ingresos en efectivo a favor del gobierno de Guinea Ecuatorial y también de un gran número de altos cargos de dicho gobierno y miembros de sus familias.

En 2003, la cuenta de Guinea Ecuatorial era individualmente la más importante del banco con un saldo que arrojaba unos setecientos (700) millones de dólares americanos.

El Subcomité Permanente de Investigaciones del Senado de EEUU determinó que el **Banco Riggs** incumplió las obligaciones *anti blanqueo* de capitales al determinar, mediante la actividad probatoria realizada, que las transacciones efectuadas por Guinea Ecuatorial revelaban que el origen de las mismas era un evidente caso de corrupción extranjera. También se concluyó que ese banco

permitió numerosas transacciones de carácter sospechoso sin notificarlas a las autoridades competentes.

A modo de ejemplo, en relación con la familia del actual presidente de Guinea Ecuatorial, Teodoro Obiang Nguema, el Subcomité descubrió que el **Banco Riggs** ayudo a éste y a sus hijos a crear, al menos, dos "empresas fantasma" y a abrir cuentas a nombre de las mismas.

Entre otros servicios, el **Banco Riggs** proporcionaba a sus clientes de Guinea Ecuatorial acuerdos crediticios y se hacía cargo de los negocios del gobierno y de la Embajada, así como de las necesidades individuales de diversos altos cargos de dicho gobierno. Asimismo -se afirma en el informe- Guinea Ecuatorial disponía en el **Banco Riggs** de dos cuentas que se utilizaban para fondos destinados a la educación de estudiantes guineo ecuatorianos en el extranjero. La investigación determinó que estos estudiantes resultaron ser los hijos y otros parientes de poderosos altos cargos de Guinea Ecuatorial.

Durante los años 90, el gobierno de Guinea Ecuatorial suscribió compromisos con diversas petroleras como parte de preexistentes contratos de participación en la producción del petróleo, con el fin de proporcionar fondos para estudiantes de Guinea Ecuatorial y con ello sufragar su educación universitaria.

La información revisada por el Subcomité precisó que los miembros del Consejo de Administración del **Banco Riggs** y otros altos funcionarios eran plenamente conscientes de todo lo referente a las cuentas de Guinea Ecuatorial. En 2001, varios altos miembros del Consejo de Administración del **Banco Riggs** y funcionarios del mismo formaron un comité

de alto nivel que se reunía trimestralmente para dedicar especial atención a la relación del banco con Guinea Ecuatorial.

Al analizar el Subcomité del Senado las importantes transacciones en el **Banco Riggs** que implicaban la Cuenta de Petróleo y otras cuentas de Guinea Ecuatorial, se descubrió un importante número de pagos realizados por las compañías petroleras a favor de entidades del gobierno de Guinea Ecuatorial, miembros del gobierno directamente, sus familiares, o entidades controladas por ellos.

Igualmente se descubrió que varios altos cargos de Guinea Ecuatorial y sus familiares dominaban sectores enteros de la economía del país y obligaban a compañías extranjeras que pretendían operar en Guinea Ecuatorial a llevar a cabo, para conseguir su propósito, negocios ilícitos con el Presidente, Teodoro Obiang Nguema, sus parientes o las entidades que ellos controlaban, asegurándose de esta manera importantes beneficios lucrativos en perjuicio de la población guineo ecuatoriana.

El 23 de febrero de 2004, directivos del **Banco Riggs** se reunieron con el Presidente y otras autoridades del gobierno de Guinea Ecuatorial para tratar asuntos concernientes a las cuentas del país y a ciertas transferencias. De acuerdo con el informe del Senado, el **Banco Riggs** solicitó al Presidente información adicional sobre ciertas compañías como **Kalunga Company S.A.** y **Apexside** relacionadas con el gobierno y/o el presidente y sus familiares. Teodoro Obiang Nguema se negó a ofrecer información adicional alguna sobre las transferencias realizadas a estas compañías y se limitó a decir que éstas habían sido autorizadas por los firmantes de dichas

cuentas. El **Banco Riggs** posteriormente informó a los funcionarios guineo ecuatorianos ~~que~~ el banco había decidido cerrar las cuentas. Las últimas cuentas se cerraron, finalmente, entre mayo y julio de 2004.

### **TERCERO.- BLANQUEO DE DINERO EN ESPAÑA.**

Una de las líneas de investigación abierta por el Senado de Estados Unidos hace referencia a múltiples transferencias multimillonarias provenientes de una cuenta oficial del Estado soberano de Guinea Ecuatorial en el Banco Riggs, la **Cuenta de Petróleo de Guinea Ecuatorial No. 17-164-642** - denominada "República de Guinea Ecuatorial-Tesorería General"-, y con destino a una cuenta privada a nombre de **Kalunga Company S.A.** en el **Banco Santander Central Hispano**, conocido por las siglas BSCH (en adelante Banco Santander), en Madrid, compañía sin actividad comercial ni de ninguna otra índole. Los fondos de la **Cuenta de Petróleo** procedían de los pagos que las compañías petrolíferas americanas, **Exxon-Mobil** y **Maratón** principalmente, realizaban al Estado guineano para poder explotar el crudo de este país, pagos que, reiteramos y como se probará a lo largo de la instrucción, son ilícitos.

En concreto, a lo largo de tres años y medio, entre junio de 2000 y diciembre de 2003, **se efectuaron desde la citada Cuenta de Petróleo de Guinea Ecuatorial en el Banco Riggs a favor de la cuenta de Kalunga Company S.A. en el Banco Santander, dieciséis transferencias electrónicas por un total de 26.483.982'57 de dólares americanos.**

Especialmente importante es que el Subcomité del Senado de Estados Unidos señalara que la sociedad anónima **Kalunga Company S.A.**, sociedad no domiciliada en España ("no

**residente**"), es, total o parcialmente, propiedad del Presidente de Guinea Ecuatorial, Teodoro Obiang Nguema. La **Cuenta de Petróleo** de la cual proceden las transferencias tenía como firmantes (personas autorizadas para retirar los fondos) al **Presidente Obiang**, a su hijo **Gabriel M. Obiang Lima** (ex Ministro de Minas y, parece ser, recientemente nombrado Viceministro de Minas, Industria y Energía) y al sobrino del Presidente, **Melchor Esono Edjo** (ex Secretario de Estado de Hacienda y, al parecer, recientemente nombrado Viceministro de Educación, Ciencia y Deportes). Para autorizar la retirada de fondos de dicha cuenta bastaban dos firmas, y una de ellas siempre debía ser la del Presidente Teodoro Obiang Nguema.

La **relación de transferencias** realizadas desde la **Cuenta de Petróleo de Guinea Ecuatorial** en el **Banco Riggs No. 17-164-642** a la cuenta de **Kalunga Company S.A.** en el **Banco Santander** en Madrid entre los años 2000 y 2003 es la que sigue:

7 de junio de 2000	Transferencia por importe de 1.332.044 US\$
10 de agosto de 2000	Transferencia por importe de 1.110.000 US\$
5 de septiembre de 2000	Transferencia por importe de 292.200 US\$
16 de octubre de 2000	Transferencia por importe de 1.362.500 US\$
30 de enero de 2001	Transferencia por importe de 2.698.900 US\$
10 de abril de 2001	Transferencia por importe de 1.349.400 US\$
9 de mayo de 2001	Transferencia por importe de 1.349.400 US\$

7 de mayo de 2002	Transferencia por importe de 798.000 US\$
26 de junio de 2002	Transferencia por importe de 167.000 US\$
31 de octubre de 2002	Transferencia por importe de 336.934,57 US\$
7 de abril de 2003	Transferencia por importe de 7.425.000 US\$
24 de julio de 2003	Transferencia por importe de 770.567 US\$
3 de septiembre de 2003	Transferencia por importe de 335.137 US\$
21 de noviembre de 2003	Transferencia por importe de 4.800.000 US\$
11 de diciembre de 2003	Transferencia por importe de 1.637.000 US\$
11 de diciembre de 2003	Transferencia por importe de 720.000 US\$
<b>TOTAL:</b>	<b>26.483.982,57 US\$</b>

Se acompaña como **documento número 2** copia del *Informe sobre Blanqueo de Dinero y Corrupción Extranjera* del Subcomité Permanente de Investigaciones del Senado de los Estados Unidos de América en su versión original (inglés), en cuyas páginas 53 y 54 se relacionan estas transferencias. Por dar unidad a dicho informe se aporta el mismo íntegramente, aunque la parte que nos ocupa referida a Guinea Ecuatorial se encuentra en las páginas 1 a 17, 37 a 66, y 96 a 110.

Es significativo que en el año 2003, el **Banco Riggs** inició una investigación para revisar las cuentas relacionadas con Guinea Ecuatorial. Esa indagación versó, entre otras operaciones, sobre las transferencias realizadas a favor de **Kalunga Company S.A.** y de **Apexside Trading Ltd.**, otra



empresa presuntamente propiedad del Presidente Obiang. En febrero de 2004, el **Banco Riggs** con el fin de obtener información adicional, envió cartas a diversos bancos a favor de los cuales se realizaron transferencias desde la **Cuenta de Petróleo** de Guinea Ecuatorial. En estas cartas se solicitaba al amparo de la Sección 314 b) de la ley conocida como el *Patriot Act* información sobre las distintas cuentas. Esta sección de la ley permite a instituciones financieras compartir información relativa a sus clientes y transacciones con el fin de prevenir el blanqueo de dinero y también la financiación del terrorismo.

Una de las cartas fue remitida desde el **Banco Riggs** al **Banco Santander** en Madrid, en concreto a doña Julia de Lucas Vallejo, y en ella se solicitaba información, a fecha de 6 de febrero de 2004, sobre la identidad de los propietarios o los firmantes de la cuenta a nombre de **Kalunga Company S.A** y la situación de la cuenta. La oficina de Nueva York del **Banco Santander** respondió que la cuenta a nombre de **Kalunga Company S.A.** se abrió en la oficina central en Madrid, pero que éste no podía revelar la información requerida porque la legislación española prohibía que se descubriese este tipo de información incluso en los casos de presunción de blanqueo de dinero. La oficina del **Banco Santander** en Nueva York señaló que la oficina central realizaba una interpretación restrictiva de la ley española prohibiendo, no sólo revelar ese tipo de información a terceros, sino también a sus oficinas situadas fuera de España.

También el Banco Santander se negó a ofrecer información alguna cuando fue requerida doña Gloria Benson, por el Banco Riggs, en la sucursal del Banco Hato Rey, en Puerto

Rico.

La posición tomada por el **Banco Santander** en Madrid tuvo como consecuencia que la diligente actuación de la oficina en Nueva York respecto de las transferencias identificadas con el fin de prevenir el blanqueo de dinero no surtiera efecto y que no se pudiera obtener información clave sobre la/s cuenta/s asociada/s a dichas transferencias. Esta prohibición de revelar datos a nivel internacional, incluso cuando se trata de la misma institución financiera, constituye un grave obstáculo para los esfuerzos anti blanqueo de dinero internacional.

Al negarse el Banco Santander a facilitar la información solicitada sobre **Kalunga Company S.A.**, el **Banco Riggs** interesó la misma información al Presidente de Guinea Ecuatorial, Teodoro Obiang Nguema, y a otros altos cargos del gobierno guineo ecuatoriano en un encuentro personal a petición del **Banco Riggs** que tuvo lugar el 23 de febrero de 2003 en Washington D.C. Durante el mismo, los altos cargos de Guinea Ecuatorial se negaron a proporcionar información sobre las compañías y sus propietarios, y se limitaron a indicar que dichas transferencias habían sido debidamente autorizadas por los firmantes de las cuentas, es decir, por el **Presidente Obiang Nguema**, cuya firma era obligatoria para la retirada de fondos, y por alguno de los otros dos autorizados: **Gabriel M. Obiang Lima**, hijo del Presidente Obiang y/o **Melchor Esono Edjo**, sobrino del Presidente Obiang.

En el referido informe que hemos acompañado como número 2 se comprueban estos extremos y, en concreto, en las páginas 40, 55 y 56.

#### **CUARTO.- CONSUMACIÓN DEL BLANQUEO EN ESPAÑA.**

En el ordinal anterior se ha señalado cómo se obtenía ilícitamente el dinero mediante mecanismos de corrupción, fundamentalmente malversando los caudales públicos, que se irán concretando progresivamente a través de la instrucción, con la imprescindible investigación judicial. De estos hechos se concluye que en España se ha cometido un delito de blanqueo de capitales en base a las numerosas transferencias millonarias procedentes de la **Cuenta de Petróleo de Guinea Ecuatorial en el Banco Riggs No. 17-164-642** y que fueron depositadas en la cuenta a nombre de **Kalunga Company S.A. del Banco Santander**, Madrid, entre los años 2000 y 2003, con un **importe total de 26.483.982'57 de dólares americanos.**

Este dinero malversado ha sido blanqueado, al menos, mediante la adquisición de fincas en diversos lugares de España. Una vez cotejadas las fechas de compraventa de propiedades por parte de los firmantes de la **Cuenta de Petróleo del Banco Riggs** y de otras personalidades o ciudadanos afines guineo ecuatorianas, con las fechas en que se llevaron a cabo las transferencias a favor de la cuenta de **Kalunga Company** en el **Banco Santander**, se infiere que con dichos fondos se procedió a la adquisición de las siguientes fincas en territorio español:

1.-Finca en el Registro de la Propiedad de Las Palmas de Gran Canaria número uno, inscrita a nombre de **TEODORO OBIANG NGUEMA MBASOGO (firmante de la Cuenta de Petróleo)**, Presidente de Guinea Ecuatorial. Esta finca fue adquirida, según escritura de compraventa, el 29 de noviembre de 2000, y se trata de una vivienda de 90,87 metros cuadrados sita en la calle Dolores de la Rocha SN, planta 4, puerta C, CP

35001, Las Palmas de Gran Canaria. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 16 de octubre de 2000 según el cuadro del ordinal anterior;

2.-Finca en el Registro de la Propiedad de Las Palmas de Gran Canaria número uno, inscrita a nombre de **TEODORO OBIANG NGUEMA MBASOGO (firmante de la Cuenta de Petróleo)**, Presidente de Guinea Ecuatorial. Esta finca fue adquirida, según escritura de compraventa, el 29 de noviembre de 2000, y se trata de un garaje de de 14 metros cuadrados sito en la calle Eufemiano Jurado SN, planta 2, CP 35016, Finca Las Labradoras, Las Palmas de Gran Canaria. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 16 de octubre de 2000 según el cuadro del ordinal anterior.

Se acompañan como **documento número 3** las notas simples informativas del Registro de la Propiedad de Las Palmas de Gran Canaria número uno.

3.-Finca en el Registro de la Propiedad número dos de Torrejón de Ardoz, Madrid, inscrita a nombre de **MARCELINO OWONO EDU**, Ministro de Minas, Industria y Energía, y de su mujer, **CONSTANCIA NCHAMA ANGÜE**. Esta finca fue adquirida, según escritura de compraventa, el 3 de octubre de 2003, y se trata de una vivienda de 184,25 metros cuadrados construidos sita en la calle Almendros número 11, CP 28864, Torrejón de Ardoz, Madrid. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 3 de septiembre de 2003 según el cuadro del ordinal anterior.

Se acompañan como **documento número 4** las notas simples

informativas del Registro de la Propiedad de Torrejón de Ardoz, número 2.

4.-Finca en el Registro de la Propiedad número 5 de Gijón, inscrita a nombre de **TEODORO BIYOGO NSUE**, cuñado del Presidente Obiang, embajador de Guinea Ecuatorial en Brasil y ex embajador del país en EEUU y en Naciones Unidas, y de su mujer, **ELENA MENSA**. Esta finca fue adquirida, según escritura de compraventa, el 15 de mayo de 2001, y se trata de una vivienda unifamiliar sobre parcela de 600 metros cuadrados sita en la urbanización denominada "Verdesol", barrio de Fuejo, concejo de Gijón. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 9 de mayo de 2001 según el cuadro del ordinal anterior.

Se acompaña como **documento número 5** las notas simples informativas del Registro de la Propiedad de Gijón número 5.

5.-Finca en el Registro de la Propiedad número 3 de Alcalá de Henares, Madrid, inscrita a nombre de **PASTOR MICHA ONDO BILE**, Ministro de Asuntos Exteriores, Cooperación Internacional y Francofonía, y de su mujer, **MAGDALENA AYANG**. Esta finca fue adquirida, según escritura de compraventa, el 27 de diciembre de 2001, y se trata de una vivienda unifamiliar de 255 metros cuadrados construidos sita en la calle Alfaguara número 27, planta CHA, puerta 180, Alcalá de Henares. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 9 de mayo de 2001 según el cuadro del ordinal anterior.

Se acompaña como **documento número 6** las notas simples informativas del Registro de la Propiedad de Alcalá de

Henares número 3.

6.-Finca en el Registro de la Propiedad número 4 de Móstoles, Madrid, inscrita a nombre de **GABRIEL NGUEMA LIMA (firmante de la Cuenta de Petróleo)**, ex Viceministro de Minas, Industria y Energía, hijo del Presidente Obiang, al parecer actual Viceministro de Minas, Industria y Energía, y de su mujer **VIRGINIA ESTHER MAYE MBA**. Esta finca fue adquirida, según escritura de compraventa, el 25 de junio de 2002, y se trata de una vivienda de 193 metros cuadrados construidos sita en la Avenida Alcalde de Móstoles número 27, planta 7, puerta B. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 7 de mayo de 2002 según el cuadro del ordinal anterior;

7.-Finca en el Registro de la Propiedad número 4 de Móstoles, Madrid, inscrita a nombre de **GABRIEL NGUEMA LIMA (firmante de la Cuenta de Petróleo)**, ex Viceministro de Minas, Industria y Energía, hijo del Presidente Obiang, al parecer actual Viceministro de Minas, Industria y Energía, y de su mujer **VIRGINIA ESTHER MAYE MBA**. Esta finca fue adquirida, según escritura de compraventa, el 25 de junio de 2002, y se trata de un garaje sito en la Avenida Alcalde de Móstoles número 27, planta ST, puerta 7. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 7 de mayo de 2002 según el cuadro del ordinal anterior.

Se acompaña como **documento número 7** las notas simples informativas del Registro de la Propiedad de Móstoles número 4.

Se han podido encontrar a su vez fincas en España cuya titularidad pertenece a personas que ostentaron cargos

oficiales en el gobierno de Guinea Ecuatorial aunque actualmente se encuentran inactivas. Estas propiedades son las siguientes:

8.-Finca en el Registro de la Propiedad número 16 de Madrid, inscrita a nombre de **MIGUEL ABIA BITECO**, ex Primer Ministro de Guinea Ecuatorial, y de **DOROTEA ANITA ROKA ELOBO**, su mujer. Esta finca fue adquirida, según escritura de compraventa, el 8 de junio de 2000, y se trata de una plaza de garaje de 32 metros cuadrados sita en la calle Vieja de Pinto número 14 del edificio denominado "Palomares", planta sótano, CP 28021, Madrid. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 7 de junio de 2000 según el cuadro del ordinal anterior.

Se acompaña como **documento número 8** las notas simples informativas del Registro de la Propiedad de Madrid número 16.

9.-Finca en el Registro de la Propiedad número 2 de Móstoles, Madrid, inscrita a nombre de **ATANASIO ELA NTUGU**, ex Ministro de Minas, Industria y Energía. Esta finca fue adquirida, según escritura de compraventa, el 30 de julio de 2001, y se trata de una vivienda de 89 metros cuadrados construidos sita en la calle Montecarlo número 3, escalera izquierda, planta 3, puerta B, Móstoles. La adquisición de esta finca es coetánea en el tiempo con la transferencia realizada el día 9 de mayo de 2001 según el cuadro del ordinal anterior.

Se acompaña como **documento número 9** las notas simples informativas del Registro de la Propiedad de Móstoles número 2.

Concluyendo, los querellados, mediante mecanismos de corrupción, han desviado ilícitamente desde Guinea Ecuatorial cantidades de dinero a cuentas del **Banco Riggs** en los Estados Unidos de América, para posteriormente transferir a España parte de esas cantidades y blanquear en el circuito legal las mismas mediante la adquisición de determinadas fincas en la geografía española.

## V

### FUNDAMENTACIÓN JURÍDICA

#### PRIMERO.- JURISDICCIÓN Y COMPETENCIA

Se interpone esta querrela ante el Juzgado Central de Instrucción que por turno corresponda por ser éste el competente.

La competencia del juzgado central de instrucción se justifica en un doble motivo. En primer lugar, por producirse y consumarse el delito de blanqueo en España y en el ámbito de diferentes Audiencias. En este sentido, el apartado 1.c) del art. 65 en relación con el art. 88 de la Ley Orgánica del Poder Judicial determina la competencia de de los Juzgados Centrales de Instrucción para conocer de las *"defraudaciones y maquinaciones para alterar el precio de las cosas que produzcan o puedan producir grave repercusión en la seguridad del tráfico mercantil, en la economía nacional o perjuicio patrimonial en una generalidad de personas en el territorio de más de una audiencia"*.



En los hechos relatados en la querrela se describe el ilícito de blanqueo, que constituye un delito contra el patrimonio, y se acredita cómo las diferentes fincas adquiridas se encuentran distribuidas en distintas provincias españolas y, por tanto, en diferentes Audiencias y Tribunales Superiores de Justicia.

En segundo lugar, y aún cuando los hechos referentes al blanqueo de capitales se han consumado en España, es aplicable el art. 23.4 apartado i) de la Ley Orgánica del Poder Judicial que determina la jurisdicción española y, en consecuencia, la competencia de los Juzgados Centrales de Instrucción, para conocer de aquellos delitos que, habiendo sido cometidos por españoles o extranjeros fuera del territorio nacional, se tipifiquen como alguno de los delitos que "según los tratados o convenios internacionales, deba ser perseguido en España".

La Convención de Naciones Unidas contra la Corrupción, aprobada por la Asamblea General el 31 de octubre de 2003, y ratificada por España el 19 de junio de 2006, establece en el art. 23 denominado "blanqueo del producto del delito" que *"a los efectos del apartado b) supra ["cada Estado Parte incluirá como delitos determinantes, como mínimo, una amplia gama de delitos tipificados con arreglo a la presente Convención"]*, *entre los delitos determinantes se incluirán los delitos cometidos tanto dentro como fuera de la jurisdicción del Estado Parte interesado. No obstante, los delitos cometidos fuera de la jurisdicción de un Estado Parte constituirán delito determinante siempre y cuando el acto correspondiente sea delito con arreglo al derecho interno del Estado en que se haya cometido y constituyese asimismo delito con arreglo al derecho interno del Estado*

*Parte que aplique o ponga en práctica el presente artículo si el delito se hubiese cometido allí".*

A mayor abundamiento, en el ámbito regional europeo el Convenio Relativo al Blanqueo, Seguimiento, Embargo y Decomiso de los Productos del Blanqueo, hecho en Estrasburgo el 8 de noviembre de 1990, y ratificado por España el 22 de julio de 1998 (BOE núm. 252, de 21 de octubre de 1998), compromete a las partes, mediante una eficaz pretensión de cooperación judicial internacional, a que adopten *«las medidas legislativas y de otro tipo que sean necesarias para tipificar como delitos [de blanqueo de capitales] en virtud de su legislación nacional, si se cometieren intencionadamente»* (art. 6.1) siendo *«irrelevante que el delito principal quede sometido a la jurisdicción penal de la Parte»* (art. 6.2. a). En este sentido el art. 301.4 de nuestro CP, reiteramos, preceptúa que el *«culpable [de blanqueo] será igualmente castigado aunque el delito del que provinieren los bienes, o los actos penados en los apartados anteriores hubieren sido cometidos, total o parcialmente, en el extranjero»*.

También el Protocolo contra el Tráfico Ilícito de Migrantes por Tierra, Mar y Aire que complementa la Convención contra la Delincuencia Organizada Transnacional, de 15 de noviembre de 2000, ratificada por España el 21 de febrero de 2002 (BOE núm. 233, de 29 de septiembre), se encarga de instaurar tácitamente el título jurisdiccional universal para la incriminación de los responsables de los buques sin nacionalidad o que se hacen pasar sin ella, involucrados en el tráfico ilícito de inmigrantes por mar. En efecto, después de facultar al Estado Parte correspondiente a visitar y registrar ese buque, si encuentra pruebas que confirmen la sospecha, el Estado Parte *«adoptará medidas*

apropiadas de conformidad con el derecho interno e internacional, según proceda» (art. 8.7). Y este protocolo (art. 15 c), congruente con la Convención a la que complementa, confirma la posibilidad de que los Estados incorporen en sus leyes domésticas el título jurisdiccional universal cuando los hechos se cometan fuera de su territorio.

La Convención contra la Delincuencia Organizada Transnacional aclara que se deben perseguir los delitos que sean graves (la conducta que constituya un delito punible con una privación de libertad máxima de, al menos, cuatro años o con una pena más grave), que sean de carácter transnacional y que entrañen la participación de un grupo delictivo organizado con la finalidad de obtener beneficios económicos o materiales (arts. 1 a 3). El citado Protocolo establece en el art. 1 que éste se deberá interpretar conjuntamente con la Convención.

**SEGUNDO.-** Los hechos descritos son constitutivos de un delito de **BLANQUEO DE CAPITALS** del art. 301.1 del Código Penal:

*“El que adquiriera, convierta o transmita bienes, sabiendo que éstos tienen su origen en un delito grave, o realice cualquier otro acto para ocultar o encubrir su origen ilícito, o para ayudar a la persona que haya participado en la infracción o infracciones a eludir las consecuencias legales de sus actos, será castigado con la pena de prisión de seis meses a seis años y multa del tanto al triplo del valor de los bienes [...]”.*

De los hechos que hemos novelado se desprende que los querellados regularmente han desviado fondos desde el

tesoro de Guinea Ecuatorial, ordenando al *Riggs Bank* sucesivas transferencias desde la cuenta oficial en Washington D.C. a cuentas privadas abiertas en el Banco Santander en Madrid cuya titularidad corresponde a la compañía instrumental controlada por los querellados y el Presidente de Guinea Ecuatorial, *Kalunga Company S.A.*

La conducta subyacente respecto de la procedencia del dinero es un delito de malversación continuada de fondos. El hecho de que el delito de malversación de fondos pudiera haberse cometido en otro país es irrelevante porque el Código Penal español expresamente otorga jurisdicción a los tribunales españoles por casos de blanqueo de dinero ejecutados en España, dondequiera que el delito subyacente (malversación) hubiera sido cometido. En efecto, el apartado cuarto del art. 301 establece que "*El culpable [de blanqueo] será igualmente castigado aunque el delito del que provinieren los bienes, o los actos penados en los apartados anteriores hubiesen sido cometidos, total o parcialmente, en el extranjero*".

## VI

Para la comprobación de los hechos relatados, deben practicarse las siguientes **DILIGENCIAS DE PRUEBA:**

1. Que, previo traslado de la querrela, a través de la pertinente comisión rogatoria, salvo que vivan en España, se reciba declaración a los querellados.

2. Que se oficie a la oficina principal del Banco Santander Central Hispano en España, situada en la calle Alcalá número 39, CP 28014 de Madrid, a fin de que informe a este

Juzgado el número de cuenta de Kalunga Company S.A., estado actual de la cuenta, extracto de todas las operaciones desde su apertura y transferencias realizadas desde y a dicha cuenta, el nombre de las personas autorizadas para realizar cualquier acto bancario con dicha cuenta y toda cuanta información posean sobre la referida compañía.

3. Que se solicite testimonio de las Diligencias Informativas n° 3/05 de la Fiscalía Especial para la Represión de los Delitos Económicos relacionados con la Corrupción que se derivaron de una denuncia por blanqueo de dinero, al parecer, contra el Banco Santander Central Hispano.

4. Que se libren las siguientes **COMISIONES ROGATORIAS**:

4.1 **A PANAMÁ**: a fin de que por las autoridades competentes de dicho país remitan la historia registral completa de la compañía Kalunga Company S.A.

4.2 **A LOS ESTADOS UNIDOS DE AMÉRICA**, para:

4.2.1 **Practicar la declaración testifical de:**

4.2.1.1. **SIMON KARERI**, en calidad de responsable de las cuentas de Guinea Ecuatorial en el Banco Riggs.

4.2.1.2. **NORM COLEMAN**, Presidente del Subcomité de Investigaciones del Senado de EEUU que practicó el informe referido en la querrela.

4.2.1.3 **CARL LEVIN**, miembro de alto rango del Subcomité de Investigaciones del Senado de EEUU.

**4.2.1.4** El investigador de identidad desconocida que el Banco Riggs contrató en 2003 para efectuar una revisión exhaustiva de las cuentas de Guinea Ecuatorial en dicho banco, a fin de que se reciba su declaración judicial en calidad de testigo.

**4.2.2. Documental:**

**4.2.2.1. AL SENADO DE LOS ESTADOS UNIDOS DE AMÉRICA,** a fin de que remita toda la información en la que se sustente el informe oficial "*Money laundering and foreign corruption: enforcement and effectiveness of the patriot act. Case study involving Riggs Bank*", y especialmente la referida a Guinea Ecuatorial, debiendo remitir incluso toda la información adicional que disponga sobre las corporaciones de petróleo, la compañía Kalunga Company S.A., el Banco Riggs, y las operaciones efectuadas con el Banco Santander Central Hispano, especificando el destino final de los 700 millones de dólares que existían en 2003 en las múltiples cuentas de Guinea Ecuatorial en el Banco Riggs y cualquier otra relacionada con Guinea Ecuatorial cuando las mismas se cerraron en el año 2004.

**5.** Declaración testifical de doña **JULIA DE LUCAS VALLEJO,** que deberá ser citada en la sede principal del Banco Santander Central Hispano.

**6.** Que se practiquen todas aquellas diligencias que se deriven de las anteriores y posteriores y demás que entienda procedentes este Juzgado.

En su virtud, y ejercitando en nombre de mis representados la acción penal,

**SOLICITO AL JUZGADO:** que teniendo por presentada esta querrela con sus copias y documentos que se acompañan, la admita a trámite e incoe diligencias previas y me tenga como parte acusadora popular en la representación que debidamente dejo acreditada, acuerde unir las respectivas escrituras de poderes en la forma interesada, se sirva tener por formulada querrela por delito de **BLANQUEO DE CAPITALS**, y cualquier otro que pudiera derivarse de la investigación de los hechos relatados contra todas las personas que se indican en el ordinal III, y contra cualquier otra persona que pudiera resultar a lo largo de la instrucción, ordenando se lleven a cabo las diligencias de prueba interesadas por esta parte.

Es justicia que pido en Madrid a veintidós de septiembre de dos mil ocho.

Ldo. Manuel Ollé Sesé

Lda. Almudena Bernabeu

Proc. Domingo José Collado Molinero

TO THE PRE-TRIAL INVESTIGATIONS COURT

[I,] **MR. DOMINGO JOSÉ COLLADO**, Court Representative and representative under the citizen complaint brought by **ASOCIACIÓN PRO DERECHOS HUMANOS DE ESPAÑA (APDHE)**, acting on behalf of all of [its members] as evidenced by the notarized special power of attorney which, having been duly examined for sufficiency, I attach hereto, hereby appear before the Court and, to the fullest extent allowed by Law and with the legal assistance of the attorney-at-law registered with the Honorable Bar Association Mr. **MANUEL OLLÉ SESÉ**, **STATE [as follows]**:

I hereby file a **CRIMINAL COMPLAINT** under the provisions of Section 271 *et seq.* of the Law of Criminal Procedure [*Ley de Enjuiciamiento Criminal*] against the persons mentioned in section III below and against those who might appear to be criminally liable during the course of the investigation for a **CRIMINAL CHARGE OF MONEY LAUNDERING**, for which purpose, and in compliance with Section 277 and related provisions of such Law,

**I**

This criminal complaint is filed with such Central Pre-Trial Investigations Court as is in session to hear this case, as such Court has jurisdiction to conduct the pre-trial investigation.



## II

The complainant, who hereby brings a citizen complaint, is **ASOCIACIÓN PRO DERECHOS HUMANOS DE ESPAÑA (APDHE)**, domiciled at calle José Ortega y Gasset, 77, 2º A, of Madrid (28006).

APDHE has a lawful and direct interest in this complaint. The purposes and/or objectives set out in the Bylaws of such complainant Association consist of "defending Human Rights in all forms and in all places, ensuring observance of those already acknowledged and fostering the recognition and guaranteed protection of those that are not yet recognized," and the specific purposes pursued by the party I represent include "defending, supporting and proclaiming, disseminating and developing, by all means of expression, the Universal Declaration of Human Rights and other resolutions issued, with the same spirit, by International and Domestic Organizations regarding Human Rights issues, as well as denouncing the violation thereof" (Article 3 of the Bylaws of APDHE).

APDHE's standing is therefore based upon the following grounds: Equatorial Guinea is sub-Saharan Africa's third-largest oil producer, after Nigeria and Angola. It has annual income on the order of 3 billion euros from the oil market; its economy grows at a 20% rate, and its GDP per capita stands at 17,000 euros per annum. It is estimated that the current regime under the rule of Teodoro Obiang has managed around 16 billion euros since it took power in 1979. As an example, the list prepared annually by the well-known magazine *Forbes* revealed in 2006 that President Obiang occupied the eighth position among heads of government with the largest personal wealth, with a fortune

of 600 million euros. Attached hereto as **document number 1** is a copy of the article "*Fortunes of Kings, Queens and Dictators*," of May 5, 2006, in which it is claimed that the dictator has control over the country's public funds and over a sum close to 700 million dollars deposited by Equatorial Guinea in U.S. funds (at **Riggs Bank**).

Despite the sizeable revenues earned by the Equatorial Guinean State, 65% of the population lives in extreme poverty; the life expectancy of Equatorial Guinean citizens is 50.4 years; 56% of the population has no access to piped water; 19% of children suffer from malnutrition; the share of public expenditure that goes to education is 4% and that allocated to health care is about 1.2% of the GDP (data taken from the *Human Development Report 2007/2008*, [http://hdr.undp.org/en/media/HDR\\_20072008\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_20072008_EN_Complete.pdf)).

The prestigious *Transparency International's Global Corruption Report 2008* places Equatorial Guinea in 171<sup>st</sup> place among the 180 countries subject to examination ([http://www.transparency.org/newsroom/latestnews/pressreleases/2008/2008\\_09\\_23\\_cpi\\_2008\\_en](http://www.transparency.org/newsroom/latestnews/pressreleases/2008/2008_09_23_cpi_2008_en)).

Members of the Equatorial Guinean government and other private persons acting in connivance with them are unlawfully diverting a portion of these large public funds from the oil business in order to subsequently "launder" them in Spain. In this way, not only the civil rights but also the economic and social rights of the Equatorial Guinean population are subject to continuous and systematic violation, as the population is deprived of the minimum quality standards indispensable for survival, health or education, among others. Such violation undoubtedly has a direct impact on the dignity of the citizens, whose most fundamental rights are deliberately curtailed.

Within the framework of its strategic plans, APDHE has always closely monitored the situation of Human Rights in Equatorial Guinea.

### III

The defendants under this criminal complaint are: (1) **MARCELINO OWONO EDU**, who appears to have been recently appointed as Minister for Mining, Industry and Energy; (2) **CONSTANCIA NCHAMA ANGÜE**, the wife of Marcelino Owono Edu; (3) **MIGUEL ABIA BITECO**, former Primer Minister of Equatorial Guinea in the 2004-2006 period; (4) **DOROTEA ANITA ROKA ELOBO**, the wife of Miguel Abia Biteco; (5) **GABRIEL NGUEMA LIMA** (the son of President Obiang, also known as Gabriel M. Obiang Lima), who served as Deputy Minister for Mining, Industry and Energy until 2006 and appears to have been recently appointed as Deputy Minister for Mining, Industry and Energy; (6) **VIRGINIA ESTHER MAYE MBA**, the wife of Gabriel Nguema Lima; (7) **TEODORO BIYOGO NSUE**, ambassador of Equatorial Guinea to Brazil and former ambassador to the U.S. and to the United Nations, brother-in-law of President Obiang; (8) **ELENA MENSA**, the wife of Teodoro Biyogo Nsue; (9) **PASTOR MICHA ONDO BILE**, Minister of Foreign Affairs, International Cooperation and Francophony; (10) **MAGDALENA AYANG**, the wife of Pastor Micha Ondo Bile; (11) **ATANASIO ELA NTUGU**, former Minister for Mining, Industry and Energy; and such persons as may appear to be criminally liable during the course of the investigation for a criminal charge of **MONEY LAUNDERING**, as well as for any other charge arising from the conduct of the defendants.

### IV

## FACTS

Set forth below is a detailed account of the facts:

### **PRELIMINARY: SUMMARY.**

In July 2004, the United States Senate Permanent Subcommittee on Investigations submitted a report on money laundering and foreign corruption focusing on the activities of the U.S. entity **Riggs Bank** (*Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act. Case study involving Riggs Bank*). During the course of the investigations, a number of accounts held by the Government of Equatorial Guinea, by senior government officials and by some of their family members were found in this bank.

The Subcommittee concluded that **Riggs Bank** had failed to comply with its anti-money laundering obligations in connection with certain transactions relating to the accounts held by Equatorial Guinea and that, without any room for doubt, such transactions had their criminally unlawful origin in corruption practices (embezzlement) in that country.

During the course of the investigation, it was discovered how, over a period of three years, various transfers had been made from the **Equatorial Guinea Oil Account at Riggs Bank No. 17-164-642** to an account in the name of the company **KALUNGA COMPANY S.A. held at a branch of Banco Santander in Madrid, in the amount of 26,483,982.57 U.S. dollars.**

This "laundered" money was apparently used by Equatorial Guinean personalities and their families for their own benefit, for the acquisition of properties in various Spanish provinces.

**ONE.- GENERAL FRAMEWORK FOR THE SITUATION OF CORRUPTION AND VIOLATION OF HUMAN RIGHTS.**

Equatorial Guinea is one more among the existing cases of corruption in authoritarian governments. It is a regime in which the largest part of the wealth belonging to Equatorial Guineans is looted for the personal benefit of President Teodoro Obiang Nguema Mbasogo, his family members (locally known as the *Mongomo clan*) and his inner circle, with the consent, the aid and the participation of the corporations that operate in the country's raw materials industry and financial sectors. Revenues from gas and oil exports should place Equatorial Guinea among the richest and most prosperous countries in the world. The current level of well-being of many Equatorial Guineans, however, adds Equatorial Guinea to the long list of underdeveloped and poor countries. The reasons for this are primarily the following:

1.- Extensive corruption, induced by multinational companies, through the direct or indirect bribing of a large number of Equatorial Guinean officials, government members and their relatives, thus facilitating a systematic embezzlement of funds from the national budget.

2.- The system is supported by the fact that the gas and oil companies or their subsidiaries have participated from the outset in the exploitation of the vast resources of the country as partners or associates of President Obiang or of

companies controlled by him, with the result that most of such companies' revenues are diverted for the personal benefit of the President and of other persons close to him. Some financial corporations have played a key role in the management of this structure.

3.- The system operates within a framework of dictatorship, violation of Human Rights, persecution of political opponents, political instability, and non-enforcement of the law. Impunity is rampant.

4.- At present, the oil and gas industry is enjoying an extremely prosperous period; it has an enormous potential and brilliant future prospects. Taking into account the revenues from oil and gas exports and considering the price in the United States (its largest customer), per capita income in Equatorial Guinea should place this country second in the world, only after Luxembourg and ahead of Norway and the United States of America. If the factors used to measure human development levels are considered, human development in Equatorial Guinea should be equivalent to that in a medium-developed country among those in the European Union, standing between Greece and Portugal, and should rank above the 25<sup>th</sup> position on the world list of countries with the highest human development. However, it is a poverty-stricken country ranking in the 127<sup>th</sup> position, with most of its population barely surviving in underdevelopment conditions.

In sum, the three main aspects characterizing the situation in the country are:

1.- Corruption: the government of Equatorial Guinea is plundering the country's wealth with the acquiescence and

cooperation of its partners, i.e., oil multinational companies and financial corporations. It is systematically misappropriating a large part of country's remaining wealth. Bribes are a customary working practice among Equatorial Guinean authorities. President Obiang and his family (the *Mongomo Clan*) control almost all of the country's wealth.

2.- Oppression: Equatorial Guinea is one of the worst dictatorships. It is subject to a merciless rule and to constant violations of Human Rights. The president and his clan concentrate in themselves all the political power, controlling the Government and Institutions.

3.- Extreme poverty: Most of the population lives in extreme poverty. The child and female death rates are alarmingly high. Life expectancy at birth is 50.4 years, when, in view of the country's wealth, it should be 78 years.

The three aspects described above are not independent, but are rather related to each other. Corruption with a capital "C" is the word that defines Equatorial Guinea, but oppression is no separate issue. In fact, in Equatorial Guinea, oppression is an instrument for corruption. The extensive corruption framework through which the country is governed can only be maintained by means of a system of suppression of the population and of political opponents. Poverty is also no isolated issue: it is the necessary consequence of the amazingly high corruption level, which places Equatorial Guinea in the ninth position among the countries with the highest levels of corruption in the world.

The instrumental relationship between corruption and oppression, on the one hand, and the cause-effect relationship between corruption and extreme poverty, on the other, are crucial for the purposes of this complaint: multinational corporations are clearly involved in Equatorial Guinea's corrupt practices. The corporations are responsible for the repression because they are inducing it, knowing and accepting that this is the only way in which they can preserve their abusive and extremely lucrative status quo. Therefore, the corporations must also be deemed responsible for the deplorable living conditions of Equatorial Guinea's population. Equatorial Guineans are dying, and their death is the foreseeable and necessary consequence of the looting of the country's wealth.

**TWO.- RIGGS BANK AND THE REPORT OF THE UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS.**

In 1995, the first accounts of the Equatorial Guinean Embassy were opened at **Riggs Bank** in the United States of America. Over the next eight years, an additional fifty accounts were opened at such bank, and at least a dozen cash deposits were made in favor of the government of Equatorial Guinea and of a large number of senior governmental officials and members of their families.

In 2003, Equatorial Guinea's account was individually the most significant in the bank, with a balance of approximately seven hundred (700) million U.S. dollars.

The U.S. Senate Permanent Subcommittee on Investigations determined that **Riggs Bank** failed to comply with anti-money laundering obligations, upon establishing, through the evidence gathered, that the transactions conducted by



Equatorial Guinea showed that the origin thereof constituted a clear case of foreign corruption. It was also concluded that such bank allowed numerous suspicious transactions to take place without notifying the competent authorities.

By way of example, the Subcommittee discovered, in connection with the family of the current president of Equatorial Guinea, Teodoro Obiang Nguema, that **Riggs Bank** helped him and his children to create at least two "shell companies" and to open accounts in the name of such companies.

Among other services, **Riggs Bank** provided its customers from Equatorial Guinea with credit agreements and took care of the government's and the Embassy's business transactions, as well as of the individual needs of various senior governmental officials. As stated in the report, Equatorial Guinea held two accounts at **Riggs Bank** which were used as a source of funds to cover the education needs of Equatorial Guinean students abroad. The investigation determined that the students turned out to be the children and other relatives of powerful senior governmental officials of Equatorial Guinea.

During the 90s, the government of Equatorial Guinea made agreements with various oil companies as part of pre-existing oil production participation contracts, under which the companies provide funds to Equatorial Guinean students to cover the costs of their university education.

The information reviewed by the Subcommittee revealed that the members of the Board of Directors of **Riggs Bank** and other senior officers were fully aware of everything in

connection with the Equatorial Guinea accounts. In 2001, several senior members of the Board of Directors of **Riggs Bank** and officers of such bank formed a high-level committee that met on a quarterly basis in order to provide special attention to the relationship of the bank with Equatorial Guinea.

When the Senate Subcommittee analyzed the significant transactions at **Riggs Bank** stemming from the Oil Account and other Equatorial Guinea accounts, it discovered a large number of payments made by the oil companies in favor of Equatorial Guinean governmental entities or of government members directly, their relatives, or entities controlled by them.

It was also uncovered that several senior governmental officials of Equatorial Guinea and their family members dominated entire sectors of the country's economy and forced foreign companies seeking to operate in Equatorial Guinea to engage, in order to achieve their purpose, in unlawful business with the President, Teodoro Obiang Nguema, his relatives, or the entities they controlled, thus securing hefty lucrative returns for themselves to the detriment of the Equatorial Guinean population.

On February 23, 2004, managers of **Riggs Bank** met with the President and other Equatorial Guinean governmental authorities to discuss matters in connection with the accounts held by Equatorial Guinea and certain transfers. As stated in the Senate report, **Riggs Bank** requested the President to supply additional information regarding certain companies, such as **Kalunga Company S.A.** and **Apexside**, which were connected to the government and/or the president and his relatives. Teodoro Obiang Nguema refused

to provide any further information on the transfers made to such companies and merely said that the transfers had been authorized by the signatories for such accounts. **Riggs Bank** subsequently informed the Equatorial Guinean governmental officials that the bank had decided to close the accounts. The last accounts were finally closed between May and July 2004.

### **THREE.- MONEY LAUNDERING IN SPAIN.**

One of the lines of investigation opened by the U.S. Senate mentions a large number of multi-million [dollar] transfers from an official account held by the sovereign State of Equatorial Guinea at Riggs Bank, **Equatorial Guinea Oil Account No. 17-164-642** -called "*República de Guinea Ecuatorial - Tesorería General*" ["Republic of Equatorial Guinea - General Treasury"]- to a private account maintained at **Banco Santander Central Hispano**, known by its acronym BSCH (hereinafter, Banco Santander), in Madrid by **Kalunga Company S.A.**, a company that did not carry on any commercial or other business. The **Oil Account** funds originated from payments made by American oil companies (especially **Exxon-Mobil** and **Maratón**) to the Equatorial Guinean State in order to be entitled to exploit crude oil in such country. We reiterate that, as will be proved during the course of this investigative proceeding, such payments are unlawful.

Specifically, over the course of three and one-half years, from June 2000 to December 2003, sixteen wire transfers were made from the aforementioned Equatorial Guinea Oil Account at Riggs Bank in favor of the account held by Kalunga Company S.A. at Banco Santander, in the aggregate amount of 26,483,982.57 U.S. dollars.

Particularly noteworthy is that the United States Senate Subcommittee pointed out that the corporation **Kalunga Company S.A.**, a company not domiciled in Spain (a "**non-resident**"), is owned, in whole or in part, by the President of Equatorial Guinea, Teodoro Obiang Nguema. The **Oil Account** from which the transfers originated had as signatories (i.e., persons authorized to withdraw funds) **President Obiang**, his son **Gabriel M. Obiang Lima** (former Minister for Mining and, apparently, recently appointed as Deputy Minister for Mining, Industry and Energy) and the President's nephew, **Melchor Esono Edjo** (former State Economy Secretary and, apparently, recently appointed as Deputy Minister of Education, Science and Sports). Two signatures were sufficient to authorize withdrawals from such account, and one of them always had to be that of President Teodoro Obiang Nguema.

Below is a **list of the transfers** made from **Equatorial Guinea Oil Account** at **Riggs Bank No. 17-164-642** to the account held by **Kalunga Company S.A.** at **Banco Santander** in Madrid between 2000 and 2003:

June 7, 2000	Transfer in the amount of USD 1,332,044
August 10, 2000	Transfer in the amount of USD 1,110,000
September 5, 2000	Transfer in the amount of USD 292,200
October 16, 2000	Transfer in the amount of USD 1,362,500
January 30, 2001	Transfer in the amount of USD 2,698,900
April 10, 2001	Transfer in the amount of USD

	1,349,400
May 9, 2001	Transfer in the amount of USD 1,349,400
May 7, 2002	Transfer in the amount of USD 798,000
June 26, 2002	Transfer in the amount of USD 167,000
October 31, 2002	Transfer in the amount of USD 336,934.57
April 7, 2003	Transfer in the amount of USD 7,425,000
July 24, 2003	Transfer in the amount of USD 770,567
September 3, 2003	Transfer in the amount of USD 335,137
November 21, 2003	Transfer in the amount of USD 4,800,000
December 11, 2003	Transfer in the amount of USD 1,637,000
December 11, 2003	Transfer in the amount of USD 720,000
<b>TOTAL:</b>	<b>USD 26,483,982.57</b>

Attached hereto as **document number 2** is a copy of the *Money Laundering and Foreign Corruption Report* of the United States Senate Permanent Subcommittee on Investigations in its original English version, on pages 53 and 54 of which these transfers are listed. Such report is attached hereto in its entirety for the sake of completeness, although the portions relating to the issues at hand in connection with Equatorial Guinea can be found on pages 1 through 17, 37 through 66, and 96 through 110.

It is worthy of note that in 2003, **Riggs Bank** initiated an

investigation aimed at reviewing the accounts relating to Equatorial Guinea. The inquiry focused, among other transactions, on the transfers made in favor of **Kalunga Company S.A.** and of **Apexside Trading Ltd.**, another company presumably owned by President Obiang. In order to obtain additional information, in February 2004 **Riggs Bank** sent letters to various banks to which transfers had been made from the Equatorial Guinea **Oil Account**. In these letters, information was requested regarding various accounts under Section 314 b) of the law known as the *Patriot Act*. Under such section of the law, financial institutions are allowed to share client and transaction information in order to guard against money laundering and terrorist financing.

One of the letters was sent from **Riggs Bank** to **Banco Santander** in Madrid, specifically to Ms. Julia de Lucas Vallejo; in such letter, information was requested as of February 6, 2004 regarding the identity of the holders of or signatories for the account in the name of **Kalunga Company S.A** and regarding the status of such account. The New York branch of **Banco Santander** responded that the account in the name of **Kalunga Company S.A.** had been opened at the head office in Madrid, but added that such office could not disclose the requested information because Spanish law prohibited disclosure of this kind of information even in cases of presumed money laundering. The New York branch of **Banco Santander** stated that the head office was construing the Spanish law strictly to prohibit disclosure of this kind of information not only to third parties but also to its offices located outside of Spain.

Banco Santander also refused to provide any information when Riggs Bank requested it of Ms. Gloria Benson at the Banco Hato Rey branch in Puerto Rico.

As a consequence of the position assumed by **Banco Santander** in Madrid, the prompt action taken by the New York branch in order to prevent money laundering in connection with the identified transfers was fruitless, such that it was impossible to obtain key information on the account(s) associated with such transfers. The above-mentioned prohibition against disclosure of data on an international level, even when the financial institution is the same, seriously hinders international anti-money laundering efforts.

As Banco Santander would not furnish the information requested in connection with **Kalunga Company S.A.**, **Riggs Bank** requested such information of the President of Equatorial Guinea, Teodoro Obiang Nguema, and of other Equatorial Guinean senior governmental officials at a personal meeting that took place, at the request of **Riggs Bank**, in Washington D.C. on February 23, 2003. During such meeting, the Equatorial Guinean senior officials refused to provide information regarding the companies and their owners, and limited themselves to saying that such transfers had been duly authorized by the signatories for the accounts, i.e., by **President Obiang Nguema**, whose signature was mandatorily required for funds to be withdrawn, and by either of the other two authorized signatories: **Gabriel M. Obiang Lima**, the son of President Obiang and/or **Melchor Esono Edjo**, a nephew of President Obiang.

The above-mentioned information is contained in the report attached hereto as document number 2, specifically on pages 40, 55 and 56.

#### **FOUR.- CONSUMMATION OF THE MONEY LAUNDERING IN SPAIN.**

In the preceding section we have described the manner in which money was unlawfully obtained by resorting to corruption mechanisms –primarily, the embezzlement of public funds–, which mechanisms will be progressively identified during the investigation stage, with the indispensable aid of the judicial inquiry. The facts described above lead to the conclusion that a crime of money laundering has been committed in Spain, based on the numerous million-dollar transfers originating from **Equatorial Guinea Oil Account at Riggs Bank No. 17-164-642** and deposited in the account in the name of **Kalunga Company S.A.** at **Banco Santander**, Madrid, from 2000 to 2003, in the **aggregate amount of 26,483,982.57 U.S. dollars.**

These embezzled funds have been laundered at least through the acquisition of properties at various locations in Spain. From a comparison of the dates of purchase of properties by the signatories for the **Oil Account at Riggs Bank** and by other Equatorial Guinean personalities or citizens within their inner circle, with the dates on which the transfers were made to the account held by **Kalunga Company** at **Banco Santander**, it may be inferred that such funds were used to buy the following properties on Spanish territory:

1.- Property registered with the Land Registry of Las Palmas de Gran Canaria number one in the name of **TEODORO OBIANG NGUEMA MBASOGO (signatory for the Oil Account)**, President of Equatorial Guinea. Such property was acquired, as shown by the deed of purchase and sale, on November 29, 2000, and it is a housing unit with a surface area of 90.87 square meters, located at calle Dolores de la Rocha SN, 4<sup>th</sup>



floor, door C, CP 35001, Las Palmas de Gran Canaria. The acquisition of this property is contemporaneous with the transfer made on October 16, 2000, as shown in the table included in the preceding section;

2.- Property registered with the Land Registry of Las Palmas de Gran Canaria number one in the name of **TEODORO OBIANG NGUEMA MBASOGO (signatory for the Oil Account)**, President of Equatorial Guinea. Such property was acquired, as shown by the deed of purchase and sale, on November 29, 2000, and it is a garage with a surface area of 14 square meters located at calle Eufemiano Jurado SN, 2<sup>nd</sup> floor, CP 35016, Finca Las Labradoras, Las Palmas de Gran Canaria. The acquisition of this property is contemporaneous with the transfer made on October 16, 2000, as shown in the table included in the preceding section.

Attached hereto as **document number 3** are the uncertified information notes issued by the Land Registry of Las Palmas de Gran Canaria number one.

3.- Property registered with Land Registry number two of Torrejón de Ardoz, Madrid, in the name of **MARCELINO OWONO EDU**, Minister for Mining, Industry and Energy, **and of his wife, CONSTANCIA NCHAMA ANGÜE**. This property was acquired, as shown by the deed of purchase and sale, on October 3, 2003, and it is a housing unit with a built-on surface area of 184.25 square meters located at calle Almendros número 11, CP 28864, Torrejón de Ardoz, Madrid. The acquisition of this property is contemporaneous with the transfer made on September 3, 2003, as shown in the table included in the preceding section.

Attached hereto as **document number 4** are the uncertified

information notes issued by the Land Registry of Torrejón de Ardoz number 2.

4.- Property registered with Land Registry number 5 of Gijón in the name of **TEODORO BIYOGO NSUE**, the brother-in-law of President Obiang, ambassador of Equatorial Guinea to Brazil and former ambassador to the United States of America and to the United Nations, and of his wife, **ELENA MENSA**. This property was acquired, as shown by the deed of purchase and sale, on May 15, 2001, and it is a single-family housing unit built on a plot with a surface area of 600 square meters, located in the development area called "Verdesol," district of Fuejo, council of Gijón. The acquisition of this property is contemporaneous with the transfer made on May 9, 2001, as shown in the table included in the preceding section.

Attached hereto as **document number 5** are the uncertified information notes issued by the Land Registry of Gijón number 5.

5.- Property registered with Land Registry number 3 of Alcalá de Henares, Madrid, in the name of **PASTOR MICHA ONDO BILE**, Minister of Foreign Affairs, International Cooperation and Francophony, and of his wife, **MAGDALENA AYANG**. This property was acquired, as shown by the deed of purchase and sale, on December 27, 2001, and it is a single-family housing unit with a built-on surface area of 255 square meters located at calle Alfaguara número 27, planta CHA, door 180, Alcalá de Henares. The acquisition of this property is contemporaneous with the transfer made on May 9, 2001, as shown in the table included in the preceding section.

Attached hereto as **document number 6** are the uncertified information notes issued by the Land Registry of Alcalá de Henares number 3.

6.- Property registered with Land Registry number 4 of Móstoles, Madrid, in the name of **GABRIEL NGUEMA LIMA (signatory for the Oil Account)**, former Deputy Minister for Mining, Industry and Energy, the son of President Obiang, and, apparently, the current Deputy Minister for Mining, Industry and Energy, and of his wife, **VIRGINIA ESTHER MAYE MBA**. This property was acquired, as shown by the deed of purchase and sale, on June 25, 2002, and it is a housing unit with a built-on surface area of 193 square meters located at Avenida Alcalde de Móstoles número 27, 7<sup>th</sup> floor, door B. The acquisition of this property is contemporaneous with the transfer made on May 7, 2002, as shown in the table included in the preceding section;

7.- Property registered with Land Registry number 4 of Móstoles, Madrid, in the name of **GABRIEL NGUEMA LIMA (signatory for the Oil Account)**, former Deputy Minister for Mining, Industry and Energy, the son of President Obiang, and, apparently, the current Deputy Minister for Mining, Industry and Energy, and of his wife, **VIRGINIA ESTHER MAYE MBA**. This property was acquired, as shown by the deed of purchase and sale, on June 25, 2002, and it is a garage located at Avenida Alcalde de Móstoles número 27, basement, door 7. The acquisition of this property is contemporaneous with the transfer made on May 7, 2002, as shown in the table included in the preceding section.

Attached hereto as **document number 7** are the uncertified information notes issued by the Land Registry of Móstoles number 4.

In addition, properties have been found in Spain whose ownership is held by persons that served in official positions in the government of Equatorial Guinea, although they are now idle. Such properties are the following:

8.- Property registered with Land Registry number 16 of Madrid in the name of **MIGUEL ABIA BITECO**, former Prime Minister of Equatorial Guinea, and of **DOROTEA ANITA ROKA ELOBO**, his wife. This property was acquired, as shown by the deed of purchase and sale, on June 8, 2000, and it is a garage lot with a surface area of 32 square meters located at calle Vieja de Pinto número 14, in the building called "Palomares," basement, CP 28021, Madrid. The acquisition of this property is contemporaneous with the transfer made on June 7, 2000, as shown in the table included in the preceding section.

Attached hereto as **document number 8** are the uncertified information notes issued by the Land Registry of Madrid number 16.

9.- Property registered with Land Registry number 2 of Móstoles, Madrid, in the name of **ATANASIO ELA NTUGU**, former Minister for Mining, Industry and Energy. This property was acquired, as shown by the deed of purchase and sale, on July 30, 2001, and it is a housing unit with a built-on surface area of 89 square meters located at calle Montecarlo número 3, left-hand staircase, 3<sup>rd</sup> floor, door B, Móstoles. The acquisition of this property is contemporaneous with the transfer made on May 9, 2001, as shown in the table included in the preceding section.

Attached hereto as **document number 9** are the uncertified

information notes issued by the Land Registry of Móstoles number 2.

In conclusion, by resorting to corruption mechanisms, the defendants have unlawfully diverted sums of money from Equatorial Guinea to accounts held at **Riggs Bank** in the United States of America and have subsequently transferred to Spain a part of such sums, which they have laundered into the legal circuit through the acquisition of certain properties in Spain.

## V

### LEGAL GROUNDS

#### ONE.- JURISDICTION AND VENUE

This criminal complaint is filed with such Central Pre-Trial Investigations Court as is in session to hear this case, as such is the Court with competent jurisdiction.

The central pre-trial investigations court has jurisdiction for two reasons. First, because the crime of money laundering was committed and consummated in Spain and within the jurisdiction of various High Courts [*Audiencias*]. In this regard, sub-section 1.c) of Section 65 of the Organic Law of the Judiciary [*Ley Orgánica del Poder Judicial*], read in connection with Section 88 thereof, provides that Central Pre-Trial Investigations Courts shall have jurisdiction to hear cases of "*fraud and schemes calculated to alter the price of things, which cause or may cause a serious impact on the safety of trade [or] on the national economy, or financial damage to people*

*generally within the jurisdiction of more than one high court."*

The facts recited above in this complaint refer to the crime of money laundering, which is a crime against property, and evidence is provided of the fact that the various properties acquired are located in different Spanish provinces and, therefore, within the jurisdiction of different High Courts and Superior Courts of Justice.

Second, and apart from the fact that the events relating to money laundering were consummated in Spain, Section 23.4, sub-section i) of the Organic Law of the Judiciary applies to the instant case, as it provides for the jurisdiction of the Spanish courts and, therefore, for the jurisdiction of the Central Pre-Trial Investigations Courts, over crimes which, having been committed by Spaniards or foreigners outside of the Spanish territory, are described as any of the crimes that "pursuant to international treaties or agreements, must be prosecuted in Spain."

The United Nations Convention Against Corruption<sup>1</sup>, approved by the General Assembly on October 31, 2003 and ratified by Spain on June 19, 2006, provides in Article 23 thereof, entitled "Laundering of proceeds of crime," that "*for the purposes of subparagraph (b) above* ["Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention"], *predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute*

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<sup>1</sup> [Translator's note: All texts from international agreements cited in this translation have been retrieved from the official English versions.]

*predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there."*

Furthermore, within the European regional sphere, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, executed in Strasbourg on November 8, 1990 and ratified by Spain on July 22, 1998 (Spanish Official Gazette number 252, of October 21, 1998), binds each of the parties, in an effective quest for international judicial cooperation, to adopt "such legislative and other measures as may be necessary to establish offences [of money laundering] under its domestic law, when committed intentionally" (Article 6.1), and that "it shall not matter whether the predicate offence was subject to the criminal jurisdiction of the Party" (Article 6.2.a.). In this connection, we note again that Section 301.4 of the Spanish Penal Code provides that the "person guilty [of money laundering] shall still be punished even though the crime from which the property proceeds, or the acts punished under the preceding sub-sections, have been committed, in whole or in part, abroad."

The Protocol Against the Smuggling of Migrants by Land, Sea and Air, which supplements the Convention Against Transnational Organized Crime, of November 15, 2000, ratified by Spain on February 21, 2002 (Spanish Official Gazette number 233, of September 29), also tacitly establishes the right to universal jurisdiction in order to inculcate those responsible for vessels without nationality or which may appear to be without nationality and which are involved in unlawful trafficking of immigrants by sea.

Thus, the State Party in question may board and search the vessel, and if it finds evidence confirming the suspicion, the State Party "shall take appropriate measures in accordance with relevant domestic and international law, [as applicable]<sup>2</sup>" (Article 8.7). And this protocol, (Article 15 c), consistent with the Convention it supplements, confirms the possibility for States to add to their domestic laws the right to international jurisdiction when the acts are committed outside of their territory.

The Convention Against Transnational Organized Crime makes clear that the crimes to be prosecuted must be serious crimes ("conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty"), which are transnational in nature and which entail the participation of a criminal group organized "to obtain a financial or other material benefit" (Articles 1 to 3). The above-mentioned Protocol states in Article 1 that it must be interpreted together with the Convention.

**TWO.-** The events described constitute the crime of **MONEY LAUNDERING** under Section 301.1 of the Spanish Penal Code:

*"Anybody who acquires, converts or transfers property, knowing that such property proceeds from a serious crime, or performs any other act to conceal or disguise its unlawful origin or to aid the person that has participated in the offense or offenses in evading the legal consequences of their acts, shall be punished with imprisonment from six months to six years and with a fine from as much as the property is worth to three times such value [...]."*

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<sup>2</sup> [Translator's note: this phrase does not appear in the official English version.]



From the facts recited above, it is established that the defendants have regularly diverted funds from Equatorial Guinea's treasury, by ordering *Riggs Bank* to make successive transfers from the official account in Washington D.C. to private accounts opened at Banco Santander in Madrid, held by a shell company controlled by the defendants and the President of Equatorial Guinea, namely, *Kalunga Company S.A.*

The underlying conduct in respect of the origin of the money constitutes a crime of continuing embezzlement of funds. The fact that the crime of embezzlement may have been committed in another country is irrelevant, because the Spanish Penal Code expressly grants jurisdiction to the Spanish courts over money laundering cases occurring in Spain, regardless of the place where the underlying crime (embezzlement) may have been committed. Thus, sub-section four of Section 301 provides that "*The person guilty [of money laundering] shall still be punished even though the crime from which the property proceeds, or the acts punished under the preceding sub-sections, have been committed, in whole or in part, abroad.*"

## VI

In order for the facts recited above to be proved, the following **EVIDENTIARY PROCEEDINGS** must be carried out:

1. After notice of this complaint has been given [to the defendants], a statement must be taken from the defendants by means of the appropriate letter rogatory, unless they live in Spain.

2. An official letter must be sent to the head office of Banco Santander Central Hispano in Spain, located at calle Alcalá número 39, CP 28014, Madrid, in order for it to provide this Court with the number of the account held by Kalunga Company S.A., information regarding the current status of such account, a statement of all transactions made since it was opened and of all transfers made from and to such account, the name of the persons authorized to carry out any banking acts through such account, and any information it possesses regarding the above-mentioned company.

3. A request must be made for a certified copy of Information Proceedings No. 3/05 of the Special Prosecution Office for the Punishment of Economic Crimes relating to Corruption [*Fiscalía Especial para la Represión de los Delitos Económicos relacionados con la Corrupción*] arising from the reporting of a case of money laundering, apparently against Banco Santander Central Hispano.

4. The following **LETTERS ROGATORY** must be issued:

4.1 **TO PANAMA:** in order that the competent authorities of such country provide a complete history of record of the company Kalunga Company S.A.

4.2 **TO THE UNITED STATES OF AMERICA,** in order to:

4.2.1 **Take a witness statement from:**

4.2.1.1. **SIMON KARERI,** in his capacity as the person responsible for the accounts of Equatorial Guinea at Riggs Bank.

**4.2.1.2. NORM COLEMAN**, Chairman of the United States Senate Subcommittee on Investigations that prepared the report mentioned in this complaint.

**4.2.1.3 CARL LEVIN**, senior member of the United States Senate Subcommittee on Investigations.

**4.2.1.4** The investigator of unknown identity that Riggs Bank hired in 2003 to conduct an exhaustive review of the accounts held by Equatorial Guinea at such bank, in order that he bear testimony in court as a witness.

**4.2.2. Documentary evidence:**

**4.2.2.1. TO THE SENATE OF THE UNITED STATES OF AMERICA**, in order for it to provide all the information supporting the official report entitled "*Money laundering and foreign corruption: enforcement and effectiveness of the Patriot Act. Case study involving Riggs Bank,*" and especially the information relating to Equatorial Guinea; and also to provide all additional information it may have regarding the oil companies, the company Kalunga Company S.A., Riggs Bank, and the transactions carried out with Banco Santander Central Hispano, specifying the final destination of the 700 million dollars existing in 2003 in the multiple accounts held by Equatorial Guinea at Riggs Bank and providing any other information in connection with Equatorial Guinea when such accounts were closed in 2004.

**5.** Witness statement from Ms. **JULIA DE LUCAS VALLEJO**, who must be subpoenaed at the headquarters of Banco Santander Central Hispano.

6. [It is also requested] that any further proceedings be carried out as may derive from the foregoing and from any subsequent and other proceedings that this Court may deem appropriate.

By virtue of the foregoing, and bringing a criminal action on behalf of the parties I represent,

**I PRAY OF THE COURT:** that it will consider this criminal complaint duly filed, together with the copies hereof and the documents attached hereto; that it will admit it for further proceedings and that it will carry out any requisite pre-trial proceedings; that it will consider me as a citizen complainant acting in the representative capacity of which I have duly provided evidence; that it will order the notarized powers of attorney to be consolidated as requested; that it will deem this complaint to have been filed for a charge of **MONEY LAUNDERING**, and for any other crime that might arise from the investigation of the facts recited above, against all the persons mentioned in section III and against any other person that might appear to be [responsible] during the course of the investigative proceedings, and that it will cause to be carried out the evidentiary proceedings that this party has requested.

It is justice I pray for in Madrid, on September the twenty-second of two thousand eight.

Ido. Manuel Ollé Sesé

Lda. Almudena Bernabeu

[Attorney-at-law]

[Attorney-at-law]

Court Representative Domingo José Collado Molinero

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MADRID / Un parado dona su cuerpo para ser plastificado cuando muera si le pagan la hipoteca / 17

## Detenido Aitzol Iriondo al dar sus primeros pasos como jefe de ETA

► Cae en Francia junto a dos etarras más tres semanas después del arresto de su antecesor, 'Txeroki'  
► Horas después, otros tres miembros de la banda fueron capturados en Irún, cerca de la frontera

FERNANDO LÁZARO

MADRID.- El reinado más corto en ETA. Apenas 22 días ha logrado estar al frente del llamado entramado militar de la organización terrorista. Su antecesor, Garikoitz Aspiazu, Txeroki, fue detenido el pasado 17 de noviembre. Desde ese día se consideraba a Aitzol Iriondo su sucesor.

En poco más de tres semanas de mandato, la organización terrorista sí ha tenido tiempo de perpetrar un nuevo asesinato, el del empresario de Azpeitia (Guipúzcoa) Ignacio Uribe, que recibió un disparo en la cabeza cuando iba a comer.

Iriondo era uno de los terroristas más buscados. Su rostro estaba en

### El asesino de Ordóñez se aleja de la banda y critica el crimen de Azpeitia

Página 10

todos los carteles distribuidos por el Ministerio del Interior tanto en España como en Francia.

Su presencia en el país vecino fue una «gran sorpresa» para el dispositivo conjunto de la Gendarmería y la Guardia Civil, que seguían rastreando las pistas dejadas en el sur de Francia por Txeroki. Los datos obtenidos durante los días siguientes a la captura del ex responsable del entramado militar de ETA han llevado a esta nueva operación policial contra la cúpula terrorista. «Y eso que aún no hemos podido acceder a sus ordenadores», recuerdan fuentes policiales. Sigue en página 8 Editorial en página 3



FRANCISCO BONILLA / REUTERS

### Reyerta racial en Almería

Guardias Civiles reducen a inmigrantes subsaharianos en la localidad almeriense de La Mojenera, tras los disturbios raciales surgidos entre este colectivo y trabajado-

res magrebíes. La tensión entre los dos grupos estalló en la noche del domingo tras el apuñalamiento de un ciudadano malí por parte de un súbdito marroquí. Página 15

### El PSC tilda de 'desafortunado' el grito de Tardà y de 'disparate' que el PP inste al fiscal a actuar

CARMEN REMÍREZ DE GANUZA  
MADRID.- El portavoz del PSC, Miguel Iceta, rompió ayer el silencio de su partido para admitir que fue «desafortunado» el grito «¡Muera el Borbón!», proferido el sábado por el diputado de ERC, Joan Tardà, al término de un mitin. Pero, según se expresó en su blog, condena también «con energía» el «disparate» que supone la exigencia del PP para que la Fiscalía actúe contra el parlamentario.

Sigue en página 11

### El presidente del Parlament ha hecho en cuatro años 60 viajes al extranjero

Ernest Benach ha visitado un total de 42 destinos, alguno de ellos para ver al Barça. Página 12

### El ICO reclama más fondos a Solbes para financiar los planes anticrisis del Gobierno

Advierte que no podrá llevarlos a cabo si no le autoriza a una emisión de deuda de 15.000 millones. Página 28

### OTRAS NOTICIAS

La tercera noche de disturbios violentos sin control en Grecia hace tambalear al Gobierno

Página 23

## Obiang blanquea más de 26 millones comprando propiedades en España

Utiliza la sociedad Kalunga Company para invertir en Canarias, Asturias y Madrid los ingresos por petróleo que desvió al Banco Riggs / La Fiscalía Anticorrupción estudia querrellarse contra el Gobierno de Guinea Ecuatorial

ANTONIO RUBIO

MADRID.- La Fiscalía Anticorrupción está estudiando una querrela criminal contra el Gobierno de Guinea Ecuatorial por «un delito de blanqueo de capitales» en España. La querrela, presentada por la

Asociación Pro Derechos Humanos de España, documenta con detalle «las numerosas transferencias millonarias procedentes de la Cuenta de Petróleo de Guinea Ecuatorial en el Banco Riggs [de EEUU] con número 17-164-642 de-

positadas en la cuenta a nombre de la sociedad Kalunga Company SA, del Banco Santander, Madrid, entre los años 2000 y 2003, con un importe total de 26.483.982,57 dólares americanos».

Sigue en página 14 Editorial en página 3

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## LA TRONERA

ANTONIO GALA

## Pseudohumanismo

Los grandes discursos pseudohumanistas —cuando se toma la molestia pagada de hacerlos el capital— son menos que agua de borrajas. «Solos o en compañía de otros», como en Washington. Todo se le vuelve dar vueltas a su noria, de donde sacan su agua de oro. ¿Qué diría Calvino, el predeterminista de la vida eterna a través del éxito en ésta? ¿Qué dirá su heredero el Opus Dei? Los intelectuales honrados, que ni sirven a nadie ni obedecen, y el pueblo movilizado tienen ahora que dar la vuelta a esta tortilla que comen siempre los mismos. Si Dios existe, está en el corazón y no en los bancos; en la comunidad y no en el limosneo; en la igualdad y no en las caridades. Si no, los ricos no conocerán más paraísos que los fiscales. Ojalá éstos se les cierren también.

## Ausencias

Aniversario: Carta Magna '30. No presentados: González (de viaje), Aznar, tan sensible, as usual. Diputados ausentes (ventitantos). Y Solé Tura (malito). Nadie evocó a Cisneros: que se fue. Y Bono, del caimino hispano: más respetados fuera que dentro. Ahora, en Madrid: los angry young men, tan british, tan fifties, tan sixties, tan jóvenes airados, Osborne, Richardson, et al. ¿Y tales nacionalistas? Angry old idiots. —ERASMO

## EL PSOE calla, el PSC otorga el 'disparate' al PP

El Gobierno de Zapatero y el PSOE mantuvieron ayer su más absoluto silencio respecto al grito «muera el Borbón» proferido el sábado por el diputado de ERC Joan Tardà. Ciertamente es que a veces es mejor callarse y parecer desatinado que abrir la boca para despejar las dudas. Eso es lo que ha vuelto a hacer el presidente del Congreso, José Bono, quien justificó una vez más la conducta de Tardà basándose en cuestiones de carácter, dando a entender además que él

«hablará en favor de los diputados» digan éstos lo que digan y hagan lo que hagan. Aunque puestos a desbaratar, peor fue la reacción del vicepresidente secretario y portavoz del PSC, Miquel Iceta, para quien el «disparate» no son las palabras de Tardà, sino la disposición del PP ante éstas. Para Iceta, la declaración (sic) del diputado de ERC sólo merece el adjetivo de «desafortunada», mientras que es evidente que la intención de los populares es «contaminar la vida política».

Con ello, básicamente se adhiere a la opinión del secretario general de ERC, Joan Rida, quien considera que lo «desproporcionado» no es apelar a la muerte del Rey en un mitin, sino criticar que eso se haga. Una vez más se está poniendo en evidencia la disposición de los socialistas catalanes a tragar con todo tipo de abusos —desde los verbales de Tardà a los que cometen con el dinero del contribuyente Carod o Benach— con tal de mantenerse en el Gobierno.

## Los riesgos del nuevo papel del ICO

El Instituto de Crédito Oficial (ICO) ha enviado un informe al vicepresidente y ministro de Economía, Pedro Solbes, en el que le pide que el Gobierno le autorice a aumentar su capacidad de endeudamiento. El ICO quiere emitir 15.000 millones de deuda y recibir más financiación del Tesoro para poder desarrollar las nuevas actividades que le ha encomendado el propio Gobierno para luchar contra la crisis. Entre ellas figuran proporcionar liquidez a las empresas, avalar

la vivienda protegida, ayudar a las pymes, financiar la moratoria de hipotecas y prestar a los sectores en crisis como el automóvil. Ello pasa inevitablemente por incrementar el nivel de endeudamiento que fija cada año el Ministerio de Economía. A pesar de las limitaciones presupuestarias, el Gobierno no va a tener otro remedio que aceptar la petición del ICO si, de verdad, pretende que atienda a los muchos frentes que se han abierto. Tras la liquidación de la banca pública en

los años 90, el ICO es el único instrumento que le queda al Gobierno para prestar dinero a las empresas. El grave peligro que subyace en esta creciente implicación del ICO en la lucha contra la crisis es que acabe jugando el papel del INI cuando se convirtió en una especie de basurero del sector público, donde iban a parar las empresas que nadie quería. Ello no puede volver a suceder, por lo que el Gobierno no debe forzar al ICO a sobrepasar ciertos límites.

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LA CAÍDA DE AITZOL 'EL BREVE',  
SÍMBOLO DE LA DEBILIDAD DE ETA

Podría pasar al libro de los récords porque Aitzol Iriondo ha sido, sin duda, el líder más efímero de la historia de ETA. En todas las organizaciones jerarquizadas, empezando por el Imperio Romano, pasando por las grandes dinastías históricas y terminando por la Mafia o la Camorra, siempre ha habido líderes que han ejercido sus funciones en una situación de interinidad o a causa de grandes turbulencias que les han catapultado al poder. Pero muy pocos han reinado o gobernado un período tan breve como el de Iriondo, detenido ayer en el sur de Francia tan sólo tres semanas después de la captura de Txeroki y cuando empezaba a ejercer como jefe de la banda.

Iriondo, al que se le acusa de haber asesinado al concejal socialista Isaias Carrasco en Mondragón, estaba considerado como un miembro del ala más dura, partidario de intensificar las acciones terroristas para obligar al Gobierno de Zapatero a negociar. Ahora tendrá tiempo en la cárcel para reflexionar cuál es la estrategia que mejor le conviene a la banda.

La rápida detención de Iriondo pone en evidencia el nivel de infiltración policial en ETA, lo que ha permitido que los tiempos se hayan acortado espectacularmente desde que un terrorista comete su primera acción criminal hasta que entra en la cárcel.

La captura de Iriondo y otros dos etarras —así como la posterior detención en Irún de otros tres presuntos miembros de ETA— corrobora la excelente cooperación del Gobierno de Sarkozy en la lucha antiterrorista, que ha llegado a un grado óptimo. Pero también hay que resaltar el buen hacer de la Guardia Civil, la Policía Nacio-

nal y el CNI, que, dejando al margen viejos recelos, están trabajando juntos para arrinconar a ETA en el vecino país. El Ministerio de Interior sigue recogiendo los frutos de una labor iniciada por los Gobiernos de Aznar y continuada por los de Zapatero. Ahora sabemos lo que quiso dar a entender Rubalcaba cuando dijo que el nuevo líder de ETAYa estaba en el punto de mira policial.

Los éxitos de las Fuerzas de Seguridad no sólo han puesto contra las cuerdas a la banda sino que además permiten albergar el objetivo de acabar con ETA o convertirla al menos en un sucedáneo del GRAPO: podrá actuar de vez en cuando pero no reorganizará con continuidad. Esto debe ser el objetivo último del Gobierno: la entrega de armas de ETA sin condición alguna.

Volver a una posible negociación en vísperas de las elecciones vascas, como algunos han especulado, sería una verdadera locura cuando la banda está más tocada que nunca y la izquierda abertzale sufre una crisis sin precedentes.

Ello no es una especulación sino la constatación de lo que está pasando en ETA, como lo demuestra el aparente cambio de actitud del otrora sanguinario Valentín Lasarte, que ha expresado su repulsa en prisión por el reciente crimen de Azpetitia tras darse cuenta de la inutilidad de la lucha armada.

El Gobierno debe seguir presionando a ETA y su entorno, lo que incluye la pronta disolución de los 42 ayuntamientos vascos gobernados por ANV, que es uno de los apéndices de la banda. No hay que dar ni el menor respiro a los terroristas, que deben tener la certeza de que su único destino será el de pasar buena parte de su vida en la cárcel.

## OBIANG SE BLANQUEA EN ESPAÑA

Guinea Ecuatorial es un país que nada en petróleo mientras la mayoría de su población vive en situación de extrema pobreza. Es desde hace años un secreto a voces que el dinero sale de forma irregular del país y es manejado con total impunidad por el dictador de la nación africana, Teodoro Obiang, hasta incorporarlo a su fortuna personal. Las prácticas corruptas y delictivas del Gobierno ecuatoguineano están ya denunciadas en Francia y ahora la Fiscalía Anticorrupción española estudia una querrela criminal por que buena parte de los fondos de Obiang pasaron por un banco español y se blanquearon con la compra de casas, chalés y edificios por toda la geografía de nuestro país.

El dinero en cuestión, 26,5 millones de dólares, llegó a España procedente del estadounidense Banco Riggs, el mismo que ayudó a Pinochet a ocultar parte de su fortuna y que, antes de desaparecer en una fusión, tuvo que hacer frente a una sanción de 25 millones de dólares por violar las leyes anti-blanqueo de capitales, especialmente por sus transacciones con Guinea.

La denuncia que estudia ahora la Fiscalía, presentada por la Asociación Pro Derechos Humanos de España, va dirigida contra un total de 11 personas, todas ellas familiares directos o políticos de Obiang.

Es difícil contabilizar los ingresos reales

del país, dado el secretismo que rodea los contratos con las compañías internacionales que allí operan, pero se calcula que ascienden a más de 3.000 millones de euros anuales. Eso significa que por su renta per cápita Guinea Ecuatorial sería hoy el noveno país más rico del mundo, pero uno de cada cinco niños sufre allí desnutrición. Y eso a pesar de que el país es receptor de fondos de ayuda al desarrollo, procedentes, entre otros países, de España.

Las ayudas no se condicionan, como reza la teoría, a la democratización del país o a la transparencia de su destino. Pero no es éste el único caso en el que los representantes españoles se han dejado timar por Obiang. En 2006, en su última visita a nuestro país, éste se reunió con Zapatero para prometer —por enésima vez— que liberaría a los presos políticos. Y hace unos meses tres diputados españoles (de PSOE, PP y CIU) viajaron como observadores a las elecciones presidenciales para constatar un «avance en materia de garantías electorales», pese a que Obiang fue reelegido con el 99% de los votos y la ONU certificó días después las torturas a que se practican sobre los opositores encarcelados.

Bien podría la Audiencia Nacional actuar contra un dictador que no sólo vulnera los derechos humanos, sino que también ha delinquido en suelo español.

# El Gobierno de Guinea Ecuatorial 'blanquea' dinero en España

Una investigación desvela que el presidente desvió 26,5 millones de dólares a EEUU y después lo 'lavó' en España adquiriendo fincas y chalés

Viene de primera página

La denuncia de la Asociación Pro Derechos Humanos de España (APDHE) va dirigida contra un total de 11 personas, todas ellas familiares directos o políticos de Teodoro Obiang Nguema, actual presidente de Guinea Ecuatorial. Gabriel Nguema Lima, hijo; Virginia Esther Maye, nuera; Teodoro Biyogo, cuñado, y Elena Mensa, cuñada política, son los familiares del presidente. Y entre los querrelados también figuran destacados dirigentes del Gobierno de la ex colonia española como el ministro de Asuntos Exteriores y su esposa, Pastor Mincha y Magdalena Ayang, y el ex ministro de Minas Anatasio Eia.

La querrela se basa en un ex-

ministro de Minas; Teodoro Biyogo, cuñado del presidente y embajador en Brasil; Pastor Micha, ministro de Exteriores; Marcelino Owono, ministro de Minas y Gabriel Nguema, hijo del presidente.

La querrela de la APDHE está basada en el exhaustivo trabajo realizado por sus técnicos, investigadores y abogados en España, y en el informe elaborado en julio de 2004 por el Subcomité Permanente de Investigaciones del Senado de Estados Unidos sobre «blanqueo de dinero y corrupción extranjera».

Parte de ese informe norteamericano se centraba en el Banco Riggs y, tal como recoge la querrela, «en el transcurso de las investigaciones se descubrieron una serie de cuentas en este banco (Riggs) cuya titularidad era del Gobierno de Guinea Ecuatorial, de altos cargos del mismo y de algunos de sus familiares (de Teodoro Obiang)».

El Subcomité de EEUU concluyó, tal como se recoge en la querrela de la APDHE, que «el Banco Riggs había incumplido sus obligaciones anti-blanqueo de capitales en relación con... las cuentas de Guinea Ecuatorial y que, sin ningún género de dudas, tenían su origen ilícito penal en la corrupción (malversación) practicada en ese país».

Y en ese mismo informe también se plasma el resultado de las investigaciones sobre Guinea y sus gobernantes: «A lo largo de tres años se habían realizado diferentes transferencias desde la Cuenta de Petróleo de Guinea Ecuatorial en el Banco Riggs número 17-164-642 a una cuenta a nombre de Kalunga Company S.A. domiciliada en una sucursal del Banco Santander de Madrid, por un valor de 26.483.982, 57 dólares americanos».

En la documentación que estudia la Fiscalía Anticorrupción sobre Guinea se concreta que las primeras cuentas de la Embajada del país africano en el Banco Riggs se abrieron en 1995. Después, el número de cuentas en el Riggs llegaron a 50 y «se realizaron, al menos, una docena de ingresos en efectivo a favor del Gobierno de Guinea y también de un gran número de altos cargos de dicho gobierno y miembros de su familia (se refiere a Teodoro Obiang)». Y concluye el informe: «En 2003 la cuenta de Guinea Ecuatorial era individualmente la más importante del banco (Riggs) con un saldo que arrojaba unos 700 millones de dólares».

El Subcomité de Estados Uni-

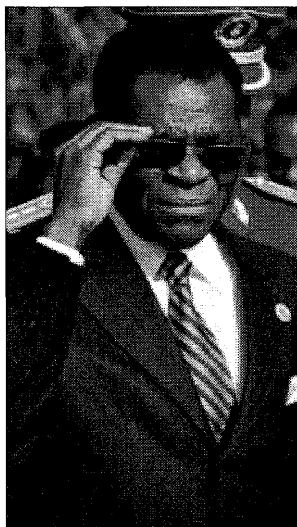
## Las cuentas de la familia Obiang

Relación de transferencias realizadas desde el Banco Riggs (cuenta de Petróleo de Guinea Ecuatorial) al Banco Santander (Madrid) y de los familiares del presidente Obiang y miembros del Gobierno guineano que se han beneficiado con ese dinero.

Transferencias	Importe transferencia (\$)	Propietario	Inmueble	Escritura
07/06/2000	1.332.000	Miguel Abia (ex primer ministro)	Garaje 32 m <sup>2</sup> . Madrid	8/06/2000
10/08/2000	1.110.000			
05/09/2000	292.200			
16/10/2000	1.362.000	Teodoro Obiang Nguema (presidente)	Apartamento 90 m <sup>2</sup> . Las Palmas de Gran C.	29/11/2000
		Teodoro Obiang Nguema (presidente)	Garaje 24 m <sup>2</sup> . Las Palmas de Gran C.	29/11/2000
30/01/2001	2.698.900			
10/04/2001	1.349.400			
09/05/2001	1.349.700	Atanasio Eca (ex ministro de Minas)	Vivienda 89 m <sup>2</sup> . Mostoles.	30/07/2001
		Teodoro Biyogo (cuñado presidente y embajador Brasil)	Vivienda unifamiliar 600 m <sup>2</sup> . Gijón.	15/05/2001
		Pastor Michá. Ministro de Asuntos Exteriores.	Vivienda unifamiliar 225 m <sup>2</sup> . Alcañal de Henares.	27/12/2001
07/05/2002	798.000	Gabriel Nguema (hijo del presidente)	Vivienda 193 m <sup>2</sup> . Mostoles.	25/06/2002
07/05/2002	798.000	Gabriel Nguema (hijo del presidente)	Garaje. Mostoles.	25/06/2002
26/06/2002	167.000			
31/10/2002	336.934,57			
07/04/2003	7.425.000			
24/07/2003	770.567			
03/09/2003	335.137	Marcelino Owono (ministro de Minas)	Vivienda 184,25 m <sup>2</sup> . Torrejón de Ardoz.	03/10/2003
21/10/2003	4.800.000			
11/12/2003	1.637.000			
11/12/2003	720.000			
TOTAL	26.483.982,57			

FUENTE: Fiscalía Anticorrupción.

EL MUNDO



Teodoro Obiang, presidente de Guinea. / B. RIVAS.

haustivo trabajo de investigación realizado por la fundación estadounidense Soros junto con la Open Society Institute (ISO) —que se dedican a la defensa de los Derechos Humanos y a luchar contra la corrupción en todo el mundo— y la APDHE, en el que se demuestra y acredita que los querrelados han ido adquiriendo una serie de casas, chalés y edificios entre el año 2000 y 2003 en el territorio español con el dinero que de forma irregular salía de Guinea, llegaba al Banco Riggs de Washington y después terminaba en la oficina central del Santander de Madrid.

La mayoría de las propiedades adquiridas en España con el dinero del Estado guineano se encuentran entre Canarias, Asturias y la Comunidad de Madrid y los beneficiarios son: Teodoro Obiang Nguema, presidente de Guinea Ecuatorial; Miguel Abia, ex primer ministro; Anatasio Eca, ex

ministro de Minas; Teodoro Biyogo, cuñado del presidente y embajador en Brasil; Pastor Micha, ministro de Exteriores; Marcelino Owono, ministro de Minas y Gabriel Nguema, hijo del presidente.

La querrela de la APDHE está basada en el exhaustivo trabajo realizado por sus técnicos, investigadores y abogados en España, y en el informe elaborado en julio de 2004 por el Subcomité Permanente de Investigaciones del Senado de Estados Unidos sobre «blanqueo de dinero y corrupción extranjera».

El Subcomité de Estados Uni-

La APDHE argumenta y razona su querrela ante la Fiscalía Anticorrupción recordando que «Guinea Ecuatorial ingresa anualmente 3.000 millones de euros procedentes del petróleo» y que, a pesar de esos beneficios «el 65% de la población vive en situación de extrema pobreza; la esperanza de vida de los ciudadanos es de 50,4 años; el 56% no tiene agua corriente; el 19% de los niños sufre desnutrición; el gasto público en educación es del 4%, y en salud ronda el 1,2% del PIB».

El último informe de la organización Transparencia Internacional sobre Corrupción

## Un país rico con extrema pobreza

Global también ha servido de base a la APDHE para recordar que «Guinea Ecuatorial aparece en el puesto 171 en el ranking de los 180 países sometidos a examen».

Con respecto a la situación actual de Guinea, los querellantes recuerdan que hay una constante «violación de Derechos Humanos, persecución de los opositores políticos, inestabilidad política e incapacidad de la ley».

Pero donde ponen más énfasis los denunciantes es en la miseria

en la que vive el país: «La mayoría de la población vive en condiciones de extrema pobreza». Y, después, la APDHE subraya que «el nivel de muerte infantil y femenina es terrible».

Hay que recordar que tanto la fundación Soros como Iso, que son los dos organismos que han llevado a cabo la investigación en Estados Unidos, tienen como base fundamental de su trabajo «fomentar la educación, la salud pública, la justicia y la independencia

de los medios de comunicación».

En esa misma querrela se recuerda que «los guineanos ecuatorianos están muriendo y su muerte es la consecuencia previsible y necesaria de la explotación de la riqueza de este país».

Entre los documentos aportados por los querellantes a la Fiscalía Anticorrupción hay un informe elaborado por la revista *Forbes*, del año 2006, donde se refleja que «el presidente Teodoro Obiang ocupa el octavo puesto de los gobernantes con mayor riqueza personal, con una fortuna de 600 millones de euros».

## Anticorrupción estudia una querrela de la Asociación Pro Derechos Humanos de España

Lo más llamativo del trabajo realizado por los norteamericanos (Subcomité de EEUU, la fundación e ISO) se centra en que el Banco Riggs ayudó, de forma directa, al presidente Teodoro Obiang y a sus hijos a crear «al menos dos empresas fantasmas (Ka-

lunga Company y Apexside) y a abrir cuentas a nombre de las mismas».

En la misma línea de colaboración entre los dirigentes guineanos y los responsables del Riggs se crearon «dos cuentas que se utilizaban para fondos destinados a la educación de estudiantes en el extranjero». Al final se descubrió que «estos estudiantes resultaron ser los hijos y otros parientes de poderosos altos cargos de Guinea Ecuatorial».

En la actualidad, Guinea Ecuatorial ingresa anualmente una mediada 3.000 millones de euros procedente del mercado del petróleo y se calcula, según se explica en la querrela, que «Teodoro Obiang ha manejado alrededor de 16.000 millones de euros desde que se hizo con el poder en 1979».

En la denuncia de la APDHE se explica que «los fondos de la Cuenta de Petróleo (que Obiang y

su familia tiene en el Banco Santander) procedían presuntamente de los pagos ilícitos que las compañías petrolíferas americanas Exxon-Mobil y Maratón, principalmente, realizaban al Estado de Guinea para poder explotar el crudo de aquel país».

En la querrela contra Teodoro Obiang, sus familiares y altos cargos del Gobierno de Guinea por «lavado de dinero en España» se solicita a la Fiscalía Anticorrupción que sean llamados a declarar los responsables de las entidades bancarias y que se tramiten las correspondientes comisiones rogatorias.

Esta querrela fue presentada en la Audiencia Nacional hace aproximadamente un mes y la Fiscalía de ese organismo judicial considera que podía haber indicios de «blanqueo de dinero», y por ese motivo fue remitida a la Fiscalía Anticorrupción para su estudio.

## Obiang Lauanders over \$26 million, Buying Real Estate in Spain

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Kalunga Company uses oil revenues it diverted to Riggs Bank to invest in the Canary Islands, Asturias and Madrid. The Anticorruption Division of the Attorney General's Office is considering filing a criminal complaint against the Government of Equatorial Guinea.

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ANTONIO RUBIO

MADRID.- The Anticorruption Division of the Office of the Attorney General is reviewing a criminal complaint filed against the government of Equatorial Guinea for "the crime of money laundering" in Spain. The criminal complaint, filed by the *Asociación Pro Derechos Humanos de España*, provides detailed documentation of "numerous multi-million dollar transfers originating from Equatorial Guinea's Oil Account No. 17-164-642 at [U.S.-based] Riggs Bank and deposited into an account for the company Kalunga Company S.A. at Banco Santander in Madrid, in the total amount of US\$26,483,982.57."

Continues on page 14

Editorial on page 3



## SPAIN

# The Government of Equatorial Guinea “launders” funds in Spain

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An investigation reveals that the president diverted US\$26.5 million to the United States and “laundered” it in Spain, buying ranches and chalets

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**From the first page**

The formal complaint of the *Asociación Pro Derechos Humanos de España* (APDHE) was filed against 11 people, all of whom were either direct relatives or in-laws of Teodoro Obiang Nguema, the current president of Equatorial Guinea. Gabriel Nguema Lima, son; Virginia Esther Maye, daughter-in-law; Teodoro Biyogo, brother-in-law; and, Elena Mensa, sister-in-law, are relatives of the president. Also among the accused are important government officials of the former Spanish colony, such as the Minister of Foreign Affairs and his wife, Mr. Pastor Mincha and Magdalena Ayang, and the former Minister of Mines, Anastasio Ela.

The complaint is based upon an exhaustive investigation conducted by the U.S.-based Soros Foundation together with The Open Society Institute (OSI) - an organization committed to the defense of human rights and fighting corruption worldwide - and APDHE, which provides evidence that, between 2000 and 2003, the defendants acquired houses, chalets and buildings in Spain with funds improperly transferred from Guinea to Riggs Bank in Washington. D.C. and which later ended up at Santander's main office in Madrid.

The majority of the properties acquired in Spain with monies from Equatorial Guinea are located in the Canary Islands, Asturias and the Community of Madrid and are held in the names of: Teodoro Obiang Nguema, president of Equatorial Guinea; Miguel Abia, former prime minister; Atanasio Eca, former minister of Mines; Teodoro Biyogo, brother-in-law of the president and ambassador to Brazil; Pastor Micha, minister of Foreign Affairs; Marcelino Owono, minister of Mines and Gabriel Nguema, the president's son.

APDHE's complaint is based on the exhaustive work of its experts, researchers and lawyers in Spain and on the “money laundering and foreign corruption” report prepared by the United States Senate Permanent Subcommittee on Investigations in July 2004.

Part of the American report focused on Riggs Bank and, as set forth in the complaint, “[D]uring the course of the investigations a number of accounts were discovered at this bank (Riggs) under the name of the government of Equatorial Guinea, high-ranking officials of that government and of some of his (Teodoro Obiang's) relatives.”

The U.S. Subcommittee concluded, as set forth in the APDHE complaint, that “Riggs Bank had failed to comply with its anti-money laundering obligations with respect to the... accounts of Equatorial Guinea and that, without doubt, those monies were the proceeds of criminally corrupt conduct (misappropriation) practiced in that country.”

The report also deals with the investigations of Guinea and its government officials: “For three years various transfers were made for a total of US\$26,483,982.57 from Equatorial Guinea's oil account number 17-164-642 at Riggs Bank to an account held by Kalunga Company S.A. at a branch of Banco Santander in Madrid.”

The documents reviewed by the Attorney General's Anticorruption Division regarding Guinea show that the first accounts of the African country's embassy were opened at Riggs Bank in 1995. Subsequently, the number of accounts at Riggs reached 50 and “at least a dozen cash deposits were made in favor of the Government of Guinea and a number of high-ranking officials

**SPAIN**

of that government and members of his family (referring to Teodoro Obiang)". The report concludes: "In 2003, Equatorial Guinea's account, with a balance of some \$700 million dollars, was the largest account at the bank (Riggs)."

The U.S. Subcommittee concluded that "Riggs Bank did not comply with its anti-money laundering obligations... [T]he transactions made by Equatorial Guinea revealed that they were based on a clear case of foreign corruption."

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### The Anticorruption Division reviews a complaint of the *Asociación Pro Derechos Humanos de España*

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The most remarkable outcome of the Americans' work (the U.S. Subcommittee, the Soros Foundation and OSI) is the finding that Riggs Bank directly assisted President Teodoro Obiang and his sons in establishing "at least two shell companies (Kaluga Company and Apexside) and opening bank accounts in their names."

Government officials from Equatorial Guinea also collaborated with Riggs Bank employees to set up "two accounts that were used to provide funds for the education of students abroad." It was ultimately discovered that "these students were the children and other relatives of powerful, high-ranking officials of Equatorial Guinea."

Currently, Equatorial Guinea has average annual revenues of 3 billion euros originating from the petroleum market. According to the criminal complaint, it is also calculated that "Teodoro Obiang has controlled close to 16 billion euros worth of oil revenues since he took power in 1979."

The APDHE complaint explains that "the Oil Account funds (that Obiang and his family have at Banco Santander) are presumably proceeds from illicit payments made by American oil companies, mainly Exxon-Mobil and Marathon, to the government of Guinea in order for those companies to exploit the country's crude oil."

The criminal complaint filed against Teodoro Obiang, his relatives and high-ranking government officials for "money laundering in Spain" requests that the Anticorruption Division of the Office of the Attorney General issue a summons requiring that high-level officials from the banks involved testify and that the relevant letters rogatory be issued.

The criminal complaint was filed with the National Criminal Court (*Audiencia Nacional*) approximately one month ago, and the Office of the Attorney General of that court determined that there may have been evidence of "money laundering." For that reason, the complaint was remitted to the Anticorruption Division of the Attorney General's Office for its review.

**SPAIN****The Obiang family accounts**

Relationship of the transfers made from Riggs Bank (Oil account of Equatorial Guinea) to Banco Santander (Madrid) and from the relatives of President Obiang and members of the Guinean government, who have benefited from that money.

Transfers	Transfer Amount (\$)	Owner	Real Estate	Deed
06/07/2000	<b>1,332,000</b>	Miguel Abia (former prime minister)	32 m <sup>2</sup> Garage, Madrid	06/08/2000
08/10/2000	<b>1,110,000</b>			
09/05/2000	<b>292,200</b>			
10/16/2000	<b>1,362,000</b>	Teodoro Obiang Nguema (President)	90 m <sup>2</sup> Apartment Las Palmas de Gran Canaria	11/29/2000
		Teodoro Obiang Nguema (President)	24 m <sup>2</sup> Garage, Palmas de Gran Canaria	11/29/2000
01/30/2001	<b>2,698,900</b>			
04/10/2001	<b>1,349,700</b>			
05/09/2001	<b>1,349,700</b>	Atanasio Eca (former minister of Mines)	89 m <sup>2</sup> residence Móstoles	07/30/2001
		Teodoro Blyogo (brother-in-law of the president and ambassador to Brazil)	600 m <sup>2</sup> single-family residence. Gijón	05/15/2001
		Pastor Michá (Minister of Foreign Affairs)	225 m <sup>2</sup> single-family residence. Alcalá de Henares	12/27/2001
05/07/2002	<b>798,000</b>	Gabriel Nguema (president's son)	193 m <sup>2</sup> residence. Móstoles	06/25/2002
05/07/2002	<b>798,000</b>	Gabriel Nguema (president's son)	Garage. Móstoles	06/25/2002
06/26/2002	<b>167,000</b>			
10/31/2002	<b>336,934.57</b>			
04/07/2003	<b>7,425,000</b>			
07/24/2003	<b>770,567</b>			
09/03/2003	<b>335,137</b>	Marcelino Owono (minister of Mines)	184.25 m <sup>2</sup> residence Torrejón de Ardoz	10/03/2003
10/21/2003	<b>4,800,000</b>			
12/11/2003	<b>1,637,000</b>			
12/11/2003	<b>720,000</b>			
<b>TOTAL</b>	<b>26,483,982.57</b>			

**SOURCE:** Office of the Attorney General, Anticorruption Division.

EL MUNDO

## SPAIN

APDHE argues, and its criminal complaint before the Office of the Attorney General's Anticorruption Division posits, that "Equatorial Guinea has oil revenues of over 3 billion euros a year" and yet, in spite of these resources, "65% of its population lives in extreme poverty; the life-expectancy of its citizens is 50.4 years; 56% of the population does not have running water; 19% of its children are malnourished and the public spending for education and health care is 4% and 1.2% of the GDP, respectively."

## A rich country with extreme poverty

Transparency International's last Global Corruption Report has also served as a basis for APDHE to recall that "Equatorial Guinea is ranked 171 out of 180 countries evaluated".

Regarding the current situation in Equatorial Guinea, the plaintiffs remind us that there are constant "human rights violations, persecution of political opponents, political instability and failure to apply the law". But the plaintiffs' strongest

emphasis is on the misery experienced by the country: "The majority of the population lives in conditions of extreme poverty, and the mortality rate among women and children is terrible."

It should be remembered that both the Soros Foundation and OSI, which are the two organizations that have done the research in the United States, are committed to: "promoting education, public health, justice and freedom of the press".

The criminal complaint also serves as a reminder that "the people of Equatorial Guinea are dying and their death is the foreseeable and necessary consequence of the waste of the country's riches."

Among the documents filed by the plaintiffs with the Office of the Attorney General's Anticorruption Division is a 2006 Forbes magazine report in which "[P]resident Teodoro Obiang is ranked the world's eighth wealthiest president, with a personal fortune of 600 million euros."

## ***OBIANG LAUNDERS MONEY IN SPAIN***

Equatorial Guinea is a country swimming in oil while the majority of its population lives in extreme poverty. For years, it has been an open secret that money leaves the country improperly, being controlled with total impunity by the African nation's dictator Teodoro Obiang and added to his personal fortune. Equatorial Guinea's corrupt and criminal practices have already been denounced in France, and the Spanish Attorney General's Anticorruption Division is now evaluating a criminal complaint because a significant portion of Obiang's funds passed through a Spanish bank and was laundered with the purchase of houses, chalets and buildings throughout our country.

The money in question, \$26.5 million, arrived in Spain from Riggs Bank, the same bank that helped Pinochet hide part of his fortune and that, before disappearing in a merger, faced a \$25 million fine for violations of anti-money laundering laws, particularly due to its transactions with Guinea.

The complaint now being assessed by the Attorney General's Office was filed by the *Asociación Pro Derechos Humanos de España* against 11 people, all of them either direct family or in-laws of Obiang.

Given the secrecy surrounding the contracts with international corporations operating there, it is hard to calculate accurately the country's income, but it is calculated that

they are more than 3 billions euros annually. This means that, in terms of *per capita* income, Equatorial Guinea would be the ninth wealthiest country in the world. Nevertheless, one out of five children there suffers from malnutrition. This is despite the fact that the country receives development aid from Spain, among other countries.

The aid is not conditioned, as theory dictates, on the democratization of the country or the transparency of its use. However, this is not the only case in which Spanish representatives have been deceived by Obiang. In 2006, during his last visit to Spain, Obiang met with Zapatero and promised – for the umpteenth time - that he would free political prisoners. And yet, some months ago, three Spanish representatives (from the PSOE, PP and CiU) traveled to Guinea as observers of the presidential elections to certify “advances in electoral guarantees,” even though Obiang was re-elected with 99% of the vote, and days after the visit the U.N. certified the torture to which jailed political opponents had been subjected.

The National Criminal Court should act against a dictator that not only violates human rights but also has committed crimes on Spanish soil.

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**"El Barcelona se lo cree"**

Serrat y Vila-Matas charlan ante la 'Champions' **PÁGINAS 56 Y 57**



## La fiscalía pide que se investigue a Obiang en España por blanqueo

Familiares y ministros del líder guineano poseen casas y plazas de garaje ● Anticorrupción analiza el origen de 19 millones de euros

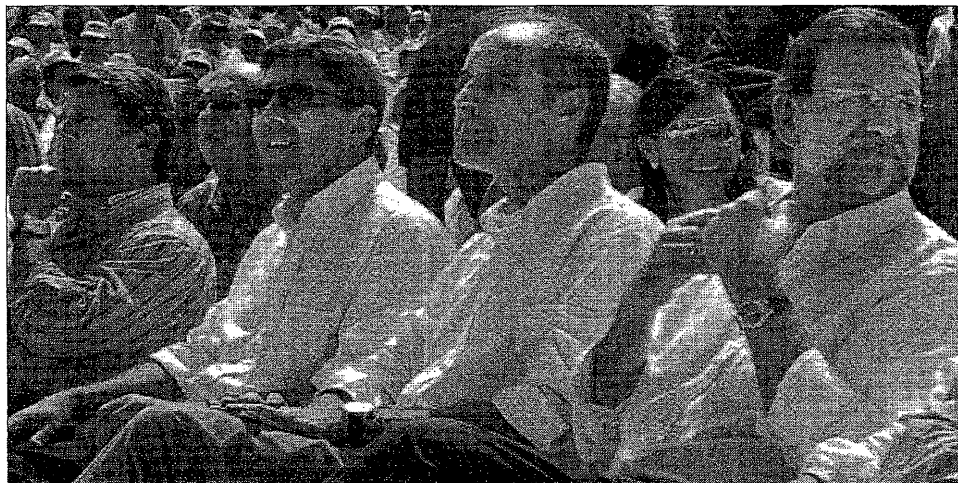
JOSÉ MARÍA IRUJO  
Madrid

La Fiscalía Anticorrupción ha pedido que se investiguen las inversiones y cuentas corrientes en España del presidente de Guinea Ecuatorial, Teodoro Obiang Ngema, de sus familiares y de varios

ministros, por un presunto delito de blanqueo de capitales. El objetivo es averiguar el origen y paradero de 19 millones de euros presuntamente transferidos de manera irregular desde el banco estadounidense Riggs a una cuenta de un banco español en Las Palmas. El fiscal ha apoyado una quere-

lia de la Asociación pro Derechos Humanos en la que se asegura que a esa cuenta se desviaron fondos públicos obtenidos del petróleo para "su lavado" en España y que, con ellos, Obiang y sus ministros compraron, al menos, seis viviendas y tres plazas de garaje en Madrid, Alcalá de Henares, Gijón

y Las Palmas. El fiscal solicita a una juez de Las Palmas que reclame al Banco Santander los movimientos de dicha cuenta, abierta a nombre de Kalunga Company, SA, una sociedad panameña ligada a la familia Obiang, y que pida al Banco de España informes sobre la misma. **PÁGINA 11**



"PACO, ESTAMOS CONTIGO". Mariano Rajoy acudió ayer a Alicante para defender al presidente valenciano, Francisco Camps, quien declaró el miércoles como imputado por cohecho en el Tribunal Superior de Valencia. En el acto estuvo también el ex ministro Federico Trillo (a la izquierda), tres de cuyos subordinados acaban de ser condenados por el caso del Yak-42. Junto a Trillo, el vicepresidente valenciano Vicente Rambla. / CARLES FRANCESC

## El PP supone que las elecciones europeas 'absolverán' a Camps

CARLOS C. CUÉ, Alicante

El PP busca en la Comunidad Valenciana una victoria clara en las europeas para demostrar que el caso Gürtel no tiene efectos electorales y para exhibir los resultados como una absolución a Francisco Camps. Hasta Mariano Rajoy, con el presidente valenciano a su lado, aseguró ayer a gritos en Alicante que los

"inquisidores sin corazón que atacan a Camps" se van a llevar "un gran berrinche". Poco antes del mitin, el propio Camps respondió así a EL PAÍS: "Por lo menos 10 puntos sacaremos seguro". "¿Eso quiere decir que Gürtel no tiene efectos electorales?", se le pregunta. "Claro que no, eso no interesa a la gente", sentencia el sucesor de Eduardo Zaplana. **PÁGINA 12**

## El subdirector antiterrorista del CNI presenta su dimisión

El Centro estudia abrir un expediente por la carta de renuncia

Sólo unos días después de que el máximo responsable del Centro Nacional de Inteligencia (CNI), Alberto Salz, proclamara que en el servicio de espionaje había "un problema interno", ayer se hizo público que el subdirector de Contraterrorismo del Centro, nombrado hace un año, había presentado su dimisión por desavenencias con la actual dirección. Fuentes del CNI confirmaron esta renuncia e informaron de que está en estudio la apertura de un expediente al dimisionario por el contenido de su carta de despedida. **PÁGINA 16**

## Defensa prolonga una semana el aislamiento de 500 militares

El Ministerio de Defensa ordenó ayer extender al menos una semana el aislamiento de 500 militares de la Academia de Ingenieros de Hoyo de Manzanares a causa del brote de gripe porcina originado en el cuartel. Son ya 18 los casos confirmados en esas instalaciones y 81 en observación. En Castilla y León hay cinco casos sospechosos, tres de ellos de militares de esa academia. **PÁGINA 33**

## Bruselas fijará criterios comunes para supervisar bancos y seguros

ANDREU MISSÉ, Bruselas

La Comisión Europea quiere adelantarse a EE UU en la carrera por la nueva regulación financiera. Bruselas presentará esta semana el diseño de un organismo para evaluar los grandes riesgos del sistema financiero, y una entidad que fijará criterios comunes de inspección sobre la banca para evitar excesos. **PÁGINA 20**

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## ESPAÑA

# La fiscalía pide que se investigue a Obiang en España por blanqueo

Anticorrupción reclama datos de su patrimonio y una cuenta ligada al Banco Riggs

JOSÉ MARÍA IRUJO  
Madrid

La Fiscalía Anticorrupción reclama que se investiguen las cuentas e inversiones inmobiliarias en España de Teodoro Obiang Nguema, presidente de Guinea Ecuatorial y uno de los hombres más ricos del planeta, según la revista *Forbes*, así como de sus familiares y varios de sus ministros, según fuentes judiciales. El fiscal Luis del Río Montes de Oca ha apoyado una querrela de la Asociación pro Derechos Humanos de España por un presunto delito de blanqueo de capitales del dirigente ecuatoguineano, quien supuestamente transfirió desde EE UU 26,5 millones de dólares (19 millones de euros) a una cuenta de un banco español en Las Palmas.

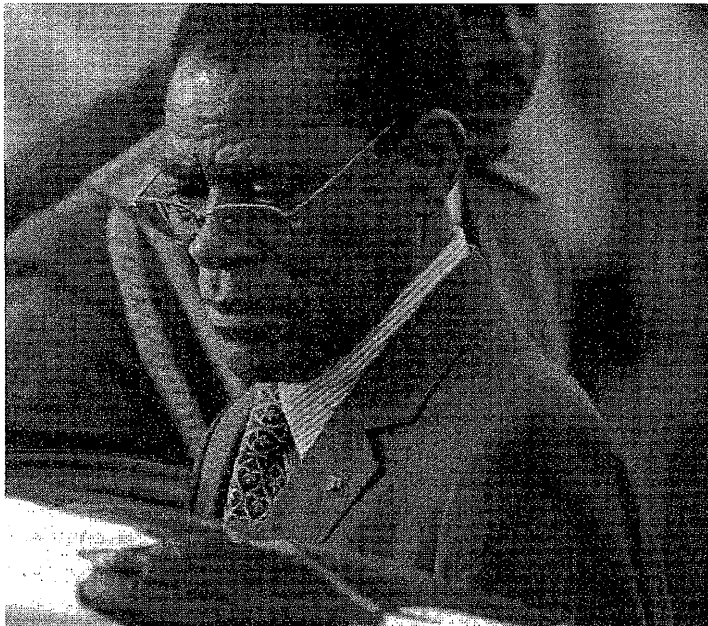
El fiscal DelRío presentó la pasada semana un escrito en el que considera competentes a los juzgados de Las Palmas para indagar los hechos y pide a Ana Isabel de Vega, titular del Juzgado de Instrucción número 5, que reclame al banco Santander los movimientos y extractos bancarios de una cuenta abierta en esa ciudad a nombre de la sociedad panameña Kalunga Company, SA. El delegado de la Fiscalía Anticorrupción en Las Palmas pide también que el Servicio de Prevención de Blanqueo de Capitales (Sepblac) del Banco de España le remita informes sobre los movimientos de esa cuenta.

Una pesquisa del Subcomité de Investigaciones del Senado de EE UU determinó que Teodoro Obiang era dueño de la denominada Cuenta de Petróleo de Guinea Ecuatorial en el banco norteamericano Riggs, desde la que se enviaron a la cuenta abierta en España 16 transferencias entre el 7 de junio de 2000 y el 11 de diciembre de 2003 por valor de 26.483.982 dólares (19.068.314 euros).

## El Banco de España fue alertado de una cuenta sospechosa abierta en Las Palmas

En esa fecha, la cuenta de Guinea Ecuatorial en el Riggs ascendía a 700 millones y se alimentaba de los pagos de las petrolíferas americanas Marathon y Exxon Mobil. El banco incumplió las normas antiblanqueo y dio cobertura a Obiang y a sus hijos para crear "empresas fantasma" y abrir cuentas a su nombre, según concluyó el Senado.

La cuenta española a nombre de Kalunga Company, SA, es un misterio. El banco español declinó dar información al Senado de EE UU (la legislación se lo impide), pero alertó al servicio antiblanqueo del Banco de España de los movimientos sospechosos de la misma, según fuentes próxi-



El presidente de Guinea Ecuatorial, Teodoro Obiang Nguema. / AFP

## Presidentes africanos bajo sospecha

► Varios jueces de instrucción decidirán en los próximos meses si investigan la fortuna que han acumulado en Francia los mandatarios africanos

**Omar Bongo**, presidente de Gabón, **Denis Sassou-Nguesso**, presidente de la República de Congo, y **Teodoro Obiang Nguema**, presidente de Guinea Ecuatorial

► La ONG **Transparencia Internacional**, dedicada a la lucha contra la corrupción, logró que François Dèsset, la juez decana de delitos financieros, admitiera a trámite una denuncia de esta organización en la que acusa a los tres jefes de Estado

africanos de enriquecimiento ilícito y apropiación de fondos públicos. Un informe policial describe numerosas viviendas de lujo de los presidentes de Gabón y de Congo y los coches de la marca Bugatti, valorados en un millón de euros, de Teodoro Obiang, hijo del presidente ecuatoguineano.

► La fiscalía se ha opuesto a la iniciativa de la juez de delitos monetarios, por lo que la decisión final está ahora en manos de los jueces de instrucción. Diversas ONG internacionales critican la impunidad con la que algunos dictadores africanos esconden su fortuna en Europa

mas a la investigación. Ni Obiang ni sus familiares aparecían como titulares o con firma autorizada en la cuenta de Las Palmas. Sólo están autorizados para sacar dinero una pareja de ciudadanos rusos, supuestos testaferros o fiduciarios de los auténticos dueños.

Los querellantes aseguran que Obiang y miembros de su Gobierno desviarían ilícitamente parte de los fondos públicos que obtienen del petróleo para "su lavado" en España y vinculan 16 transferencias desde el banco Riggs con la compra en España, en esas mismas fechas, de seis viviendas y tres plazas de garaje a nombre del presidente de Guinea Ecuatorial y de varios de sus ministros

en Madrid, Alcalá de Henares, Gijón y Las Palmas.

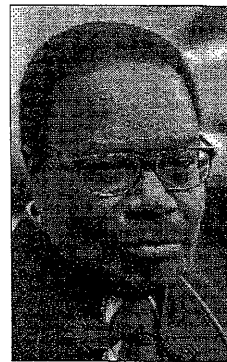
Una de estas viviendas está escriturada en Las Palmas a nombre del presidente Obiang, y el resto figura a nombre de ministros, ex ministros y sus esposas. Los propietarios y querellados son Marcelino Owono, ministro de Minas, y Constanza Nchama; Teodoro Byogno Nsu, cuñado del presidente, embajador en Brasil y ex embajador en EE UU y Naciones Unidas, y Elena Mensa; Pastor Micha Ondo, ministro de Asuntos Exteriores, y Magdalena Ayang; Gabriel Mbega Obiang, hijo del presidente y ex viceministro de Minas, Industria y Energía, y Virginia Maye; Miguel Abia Bi-

teo, ex primer ministro, y Dorotea Roka; y Atanasio Ela Ntugu, ex ministro de Minas.

El Subcomité del Senado de EE UU determinó que la sociedad panameña Kalunga Company, SA, a cuyo nombre se abrió una cuenta en Las Palmas, es total o parcialmente propiedad del presidente guineano. La cuenta en el Riggs desde la que se hicieron las transferencias a España tenía como firmantes al presidente Obiang, a su hijo Gabriel y a Melchor Esono Bijo, ex secretario de Estado de Hacienda. La firma de Obiang era obligada para mover fondos. La cuenta en Las Palmas se cerró y el Santander comunicó sus sospechas al Sepblac.

¿Qué ocurrió con los 26,5 millones de dólares? Nadie ha respondido todavía a esta pregunta. El 23 de febrero de 2003 directivos del Riggs preguntaron en Washington a Obiang y a otras autoridades de Guinea Ecuatorial sobre las enigmáticas transferencias a compañías como Kalunga Company, SA. El dictador declinó facilitar detalles. Meses después la entidad norteamericana cerró las cuentas en Washington.

Fuentes judiciales señalan que para acreditar el presunto blanqueo de capitales del presidente Teodoro Obiang la fiscalía deberá demostrar la procedencia ilícita de esos fondos. La investigación del Senado de EE UU será un importante punto de partida, ya que el dinero recibido en España procedía de la cuenta del banco Riggs, una entidad acusada de numerosas irregularidades en el manejo del dinero procedente de Guinea Ecuatorial.



Omar Bongo.

## El presidente de Gabón, internado en Barcelona para eludir la justicia francesa

EL PAÍS, Barcelona

El presidente de Gabón, Omar Bongo, de 73 años, permanece ingresado en la clínica Quirón de Barcelona desde hace más de una semana. Ese establecimiento no ha querido desvelar los motivos del ingreso pero, el pasado viernes, la Presidencia de la República de Gabón reconoció oficialmente que está en la clínica barcelonesa, aunque aseguró que el mandatario no ha sido sometido "a ninguna intervención" y sólo se encuentra en España para pasar un "chequeo médico".

Fue el ministro español de Exteriores, Miguel Ángel Moratinos, quien aseguró el pasado miércoles que Omar Bongo estaba "muy mal". Bongo está pendiente de que la justicia francesa decida si investiga o no la fortuna que ha acumulado en Francia el mandatario africano y si ésta tiene un origen ilícito.

Este es el motivo por el que Bongo ha eludido dirigirse a un hospital de París, donde solía acudir habitualmente. Curiosamente, el hijo de Bongo, Ali Ben Bongo, ministro de Defensa del país, se encuentra en París hospitalizado para someterse a un chequeo.

Pese a que la presidencia de Gabón insiste en que Bongo sólo se ha sometido a un reconocimiento médico, otras fuentes citadas por France Presse aseguran que se encuentra gravemente enfermo de un cáncer intestinal. Ese mismo fin de semana, las autoridades del país han suspendido dos periódicos locales y han arremetido contra dos medios de televisión franceses por difundir "informaciones no oficiales y alarmistas" sobre la salud de Bongo.

Hace sólo unos días, el mismo portavoz oficial del Gobierno de Gabón aseguró que el presidente está sufriendo, además, "un choque emocional de gran intensidad debido a la prematura muerte de su joven esposa tras una prolongada enfermedad". Edith Lucie Bongo Odimba, de 45 años, falleció el pasado mes de marzo.







## ESPAÑA

## Una juez investiga supuestas cuentas y propiedades de Obiang en España

El juzgado 5 de Las Palmas ordena rastrear las operaciones de una firma, presunta tapadera del presidente guineano, que movió 18 millones

JOSE MARIA RIJDO  
Madrid

La policía española sigue la pista de supuestas cuentas y propiedades inmobiliarias en España de Teodoro Obiang Nguema, presidente de Guinea Ecuatorial, y de varios de sus ministros. Ana Isabel de Vega Serrano, titular del juzgado de instrucción número cinco de Las Palmas, ha dictado una providencia en la que pide a la Unidad de Delitos Económicos y Fiscales de la Brigada Provincial de la Policía Judicial que investigue las operaciones en España de la sociedad panameña Kalunga Company SA, supuesta tapadera del dirigente africano, que movió en el Banco Santander más de 26,5 millones de dólares (17,89 millones de euros).

De Vega ha pedido al grupo 2 de Delincuencia Económica y Fiscal de la policía que "estude y analice" los movimientos y operaciones de Kalunga Company SA en una cuenta abierta en una sucursal del Banco Santander en Las Palmas entre los años 2000 y 2003. Una pesquisa del Subcomité de Investigaciones del Senado de EE UU descubrió que Obiang era el dueño de la denominada Cuenta de Petróleo de Guinea Ecuatorial en el banco norteamericano Riggs, desde la que se enviaron a la cuenta española de Kalunga Company SA un total de 16 transferencias entre el 7 de junio de 2000 y el 11 de diciembre de 2003 por valor de 26.483.982 dólares (17.881.292 euros).

Durante ese período, la cuenta de Guinea Ecuatorial en el Riggs se elevó a 700 millones de dólares gracias a los pagos de las petroleras americanas Mara-

thon y Exxon Mobil. El Senado de EE UU concluyó que el banco norteamericano incumplió las normas antiblanqueo y facilitó que Obiang y sus hijos crearan "empresas fantasmas" y abrieran cuentas a su nombre.

La Juez de Las Palmas ha librado un oficio al Banco Santander en el que le requiere que aporte información complementaria sobre numerosas imposiciones a plazo fijo que se hicieron durante ese período con los 26,5 millones de dólares y que

Los tres ciudadanos rusos titulares de las cuentas han sido interrogados

El Banco Santander deberá informar sobre el destino final del dinero

facilite la identidad de las personas que las ordenaron y cancelaron, así como la cuenta de destino a la que se remitió el dinero cuando se cerró la cuenta.

¿Quién manejaba la sociedad Kalunga Company SA? El banco español se negó a facilitar información al Senado de EE UU (la ley se lo impide), pero avisó al Servicio de Prevención de Blanqueo de Capitales (SEBLAC) sobre los movimientos sospechosos, según señalan fuentes de la investigación. Un informe de este servicio del Banco de España facilitado a la Fiscalía Anticorrupción desvela su identidad:

Las personas autorizadas para



Teodoro Obiang, presidente de Guinea Ecuatorial, en Lisboa, en 2008. / AFP

disponer del dinero eran el matrimonio ruso Vladimir Koborev y Julia Koboreva, así como Igor Koborev.

Vladimir vive en Las Palmas y, según fuentes de la investigación, conoce a la familia Obiang. Este período no ha logrado localizarse para recabar su versión de los hechos. El matrimonio prestó declaración en la Fiscalía Anticorrupción y afirmó que los fondos provenían de la venta de piezas para barcos.

La investigación sobre las supuestas cuentas de Obiang y sus propiedades en España lo inició la Fiscalía Anticorrupción que dirige Antonio Salinas tras aceptar

una querrela presentada contra el dictador africano y varios de sus ministros por la Asociación pro Derechos Humanos de España. La fiscalía abrió unas diligencias informativas y remitió el caso a los juzgados de Las Palmas, ciudad en la que se abrió la cuenta de Kalunga Company SA.

El fiscal Luis del Río Mames de Oca, delegado de la Fiscalía Anticorrupción en Las Palmas, presentó el pasado mes de mayo un escrito en el que consideraba competente a los juzgados de esa ciudad para investigar los hechos y pidió a la Juez de Vega que reclamara al Banco Santander los movimientos de la cuenta

panameña. La querrela contra Obiang y miembros de su Gobierno asegura que desviaron ilícitamente parte de los fondos públicos que el país obtiene del petróleo para "su lavado" en España y relaciona las 16 transferencias desde el banco Riggs con la compra en España en fechas próximas de seis viviendas y tres plazas de garaje a nombre del presidente y de varios de sus ministros. Las propiedades están Madrid, Alcalá de Henares, Gijón y Las Palmas. EL PAÍS ha comprobado en el Registro de la Propiedad que los dueños son Obiang y varios de sus ministros.

El Subcomité del Senado de EE UU concluyó en Kolumba Company SA, la sociedad que manejaban los rusos, es total o parcialmente propiedad del presidente guineano. La cuenta en el banco norteamericano Riggs desde la que se transfirieron los 26,5 millones de dólares tenía como firmantes al presidente Obiang, a su hijo Gabriel y a Melchor Esono Njéjo, ex secretario de Estado de Hacienda. Sin la autorización y firma de Obiang no se podían mover los fondos. Jorge Trias, abogado del Gobierno de Guinea Ecuatorial, asegura que de la citada investigación en EE UU no se derivaron imputaciones ni al presidente ni a sus ministros.

La investigación judicial en España puede determinar quién era el dueño del dinero que llegó a la cuenta de Kalunga Company SA en Las Palmas procedente del banco Riggs, una entidad bancaria que según la investigación del Senado de EE UU, incumplió todo clase de normativas. Las cuentas de los Obiang en Washington fueron cerradas en 2003 en pleno escándalo por las vitrioladas pesquisas del Riggs. ¿Dónde está el dinero? La información que facilita el Banco Santander a la Juez de Vega puede aclarar cuál fue el siguiente año que dio el dinero cuando la entidad española obligó a los rusos a cancelar la cuenta. Fuentes de la investigación sugieren que la pista apunta a que está en Rusia.

## Viviendas, chalés y garajes

Teodoro Obiang y varios de sus ministros son propietarios en España de diversas propiedades, pisos, chalés y plazas de garaje que la Asociación Pro Derechos Humanos de España vincula con las cuentas abiertas por la sociedad Kalunga Company SA y el dinero transferido desde el banco Riggs en Washington (EE UU) donde el presidente de Guinea Ecuatorial manejaba lo

Cuenta de Petróleo. Una de estas viviendas está escriturada en Las Palmas a nombre del presidente Obiang y los demás figuran a nombre de ministros, ex ministros y sus esposas en Madrid, Alcalá de Henares y Gijón.

Los querrelados por presunto blanqueo son Marcelino Ovono, ministro de Minas, y Constantino Nchama; Teodoro Nguema Nda, cunado del pre-

sidente, embajador en Brasil y ex embajador en EE UU y Naciones Unidas, y Efeim Mensa; Pastor Míchica Ondo, ministro de Asuntos Exteriores, y Magdalena Nyang, Gabriel Njéjo Obiang, hijo del presidente y ex vicepresidente de Minas, Industria y Energía, y Virginia Maye; Miguel Abin Itico, ex primer ministro, y Darotes Roka; y Atamaso Eba Ngu, ex ministro de Minas.

## Europa, refugio de dictadores

Varios presidentes africanos se encuentran bajo la lupa judicial en Europa por supuesto blanqueo. En Francia, los jueces de instrucción decidirán si investigan la fortuna que han acumulado en ese país los dirigentes Omar Bongo, ex presidente de Gabón ya fallecido, Denis Sassou Nguesso, presidente de la República del Congo, y Teodoro Obiang Nguema, presidente de Guinea

Ecuatorial. Transparencia Internacional, una ONG dedicada a denunciar la corrupción en el mundo, logró que François Dasset, juez decano de delitos financieros, adhiriera a través de una denuncia en la que se acusa a los tres jefes de Estado africanos de apropiación de fondos públicos y camuflamiento ilícito. Un informe policial detalla la colección de co-

ches de la marca Bugatti, valorados en un millón de euros, de Teodoro Obiang, Nguema Obiang, hijo del presidente ecuatoguineano, y las villas del ex presidente de Gabón y del mandatario del Congo. La fiscalía, al contrario que en España, se opuso a la iniciativa de la juez. Varios ONG denuncian la "impunidad" de la que goza en Europa los dictadores africanos.

*A Monsieur le Doyen des Juges d'Instruction*  
Près le Tribunal de Grande Instance de Paris

**PLAINTE AVEC CONSTITUTION DE PARTIE CIVILE**

**1/ *Transparence International France***, association régie par la loi du 1<sup>er</sup> juillet 1901, dont le siège social est sis 2 bis, rue de Villiers 92300 Levallois-Perret, prise en la personne de son Président, Monsieur Daniel LEBEGUE.

**2/ *Gregory Ngbwa Mintsa***, domicilié BP 2415 à Libreville (Gabon), de nationalité gabonaise.

**Ayant pour Avocat :**  
Maître William BOURDON  
Avocat à la Cour  
156 rue de Rivoli – 75001 PARIS  
Tél. 01 42 60 32 60  
Fax 01 42 60 19 43  
Toque R 143

Élection de domicile étant faite en son cabinet.

**ONT L'HONNEUR D'EXPOSER LES FAITS SUIVANTS**

## I. Rappel des faits

Aux termes d'une plainte simple déposée en mars 2007 entre les mains du Parquet de Paris, les Associations Sherpa, Survie et la Fédération des congolais de la diaspora avaient exposé ce qui suit :

*«1/ Depuis de très nombreuses années, différents observateurs ont recueilli un certain nombre d'informations faisant état du fait que des dirigeants d'Etats africains ou certains membres de leur famille avaient, alors qu'ils étaient en fonction ou postérieurement, acquis ou fait acquérir des biens immobiliers sur le territoire français.*

*Il est certain également que, pour partie, ces mêmes dirigeants africains ont plus ou moins simultanément constitué des patrimoines mobiliers, c'est-à-dire ont logé des avoirs bancaires en France, auprès de banques françaises et/ou de banques étrangères ayant des activités en France.*

*2/ Il est également certain et non contestable que différents Etats africains, ces dernières années, n'ont pas hésité, à la suite de successions de régimes, à lancer des commissions rogatoires internationales et plus généralement, à requérir l'entraide de la communauté internationale, pour solliciter, parfois avec succès, le rapatriement au profit des trésors publics nationaux concernés des avoirs bancaires détournés par ceux des dirigeants africains qui avaient été démis de leurs fonctions ou avaient perdu des élections, voire même qui étaient décédés.*

*On pense notamment aux démarches entreprises par le gouvernement nigérian, s'agissant des avoirs bancaires détournés, pour un montant considérable, par l'ancien Président Sani Abacha, ceci n'étant rappelé qu'à titre d'exemple.*

*Ces mêmes démarches judiciaires ont non seulement visé les avoirs bancaires ainsi détournés, mais ont eu également pour objet de tenter d'identifier le ou les biens immeubles acquis par ces mêmes dirigeants africains.*

*Il est vrai que ces démarches n'ont pas toujours été couronnées de succès, tant les propriétaires réels ou apparents de ces patrimoines immobiliers ont eu le souci de s'entourer, de façon très prudentielle, d'un certain nombre de précautions pour tenter d'opacifier la réalité de la propriété de ces biens et leurs modalités de financement.*

*Néanmoins, les associations soussignées, à la suite de différentes enquêtes qu'elles ont effectuées ou en collationnant des informations recueillies par différents observateurs, ces dernières années, ont pu établir la preuve, ou en tous les cas la très grande probabilité, de la détention sur le territoire français et notamment à Paris, de biens immobiliers parfois d'une très grande valeur par des dirigeants africains toujours en fonction et par certains membres de leur famille.*

*Elles ont pu également acquérir cette preuve s'agissant de biens immobiliers qui étaient détenus précédemment par les dirigeants déchus ou décédés et dont la propriété est automatiquement revenue à leurs ayants droit.*

*3/ Quelque soit le mérite de ces dirigeants et leurs compétences, personne ne peut croire*

*sérieusement que ces biens immobiliers, dont la valeur est aujourd'hui pour certains d'entre eux de l'ordre de plusieurs millions d'euros, ont pu être acquis par le seul fruit de leurs rémunérations.*

*Cette observation est encore plus valable s'agissant des membres de la famille de ces dirigeants africains, lorsqu'ils apparaissent comme propriétaires d'un certain nombre de biens puisque, dans bien des cas, ils sont sans profession ou leur profession est ignorée.*

*Il existe, à l'égard de certaines infractions telles le blanchiment une présomption légale de commission de l'infraction lorsqu'une personne ne peut justifier des ressources correspondant à son train de vie. (V. par exemple, Cass. crim., 30 oct. 2002, n°01-83.852)*

*De manière parallèle, en matière d'abus de bien sociaux, il est admis que des fonds sociaux prélevés par le dirigeant social l'ont nécessairement été dans son intérêt personnel s'il n'est pas justifié qu'ils ont été utilisés dans le seul intérêt de la société (V. par exemple, Cass. crim., 11 janv. 1996, n°95-81.776).*

*Un tel raisonnement peut être appliqué, par analogie, pour un chef d'Etat, à l'égard du délit de détournement de biens publics ou de recel de détournement de biens publics.*

*Il est rappelé que le délit de détournement de biens public est prescrit et réprimé par l'article 432-15 du Code pénal qui énonce que :*

*« Le fait, par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public, un comptable public, un dépositaire public ou l'un de ses subordonnés, de détruire, détourner ou soustraire un acte ou un titre, ou des fonds publics ou privés, ou effets, pièces ou titres en tenant lieu, ou tout autre objet qui lui a été remis en raison de ses fonctions ou de sa mission, est puni de dix ans d'emprisonnement et de 150 000 euros d'amende».*

*S'agissant du recel de détournement de biens public, il est réprimé par la combinaison des articles 432-15 et 321-1 du même Code, selon lequel :*

*« Le recel est le fait de dissimuler, de détenir ou de transmettre une chose, ou de faire office d'intermédiaire afin de la transmettre, en sachant que cette chose provient d'un crime ou d'un délit.*

*Constitue également un recel le fait, en connaissance de cause, de bénéficiaire, par tout moyen, du produit d'un crime ou d'un délit ».*

*Il est joint, en tant que de besoin, à la présente plainte la jurisprudence pertinente la plus récente (pièce n°1).*

*On conviendra néanmoins que, dans certains cas, quelques uns de ces chefs d'Etats ont pu bénéficier, de façon opaque bien sûr, de rémunérations plus ou moins extravagantes.*

*S'il est incontestable que le juge français ne peut pas être le juge de la rémunération des dirigeants africains, pour autant, pour chacun des dirigeants et de leur famille, dont la situation va être examinée comme suit, on doit tenir compte également du fait que ce patrimoine immobilier français s'est constitué plus ou moins simultanément avec un patrimoine immobilier local ou dans d'autres pays, dont il sera démontré qu'il est parfois d'une très grande consistance, tant en volume qu'en valeur.*

*Enfin et à ce stade, il sera souligné qu'il existe pour certains de ces dirigeants africains, dont*

*la situation sera examinée cas par cas, de très sérieuses présomptions d'être ou d'avoir été les instigateurs de détournements de biens publics pour des montants considérables.*

*Ces soupçons ne sont pas le fruit d'une simple agitation militante, mais sont corroborés par des rapports très documentés pour certains de ces dirigeants, provenant notamment d'institutions financières internationales, voire de créanciers de ces Etats.*

*4/ C'est ainsi, Monsieur le Procureur de la République, que sont portés à votre connaissances plus précisément les faits suivants :*

***4-1/ S'agissant de Monsieur Omar BONGO ou de ses proches :***

*- Observations générales*

*Il existe une documentation très fournie s'agissant des détournements de biens publics commis par le clan BONGO.*

*On sait notamment que les comptes de Monsieur Omar BONGO ont fait l'objet, en Suisse, d'une tentative de blocage en date du 11 mai 1998 par le juge d'instruction, Monsieur Paul Perraudin. Le compte ouvert au nom d'un conseiller du président Bongo, Samuel Dossou-Aworet, est saisi à la Canadian Imperial Bank of Commerce de Genève. Le chef de l'Etat gabonais affirme être le véritable ayant droit du compte controversé, ce qui permet d'invoquer l'immunité présidentielle dont il bénéficie pour faire interrompre l'enquête du juge d'instruction (cf. pièces énumérées ci-après) :*

- *article du Journal Sud Ouest « Les comptes d'Omar Bongo » du 28 août 1998 (pièce n°2)*
- *lettre du Continent du 15 février 2001 « Pas de comptes en Suisse ... » (pièce n°3)*
- *article du Monde des 6 août et 2 avril 1997 (pièces n° 4 et 5)*
- *article de l'Express du 21 janvier 1999 (pièce n°6)*

*Une enquête du Sénat américain, publiée en juin 2000, a également mis en lumière les comptes secrets de Monsieur Omar Bongo auprès de la City Bank.*

*Monsieur Omar BONGO est soupçonné d'avoir détourné aux Etats-Unis des avoirs bancaires pour un montant de 130.000.000 de dollars entre 1985 et 1997, ceci sans compter les prêts de la City Bank à la famille Bongo, lesquels s'élèvent à 50 millions de dollars.*

*La City Bank aurait expliqué « que l'argent provenait d'une allocation budgétaire, 8,5 % du budget gabonais - soit 111 millions de dollars - étant chaque année réservés au président ».*

*Les enquêteurs du Sénat, notamment le sénateur démocrate de l'Etat du Michigan, Carl Levin, qui ont épluché les examens du budget gabonais faits par le FMI, n'ont jamais trouvé aucune trace d'une quelconque "allocation présidentielle" de cette ampleur. (Cf. La Lettre du Continent, Vieux comptes gabonais, 11/11/1999 – pièce n°7).*

*Monsieur Omar BONGO a été également gravement mis en cause dans l'affaire Elf et ce n'est qu'en raison de son immunité de chef d'Etat que les magistrats instructeurs ont renoncé à l'entendre, à tout le moins en qualité de témoin.*

*De manière significative, la 11ème Chambre de la Cour d'Appel de Paris a jugé le 3 juillet*

2002 que François-Xavier Verschave et son Editeur Les Arènes étaient « non coupables du délit d'offense à chefs d'Etats étrangers », alors même qu'ils avaient qualifié Omar Bongo de « parrain régional » et son régime de « démocratie prédatrice ».

La Cour a estimé en effet que « les documents versés et les témoignages recueillis au cours de la procédure [...] établissent non seulement l'importance et l'actualité des sujets évoqués mais aussi le sérieux des investigations effectuées ».

- S'agissant des biens propriétés de Monsieur Omar BONGO (ou de ses proches) en France et notamment à Paris, ceux-ci se composent de :
  - un hôtel particulier 18 Rue Dosne dans le 16ème arrondissement de Paris : hôtel situé dans une voie privée entre le 157 rue de la Pompe et le 25 avenue Bugeaud (cf. « DDV et Sarko chez Bongo à Paris », Lettre du Continent, 14 septembre 2006 - pièce n°8) ; cet hôtel appartiendrait à sa femme Edith Bongo.
  - plusieurs appartements situés à côté de l'avenue Foch à Paris au nom de proches de la famille Bongo :

Albert Bongo : 5 rue Laurent Pichat - 75016 Paris,  
 Arthur Ondimba Bongo : 53 boulevard Lannes - 75016 Paris,  
 Nesta Bongo Ping : 6 rue Marbeau - 75016 Paris,  
 Nesta Bongo Ting : 52 avenue Foch - 75016 Paris.

De forts soupçons peuvent laisser penser très sérieusement que ces biens appartiennent à la famille Bongo ou à son clan (en tant que de besoin : extrait de l'annuaire Pages Blanches – pièce n°9).

On doit souligner que, s'agissant de Nesta Bongo Ping, (il s'agit de la fille ou du fils issu d'un mariage entre une fille d'Omar Bongo et Jean Ping, Ministre gabonais des Affaires Etrangères, Nesta Bongo Ping fait d'ailleurs un magister de gestion à Paris Dauphine) cette personne étant propriétaire de deux appartements à son nom figurant dans l'annuaire évoqué ci-dessus.

Dès 1993, Monsieur Philippe Madelin, listait dans son ouvrage intitulé « L'or des dictatures » les différents biens du clan Bongo dont un appartement situé avenue Foch et une propriété à Nice.

Dix ans après, en mars 2005, c'est dans « La Lettre du Continent » que l'on apprend à nouveau l'existence d'appartements appartenant à la famille élargie d'Omar Bongo, avenue Foch (8 millions d'euros pour 1000 m<sup>2</sup>). (cf. Lettre du Continent, 24 mars 2005, « Appartements gabonais à vendre avenue Foch » - pièce n°10).

#### **4-2/S'agissant de Monsieur Denis SASSOU N'GUESSO et de sa famille :**

- Observations générales

Monsieur Denis SASSOU N'GUESSO est l'actuel Président de la République du Congo.

Il a été, comme Monsieur Omar BONGO, gravement mis en cause pour des détournements de biens publics et notamment par des plus hauts représentants de la Banque Mondiale.

Paul Wolfowitz, ancien directeur de la Banque Mondiale, aurait notamment critiqué les notes

*d'hôtel vertigineuses du président congolais.*

*En effet, lors de la cérémonie pour le 60ème anniversaire des Nations Unies, Denis Sassou Nguesso aurait dépensé plus de 140.000 euros en frais d'hôtel pour un discours de cinq minutes sur la pauvreté.*

*L'ancien président de la Banque mondiale aurait alors déclaré à un journaliste du New York Times : « C'est une injustice faite aux pays en voie de développement et à leurs populations que de cacher ces problèmes ».*

*La Banque Mondiale a ainsi été longtemps réticente à poursuivre les négociations en vue de voir échelonner la dette publique congolaise, en raison des pratiques frauduleuses de son Président.*

*Plus précisément, Denis Sassou Nguesso est suspecté d'avoir détourné, à son profit et au profit de sa famille et de son clan, une partie substantielle de la rente pétrolière. Ces détournements auraient commencé dès sa première période au pouvoir, de 1979 à 1992, en négociant la vente du pétrole en dessous du prix du marché en contrepartie de versements à son profit. « La Banque mondiale a fait remarquer dans les années 1990-91 que le rendement de l'exploitation pétrolière [au Congo] était l'un des plus bas du monde » (Cf. audition de Martial Cozette par la mission d'information parlementaire présidée par Marie-Hélène Aubert, in Assemblée nationale, « Le rôle des compagnies pétrolières dans la politique internationale et son impact social et environnemental », Rapport d'information n° 1859, 1999, p. 228).*

*L'ancien président d'Elf, Loïc Le Floch-Prigent, a également parlé pour le Congo des « cargaisons fantômes d'hydrocarbure [qui] échappent aux comptabilités officielles et [sont] partagées entre hommes de l'ombre » (cité dans Nicolas Lambert, Elf, la pompe Afrique – Lecture d'un procès, Ed. Tribord, 2005, p. 82).*

*Monsieur Le Floch-Prigent sait de quoi il parle car Elf, puis Total, fournit à l'Etat congolais 70% de ses revenus pétroliers.*

*A ce jour, la fortune de Denis Sassou-NGuesso est estimée à plus d'un milliard de dollars (cf. Ouvrage écrit par Monsieur Xavier Harel, « Afrique : le pillage à huis clos » - page 37 à page 45 - pièce n°11).*

*Un rapport du Fonds Monétaire International (FMI) en 2001 dénonçait les affectations des fonds publics congolais dans des comptes privés autres que ceux du trésor public. Selon le FMI, entre 1999 et 2002, 248 millions de dollars provenant de l'extraction du brut n'ont pas laissé de traces dans la comptabilité nationale.*

*Dans le budget 2003, sur les 800 millions de dollars de rente pétrolière, seulement 650 millions y ont été inscrits (cf. Le Monde, 25 mars 2004 – pièce n°12).*

*L'observation d'un fonds vautour, FG Hemisphere, a permis de démontrer qu'entre 2003 et 2005, c'est près d'un milliard de dollars que les autorités congolaises ont « oublié » de comptabiliser (cf. l'ouvrage déjà cité de M. Xavier Harel, p. 152).*

*Le président congolais et son clan ont aussi profité des bonus - des prêts gagés ou préfinancements - des diverses commissions sur la vente du pétrole, et de la PID « provision pour investissements diversifiés », véritable caisse noire, non budgétisée de 1997 à 2002.*

*L'action judiciaire de « fonds vautours », avait permis le rachat à bon compte d'une partie de*

*la dette congolaise, a mis à jour, en 2005, un système de sociétés écrans contrôlées par des hommes proches du président Denis Sassou-Nguesso. (Voir articles de La Tribune « Les millions envolés du Congo », 13 décembre 2005 et Les Echos « Les fonds vautours multiplient les attaques contre les pays pauvres », 14 mars 2007)*

*Selon les jugements de juridictions britannique et américaine, ces sociétés déviaient une partie de l'argent du pétrole vers des comptes bancaires situés dans des paradis fiscaux (cf. arrêt de la Chambre commerciale de la Cour Royale de Londres le 28 novembre 2005 et décision d'un juge fédéral américain en avril 2006 jugeant recevable une plainte déposée en mai 2005 par Kensington International devant la Cour fédérale à New York – pièces n° 13 et 14).*

*Le 28 novembre 2005, la Chambre commerciale de la Cour royale de Londres condamnait le Congo à rembourser des créances impayées à Kensington International, un fond vautour basé dans un paradis fiscal, les îles Caïman.*

*Au cœur du dispositif, on découvre une petite entreprise basée aux Bermudes, Sphynx Bermuda, au capital de 12 000 dollars seulement, qui a réalisé des opérations pour un montant de 472 millions de dollars ! Elle achetait du pétrole à la Société Nationale des Pétroles du Congo (SNPC), souvent au-dessous des prix du marché et le revendait sur le marché international.*

*Selon la Cour royale de Londres, il n'y a « aucun lien entre les espèces qui transitaient par ses comptes bancaires et les sommes d'argent qu'elle aurait dû recevoir en contrepartie du pétrole qu'elle vendait » (pièce n°15).*

*Ces deux sociétés ont le même dirigeant : Denis Gokana, un conseiller de Denis Sassou-Nguesso. Le fils du président en faisait aussi partie.*

*En avril 2006, c'est au tour d'un juge fédéral américain de juger recevable une plainte de Kensington International contre le groupe bancaire français BNP Paribas et la Société nationale pétrolière congolaise pour blanchiment d'argent.*

*Ces dernières se seraient associées pour cacher sciemment aux créanciers de Brazzaville des revenus tirés de la vente de pétrole par le biais d'un système de pré-paiement « complexe et structuré de manière inhabituelle ».*

*Sous la conduite de Monsieur Itoua, la société nationale pétrolière congolaise a, de 2001 à 2004, utilisé une étourdissante série de transactions fictives complexes et de compagnies paravents pour piller la richesse pétrolière du pays. Parmi les intermédiaires supposés, on trouve une société enregistrée aux Iles vierges britanniques avec « pour seul identifiable lieu d'activité ... une résidence privée à Monaco ».*



notamment à Paris, ceux-ci se composent :

- *Villa Suzette, 45 avenue Maurice Berteaux - 78110 Le Vesinet : hôtel particulier de 700 m<sup>2</sup> estimé entre 5 et 10 millions d'euros. des travaux somptueux ont été réalisés pour plus de 800 000 euros : "bibliothèque en acajou massif, tapis d'Aubusson, robinets et poignets de portes dorés à la feuille d'or, même pour le sous-sol avec ses six chambres réservées aux domestiques, caméras, vitres blindées », carrelages avec « du marbre blanc de Carrare », « salles de bains équipées de robinets en or » ;*
- *19 avenue Rapp - 75007 Paris*

Ses proches détiennent aussi des biens immobiliers à Paris :

- *Wilfrid Nguesso, neveu du Président, serait propriétaire d'un appartement sis 10 promenade Millénaire 92400 Courbevoie (cf Jean François Julliard, « L'appartement d'un émule africain de Gaymard », Le Canard Enchaîné, 16 mars 2005 : un luxueux appartement de 550 m<sup>2</sup> (dont 100 m<sup>2</sup> de terrasse) estimé entre 2,5 et 3 millions d'euros.*
- *D'autres appartements à Courbevoie appartiennent à la famille Nguesso : Ines Nguesso, 10 promenade Millénaire et Edna Ambendet Nguesso, 20 rue Clos Lucé (Cf. Pages Blanches)*
- *Maurice Nguesso, frère du Président et PDG de la Compagnie pétrolière LIKOUALA SA, posséderait une propriété à Argenteuil au 38, rue Poirier Fourrier (Cf. Pages Blanches).*
- *Jean François Ndengue, chef de la police congolaise, a lui une propriété à Meaux. Il a été impliqué dans l'affaire des disparus du Beach (Cf. livre de Xavier Harel, chapitre « Les disparus du Beach »).*

*Les associations portent à la connaissance de Monsieur le Procureur de la République un travail sérieux réalisé par un groupe de Congolais pour recenser les biens mal acquis du Congo Brazzaville. La liste des biens et des personnes incriminées se trouve sur le site internet à l'adresse suivante : <http://congo-biensmalacquis.over-blog.com/>. (En annexe reproduction du site Internet au 21 mars 2007).*

#### **4-3/ Sur les biens situés en France et qui seraient la propriété d'autres dirigeants africains**

*Les associations soussignées souhaitent indiquer à ce stade que, s'agissant des biens qui seront évoqués ci-dessous, elles n'ont pas été en mesure de réunir les éléments factuels suffisants afin que ces biens fassent partie du périmètre des investigations à venir.*

*Cependant, elles rappellent qu'il serait particulièrement inapproprié que ceux qui ont agi avec le maximum d'opacité soient simultanément les plus récompensés.*

*En d'autres termes, même si les biens qui seront évoqués ci-après ne sont pas, en l'état, très précisément répertoriés et si parfois il n'y a été fait que des allusions dans certaines coupures de presse, la probabilité est extrêmement importante qu'ils existent et qu'ils sont bien les propriétés des dirigeants africains indiqués.*

*Il vous appartient, dans ces conditions, Monsieur le Procureur de la République, d'apprécier,*

*comme les associations le pensent, si, en dépit du peu de visibilité de ces biens, il ne serait pas justifié malgré tout, eu égard aux engagements pris par la France (tels que rappelés ci-après), de les incorporer dans le périmètre des investigations à venir.*

**a) S'agissant de Monsieur Blaise COMPAORE et de sa famille :**

*Monsieur Blaise COMPAORE est le Président du Burkina Faso.*

*S'il est moins répertorié que les deux précédents comme s'étant rendu coupable de détournements de biens publics, pour autant il est propriétaire (par le truchement de son épouse, Madame Chantal COMPAORE) d'un appartement sis 2, rue Capitaine Olchanski, dans le 16ème arrondissement à Paris.*

*Il est également porté à la connaissance de Monsieur le Procureur de la République quelques références démontrant les détournements de fonds telles que l'ouvrage "L'ère Compaoré : crimes, politique et gestion du pouvoir", Vincent Ouattara (Editions Klanba, décembre 2006). Le Bimensuel Afrique Education du 1er au 15 mars 2007 publie un article intitulé "Compaoré chef de l'Etat ou chef de la mafia", dans lequel est relaté notamment son rôle aux côtés de Charles TAYLOR, l'ancien chef d'Etat dictateur du Liberia, poursuivi par le Tribunal Pénal International de la Haye dont les avoirs ont été gelés en Europe en application d'un règlement adopté par l'Union Européenne en 2004.*

**b) S'agissant de Monsieur Téodore OBIANG et de sa famille :**

*Monsieur Téodore OBIANG est le Président de la Guinée Equatoriale.*

*Il aurait acquis un hôtel particulier sis avenue Foch, selon le Figaro du 12 avril 2006 (cf. article de Stéphane Bern, « Drapeau rouge et billet vert », 12 mai 2006 – pièce n°16). Il apparaît évident que Monsieur Téodore OBIANG a pris soin de ne pas être titré comme propriétaire facialement apparent de ce bien, mais les vérifications qui interviendront dans le cadre des investigations à venir ne manqueront pas de l'établir.*

*Monsieur Téodore OBIANG est stigmatisé comme étant un des chefs d'Etats africains les plus corrompus (cf. Rapport du sénateur Carl Levin & Norm Coleman en date du 15 juillet 2004 « Money laundering and foreign corruption : enforcement and effectiveness of the Patriot Act, Permanent Subcommittee on Investigations – pièce n°17. Voir également le rapport de Global Witness cité plus haut pour le Congo Brazzaville).*

*Dans le dernier classement du magazine Forbes, sa fortune est estimée à plus de 600 millions de dollars.*

**c) S'agissant de Monsieur Eduardo DOS SANTOS et de sa famille :**

*Monsieur Eduardo DOS SANTOS est le Président de la République d'Angola.*

*Il est stigmatisé depuis des années comme étant un des chefs d'Etat les plus corrompus de la planète. (Voir le rapport de Global Witness « L'histoire accablante du pétrole en Angola »)*

*Monsieur Eduardo Dos Santos est répertorié comme étant propriétaire, dans les mêmes conditions d'opacité sans doute que le Président Téodore Obiang, d'une villa absolument somptueuse au Cap d'Antibes (cf. Lettre du Continent du 11 décembre 2002 – pièce n° 18).*

\* \* \*

*En conclusion, la démonstration est faite, par conséquent, aux termes de la présente plainte et des pièces annexées de :*

*1/ L'existence d'un patrimoine immobilier en France et notamment à Paris, d'une valeur considérable, dont le financement de l'acquisition n'a pu, quelles que soient les circonstances de cette acquisition, intervenir du seul fait des rémunérations versées aux dirigeants des pays concernés.*

*2/ Ces mêmes dirigeants sont répertoriés, pour certains d'entre eux, comme ayant persévéré dans une culture de la prébende et de la corruption.*

*3/ S'agissant des tiers, propriétaires juridiquement de ces biens ou de ceux qui en ont bénéficié, c'est-à-dire de ceux qui en jouissent, qu'il s'agisse des membres des familles concernées ou d'autres personnes, il existe à leur encontre des présomptions extrêmement sérieuses de la commission, depuis temps non prescrit car il s'agit d'un délit continu, du délit de recel de détournement d'argent public.*

*La France, à travers la déclaration de ses plus éminents représentants, n'a eu de cesse, ces dernières années, de dire sa volonté de favoriser la lutte contre tout comportement qui serait de nature à appauvrir les populations africaines et notamment du fait de ces détournements d'argent public.*

*En effet, les conséquences de ce déport de sommes considérables, nécessaires pour acquérir un tel patrimoine immobilier, donne la mesure de la réduction des ressources publiques en Afrique.*

*Force est de rappeler que :*

- la France a été en première ligne, lors de la réunion du G8 à Evian (juin 2003), pour demander le rapatriement vers les pays concernés des biens détournés,*
- la France a été également le premier des pays du G8 à ratifier la convention internationale des Nations Unies de lutte contre la corruption, dite de Mérida, qui fait de la restitution des biens et argent détournés un principe fondamental du droit international.*

*Au-delà, se constitue sous nos yeux, Monsieur le Procureur de la République, un droit international normatif, mais également coutumier qui, chaque jour, fait peser sur chaque Etat de la planète une obligation de plus en plus impérative de contribuer par tous moyens à lutter contre ceux qui menacent les grands équilibres économiques et politiques, c'est-à-dire la criminalité financière, quels qu'en soient les bénéficiaires et les moyens.*

*Simultanément et en écho à cette préoccupation de plus en plus universelle, il est indiscutable que les principes qui, pendant des années, ont protégé les chefs d'Etats en exercice, qu'il s'agisse de leur immunité pénale ou de leur immunité civile, se sont érodés et effrités année après année.*

*Ce mouvement du droit international conventionnel et coutumier a conduit d'ailleurs un certain nombre de juridictions nationales à considérer qu'un chef d'Etat en exercice ne pouvait pas se prévaloir d'une quelconque immunité, s'agissant de ces biens (biens mobiliers ou biens fonciers), dès lors qu'il existait des présomptions sérieuses de ce que leur acquisition s'était faite au prix de la commission de l'infraction. C'est exactement le cas de l'espèce.*

*Les associations soussignées rappellent qu'en tout état de cause, les membres des familles des*

*dirigeants africains concernés ne sauraient, pour ce qui les concerne, tenter d'exciper d'une quelconque immunité.*

*Par ailleurs, il apparaît extrêmement probable qu'a été commis également le délit de blanchiment de détournement de biens publics, ce délit ayant accompagné, précédé ou coïncidé avec les flux financiers nécessaires à la constitution de ce patrimoine foncier (au moins pour certains d'entre eux).*

*Le délit de blanchiment de détournement d'argent public s'applique, Monsieur le Procureur de la République le sait, à l'auteur de l'infraction principale.*

*Enfin, ce sont les investigations à venir qui détermineront si certains tiers, qui ont prêté leurs compétences et leurs ministères à l'organisation des flux financiers nécessaires à l'acquisition de biens, ne se seraient pas rendus, pour certains, responsables soit du délit de complicité de détournement d'argent public, soit du délit de blanchiment de détournement d'argent public.*

*Certes, ces infractions connexes sont peut-être prescrites, mais là encore, les associations soussignées ignorent la date à laquelle certains des biens évoqués ci-dessus ont été acquis.*

*De la même façon, l'opacité avec laquelle ces délits ont été commis pourrait conduire à ce qu'il soit considéré, à l'occasion des investigations à venir et s'agissant de ces délits connexes, que la prescription n'est pas acquise à leur auteur.*

*Par ailleurs, seules les investigations à venir permettront de déterminer (le recel de détournement d'argent public n'étant évidemment pas prescrit) si, s'agissant du délit principal, soit le détournement d'argent public (qui s'est réalisé à l'occasion de la constitution du patrimoine foncier), la prescription a bénéficié à son auteur.*

*Enfin, la juridiction de céans n'ignore pas que, quand bien même l'infraction principale aurait été commise en tout ou partie à l'étranger, la jurisprudence et la loi enseignent que le juge français conserve sa compétence sur le délit de recel.*

*C'est dans ces conditions que les plaignants soussignés ont l'honneur, Monsieur le Procureur de la République, de déposer plainte entre vos mains, en l'état, du seul chef de recel de détournement de biens publics, délit vu et réprimé par les articles 432-15 et 321-1 du Code pénal et de complicité au visa des articles 121-6 et 121-7 du Code pénal.*

Cette première plainte a été classée sans suite le 12 novembre 2007.

Une deuxième plainte dénonçant exactement les mêmes faits a été déposée par TRANSPARENCE INTERNATIONAL France, Béatrice MIAKAKELA épouse TOUNGAMANI, Abdoul Aziz MAIGA et Grégory NGBWA MINTSA le 9 juillet 2008 et a fait également l'objet d'un classement sans suite début septembre 2008.

Une enquête préliminaire (dont vous trouverez copie intégrale en annexe) avait été initialement diligentée par Monsieur le Procureur de la République de PARIS en date du 18 mai 2007. Cette enquête a corroboré la plupart des faits dénoncés par les plaignants. Aussi ne nous paraît-il pas inutile à ce stade de reprendre l'intégralité des conclusions des services de police.

## LES FAITS

*Le 18 juin 2007, Monsieur ALDEBERT, Vice Procureur près le Tribunal de Grande Instance de Paris, Pôle Financier, adresse un Soit Transmis à l'Office Central pour la Répression de la Grande Délinquance Financière. Cette demande fait suite à un dépôt de plainte reçu au Parquet de Paris émanant de trois associations (SHERPA, SURVIE et la Fédération des Congolais de la Diaspora).*

*Dans leur demande, ces associations déposent plainte contre X pour recel de détournement de biens publics. Elles évoquent un patrimoine très important acquis depuis de nombreuses années par cinq chefs d'Etat africains et leur famille. L'origine des fonds ayant permis ces acquisitions en France proviendrait de détournements réalisés dans leurs pays. A l'appui de leurs déclarations, elles fournissent une importante documentation, essentiellement journalistique, dans laquelle sont évoqués quelques uns des biens immobiliers détenus par ces chefs d'Etat.*

*Les cinq pays visés par la plainte sont le Gabon, le Congo, le Burkina Faso, la Guinée Equatoriale et l'Angola. Pour des raisons pratiques, il est décidé de classer les actes correspondants à nos investigations en sous dossiers séparés : Sous dossier A pour le Gabon, Sous dossier B pour le Congo, Sous dossier C pour le Burkina Faso, Sous dossier D pour la Guinée Equatoriale, Sous dossier E pour l'Angola. Une première transmission partielle est effectuée en date du 27/09/07.*

### L'ENQUETE

*La mission confiée à la plate-forme d'Identification des Avoirs Criminels (PIAC) de l'OCRGDF consiste à procéder aux actes suivants:*

- *Répertorier le patrimoine immobilier à Paris et sur le territoire national d'Omar BONGO président du Gabon, Denis SASSOU NGUESSO président du Congo, Blaise COMPAORE président du Burkina Faso, Téodore OBIANG président de la Guinée Equatoriale, Eduardo DOS SANTOS président de l'Angola,*
- *Etablir les conditions d'acquisition de ce patrimoine en identifiant les flux financiers correspondants,*
- *Répertorier les membres de la famille, les tiers et les propriétaires officiels des biens immobiliers ainsi recensés susceptibles d'en avoir bénéficié,*
- *Vérifier pour chacun d'entre eux s'ils disposent d'une immunité diplomatique.*

*Nos premières investigations permettent d'établir avec le plus de précision possible les identités des personnes apparaissant dans le dossier: ces renseignements d'état civil étant l'unique moyen de déterminer un éventuel patrimoine mobilier ou*

immobilier. La lettre - plainte des associations n'indique qu'un nom, parfois un prénom mais aucune date de naissance; de plus les liens de parenté entre ces individus ne sont pas toujours précisés.

Ainsi, une liste de personnes physiques est dressée pour chaque pays servant de base aux investigations (Cf procès verbal N° 1 dans chacun des sous dossiers).

Nos recherches mettent à jour un parc automobile conséquent, notamment aux noms de Wilfrid NGUESSO, neveu du président du Congo, ou de Téodoro NGUEMA, fils du président de la Guinée Equatoriale. Ce dernier fait notamment l'acquisition en France d'une quinzaine de véhicules pour un montant estimé de plus de 5.700.000 €. Pour exemple, Téodoro NGUEMA commande auprès du constructeur en Alsace trois véhicules de marque BUGATTI type Veyron d'un montant unitaire de plus de 1.000.000€ (Cf procès verbal N° 132/2007 /D/5 du 06/08/07).

Le financement de certains véhicules apparaît pour le moins atypique : Pascaline BONGO, fille présumée du Président du Gabon, acquiert en 2006 un véhicule MERCEDES payé par trois chèques tirés respectivement des comptes bancaires de Mme JOANNIE ARTIGA, de Maître François MEYER et de la Paierie du Gabon en France (Cf procès verbal N° 132/2007/A/4 du 20/07/07). De même, certains véhicules achetés par Teodoro NGUEMA sont payés par des virements en provenance de la société SOMAGUI FORESTAL (Cf procès verbaux N°132/2007/D/5 du 06/08/07 et N°132/2007/D/8 du 26/10/07). Wilfrid NGUESSO règle le solde d'achat d'un véhicule ASTON MARTIN type DB9 par un virement émis par MATSIP CONSULTING (Cf procès verbal N°132/2007/B/28 du 05/11/07).

Un patrimoine immobilier important est identifié, notamment aux noms d'individus susceptibles d'appartenir aux familles d'Omar BONGO et de Denis SASSOU NGUESSO :

- Concernant le Président du GABON, un bien immobilier à son nom est découvert au 3 boulevard Frédéric Sterling à NICE (06). Ce bien ne figure pas dans le courrier en date du 10/07/07 de Maître François MEYER à destination du Procureur de la République de Paris, courrier qui récapitule les éléments patrimoniaux d'Omar BONGO. Cette propriété est constituée de deux appartements (170 et 100 m2), trois maisons (67, 215 et 176 m2) et d'une piscine (Cf procès verbal N° 132/2007/A/8 du 17/09/07).
- Concernant les membres de la famille BONGO et SASSOU NGUESSO, les services fiscaux trouvent une société civile immobilière, la SCI DE LA BAUME, dont l'un des porteurs de parts est Edith SASSOU NGUESSO fille de Denis SASSOU NGUESSO et épouse de Omar BONGO. Cette société civile immobilière a fait l'acquisition le 15/06/07 d'un hôtel particulier sis 4 rue de la Baume à PARIS (08<sup>e</sup>) pour le prix de **18.875.000 €** (Cf procès verbal N°132/2007/B/9 du 17/09/07).

Enfin, il apparaît que la majorité des biens immobiliers détenus par les personnes identifiées est localisée dans des quartiers à forte valeur marchande : Paris 16<sup>ème</sup> et 7<sup>ème</sup> arrondissement pour Omar BONGO et son épouse, Paris 16<sup>ème</sup> et Neuilly sur Seine (92) pour Jeff BONGO, Le Vesinet (92) pour le frère de Denis SASSOU NGUESSO, Courbevoie (92) pour Wilfrid NGUESSO ou Paris 16<sup>ème</sup> pour Chantal CAMPAORE.

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De très nombreux comptes bancaires encore actifs sont identifiés aux

*noms de personnes physiques susceptibles d'appartenir aux familles des chefs d'Etat visés. Une liste par individu est dressée par procès verbal. Elle reprend le numéro de compte, la date d'ouverture, le type de compte, l'adresse précise de la banque et de l'agence ainsi que l'adresse du titulaire.*

*Concernant les éventuelles immunités dont pourraient bénéficier les individus apparaissant au dossier, les services du Protocole du Ministère des Affaires Etrangères nous adressent un courrier précisant que seuls les chefs d'Etat en exercice bénéficient à l'étranger d'une inviolabilité et d'une immunité de juridiction pénale absolue. Les membres de leur famille pourraient jouir d'une immunité s'ils accompagnent le chef de l'Etat lors d'une visite officielle (Cf procès verbal N°132/2007/7 du 24/10/07).*

*Conformément aux instructions expresses de Monsieur le magistrat mandant, la présente procédure est transmise en l'état »*

## **II. Discussion**

### **1/ Enseignements tires de l'enquête préliminaire**

Il résulte des investigations effectuées par les services d'enquête que :

#### **➤ S'agissant de Monsieur Omar BONGO et de son entourage :**

- Le patrimoine immobilier comprend trente-neuf (39) propriétés dont dix-sept (17) au nom du Monsieur Omar Bongo, pour la plupart localisées dans le 16ème arrondissement de PARIS ;
- L'identification de 70 comptes bancaires (BNP, Société Générale, Crédit Lyonnais, Barclays, ...) dont onze (11) au nom de Monsieur Omar Bongo ;
- Le parc automobile comprend au moins neuf (9) véhicules dont le montant total est estimé à 1.493. 443 euros.

#### **➤ S'agissant de Monsieur Denis SASSOU NGUESSO et de son entourage:**

- Le patrimoine immobilier comprend dix-huit (18) propriétés ;
- L'identification de cent douze (112) comptes bancaires (BNP, Crédit du Nord, Société Générale, Crédit Lyonnais, Barclays, ...) ;
- Le parc automobile comprend au moins un (1) véhicule pour une valeur de 172.321 euros.

#### **➤ S'agissant de Monsieur Teodoro OBIANG et de son entourage:**

- Le patrimoine immobilier comprend au moins une (1) propriété au nom de Monsieur Téodoro Obiang (Né le 05.06.42) ;
- L'identification d'un compte bancaire auprès de la Barclays au nom de Monsieur Téodoro Nguema Obiang (Né le 24.06.69);
- Le parc automobile comprend au moins huit (8) véhicules détenus par Téodoro Nguema Obiang (Né le 24.06.69), dont le montant total est estimé à 4.213.618 euros.

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Compte tenu de l'importance des patrimoines mobiliers et immobiliers détenus en France par Messieurs Omar BONGO et Denis Sassou NGUESSO, il est difficile de croire qu'ils aient pu

être constitués au moyen de leurs seuls salaires et émoluments. Certes, cela fait des années qu'ils se maintiennent au pouvoir. Pour autant, il paraît peu probable, même en tenant compte de cette circonstance, qu'ils aient accumulé autant d'argent pour constituer des patrimoines de cette nature.

L'enquête préliminaire confirme également la présence sur le sol français de patrimoines importants entre les mains de divers membres de l'entourage respectif (famille/proches collaborateurs) de ces dirigeants. Cette révélation est d'autant plus surprenante lorsque l'on sait que certains d'entre eux n'exercent aucune fonction publique.

L'enquête préliminaire révèle par ailleurs l'existence d'un patrimoine de valeur non négligeable au profit de la famille OBIANG, constitué pour l'essentiel de voitures de luxe.

En tout état de cause, eu égard aux conditions dans lesquelles le financement de certains des biens visés par les services de police se sont réalisées, il est raisonnablement permis de s'interroger sur l'origine légale des fonds et des biens ainsi accumulés sur le territoire français.

En particulier, s'agissant du parc automobile, force est de reconnaître que les moyens de financement de certains véhicules sont particulièrement "atypiques" pour reprendre l'expression des services de police, dans le rapport de synthèse.

Ainsi, bon nombre des véhicules acquis par Téodoro Nguema Obiang ont été réglés par virement en provenance de la société SOMAGUI FORESTAL - Société d'exploitation forestière domiciliée en Guinée Equatoriale et dirigée par Téodoro Nguema Obiang -.

TRACFIN, qui a enquêté sur cette entreprise, considère que : *« A l'aune de l'ensemble de ces éléments, tant financiers qu'environnementaux, il est dès lors envisageable que les opérations détaillées supra puissent traduire le blanchiment du produit du détournement de fonds public par un dépositaire de l'autorité publique, ce via l'acquisition de véhicules de grande valeur »* (Page 3 de la note d'information TRACFIN)

Analyse partagée par le « *Service Immigration and Customs Enforcement* » de Miami (USA) qui est chargée d'une enquête aux Etats Unies concernant Mr Téodoro Nguéma Obiang, fils du président de la Guinée Equatoriale : *« L'enquête américaine sur les activités de Téodoro Nguema Obiang et ses associés a identifié de nombreuses transactions suspectes prenant leur origine dans ou passant par le système financier français »* (Point 2. De la demande d'assistance dans l'enquête sur Téodoro Nguema Obiang et ses associés).

De même, il résulte de l'enquête préliminaire que deux véhicules acquis respectivement par Edith Bongo et Pascaline Bongo ont été réglés par des chèques tirés sur des comptes ouverts au nom du Trésor public gabonais.

En conclusion, la preuve est rapportée de la présence sur le sol français de patrimoines mobiliers et immobiliers conséquents constitués dans des conditions particulièrement douteuses.

L'ouverture d'une information s'impose pour déterminer l'origine du financement du patrimoine ainsi acquis par les personnes sus mentionnées. Il conviendra par ailleurs de faire toute la lumière sur le rôle joué par divers intermédiaires dans le déroulement de ces opérations.

## **2/ Sur l'intérêt à agir de l'Association Transparence International France**



Transparence International France est une association à but non lucratif régulièrement déclarée en préfecture depuis 1995.

Transparence International France s'est donnée pour mission de lutter contre la corruption sous toutes ses formes, conformément à son objet social rappelé ci-après :

#### Article 2 – Objet

Transparence - International (France) a pour finalité de combattre et prévenir la corruption au niveau international et national, dans les relations d'État à État, d'État à personnes physiques et morales publiques ou privées et entre ces personnes.

À ce titre, elle a pour objet:

- d'approfondir la connaissance des phénomènes de corruption, pour définir les outils ou des procédés pour en réduire et limiter l'expansion et pour évaluer leurs effets,
- de définir et de mettre en œuvre des programmes d'actions, de missions d'étude en France et dans les pays victimes de la corruption,
- de sensibiliser et de former, à l'adresse des techniciens, gestionnaires et décideurs professionnels,
- de conseiller des Pouvoirs Publics, des personnes physiques et morales publiques et privées, sur tous sujets touchant aux divers aspects de la corruption,
- d'apporter son soutien, notamment financier à Transparency International et appuyer toute action visant à la réalisation de son objet,
- de rassembler la documentation, sur tous les aspects de la corruption,
- d'impliquer les milieux professionnels, sociaux et politiques dans la recherche d'une plus grande moralisation de la vie économique et financière,
- **d'engager toutes actions ayant pour effet de prévenir, de dissuader ou de lutter contre les pratiques illégales, toutes formes de corruption,**
- **d'apporter son concours et son soutien aux victimes de pratiques illégales après examen des dossiers qui lui sont soumis,**
- d'organiser des manifestations aptes à faire progresser l'éthique individuelle, collective et professionnelle, en s'appuyant tout particulièrement sur l'usage de la communication,
- de diffuser des informations qui concourront à la connaissance de tous problèmes que génère la corruption dans le cadre de relations publiques et d'affaires.

La Cour de Cassation admet, depuis plusieurs années, sur le fondement de l'article 2 du Code de procédure pénale, la recevabilité de la constitution de partie civile des associations, lorsque l'infraction porte atteinte aux intérêts que celle-ci a légalement ou statutairement pour mission de défendre. Les exemples sont désormais légion :

- Pour la recevabilité de l'association « Aide à toute détresse » qui prend en charge des êtres démunis incapables d'assumer la sauvegarde de leurs intérêts et de leurs droits: *CA Colmar 10 février 1977;*
- Pour la recevabilité de l'association « Choisir » dans des poursuites pour viol, au motif que, selon ses statuts, cette association a pour but de veiller au respect de la personne humaine et à la sauvegarde des femmes exposées au danger : *Cour d'assises de Paris 15 décembre 1977;*
- Pour une association de lutte contre le tabagisme autorisée à se constituer partie civile en matière de publicité en faveur du tabac: *Cass. crim. 7 février 1984, Bull. crim. n° 41; Cass. crim. 29 avril 1986, Bull. crim n° 146 ; Cass. crim. 29 juin 1994, Bull. crim., n 260;*
- Pour une Fédération française de football recevable à se constituer partie civile dans une poursuite pour corruption de sportifs professionnels, affaire Valenciennes-OM : *Cass.*

- crim. 4 février 1997, Bull. crim. n°45 ;*
- Pour l'Union fédérale des consommateurs Que Choisir ? admise à se constituer partie civile sur la base de l'article L.221-1 du Code de la consommation relativement à l'exigence de sécurité des services, dans une poursuite pour homicide et blessures involontaires à la suite de l'effondrement d'une tribune du stade de Furiani : *Cass.crim 24 juin 1997, Bull. crim., n°251;*
  - Pour une association de défense de la filière des viandes bovines dans une poursuite pour délit de publicité trompeuse sur l'origine des viandes : *Cass. crim.26 oct. 1999, Bull. crim., n°233.*

Plus récemment, la Cour de Cassation a eu l'occasion de préciser qu'une association non agréée de protection de l'environnement était recevable à se constituer partie civile. La chambre criminelle a en effet considéré que l'association avait subi préjudice direct et personnel consistant en l'atteinte portée aux intérêts collectifs que celle ci a statutairement pour objet de défendre (*Cass.crim.12 septembre 2006 Juris-Data n°05-86.958*)

En chacune de ces hypothèses, la Cour de cassation s'est fondée sur « *la spécificité du but et l'objet de [la] mission* » de l'association demanderesse.

En l'espèce, il ne fait aucun doute que les faits dénoncés par la présente plainte portent atteinte de façon directe aux intérêts que Transparence International France a statutairement pour objet de défendre.

Comme indiqué plus avant, Transparence International France a pour objet de lutter contre la corruption sous toutes ses formes. Or, il est évident que les détournements de fonds publics et le recel consécutif relèvent du phénomène de la corruption. Cette analyse est par ailleurs celle retenue par la Convention des Nations Unies contre la Corruption (Articles 17 et 24 de la Convention).

Ainsi, sauf à établir une différence de traitement injustifiée entre les intérêts juridiques défendus par les associations, Transparence International France, doit se voir reconnaître la possibilité d'agir en justice. Il paraîtrait en effet quelque peu surprenant de refuser à une association de lutte contre la corruption ce que l'on accorde par ailleurs à des associations non agréées de protection de l'environnement ou encore des associations de lutte contre le tabagisme.

On précisera enfin que Transparence International France remplit les formalités exigées par l'article 5 de la loi du 1<sup>er</sup> juillet 1901 (Déclaration en préfecture) auxquelles toute association doit se soumettre pour obtenir la capacité d'ester en justice de sorte que rien ne s'oppose à la recevabilité de cette association en sa constitution : *Cass.crim 12 avril 2005, Pourvoi n° 04-85.982*

Il résulte de ce qui précède que Transparence International France a subi un préjudice direct et personnel du fait des infractions dénoncés dans la présente plainte dont elle est, conformément à l'article 2 du Code de procédure pénale, en droit de demander réparation en se constituant partie civile devant les juridictions répressives.

### **3/ Sur l'intérêt à agir de Monsieur Gregory Ngbwa Mints**

Avant tout, il importe de souligner dès à présent le courage dont ce dernier fait preuve en se constituant ainsi partie civile compte tenu des pressions qui ont été exercées sur les plaignants<sup>1</sup>

Monsieur Gregory Ngbwa Mintsá est\* de nationalité gabonaise. Il justifie avoir, pour une période correspondant en tout ou partie à la période des faits dénoncés, payer des impôts au Trésor Public gabonais (Voir Pièces jointes en annexe) et c'est en vertu de cette qualité qu'il se constitue partie civile par la présente.

Le plaignant fait valoir deux moyens au soutien de son action.

- **Premier moyen : Le préjudice subi par la collectivité étatique**

En premier lieu, Monsieur Gregory Ngbwa Mintsá entend se constituer partie civile au nom et pour le compte de l'Etat gabonais aux fins d'obtenir réparation des préjudices subis par le Gabon du fait des agissements commis par Monsieur Omar Bongo ainsi que les membres de son entourage.

**Sur la matérialité des préjudices invoqués par les plaignants :**

Il est admis depuis longtemps que « *les articles 2 et 3 du Code de procédure pénale ouvrent l'action civile à tous ceux qui ont personnellement souffert du dommage, matériel ou moral, découlant des faits objets de la poursuite, sans en exclure les personnes morales de droit public* » (Cass.crim 7 avril 1999 Parc National des Ecrins)

En l'espèce, l'Etat Gabonais a subi un préjudice du fait des agissements commis par Monsieur Omar Bongo ainsi que les membres de son entourage. Ce préjudice est tout à la fois direct et personnel.

Direct puisqu'il est évident que le fait pour le dirigeant du Gabon ainsi que les membres de son entourage de détenir sur le territoire français des biens ou des fonds provenant de détournements de deniers publics lèse la collectivité étatique en son ensemble.

- D'un point de vue matériel, le préjudice consiste en un amoindrissement des recettes publiques étatiques;
- D'un point de vue moral, le préjudice résulte de ce que les faits litigieux - en ce qu'ils ont été pour partie réalisés par des personnes exerçant des fonctions publiques et à l'occasion de l'exercice de leurs fonctions - sont de nature à jeter le discrédit sur la collectivité étatique toute entière : Cass.crim 10 mars 2004, Bull.crim n°64; Cass. crim. 8 févr. 2006, Pourvoi n°05-80.488; Cass. crim., 14 mars 2007, Pourvoi n° 06-81.010. En ces différentes hypothèses, la chambre criminelle a jugé que la collectivité avait subi un préjudice moral distinct de l'intérêt général dont la protection est assurée par le Ministère public.

Il est en effet admis depuis longtemps que les cas de manquement au devoir de probité ne portent pas seulement atteinte à l'intérêt général mais peuvent également porter atteinte à des

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<sup>1</sup> A ce titre, Il convient de préciser que deux plaignants (Madame Béatrice Tougamani et Monsieur Abdoul Aziz Maiga) ont renoncé à se constituer partie civile suite aux menaces qu'ils ont subis - faits pour lesquels deux plaintes ont été déposés auprès des services de police -.

intérêts particuliers : « Si le délit de corruption passive institué par l'article 177 du code pénal l'a été principalement en vue de l'intérêt général, il tend également à la protection des particuliers qui peuvent (...) subir un préjudice direct et personnel dont ils sont fondés à obtenir réparation devant la juridiction pénale » (Cass. crim., 1er déc. 1992 ; Dr. pén. 1993, comm. 126).

Depuis lors, la chambre criminelle admet en pareille hypothèse la recevabilité des constitutions de partie civile émanant de personnes physiques, mais aussi de personnes morales, qu'elles relèvent du droit privé, telle une Fédération sportive (Cass. crim., 4 févr. 1997 : *Juris-Data* n° 1997-000569 ; *Bull. crim.* 1997, n° 45) ou du droit public, tel un office public d'HLM (Cass. crim., 21 mai 1997 : *Juris-Data* n° 1997-003328 ; *Bull. crim.* 1997, n° 193).

S'agissant de la personne de l'Etat, la chambre criminelle a précisément déclaré recevable l'action civile de l'Etat à l'encontre de fonctionnaires qui s'étaient livrés à des actes de favoritisme et de trafic d'influence (Cass. crim. 10 mars 2004, *Bull. crim.* n°64).

### **Sur l'aptitude des plaignants à se constituer partie civile au nom et pour le compte du Gabon**

On sait que le droit des sociétés reconnaît la possibilité pour un actionnaire/associé de demander, au nom et pour le compte de la société, réparation de l'entier préjudice causé à cette dernière, à laquelle le cas échéant les dommages et intérêts seront alloués: il s'agit de l'**action sociale ut singuli**.

Cette action individuelle peut être intentée par tout actionnaire/associé, quelque soit le nombre d'actions/parts sociales qu'il détient.

Il s'agit d'une action subsidiaire qui suppose l'inaction du dirigeant social ayant vocation à représenter juridiquement la société (Cass. crim., 12 déc. 2000, *Pourvoi* n°97-83.470) et/ou la mise en cause de ce dernier à l'instance.

En l'espèce, ce n'est certes pas en sa qualité d'actionnaire que le plaignant revendique le droit d'agir en justice mais en vertu de son statut de contribuable. Dans les deux cas néanmoins, l'intérêt à agir des plaignants résulte des apports - actions/parts sociales/prélèvements obligatoires - qu'ils ont effectués au profit du groupement dont ils entendent assurer la représentation en justice.

Il n'est par ailleurs certes plus question du préjudice causé à l'entreprise de droit privé mais de celui causé à la société étatique, personne morale de droit public. Cependant, dans les deux cas, il s'agit du préjudice causé à un groupement organisé doté de la personnalité morale.

Notre droit positif n'est pas étranger à ce raisonnement puisque que l'article L.2132-5 du code général des collectivités territoriales permet précisément à tout contribuable inscrit au rôle de la commune d'exercer les actions qu'il croit appartenir à la commune et que celle-ci a refusé ou négligé d'exercer - Dispositif par ailleurs étendu par la loi du 12 avril 2000 aux contribuables départementaux (Article L.3133-1 CGCT) et régionaux (Article L.4143-1 CGCT) -.

Le terme « action » vise indifféremment les actions en recouvrement de créances, les actions en rescision pour lésion ou encore les actions civiles : La chambre criminelle a en effet jugé que l'article L.316-5 du code des communes (Ancien article L.2132-5 du CGCT) ne distingue pas entre les diverses actions dont peut bénéficier la commune et n'exclue pas de ses prévisions l'action civile en réparation d'une infraction (Cass. Crim 12 mai 1992).

Ainsi, tout contribuable peut solliciter de la juridiction administrative, agissant alors comme autorité administrative, le droit de se constituer partie civile au lieu et place de la collectivité

aux fins de mettre en mouvement l'action publique et d'obtenir réparation des préjudices subis par cette dernière.

Suivant la jurisprudence du Conseil d'Etat en la matière, l'octroi de l'autorisation requiert la réalisation de deux conditions : L'autorisation est accordée si l'action présente un intérêt matériel suffisant pour la commune et qu'elle a une chance de succès. En matière d'action civile, cette dernière exigence est satisfaite lorsque les éléments du dossier font peser un soupçon d'infraction pénale (*CE 26 mars 1999, Ville de Paris : Juris data n° 1999-050213*)

Ces différents dispositifs fournissent des principes de solution aisément transposables aux faits objets de la présente plainte :

- Le Gabon a subi un préjudice direct et personnel du fait des infractions réalisées sur le territoire français;
- Les représentants légaux du Gabon ont négligé d'agir en justice et pour cause, puisque les agissements incriminés sont précisément le fait de la plus haute autorité dirigeante de l'Etat Gabonais;
- Le Ministère public a refusé son appui aux plaignants ;
- Subsidaire, l'action de Monsieur Gregory Ngbwa Mintsu vise à servir les intérêts pécuniaires et moraux de la collectivité étatique.

Pour toutes ces raisons, il serait profondément inéquitable d'invoquer l'absence d'habilitation spéciale pour refuser au plaignant le droit de se constituer partie civile aux fins de voir réparer le tort causé à sa collectivité.

A ce titre, il convient d'évoquer les motifs retenus dans l'arrêt de la Cour d'appel de Colmar du 10 février 1977 évoqué plus avant: Après avoir rappelé que dans deux séries d'hypothèses les juridictions répressives avaient accueillis l'action civile des associations en dehors de toute habilitation légale, les juges d'appel décident que *« par analogie et a fortiori si l'on considère l'intérêt en jeu, doit-il en être ainsi de la plainte déposée par « Aide à toute détresse » puisque, par définition, ce groupement ne prend en charge que des êtres démunis de tout, incapables d'assurer la sauvegarde de leurs intérêts et de leurs droits, rejetés par la société et auxquels les autorités judiciaires et administratives refusent, comme en l'espèce, leur appui »*.

Ainsi, alors même qu'aucune loi ne permettait à l'époque l'action civile collective des associations devant le juge pénal, les juges d'appel ont néanmoins admis la recevabilité de la constitution de partie civile de l'association « Aide à toute détresse ». Dépourvue de base textuelle, cette solution repose sur des motifs d'équité. C'est qu'en effet, retenir la solution inverse aurait eu pour effet de priver les victimes du recours à la justice et de leur droit à réparation puisque le Ministère Public a refusé de leur venir en appui. C'est précisément le risque qui se présente en l'espèce.

Il résulte de ce qui précède que le Gabon a subi un préjudice direct et personnel du fait agissements délictueux commis par Monsieur Omar Bongo ainsi que les membres de son entourage dont il est, conformément à l'article 2 du Code de procédure pénale, en droit de demander réparation en se constituant partie civile devant les juridictions répressives ; fut-ce par l'intermédiaire d'un de ses nationaux.

- **Second moyen : Le préjudice propre de Monsieur Gregory Ngbwa Mintsu**

En second lieu, il ne fait aucun doute que Monsieur Gregory Ngbwa Mints a subi un préjudice propre du fait des agissements dénoncés par la présente plainte.

Ce sont en effet les contribuables gabonais qui les premiers font les frais de l'ensemble des opérations incriminées dans la présente plainte.

- D'un point de vue matériel, le préjudice résulte de ce que les impôts de Monsieur Gregory Ngbwa Mints ont été utilisés à des fins étrangères à celles auxquelles ils étaient destinés. Les détournements opérés correspondent à autant de dépenses publiques dont ce dernier a été privé.
- D'un point de vue moral, le préjudice résulte de ce que les agissements ont violé la confiance légitime de Monsieur Gregory Ngbwa Mints en l'intégrité de l'appareil étatique.

Distinct du préjudice causé à la personne morale l'Etat, le préjudice de Monsieur Gregory Ngbwa Mints se distingue par ailleurs de l'intérêt général. Comme indiqué plus avant, il est admis que les infractions consistant en des manquements au devoir de probité sont de nature à léser des intérêts particuliers qui peuvent subir un préjudice personnel dont « *ils sont fondés à obtenir réparation devant la juridiction pénale* » (Crim. 1<sup>er</sup> décembre 1992).

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On rappellera finalement que suivant l'article 13 de la Convention Européenne de sauvegarde des Droits de l'Homme et des Libertés Fondamentales : « *Toute personne dont les droits et libertés reconnus dans la présente Convention ont été violés, a droit à l'octroi d'un recours effectif devant une instance nationale, alors même que la violation aurait été commise par des personnes agissant dans l'exercice de leurs fonctions officielles* » (Droit à un recours effectif)

Or, il ne fait aucun doute que priver Monsieur Gregory Ngbwa Mints du droit de se constituer partie civile reviendrait à porter atteinte à l'article 1<sup>er</sup> du Protocole de 1952 qui garantit à toute personne physique ou morale le droit au respect de ses biens - étant rappelé que la notion de « biens » en droit européen vise toute sorte d'actifs indépendamment des qualifications formelles retenues en droit interne -.

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C'est dans ces conditions que les plaignants soussignés ont l'honneur, Monsieur le Doyen des Juges d'instruction, de déposer plainte entre vos mains à l'encontre des personnes physiques suivantes : En vertu de l'article 121-1 du Code pénal

➤ **S'agissant de Monsieur Omar Bongo et de son entourage**

- Albert Bernard Bongo dit Omar Bongo Ondimba, Chef d'Etat du Gabon ;
- Edith Lucie Bongo, fille de Denis Sassou Nguesso et épouse d'Omar Bongo ;
- Pascaline Bongo, fille d'Omar Bongo et directrice de cabinet du Chef de l'Etat ;
- Ali Bongo Ondimba, fils d'Omar Bongo et Ministre de la défense du Gabon;
- Arthur Ondimba Bongo, fils d'Omar Bongo;
- Omar Denis Junior Bongo Onbimba (Née le 19.07.1964), fils d'Omar Bongo;
- Omar Ben Bongo (Né le 01.02.1978), fils d'Omar Bongo ;
- Jeff Thierry Arsène Jaffar Bongo, fils d'Omar Bongo;
- Yacine Queenie Bongo, fille d'Omar Bongo ;
- Audrey blanche Bongo Ondimba, fille d'Omar Bongo ;
- Jean Ping, ancien Ministre d'Etat - Président de la Commission de l'Union Africaine ;
- Nesta Shatika Bongo Ping, fille de Jean Ping - petite fille d'Omar Bongo ;

➤ **S'agissant de Monsieur Denis Sassou Nguesso et de son entourage**

- Denis Sassou Nguesso (Né le 01.01.43), Chef d'Etat du Congo- Brazzaville ;
- Antoinette Sassou Nguesso, épouse de Denis Sassou Nguesso;
- Denis Christel Sassou Nguesso (Né le 14.01.75), fils de Denis Sassou Nguesso et dirigeant de la Cotrade (filiale de la compagnie pétrolière d'état SNPC);
- Denis Nguesso (Né le 08.03.67), fils de Denis Sassou Nguesso ;
- Julienne Sassou Nguesso, fille de Denis Sassou Nguesso;
- Maurice Nguesso, frère aîné de Denis Sassou Nguesso ;
- Wifrid Nguesso, fils de Maurice Nguesso - neveu de Denis Sassou Nguesso ;
- Edgar Serge Ruphin Nguesso, fils de feu Eugène Nguesso (frère de Denis Sassou Nguesso) ;
- Jean François Ndengue, ancien directeur de la police congolaise - Mis en cause dans l'affaire des disparus du Beach ;
- Claudia Carole Iki Lemboumba (Epouse Sassou Nguesso), conseillère du Chef de l'Etat ;
- Marguerite Ambendet Nguesso

➤ **S'agissant de Monsieur Teodoro OBIANG et de son entourage**

- Teodoro Obiang Mbasogo (Né le 05.06.42), Chef d'Etat de la Guinée Equatoriale ;
- Teodoro Nguema Obiang (Né le 24.06.69), fils de Teodoro Obiang, ministre de l'agriculture et des Forêts et Directeur de la société SOMAGUI FORESTAL ;

Des chefs de recel de détournement de fonds publics - Délits prévus et réprimés par les articles 321-1 et 432-15 du Code pénal;

Il appartiendra également au juge d'instruction de déterminer si les comptes bancaires identifiés par l'enquête de police ont été alimentés par des flux financiers illégaux caractérisant l'infraction de recel de détournement de fonds publics ;

Il conviendra enfin de faire toute la lumière sur le rôle joué par divers intermédiaires, qu'il s'agisse de personnes physiques ou morales, qui ont facilité et/ ou bénéficié (de) la réalisation des faits délictueux de sorte que la présente plainte est également déposée des chefs de

complicité de recel de détournement de fonds publics, complicité de détournement de fonds publics, blanchiment, complicité de blanchiment, abus de biens sociaux, complicité d'abus de biens sociaux, abus de confiance, complicité d'abus de confiance et recel de chacune de ces infractions - délits prévus et réprimés par les articles 121-6, 121-7, 321-1 et 432-15 du Code pénal (complicité de recel de détournement de fonds publics) ; 121-6, 121-7 et 432-15 du Code pénal (complicité de détournement de fonds publics), 324-1 du Code pénal (blanchiment) ; 121-6, 121-7 et 324-1 du Code pénal (complicité de blanchiment), 241-3 du code de Commerce (abus de biens sociaux) ; 121-6 et 121-7 du Code pénal et 241-3 du code de Commerce (complicité d'abus de biens sociaux) ; 314-1 du Code pénal (abus de confiance) ; 121-6 et 121-7 et 314-1 du Code pénal (complicité d'abus de confiance) et 321-1 Code pénal (recel) ;

Pour toutes ces raisons, il est également déposé plainte contre X.

Fait à Paris,

Le

#### **LISTE DES PIECES ANNEXEES**

1 Jurisprudence relative au recel de détournement d'argent public



- 2 Article du journal Sud Ouest du 28 août 1998
- 3 Lettre du Continent du 15 février 2001
- 4 Article publié dans Le Monde du 6 août 1997
- 5 Article publié dans Le Monde du 2 avril 1997
- 6 Article publié dans L'Express du 21 janvier 1999
- 7 Lettre du Continent du 11 novembre 1999
- 8 Lettre du Continent du 14 septembre 2006
- 9 Extrait de l'annuaire Pages Blanches
- 10 Lettre du Continent du 24 mars 2005
- 11 Extrait de l'ouvrage écrit par M. Xavier Harel « *Afrique : le piège à huit clos* »
- 12 Article publié dans Le Monde du 25 mars 2004
- 13 Article publié dans Les Echos du 14 mars 2007
- 14 Arrêt de la Chambre commerciale de la Cour Royale de Londres du 28 novembre 2005
- 15 Décision d'un juge fédéral américain – avril 2006
- 16 Article publié dans Le Nouvel Observateur du 17 août 2006
- 17 Dépêche de l'agence Reuters du 4 avril 2006
- 18 Article publié dans le Wall Street Journal du 19 octobre 2005
- 19 Article publié dans Le Canard Enchaîné du 16 mars 2005
- 20 Reproduction du site internet au 21 mars 2007 <http://congo-biensmalacquis.over-blog.com/>
- 21 Article de Stéphane Bern « Drapeau rouge et billet vert » du 12 mai 2006
- 22 Rapport des sénateurs Carl Levin & Norm Coleman du 15 juillet 2004 « *Money laundering and foreign corruption: Enforcement and effectiveness of the Patriot Act*, Permanent Subcommittee on Investigations
- 23 Rapport de l'association Global Witness : « *L'histoire accablante du pétrole en Angola* »
- 24 Lettre du Continent du 11 décembre 2002
- 25 Copie de l'enquête préliminaire
- 26 Pièces relatives à l'association Transparence International France

27 Pièces concernant Monsieur Gregory Ngbwa Mintsa (Copie de la pièce d'identité ; pouvoir ; bulletin de salaire)

COUR D'APPEL DE PARIS

TRIBUNAL DE GRANDE INSTANCE  
DE PARIS

CABINET DE FRANÇOISE DESSET  
DOYEN DES JUGES D'INSTRUCTION

**ORDONNANCE  
D'IRRECEVABILITE PARTIELLE  
DE PLAINTE AVEC  
CONSTITUTION DE PARTIE CIVILE**

N° du Parquet : .0833796017 .

N° Instruction : .20f/08/76 .

*PROCÉDURE CORRECTIONNELLE*

Le 05 Mai 2009,

Nous, Françoise DESSET, Doyen des Juges d'Instruction au tribunal de grande instance de Paris, étant en notre cabinet,

Vu la plainte avec constitution de partie civile déposée le 02 décembre 2008 par :

**-M. NGBWA MINTSA Grégory**

domicilié chez Me BOURDON William, 156, rue de Rivoli 75001 PARIS

**-Ass. TRANSPARENCE INTERNATIONAL FRANCE**

représentée par M. DANIEL LEBEGUE

domicilié chez Me BOURDON William, 156, rue de Rivoli 75001 PARIS

ayant pour avocat : Me William BOURDON

des chefs de recels et complicité de recel de détournement de fonds publics, complicité de détournement de fonds publics, blanchiment, complicité de blanchiment, abus de biens sociaux, complicité d'abus de biens sociaux, abus de confiance, complicité d'abus de confiance, recel de chacune de ces infractions.

Vu notre ordonnance de soit-communiqué au parquet, en date du 17 mars 2009,

Vu les réquisitions aux fins de déclaration d'irrecevabilité de la plainte avec constitution de partie civile, du 08 avril 2009 de M. le Procureur de la République,

Vu les articles 1, 2, 3, 85 et 87 du Code de procédure pénale,

L'association TRANSPARENCE INTERNATIONAL FRANCE et M. Grégory NGBWA MINTSA déposent plainte avec constitution de partie civile des chefs de recel de détournements de fonds publics à l'encontre de M. Omar BONGO, chef d'état du Gabon, de M. Denis SASSOU NGUESSO, chef d'état du Congo Brazzaville et de M. Teodoro OBIANG, chef d'état de la Guinée Equatoriale.

Ces faits de recels de détournement de fonds publics visent aussi les personnes de l'entourage de ces présidents en exercice, essentiellement des membres de leur famille, et nommément citées :

- Pour M. Omar BONGO : Edith Lucie BONGO, Pascaline BONGO, Ali BONGO ONDIMBA, Omar Denis Junior BONGO ONDIMBA, Omar BEN BONGO, Jeffe Thiery Arsen Jaffar BONGO, Yacine Queenie BONGO, Audrey Blanche BONGO ONDIMBA, Nesta Shatika BONGO PING et Jean PING,

- Pour M. Denis SASSOU NGUESSO : Antoinette SASSOU NGUESSO, Denis Christel SASSOU NGUESSO, Denis NGUESSO, Julienne SASSOU NGUESSO, Maurice NGUESSO, Wilfrid NGUESSO, Edgar Serge Ruphin NGUESSO, Claudia Carole Ikia LEMBOUMBA, Marguerite Ambendet NGUESSO et Jean François NDENGUE

- Pour M. Teodoro OBIANG : Teodoro NGUEMA OBIANG.

Les parties civiles portent également plainte contre X des chefs de complicité de recel de détournement de fonds publics, complicité de détournement de fonds publics, blanchiment, complicité de blanchiment, abus de biens sociaux, complicité d'abus de biens sociaux, abus de confiance, complicité d'abus de confiance et recel de chacune de ces infractions.

Cette plainte expose que ces chefs d'états et leur famille disposent en France d'un patrimoine très important acquis depuis de nombreuses années. L'origine des fonds ayant permis ces acquisitions en France proviendrait de divers détournements réalisés dans leur pays et dénoncés dans le cadre des infractions visées.

Ces biens immobiliers, maisons, appartements, et ces biens mobiliers, voitures de luxe et comptes bancaires, sont énumérés dans la plainte tels qu'ils ont été notamment recensés par les services de la PIAC - Plate forme d'Identification des Avoirs Criminels - service de police de l'OCRGDF- Office central de la répression de la grande délinquance financière .

En effet, en 2007, ces services ont été saisis d'une enquête préliminaire par le parquet de Paris pour "répertorier le patrimoine immobilier", notamment des trois présidents en exercice et de leur famille visés dans la présente plainte, et pour "établir les conditions d'acquisition de ce patrimoine en identifiant les flux financiers correspondants". Cette enquête a été effectuée à la suite du dépôt d'une plainte simple déposée par d'autres associations dénonçant, pour partie, les mêmes faits que dans la présente plainte.

Cette procédure, après une transmission partielle identifiant ces avoirs, a été classée sans suite en novembre 2007 pour " infraction insuffisamment caractérisée" .

Selon les plaignants, l'importance avérée de ces patrimoines au regard des fonctions ou de l'absence de fonction des personnes nommément visées, le financement de ces acquisitions, parfois atypique comme cela a été relevé par les services de police, laissent présumer des flux financiers douteux provenant des divers détournements dénoncés.

Ils dénoncent ainsi l'existence en France de ces biens dits "mal acquis" pouvant constituer des faits de recel des infractions principales dénoncées et sollicitent l'ouverture d'une information pour en établir le financement.

La présente constitution de partie civile fait suite au dépôt d'une plainte simple déposée par les parties civiles auprès du Procureur de la République le 9 juillet 2008 et classée sans suite en septembre 2008.

**Sur la recevabilité de constitution de partie civile de l'association  
TRANSPARENCE INTERNATIONALE FRANCE :**

TRANSPARENCE INTERNATIONAL FRANCE est une association à but non lucratif, créée suivant les dispositions la loi du 1er juillet 1901, elle est régulièrement déclarée en préfecture en 1995 et en l'état elle n'est pas reconnue d'utilité publique.

Elle ne relève d'aucune des dispositions législatives spéciales habilitant certaines associations à exercer l'action civile dans des cas déterminés tels que prévus aux articles 2-1 à 2-21 du Code de procédure pénale.

Suivant l'article 2 du code de procédure pénale et la jurisprudence constante, toute personne qui souhaite se constituer partie civile doit justifier d'un préjudice personnel directement causé par l'infraction pour être déclarée recevable.

En ce qui concerne les associations il est admis que le préjudice subi doit être distinct du trouble causé aux intérêts généraux de la société dont la réparation est assurée par l'exercice de l'action publique.

Toutefois une association défendant des intérêts collectifs de portée générale peut exercer l'action civile si elle subit un préjudice personnel directement causé par l'infraction poursuivie. Ainsi ont été admis par la Cour de Cassation : l'action du Comité national français de lutte contre le tabagisme dans une procédure de publicité clandestine en faveur du tabac et celle d'une association créée pour conserver la mémoire des victimes de déportation reconnue d'utilité publique du fait de l'apologie de crime de guerre.

TRANSPARENCE INTERNATIONAL FRANCE a défini son objet dans l'article 2 de ses statuts:

“Transparence International France a pour finalité de combattre et de prévenir la corruption au niveau national et international dans les relations d'Etat à Etat, d'Etat à personnes physiques et morales publiques ou privées et entre ces personnes”.

Suit dans cet article une énumération d'actions positives que l'association entend engager pour atteindre son objectif notamment : programmes d'informations, d'actions, de missions d'études, de sensibilisation, de formation, de soutien aux victimes, de manifestations, toutes actions ayant pour but d'identifier tous phénomènes de corruption, de les dénoncer et de les faire cesser.

Cette action de TRANSPARENCE INTERNATIONAL FRANCE s'inscrit dans une action plus globale menée à l'échelle mondiale par l'association TRANSPARENCE INTERNATIONALE, créée en 1993 et qui fédère plus de 90 associations nationales dont TRANSPARENCE INTERNATIONAL FRANCE, associations toutes engagées, avec leur spécificité nationale, dans la lutte contre la corruption.

Il ressort du dossier, notamment des nombreux documents annexes joints à la plainte, que TRANSPARENCE INTERNATIONAL FRANCE par ses publications, ses rapports annuels ses rencontres, ses groupes de travail, ses lettres trimestrielles, son action d'aide aux victimes, ses campagnes de mobilisation et de sensibilisation, ses interventions notamment des instances nationales et internationales justifie pleinement de la réalisation de ses objectifs de prévention et de lutte contre la corruption.

Les multiples actions menées par TRANSPARENCE INTERNATIONAL FRANCE depuis sa création et spécialement celles qu'elle a conduites pour la restitution de "biens" dits "mals acquis", attestées dans les pièces annexes sont ainsi en parfaite correspondance avec les faits dénoncés concernant l'existence en France de biens pouvant provenir de détournements de fonds publics.

TRANSPARENCE INTERNATIONAL FRANCE, association spécialement créée pour lutter contre la corruption, témoigne ainsi d'une mobilisation et d'un déploiement d'activité incontestable pour ce combat en engageant à cet effet toutes ses ressources . Elle subit en conséquence un préjudice personnel, économique, directement causé par les infractions qu'elle dénonce qui portent atteinte aux intérêts collectifs qu'elle défend et qui constituent le fondement même du combat qu'elle mène.

Si la lutte contre la corruption fait partie également des intérêts généraux de la société dont la réparation doit être assurée par le ministère public, cela ne saurait priver une association créée spécialement pour lutter contre la corruption du droit de se constituer partie civile si cette association justifie, comme en l'espèce, d'un préjudice personnel s'inscrivant directement dans son objet statutaire. Cette possibilité de constitution garantit encore plus efficacement cette lutte en permettant l'engagement d'une action judiciaire au delà des pays éventuellement directement concernés par les détournements.

L'action de TRANSPARENCE INTERNATIONAL FRANCE sera donc déclarée recevable pour les faits dénoncés.

### **Sur la recevabilité de constitution de partie civile de M Grégory NGBWA MINTSA**

- Sur sa constitution de partie civile en qualité de contribuable de l'Etat gabonais :

Ce plaignant, qui justifie de sa qualité de contribuable gabonais, ne subit pas un préjudice personnel et direct, les éventuels détournements de fonds publics privant seul l'Etat gabonais de ressources.

De même, pour les autres délits dénoncés il ne justifie pas de ce préjudice.

Sa constitution de partie civile de ce chef sera déclarée irrecevable .

- Sur sa constitution de partie civile au nom de l'Etat gabonais :

Faute de disposition spéciale autorisant M Grégory NGBWA MINTSA à exercer une action civile au nom de l'Etat gabonais éventuellement victime des faits dénoncés la constitution de partie civile de ce chef sera déclarée irrecevable.

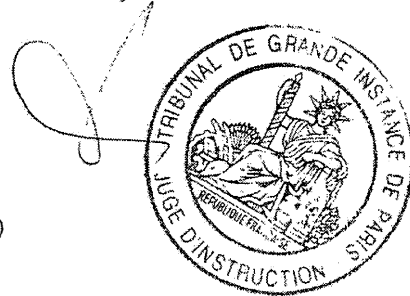
PAR CES MOTIFS

DECLARONS RECEVABLE la plainte avec constitution de partie civile déposée par TRANSPARENCE INTERNATIONAL FRANCE

DECLARONS IRRECEVABLE la plainte avec constitution de partie civile de M. NGBWA MINTSA.

Fait en notre cabinet le 5 mai 2009

le Doyen des Juges d'Instruction  
Françoise DESSET



Copie de la présente a été adressée à(aux) partie(s) civile(s)  
et à leur avocat par lettre recommandée le 5 mai 2009  
le greffier,

Copie non conforme à ses réquisitions a été donnée  
à M. le Procureur de la République le 5 mai 2009  
le greffier

Copie certifiée conforme  
à l'original

Le Greffier

DOSSIER N° 2009/03948

ARRÊT DU 29 octobre 2009

COUR D'APPEL DE PARIS

PÔLE 7

DEUXIÈME CHAMBRE DE L'INSTRUCTION

APPEL D'UNE ORDONNANCE DE RECEVABILITÉ  
DE CONSTITUTION DE PARTIE CIVILE

A R R E T

(N°1 , 9 pages)

Prononcé en chambre du conseil le **vingt-neuf octobre deux mil neuf**.

**Qualification des faits** : Recel et complicité de recel ; détournement de fonds publics ; complicité de détournement de fonds publics ; blanchiment ; complicité de blanchiment ; abus de biens sociaux ; complicité d'abus de biens sociaux ; abus de confiance ; recel de chacune de ces infractions.

**PARTIE CIVILE**

**ASSOCIATION TRANSPARENCE INTERNATIONAL FRANCE**, association régie par la loi du 1<sup>er</sup> juillet 1901, dont le siège social est sis 2 bis rue de Villiers 92230 Levallois-Perret, prise en la personne de son Président, Daniel LEBEGUE  
élisant domicile au cabinet de Me BOURDON William - 156 rue de Rivoli - 75001 PARIS  
Ayant pour avocat Me BOURDON - 156 rue de Rivoli - 75001 PARIS

**COMPOSITION DE LA COUR**

**lors des débats, du délibéré et du prononcé de l'arrêt :**

M. MAGDELEINE, Président en son rapport ;

Mme MALIGNER-PEYRON, Conseiller ;

M. OLLAT, Conseiller ;

**Tous trois désignés conformément à l'article 191 du Code de procédure pénale.**

**GREFFIER** aux débats et au prononcé de l'arrêt : Mlle PONTONNIER

PAGE 1





MINISTÈRE PUBLIC, représenté aux débats par M. LAGAUCHE et au prononcé de l'arrêt par M. BARRAL, Avocats Généraux

### DÉBATS

A l'audience, en chambre du conseil, le 17 septembre 2009, ont été entendus :

M. MAGDELEINE, Président, en son rapport ;

M. LAGAUCHE, Avocat Général, en ses réquisitions ;

Me BOURDON, avocat de la partie civile, en ses observations sommaires ;

### RAPPEL DE LA PROCÉDURE

Par ordonnance du 5 mai 2009, le doyen des juges d'instruction du Tribunal de Grande Instance de PARIS a déclaré irrecevable la constitution de partie civile de Grégory NGBWA MINTSA et a déclaré recevable la constitution de partie civile de l'Association TRANSPARENCE INTERNATIONAL FRANCE .

Le même jour, ladite ordonnance a été notifiée aux parties civiles, ainsi qu'à leur avocat, et au procureur de la République conformément aux dispositions de l'article 183 alinéas 2, 3 et 4 du Code de procédure pénale.

Le 7 mai 2009, le procureur de la République a interjeté appel de cette ordonnance au greffe du Tribunal de Grande Instance de PARIS, en limitant expressément son recours à la recevabilité de la constitution de partie civile de l'Association TRANSPARENCE INTERNATIONAL FRANCE .

La date à laquelle l'affaire serait appelée à l'audience a été notifiée par lettre recommandée du 17 juin 2009 aux parties, ainsi qu'à leurs avocats.

Le même jour, le dossier comprenant le réquisitoire écrit de M. le Procureur général en date du 28 mai 2009, a été déposé au greffe de la chambre de l'instruction et tenu à la disposition des avocats des parties.

Me BOURDON, avocat de l'Association TRANSPARENCE INTERNATIONAL FRANCE, a déposé le 16 septembre 2009, au greffe de la Chambre de l'instruction, un mémoire visé par le greffier, communiqué au Ministère Public et classé au dossier.

### DÉCISION

Prise après en avoir délibéré conformément à l'article 200 du Code de procédure pénale



## EN LA FORME

Considérant que cet appel, régulier en la forme, a été interjeté dans le délai de l'article 186 du Code de procédure pénale ; qu'il est donc recevable ;

Considérant que les dispositions de l'ordonnance déferée concernant Grégory NGBWA MINTSA sont définitives ;

## AU FOND

Le 2 décembre 2008, l'Association TRANSPARENCE INTERNATIONAL FRANCE, association régie par la loi du 1<sup>er</sup> juillet 1901, dont le siège social est sis 2 bis rue de Villiers 92230 Levallois-Perret, prise en la personne de son Président, Daniel LEBEGUE, ainsi que Grégory NGBWA MINTSA, de nationalité gabonaise, ont déposé plainte avec constitution de partie civile auprès du doyen des juges d'instruction de Paris à l'encontre des Présidents en exercice du Gabon, du Congo et de Guinée-Equatoriale et des personnes de leur entourage des chefs de recels de détournement de fonds publics, et contre personnes non dénommées des chefs de complicité de recels de détournement de fonds publics, complicité de détournement de fonds publics, blanchiment, complicité de blanchiment, abus de biens sociaux, complicité d'abus de biens sociaux, abus de confiance, complicité d'abus de confiance et recel de chacune de ces infractions.

Conformément aux dispositions de l'article 85 du Code de procédure pénale telles que modifiées par la loi du 5 mars 2007, les parties civiles ont justifié avoir, au préalable, déposé une plainte simple le 9 juillet 2008, classée sans suite le 3 septembre 2008.

Une précédente plainte simple adressée au procureur de la République de Paris par l'Association SHERPA, l'association SURVIE et la Fédération des Congolais de la Diaspora, dénonçant pour partie des faits similaires, avait été classée sans suite en novembre 2007 pour "infraction insuffisamment caractérisée", à la suite d'une enquête préliminaire réalisée en 2007 qui avait permis de dresser un inventaire pour Paris et la région parisienne, du patrimoine immobilier et mobilier des chefs d'Etat en cause, de leurs familles et de leur entourage.

Dans la présente plainte, l'Association TRANSPARENCE INTERNATIONAL FRANCE, et M. Grégory NGBWA MINTSA considèrent que les chefs d'Etat visés ainsi que des membres de leurs familles et de leur entourage, disposent en France d'un patrimoine important, depuis de nombreuses années, acquis à l'aide de fonds provenant de détournements réalisés dans leurs pays d'origine.

Grégory NGBWA MINTSA, ressortissant du Gabon, soutient qu'il a, en qualité de contribuable gabonais, subi un préjudice personnel, et qu'il entend se substituer à l'Etat gabonais qui est victime d'un préjudice financier et moral.

TRANSPARENCE INTERNATIONAL FRANCE ( T.I. France) expose qu'elle est une association à but non lucratif, non reconnue d'utilité publique, dont la dernière déclaration a été faite à la préfecture des Hauts- de- Seine, le 17 février 2006, ce qui, en la dotant de la personnalité morale, lui permet d'ester en justice. Son président en exercice a été autorisé à déposer plainte avec constitution de partie civile par un conseil d'administration du 17 novembre 2008.

L'association T.I. France fait valoir, pour fonder son intérêt à agir, que son objet statutaire est de "combattre et [de] prévenir la corruption au niveau international et national, dans les relations d'Etat à Etat, d'Etat à personnes physiques et morales publiques ou privées et entre ces personnes" et notamment



“d’engager toutes les actions ayant pour effet de prévenir, de dissuader ou de lutter contre les pratiques illégales, toutes formes de corruption, d’apporter son concours et son soutien aux victimes de pratiques illégales après examen des dossiers qui lui sont soumis”.

L’Association soutient que les faits dénoncés, relatifs à des détournements de fonds publics, qui, au sens de la Convention des Nations Unies contre la corruption entrent dans le champ de la corruption, portent directement atteinte aux intérêts qu’elle défend, en ce qu’ils vont à l’encontre des campagnes de lutte contre la corruption qu’elle conduit.

L’association T.I. France se réfère à des décisions de la Chambre Criminelle dont il résulterait que les associations non agréées ou non déclarées d’utilité publique sont recevables, lorsque les faits dénoncés portent atteinte aux intérêts collectifs qu’elles ont pour mission de défendre.

Au soutien de sa plainte, la partie civile contestée produit notamment les pièces suivantes :

- des décisions de la Chambre Criminelle et les textes de conventions internationales,
- une abondante documentation constituée par des articles de la presse française ou étrangère sur le phénomène de la corruption et des décisions de justice étrangères,
- un inventaire des biens mal acquis du Congo Brazaville réalisé par des congolais de la diaspora ou résidant en République Démocratique du Congo,
- un document intitulé “TRANSPARENCY INTERNATIONAL - cadre stratégique 2008-2010”, accepté par la réunion des membres à Bali, le 28 octobre 2007, qui distingue l’action des sections nationales responsables du travail dans leur pays et le secrétariat international qui veille à l’exécution de l’ordre du jour international de T.I. Ce document qui définit des objectifs stratégiques et détermine des priorités et des programmes régionaux, mentionne pour l’Europe et l’Asie Centrale des projets de T.I. Royaume-Uni, T.I. Allemagne et T.I. Lettonie,
- des articles relatant les actions menées en 1998 contre les famille SUHARTO -MARCOS-MOBUTU par TRANSPARENCY INTERNATIONAL Berlin et Zurich, les actions menées en Afrique par T.I. Kenya, au Japon par T.I. Japan, et T.I. Peru, un document de TRANSPARENCY INTERNATIONAL Berlin intitulé “pauvreté , aide et corruption” et qui ne mentionne aucune action spécifique pour la France,
- la lettre de Transparence (T.I. France) d’octobre 2007 contenant un dossier sur les procédures pour la restitution des biens mal acquis, composé principalement du résumé d’un rapport du Comité Catholique contre la Faim sur le sujet, l’interview du Président de l’association SHERPA sur la plainte déposée par les associations SHERPA, SURVIE et la Fédération des Congolais de la Diaspora, et un compte rendu de l’action de l’ALAC dans des pays de l’Europe de l’Est,
- les actes du colloque organisé en 2007 par T.I France, ayant pour thème “Quels droits pour les victimes de la corruption ?” et contenant notamment une intervention sur la législation française au regard des actions collectives et punitives et une intervention du président de l’association SHERPA sur la restitution des biens détournés.

Après versement de la consignation, communication de la plainte avec constitution de partie civile au procureur de la République qui a pris des réquisitions d’irrecevabilité le 8 avril 2009, le doyen des juges d’instruction a, par ordonnance du 5 mai 2009, partiellement frappée d’appel, déclaré irrecevable la constitution de partie civile de Grégory NGBWA MINTSA, qui, en tant que contribuable gabonais, ne subit pas un préjudice personnel et direct du fait d’éventuels détournements de fonds publics, privant le seul Etat gabonais de ressources, mais a en revanche admis la recevabilité de la constitution de partie civile de l’association TRANSPARENCE INTERNATIONAL FRANCE.

Le doyen des juges d’instruction estime que si la lutte contre la corruption fait partie des intérêts généraux de la société et qu’en conséquence le ministère public doit en assurer la réparation, cette considération ne saurait être un obstacle à la constitution de partie civile d’une association dont la



création a été spécialement déterminée, à travers la définition de l'objet social, par la volonté de lutter contre la corruption, lorsque cette dernière subit un préjudice qui lui est personnel et découlant directement de l'infraction en cause. A cet égard, le doyen des juges d'instruction affirme que les arrêts de la Cour de Cassation sont en ce sens puisque celle-ci a notamment admis les actions du Comité national de lutte contre le tabagisme et d'une association créée pour conserver la mémoire des victimes de déportation.

Le préjudice personnel de l'association est constitué selon le doyen, au regard de l'article 2 des statuts de cette dernière qui se donne spécifiquement mission de "combattre et prévenir la corruption", par les diverses publications et actions menées par TRANSPARENCE INTERNATIONALE FRANCE, et notamment celles ayant pour objet d'obtenir la restitution des biens dit "mals acquis". Celles-ci seraient en parfaite adéquation avec les faits en cause. Enfin, le doyen vise les dépenses engagées par l'association pour parvenir à l'objectif défini, dépenses qui, au coté des activités incontestablement mises en oeuvre pour lutter contre la corruption, permettraient de considérer qu'elle subit un préjudice personnel économique.

\* \* \*

Le Procureur Général requiert l'infirmité de cette décision dans les limites de la saisine de la Cour, en considérant qu'en l'état de l'article 2 du code de procédure pénale et de la jurisprudence de la Cour de cassation, les associations exerçant l'action civile devant les juridictions répressives à la seule raison des faits commis contre les intérêts généraux dont elles assurent la défense, n'ont pas un préjudice distinct du trouble causé aux intérêts généraux de la société dont la réparation est assurée par l'exercice de l'action publique par le ministère public. Le Procureur Général rappelle que le législateur a instauré aux articles 2-1 à 2-21 du Code de procédure pénale ainsi que dans d'autres codes ou dispositions législatives, des dérogations expresses autorisant certaines associations à conforter l'action publique, en les autorisant à se constituer partie civile alors même qu'elles ne subissent pas de préjudice direct du fait des délits commis et que l'association TRANSPARENCE INTERNATIONALE FRANCE ne bénéficie pas de ces dérogations législatives. Les jurisprudences citées par la partie civile contestée et reprises par le doyen des juges d'instruction, ne seraient pas pertinentes dans la mesure où la Cour de Cassation se fonde sur le caractère très spécifique de leur objets, reconnus d'utilité publique alors que l'objet de l'association T.I. France relève à l'évidence de l'intérêt général et que le préjudice dont elle se prévaut et qui tiendrait au tort causé aux campagnes de prévention de la corruption qu'elle conduit, ne peut être regardé ni comme lui étant propre, ni comme prenant directement sa source dans les faits dénoncés.

Par mémoire confirmatif, l'association TRANSPARENCE INTERNATIONALE FRANCE soutient, que la jurisprudence la plus récente vient très exactement au soutien de la recevabilité de sa plainte de sorte que l'exclure reviendrait à non seulement porter atteinte aux anticipations légitimes de T.I. France mais plus encore à discriminer cette association par rapport aux autres groupements se trouvant dans une situation analogue - autant de droits garantis par la Cour Européenne des Droits de l'Homme.

La partie civile considère qu'une association non spécialement habilitée par le législateur, peut se constituer partie civile relativement à des faits portant atteinte aux intérêts collectifs qu'elle s'est donné pour objectif de défendre, dès lors qu'elle remplit les conditions posées par l'article 2 du Code de procédure pénale, à savoir l'existence d'un préjudice personnel et direct ; que ce droit n'est pas réservé aux seules associations reconnues d'utilité publique depuis le revirement opéré pour une association non agréée de protection de l'environnement (Cass. Crim. 12 septembre 2006 ; Bull. Crim. N° 217). Le conseil de T.I. France se réfère à l'avis juridique rédigé par Mme Mireille DELMAS-MARTY, Professeur au Collège de France, du 9 septembre 2009, laquelle confirme cette évolution d'une tendance lourde de la Cour de Cassation en vertu de laquelle " une association peut agir au nom d'intérêts collectifs, dès lors



que ceux-ci entrent dans son objet social” et qui marque une prise de conscience d’un rôle accru des acteurs civiques que sont les groupements collectifs, dont l’action renforce l’efficacité du droit pénal, tout particulièrement lorsqu’il s’agit, comme en l’espèce, de lutter contre une criminalité à caractère transfrontalier.

T.I. France estime que, eu égard à la spécificité de son but et de l’objet de sa mission, elle subit un préjudice personnel et direct en raison des faits dénoncés dans la présente plainte, en rappelant les contours de son action définie par ses statuts, que le manquement au devoir de probité ne porte pas seulement atteinte à l’ordre public mais peut également porter atteinte à des intérêts particuliers, que pour apprécier le caractère direct du préjudice, il convient de rechercher “ l’adhérence “ entre les faits dénoncés et l’objet d’une association. La partie civile précise le sens du terme “corruption “ dans une définition anglo-saxonne qui vise un phénomène criminel susceptible de prendre des formes multiples : pot de vin, extorsion, concussion, favoritisme, soustraction et détournement de fonds, prise illégale d’intérêts ... , que l’association a pour mission de lutter contre la corruption sous toutes ses formes, que T.I. France n’est que la section française d’une organisation internationale (Transparency International ) créée en 1993 et fédérant plus de 90 associations accréditées, qu’à ce titre T.I. France est chargée d’appliquer au niveau français la stratégie d’action arrêtée par le bureau international et s’intéresse, soit de sa propre initiative, soit sur l’impulsion du siège de Berlin à cette question des détournements de fonds publics ; que les faits dénoncés portent un préjudice direct aux intérêts que l’association a statutairement pour objet de défendre.

La partie civile relève également que la Chambre Criminelle exige seulement “ pour qu’une constitution de partie civile soit recevable devant la juridiction d’instruction, qu’il suffit que les circonstances sur lesquelles elle s’appuie, permettent au juge d’admettre comme possibles l’existence du préjudice allégué et la relation directe de celui-ci avec une infraction à la loi pénale “.

Enfin, T.I. France fait observer que retenir la position de M. Le Procureur général reviendrait à porter atteinte aux anticipations de T.I. France qui pouvait légitimement croire en la recevabilité de son action et à la discriminer par rapport aux autres associations non privilégiées qui se sont vu reconnaître la possibilité d’agir. C’est également le sens de l’avis rédigé par Madame Mireille DELMAS-MARTY laquelle rappelle que le procureur de la République n’est pas une autorité judiciaire au sens de la jurisprudence de la Cour Européenne, que la corruption fausse les mécanismes institutionnels et perturbe les circuits financiers et qu’à l’heure de la mondialisation, il faut souligner une forte convergence du droit international en faveur de la mise en oeuvre effective et efficace des textes relatifs aux diverses formes de corruption y compris le recel et le détournement de fonds publics et que cette exigence résulte des principales conventions mondiales ou régionales.

#### SUR CE LA COUR,

Considérant que l’ordonnance du doyen des juges d’instruction est définitive en ce qui concerne M. Grégory NGBWA MINTSA ;

Considérant qu’aux termes de l’article 2 du code de procédure pénale : “l’action civile en réparation du dommage causé par un crime, un délit ou une contravention, appartient à tous ceux qui ont personnellement souffert du dommage directement causé par l’infraction” ;

Qu’une association qui n’est pas reconnue d’utilité publique et qui n’est pas spécialement habilitée par le législateur, peut être admise à se constituer partie civile si elle justifie d’un préjudice personnel et direct en rapport avec les infractions dénoncées ;

Considérant **sur le préjudice allégué**, que l’association TRANSPARENCE INTERNATIONALE

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FRANCE, qui est au regard du droit français, une personne morale distincte de TRANSPARENCY INTERNATIONAL, n'a fourni aucun élément sur le nombre de ses adhérents, l'origine de ses ressources et l'importance de ses dépenses par rapport aux actions dont elle se prévaut et sur les liens qui l'unissent à TRANSPARENCY INTERNATIONAL Berlin alors que ses statuts contiennent un seul article qui prévoit en cas de dissolution que les biens de l'association sont dévolus à TRANSPARENCY INTERNATIONAL ;

Qu'en cet état aucun élément ne permet d'apprécier ses éventuels droits et obligations vis à vis des quatre- vingt- dix autres associations nationales accréditées et du secrétariat international et la part qu'elle est susceptible de prendre dans les actions qui sont conduites à l'étranger par d'autres associations ;

Considérant que parmi les actions en lien avec la lutte contre la corruption qui sont évoqués principalement par des communiqués de presse, seules la diffusion d'un bulletin d'information et l'organisation d'un colloque en 2007, peuvent être attribuées à la partie civile contestée ;

Qu'il convient de constater que le bulletin d'octobre 2007, dont les modalités de diffusion ne sont pas expliquées, relate essentiellement les actions conduites par d'autres associations que T.I. France et apporte une information dans le cadre du fonctionnement normal et ordinaire de toute association qui édite un bulletin ou une lettre d'information ;

Que s'agissant du colloque organisé en 2007, aucun élément concret n'a été donné sur le nombre de participants, les dépenses engagées et leur financement, que le document versé aux débats est le résumé de diverses interventions sur le thème des droits des victimes de la corruption, avec un état du droit français et des actions entreprises par d'autres associations en particulier l'association SHERPA déjà citée et ne permet pas de savoir si ce colloque a débouché sur des actions concrètes avec la participation de T.I France pour " combattre et prévenir la corruption " ;

Considérant en conséquence que la décision déferée ne peut pas être approuvée sur ce point dans la mesure où la preuve n'est pas rapportée que " *dans son combat contre la corruption, T.I France engagerait toutes ses ressources* " et subirait un préjudice personnel, économique, directement causé par les infractions qu'elle dénonce ;

Que l'absence d'élément justificatif ne permet pas de retenir comme possible l'existence du préjudice matériel allégué ;

Que le seul préjudice dont peut se prévaloir l'association T.I France en raison de la commission des infractions visées dans la présente instance, contre lesquelles elle entend lutter, n'est pas un préjudice personnel distinct du trouble causé aux intérêts généraux de la société dont la réparation est assurée par l'exercice de l'action publique par le ministère public ;

Considérant que la recevabilité de la constitution de partie civile de T.I. France doit également être analysée par rapport " **à la spécificité du but et de l'objet de la mission de cette association** " ;

Considérant qu'il convient de souligner que par le seul effet de la volonté contractuelle des fondateurs de l'association TRANSPARENCY INTERNATIONAL FRANCE, celle-ci a pour objet la prévention et la lutte contre la corruption, prise dans une définition très large qui englobe toutes les atteintes à la probité, en France et à l'étranger, dans toutes les sphères de l'activité humaine à savoir notamment dans la vie politique, publique, économique, sociale, sportive, ainsi que dans les multiples relations qui peuvent exister entre les personnes physiques ou morales de droit privé et de droit public ;

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Que l'association T.I. France entend donc pouvoir exercer l'action publique dans ce large domaine de compétence et être autorisée à se substituer aux Etats concernés et au pouvoir légal de défendre l'intérêt général de la société qui a été donné en France au ministère public ;

Considérant que la notion d'adhérence qui a été dégagée par la Chambre Criminelle n'est pas compatible avec la conception soutenue par la partie civile contestée et par les avis des juristes éminents sur lesquels elle fonde ses prétentions ;

Qu'en effet en cas "d'adhérence", **la recevabilité de l'action de l'association découle de la spécificité du but et de l'objet de sa mission**, ce qui suppose une proximité et une adéquation créant un lien fort et spécifique entre l'association et une catégorie de comportements illégaux qui portent atteinte au but et à l'action de l'association ;

Que c'est en ce sens que doivent être comprises les décisions de la Chambre Criminelle qui acceptent par exemple la constitution de partie civile d'une association de protection de l'environnement dans un secteur géographique limité ou d'une association de lutte contre le tabagisme pour une infraction spécifique et en lien direct avec son domaine d'intervention ;

Que l'interprétation donnée par la partie civile contestée aurait pour effet de rendre sans objet l'édifice législatif et réglementaire français d'agrément auquel sont assujetties les associations ;

Considérant en conséquence que si le ministère public n'a pas le monopole de l'exercice de l'action publique et si le but de l'association T.I. France est parfaitement légitime, l'association T.I. France n'est pas, dans ces conditions, recevable en sa constitution de partie civile qui vise la défense des intérêts généraux dont le ministère public a la charge ;

Qu'il importe peu que T.I. France ait cru pouvoir se livrer à des anticipations sur la décision définitive à intervenir ;

Considérant que la cour statue au vu des seules considérations de fait et de droit concernant la partie civile contestée qui ne se trouve pas dans les mêmes conditions que les parties civiles qui ont été déclarées recevables par d'autres juridictions ; que le grief tiré d'une prétendue discrimination n'est pas ainsi fondé ;

Considérant enfin que la position de la Cour n'est pas contraire aux engagements internationaux de la France dans la mesure où les conventions internationales qui sont citées par la partie civile contestée et en particulier la convention des Nations Unies contre la corruption ou la convention de l'Union Africaine sur la prévention et la lutte contre la corruption, font confiance aux Etats signataires pour engager les actions de prévention et de lutte contre la corruption et pour prendre les mesures appropriées et éventuellement concertées qui ne se limitent pas à des actions judiciaires ;

Considérant en conséquence que la décision du doyen des juges est infirmée et la constitution de partie civile de l'association TRANSPARENCE INTERNATIONAL FRANCE déclarée irrecevable ;

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PAR CES MOTIFS

LA COUR,

Vu les articles 85, 87, 177, 183, 185  
pénale ;

186, 194 et suivants du Code de procédure

EN LA FORME

DÉCLARE L'APPEL RECEVABLE

AU FOND

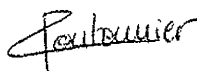
LE DIT BIEN FONDÉ

INFIRME PARTIELLEMENT L'ORDONNANCE ENTREPRISE


DECLARE L'ASSOCIATION TRANSPARENCE INTERNATIONAL FRANCE  
IRRECEVABLE EN SA CONSTITUTION DE PARTIE CIVILE

ORDONNE que le présent arrêt sera exécuté à la diligence de M. le Procureur Général.

LE GREFFIER



LE PRÉSIDENT







# Topo sur les procédures visant la famille OBIANG

## • FRANCE

Plainte simple n°1 - En mars 2007, les associations Sherpa, Survie et la Fédération des congolais de la Diaspora déposent plainte devant le Procureur de la République de Paris contre les familles dirigeantes de l'Angola, du Burkina Faso, du Congo-Brazzaville, de la Guinée Equatoriale, et du Gabon estimant qu'ils possèdent sur le sol français des patrimoines immobiliers considérables qui n'ont pu être constitués au moyen de leurs seuls salaires et émoluments.

La plainte repose sur le chef d'inculpation de recel de détournement de fonds publics visé par les articles 321-1<sup>1</sup> et 432-15<sup>2</sup> du Code pénal français. Suivant ces textes, est punissable en France le fait de détenir sur le sol français des biens qui ont été acquis de manière illégale.

Enquête préliminaire - En juin 2007, une enquête préliminaire est diligentée.<sup>3</sup> Elle confirme la plupart de nos allégations et révèle par ailleurs l'existence de nombreux autres biens, immobiliers et mobiliers (voitures, comptes bancaires).

Malgré ces résultats très probants, l'affaire est classée en novembre 2007, le Procureur de la République considérant que l'infraction n'est pas suffisamment caractérisée.

Plainte simple n°2 - Le 9 Juillet 2008, Transparence International (TI) France ainsi que des citoyens congolais et gabonais déposent une seconde plainte simple devant le Procureur de la République. Cette plainte reprend exactement les mêmes faits que ceux dénoncés 16 mois plus tôt par Sherpa et ne vise qu'à satisfaire les nouvelles conditions posées par la loi quant à la recevabilité des constitutions de partie civile.<sup>4</sup>

Cette plainte est classée sans suite le 3 septembre 2008.

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<sup>1</sup> « Le recel est le fait de dissimuler, de détenir ou de transmettre une chose, ou de faire office d'intermédiaire afin de la transmettre, en sachant que cette chose provient d'un crime ou d'un délit.

Constitue également un recel le fait, en connaissance de cause, de bénéficier, par tout moyen, du produit d'un crime ou d'un délit. Le recel est puni de cinq ans d'emprisonnement et de 375000 euros d'amende. »

<sup>2</sup> « Le fait, par une personne dépositaire de l'autorité publique ou chargée d'une mission de service public, un comptable public, un dépositaire public ou l'un de ses subordonnés, de détruire, détourner ou soustraire un acte ou un titre, ou des fonds publics ou privés, ou effets, pièces ou titres en tenant lieu, ou tout autre objet qui lui a été remis en raison de ses fonctions ou de sa mission, est puni de dix ans d'emprisonnement et de 150000 euros d'amende.

La tentative du délit prévu à l'alinéa qui précède est punie des mêmes peines. »

<sup>3</sup> «Enquête en France sur les biens des présidents Bongo et Sassou Nguesso» - Le Monde [http://www.lemonde.fr/afrique/article/2007/06/19/enquete-en-france-sur-les-biens-des-presidents-bongo-et-nguessou\\_925695\\_3212.html](http://www.lemonde.fr/afrique/article/2007/06/19/enquete-en-france-sur-les-biens-des-presidents-bongo-et-nguessou_925695_3212.html)

<sup>4</sup> Suivant l'article 85 du Code de procédure pénale :

« Toute personne qui se prétend lésée par un crime ou un délit peut en portant plainte se constituer partie civile devant le juge d'instruction compétent en application des dispositions des articles 52, 52-1 et 706-42.

**Toutefois, la plainte avec constitution de partie civile n'est recevable qu'à condition que la personne justifie soit que le procureur de la République lui a fait connaître, à la suite d'une plainte déposée devant lui ou un service de police judiciaire, qu'il n'engagera pas lui-même des poursuites, soit qu'un délai de trois mois s'est écoulé depuis qu'elle a déposé plainte devant ce magistrat, contre récépissé ou par lettre recommandée avec demande d'avis de réception, ou depuis qu'elle a adressé, selon les mêmes modalités, copie à ce magistrat de sa plainte déposée devant un service de police judiciaire.»**

Plainte avec constitution de partie civile - Le 2 décembre 2008, TI France et Gregory Ngbwa Mintsu, citoyen gabonais déposent une plainte avec constitution de partie civile devant le Doyen des juges d'instruction du Tribunal de Grande Instance de Paris<sup>5</sup> (Voir le texte de la plainte en PJ).

Ordonnance d'irrecevabilité partielle - Le 5 mai 2009, le Doyen des juges d'instruction déclare recevable la constitution de partie civile de TI France. La plainte déposée par le citoyen gabonais a en revanche été écartée et, pour des raisons tenant à sa sécurité et à celle de sa famille, il n'a pas souhaité faire appel de cette décision<sup>6</sup> (Voir le texte de l'ordonnance en PJ).

Le Parquet a cependant fait appel et par un arrêt en date du 29 Octobre 2009, la cour d'appel de Paris a infirmé l'ordonnance du Doyen des juges d'instruction<sup>7</sup> (Voir le texte de l'arrêt en PJ). Un pourvoi en cassation a été formé et l'audience devant la Cour de cassation devrait intervenir dans les prochaines semaines.

## ESPAGNE

Le 22 septembre 2008, l'APDHE (Asociación Pro Derechos Humanos de España) dépose plainte contre onze individus, membres du gouvernement équato-guinéen et/ou membres de la famille OBIANG, entre les mains du juge d'instruction Baltasar Garzón. La plainte soutient qu'entre 2000 et 2003, ces individus ont acquis des propriétés en Espagne au moyen de fonds provenant de la vente du pétrole équato-guinéen<sup>8</sup>.

Une information judiciaire a été ouverte le 21 janvier 2009.<sup>9</sup> Elle est actuellement en cours.

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<sup>5</sup> « Une nouvelle plainte vise trois chefs d'État africains » - Le Figaro <http://www.lefigaro.fr/actualitefrance/2008/12/02/01016-20081202ARTFIG00493-une-nouvelle-plainte-vise-trois-chefs-d-etat-africains-.php>

<sup>6</sup> Paris judge to examine African leaders' finances" - The Independent <http://www.independent.co.uk/news/world/europe/paris-judge-to-examine-african-leaders-finances-1680808.html>  
« Le dossier des présidents africains suscite le trouble » - L'Express [http://www.challenges.fr/depeches/monde/20090506.REU5515/le\\_dossier\\_des\\_presidents\\_africains\\_suscite\\_le\\_trouble.htm](http://www.challenges.fr/depeches/monde/20090506.REU5515/le_dossier_des_presidents_africains_suscite_le_trouble.htm)

<sup>7</sup> « "Biens mal acquis" des dirigeants africains: la justice française refuse d'enquêter » - Le Point <http://www.lepoint.fr/actualites-societe/2009-10-29/biens-mal-acquis-des-dirigeants-africains-la-justice-francaise/920/0/389971>

<sup>8</sup> Criminal complaint APDHE - October 22 2008 - <http://www.soros.org/initiatives/justice/litigation/obiangfamily>

<sup>9</sup> La fiscalía pide que se investigue a Obiang en España por blanqueo – El País [http://www.elpais.com/articulo/espana/fiscalia/pide/investigue/Obiang/Espana/blanqueo/elpepuesp/20090525elpepinac\\_1/Tes](http://www.elpais.com/articulo/espana/fiscalia/pide/investigue/Obiang/Espana/blanqueo/elpepuesp/20090525elpepinac_1/Tes)

## ETATS UNIS

Le 15 juillet 2004, le sous-comité du Sénat des Etats-Unis publie les résultats d'une enquête menée par un de ses sous-comités au sujet des activités de Riggs Bank à Washington : « Money Laundering and foreign corruption : enforcement and effectiveness of the Patriot Act – Case study involving Riggs Bank »<sup>10</sup>.

Le sous-comité a établi qu'entre 1995 et 2004, la Riggs Bank gérait plus de 60 comptes et certificats de dépôts appartenant à des membres du gouvernement équato-guinéen et/ou membres de la famille OBIANG. Suivant le rapport, la Riggs Bank a autorisé de nombreuses transactions suspectives.

Suite à ce rapport, la Riggs Bank a été condamnée au paiement d'une amende de \$16 millions pour violation des lois bancaires américaines.

Par ailleurs, l'Office de l'Immigration et du Contrôle des Douanes (ICE) a ouvert une enquête sur le comportement présumé criminel de Teodoro Nguema OBIANG et ses associés lequel impliquerait le transfert illicite et le blanchiment d'avoirs qui seraient dérivés de l'extorsion, de détournements de fonds, de vol ou d'abus de fonds publics.<sup>11</sup> Cette enquête est actuellement en cours.

Le 4 février 2010, le sous-comité du Sénat américain publie un nouveau rapport : "Keeping foreign corruption out of the United States : four cases histories".<sup>12</sup> Ce rapport examine comment, de 2004 à 2008, T.OBIANG fils a utilisé les services de différents professionnels américains (avocats, agents immobiliers, fiduciaires, courtiers en assurances et autres) pour faire introduire dans le pays plus de \$100 millions de fonds suspects et y servir ses intérêts sur place.

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<sup>10</sup> <http://hsgac.senate.gov/public/files/ACF5F8.pdf>

<sup>11</sup> Une demande d'entraide judiciaire a été adressée à la France dont vous trouverez une copie en PJ.

<sup>12</sup> [http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing\\_id=dd873712-eb12-4ff7-ae1a-cbbc99b19b52](http://hsgac.senate.gov/public/index.cfm?FuseAction=Hearings.Hearing&Hearing_id=dd873712-eb12-4ff7-ae1a-cbbc99b19b52)

	Biens immobiliers		Biens mobiliers		
	Type	Prix	Date	Type	Prix
<b>OBIANG MBASOGO Teodoro</b>	Bien immobilier au 47, boulevard Lannes 75016 Paris			Teodoro OBIANG n'est pas titulaire de compte bancaire en France.	
<b>NGUEMA OBIANG Teodoro</b> (fils du président, ministre de l'agriculture et des forêts)	Teodoro NGUEMA né le 24/06/69 n'est pas propriétaire de bien immobilier à son nom en France.		07/12/00	Ferrari type 512M	1.200.000 FRF
			22/06/98 et 16/12/98	Ferrari type 550 Maranello	998.378,50 FRF (2 chèques)
			15/02/03	Maybach 62	510.479 € TTC ou 427.595 € HT
			20/01/06 et 02/01/07 et 26/02/07	Véhicule Bugatti type Veyron	1.196.000 €
			10/02/06 et 02/01/07	Véhicule Bugatti type Veyron	1.000.000 €
			07/02/05	Rolls-Royce Phantom Limousine	381.000 €
			07/02/05	Maserati Coupé F1 Cambiocorsa	82.000 €
			07/02/05	Maserati MC12	709.000,01 €
			25/02/05 et 13/09/89	Compte courant Barclays Bank (Paris)	

→ Total patrimoine mobilier (voitures) : 4.213.618 €

Vos articles



Le Figaro, no. 19213  
Vendredi 12 mai 2006, p. 44

DER

Drapeau rouge et billet vert

Stéphane BÉRN

L'information a de quoi surprendre les âmes les plus sincères. C'est un peu comme si on apprenait, à brûle-pourpoint, que l'abbé Pierre s'était marié et avait fondé une famille nombreuse, ou que l'écervelée Paris Hilton venait de se voir décerner un prix Nobel. Pire qu'une faute de goût, une trahison. Et pourtant, le magazine américain *Forbes* est formel : le dictateur cubain Fidel Castro se hisse à la septième place des plus grandes fortunes de chefs d'État du monde, avec un magot estimé à neuf cents millions de dollars, soit une substantielle augmentation en un an puisque le palmarès établi en 2005 avait provoqué l'ire du Lider Máximo en lui attribuant une richesse de 550 millions.

Dans la liste sobremen intitulée *Fois, reines & dictateurs*, la position prééminente revient aux rois du pétrole : Abdallah d'Arabie saoudite, avec un portefeuille de 21 milliards de dollars ; le sultan de Brunei, Hassanal Bolkiah, avec 20 milliards ; le président Khalifa, d'Abu Dhabi, avec 19 milliards et l'émir de Dubaï, avec 14 milliards. A côté, les reines d'Angleterre et des Pays-Bas l'ont figures de parents pauvres, avec une fortune évaluée à 500 millions pour la première et à 270 pour la seconde, s'octroyant les neuvième et dixième placés. Cette étonnante proximité avec les héritiers d'anciennes dynasties ayant su faire fructifier le pécule familial ne constitue guère un brevet de communisme pour celui qui ne quitte jamais son uniforme de combattant de la révolution prolétarienne. Si Castro prétend avec véhémence être pauvre comme Job et n'avoir jamais eu d'autre richesse que la cause de son peuple à défendre, *Forbes* estime, pour sa part, « qu'il exerce un contrôle économique sur un réseau d'entreprises publiques, notamment le palais des Congrès près de La Havane, le centre commercial Cimex et le groupe pharmaceutique Medica qui vend des vaccins et d'autres produits pharmaceutiques produits à Cuba ».

On comprend la fureur de l'ancien révolutionnaire qui, à 79 ans, est aussi l'un des détenteurs du record de longévité au pouvoir puisqu'en quarante-cinq ans d'un règne sans partage il n'a jamais cru bon de demander l'avis du peuple cubain. Dans une des diatribes publiques dont il délient le secret, Fidel Castro avait déjà énoncé l'an passé contre l'ennemi yankee : « Une fois de plus, ils ont commis l'infamie de parler de la fortune de Castro, me mettant au-dessus de la reine d'Angleterre. Croient-ils que je sois Mobutu ou l'un des nombreux milliardaires, ces voleurs et rapaces, que l'empire a protégés ? »

Connu pour ses discours fleuve, le numéro un cubain touche assurément, depuis quarante-cinq ans, des royautés sur sa prose. A moins qu'il ne soit également rémunéré au nombre de ses casquettes, titres ronflants et hautes responsabilités clés du pays pour arrondir son matelas, d'autant qu'on devine que le guérillero ne connaît des parachutes que celui qu'il s'est constitué en tas d'or et cave à cigares. Il est vrai qu'être dictateur est un métier à risques, un emploi précaire, qui justifie sans doute une prime, un prélèvement à la source sur le PIB. Au reste, Castro ne doit pas se sentir seul sur cette liste où apparaît pour la première fois le président Teodoro Obiang Nguema Mbasogo, de Guinée équatoriale, qui semble plus bénéficier de la flambée du prix du baril que son peuple et qui, avec ses 600 millions de dollars, vient de s'offrir un hôtel particulier avenue Foch. Pudiquement, on appellera cela la rançon de la gloire... et du pouvoir.

Souvenons-nous des comptes secrets de la famille Duvalier, des diamants de l'empereur Bokassa, ou des chaussures d'Imelda Marcos. Mille quatre cents paires qu'elle jugeait nécessaires pour battre le pavé de Manille, et voler au secours des enfants des rues. Tous ont voulu faire la révolution pour défendre le peuple opprimé contre l'impérialisme colonialisateur et les ravages du grand capital. Ils en ont surtout profité pour remplir leur bas de laine qu'un peuple exsangue doit ravauder et reprendre sans cesse, juste payé en échange par l'étalage d'un faste éblouissant. Aux exactions totalitaires et à la trahison de ses idéaux depuis longtemps foulés aux pieds, Fidel Castro ajoute un nouveau forfait : la fausse pauvreté de façade et le mensonge caractérisé, sur une fortune accumulée et pas même assumée.

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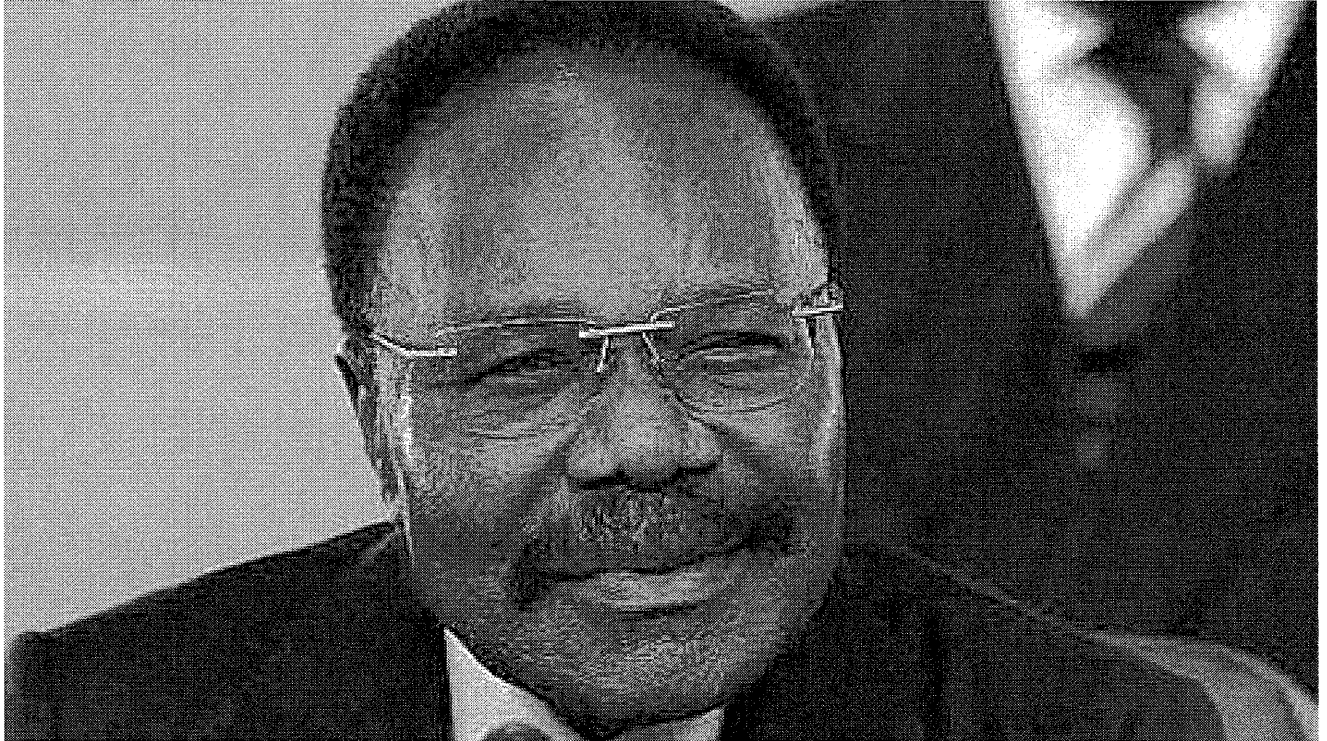
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# Une nouvelle plainte vise trois chefs d'État africains

J.B. (lefigaro.fr) avec AFP et AP  
02/12/2008 | Mise à jour : 18:06 Réactions(31)



Omar Bongo, le président gabonais. Crédits photo : Bouchon/Le Figaro

**Deux ONG accusent les présidents du Gabon, du Congo-Brazzaville et de Guinée-Equatoriale de posséder en France des biens immobiliers financés par de l'argent public détourné. Omar Bongo a fait savoir qu'il allait porter plainte en diffamation.**

Deux ONG, Sherpa et Transparence-International (TI), ont déposé mardi une plainte contre X visant les conditions d'acquisition en France par des chefs d'Etat africains et leur entourage d'un patrimoine immobilier et mobilier. Cette plainte, avec constitution de partie civile, vise notamment les délits de «recel de détournement de fonds publics», «blanchiment», «abus de biens sociaux» et «abus de confiance». Elle vise trois présidents africains: Omar Bongo (Gabon), Denis Sassou N'Gusso (Congo-Brazzaville) et Théodore Obiang (Guinée-Equatoriale).

«Il n'y a aucun doute sur le fait que ce patrimoine n'a pu être constitué grâce aux seuls salaires et émoluments de ces chefs d'Etat au sujet desquels il existe de sérieuses

présomptions de détournements de fonds publics», relèvent les deux associations dans un communiqué. La plainte a été déposée conjointement avec un ressortissant gabonais. Ce dernier, explique le communiqué, «a fait l'objet de pressions et d'un harcèlement croissants de la part de certains membres du gouvernement gabonais qui ont jusqu'au dernier moment tenté de le convaincre de se retirer».

L'avocat d'Omar Bongo, Me Patrick Maisonneuve, a rapidement démenti mardi toute tentative de pression sur les plaignants et a déclaré à quelques journalistes qu'il allait déposer une plainte pour diffamation.

## Deux plaintes classées sans suite

En novembre 2007, le parquet de Paris avait classé sans suite la plainte simple déposée en mars de la même année par Sherpa, l'association Survie et la Fédération des Congolais de la diaspora concernant cinq chefs d'Etat africains, estimant que «les investigations n'ont pas permis, en l'état, de mettre en évidence des infractions pénales». Les associations demandaient à la justice française d'enquêter sur l'origine des fonds et flux financiers qui ont permis l'acquisition de ces biens en France. Elles visaient les multiples résidences parisiennes et villégiatures de bord de mer de cinq chefs d'Etat africains: outre Omar Bongo, Denis Sassou N'Gusso et Théodore Obiang, de nouveau visés, les noms de Blaise Compaoré (Burkina Faso) et Eduardo Dos Santos (Angola), étaient cités.

L'enquête policière avait notamment établi, selon le quotidien Le Monde en janvier, qu'Omar Bongo et sa famille étaient propriétaires de 33 luxueux appartements ou maisons en France, et que Denis Sassou Nguesso disposait d'au moins trois immenses logements à Paris. Une nouvelle plainte a été déposée en juillet 2008 et classée sans suite en septembre pour les mêmes raisons. A la suite d'un changement de législation, les plaignants ont la possibilité après un classement sans suite de déposer une plainte avec constitution de partie civile, ce qu'ils ont fait mardi. Ce type de plainte entraîne quasi-automatiquement l'ouverture d'une information judiciaire et la désignation d'un juge d'instruction dès lors que l'intérêt à agir des plaignants est reconnu. «Nous avons restreint la plainte aux éléments extrêmement probants. Nous avons des éléments contre les présidents Compaoré et dos Santos mais qui ne sont pas en l'état aussi probants», a justifié Me William Bourdon, avocat des trois associations. «Les faits dénoncés sont par nature dissimulés et opaques», a-t-il expliqué.

L'ONG TI est spécialisée dans la lutte contre la corruption tandis que Sherpa, une association de juristes, promeut notamment la responsabilité sociale des entreprises.

<http://www.lefigaro.fr/actualite-france/2008/12/02/01016-20081202ARTFIG00493-une-nouvelle-plainte-vise-trois-chefs-d-etat-africains-.php>



## Sudan

### KHARTOUM'S BANKERS

■ Lloyds TSB, recently bailed out by the British government, has had to pay fines of US\$350 million for breaking United States' sanctions on Sudan, Libya and Iran, following an investigation by the New York County District Attorney and the US Department of Justice and a complex plea bargain deal on 9 January. Lloyds TSB has been doing clandestine business with Sudan for the past decade, according to the regulators.

The clandestine business involved concealing the source of funds to avoid US sanctions against the Khartoum regime: bankers call the practice 'stripping' accounts – the removal of information that would identify the source of the funds. The 'stripping' by Lloyds TSB dates from 1997, shortly after Usama bin Laden quit Al Qaida's Khartoum base for Afghanistan.

Usama left Khartoum following the regime's sponsorship of the 1995 assassination attempt on Egyptian President Hosni Mubarak in Addis Ababa (ACVol 36 No 14). The attempt on Mubarak triggered United Nations' sanctions against the National Islamic Front regime, then led by Hassan el Turabi (see Feature).

The British taxpayers' £45 billion (\$63 bn.) bailout will cover the \$350 mn. fine that Lloyds TSB pays the US government under a 'deferred prosecution agreement'. Essentially a plea bargain deal, it required Lloyds TSB to disclose all its clandestine activities with countries under sanctions. The deal stipulates that Lloyds TSB must cooperate with authorities as investigations into other stripping operations continue.

Lloyds TSB was 'stripping' information from illicit clients so that transfers to the USA appeared to originate elsewhere. The US investigation began in 2006 after reports about suspicious activities by front companies and charities linked to Iran, the Alavi Foundation and Assa Corporation. It uncovered over \$300 mn. of transactions till 2004, when Lloyds feared 'reputational implications'. Instead of 'stripping' information from the transfers, Lloyds then taught Iranian banks how to do it.

Lloyds TSB's 'stripping' for Sudan continued while the US enquiry was under way, as was the mass killing in Darfur, which provoked new US sanctions. Involved were the National Bank of Khartoum, Al Baraka Bank, Animal Resources Bank and Commercial Real Estate Bank, with business said to total \$20 mn. An equivalent sum was apparently transferred in 2002-04 for Libyan banks. Lloyds TSB is now committed to full cooperation with the US investigation.

## Tanzania

### GUARDS FOR SALE

■ Young Tanzanians conscripted for their military National Service may find themselves doing commercial security work. The government says it wants to reduce youth unemployment and increase competition in the private security sector. It also hopes to bring in some extra money.

National Service (*Jeshi la Kujenga Taifa*) is a wing of the Tanzanian People's Defence Forces, overseen by the Minister of Defence and National Service, Hussein Ali Mwinyi. Its recruits get military training, after which they remain in the reserve to be called up in times of conflict. Its Production Unit, known as SUMA-JKT, already undertakes commercial activities in, for example, construction and agriculture.

SUMA-JKT Research Director Felix Samillan said last year that the agricultural projects were not bringing in sufficient revenue and that additional initiatives were necessary. The new plan is to diversify into protecting people's homes.

Civic activists worry that the military is slipping into a more commercial role, akin to that of China's People's Liberation Army. Some senior officers say that guarding private residences could damage the army's reputation. The Secretary General of the Tanzania Security Industry Association, Issay Maisel, said the servicemen would not threaten established players in the industry because: 'We believe that only efficiency and quality services will satisfy customers' – which implies that the soldiers' work will be deficient.

SUMA-JKT has a poor reputation for transparency. In 2006, it was investigated by the Controller and Auditor General for failing to report more than US\$500,000 in 'suspicious' transactions.

## Gambia/Senegal

### YOM ASHURA

■ Forgiveness and tolerance are key to Gambia and Senegal's celebration of the Islamic holy day of *Yom Ashura* (the tenth day of the Islamic New Year), this year on 8 January. In contrast with the self-flagellation of Middle Eastern Shiite Muslims in remembrance of the martyrdom of Imam Hussein, grandson of the Prophet Mohammed, West African Muslims customarily forgive others and ask forgiveness.

*Yom Ashura* is also day for temporarily inverting the established order, for pranks and mild subversion. In villages north of the Gambia River, for example, men may dress as women and women as men, and black skins may be painted white. Some say the day also recalls the reuniting of Adam and Eve after their expulsion from Eden.

This year's *Yom Ashura* coincided with the sentencing of nine men in Senegal to an unprecedented eight years in gaol for 'unnatural acts' and 'criminal

conspiracy'. They include Diadji Diouf, the head of *AIDES-Senegal*, an organisation providing HIV/AIDS prevention services. Only weeks before, Senegal had played host to an international conference on HIV/AIDS, in which gay, lesbian, bisexual and transgender participants were included.

In both Senegal and Gambia, there has also been a rash of 'kill the battyman' (pejorative Caribbean slang for homosexual) lyrics among local wannabe reggae artists, their homophobia echoing not only their Jamaican idols but also Gambia's President Yahya Jammeh. With a willingness to embrace cross-dressing and gender-swapping (if only for a day a year), some traditional societies show more tolerance than their political leaders.

## France/Africa

### CREDITS CRUNCHED

■ Africa advisor at the *Elysée* Bruno Joubert will be awaiting a ruling by Paris's *parquet* on the admissibility of a civil case against Gabon's President Omar Bongo Ondimba, Congo-Brazzaville's President Denis Sassou-Nguesso and Equatorial Guinea's President Teodoro Obiang Nguema for theft of public funds.

The case, brought by William Bourdon, a lawyer and founder of the French non-governmental organisation Sherpa, says that the presidents and their family members amassed a grand French property portfolio and a fleet of luxury cars using stolen state funds. One of the plaintiffs is the Gabonese activist (and taxpayer) Gregory Ngwba Mintsa; he was arrested on charges of inciting rebellion by the Libreville authorities earlier this month, along with two other activists and a journalist, before being released.

The indictment lists 39 of Bongo's family properties, mostly in Paris's chic 16th *arrondissement*, 9 cars (worth about \$2 million), and 70 bank accounts. It was also revealed that Citibank on the *Champs Elysée* banks for Bongo's cousin Felix; Citibank was censured by the United States Senate Permanent Subcommittee on Investigations in 1999 for transferring over \$120 mn. into one of Bongo's accounts without checking its provenance. Investigators identified 18 properties owned by Sassou-Nguesso, at least one car bought for \$224,492 and 112 bank accounts. Obiang had just one property in his name and a Barclays bank account. His son, also Teodoro, spent \$5.5 mn. on 8 sports cars.

The case was dismissed as inadmissible in December 2007, but a police investigation continued until its suspension last year. Bourdon's appeal is expected to be upheld in February in the light of new evidence. If an investigating magistrate is appointed, relations between President Nicolas Sarkozy and these African oil producers will be tense.

## Des chefs d'Etat africains visés à Paris par une nouvelle plainte, *Le Monde* du 2 décembre 2008

Les chasseurs de "*biens mal acquis*" par les chefs d'Etat africains reviennent à la charge. Un an après la fin d'une enquête de police qui a mis au jour l'impressionnant patrimoine immobilier de plusieurs chefs d'Etat africains en France, une nouvelle plainte a été déposée, mardi 2 décembre, devant le doyen des juges d'instruction de Paris visant les chefs d'Etat du Gabon, du Congo-Brazzaville et de Guinée équatoriale ainsi que leurs entourages pour "*recel de détournement de fonds publics*".

Les plaignants – l'organisation non gouvernementale Transparency International et un contribuable gabonais – accusent les présidents Omar Bongo, Denis Sassou Nguesso et Teodoro Obiang, d'avoir acquis leur fortune au détriment du budget de leur pays, et donc de leur population. "*Personne ne peut croire, écrivent-ils dans la plainte, que ces biens immobiliers dont la valeur est (...) de l'ordre de plusieurs millions d'euros, ont pu être acquis par le seul fruit de leurs rémunérations*".

Ils estiment que la justice française est compétente car, selon eux, le délit de recel, constitué par l'achat d'immeubles et de voitures de luxe, a été commis en France.

Une nouvelle plainte est déposée car la première a été classée sans suite, en novembre 2007, pour "*infraction insuffisamment caractérisée*". Si l'enquête policière a dressé l'inventaire de l'opulence des dirigeants de ces pays pauvres, elle n'a pas, faute de mandat dans ce sens, déterminé l'origine des fonds ayant permis ces somptueuses acquisitions concentrées entre les 16e, 8e et 7e arrondissements de Paris.

C'est précisément pour obtenir la désignation d'un juge d'instruction apte à diligenter une enquête approfondie, qu'une nouvelle plainte, appuyée par les résultats de l'enquête de police, est déposée.

Cette fois, la plainte est assortie d'une "*constitution de partie civile*" qui emporte, en principe, l'ouverture d'une information et donc la désignation d'un magistrat instructeur. Mais pour en arriver là, la plainte doit être considérée comme "*recevable*". Elle ne le sera que si le doyen des juges d'instruction reconnaît l'"*intérêt à agir*" des plaignants.

La position du parquet, lié au gouvernement, sera très attendue, s'agissant d'une procédure visant des chefs d'Etat "*amis de la France*".

Les promoteurs de la première plainte assurent avoir "*bétonné*" cet aléa juridique en cédant la place à Transparency international (TI), ONG reconnue, dont la vocation est précisément la lutte contre la corruption. "*Nous avons décidé de nous placer plus résolument aux côtés des victimes de la corruption, explique Daniel Lebègue, président de TI-France. La solide enquête déjà menée ne peut rester sans suite. Mais notre but n'est pas de régler des comptes. Ce que nous visons c'est la restitution aux populations des biens mal acquis.*" Le ressortissant gabonais qui signe la plainte aux côtés de TI, allègue du "*préjudice*" qu'il aurait subi en tant que contribuables, par suite des détournements supposés de fonds publics.

Si l'avenir judiciaire de la procédure reste incertain, l'écho favorable qu'elle a suscité dans les opinions publiques africaines et, a contrario, la fureur qu'elle a déclenchée chez les chefs d'Etat visés, semble traduire un réel retentissement.

Les pressions et les menaces, les visites d'intercesseurs mystérieux et les appels téléphoniques anonymes rapportés par les plaignants tendent à montrer que l'affaire est prise au sérieux. Ainsi, l'avocat William Bourdon, président de l'association de défense des droits de l'homme Sherpa, maître d'œuvre des plaintes, affirme avoir fait l'objet d'une "*tentative de corruption privée*" en septembre. Un avocat se disant mandaté par les autorités gabonaises est venu lui proposer "*une somme d'argent pour Sherpa via la création d'une fondation en Suisse*".

D'autre part, Me Bourdon dit aussi avoir reçu la visite d'un personnage énigmatique se présentant comme émissaire du président Bongo et l'informant de menaces pesant sur sa

personne. Me Bourdon affirme que le visiteur lui a déclaré que le président gabonais était prêt à vendre un hôtel particulier à Paris au profit d'ONG de son pays, en contrepartie du retrait de la plainte.

*"La pression sur nos coplaignants est énorme"*, assure M. Lebègue, le président de Transparency International-France. Si forte, semble-t-il, que deux contribuables congolais appartenant à une *"plate-forme contre la corruption et l'impunité"*, qui devaient cosigner la plainte y ont renoncé, vendredi 28 novembre, après avoir reçu des menaces explicites contre leurs familles.

Intimidation, mais aussi pressions sur le microcosme associatif de la diaspora : la nouvelle plainte sur les *"biens mal acquis"* a déclenché de multiples réactions. A Libreville (Gabon), une association baptisée *"Touche pas à mon président"* s'est constituée cet été pour dénoncer la *"cabale"* visant M. Bongo.

A Paris aussi, l'affaire est suivie de près. En avril, Nicolas Sarkozy avait fait prévaloir l'amitié d'Omar Bongo, doyen des chefs d'Etat africains influent mais controversé, sur ses déclarations de campagne favorables à un aggiornamento des relations franco-africaines et à la fin des *"complaisances"* à l'égard de certains régimes africains.

Il avait dépêché au palais présidentiel de Libreville le secrétaire général de l'Elysée, Claude Guéant, afin d'apaiser la colère du président gabonais suscitée par l'enquête sur ses immeubles à Paris et les critiques de Jean-Marie Bockel, alors secrétaire d'Etat à la coopération.

Avant d'être écarté de ce poste, M. Bockel avait affirmé que *"certains pays ont d'importantes ressources pétrolières mais [que] leur population n'en bénéficie pas"*. Une assertion qui sonnait comme une approbation officielle de la plainte visant les *"biens mal acquis"*.

**Philippe Bernard**

13 Fevrier 2009

[http://www.lexpress.fr/actualite/monde/l-affaire-bma-secoue-la-francafrique\\_740477.html](http://www.lexpress.fr/actualite/monde/l-affaire-bma-secoue-la-francafrique_740477.html)

## Enquête

### L'affaire "BMA" secoue la Françafrique

Par Philippe Broussard, publié le 13/02/2009 10:00 - mis à jour le 13/02/2009 16:37

**Bongo, Sassou-Nguesso, Obiang: ces trois chefs d'Etat africains possèdent-ils en France des "biens mal acquis"? Ont-ils détourné des fonds publics pour y acheter propriétés et voitures de luxe? A Paris, la justice doit bientôt se prononcer sur les suites à donner à la plainte déposée contre le trio. Un dossier explosif pour ces pays pétroliers.**

BMA. Trois lettres qui fâchent. BMA pour "Biens mal acquis". La suite est proverbiale - "ne profitent jamais..." - et vise trois dirigeants africains suspectés d'avoir détourné des fonds publics pour acquérir des dizaines de logements et de véhicules de luxe en France: Omar Bongo Ondimba (Gabon), Denis Sassou-Nguesso (Congo-Brazzaville) et Teodoro Obiang Nguema Mbasogo (Guinée équatoriale).

L'inventaire des biens en question est si long qu'il ferait pâlir d'envie nombre d'agents immobiliers et de concessionnaires automobiles.

Quant à la liste des bénéficiaires, elle confine au Who's Who ouest-africain: outre les présidents déjà cités, il y a là des épouses, des filles, des fils, des neveux, des gendres de présidents... Bref, un aréopage assez relevé pour affoler le Quai d'Orsay, mobiliser l'Elysée et irriter le trio incriminé, pressé que la justice française mette un terme à cette procédure largement médiatisée.



AFP

### **OMAR BONGO ONDIMBA (Gabon)**

**Immobilier :** 39 propriétés, dont 17 au nom du président lui-même.

**Comptes bancaires :** 70, dont 11 au nom du président lui-même.

**Voitures de luxe :** au moins 9 (montant total : 1 493 444 euros).

La décision ne tardera pas: la juge d'instruction parisienne Françoise Desset se prononcera, début mars, sur les suites à donner à la plainte déposée, à Paris, en décembre 2008, pour "recel de détournement de fonds publics, blanchiment, abus de bien social, abus de confiance et complicités".

Si la juge estime cette plainte irrecevable, l'affaire entrera dans un tunnel procédural à l'issue incertaine. Si, au contraire, elle la considère comme recevable, ce sera un premier pas - hautement symbolique - vers une enquête approfondie, confiée à un magistrat instructeur, afin de connaître l'origine de l'argent déboursé en France.

Au Gabon comme au Congo-Brazzaville, les deux pays les plus touchés par le soupçon, une telle décision serait perçue comme un geste de défiance. Pour en convaincre Paris, les présidents visés multiplient les avertissements, plus ou moins voilés. Et apprécient sans doute à sa juste valeur la coïncidence d'actualité que constitue "l'affaire Kouchner".

Pour mesurer l'ampleur du scandale BMA, il faut revenir en mars 2007 et au dépôt, à Paris, d'une première plainte. Sont alors visés les trois chefs d'Etat déjà cités, mais aussi le Burkinabé Blaise Compaoré et l'Angolais José Eduardo Dos Santos. Les poursuites émanent de trois associations: la Fédération des Congolais de la diaspora, Survie et Sherpa, un groupement de juristes. Leur démarche s'appuie en partie sur un rapport du Comité catholique contre la faim et pour le développement (CCFD), intitulé "Biens mal acquis... profitent trop souvent".

### **Dossier complet**

L'affaire "BMA" sur L'EXPRESS.fr, c'est aussi:

- les biens immobiliers des chefs d'Etat africains en France, sur notre carte interactive
- la liste complète ainsi que les photos de leurs voitures de luxe
- la colère du Gabon

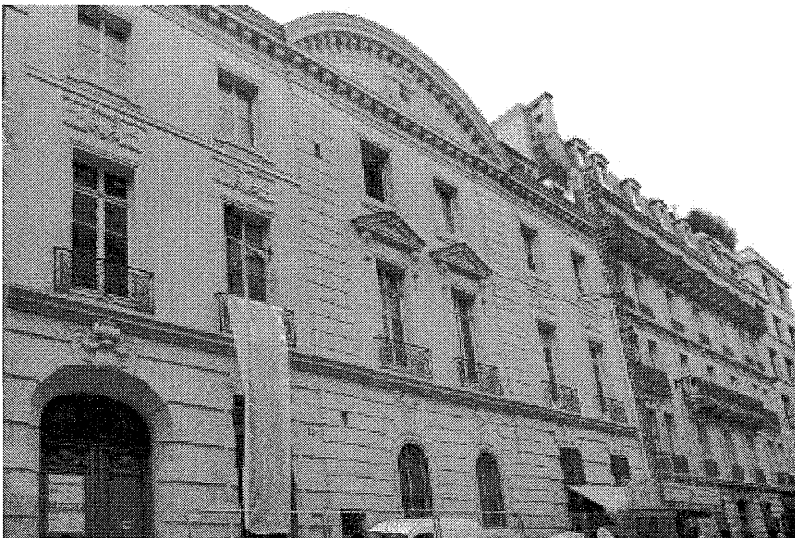
Fort de ces éléments, le parquet demande à l'Office central pour la répression de la grande délinquance financière (OCRGDF) d'enquêter. Les policiers dressent la liste des présidents et de leurs proches, recensent les adresses françaises, les comptes bancaires, les voitures, et constituent ainsi un dossier d'une extrême richesse, au propre et au figuré.

Les appartements se comptent par dizaines, dans la capitale, en proche banlieue et dans le Sud. Avec une mention spéciale, toutefois, pour le clan Bongo. En septembre 2007, quand l'OCRGDF fait le bilan de ses recherches, le président gabonais et son entourage arrivent largement en tête, avec 39

propriétés. Trois appartements avenue Foch (XVIe)? Bongo. Un sept-pièces boulevard Lannes (XVIe)? Bongo. 219 mètres carrés rue Laurent-Pichat (XVIe), 284 mètres carrés avenue Rapp (VIIe), 125 mètres carrés et 13 garages à Aix-en-Provence? Bongo, Bongo, Bongo...

### **Le joyau de l'inventaire: un hôtel particulier de 19 millions d'euros**

Sans oublier une propriété niçoise comprenant deux maisons, trois appartements et une piscine. Le joyau de l'inventaire reste toutefois un hôtel particulier (actuellement en travaux) situé rue de la Baume, à Paris (VIIIe). Sa valeur en juin 2007? Près de 19 millions d'euros. Il a été acquis par une société civile immobilière (SCI) dont trois porteurs de parts sont l'épouse d'Omar Bongo et deux de ses enfants mineurs.



Immeuble rue de la Baume, 75008 Paris.

Le beau-père d'Omar Bongo, le président congolais Denis Sassou-Nguesso, dispose lui aussi - directement ou par ses proches - de pied-à-terre enviables: un appartement de 10 pièces rue de la Tour (XVIe), un autre de 328 mètres carrés avenue Niel (XVIIe)... Ou encore, au Vésinet (Yvelines), la villa Suzette, une demeure de 500 mètres carrés.

Pour les trois familles concernées, la liste des voitures de luxe est à l'avenant. Avec, parfois, des conditions d'achat surprenantes. Ainsi, en 2004,

l'épouse du président gabonais s'offre une Maybach 57 bleu clair d'une valeur de 326 752 euros, mais le chèque, tiré sur le compte de la Paierie du Gabon (les caisses publiques), est supérieur à ce montant (390 795 euros).

Explication: la différence (64 000 euros) est un acompte sur l'achat d'une Mercedes classe E 55 pour sa fille Pascaline, directrice du cabinet privé du président. En 2006, cette même Pascaline fait l'acquisition d'une autre Mercedes (75 558 euros) payée en partie grâce à un chèque (41 370 euros) tiré d'un compte de Me François Meyer, l'un des avocats parisiens de son père. Me Meyer précise à L'Express qu'il s'agissait d'un "cadeau": "Pascaline est quelqu'un que je connais depuis vingt ans. Chacun sait que je gagne bien ma vie. J'ai quand même le droit de faire ce que je veux de mon argent!"



AFP

**DENIS SASSOU-NGUESSO (Congo-Brazzaville)**

**Immobilier :** 18 propriétés.

**Comptes bancaires :** 112.



**Voitures de luxe :** au moins un véhicule (172 321 euros).

Si complètes soient-elles, les investigations ne suffisent pas à convaincre le parquet d'aller plus avant dans les recherches. Le 12 novembre 2007, la plainte est classée sans suite pour "infraction insuffisamment caractérisée". Sous-entendu: rien ne prouve l'origine frauduleuse de l'argent ayant permis ces dépenses, dont les intéressés eux-mêmes ne font d'ailleurs pas mystère. Les plaignants ont beau assurer que les présidents ne perçoivent pas des salaires compatibles avec un tel train de vie et que la plupart de leurs proches sont sans profession, le parquet estime, lui, qu'il n'y a pas matière à fouiller.

Reste que le dossier est là, avec ses factures, ses virements, ses listes d'adresses. Autant d'informations dont la divulgation agace les chefs d'Etat mis en cause. Leur colère est d'autant plus grande que l'adversaire ne s'avoue pas vaincu... Une autre plainte, assortie d'une constitution de partie civile, est déposée le 2 décembre 2008 devant le doyen des juges d'instruction de Paris. Cette fois, seuls trois présidents sont visés: Bongo, Sassou et Obiang (Guinée équatoriale). Ceux sur lesquels il existe le plus d'éléments.

**"Notre but n'est pas de stigmatiser l'Afrique mais le rapport est accablant"**

Cette plainte émane d'un citoyen gabonais, Gregory Ngbwa Mintsu, et d'une prestigieuse association de lutte contre la corruption et le blanchiment: Transparency International (TI). En s'associant à ces poursuites, la branche française de TI leur donne une crédibilité supplémentaire.

La composition de l'organisation laisse en effet peu de doute sur le sérieux de la démarche. Daniel Lebègue, président de TI France, est un ancien président de la Caisse des dépôts et consignations. Parmi les membres de l'association figurent Jean-Claude Paye, ancien secrétaire général de l'OCDE, et Anne-José Fulgères, ex-chef de la section financière du parquet de Paris.

"Notre but n'est pas de stigmatiser l'Afrique et ses dirigeants, précise Daniel Lebègue à L'Express, mais le rapport est accablant. C'est même exceptionnel, pour un magistrat, d'avoir un dossier aussi précis, complet, exhaustif. La disproportion est telle entre les revenus officiels des uns et des autres et leur patrimoine qu'il y a, à nos yeux, des présomptions fortes et concordantes de détournements de fonds publics. Nous parlons tout de même de biens dont la valeur totale est évaluée à 160 millions d'euros! Et nous savons qu'ils ont d'autres actifs, en Suisse, aux Etats-Unis, peut-être en Espagne."

Les avocats français des "suspects" contestent cette thèse et certaines assertions des plaignants. Ainsi, au nom d'Omar Bongo, Me François Meyer rejette les conclusions de l'enquête préliminaire. Selon lui, son client n'a pas 17 propriétés à son nom, mais cinq, et quatre d'entre elles auraient été acquises entre 1967 et 1974, à une époque où le coût de l'immobilier était "très bas".

### **Le président congolais monte lui-même au front**

"Ce patrimoine est compatible avec ses revenus de président depuis quarante ans, insiste Me Meyer. Des revenus supérieurs aux 15 000 euros mensuels évoqués par certains médias. Rappelons aussi que les chefs d'Etat du monde entier ont à disposition des fonds souverains permettant d'acquérir des biens au nom de leur pays. Quant aux personnes de l'entourage du président, elles travaillent et ont les moyens d'être propriétaires à Paris. A mes yeux, la plainte est vouée à l'échec. Les gens qui la portent le savent, mais cherchent avant tout un écho médiatique. Mon client vit très mal cette affaire absurde. Ses compatriotes aussi. Pour eux, il est logique qu'il dispose de logements à Paris. Il lui faut bien des endroits où se reposer!"

Du côté congolais, c'est le président lui-même, Denis Sassou-Nguesso, qui monte au front pour qualifier de "bourgeois de Neuilly" les dirigeants des ONG Sherpa et TI France: "Si on regarde bien, déclarait-il en décembre, ce sont des descendants de l'esclavagisme et du colonialisme qui veulent se donner bonne conscience en parlant aux Africains, en ayant pitié."

Le cas du dirigeant équato-guinéen Obiang, au pouvoir depuis 1979, est différent. Cet homme de 66 ans, dont le pays produit aussi du pétrole et peut compter sur ses ressources forestières, n'a, semble-t-il, qu'une ou deux adresses en France. L'OCRGDF a surtout recueilli des éléments sur le parc automobile de son fils aîné, Teodorin: au moins huit véhicules, d'une valeur totale de 4,2 millions d'euros, achetés en France entre 1998 et 2007.



AFP

### **TEODORO OBIANG NGUEMA MBASOGO (Guinée équatoriale)**

**Immobilier :** au moins une propriété au nom du président lui-même.

**Compte bancaire :** un compte (Barclays), au nom de son fils.

**Voitures de luxe :** au moins 8 véhicules détenus par le fils (montant total : 4 213 618 euros).

L'avocate du président Obiang, Me Isabelle Thomas-Werner, ne voit là aucune raison d'accuser son client. "Que son fils soit riche et apprécie les belles voitures, c'est une chose. Mais je ne comprends pas pourquoi mon

client apparaît dans ce dossier. Que lui reproche-t-on? Il se demande pourquoi les Français lui en veulent tant. L'acharnement contre ce petit pays est incompréhensible! Les poursuites de Transparency reposent juste sur un rapport rédigé en 2004 par deux sénateurs américains."

De fait, ce rapport figure au dossier, mais d'autres sources confirment, sur la base d'informations plus récentes (septembre 2007), les soupçons contre les Obiang, en particulier le fils. Ces sources détaillent les mécanismes financiers qui lui ont permis de transférer des sommes colossales de Guinée équatoriale aux Etats-Unis, en transitant par des banques françaises. Entre avril 2005 et juin 2007, une quinzaine de virements sont ainsi passés par la Banque de France, Fortis France et Natixis. Avec cet argent, le fils Obiang s'est offert une villa à Malibu (35 millions de dollars) et un jet (33,8 millions de dollars).

Dans ce cas, comme dans ceux des dirigeants gabonais et congolais, la justice s'apprête donc à prendre une décision lourde de conséquences politiques. En attendant, la tension monte. A Libreville, le seul plaignant gabonais a été incarcéré pendant deux semaines en janvier. Son avocat français, Me Thierry Lévy, n'a pas pu se rendre sur place, les autorités locales ayant refusé de lui accorder un visa.

En France, aussi, la fièvre gagne. A Orléans, un opposant congolais, dont l'épouse s'était jointe à une plainte précédente, a fait l'objet de menaces. Quant à Me William Bourdon, responsable de Sherpa et défenseur de TI France, il affirme avoir subi des pressions de la part de deux personnes - dont un avocat du barreau de Paris - se présentant comme des émissaires du Gabon.

La tension est tout aussi vive dans l'entourage des présidents incriminés, où l'on redoute les ennuis judiciaires. Si les chefs d'Etat se savent protégés par l'immunité liée à leur fonction, il n'en est rien, en effet, pour leurs proches. Une note du ministère des Affaires étrangères, versée au dossier, le rappelle : ceux-ci ne bénéficient d'une forme d'immunité qu'en cas de visites ou de missions officielles. Une protection peu efficace contre les charges explosives du dossier BMA.

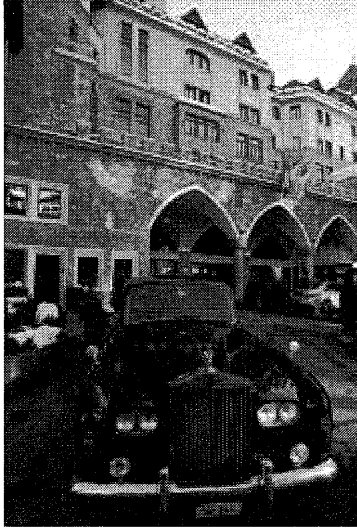
## **Les fous du volant**

Par Philippe Broussard, publié le 13/02/2009 10:00

Le dossier des "biens mal acquis" en France confine parfois au catalogue de voitures de luxe. Ainsi, selon la police, la famille Bongo possédait à elle seule, à la date du 12 juillet 2007, deux Ferrari, six Mercedes, trois Porsche, une Bugatti et quelques autres véhicules. Rien que du haut de gamme, dont les factures trahissent un double souci du détail et de l'esthétique.

En 2004, quand Omar Bongo s'offre, à Paris, une Ferrari 612 bleue (garantie 36 mois pièces et main-d'oeuvre), il prend en option les écussons "Scuderia" à 1 291 euros. Une peccadille, sur un montant global de 193 816 euros.

Sa fille Pascaline préfère les Maybach, une marque allemande. En 2002, elle en achète une pour 424 477 euros, sans lésiner, elle non plus, sur les options: la "paroi de séparation" (29 498 euros), le "toit panoramique" (14 498 euros) et l'indispensable "store électrique pour vitre arrière" (3 002 euros).



... a acheté huit voitures en France dont une Rolls-Royce Phantom limousine.

Mais le garage des Bongo ferait presque pitié devant celui de Teodoro Nguema Obiang Mangue, fils du président de la Guinée équatoriale. Cet homme de 39 ans, ministre de l'Agriculture et de la Forêt au sein du gouvernement paternel, ne regarde pas à la dépense. Les enquêteurs ont identifié huit voitures à son nom, acquises entre 1998 et 2007 en France: deux Ferrari, une Maybach 62, deux Bugatti Veyron, une Rolls-Royce (Phantom limousine), deux Maserati. Le montant total? 4 213 618 euros.

Dans la Rolls, achetée en 2005 pour 381 000 euros, il avait prévu des "repose-pieds arrière pivotants" (1 800 euros) et une "boiserie marquetée en ronce de noyer" (2 000 euros). Pour l'une des Maserati (type MC12, intérieur cuir noir et bleu), il a bénéficié d'une remise de 7 190,63 euros, mais la facture s'est tout de même élevée à 709 000, 01 euros TTC.

### **Dossier complet**

[L'affaire "BMA" sur L'EXPRESS.fr](#), c'est aussi:

- les biens immobiliers des chefs d'Etat africains en France, [sur notre carte interactive](#)

- la [liste complète](#) ainsi que [les photos de leurs voitures de luxe](#)

## - la colère du Gabon

Dans le cas des Bugatti, il a réglé ses dépenses par des virements émanant de la Somagui Forestal, la société d'exploitation forestière qu'il dirige dans son pays. Dans un rapport daté du 9 novembre 2007, la police voyait là un "financement pour le moins atypique".

L'avocate française du président guinéen, Me Isabelle Thomas-Werner, rejette ces soupçons et précise que le fils aîné de son client est "un homme très riche", dont la fortune provient "en partie du commerce du bois". Selon elle, il aurait cessé ses activités à la Somagui Forestal "depuis deux ans". Le 16 mai 2007, il y a donc moins de deux ans, la même société a pourtant effectué, à son profit, un virement en France de 300 000 euros. Un acompte pour l'achat... d'une troisième Bugatti!

**L'EXPRESS**.fr

TOUS LES JOURS, TOUTE L'INFO

### **Colères gabonaises**

Par Vincent Hugeux, publié le 13/02/2009 10:00

Un vent délétère souffle sur Libreville. Celui des fins de règne maussades plombées par le dépit. Seul maître à bord du rafiote gabonais depuis plus de quarante ans, le président Omar Bongo se sent trahi, lâché par des parrains français dont l'ingratitude le dérouta, lui le bienfaiteur de tant d'aventures électorales tricolores.

La preuve? Cette affaire de "biens mal acquis". "Avec Jacques - entendez Chirac - maugrée-t-il en boucle à ses confidents, ça ne se serait jamais passé ainsi." En clair, on aurait étouffé l'enquête dans l'oeuf. Amer, incrédule, le doyen des chefs d'Etat d'Afrique dénonce l'"acharnement" dont il serait la cible, sinon le complot relayé par une presse aux

ordres. N'est-ce pas le 20 heures de France2, "télévision d'Etat", qui contribua, avec d'autres médias, à sortir de l'ombre son patrimoine parisien?

### **Dossier complet**

L'affaire "BMA" sur L'EXPRESS.fr, c'est aussi:

- les biens immobiliers des chefs d'Etat africains en France, sur notre carte interactive
- la liste complète ainsi que les photos de leurs voitures de luxe
- la colère du Gabon

"Les temps ont changé, arguë-t-on à l'Elysée. Le rapport de forces entre pouvoir, médias et justice aussi. Nos amis africains le savent, mais nous reprochent de les priver, eux et leurs rejetons en goguette, des traitements de faveur hier en vigueur."

Vient l'énigme à 100 millions de francs CFA: y a-t-il un lien entre la revue de détail du parc immobilier du clan Bongo et les mésaventures de Bernard Kouchner? Probable.

"Seule une source gabonaise a pu fournir à Pierre Péan certains documents qu'il évoque", avance un homme du sérail.

A Libreville, on en veut au patron du Quai d'Orsay, hier gratifié de contrats de consultant, d'avoir laissé enfler une "campagne hostile". Voilà peu, un pilier du système Bongo affichait sa certitude de "tenir un ministre en vue par les c...".

Représailles, menaces? Le procédé n'aurait rien d'inédit. Qu'on se souvienne du dossier Elf: chaque fois que la justice française lui mordille les mollets, le "doyen" réplique à coups de mises en garde plus ou moins subliminales. Et Dieu sait que ce fin connaisseur des arrières-cuisines de la politique hexagonale en a sous la talonnette.

Une nuance pourtant: l'assaut peut venir cette fois, non de la présidence, mais de l'une des coteries en lice dans la guerre de succession. Car à 73 ans, "le Vieux", dont la santé vacille, fait son âge. De l'aveu de familiers du palais, il rechigne à trancher entre son fils



Ali, ministre de la Défense, et son gendre Paul Toungui, époux à la ville de l'influente Pascaline, directrice de cabinet et héritière préférée.

En plaçant trois fidèles à des postes clefs de la hiérarchie militaire, le premier nommé a marqué des points. Quant au second, il sait que son passage des Finances aux Affaires étrangères n'a rien d'une promotion. "Le pataquès des biens mal acquis n'arrange personne, souligne une initiée. Car il éclabousse tous les prétendants, qui ripostent en ordre dispersé, l'oeil rivé sur l'après-Omar." Chacun pour soi et Dieu pour tous? A ceci près que Dieu, au Gabon, a perdu la main.



Asociación Pro Derechos Humanos de España

The Secretary  
African Commission on Human and Peoples Rights  
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**COMMUNICATION SUBMITTED BY THE  
ASOCIACIÓN PRO DERECHOS HUMANOS  
DE ESPAÑA REGARDING THE REPUBLIC  
OF EQUATORIAL GUINEA, UNDER  
ARTICLE 55 OF THE AFRICAN CHARTER  
ON HUMAN AND PEOPLES' RIGHTS**

**A. Introduction**

This letter introduces a communication under the Article 55 Communications Procedure of the African Charter on Human and Peoples' Rights (the "Charter") by the *Asociación pro Derechos Humanos de España* (APDHE). Founded in 1976, the APDHE is a nongovernmental organization that advocates for human rights and the rule of law around the globe. Among its objectives, APDHE advocates for human rights in Equatorial Guinea through its Equatorial Guinea Working Group. It is registered in Spain and counts among its members many nationals of Equatorial Guinea resident in Spain.

This communication alleges violations of the right under Article 21 of the Charter of the peoples of Equatorial Guinea to "freely dispose of their wealth and natural resources." Specifically, the communication alleges that the Government of Equatorial Guinea violates the Charter in permitting the family of the President, H.E. Teodoro Obiang Nguema Mbasogo, and a small number of allied families, mostly from the President's Esangui clan or the Mongomo region (the "Nguema/Mongomo group"<sup>1</sup>), to divert to their own private benefit the overwhelming preponderance of

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<sup>1</sup> In employing this term, the APDHE has no intention to suggest that the group includes only people from Mongomo, or that all or most people from Mongomo are part of the group. The Nguema/Mongomo group comprises a small minority of a small minority. It has, however, long been widely acknowledged that the Esangui clan and the Mongomo region have been very disproportionately represented in the political elite since independence in 1968. See, e.g., "Equatorial Guinea: Country Outlook." ViewsWire, Economist Intelligence Unit (January 4, 2007) ("Mr. Obiang has kept a tight grip on power since 1979...principally through a network of relatives and members of his Esangui clan from Mongomo, in the east, who occupy all the top security posts in government."), available at [http://www.eiu.com/index.asp?layout=VWArticleVW3&article\\_id=1651791950&region\\_id=&country\\_id=230000023&refm=vwCtry&page\\_title=Latest+analysis](http://www.eiu.com/index.asp?layout=VWArticleVW3&article_id=1651791950&region_id=&country_id=230000023&refm=vwCtry&page_title=Latest+analysis). See also United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2006* (March 6, 2007) ("near monopolization of political and economic power by the Fang ethnic group, particularly its Mongomo subclan"), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78732.htm>.

the value of and revenue from the Equatoguinean peoples' natural resources, in particular, the value of the peoples' land and hydrocarbon<sup>2</sup> resources. This misappropriation of the peoples' resources has continued for well over two decades and represents precisely the kind of massive "spoliation" that is prohibited by Article 21. These violations entitle the people of Equatorial Guinea to "lawful recovery of its property as well as to an adequate compensation." Moreover, this spoliation also entails additional grave violations of the "interest of the people."

In order to accomplish these violations, the Nguema/Mongomo group has established and maintains a far-reaching system of corruption affecting every sphere of life within Equatorial Guinea. The Government of Equatorial Guinea has materially assisted and colluded with this corruption system by, among other things, putting the Equatoguinean judicial system at the disposal of the ruling group, to implement and ratify the massive diversion of the peoples' wealth, thus violating the Government's "duty to guarantee the independence of the Courts," under Article 26 of the Charter, and the closely related duty to ensure the right of "[e]very individual [...to] have his cause heard," under Article 7(1).

The fruits of this corruption system are, in turn, the consequent violations of the right to development, right to health, right to education, and right to lawfully acquired private property, under Articles 22, 16, 17(1), and 14. The APDHE submits the present claim to the African Commission on Human and Peoples' Rights (the "Commission") in its own name and in defence of the human and peoples' rights of the individuals and communities in Equatorial Guinea that have been victimized by the corruption system imposed on them by the Government of the Republic of Equatorial Guinea, as further described below. Other victims of this system include but are not limited to legitimate individual and collective owners of land and other types of property which has been unlawfully seized by the Government for the benefit of members of the Nguema/Mongomo group; tenants and residential property owners who have been forcefully evicted from their homes without appeal and, generally, without reasonable compensation or alternative places to live; individuals, families and communities who have suffered, or seen loved ones suffer, death or serious illness because of the absence of sanitation, potable water, and/or adequate health care facilities and services; and children who have been robbed of dignity and economic opportunity for lack of free minimally acceptable education. Most of the individuals and communities that have endured the brunt of the corruption system are, because of their poverty and because of the threat of violent repression, unable to assert their claims on their own behalf either to the Commission or in other fora.

The Republic of Equatorial Guinea ratified the Charter on April 7, 1986.<sup>3</sup> All the violations alleged in this communication occurred after this date. To the extent that

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<sup>2</sup> As used in this communication, the term "hydrocarbons" refers generally to all oil and gas substances composed of hydrogen and oxygen that are produced commercially in Equatorial Guinea, including petroleum, liquefied petroleum gas, liquefied natural gas, and methanol.

<sup>3</sup> See the Commission's website at [http://www.achpr.org/english/ratifications/ratification\\_charter\\_en.pdf](http://www.achpr.org/english/ratifications/ratification_charter_en.pdf).

any of the communications herein alleged began before this date, the authors allege that those violations have continued since then and have persisted to the present day.

The APDHE hereby respectfully requests the Commission to be seized of this case. If seizure is granted, the APDHE will submit to the Commission a full legal memorandum in support of the claim.

### **B. Unique Gravity of the Circumstances of this Case**

Equatorial Guinea has a relatively small population of about 550,000, and vast wealth from its natural gifts, above all, its abundant hydrocarbon deposits, but also forestry, fishing, and undeveloped resources including titanium, iron ore, manganese, uranium, and alluvial gold.<sup>4</sup> Unlike many of its neighbors, Equatorial Guinea has also been spared the ravages of civil war and invasion. Yet, as explained below, the scale of the corruption system and the Nguema/Mongomo group's indifference to the welfare of the people have placed Equatorial Guinea at or near the bottom for every major development and governance indicator, far below countries whose per capita wealth should make them peers.

The United Nations Development Program (UNDP) measures every country's relative will and effectiveness in applying available wealth to the public benefit by comparing per capita Gross Domestic Product (GDP) ranking (roughly reflecting the amount of wealth available for the nation's needs) and the Human Development Index (HDI) ranking (reflecting the extent to which those needs are satisfied). Where the HDI rank lags substantially behind the GDP rank, it is a sign of a government's failure to use available resources appropriately to meet the needs of the people. By subtracting the HDI ranking from the per capita GDP ranking, UNDP generates a numerical measure of the government's performance. In its 2006 *Human Development Report*, UNDP found the difference between Equatorial Guinea's per capita GDP rank (30 out of 177) and its HDI rank (120) was -90 – putting Equatorial Guinea *dead last* of all states measured.<sup>5</sup> If there is any case meriting the Commission's scrutiny under Article 21, it is the extreme outlier, Equatorial Guinea.

### **C. Background**

Equatorial Guinea's economy has grown at double-digit annual rates<sup>6</sup> since large-scale exploitation of its rich off-shore oil deposits began in the mid-1990s. On a per

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<sup>4</sup> United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), Equatorial Guinea Country Profile (as of September 2006), available at <http://www.unohrrls.org/en/orphan/82/>.

<sup>5</sup> See United Nations Development Program, *Human Development Report 2006*, Table 1, "Human development index," p. 285, available at <http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf>. The *Human Development Report 2006* uses data for 2004, the most recent data available at the time of publication. Subsequent year growth in GDP may make future calculations even starker.

<sup>6</sup> International Monetary Fund, IMF Public Information Notice (PIN) No. 06/66, "IMF Concludes Article IV Consultation with Equatorial Guinea" (June 14, 2006), p.1 (economic growth averaging 37% per year during the past decade), available at <http://www.imf.org/external/np/sec/pn/2006/pn0666.htm>.

capita basis, Equatorial Guinea is the fourth wealthiest nation in the world, with a per capita GDP of \$50,200.<sup>7</sup> However, despite the enormous wealth deriving from the Equatoguinean peoples' hydrocarbon, timber and other natural resources, "the standard of living for the population at large has not improved commensurately."<sup>8</sup> The quality of life for most citizens of Equatorial Guinea has stagnated, and, by many measures, has actually declined in recent years.<sup>9</sup> A small group at the top of Equatoguinean society and Government diverts to itself the better part of billions of dollars of the country's oil revenues and other natural resource earnings, and flaunts the luxury trappings of a lifestyle conspicuous even in the capitals of Europe and America, leaving the great bulk of the population mired in absolute poverty. Sixty percent or more of Equatoguineans live on less than \$1 per day.<sup>10</sup>

Wealth that should have been used for the "exclusive interest of the people" to provide jobs, education, health care and housing has instead been substantially expropriated by the Nguema/Mongomo group. Indeed, large portions of the oil income have never even made their way to Equatorial Guinea, having been deposited into banks in the United States, Spain, Luxembourg, and elsewhere,<sup>11</sup> or squandered on cars, mansions and other extravagances for senior officials and their families.<sup>12</sup>

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<sup>7</sup>Official Website of the Embassy of the Republic of Equatorial Guinea to the United Kingdom, available at <http://www.embarege-londres.org/index.cfm?action=history>. This is an estimate for 2005 based on Purchasing Power Parity. See also United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), Equatorial Guinea Country Profile (as of September 2006), available at <http://www.unohrrls.org/en/orphan/82/>; *New York Times* online, General Information on Equatorial Guinea, available at <http://topics.nytimes.com/top/news/international/countriesandterritories/equatorialguinea/index.html>.

<sup>8</sup>International Monetary Fund, "IMF Concludes Article IV Consultation with Equatorial Guinea," IMF Public Information Notice (PIN) No. 06/66 (June 14, 2006), p. 1, available at <http://www.imf.org/external/np/sec/pn/2006/pn0666.htm>.

<sup>9</sup>For example, the infant mortality rate for 2005 was 123 per 1,000 live births. This reflects a continued worsening trend from the years 2000 (120 per 1,000 births), 1995 (112 per 1,000 births), and 1990 (103). Similarly, the under-five mortality rate for 2005 was 205 per 1,000 live births, compared with 200 in year 2000, 187 in year 1995, and 170 in 1990. Meanwhile, though the primary school completion rate improved from 44.4% in 2003 to 54.3% in 2005, it remains substantially worse than the 1999 rate of 61.0%. See official United Nations "Millennium Development Goals Indicators" website, <http://mdgs.un.org/unsd/mdg/Data.aspx>.

<sup>10</sup>República de Guinea Ecuatorial y Sistema de las Naciones Unidas, *Balance Común de Pais (CCA), Versión Validada* (September 2006), p. 7. See also Système des Nations Unies, *Cadre d'assistance des Nations Unies pour le développement (UNDAF) en Guinée Equatoriale pour la période 2008-2012*, p. 7 (February 12, 2007) (67% of Equatoguineans live on less than \$1 a day in period 1994-2001), available at [http://www.undg.org/docs/7228/undaf%20version%20finale%20\(FR\)%2020-02-2007.doc](http://www.undg.org/docs/7228/undaf%20version%20finale%20(FR)%2020-02-2007.doc).

<sup>11</sup>See generally United States Senate, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, Minority Staff Report, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act, Case Study Involving Riggs Bank* (July 15, 2004), available at [http://hsgac.senate.gov/files/071504minorityreport\\_moneylaundering.pdf](http://hsgac.senate.gov/files/071504minorityreport_moneylaundering.pdf).

<sup>12</sup>See, e.g., Chris McGreal and Dan Glaister, "The Tiny African State, the President's Playboy Son and the \$35M Malibu Mansion," *Guardian* (November 10, 2006) (President's son purchased \$35 million California mansion, on a monthly salary as government minister of less than £3,000), available at <http://www.guardian.co.uk/equatorialguinea/story/0,1944445,00.html>. *Forbes* magazine listed the Malibu property as the sixth most expensive home purchase in the United States in 2006. Matt Woolsey, "Most Expensive Home Sales 2006," *Forbes* (December 12, 2006), available at

Most Equatoguineans survive from subsistence farming,<sup>13</sup> living almost entirely outside the monetary economy, which is dominated by energy extraction activities.<sup>14</sup> Senior Government officials strictly control participation in the formal economy, allocating licenses and other business opportunities to themselves or other members of the Nguema/Mongomo group in exchange for a share of the revenues; and channeling access to hydrocarbon-related jobs through a handful of highly profitable politically connected “employment agencies.”<sup>15</sup>

While a small number of enterprises owned by or closely linked to the governing elite profit handsomely from building fancy hotels and luxury housing in the urban centers of Malabo, Bata and elsewhere, thousands of the poor and even the middle class have seen their homes expropriated, or live in fear that their homes will be next. Those rendered homeless to make way for the construction boom receive negligible compensation for their losses, if any at all, and have no legal recourse.<sup>16</sup>

Equatorial Guinea is the third largest hydrocarbons producer in sub-Saharan Africa. However, it is also a country in which most people have no regular access to electricity, and prolonged blackouts are a common occurrence even in the capital city; the health care system ranks 174 out of 190 in the world in quality,<sup>17</sup> with only 51% of one-year-olds immunized against measles and 39% of one-year-olds immunized against polio;<sup>18</sup> average life expectancy is less than 43 years;<sup>19</sup> 57% of the population

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[http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx\\_inw\\_1212mostexpensivehomesales.html](http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx_inw_1212mostexpensivehomesales.html).

<sup>13</sup> United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), Equatorial Guinea Country Profile (as of September 2006), available at <http://www.unohrlls.org/en/orphan/82/>.

<sup>14</sup> Oil revenues accounted for 81% of Government revenues in 2005; hydrocarbons represented 97% of total exports. United States Department of State, Bureau of African Affairs, “Equatorial Guinea: Background Note” (June 2007), available at <http://www.state.gov/r/pa/ei/bgn/7221.htm>. See also official website of the Ministry of Mines, Industry and Energy of the Republic of Equatorial Guinea (“Petroleum production now dominates the Equatorial Guinea economy.”), available at <http://www.equatorialoil.com/>.

<sup>15</sup> “Wealthy individuals were able to buy the licenses needed to operate and had the influence to squeeze out competitor....According to regional representatives of the International Labor Organization, the government continued to influence employment in all sectors. Requirements to utilize employment and security agencies controlled largely by the president’s relatives continued.” United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2006* (March 6, 2007), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78732.htm>.

<sup>16</sup> See, e.g., Amnesty International, “Guinea Ecuatorial: Los Desalojos Forzosos Violan los Derechos Humanos” (June/July 2007) (approximately 1,000 families forcefully evicted since 2003), available at <http://web.amnesty.org/library/print/ESLAFR240092007>.

<sup>17</sup> Based on World Health Organization survey for year 1997. World Health Organization, *World Health Report 2000. Health Systems: Improving Performance*, Annex Table 10, “Health system performance in all Member States, WHO indexes, estimate for 1997,” p. 203, available at [http://www.who.int/whr/2000/en/whr00\\_en.pdf](http://www.who.int/whr/2000/en/whr00_en.pdf).

<sup>18</sup> United Nations Children’s Fund, *The State of the World’s Children 2007*, Statistical Table 3, “Health,” p. 110 (figures for 2005), available at <http://www.unicef.org/sowc07/docs/sowc07.pdf>. Of those states with reported data, only seven ranked worse with respect to measles immunization, and only four with respect to polio.

lives without access to clean drinking water, and 47% without access to safe plumbing;<sup>20</sup> more than 51% of primary school teachers lack adequate professional training;<sup>21</sup> and the routine tools of governance include ignorance, censorship, fear, indefinite detention, kidnapping, torture, and extrajudicial execution.<sup>22</sup>

This willful abdication by the Government of responsibility to provide for the basic needs of the people, as reflected in Articles 22, 16, 17(1), and 14, is a direct consequence of the Government's complicity in the illicit self-enrichment of the Nguema/Mongomo group and the corruption system which is the central basis of this communication.

#### **D. Statement of the Case: The Corruption System in Equatorial Guinea**

The original foundation for the corruption system most immediately involved use of the coercive machinery of the state, in the early 1980s, to implement the wholesale expropriation – without compensation – and distribution to members of the Nguema/Mongomo group of what was at the time the country's most valuable asset, rich agricultural farmland on Bioko Island (formerly, Fernando Po), owned mostly by Spaniards but also in some cases by Equatoguineans. Though Equatorial Guinea was not a party to the Charter at the time these initial expropriations took place, the seizures constituted violations of Article 17, 6, and 7 of the Universal Declaration of Human Rights<sup>23</sup> as well as of applicable Equatoguinean law.<sup>24</sup> These original

<sup>19</sup> United Nations Development Program, Human Development Report 2006, Table 1, p. 285, available at <http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf>.

<sup>20</sup> United Nations Development Program, Human Development Report 2006, Table 7, p. 307, available at <http://hdr.undp.org/hdr2006/pdfs/report/HDR06-complete.pdf>.

<sup>21</sup> *Système des Nations Unies, Cadre d'assistance des Nations Unies pour le développement (UNDAF) en Guinée Equatoriale pour la période 2008-2012*, p. 8 (February 12, 2007), available at [http://www.undg.org/docs/7228/undaf%20version%20finale%20\(FR\)%2020-02-2007.doc](http://www.undg.org/docs/7228/undaf%20version%20finale%20(FR)%2020-02-2007.doc)

<sup>22</sup> See, e.g., most recently, United Nations Press Release, "Visita del Grupo de Trabajo sobre la Detención Arbitraria a Guinea Ecuatorial" (July 13, 2007) (reporting findings of a July 2007 mission by the United Nations Human Rights Council Working Group on Arbitrary Detentions that found cause for "deep concern" regarding detentions of political prisoners, kidnapping from foreign countries, secret detentions, indefinite detentions without charge or trial, summary trials of civilians, without appeal, before military tribunals, extended hand- and foot-shackling and other physical mistreatment, etc.), available at <http://www.unhchr.ch/huricane/hurricane.nsf/view01/4DB693A1A20AD0D2C125731A002D6AF9?opendocument>. See also, e.g., United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2002 – Equatorial Guinea* (March 31, 2003) (reports of "between three and five deaths...from torture by prison authorities" and other cases of "torture, beatings, or abuse that, "combined with a lack of medical care, resulted in some prison deaths"), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18181.htm>.

<sup>23</sup> Article 17 of the Universal Declaration of Human Rights (1948) guarantees to each person the "right to own property" and the right not to be "arbitrarily deprived of his property." Article 6 guarantees the "right to recognition everywhere as a person before the law," and Article 7 guarantees the right to "equal protection of the law," including protection against "any discrimination" in violation of the Declaration. Available at <http://www.unhchr.ch/udhr/lang/eng.htm>.

<sup>24</sup> Article 75 of the then applicable 1982 Constitution of the Republic of Equatorial Guinea provided that "Property is inviolable. No one can be deprived of his assets and rights except for a reason justified by a public utility or a declared social interest in conformity with law and subject to appropriate indemnification." Quoted in Juan María Calvo, *Guinea Ecuatorial: La ocasión perdida*, chapter 40, "La

expropriations set the pattern by which the Nguema/Mongomo group would continue for decades to abuse the apparatus of the state to divert individual and collective property into their own private hands.

The authors take no position on how or by whom the losses of the Spanish *finqueros* should have been indemnified. What matters for purposes of this case is that once the Government of Equatorial Guinea came into possession of the plantation properties, it should have recognized and acted in accordance with the principle that it held those properties in trust for the true owners, the nation's people, to be "dispose[d] of...in the [people's] exclusive interest."

Moreover, subsequent to April 7, 1986, when Equatorial Guinea ratified the Charter, numerous other valuable land properties – mostly owned by Equatoguineans – including lucrative agricultural land, timber land and, later, urban residential neighborhoods, have fallen victim to similar large-scale expropriations, without independent judicial oversight or meaningful compensation to owners, in violation of individual and collective property rights under Articles 14 and 21 of the Charter.

When large deposits of exploitable petroleum and gas were discovered in Equatoguinean waters in the early 1990s, the Nguema/Mongomo group used its previous acquisitions and political dominance to ensure itself control over the vast hydrocarbon resources that have now made Equatorial Guinea the envy of its neighbors. Members of the Nguema/Mongomo group have been able to lock up for themselves the benefit of these new opportunities, building upon a legal system entirely subordinate to the uncontrolled will of the Executive. Far from fulfilling its traditional functions as "the bastion of protection of the individual's rights against the abuses of State power,"<sup>25</sup> the Equatoguinean judiciary has been regularly used to justify and directly enforce land expropriations and other injuries necessary for the illicit privatization by the Nguema/Mongomo group of the natural resources of the country.

This diversion of the peoples' wealth in Equatorial Guinea is accomplished through several means, including but not limited to:

- (a) Large-scale expropriations of properties and businesses from individual and communal proprietors, continuing over more than two decades, generally executed under one or another legal pretext, such as purported "national security" needs, fictitious determinations of property "abandonment," alleged or actual failure to pay discriminatory "taxes," technical disqualifications of legal title claims, or payment of token compensation;

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Constitución" (1989), unpublished work by former Malabo correspondent for Spanish news agency EFE (APDHE translation), available at <http://www.asodegue.org/hdojmc.htm>.

<sup>25</sup> *Civil Liberties Organizations v. Nigeria*, ACHPR 129/94, Annual Activity Report (1995), Paragraph 16.



- (b) Sham “co-investment” transactions by which leading members of the Nguema/Mongomo group use their influence to obtain direct equity holdings in the enterprises of foreign companies for little or no consideration;
- (c) Rigged Government procurement, construction, and licensing contracts “negotiated” by officials irremediably tainted by conflicts of interest;
- (d) Secret off-the-books “contributions” by foreign companies of educational scholarships and other payments to or for the benefit of leading members of the Nguema/Mongomo group;
- (e) Use of political and economic power to ensure for the Nguema/Mongomo group’s own private enterprises sole authorization for provision of all important local goods and services – particularly land and labor – required for the hydrocarbon extraction activities; and
- (f) Direct diversion of millions of dollars from Government revenue accounts into the private accounts of senior officials, often through use of offshore shell corporations.

As a result of these and other corrupt arrangements, Equatorial Guinea routinely ranks near the bottom of Transparency International’s “Corruption Perception Index,” placing at number 168 (out of 179) in 2007.<sup>26</sup>

This corruption system in Equatorial Guinea has functioned and grown as a seamless web of political and economic power, each of which is used to bolster the other. Political power puts the force of the state at the service of the Nguema/Mongomo group’s private enrichment and furnishes the formalities of legal process often used to create the appearance of lawfulness for this misappropriation of wealth. Ever increasing economic power, in turn, finances the machinery of political control that eliminates effective opposition through repression and/or bribery.

The design and effect of this corruption system is to ensure the Nguema/Mongomo group a *de facto* monopoly on virtually all of the peoples’ natural resources and the economic opportunities resulting from their exploitation, thus depriving the peoples of Equatorial Guinea of the full and “exclusive” enjoyment of the country’s patrimony, to which they are entitled under Article 21.

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<sup>26</sup> Available at [http://www.transparency.org/news\\_room/in\\_focus/2007/cpi2007/cpi\\_2007\\_table](http://www.transparency.org/news_room/in_focus/2007/cpi2007/cpi_2007_table). See also World Bank, *Governance Matters 2007*, Worldwide Governance Indicators website, Equatorial Guinea, Control of Corruption (2006) (showing Equatorial Guinea at low end of the “0<sup>th</sup> - 10<sup>th</sup> Percentile”), available at [http://info.worldbank.org/governance/wgi2007/mc\\_chart.asp](http://info.worldbank.org/governance/wgi2007/mc_chart.asp).

### **E. Unavailability of Local Remedies for the Wrongs Complained of**

The authors will at the appropriate time show that this corruption system is sustained by a governmental policy that violates judicial independence and precludes any form of judicial or other accountability for the violations complained of. In particular:

- (a) Equatoguinean law provides no remedy for actions committed by the Executive, as evidenced, for example, by the text of expropriation decrees that contain no provision for administrative, let alone judicial, challenge to property seizures or decisions regarding eligibility for compensation, or amounts.<sup>27</sup> Individuals who have sought judicial remedies for specific property or business expropriations or evictions have found no law to be applicable.
- (b) Those victimized more broadly through unavailability of gainful employment, housing, health care, or education do not have legal standing as plaintiffs in any judicial forum in Equatorial Guinea.
- (c) And even were judicial remedies technically provided for, informed observers are consistent in voicing “concern at the absence of an independent judiciary...and at the conditions for the appointment and dismissal of judges, which are not such as to guarantee the proper separation of the executive and the judiciary.”<sup>28</sup> United Nations human rights bodies and rapporteurs have highlighted this unbroken history of judicial subordination to the Executive in Equatorial Guinea for decades, as have the European Parliament, the United States Department of State, and respected nongovernmental organizations such as the International Bar Association, Amnesty International, and Freedom House.

### **F. Violations**

In consideration of the above, the APDHE respectfully requests the Commission to find that the respondent Government has:

- (a) permitted the unlawful diversion of the country’s natural resources, in violation of Article 21 of the Charter;
- (b) facilitated this spoliation through abuse of the judicial system, in violation of Articles 26 and 7(1); and,

<sup>27</sup> See, e.g., Presidential Decree No. 176/2005, of October 4, 2005, “to authorize the forced expropriation of the buildings situated around the Peoples’ Palace in Malabo,” BBC Africa Monitoring Service (BBC English translation, published December 22, 2005, of original Spanish language broadcast of December 16, 2005, 0600 GMT, Radio Nacional de Guinea Ecuatorial, Malabo), available on LEXIS.

<sup>28</sup> United Nations Human Rights Committee, 81<sup>st</sup> Session, “Concluding Observations on the Situation of Civil and Political Rights: Equatorial Guinea,” CCPR/CO/79/GNW (July 30, 2004), Paragraph 7, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/ff303399c6edc0c0c1256efc00565697?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/ff303399c6edc0c0c1256efc00565697?Opendocument).

- (c) as a consequence, failed to ensure fundamental legal, economic and social rights of the peoples of Equatorial Guinea, in violation of Articles 22, 16, 17(1), and 14.

### **G. Remedies Requested**

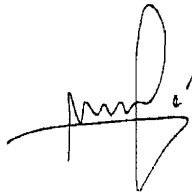
The APDHE requests that the Commission recognize the systematic spoliation of the peoples' wealth that has over decades been perpetrated by the Nguema/Mongomo group, and that the Commission issue recommendations to the Government of the Republic of Equatorial Guinea that will oblige it to:

- (i) engage with representatives of all sectors of civil society to ensure genuine oversight by the people of revenues, investments, and expenditures comprising or deriving from the peoples' resources, including rapid and full implementation of all steps necessary for compliance with its obligations under the Extractive Industries Transparency Initiative;
- (ii) establish and enforce a compulsory system of regular and meaningful financial disclosure under direct monitoring of the Commission and applicable to all government departments without exception, in order to help "prevent potential conflicts of interest, help to detect illicit enrichment of public officials, and...help to deter corrupt practices";<sup>29</sup>
- (iii) ensure full and fair rights of appeal regarding land condemnation decisions, and prompt and adequate compensation, including provision for comparable alternative housing;
- (iv) ensure that the dire needs of Equatoguineans in the spheres of health, education, and housing are adequately addressed, including by provision of adequate resources for such needs in the Government's budgets; and
- (v) take such other remedial measures as may come to appear appropriate during the course of the proceedings relating to this case.

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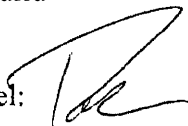
<sup>29</sup> Organization for Economic Co-operation and Development, "OECD Guidelines for Managing Conflict of Interest in the Public Service," Section 2.2.3(b), in *Managing Conflict of Interest in the Public Sector: A Toolkit* (2005), p. 109. The Guidelines, arising out of an OECD review of the experience of 30 countries in handling conflict of interest issues, are intended to help governments adopt policies and deploy "effective procedures...for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations." *Ibid.* pp. 94-96.

In view of the above, the *Asociación pro Derechos Humanos de España* hereby requests the Commission to be seized of this case.



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**Asociación Pro Derechos Humanos de España**

March 19, 2008

The Secretary  
African Commission on Human and Peoples Rights  
Kairaba Avenue  
P.O. Box 673  
Banjul  
The Gambia

**COMMUNICATION 347/07 -  
ASOCIACIÓN PRO DERECHOS HUMANOS  
DE ESPAÑA (APDHE)/EQUATORIAL GUINEA**

**Submission on Admissibility of the Communication  
Under Article 56 of the African Charter on Human  
and Peoples' Rights**

**Introduction**

On October 12, 2007, the *Asociación pro Derechos Humanos de España* (APDHE) filed a first submission in this case, introducing a Communication under the Article 55 Communications Procedure of the African Charter on Human and Peoples' Rights (the "Charter").

This Communication alleges violations of the right under Article 21 of the Charter of the peoples of Equatorial Guinea to "freely dispose of their wealth and natural resources." Specifically, as will be detailed in a subsequent submission, the Communication alleges that the Government of Equatorial Guinea violates the Charter in permitting the family of the President, H.E. Teodoro Obiang Nguema Mbasogo, and a small number of allied families, mostly from the President's Esangui clan or the

Mongomo region (the “Nguema/Mongomo group”<sup>1</sup>), to divert to their own private benefit the preponderance of the value of and revenue from the Equatoguinean peoples’ natural resources, in particular, the value of the peoples’ land and hydrocarbon<sup>2</sup> resources. This misappropriation of the peoples’ resources has continued for well over two decades and represents precisely the kind of massive “spoliation” that is prohibited by Article 21. These violations entitle the people of Equatorial Guinea to “lawful recovery of its property as well as to an adequate compensation.” Moreover, this spoliation also entails additional grave violations of the “interest of the people.”

In order to accomplish these violations, the Nguema/Mongomo group has established and maintains a tightly-knit system of corruption that has subordinated to itself the machinery of the state, leaving virtually no room for participation by those outside the ruling group in either the primary economy or the political system. The Government of Equatorial Guinea has materially assisted and colluded with this corruption system by, among other things, putting the Equatoguinean judicial system at the disposal of the ruling group, to implement and ratify the massive diversion of the peoples’ wealth, thus violating the Government’s “duty to guarantee the independence of the Courts,” under Article 26 of the Charter, and the closely related duty to ensure the right of “[e]very individual [...] to have his cause heard,” under Article 7(1).

The fruits of this corruption system are, in turn, the consequent violations of the right to development, right to health, right to education, and right to lawfully acquired private property, under Articles 22, 16, 17(1), and 14.

By letter of December 19, 2007, the Secretary to the African Commission on Human and Peoples’ Rights (the “Commission”) advised the authors that during its 42<sup>nd</sup> Ordinary Session, held in Brazzaville, Republic of Congo, the Commission decided to be seized of the Communication. In the December letter, the Secretary also requested the authors to file, by March 19, 2008, a second submission addressing the admissibility of the Communication, for consideration by the Commission at its 43<sup>rd</sup> Ordinary Session, to

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<sup>1</sup> In employing this term, the authors of this Communication have no intention to suggest that the group includes only people from Mongomo, or that all or most people from Mongomo are part of the group. The Nguema/Mongomo group comprises a small minority of a small minority of the Equatoguinean population. It has, however, long been widely acknowledged that the Esangui clan and the Mongomo region have been very disproportionately represented in the political elite since independence in 1968. See, e.g., “Equatorial Guinea: Country Outlook,” ViewsWire, Economist Intelligence Unit (January 4, 2007) (“Mr. Obiang has kept a tight grip on power since 1979...principally through a network of relatives and members of his Esangui clan from Mongomo, in the east, who occupy all the top security posts in government.”), available at [http://www.eiu.com/index.asp?layout=VWArticleVW3&article\\_id=1651791950&region\\_id=&country\\_id=230000023&refm=vwCtry&page\\_title=Latest+analysis](http://www.eiu.com/index.asp?layout=VWArticleVW3&article_id=1651791950&region_id=&country_id=230000023&refm=vwCtry&page_title=Latest+analysis). See also United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2006–Equatorial Guinea* (March 6, 2007), Section 5 (“near monopolization of political and economic power by the Fang ethnic group, particularly its Mongomo subclan”), available at <http://www.state.gov/g/drl/rls/hrrpt/2006/78732.htm>.

<sup>2</sup> As used in this communication, the term “hydrocarbons” refers generally to all oil and gas substances composed of hydrogen and oxygen that are produced commercially in Equatorial Guinea, including petroleum, liquefied petroleum gas, liquefied natural gas, and methanol.

be held in Swaziland from May 15-19, 2008. The present submission is made pursuant to that request.

### **Admissibility under Article 56**

Article 56 of the Charter provides that communications submitted to the Commission “shall be considered” if they comply with seven conditions. All of these conditions are met. The conditions in subsections 1, 2, 3, 4, 6, and 7 of Article 56 are clearly satisfied, as are the conditions for applying the exception to the exhaustion of remedies rule in subsection 5. The bulk of the discussion in this submission will address the applicability of subsection 5 of Article 56, which requires a showing that the authors have “exhaust[ed] local remedies, unless it is obvious that this procedure is unduly prolonged.”

#### **The Conditions for Admissibility under Subsections 1, 2, 3, 4, 6, and 7 of Article 56**

*Identity of authors (subsection 56(1)).* Founded in 1976, the APDHE is a nongovernmental organization that advocates for human rights and the rule of law around the globe. Among its objectives, APDHE advocates for human rights in Equatorial Guinea through its Equatorial Guinea Working Group. It is registered in Spain and counts among its members many nationals of Equatorial Guinea resident in Spain, and views the Equatoguinean diaspora as an important constituency for its work. Estimates for the number of Equatoguineans living in Spain range from 40,000 to 100,000.<sup>3</sup>

*Compatibility with the Charter (subsection 56(2)).* The core of the Communication is a claim under Article 21 of the Charter, and the Communication further alleges violations of Articles 26, 7(1), 22, 16, 17(1), and 14, perpetrated by the Government of Equatorial Guinea, which ratified the Charter on April 7, 1986.<sup>4</sup> All the violations alleged in this Communication occurred after this date. To the extent that any of the violations herein alleged began before this date, the authors allege that those violations have continued since then and have persisted to the present day.

*Lack of disparaging or insulting language (subsection 56(3)).* The authors have confidence in the strength of their legal arguments and the evidence submitted in support thereof, which are presented in decorous language respectful of the dignity of the Commission.

*Not based exclusively on news disseminated through the mass media (subsection 56(4)).* The authors have been mindful of the need to submit the most direct and probative evidence available in support of their allegations. As will be demonstrated in

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<sup>3</sup> United Nations High Commission on Refugees, Emergency & Security Service, *Equatorial Guinea: The Position of Refugees and Exiles in 2001*, Writenet Paper No. 18/2001 (December 2001), page 9, available at <http://www.unhcr.org/home/RSDCOI/3dca82d32.pdf>.

<sup>4</sup> See the Commission’s website at <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Charter%20on%20Human%20and%20Peoples%20Rights.pdf>.

this and other submissions in this proceeding, Equatorial Guinea is almost universally recognized in published sources as a country in which fear is pervasive and physical torture and other forms of abuse are regularly used by the Government to suppress dissent and political opposition. Until 2005, there were no human rights associations legally registered in the country, and even now there are few if any nongovernmental organizations concerned directly with civil and political rights.<sup>5</sup> It is, accordingly, risky in many cases for individuals who continue to reside in Equatorial Guinea – or who have relatives and friends there – to provide testimony or evidence in their own name in a proceeding such as this one. Despite these dangers, some individuals have been courageous enough to come forward and speak openly, and, wherever possible, the authors will attempt to give such individuals voice in this proceeding. The allegations of this Communication are also corroborated by evidence produced by national governments, including the Government of Equatorial Guinea; intergovernmental organizations, such as the United Nations, the Council of Europe and the Organization for Economic Cooperation and Development; international financial institutions such as the World Bank and the International Monetary Fund; respected nongovernmental organizations; and numerous other sources. Where journalistic reporting has been particularly illuminating, the authors have incorporated such materials as well.<sup>6</sup>

Submission within a reasonable period from the date the Commission is seized of the matter (subsection 56(6)). The present submission is filed within the time period requested by the Commission.

Not a case dealt with in accordance with the principles of the United Nations or African Charters (subsection 56(7)). No other United Nations or African Union body has addressed the factual situations set forth in this Communication.

#### The Requirement for Exhaustion of Local Remedies under Subsection 56(5).

Subsection 56(5) of the Charter provides as a condition for admissibility that communications must be “sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.”

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<sup>5</sup> “The law establishes what types of NGOs can register, and human rights associations were added to the list in 2005; since then, human rights NGOs have been registered to address issues of the aged and disabled, HIV/AIDS, conservation, and environment.” United States Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices 2007— Equatorial Guinea* (March 11, 2008), Introduction and Section 1(b), available at <http://www.state.gov/g/drl/rls/hrrpt/2007/100479.htm>.

<sup>6</sup> “It is common knowledge that information is always gotten from the media. The genocide in Rwanda, the human rights abuses in Burundi, Zaire, Congo to name but a few, were revealed by the media....The issue therefore should not be whether the information was gotten from the media, but whether the information was correct. Did the complainant try to verify the truth about these allegations? Did he have the means, or was it possible for him to do so, given the circumstances of his case?” *Dawda Jawara v. The Gambia*, ACHPR Nos. 147/95 and 149/96 (2000), Paragraphs 25-26.



This exhaustion requirement is “a well-established rule of customary law,”<sup>7</sup> and important policy concerns underlie it. As the Commission has explained:

One purpose of the exhaustion [rule] is to give the domestic courts an opportunity to decide upon cases before they are brought to an international forum, thus avoiding contradictory judgments of law at the national and international levels....

Another rationale for the exhaustion requirement is that a government should have notice of a human rights violation in order to have the opportunity to remedy such violation, before being called to account by an international tribunal....The exhaustion of domestic remedies requirement should be properly understood as ensuring that the State concerned has ample opportunity to remedy the situation of which applicants complain....

Requiring the exhaustion of local remedies also ensures that the African Commission does not become a tribunal of first instance for cases for which an effective domestic remedy exists.<sup>8</sup>

Notwithstanding these principles, the Commission has repeatedly recognized that in some situations, an attempt to pursue domestic remedies for violations of rights protected under the Charter would be futile, unduly prolonged, and/or, indeed, quite often dangerous for the claimant or those close to him or her.

Accordingly, the Commission has often excused claimants from having to satisfy the exhaustion requirement in “cases in which it is neither practicable nor desirable for the complainants or the victims to pursue such internal channels.”<sup>9</sup> The Commission has declined to require proof of exhaustion where, for example, the “seriousness of the human rights situation in [a country] and the great numbers of people involved render such remedies unavailable in fact, or, in the words of the Charter, their procedure would probably be ‘unduly prolonged.’”<sup>10</sup>

The Commission has carefully drawn out the full implications of this equation between a purported local remedy that is “unavailable in practical terms,”<sup>11</sup> and the Charter characterization of such a remedy as “unduly prolonged.” Accordingly, the Commission has formulated “[t]hree major criteria” for determining whether to enforce

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<sup>7</sup> *Interhandel Case (Switzerland v. United States)*, Preliminary Objections, 1959 ICJ Rep. 6, 27 (March 21, 1959).

<sup>8</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, ACHPR No. 155/96 (2001), Paragraphs 37-39 (internal citations omitted).

<sup>9</sup> *Malawi African Association and Others v. Mauritania*, ACHPR, Nos. 54/91, 61/91, 98/93, 164/97, 196/97 and 210/98 (2000), Paragraph 85 (internal quotations marks omitted).

<sup>10</sup> *Amnesty International and Others v. Sudan*, ACHPR Nos. 48/90, 50/91, 52/91 and 89/93 (1999), Paragraph 39. See also *Organization Mondiale contre la Torture v. Rwanda*, ACHPR Nos. 27/89, 46/91, 49/91 and 99/93 (1996), Paragraph 18 (“serious and massive violations of human rights...vast and varied scope of the violations alleged...large number of individuals involved”).

<sup>11</sup> *Malawi African Association and Others v. Mauritania*, Paragraph 85.

the exhaustion rule, “namely: the remedy must be *available, effective and sufficient*.”<sup>12</sup> The Commission has explained:

A remedy is considered available if the petitioner can pursue it without impediment, it is deemed effective if it offers a prospect of success, and it is found sufficient if it is capable of redressing the complaint.<sup>13</sup>

It has been observed that in practice, these concepts have tended to overlap.<sup>14</sup> Nonetheless, no matter how considered, the evidence of decades of rule by the Nguema/Mongomo group shows that recourse to the Equatoguinean judicial system to right the wrongs of the corruption system is wholly impracticable; and that no desirable end could be furthered by conditioning Commission review of this Communication on such a futile exercise.

As will be shown below, virtually every observer of the judicial system in Equatorial Guinea has found it to be so lacking in independence and authority that, as a practical matter, even where the law may appear on its face to provide a remedy for a serious wrong, such relief remains a dead letter in any case involving interests perceived to be important to senior officials or their close associates. Far from fulfilling its traditional function as the “bastion of protection of the individual’s rights against the abuses of State power,”<sup>15</sup> the Equatoguinean legal system has been regularly used to justify and directly enforce the abuses of the corruption system.<sup>16</sup>

### Unavailability of Domestic Remedies

As noted above, in considering whether to require exhaustion of local remedies, the Commission has found a domestic remedy to be *available* “if the petitioner can pursue it without impediment.”<sup>17</sup> Commission cases have found such impediments in a number of circumstances that are also characteristic of Equatorial Guinea. The most obvious circumstance establishing the unavailability of domestic remedies is where, as in Equatorial Guinea, domestic law fails, as a threshold matter, in fact, or in definitive official interpretation, to provide for the right in question. The Commission has also found no local remedy to be available where significant practical barriers prevent claimants from accessing the courts: situations of serious and massive violations of Charter rights; a generalized fear of seeking recourse to the courts; and/or the *de facto* lack of access to legal counsel. We address each of these in turn below.

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<sup>12</sup> *Dawda Jawara v. The Gambia*, Paragraph 31 (emphasis added).

<sup>13</sup> *Dawda Jawara v. The Gambia*, Paragraph 32.

<sup>14</sup> See generally Nsongurua J. Udombana, “So Far, So Fair: The Local Remedies Rule in the Jurisprudence of the African Commission on Human and Peoples’ Rights,” 97 A.J.I.L. 1, 21-34 (2003).

<sup>15</sup> *Civil Liberties Organization v. Nigeria*, ACHPR No. 129/94 (1995), Paragraph 16.

<sup>16</sup> While the authors of this Communication are in the position of pursuing a claim against the Government of Equatorial Guinea, the very same defects in the judicial system are equally – or even more gravely – manifested in criminal cases in which an accused seeks to defend himself against the allegations of the Government. In either posture, especially in any case raising issues of political or economic sensitivity, the Nguema/Mongomo group effectively employs the judicial system as but another organ of executive power.

<sup>17</sup> *Dawda Jawara v. The Gambia*, Paragraph 32.

### Failure of Domestic Law to Provide for the Peoples' Right to Freely Dispose of Their Wealth and Natural Resources

“Where a right is not well provided for in domestic law such that no case is likely to be heard....there cannot be...any remedies at all.”<sup>18</sup> Equatoguinean law lacks any meaningful prohibition on the abuse of public office to divert the peoples' wealth into private hands. Though smaller scale theft or robbery is often prosecuted forcefully in Equatorial Guinea,<sup>19</sup> the grander misappropriation of national wealth at stake in this case is generally clothed in the form of legal process, often through acts of Government expropriation for purportedly public use and/or contractual business arrangements. Virtually all important business opportunities – including access to decent employment – are controlled directly or indirectly by members of the Nguema/Mongomo group and close associates, whose *de facto* and often official monopoly or oligopoly power is ensured by the Government. High-level self-dealing is not just common but the norm in the Equatoguinean economy.

As was exhaustively detailed in a U.S. Senate Subcommittee investigation in 2004, the Nguema/Mongomo group has been able to ensure itself access to profitable co-investment opportunities with the international hydrocarbon companies, often with little or no capital invested or at risk.<sup>20</sup> Several such deals examined by the Senate investigating committee revealed little indication of rational business purpose for the international enterprises to include members of the Nguema/Mongomo group in the investment projects other than to comply with express or implied Governmental pressure.

Senate investigators uncovered, for example, a transaction involving the sale by Mobil Oil Corporation of a 15% stake in a joint oil-trading business, Mobil Oil Guinea Ecuatorial (MOGE), to President Obiang's holding company, Socio Abayak, S.A., in 1998 and 1999, for an aggregate of US\$ 2,300. Dividends declared by MOGE in 2001, 2002 and 2003 resulted in payments to Abayak of approximately \$10,500 in each of those years. By 2004, Abayak's MOGE investment was worth \$645,000. ExxonMobil was unable to explain to the Senate investigating committee why Abayak had been brought into the investment, or whether Abayak or Mobil had proposed it. A related December 23, 1997 Mobil internal memorandum suggests that legal or political, rather than business, considerations motivated inclusion of the President's company. Under the heading “LEGAL REQUIREMENTS AND ADVANTAGES, Capital Structure,” the

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<sup>18</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Paragraph 37.

<sup>19</sup> See U.S. Department of State, Overseas Security Advisory Council, “Equatorial Guinea 2007 Crime & Safety Report” (February 9, 2007) (“criminals, if identified, are dealt with swiftly and sometimes harshly”), available at <https://www.osac.gov/Reports/report.cfm?contentID=61634>.

<sup>20</sup> See generally United States Senate, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, Minority Staff Report, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act – Case Study Involving Riggs Bank* (July 15, 2004) (hereafter, “U.S. Senate Riggs Bank Report”), available at [http://www.senate.gov/~govt-aff/\\_files/ACF5F8.pdf](http://www.senate.gov/~govt-aff/_files/ACF5F8.pdf).

memo says that “Mobil has to be in partnership with local Guineans. Abayak, a local company will be our partner, with 15% share.”<sup>21</sup>

The Equatoguinean Government has argued that there is nothing improper about such deals. In its detailed response to the U.S. Senate report, the Government publicly stated:

Foreign legislation, such as that of the United States [North America] does not control in Equatorial Guinea, for which reason neither does it prohibit the President of the Republic, Ministers, Functionaries, Citizens and foreigners residing in the Country from undertaking entrepreneurial initiatives....

[N]ot only did the President of the Republic and his family [already] have their assets before the oil economy, but so did other Equatoguineans...who dedicated themselves to entrepreneurial activities through investments in property, purchase of lands and creation of small and medium size businesses, whose holdings have gained in value and profitability with the presence of North American companies that by virtue of contracts of purchase and rental of properties of [Equatoguinean] nationals are paying significant amounts with which they have opened personal bank accounts in Equatorial Guinea and abroad, including the United States.<sup>22</sup>

The position of the Government of Equatorial Guinea is, in effect, that express or implied use of government influence to direct to the Nguema/Mongomo group no-risk investment participations in foreign business investments, such as the Mobil Oil deal described above, constitutes a development strategy for the country.

These traditional properties are used for commercial transactions, and with them [Equatoguinean] nationals obtain significant sums of money to undertake business initiatives and to improve their own and their families' standard of living. In this way, many Equatoguineans, by availing

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<sup>21</sup> Responses to Supplemental Questions for the Record Submitted to Exxon-Mobil, including Attachments (no date, presumably 2004), Exhibit 54, in *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the PATRIOT Act, Hearing Before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, United States Senate, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (July 15, 2004)*, pages 834-40 (the memorandum is at page 840). Mobil merged with Exxon Corporation in 1999 to form ExxonMobil Corporation. The authors do not contest the right of a government to require local participation in foreign investments, as a means of providing opportunity for the country's nationals. The concern here is, rather, the abuse of such rules to steer unearned income to a small circle within the government elite, at the expense of development opportunities for the people overall.

<sup>22</sup> Government of the Republic of Equatorial Guinea, “Reacción del Pueblo y Gobierno de Guinea Ecuatorial al Informe del Subcomité Permanente de Investigaciones del Senado de los Estados Unidos de América sobre Riggs Bank” (September 2004) (hereafter, “Reacción del Pueblo y Gobierno”), “Preliminary Considerations” and Paragraph 14, available at <http://www.ceiba-guinea-ecuatorial.org/guineees/template2.htm> (APDHE translation).

themselves of laws applicable in the Country and as a strategy for direct participation in the investments of foreign capital, are shareholders in many businesses involved in petroleum extraction, services, construction, fishing, timber, aviation, etc.; profits from which have served to create internal savings and to reinvest in financial assets within and outside the country in accordance with the financial regulations applicable in Equatorial Guinea and the Central African Monetary Union.<sup>23</sup>

As a practical matter, however, lack of family or government connections has put such participations out of reach for all but a few Equatoguineans. In the Mobil Oil deal, Abayak was not just *any* “local company.”

In most states, the law prohibits transactions between government officials and private entities over whom the officials have, or may appear to have, power through the authorities of their offices, or at least provides strict conditions for such arrangements, including transparency, full disclosure of any such potential conflicts of interest, and the affected official’s recusal from direct decision-making related to such transactions. Equatorial Guinea had no law even addressing conflicts of interest until 2004, and, even now, that law is narrowly drafted, weak on its terms, and virtually never enforced.

As officially construed by the Equatoguinean Government, the Law on Ethics and Dignity in the Exercise of Public Function only addresses some conflicts of interest in transactions in which an official is personally directly involved, and only covers dealings with government agencies over which the official has “direct functional competence.”<sup>24</sup> Article 12(a) generally bars the official from providing “services” to businesses dealing with government agencies within the official’s “direct functional competence,” but places no bar on the official’s *ownership* of equity interests in such businesses. Article 12(b) seems to bar direct or indirect ownership interests, but only in businesses that are “providers” or suppliers to government agencies in which the official “carries out [his or her] functions.” As explained by the Government, the Law “prohibits members of the Government and senior Functionaries from devoting themselves directly to commercial

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<sup>23</sup> “Reacción del Pueblo y Gobierno,” “Preliminary Considerations” (APDHE translation).

<sup>24</sup> Article 12 of the Law, Decree-Law Number 1/2004, February 5, 2004, on Ethics and Dignity in the Exercise of Public Function, provides:

Article 12- It is incompatible with the exercise of public function:

a)- to manage, administer, represent, sponsor, advise, or in any other manner, provide services to someone who administers or has a concession or is a provider [*proveedor*: supplier] to the State, or who conducts activities regulated by the State, provided always that the public office held has direct functional competence regarding the contracting, procuring, administration or control of such concessions, benefits or activities.

b)- to be a provider [*proveedor*: supplier] oneself or through third parties of all organisms of the State in which [the official] carries out [his or her] functions. (APDHE translation.)

activities, though they may, however, do this through other persons.”<sup>25</sup> This constricted understanding of the range of possible harmful conflicts leaves little room for control of the use of family members, close associates or “straw men” to avoid the letter of the law.

Such a permissive rule would do little to staunch high-level corruption even in a governance environment of effective transparency and serious commitment to enforcement.<sup>26</sup> In the notoriously secretive context of Equatorial Guinea, the Law on Ethics, it appears, has served as virtually an official justification for stealing from the public. At least that is how one senior government official has publicly construed it.

In an affidavit filed in a South African court in August 2006, the President’s oldest son, and Minister of Forestry, Teodorín Nguema Obiang Mangué, explained, under oath:

Cabinet Ministers and public servants in Equatorial Guinea are by law allowed to own companies that in consortium with a foreign company can bid for government contracts and should the company be successful, then what percentage of the total cost of the contract the company gets, will depend on the terms negotiated by the parties.

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<sup>25</sup> “Reacción del Pueblo y Gobierno,” Paragraph 64 (APDHE translation). See also the “Preliminary Considerations” section of the same document:

Decree Law Number 1/2004, of February 5 [2004], on Ethics and Dignity in the Exercise of Public Function (Art. 12), establishes the mechanisms and controls to ensure that no conflict emerges between public office and private activities. Within the framework of this Law, and respecting conflict of interests, the authorities may promote the creation of businesses directed by third parties. The Law on Ethics and Dignity in the Exercise of Public Function only prohibits the *personal and direct* management of business by Political and Administrative Authorities, Civil or Military.

In the Republic of Equatorial Guinea, family relatives of authorities and political leaders are not prohibited from engaging in business. (APDHE translation; emphasis added.)

<sup>26</sup> See United States Department of State, *Country Reports on Human Rights Practices 2007 – Equatorial Guinea*, Section 3. The Law (Articles 5-11) also provides that:

Officials...must declare their assets, but there were no reports that they ever complied. There was no requirement for an official to divest himself of business interests that were in areas that his agency oversaw. When that was ostensibly done, under international pressure, the divestment generally was only a facade; another family member or associate nominally took over, or a business group was formed that falsely appeared to have no connection to the official...The law did not provide for public access to government information, and citizens and non-citizens, including foreign media, were generally unable to access government information.

Responsibility for overseeing compliance with the Law on Ethics and Dignity in the Exercise of Public Function rests with the National Commission on Public Ethics, an “independent organ” acting with “functional autonomy” within the President’s office (“*Jefatura del Estado*”). All members of the Commission are appointed by the President. Articles 21-22.

But in any event, it means that a cabinet minister ends up with a sizeable part of the contract price in his bank account.<sup>27</sup>

Serious and Massive Nature of the Spoliation Committed by the Ngeuma/Mongomo Group

In *Amnesty International and Others v. Sudan*, the Commission found that “the seriousness of the human rights situation...and the great numbers of people involved render[ed domestic] remedies unavailable in fact.”<sup>28</sup> The Commission explained that in applying subsection 56(5), it has “drawn a distinction between cases in which the complaint deals with violations against victims identified or named and those cases of serious and massive violations in which it may be impossible for the complainants to identify all the victims.”<sup>29</sup> In the former case, the Commission considered that so long as there were judicial remedies available that met the fair trial standards of Article 7, the exhaustion rule should be applied. In “serious and massive” cases, by contrast, “read[ing] Article 56.5 in the light of its duty to protect human and peoples’ rights as provided for by the Charter,” the Commission noted that it does not hold the requirement of exhaustion of local remedies to apply “literally, especially in cases where it is impractical or undesirable for the complainants or victims to seize the domestic courts.”<sup>30</sup>

The present Communication focuses on different Charter rights than the mass arrests and tortures complained of in the Sudan case, but the spoliation perpetrated by the Nguema/Mongomo group in Equatorial Guinea is comparably massive and serious. Moreover, as discussed below, adjusting for the much smaller population, the Government of Equatorial Guinea has indeed employed such measures as mass arrests and torture on a comparably wide scale in defense of the corruption system.<sup>31</sup>

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<sup>27</sup> Affidavit of Teodoro Nguema Obiang, Minister of Forestry, filed in the Matter between Maseve Investments 7 (PTY) Ltd., Applicant, and The Government of the Republic of Equatorial Guinea, Teodoro Nguema Obiang, *et al.*, Respondents, High Court of South Africa (Cape Provincial Division), No. 1407/2006 (August 8, 2006), Paragraphs 11.2-11.2.2, available at <http://www.laweekly.com/images/stories/07/09/Obiangaffidavit.pdf>.

<sup>28</sup> *Amnesty International and Others v. Sudan*, Paragraph 39.

<sup>29</sup> *Amnesty International and Others v. Sudan*, Paragraph 30.

<sup>30</sup> *Amnesty International and Others v. Sudan*, Paragraph 38 (internal quotation marks omitted).

<sup>31</sup> See, e.g., United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices 2002 – Equatorial Guinea* (March 31, 2003), Section 1(e), available at <http://www.state.gov/g/drl/rls/hrrpt/2002/18181.htm>:

Beginning on May 22[, 2002], a special tribunal convicted 68 prisoners and their relatives and sentenced them from 6 to 20 years in prison for a purported coup d’état plot against President Obiang. Those sentenced included leaders of the three main opposition parties....There were numerous irregularities associated with the trial, including evidence of torture and a lack of substantive proof....The judge consistently overruled the defense attorney’s attempt to question the prisoners about torture. Prisoners who renounced confessions allegedly were tortured upon their return to prison.

See also Amnesty International, Public Statement, News Service No. 257, AI Index: AFR 24/017/2005, “Equatorial Guinea/Nigeria: Concerns about an Unfair Trial, Torture and Possible ‘Disappearance’”

Because the “right to dispose of their wealth and natural resources” specified in Article 21 intrinsically belongs to the people of Equatorial Guinea, systematic diversion of the benefits of that wealth to a small ruling group is inevitably massive in its impact. The victims of the corruption system comprise the overwhelming preponderance of the peoples of Equatorial Guinea, who eke out their subsistence on less than US\$ 1 a day<sup>32</sup> in the third largest hydrocarbon producer in Sub-Saharan Africa. Thousands of these people have been specifically victimized as legitimate individual and collective owners of land and other types of property that has been unlawfully seized by the Government for the benefit of members of the Nguema/Mongomo group, or as tenants and residential property owners who have been forcefully evicted from their homes without appeal and, generally, without reasonable compensation or alternative places to live,<sup>33</sup> as individuals, families and communities that have suffered, or seen loved ones suffer, death or serious illness because of the absence of sanitation,<sup>34</sup> potable water,<sup>35</sup> and/or adequate health

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(September 23, 2005), available at  
<http://www.amnestyusa.org/document.php?lang=e&id=ENGAFR240172005>:

Amnesty International is concerned about allegations of torture and unfair trial of about 70 people charged with offenses related to an alleged coup attempt in Equatorial Guinea on 8 October 2004....Allegations of torture made in the course of the trial were ignored and....no investigation into allegations has been conducted.

All but two of the defendants reportedly stated in court that they had been tortured in detention and some reportedly still bore visible marks. One man apparently had to be carried in and out of court as he was still unable to walk. One woman is reported to be suffering from vaginal bleeding resulting from torture....The trial did not conform to international standards of fair trials.

The 70 or so people involved in each of the trials described above come from a total population in Equatorial Guinea of about 550,000. A proportionately comparable number of Nigerians (population 135,000,000) would be more than 17,000.

<sup>32</sup> República de Guinea Ecuatorial y Sistema de las Naciones Unidas, *Balance Común de País (CCA), Versión Validada* (September 2006), page 7 (Executive Summary) (60% of population earns less than US\$ 1 per day), available at  
[http://209.85.165.104/search?q=cache:LEt2Ndd4Z1IJ:www.undg.org/docs/7647/CCA%2520ESPA%C3%91OL%2520Versi%C3%B3n%2520Final%2520Validada%2520Sept%25202006.doc+Balance+Com%C3%B3n+de+País+\(CCA\).+Versi%C3%B3n+Validada+Guinea+Ecuatorial&hl=en&ct=clnk&cd=1&gl=us](http://209.85.165.104/search?q=cache:LEt2Ndd4Z1IJ:www.undg.org/docs/7647/CCA%2520ESPA%C3%91OL%2520Versi%C3%B3n%2520Final%2520Validada%2520Sept%25202006.doc+Balance+Com%C3%B3n+de+País+(CCA).+Versi%C3%B3n+Validada+Guinea+Ecuatorial&hl=en&ct=clnk&cd=1&gl=us).  
 See also *Système des Nations Unies, Cadre d'assistance des Nations Unies pour le développement (UNDAF) en Guinée Equatoriale pour la période 2008-2012* (February 12, 2007), page 67 (67% of Equatoguineans live on less than \$1 a day in period 1994-2001), available at  
<http://www.undp.org/execbrd/word/UNDAF%20RMs/UNDAF%20EQG%20VERSION%20FINALE%20FR.doc>.

<sup>33</sup> See, e.g., Amnesty International, “Guinea Ecuatorial: Los Desalojos Forzosos Violan los Derechos Humanos,” AI Index: AFR 24/009/2007 (June/July 2007) (about 1,000 families forcefully evicted from Malabo and Bata since 2003), available at  
<http://www.amnesty.org/es/library/asset/AFR24/009/2007/es/8c050d6c-a2af-11dc-8d74-6f45f39984e5/afr240092007es.html>.

<sup>34</sup> Only 53% of Equatoguineans have access to adequate sanitation facilities. See official United Nations “Millennium Development goals indicators” website (hereafter, “MDG Indicators website”),  
<http://mdgs.un.org/unsd/mdg/Data.aspx>.

<sup>35</sup> Forty-three percent of Equatoguineans have access to safe drinking water. MDG Indicators website.



care;<sup>36</sup> and children who have been robbed of dignity and economic opportunity for lack of free minimally acceptable education.<sup>37</sup> Smaller but still important numbers of people have been blacklisted from employment and education,<sup>38</sup> imprisoned without legal grounds,<sup>39</sup> or subjected to torture or other inhuman treatment,<sup>40</sup> for their actual or perceived protest against the system. Simply from a logistical standpoint, it would be inconceivable for any significant portion of these victims to be able to have their day in court even if the courts were in position to provide justice.

The seriousness and breadth of impact of the Charter violations in this case also weigh heavily in favor of waiving the exhaustion requirement to the extent that the normal rule is justified by the “rationale...that a government should have notice of a human rights violation in order to have the opportunity to remedy such violation, before being called to account by an international tribunal.”<sup>41</sup> First, the claim addresses the conduct of some of the most senior officials within the Government, individuals who would, as a practical matter, be the ones with authority and power to redress the wrong of grand corruption. Moreover, as the Commission observed with regard to the Ogoni people in Nigeria, whose spoliation and other grievances were addressed by the Commission in 2001, it will hardly be “necessary here to recount the international attention that [the corruption system in Equatorial Guinea] has received to argue that the [Equatoguinean] government has had ample notice and, over the past several decades, more than sufficient opportunity to give domestic remedies.”<sup>42</sup> Equatorial Guinea

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<sup>36</sup> For example, the infant mortality rate for 2005 was 123 per 1,000 live births. This reflects a continued worsening trend from the years 2000 (120 per 1,000 births), 1995 (112 per 1,000 births), and 1990 (103). Similarly, the under-five mortality rate for 2005 was 205 per 1,000 live births, compared with 200 in year 2000, 187 in year 1995, and 170 in 1990. The percentage of one-year-old children immunized against measles has stagnated at 51% since 1999, down from 81% in 1995, and 88% in 1990. MDG Indicators website.

<sup>37</sup> Though the primary school completion rate improved from 44.4% in 2003 to 54.3% in 2005, it remains substantially worse than the 1999 rate of 61.0%. MDG Indicators website.

<sup>38</sup> See, e.g., United States Department of State, *Country Reports on Human Rights Practices 2006 – Equatorial Guinea*, Sections 2(a) and 6(a):

In past years some qualified professionals were moved out of teaching positions because of their political affiliations or critical statements reported to government officials....[M]ost professors practiced self-censorship in order to avoid problems....According to...the International Labor Organization, the government continued to influence employment in all sectors. Requirements to utilize employment and security agencies controlled largely by the president’s relatives continued.

<sup>39</sup> See United Nations Press Release, “Visita del Grupo de Trabajo sobre la Detención Arbitraria a Guinea Ecuatorial” (July 13, 2007) (reporting findings of a 2007 mission by the United Nations Human Rights Council Working Group on Arbitrary Detentions), available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/4DB693A1A20AD0D2C125731A002D6AF9?opendocument>.

<sup>40</sup> See discussion at pages 20-22 below.

<sup>41</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Paragraph 38.

<sup>42</sup> *The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria*, Paragraph 38.

routinely ranks near the bottom, for example, of Transparency International's "Corruption Perception Index," placing at number 168 (out of 179) in 2007.<sup>43</sup>

### Generalized Fear

The Commission has stressed that:

The existence of a remedy must be sufficiently certain, not only in theory but also in practice....Therefore, if the applicant cannot turn to the judiciary of his country because of generalized fear for his life (or even those of his relatives), local remedies would be considered to be unavailable to him.<sup>44</sup>

As detailed below, the human rights reporting on Equatorial Guinea throughout the decades of rule of the Nguema/Mongomo group has been a constant refrain of concern regarding grave violations of fundamental rights and complete absence of accountability for serious crimes committed by or on behalf of Government officials.<sup>45</sup>

### Access to Legal Counsel

In examining the ability of a country's judiciary to provide remedies for Charter violations, the Commission has not automatically found domestic remedies available with respect to a specific communication even where it has concluded that there were provisions of law that would permit effective recourse for some. *In Purohit and Moore v. The Gambia*, the Commission noted that it "cannot help but look at the nature of people...represented in the...communication...[to determine whether] the remedies

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<sup>43</sup> Available at [http://www.transparency.org/news\\_room/in\\_focus/2007/cpi2007/cpi\\_2007\\_table](http://www.transparency.org/news_room/in_focus/2007/cpi2007/cpi_2007_table). See also World Bank, *Governance Matters 2007*, Worldwide Governance Indicators website, Equatorial Guinea, Control of Corruption (2006) (showing Equatorial Guinea at low end of the "0<sup>th</sup> - 10<sup>th</sup> Percentile"), available at [http://info.worldbank.org/governance/wgi2007/mc\\_chart.asp](http://info.worldbank.org/governance/wgi2007/mc_chart.asp). See also, e.g., United States Department of State, *Country Reports on Human Rights Practices 2006 – Equatorial Guinea*, Section 3:

Official corruption in all branches of the government remained a serious problem....Wealthy individuals were able to buy the licenses needed to operate and had the influence to squeeze out competitors....The government removed some officials from office for misuse of public trust (corruption), but none were prosecuted and some were moved to other government positions.

See generally, United States Senate Riggs Bank Report.

<sup>44</sup> *Dawda Jawara v. The Gambia*, Paragraph 35.

<sup>45</sup> See, most recently, United Nations Press Release, "Visita del Grupo de Trabajo sobre la Detencion Arbitraria a Guinea Ecuatorial" (July 13, 2007) (reporting findings of a 2007 mission by the United Nations Human Rights Council Working Group on Arbitrary Detentions that found cause for "deep concern" regarding detentions of political prisoners, kidnapping from foreign countries, secret detentions, indefinite detentions without charge or trial, summary trials of civilians without appeal before military tribunals, extended hand- and foot-shackling and other physical mistreatment, etc.).

available...are realistic remedies for them.”<sup>46</sup> In *Purohit*, the Commission considered whether “people picked up from the streets or people from poor backgrounds” who were detained as voluntary or involuntary patients under Gambia's Lunatics Detention Act would, as a practical matter, be able to avail themselves of applicable constitutional protections, in circumstances where no legal assistance or aid would be provided to them. The Commission found they would not. Legal protections, it explained, cannot be considered available to the category of people actually “likely to be...picked up” under the Lunatics Detention Act, even if adequate protections would be “available to the wealthy and those that can afford the services of private counsel.” That “the avenues for redress are there if you can afford it” is not enough.<sup>47</sup>

The divestment of wealth and livelihood from the majority of Equatoguineans lies at the core of this Communication. Most Equatoguineans survive for all practical purposes outside the monetary economy.<sup>48</sup> The people whose interests are most centrally represented in this Communication struggle for shelter, food and water and do not have financial resources to hire one of the handful of lawyers who practice in Equatorial Guinea. In Equatorial Guinea, even criminal defendants, let alone victims or civil plaintiffs, lack access to legal aid.<sup>49</sup> Most of the individuals and communities that endure the brunt of the corruption system are, because of their poverty and because of the threat of violent repression discussed above, unable to assert their claims on their own behalf, either in Equatoguinean courts or to the Commission.

The authors do not claim, however, that it is *only* the very impoverished who have been victimized by the corruption system. The Nguema/Mongomo group has been all-inclusive in the wealth it has targeted, and has by no means limited itself to appropriation of state-owned assets. While diversion of the most important resources, hydrocarbons and timber, accounts for the biggest portion of the misappropriated wealth, proprietors of privately owned commercial land and businesses and other assets have also seen their properties expropriated for the benefit of senior officials or close associates of the Nguema/Mongomo group, generally without meaningful compensation or redress. It is in the nature of the circumstances prevailing in Equatorial Guinea that those victims who were relatively more privileged are generally better able to come forth and tell their stories, and even, occasionally, try to seek local redress.<sup>50</sup> Some of their experiences are

<sup>46</sup> *Purohit and Moore v. The Gambia*, ACHPR No. 241/2001 (2003), Paragraphs 35-37.

<sup>47</sup> *Purohit and Moore v. The Gambia*, Paragraphs 35-37.

<sup>48</sup> United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS), Equatorial Guinea Country Profile (as of September 2006), available at <http://www.unohrlls.org/en/orphan/82/>.

<sup>49</sup> United States Department of State, *Country Reports on Human Rights Practices 2007 – Equatorial Guinea*, Section 1(d) (“Although in principle a bail system and public defenders were available upon request, this was not generally known by the public, and these systems did not operate effectively in practice.”) Of course, as in most countries, legal aid for *civil plaintiffs* is unknown in Equatorial Guinea.

<sup>50</sup> One such rare case is that of Angel N. Oló Bahamonde, who brought to the U.N. Human Rights Committee claims arising from his arbitrary arrest and detention, the confiscation of agricultural properties and crops, and other violations. In support of his argument seeking waiver of the exhaustion of local remedies rule, he submitted to the Human Rights Committee copies of his “numerous démarches, administrative, judicial or otherwise, to obtain judicial redress, adding that all the avenues of redress that in the State party's opinion are open to him have been systematically blocked by the authorities and President

cited in this Communication and in other evidence that the authors of this Communication propose to adduce, if the Commission deems the Communication admissible. Such experiences are important, both because they are in themselves grave injustices, and also because they serve to illustrate the manner in which the corruption system functions more broadly. The authors of this Communication hope that as it considers some of the more readily documented examples provided, the Commission will remain mindful that the typical victim of the corruption system in Equatorial Guinea is impoverished.

### **Ineffectiveness and Insufficiency of Domestic Remedies**

While the test of *availability* can be seen as an examination of whether the claimant can, as a matter of law and of fact, gain *access* to judicial process for redress for his or her injury, the companion tests of *effectiveness* and *sufficiency* appraise whether an aggrieved party would be wasting his or her time and effort in seeking redress from the court system.

As applied in prior cases, the test of effectiveness inquires as to the fairness of a proceeding that would be used to reach a decision on the merits of the claim – whether there is a reasonable likelihood that the process would uphold the rights of a worthy petitioner. “[A] remedy that has no prospect of success does not constitute an effective remedy.”<sup>51</sup> In examining effectiveness, the Commission's decisions recognize that it is “improper to insist on the complainant seeking remedies from a source which does not operate impartially and ha[s] no obligation to decide according to legal principles. [In such a case, t]he remedy is neither adequate nor effective.”<sup>52</sup> To the extent that sufficiency can be distinguished, it may be seen as focusing on whether even a favorable decision on the merits would actually be “capable of redressing the complaint.”<sup>53</sup> On this logic, a court lacking legal authority or *de facto* power to mandate and enforce a meaningful remedy for a wrong determined to have occurred would not constitute a sufficient remedy for that wrong. The bottom line in these inquiries is whether or not in fact “the judiciary can provide [a] check on the executive branch of government.”<sup>54</sup>

### **Ineffectiveness of Judicial Remedies in Equatorial Guinea**

Many of the situations in which remedies are found ineffective and/or insufficient concern the formal ouster of the courts by military or other executive power from

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Obiang himself.” Though the Government of Equatorial Guinea responded to these claims, submitting legal documents that it maintained established remedies available to Mr. Oló Bahamonde, the Human Rights Committee was unpersuaded and, on the merits, found for the complainant, upholding his right to appropriate remedy, including return of the confiscated properties or payment of appropriate compensation. *Oló Bahamonde v. Equatorial Guinea*, Communication No. 468/1991, U.N. Doc. CCPR/C/49/D468/1991 (1993), Paragraphs 5.1 and 11.

<sup>51</sup> *Dawda Jawara v. The Gambia*, Paragraph 38.

<sup>52</sup> *The Constitutional Rights Project v. Nigeria*, ACHPR No. 87/93 (1995), Paragraph 8.

<sup>53</sup> *Dawda Jawara v. The Gambia*, Paragraph 32.

<sup>54</sup> *The Constitutional Rights Project and Civil Liberties Organisation v. Nigeria*, ACHPR No. 102/93 (1998), Paragraph 41.

jurisdiction over the rights at issue.<sup>55</sup> The situation in Equatorial Guinea is different in form, though not in substance, from such cases. Equatoguinean courts are, as they always have been, a *de facto* instrument of the executive apparatus. They have been controlled, rather than supplanted.

While the Constitution of Equatorial Guinea purports to ensure that “[t]he judicial power shall be independent of the executive and legislative powers,”<sup>56</sup> the actual constitutional structure of the state ensures the contrary. Under article 86, the Head of State is self-contradictorily designated as “first magistrate of the nation...[who] shall guarantee the independence of the judicial power.” This is no mere formality. Under the Constitution, the President has the *sole* power to appoint the most important members of the judiciary, including Supreme Court justices,<sup>57</sup> members of the Constitutional Council,<sup>58</sup> and members of the Higher Judicial Council.<sup>59</sup> The Higher Judicial Council, in turn, appoints all other judges.<sup>60</sup>

Moreover, the Constitution expressly denies all members of the judiciary any immunity whatsoever for actions taken in the course of their professional duties,<sup>61</sup> contrary to international norms providing for “personal immunity in civil suits” for judicial acts or omissions, and requiring “guaranteed tenure....subject to...removal only for reasons of incapacity or behavior that renders them unfit to discharge their duties.”<sup>62</sup>

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<sup>55</sup> See, e.g., *Dawda Jawara v. The Gambia* (military state of emergency); *The Constitutional Rights Project v. Nigeria* (military state of emergency); *The Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (military state of emergency); and *Lawyers for Human Rights v. Swaziland*, ACHPR No. 251/2002 (2005) (King had abrogated the democratic constitution and “Complainant ha[d] presented...information demonstrating that the King [was] prepared to utilise the judicial power vested in him to overturn court decisions.” (Paragraph 27)).

<sup>56</sup> Constitution of the Republic of Equatorial Guinea (1996) (hereafter, “Constitution”), Article 83, available at <http://www.ceiba-guinea-ecuatorial.org/guineeanl/indexbienv1.htm>.

<sup>57</sup> Constitution Article 91.

<sup>58</sup> Constitution Article 94.

<sup>59</sup> Constitution Article 98. Article 93 also grants the President sole appointment power for the office of Attorney General.

<sup>60</sup> “The president appoints members of the Supreme Court, who reportedly took instructions from him. The Supreme Council of the Judicial Power [Higher Judicial Council] appoints and controls judges. President Obiang is president of that entity, and the president of the Supreme Court is its vice president.” United States Department of State, *Country Reports on Human Rights Practices 2007 – Equatorial Guinea*, Section I(e).

<sup>61</sup> Constitution Article 87.

<sup>62</sup> See, e.g., “Basic Principles on the Independence of the Judiciary,” Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, endorsed by General Assembly Resolution 40/32 and 40/146, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), available at [http://www.unhchr.ch/html/menu3/b/h\\_comp50.htm](http://www.unhchr.ch/html/menu3/b/h_comp50.htm):

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists....

Numerous U.N. observers have highlighted the unbroken history of judicial subordination to the Executive in Equatorial Guinea. The U.N. Human Rights Commission first became concerned regarding the human rights situation in Equatorial Guinea in 1976, under a confidential procedure, and, from 1979 until 2002 under a public procedure through appointment of Special Rapporteurs (and, in 2000 – 2002, a Special Representative) mandated to report on the human rights situation. Fernando Volio Jiménez, of Costa Rica, served in that role for each year until 1993, when he was succeeded by Alejandro Artucio, of Uruguay. Mr. Artucio's mandate was also renewed each year until 1999, when he was succeeded by Gustavo Gallón, of Colombia, as Special Representative.

Attached to this submission is an Affidavit, dated March 18, 2008, submitted by Mr. Gallón describing his experience as the last human rights Special Representative in Equatorial Guinea and setting out his conclusions regarding the effectiveness of judicial remedies in Equatorial Guinea for violations such as those under examination in this case.

Mr. Gallón's mandate was renewed in 2000 and 2001.<sup>63</sup> In April 2002, the Commission on Human Rights terminated Mr. Gallón's mandate, "despite protest from the international community and the former Special Representative himself."<sup>64</sup> At that time, human rights in Equatorial Guinea had been subject to these special reporting procedures longer than any other country.<sup>65</sup> As of March the same year, the Government of Equatorial Guinea had refused seven requests from the president of the African Commission for an invitation to visit the country.<sup>66</sup>

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16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions....

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties....

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

<sup>63</sup> United Nations Commission on Human Rights, 58<sup>th</sup> Session, "Report on the human rights situation in the Republic of Equatorial Guinea submitted by the Special Representative Mr. Gustavo Gallón," E/CN.4/2002/40 (January 24, 2002) (hereafter, "2002 U.N. Human Rights Report"), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/103/39/PDF/G0210339.pdf?OpenElement>.

<sup>64</sup> United States Department of State, *Country Reports on Human Rights Practices 2002 – Equatorial Guinea*, Section 4. See also Affidavit of Gustavo Gallón, dated March 18, 2008, annexed hereto.

<sup>65</sup> 2002 U.N. Human Rights Report, page 4.

<sup>66</sup> United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices 2001 – Equatorial Guinea* (March 4, 2002), Section 4, available at <http://www.state.gov/g/drl/rjs/hrrpt/2001/af/8367.htm>.

In his 1994 report Special Rapporteur Arturo Artucio had “no doubt...that the independence of the Judiciary is not guaranteed” in Equatorial Guinea.<sup>67</sup> Ten years later, the United Nations Human Rights Committee found cause for “concern at the absence of an independent judiciary in the State party and at the conditions for the appointment and dismissal of judges, which are not such as to guarantee the proper separation of the executive and the judiciary.”<sup>68</sup>

Similarly, an International Bar Association mission to Equatorial Guinea in 2003 concluded that “in practice, members of the Supreme Court report to the President and their appointments are revocable, although Article 91 of the Constitution stipulates that they shall serve for five years.”<sup>69</sup>

More recent reporting indicates no material change in the situation. This month, in its most recent (2007) *Country Report on Human Rights Practices* for Equatorial Guinea, for example, the U.S. Department of State found that:

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<sup>67</sup> United Nations Commission on Human Rights, 50<sup>th</sup> Session, “Report on the human rights situation in the Republic of Equatorial Guinea prepared by Mr. Alejandro Artucio, Special Rapporteur of the Commission,” E/CN.4/1994/56 (January 1, 1994) (hereafter, “1994 U.N. Human Rights Report”), Paragraph 54, available at

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/1a4ce1c8a78d3ea880256732004bcf2f?Opendocument>.

See also, e.g., United Nations Commission on Human Rights, 53<sup>rd</sup> Session, “Report on the human rights situation in the Republic of Equatorial Guinea submitted by Mr. Alejandro Artucio, Special Rapporteur of the Commission,” E/CN.4/1997/54 (January 20, 1997) (hereafter, “1997 U.N. Human Rights Report”), Paragraph 18 (“The independence of the judiciary cannot be said to be adequate.”), available at <http://daccessdds.un.org/doc/UNDOC/GEN/G97/102/28/PDF/G9710228.pdf?OpenElement>.

<sup>68</sup> United Nations Human Rights Committee, 81<sup>st</sup> Session, “Concluding Observations on the Situation of Civil and Political Rights: Equatorial Guinea,” CCPR/CO/79/GNQ, (July 30, 2004), Paragraph 7, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ff303399c6edc0c0c1256efc00565697?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ff303399c6edc0c0c1256efc00565697?Opendocument). See also United Nations Commission on Human Rights, 59<sup>th</sup> Session, “Report submitted by Mr. Ambeyi Ligabo, Special Rapporteur on the right to freedom of opinion and expression,” E/CN.4/2003/67/Add.2 (January 9, 2003), Paragraph 43 (“[J]udges are appointed by cooptation, which can favour nepotism...they have hardly any legal training or background in addition to law studies....members of the judiciary and lawyers receive no training in human rights norms and standards.”), available at

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/06f580d099cbd229c1256ccb0036d582/\\$FILE/G0310035.doc](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/06f580d099cbd229c1256ccb0036d582/$FILE/G0310035.doc).

<sup>69</sup> International Bar Association, *At the Crossroads, Report of a Mission to Equatorial Guinea by the International Bar Association Human Rights Institute* (October 2003) (hereafter, “At the Crossroads”), Paragraph 4.13, available at [http://www.ibanet.org/images/downloads/Equatorial\\_Guinea\\_Report.pdf](http://www.ibanet.org/images/downloads/Equatorial_Guinea_Report.pdf). The report continues:

[I]t was widely reported to the delegation that in practice judges serve at the pleasure of the President, and in general they are appointed by the Chief of State by virtue of their belonging to the President’s family, clan or political party. The IBA delegation was also concerned to hear from a number of sources that the judges appointed were expected to be “loyal” to the Government. The delegation concluded that demanding “loyalty” from judges amounted to a fetter upon their ability to determine cases with independence and impartiality as required in various international standards.

Ibid., Paragraph 4.14.

All branches of government were dominated by President Teodoro Obiang Nguema Mbasogo and his clan....Judges served at the pleasure of the president, and they were appointed, transferred, and dismissed for political as well as competency reasons. Judicial corruption was widely reported, and cases were sometimes decided on political grounds....Civil cases rarely came to trial, reportedly because of lack of faith that judgment would be fair and transparent, and because the general population had a limited understanding of the process.<sup>70</sup>

The impotence of the judiciary as a check on the executive is illustrated by the pervasive practice of arbitrary arrest and detention, persisting as a “serious problem[.]” into 2007, with “many persons...taken into custody on the verbal orders of officials.”<sup>71</sup> Despite widely reported pledges made by the President during his November 2006 visit to Spain to release all political prisoners,<sup>72</sup>

[s]ome 58 identified “prisoners of conscience,” or political prisoners, remained detained at [2007] year’s end, at least four of whom had not been tried; other had been convicted of “crimes against the state” without adequate representation. The right to appeal was seldom exercised and even more rarely successful. These prisoners were all members of opposition parties or persons the government accused of involvement in coup attempts.<sup>73</sup>

The legal system has proven itself not only ineffective, but irrelevant and all but invisible as a protection against the worst abuses of personal rights in Equatorial Guinea.

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<sup>70</sup> United States Department of State, *Country Reports on Human Rights Practices 2007 – Equatorial Guinea*, Introduction and Section 1(e).

<sup>71</sup> United States Department of State, *Country Reports on Human Rights Practices 2007— Equatorial Guinea*, Introduction and Section 1(d). See also United Nations Press Release, “Visita del Grupo de Trabajo sobre la Detención Arbitraria a Guinea Ecuatorial” (July 13, 2007).

<sup>72</sup> “Obiang se compromete ante Zapatero a liberar a los presos políticos,” ABC (November 15, 2006) (President Obiang promises to Spanish Prime Minister José Luis Rodríguez Zapatero to release political prisoners), available at [http://www.abc.es/hemeroteca/historico-15-11-2006/abc/Nacional/obiang-se-compromete-ante-zapatero-a-liberar-a-los-presos-politicos\\_1524269060743.html](http://www.abc.es/hemeroteca/historico-15-11-2006/abc/Nacional/obiang-se-compromete-ante-zapatero-a-liberar-a-los-presos-politicos_1524269060743.html).

<sup>73</sup> United States Department of State, *Country Reports on Human Rights Practices 2007 – Equatorial Guinea*, Introduction and Section 1(e). See also Amnesty International Urgent Action, “Equatorial Guinea: Detention without charge or trial/ Harsh detention conditions: Brígida Asongsua Elo,” AI Index: AFR 24/001/2008 (February 11, 2008) (arrest and detention without charge or trial, in harsh conditions amounting to “cruel and degrading treatment,” of wife of prisoner of conscience Guillermo Ela Nguema, who is serving 20-year prison sentence after May 2002 conviction in “unfair trial” of plotting to overthrow the government), available at <http://www.amnesty.org/en/library/asset/AFR24/001/2008/5e33a772-d8d1-11dc-95ba-577b59b8145d/afi240012008eng.html>.



While apparently somewhat abated in recent years, torture remains a tool employed by the Government, as noted by virtually every observer who has investigated the matter, including U.N. special rapporteurs,<sup>74</sup> the U.N. Human Rights Committee,<sup>75</sup> the European Parliament,<sup>76</sup> the U.S. Department of State,<sup>77</sup> and NGOs such as the International Bar Association,<sup>78</sup> and Amnesty International.<sup>79</sup>

<sup>74</sup> See, e.g., 1994 U.N. Human Rights Report, Paragraph 42 (“persistent pattern of arbitrary arrests, torture, ill-treatment and persecution of political activists and leaders of the opposition parties”); 1997 U.N. Human Rights Report, Paragraph 40 (“cases of torture and ill-treatment of prisoners continue to occur, although the number of complaints received is considerably lower than in previous years”); 2002 U.N. Human Rights Report, Paragraph 24 (“[B]ecause of the legal insecurity that prevails...arbitrary detentions, inhuman treatment and torture...continue as if they were perfectly normal.”); United Nations Commission on Human Rights, 58th Session, “Report of the Special Rapporteur on the question of torture, Theo van Boven,” E/CN.4/2003/68/Add.1 (February 27, 2003), Paragraphs 480-501 (reporting more than 20 specific cases of torture or other physical abuse; the Special Rapporteur notes that “no response has been provided to the cases brought to the attention of the Government since 1998 as well as to urgent appeals.”), available at <http://www.derechos.org/nizkor/torture/vanboven03/>.

<sup>75</sup> United Nations Human Rights Committee, 81<sup>st</sup> Session, “Concluding Observations on the Situation of Civil and Political Rights: Equatorial Guinea,” CCPR/CO/79/GNQ, (July 30, 2004), Paragraph 3 (“concern at the substantiated accusations of systematic torture and ill-treatment in the State party and at the use of statements and confessions obtained through torture”), available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ff303399c6edc0c0c1256efc00565697?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ff303399c6edc0c0c1256efc00565697?Opendocument).

<sup>76</sup> See, e.g., European Parliament Resolution, Bulletin EU 6-2002, Human rights (8/15), Equatorial Guinea, Point 1.2.8 (June 13, 2002) (“Parliament called for annulment of the unfair political trials resulting in the sentencing of 68 opposition leaders, and condemned the torture and ill-treatment in breach of all the human rights conventions signed by Equatorial Guinea.”), available at <http://europa.eu/bulletin/en/200206/p102008.htm>.

<sup>77</sup> See, e.g., United States Department of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices 1999 – Equatorial Guinea* (February 23, 2000) (“Members of the security forces generally commit abuses with impunity. Prison conditions remained life threatening. Prisoners often are subjected to torture in order to extract confessions.”), available at <http://www.state.gov/g/drl/rls/hrrpt/1999/244.htm>; United States Department of State, *Country Reports on Human Rights Practices 2006 – Equatorial Guinea* (“On November 2, [2006] a law criminalizing torture and other cruel, inhuman, or degrading acts went into effect... However, during the year torture and cruel treatment continued in the country's jails and prisons. Beatings and threats with loaded weapons were most frequently reported...”).

<sup>78</sup> At the Crossroads, Paragraph 2.75 (“Torture would appear to be used systematically by the police and security forces. The judiciary has ignored allegations of torture when presented with victims of torture and other ill treatment at court.”).

<sup>79</sup> See, e.g., Amnesty International USA, “Medical care urgently needed for over 60 political prisoners, Equatorial Guinea: New information: death of Juan Asumu Sima,” AI Index: AFR 24/ (September 17, 2002) (“According to reports, Juan Asumu Sima was severely tortured in pre-trial detention. He reportedly had scars, consistent with torture/ill-treatment, on legs and arms. Like several other defendants...[he] was denied [medical treatment].”), available at <http://www.amnestyusa.org/document.php?lang=e&id=18908CA3692FEF0780256C3E001062DE>; Amnesty International Report 2005 (“Dozens of soldiers and former military personnel as well as political opponents...detained without charge or trial. Many appeared to have been tortured in detention and at least one reportedly died as a result.”); Amnesty International Report 2006 (“Police tortured or ill-treated detainees with impunity. At least one detainee was reported to have died as a result of torture. Those responsible were not brought to justice.”). The Amnesty International Report 2007 reports one instance it characterizes as torture (resulting in death) and nine instances of flogging (50 lashes each), though it also notes “fewer reports of political arrests [in 2006] than in previous years,” as well as the passage of an anti-torture law. The 2007 Report is available at <http://thereport.amnestv.org/eng/Regions/Africa/Equatorial-Guinea>.

In 2006, “torture and cruel treatment” were reported as “continu[ing]” in the country’s jails and prisons, with “numerous reports that security forces beat opposition party activists, often on the orders of local officials, who apparently had support at higher levels and acted with impunity.” Despite “widely occurring torture” in prior years and during 2006, however, no one responsible was charged with a crime.”<sup>80</sup>

In 2007, at least four cases of official torture received prominent attention even within the country after national television broadcast Parliamentary sessions during which opposition members of Parliament from the Convergencia para la Democracia Social (CPDS) criticized the Government for permitting police officials to torture with impunity.

Following the unprecedented television exposure of these cases, the Government arrested four police officers in connection with these cases, in October 2007.<sup>81</sup>

The Government has, however, taken no action to sanction those responsible for thousands of cases involving arbitrary arrest and detention, torture, even extrajudicial execution that have been reported by credible sources. Even in the bare handful of cases in which some kind of legal action was taken against a major abuser, the outcomes have been discouraging. U.N. human rights Special Rapporteur Alejandro Artucio provided this account of perhaps the most notorious case:

To illustrate the impunity of the perpetrators of violations of civil and political rights, the Special Rapporteur will mention the case of the former Chief of Police in Málabo, Mr. Cayo Ndó Mbá, to which he referred in his previous report...as being the only case he knows in which a member of the security forces was prosecuted, tried and sentenced to imprisonment (two years and four months for the homicide of a peasant, Mr. Martín Obama Ondo). The Special Rapporteur has ascertained that not only did the former police chief not serve his sentence, but in August 1996 he was promoted to the rank of chief of the Gendarmería in Bata, where he has again been reported to have practised torture and ill-treatment.<sup>82</sup>

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<sup>80</sup> United States Department of State, *Country Reports on Human Rights Practices 2006 – Equatorial Guinea*, Section I(c). Among the cases of torture for which no one was prosecuted were the torture of (i) “approximately 70 persons charged with offenses related to an alleged coup attempt in October 2004, before and during their secret military trial....the group consist[ing] of former military officers and relatives of the alleged leaders of the coup attempt, Lieutenant Colonel Cipriano Nguema Mba”; (ii) five persons arrested on Corsico Island; (iii) Weja Chicampo; and (iv) Lieutenant Colonel Maximiliano Owono Nguema. Ibid.

<sup>81</sup> United States Department of State, *Country Reports on Human Rights Practices 2007— Equatorial Guinea*, Section I(c).

<sup>82</sup> 1997 U.N. Human Rights Report, Paragraph 78.

## Insufficiency of Judicial Remedies in Equatorial Guinea

For all the reasons set out above, the likelihood that a particular victim of the corruption system will find any “prospect of success”<sup>83</sup> in an Equatoguinean court is virtually nil. Accordingly, it will be an extremely unusual case that will actually put to the test the “sufficiency” of a judicial remedy – the court’s ability to enforce a ruling adverse to the interests of a key member of the Nguema/Mongomo group. Amerada Hess Corporation, however, did recount one example of such a case to the U.S. Senate Subcommittee investigators in their 2004 investigation into Riggs Bank, revealing in stark relief the degree of executive interference that is applied in cases where the family interests of certain senior officials are at stake.

In an interview with Subcommittee staff, a Hess representative explained that in 2003, Hess was served with a court order instructing it to stop paying the President’s relative [a fourteen year old boy, who was “represented by his mother”] and make rental payments to another Equatorial Guinea citizen whom the court declared had documented that he was the legitimate property owner. Hess complied, and approximately two months later a minister of the E.G. government asked Hess why it had stopped making payments on the lease and informed Hess that the youth was his Godson. When Hess informed the Minister of the court order, the Minister called the judge who had issued the court order. According to Hess, while on the telephone with the Minister, the judge rescinded the court order, and Hess started paying the relative for the lease again.<sup>84</sup>

## Conclusion

The Nguema/Mongomo group has maintained unchallenged domination of Equatorial Guinea since the country’s independence in 1968. Throughout that history, the legal system in Equatorial Guinea has lacked the will or ability to act as any kind of independent check on the continuing consolidation of economic and political power by the ruling group. Indeed, the legal system has largely played an assisting role to the Nguema/Mongomo corruption system by furnishing the appearance of lawful process to justify and enforce the diversion of the major sources of wealth of the Equatoguinean people into the hands of the Nguema/Mongomo group. The people of Equatorial Guinea have long understood the grave risks of challenging the perceived interests of powerful officials, and the futility of seeking legal redress from a cowed judiciary. As vividly shown by Amerada Hess’ dealings with the President’s teenaged relative, the authority of the courts and rule of law in Equatorial Guinea are merely a façade for unconstrained rule by executive fiat in the interests of a small group. By any measure, the search of the Equatoguinean peoples for a remedy for the corruption system has been “unduly prolonged.”

<sup>83</sup> *Dawda Jawara v. The Gambia*, Paragraph 38.

<sup>84</sup> U.S. Senate Riggs Bank Report, page 101 and note 345.

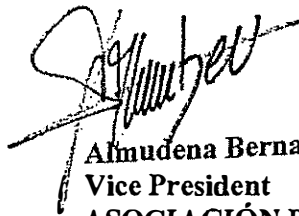
On January 30, 2005, the Republic of Equatorial Guinea joined what are now 41 African states in signing the African Union Convention on Preventing and Combating Corruption.<sup>85</sup> In so doing, Equatorial Guinea affirmed its recognition, as matters of continental concern, of the “devastating effects [of corruption and impunity] on the economic and social development of the African peoples,” and the concomitant “need to address the root causes of corruption on the continent.”<sup>86</sup> Yet the Government of Equatorial Guinea has so far failed to break free of the corrupting stranglehold of the Nguema/Mongomo elite, which, on a scale unique in Africa, runs an entire nation – including all the organs of the state – as its own private business, entirely insulated from independent oversight. If there is any situation that calls out for action by the Commission to vindicate the rights of the peoples under Article 21, it is this case.

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<sup>85</sup> See list of signatories and parties to the African Union Convention on Preventing and Combating Corruption (as of October 2007), available at <http://www.africa-union.org/root/au/Documents/Treaties/List/African%20Convention%20on%20Combating%20Corruption.pdf>.

<sup>86</sup> African Union Convention on Preventing and Combating Corruption (2003), Preamble, available at [http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Convention%20on%20Combating%20Corruption.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Convention%20on%20Combating%20Corruption.pdf).

In view of the above, the *Asociación pro Derechos Humanos de España* hereby requests the Commission to find this Communication 347/07 admissible under Article 56 of the Charter.



**Almudena Bernabeu**  
**Vice President**  
**ASOCIACIÓN PRO DERECHOS**  
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March 19, 2007


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Ref: ACHPR/COMM/347/07/0.2/469.09

Date: 3 June 2009

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Dear Sir,

**Subject: Communication 347/07 – Asociacion Pro Derechos Humanos De Espana (APDHE)/Equatorial Guinea**

I write to inform you that, at its 45<sup>th</sup> Ordinary Session which took place from 13-27 May 2009 in Banjul, The Gambia, the African Commission considered the above Communication and decided to defer its decision on Admissibility to its 46<sup>th</sup> Ordinary Session, pending submissions on Admissibility from the Respondent State, and also due to the fact that it received Preliminary Objections from the Respondent on your *locus standi* before the African Commission. Please find attached herewith, the said Preliminary Objections.

The African Commission intends to take a decision on the Admissibility of this Communication at its 46<sup>th</sup> Ordinary Session scheduled to take place from **11 to 25 November 2009** at a venue still to be determined.

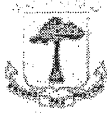
The Secretariat would be most obliged if you could kindly forward your responses, if any, on the State's Preliminary Objections within three months from the date of this notification. That is, **before 3 September 2009**.

Accept my best regards.



**Dr. Mary Maboreke**  
**Secretary to the African Commission**

im/MM



**Embajada de la República  
de  
Guinea Ecuatorial**  
Addis Ababa (Etiopía)



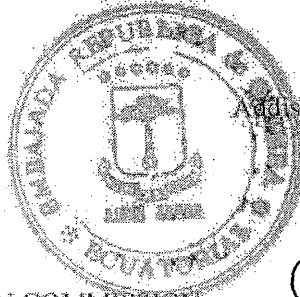
No. 88/G-9/MME/YA/09

The Embassy of the Republic of Equatorial Guinea in Ethiopia, Permanent Mission to the African Union and ECA, presents its compliments to the Commission of the African Union and, with regard to the Note Verbal of the Secretariat of the African Commission on Human and Peoples' Rights No ACHPR/LPROT/COMM/347/08/REQ dated December 11, 2008, has the honour to transmit to the latter the indignation of the Government of the Republic of Equatorial Guinea, at learning that at the 44<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights that took place in Abuja, Nigeria from 10 to 24 November 2008 it considered the Communication N<sup>o</sup> 347/07 - Asociación Pro Derechos Humanos de España (APDHE)/Equatorial Guinea, and decided to defer its decision on admissibility to its 45<sup>th</sup> Ordinary Session, to give an opportunity to Equatorial Guinea to submit its arguments.

In this regard, the Embassy would like to share to the Commission the necessity to inform to the Secretariat of the African Commission on Human and Peoples' Rights that the Asociación Pro Derechos Humanos de España is not african, is european. Therefore, it has not a seat in the bosom of our Continental Organization unless if the components of the Secretariat consider Spain as member state of the African Union. And also, this association is not recognized by the Equatorial Guinea's Government.

But, nevertheless, as they press on insisting to analyze this situation in the next sessions in order to grant the admissibility of the said spanish association, the Government of the Republic of Equatorial Guinea reserves its rights to review its relations with the Secretariat of the African Commission on Human and Peoples' Rights.

The Embassy of the Republic of Equatorial Guinea in Ethiopia, Permanent Mission to the African Union and ECA, avails itself of this opportunity to renew to the Commission of the African Union the assurances of its highest consideration.



Addis Ababa, March 6, 2009

COMMISSION OF THE AFRICAN UNION  
ADDIS ABABA.

CC: SECRETARIAT OF THE AFRICAN COMMISSION  
ON HUMAN AND PEOPLES RIGHTS  
BANJUL - (THE GAMBIA)

① Colley  
PLS register.

② Dr. Gna  
lets discuss.  
12/03/09

**BEFORE THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS**

**Communication 347/07**

**Asociación Pro Derechos Humanos De España (APDHE) / Equatorial Guinea**

**COMPLAINANT'S RESPONSE TO THE  
STATE'S PRELIMINARY OBJECTIONS ON *LOCUS STANDI***

1. The Open Society Justice Initiative (the "Justice Initiative"), co-counsel with EG Justice to complainant *Asociación Pro Derechos Humanos de España* (APDHE) in the above-referenced Communication, submits the following response to Equatorial Guinea's Preliminary Objection regarding APDHE's *locus standi*.
2. The Justice Initiative received a letter from the Secretary to the African Commission dated June 3, 2009, which notified us of Equatorial Guinea's Preliminary Objection and requested a response prior to September 3, 2009.
3. Attached to the Secretary's letter was a copy of the Preliminary Objection, which asserted that (i) APDHE is "not African...[but] european" and (ii) APDHE is "not recognized by Equatorial Guinea's Government." It suggested that because of these two circumstances, APDHE's Communication should not be heard by the Commission.
4. Equatorial Guinea's Preliminary Objection is unfounded: it does not and can not cite a single source of authority to support either disqualifying APDHE as a Complainant or dismissing this Communication.
5. To the contrary, all relevant sources of authority and guidance regarding the practice of the Commission clearly support the standing of any individual or organization – whether based in Africa or elsewhere – to bring to the Commission's attention human rights violations occurring on the continent, including (i) the African Charter on Human and Peoples' Rights (the "Charter"), (ii) the published guidelines of the Commission itself, (iii) the long-standing practice of the Commission to consider communications from individuals and NGOs from non-African states, and (iv) scholarly commentary by experts.
6. As to the second objection, it is submitted that if it were for responding State Parties to decide whether or not to recognize the authors of individual Communications under Article 55, the effectiveness of the Charter would be entirely compromised.



## **The Charter**

7. The Preamble of the Charter is clear on the importance of international involvement for the advancement of human and peoples' rights in Africa, pledging "*to promote international cooperation* having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights" (emphasis added).
8. Article 45(1)(c) of the Charter specifies that one of the functions of the Commission is to "co-operate with other African *and international institutions* concerned with the promotion and protection of human and peoples' rights" (emphasis added).
9. The Charter provides for the Commission to consider communications from non-State parties, by setting out requirements in Articles 55 and 56. Article 55 establishes that the Commission will consider communications "other than those of States" if a simple majority of its members so decide. Article 56 then lays out the required criteria that the Commission considers in deciding whether or not to admit a communication. None of these requirements sets any restriction based on the nationality of the complainant or the need for any form of "recognition" by a respondent state.

## **The Commission's Published Guidelines**

10. The Commission's website contains Guidelines for Submission of Communications (the "Guidelines"), which the Commission has taken efforts to make easily distributable and accessible by providing in a downloadable "Information Sheet".<sup>1</sup>
11. The Guidelines include instructions regarding the standing of individuals and entities to file communications with the Commission. The Guidelines say:

"Anybody either on his or her own behalf or on behalf of someone else, can submit a communication to the commission denouncing a violation of human rights. Ordinary citizens, a group of individuals, NGOs, and states Parties to the Charter can all put in claims. The complainant or author of the communication need not be related to the victim of the abuse in any way, but the victim must be mentioned."
12. In the section entitled "Who can submit a Communication to the Commission?" the Commission presents a clear answer: "Anybody...[including] NGOs."<sup>2</sup> Nowhere in the Guidelines is there mention of any limitation by reason of the nationality, lineage or location of the complainant.

## **Practice of the Commission**

13. Consistent with the rules described above, the Commission has repeatedly granted admissibility and decided the merits of communications filed by individuals and organizations that reside, incorporate and/or operate outside of Africa.<sup>3</sup> In these

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<sup>1</sup> The online Guidelines and Information Sheet No. 2 Guidelines on Submission of Communications are available at: African Commission on Human and Peoples' Rights website, [http://www.achpr.org/english/info/guidelines\\_communications\\_en.html](http://www.achpr.org/english/info/guidelines_communications_en.html) (last visited August 7, 2009).

<sup>2</sup> Id.

<sup>3</sup> Among the numerous communications filed by non-African individuals and NGOs that have been admitted by the Commission are: *Commission Nationale des Droits de l'Homme et des Libertés v. Chad*,

communications, the nationality of the non-African complainant is often plainly stated at the beginning of a decision, following which the Commission moves into discussion of admissibility and merits as a matter of course.<sup>4</sup>

14. For example, in *Maria Baes v. Zaire*, the complainant, a Danish national, submitted a communication regarding the illegal detention of a colleague at the University of Kinshasa.<sup>5</sup> The Commission admitted the case, though it was later found moot when the detained person was released. Certainly if a European individual has standing to submit a communication, a European human rights organization with a thirty-year history and a deep commitment to supporting the human rights of the people of Equatorial Guinea should also be entertained, regardless of the organization's place of incorporation or lack of "recognition" by the respondent state.
15. In *Lawyers Committee for Human Rights v. Zaire*, the complainant, a United States-based organization, filed the communication related to, *inter alia*, arbitrary arrests, detention, and torture. The Commission admitted the evidence of massive human rights violations and made a final decision to "call the attention of the Assembly of Heads of State and Government to the situation".<sup>6</sup>

#### **Recognition of Commission Procedure and Practice by Scholarly Experts**

16. This common practice of the Commission to consider communications from non-African individuals and NGOs has been widely recognized by prominent legal experts, who have unambiguously concluded that "communications may be filed by individuals or NGOs from countries that are not State parties to the Charter."<sup>7</sup>

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Comm. No. 74/92 (1995); *Amnesty International v. Malawi*, Comm. Nos. 68/92, 78/92 (1994); *William A. Courson v. Equatorial Guinea*, Comm. No. 144/95 (1997); *Free Legal Assistance Group and Others v. Zaire*, Comm. No. 25/89, 47/90, 56/91, 100/93 (1995); *Interights v. Ethiopia*, Comm. No. 233/99 (1999); *Interights v. Egypt*, Comm. No. 261/02 (2002); *Article 19 v. Eritrea*, Comm. No. 275/03 (2007); *Anuak Justice Council v. Ethiopia*, Comm. No. 299/05 (2006) (inadmissible on other grounds); *Association Pour la Sauvegarde de la Paix au Burundi v. Kenya, Rwanda, Tanzania, Uganda, Zaire and Zambia*, Comm. No. 157/96 (2003); *Interights v. Namibia*, Comm. No. 239/01 (2001).

<sup>4</sup> See, e.g., *Anuak Justice Council v. Ethiopia*, Comm. No. 299/05 (2006) ("Summary of Facts 1. The Communication is submitted by the Anuak Justice Council...prepared by the International Human Rights Clinic, Washington College of Law, in Washington D.C., the United States of America"); *Association Pour la Sauvegarde de la Paix au Burundi v. Kenya, Rwanda, Tanzania, Uganda, Zaire and Zambia*, Comm. No. 157/96 (2003) ("The communication was submitted by the Association Pour la Sauvegarde de la Paix au Burundi (ASP-Burundi, Association for the Preservation of Peace in Burundi), a non-governmental organisation based in Belgium.").

<sup>5</sup> *Baes v. Zaire*, Comm. No. 31/89 (1995).

<sup>6</sup> *Lawyers Committee for Human Rights v. Zaire*, Comm. No. 47/90 (1995).

<sup>7</sup> Evans, Malcolm and Murray, Rachel, Eds., *The African Charter on Human and Peoples' Rights The System in Practice: 1986 – 2006*, Second Ed., at 103. The authors go on to note "[c]urrently, the African Commission does not require NGOs to even have observer status to qualify to file cases." *Ibid* at 432. See also Odinkalu, Chidi and Viljoen, Frans, *The Prohibition of Torture and Ill-treatment in the African Human Rights System: A Handbook for Victims and their Advocates*, October 2006, at 63-64 ("Any 'person' may submit a communication, whether individual or corporate. NGOs need not enjoy observer status with the Commission to be granted standing to submit a communication").

## Conclusion

17. Equatorial Guinea's objection to APDHE's standing based on nationality and lack of "recognition" conflicts with the Charter, the Commission's published procedural guidance, the long-standing actual practice of the Commission, and the learned commentary of experts, all of which support APDHE's right to pursue this proceeding.



Manuel Ollé Sesé  
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August 31, 2009

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الاتحاد الأفريقي Africa Commission on Human & Peoples' Rights		UNIÃO AFRICANA Commission Africaine des Droits de l'Homme & des Peuples
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Ref: ACHPR/COMM/347/07/0.4/940.09  
Date: 3 December 2009

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Dear Sir,

Subject: Communication 347/07 – Asociación Pro Derechos Humanos De España (APDHE)/Equatorial Guinea

I write to inform you that, at its 46<sup>th</sup> Ordinary Session which took place from 11 to 25 November 2009 in Banjul, The Gambia, the African Commission considered the Preliminary Objections from the Respondent State of the above Communication and decided that, you indeed have *locus standi* before the African Commission.

The Secretariat has informed the Respondent State about the decision of the African Commission, and has requested the Respondent State to forward its arguments on Admissibility.

The African Commission intends to take a decision on the Admissibility of this Communication at its 47<sup>th</sup> Ordinary Session scheduled to take place from 12 to 26 May 2010, in Tunis, Republic of Tunisia.

Accept my best regards.

Sincerely,



Dr. Mary Maboreke  
Secretary to the African Commission

im/CB

*United States Senate*  
**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**  
*Committee on Governmental Affairs*

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*Norm Coleman, Chairman*  
*Carl Levin, Ranking Minority Member*

9/1

**MONEY LAUNDERING  
AND  
FOREIGN CORRUPTION:  
ENFORCEMENT AND EFFECTIVENESS  
OF THE PATRIOT ACT**

**CASE STUDY INVOLVING RIGGS BANK  
REPORT**

PREPARED BY THE  
  
MINORITY STAFF  
OF THE  
PERMANENT SUBCOMMITTEE  
ON INVESTIGATIONS



RELEASED IN CONJUNCTION WITH THE  
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS' HEARING  
ON JULY 15, 2004

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# **MONEY LAUNDERING AND FOREIGN CORRUPTION: ENFORCEMENT AND EFFECTIVENESS OF THE PATRIOT ACT**

## **CASE STUDY INVOLVING RIGGS BANK**

**July 14, 2004**

### **I. Introduction**

From 1999 to 2001, the U.S. Senate Permanent Subcommittee on Investigations of the Committee on Governmental Affairs, at the request of Senator Carl Levin, Ranking Minority Member, conducted a detailed investigation into money laundering activities in the U.S. financial services sector, including in-depth examinations of money laundering activities in private banking, correspondent banking, and the securities industry. Two Minority staff reports were issued, and Subcommittee hearings were held in November 1999 and March 2001.<sup>1</sup> This investigative work provided the foundation for many of the anti-money laundering provisions in Title III of the USA Patriot Act enacted in October 2001. Among other key provisions, the Patriot Act obligated U.S. financial institutions to exercise due diligence when opening and administering accounts for foreign political figures, and deemed corrupt acts by foreign officials as an allowable basis for U.S. money laundering prosecutions.

In 2003, again at Senator Levin's request, the Subcommittee initiated a followup investigation to evaluate the enforcement and effectiveness of key anti-money laundering provisions in the Patriot Act, using Riggs Bank as a case history. The information in this Minority Staff Report is based upon the ensuing joint investigation by the Subcommittee's Democratic and Republican staffs.

During the course of this investigation, the Subcommittee issued numerous subpoenas and document requests. The Subcommittee staff reviewed over 100 boxes, folders, and electronic compact disks containing hundreds of thousands of pages of documents, including bank statements, account opening materials, wire transfers, correspondence, electronic mail, contracts, board minutes, materials related to specific bank accounts and transactions, bank examination materials, audit reports, legislative materials, and legal pleadings. The Subcommittee staff also conducted numerous interviews with representatives from financial institutions, the Office of the Comptroller of the Currency (OCC), the Federal Reserve, oil companies, various experts, and other persons with relevant information.

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<sup>1</sup> See "Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities," S. Hrg.106-428 (November 9 and 10, 1999), Minority staff report at 872 (hereinafter "1999 Subcommittee Private Banking Hearings"); "Role of U.S. Correspondent Banking in International Money Laundering," S. Hrg.107-84 (March 1, 2, and 6, 2001), Minority staff report at 273.



## II. Executive Summary

The evidence reviewed by the Subcommittee staff establishes that, since at least 1997, Riggs has disregarded its anti-money laundering (AML) obligations, maintained a dysfunctional AML program despite frequent warnings from OCC regulators, and allowed or, at times, actively facilitated suspicious financial activity.

The evidence also shows that federal regulators did a poor job of compelling Riggs Bank to comply with statutory and regulatory anti-money laundering requirements. They were tolerant of the bank's weak AML program, too slow in reacting to repeat deficiencies, and failed to make prompt use of available enforcement tools.

Two sets of Riggs accounts, one involving Augusto Pinochet and the other involving Equatorial Guinea, illustrate the bank's poor AML compliance.<sup>2</sup> They also illustrate the failure of federal bank regulators to exercise meaningful oversight of a bank with numerous high risk accounts and fundamental, long-standing AML deficiencies. This regulatory failure is especially troubling for the ongoing battles against terrorism and corruption, since it makes it more difficult for the United States to stop terrorists, corrupt leaders, and other criminals from misusing our financial system. Federal regulators must do more to meet their legal obligation to protect the United States from money laundering, terrorist financing, and foreign corruption.

**Assisting Pinochet.** The evidence obtained by the Subcommittee staff shows that, from 1994 until 2002, Riggs Bank (Riggs) opened at least six accounts and issued several certificates of deposit (CDs) for Augusto Pinochet, former President of Chile, while he was under house arrest in the United Kingdom and his assets were the subject of court proceedings. The aggregate deposits in the Pinochet accounts at Riggs ranged from \$4 to \$8 million at a time. The Subcommittee investigation has determined that the bank's leadership directly solicited the accounts from Mr. Pinochet, and Riggs account managers took actions consistent with helping Mr. Pinochet to evade legal proceedings seeking to discover and attach his bank accounts. The Subcommittee investigation found that Riggs opened multiple accounts and accepted millions of dollars in deposits from Mr. Pinochet with no serious inquiry into questions regarding the source of his wealth; helped him set up offshore shell corporations and open accounts in the names of those corporations to disguise his control of the accounts; altered the names of his personal accounts to disguise their ownership; transferred \$1.6 million from London to the United States while Mr. Pinochet was in detention and the subject of a court order to attach his bank accounts; conducted transactions through Riggs' own accounts to hide Mr. Pinochet's involvement in some cash transactions; and delivered over \$1.9 million in cashiers checks to Mr. Pinochet in Chile to enable him to obtain substantial cash payments from banks in that country.

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<sup>2</sup> Other accounts at Riggs present equally troubling facts, most notably the more than 150 accounts associated with Saudi Arabia. These Saudi accounts are the subject of an ongoing investigation by the full Committee on Governmental Affairs.

The Subcommittee investigation also determined that Riggs concealed the existence of the Pinochet accounts from OCC bank examiners for two years, initially resisted OCC requests for information, and closed the accounts only after a targeted OCC examination in 2002. Despite Riggs' track record of repeat AML deficiencies, the OCC's concern about the Pinochet accounts, and Riggs' concealment of them from the agency, the OCC took no enforcement action against the bank after it learned of those actions in 2002. Moreover, in July 2002, the OCC Examiner-in-Charge at Riggs instructed the examiners who had investigated the Pinochet accounts not to include their examination memorandum or supporting workpapers in the OCC's electronic files for Riggs Bank. The Subcommittee learned that such an instruction was highly unusual and contrary to OCC procedure and practice. About a month later, the OCC Examiner-in-Charge accepted a job at Riggs Bank.

**Equatorial Guinea Accounts.** The Subcommittee investigation also determined that, from 1995 until 2004, Riggs Bank administered more than 60 accounts and CDs for the government of Equatorial Guinea (E.G.), E.G. government officials, or their family members. By 2003, the E.G. accounts represented the largest relationship at Riggs Bank, with aggregate deposits ranging from \$400 to \$700 million at a time. The Subcommittee investigation has determined that Riggs Bank serviced the E.G. accounts with little or no attention to the bank's anti-money laundering obligations, turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement. The Subcommittee investigation found, for example, that Riggs opened multiple personal accounts for the President of Equatorial Guinea, his wife, and other relatives; helped establish shell offshore corporations for the E.G. President and his sons; and over a three-year period, from 2000 to 2002, facilitated nearly \$13 million in cash deposits into Riggs accounts controlled by the E.G. President and his wife. On two of those occasions, Riggs accepted without due diligence \$3 million in cash deposits for an account opened in the name of the E.G. President's offshore shell corporation, Otong, S.A.

In addition, Riggs opened an account for the E.G. government to receive funds from oil companies doing business in Equatorial Guinea, under terms allowing withdrawals with two signatures, one from the E.G. President and the other from either his son, the E.G. Minister of Mines, or his nephew, the E.G. Secretary of State for Treasury and Budget. Riggs subsequently allowed wire transfers withdrawing more than \$35 million from the E.G. government account, wiring the funds to two companies which were unknown to the bank and had accounts in jurisdictions with bank secrecy laws. The Subcommittee has reason to believe that at least one of these recipient companies is controlled in whole or in part by the E.G. President. When, in 2004, the bank requested more information about the two companies from the E.G. President, he declined to provide it, except to say the wire transfers to them had been authorized.

The senior leadership at Riggs Bank were well aware of the E.G. accounts and met on several occasions with the E.G. President and other E.G. officials. The bank leadership permitted the account manager handling the E.G. relationship to become closely involved with E.G. officials and business activities, including advising the E.G. government on financial

matters and becoming the sole signatory on an E.G. account holding substantial funds. The bank exercised such lax oversight of the account manager's activities that, among other misconduct, the account manager was able to wire transfer more than \$1 million from the E.G. oil account at Riggs to another bank for an account opened in the name of Jadini Holdings, an offshore corporation controlled by the account manager's wife.

In response to a Subcommittee subpoena, Riggs Bank initially failed to identify a number of E.G. accounts at the bank. The Subcommittee later learned that the bank had failed to designate any of the E.G. accounts as high risk accounts until October 2003, and did not subject them to additional scrutiny despite obvious warning signs, such as the involvement of foreign political figures, a country with a culture of corruption, and frequent high dollar transactions. The bank also failed to monitor or report suspicious activity in the E.G. accounts. The bank closed these accounts in recent weeks.

**Riggs' Dysfunctional AML Program.** The evidence demonstrates that the Pinochet and E.G. accounts were not treated in an unusual manner, but were the product of a dysfunctional AML program with long-standing, major deficiencies. These deficiencies included the inability readily to identify all of the accounts associated with a particular client, the absence of any risk assessment system to identify high risk accounts, inadequate client information, the lack of an established policy for handling accounts associated with foreign political figures, the failure to provide enhanced monitoring of high risk accounts, the failure to monitor wire transfer activity, the failure to detect and report suspicious activity, untimely and incomplete internal audits, and inadequate AML training. These flaws were repeatedly identified in regulatory examinations and internal audits, and Riggs repeatedly promised to correct them, but failed to do so.

**Regulatory Failure.** Given the fundamental, long-standing deficiencies in Riggs' AML program, it is difficult to understand why federal regulators failed to act sooner to require the bank to correct them. The OCC recently acknowledged: "there was a failure of supervision" at Riggs, and "[w]e gave the bank too much time." The evidence shows that, since 1997, OCC examiners repeatedly identified major AML deficiencies at Riggs Bank, but more senior OCC personnel allowed these AML deficiencies to continue year after year without forceful action to stop them.

In the case of Riggs, the evidence also indicates that the OCC's Examiner-in-Charge (EIC) appeared to have become more of an advocate for the bank than an arms-length regulator. In 2001, for example, he advised more senior OCC personnel against taking a formal enforcement action against Riggs, because the bank had promised to correct identified AML deficiencies. In 2002, he ordered examiners not to include a memorandum or workpapers on the Pinochet examination in the OCC's electronic database. About a month after giving this order, that same examiner was hired by Riggs, creating an appearance of a conflict of interest. During his tenure at the bank, he attended a number of meetings with OCC personnel related to Riggs' AML problems. Federal law bars former federal employees from appearing before their former agencies on certain matters, and OCC rules bar former OCC employees from even attending

meetings with the agency for two years, unless the OCC ethics office approves the contact. Despite these post-employment restrictions, the former Riggs examiner failed to obtain clearance from the OCC ethics office prior to attending the meetings with OCC personnel. These actions – advising against a formal enforcement action, suppressing the Pinochet examination materials, accepting a job offer at the bank he regulated, and ignoring post-employment restrictions on OCC contact – suggest this Examiner had become much too close to Riggs during the years he was responsible for overseeing it.

In addition, the facts demonstrate that his supervisors were too slow in reacting to repeat deficiencies at the bank and were too reluctant to make use of available enforcement tools to compel AML compliance. In 2001, for example, when presented with three examination reports outlining AML deficiencies at Riggs, OCC enforcement personnel went along with the EIC's recommendation against taking any enforcement action. In 2002, after learning that Riggs had hid the Pinochet accounts from the agency for two years and facilitated suspicious transactions, OCC supervisors, again, failed to take any enforcement action. The OCC failed even to issue a final examination report on the Pinochet matter. In 2003, after uncovering extremely troubling information in connection with accounts associated with Saudi Arabia, the OCC took its first enforcement action against the bank, issuing a cease and desist order requiring it to revamp its AML program. This order was more comprehensive and capable of enforcement in court than directives in prior examination reports, but included no punitive measures at the time such as a civil fine. It was only in 2004, six years after the OCC began citing Riggs for AML deficiencies, that federal regulators imposed their first civil fine on the bank.

The key OCC enforcement actions against Riggs Bank also took place after negative press reports began raising public questions about Riggs' AML safeguards. For example, the OCC's in-depth review of the Saudi accounts followed press articles that began appearing in November 2002, suggesting links between certain Riggs accounts and the 9-11 terrorist attack. This examination resulted in the OCC's identifying the same deficiencies as in earlier years, but in contrast to the agency's prior willingness to rely on promises by the bank to improve, the OCC issued a public cease and desist order requiring corrective action. The OCC's examination of the E.G. accounts in 2003 and 2004 was, in turn, prompted by a negative press article in January 2003 suggesting these Riggs accounts were being misused by E.G. officials and by the Subcommittee's investigation of these accounts throughout 2003. The OCC has indicated that it was the E.G. examination that opened their eyes to still more bank misconduct and to evidence of the bank's utter failure to implement promised AML reforms, resulting in the decision to impose a civil fine on the bank.

The Subcommittee's investigation indicates that the failure of supervision in the Riggs matter is not an isolated case, but symptomatic of a pattern of uneven and, at times, ineffective AML enforcement by federal regulators. The General Accounting Office has summarized a number of cases in addition to Riggs showing that federal regulators have allowed AML compliance problems to persist for years without correction. These cases indicate that all of the federal financial regulators, not just the OCC, need to strengthen their AML enforcement efforts

by requiring prompt correction of identified AML deficiencies, making greater use of formal enforcement tools when financial institutions ignore their AML obligations, and issuing more timely civil fines. Regulators should also consider developing a policy requiring mandatory enforcement action within a specified period of time against any financial institution with major, repeat AML violations.

Federal regulators should take broader actions as well to strengthen AML oversight. First, they should finalize overdue regulations and revise existing AML examination manuals to implement the due diligence provisions in the Patriot Act designed to combat money laundering and foreign corruption. Federal bank regulators should also elevate the importance of AML controls by routinely including AML assessments in the annual Report on Examination given to a bank's Board of Directors, and make these annual AML assessments available to the public, both to increase bank compliance and to alert other financial institutions to banks with inadequate AML controls. Congress should also consider enacting new legislation, modeled after 41 U.S.C. § 423(d) for federal procurement officials, imposing a one-year cooling-off period before an Examiner-in-Charge can take a position with the financial institution he or she oversaw.

An important ancillary issue raised by the Riggs case history involves the ability of U.S. financial institutions with foreign affiliates to get key due diligence information about accounts opened and managed by their foreign affiliates. After questions arose about the \$35 million in wire transfers from the E.G. oil account, for example, Riggs sent letters under Section 314 of the Patriot Act to at least two banks, Banco Santander and HSBC USA, asking them voluntarily to share information about the beneficial owners of certain accounts to which the funds had been directed. These accounts included, for example, ones opened in the name of Apexside Trading Ltd. and Kalunga Co. S.A., at least one of which the Subcommittee has reason to believe may be owned in whole or in part by the E.G. President.

Both banks declined to provide the requested information, because the accounts had been opened at their foreign affiliates in Luxembourg or Spain. Both banks took the position that bank secrecy laws in those jurisdictions barred disclosure of client information by their affiliates, not only to third parties, but also to personnel within the same bank if located outside the host country. This bar on disclosure means, in essence, that banks operating in the United States seeing large wire transfers directed to accounts at foreign affiliates of their own bank cannot obtain key information about the beneficial owners of those accounts, even from their own affiliates. In the Riggs matter, HSBC USA and Banco Santander told the Subcommittee that their own affiliates couldn't tell them the name of the individuals who owned the companies receiving the multi-million dollar wire transfers, whether those companies were owned by a political figure, or even whether the accounts were still open or had been closed.

This bar on disclosure across international lines, even within the same financial institution, presents a significant obstacle to effective AML due diligence for banks operating in the United States and a huge impediment to international efforts to stop money laundering, drug trafficking, and terrorism. To overcome this obstacle, the United States should work with the European

Union and other international bodies to enable financial institutions with U.S. and foreign affiliates to exchange client information across international lines to safeguard against money laundering and terrorist financing.

**Oil Company Payments.** During its analysis of large bank transactions involving E.G. accounts at Riggs Bank and other financial institutions, the Subcommittee staff became aware of a number of substantial payments that had been made by oil companies doing business in Equatorial Guinea to individual E.G. officials, their family members, or entities controlled by these officials or family members. For example, these payments, which sometimes exceeded \$1 million, paid for E.G. land leases or purchases, E.G. Embassy expenses, in-country security services, or expenses for E.G. students studying abroad. In a few instances, the evidence shows that oil companies entered into business ventures with companies owned in whole or in part by the E.G. President, other E.G. officials, or relatives. For example, in 1998, ExxonMobil established an oil distribution business in Equatorial Guinea of which 85 percent is owned by ExxonMobil and 15 percent by Abayak S.A., a company controlled by the E.G. President.

These types of payments and business ventures, which came to light as a result of the Subcommittee's detailed review of bank transactions involving Equatorial Guinea, are often unknown to the public and raise concerns related to corruption and profiteering. To reduce opportunities for corruption, the oil companies doing business in Equatorial Guinea should adhere to disclosure practices advocated in such international transparency initiatives as the Extractive Industries Transparency Initiative led by U.K. Prime Minister Tony Blair, and the G-8 Anti-Corruption and Transparency Initiative. These initiatives would require the oil companies to make public disclosure of all payments made to E.G. officials, their family members, or entities they control. To further reduce opportunities for corruption, U.S. oil companies should not participate in future business ventures in which individual E.G. officials or their family members have a direct or beneficial interest. Congress should also amend the Foreign Corrupt Practices Act to require U.S. companies to disclose substantial payments to and business ventures entered into with a country's officials, their family members, or entities they control.

### **III. Findings**

Based upon its investigation, the Subcommittee Minority staff makes the following findings of fact.

- (1) **Assisting Pinochet.** Riggs Bank assisted Augusto Pinochet, former president of Chile, to evade legal proceedings related to his Riggs bank accounts and resisted OCC oversight of these accounts, despite red flags involving the source of Mr. Pinochet's wealth, pending legal proceedings to freeze his assets, and public allegations of serious wrongdoing by this client.

(2) **Turning a Blind Eye.** Riggs Bank managed more than 60 accounts and certificates of deposit for Equatorial Guinea, its officials, and their family members, with little or no attention to the bank's anti-money laundering obligations, turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement.

(3) **Dysfunctional AML Program.** For many years, Riggs Bank ignored repeated directives by federal bank regulators to improve its anti-money laundering program, instead employing a dysfunctional system that failed to safeguard the bank against money laundering or foreign corruption.

(4) **Regulatory Failure at Riggs.** For many years, OCC examiners accurately and repeatedly identified major anti-money laundering deficiencies at Riggs Bank, but OCC supervisors failed to take strong action to require improvements. OCC regulators were tolerant of the bank's weak anti-money laundering program, too willing to rely on bank promises to correct repeat deficiencies, and failed initially to use available enforcement tools. Federal Reserve regulators were slow and passive.

(5) **Conflicts of Interest.** By taking a job at Riggs in 2002, after the OCC failed to take enforcement action against the bank in 2001 and 2002 for AML deficiencies, the former OCC Examiner-in-Charge at Riggs created, at a minimum, an appearance of a conflict of interest. In addition, despite federal law barring former employees from appearing before their former agencies on certain matters, and OCC rules barring former employees from attending meetings with the agency for two years without prior approval from the OCC ethics office, the former Examiner attended multiple meetings with OCC personnel related to Riggs' AML compliance, without obtaining the required clearance.

(6) **Uneven AML Enforcement.** Current AML enforcement efforts by federal agencies are uneven and, at times, ineffective, as demonstrated by cases in which federal regulators have allowed AML compliance problems to persist at some financial institutions for years, failed after three years to issue final regulations implementing the Patriot Act's due diligence requirements, and failed to issue revised guidelines for bank examiners testing AML compliance with the Patriot Act's due diligence requirements combating money laundering and foreign corruption.

(7) **Unseen Payments.** Oil companies operating in Equatorial Guinea may have contributed to corrupt practices in that country by making substantial payments to, or entering into business ventures with, individual E.G. officials, their family members, or entities they control, with minimal public disclosure of their actions.

## IV. Current Law

### A. Key Anti-Money Laundering Laws

Money laundering has been defined as “the movement of illicit cash or cash equivalent proceeds into, out of, or through the United States [or] ... United States financial institutions.”<sup>3</sup> Anti-money laundering laws also apply to terrorist financing, including any legally obtained funds if intended for use in planning, committing, or concealing a terrorist act.<sup>4</sup> History has shown that financing is key to terrorism, corruption, and other criminal acts. Money launderers want to be able to transfer funds across international lines, move money quickly, and minimize inquiries into their finances and activities. U.S. anti-money laundering laws are designed to prevent terrorists and other criminals from utilizing U.S. financial institutions to commit their crimes.

Three key laws lay out the basic anti-money laundering obligations of U.S. financial institutions, the Bank Secrecy Act (BSA) of 1970, the Money Laundering Control Act of 1986, and the USA Patriot Act of 2002, which amended both prior laws.<sup>5</sup>

The BSA, as amended by the Patriot Act, requires financial institutions operating in the United States to undertake a number of anti-money laundering efforts to ensure they do not become conduits for terrorist financing or criminal proceeds, or facilitators of money laundering. Key provisions include requirements for financial institutions to: (1) establish anti-money laundering programs with explicit policies and procedures, a BSA officer, employee training, and an internal audit function;<sup>6</sup> (2) verify the identity of persons seeking to open and maintain accounts;<sup>7</sup> and (3) exercise appropriate due diligence when opening and administering accounts for foreign financial institutions or wealthy foreign individuals, including senior foreign political figures.<sup>8</sup> In addition, the BSA authorizes the U.S. Department of Treasury to require financial

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<sup>3</sup> 31 U.S.C. § 5340(2).

<sup>4</sup> See, e.g., 18 U.S.C. § 981(a)(1)(G) (civil forfeiture laws applicable to laundered proceeds also apply to terrorist assets).

<sup>5</sup> For a more detailed discussion of U.S. anti-money laundering laws, see “Anti-Money Laundering: Issues Concerning Depository Institution Regulator Oversight,” (Report No. GAO-04-833T, 6/3/04), testimony provided by the General Accounting Office before the U.S. Senate Committee on Banking, Housing, and Urban Affairs, at 4-6.

<sup>6</sup> 31 U.S.C. § 5318(h).

<sup>7</sup> 31 U.S.C. § 5318(l).

<sup>8</sup> 31 U.S.C. § 5318(i).



institutions and other businesses to file reports on large currency transactions and suspicious activities to guard against money laundering.<sup>9</sup>

The Money Laundering Control Act, enacted partly in response to hearings held by this Subcommittee in 1985, was the first in the world to make money laundering a crime. It prohibits any person from knowingly engaging in a financial transaction which involves the proceeds of a “specified unlawful activity.”<sup>10</sup> The law provides a long list of specified unlawful activities, including, for example, terrorism, drug trafficking, and fraud. Most listed activities are crimes under U.S. law; however, in 2002, the Patriot Act expanded the list to include, among other items, foreign crimes involving corruption such as bribery and misappropriation of funds. The purpose of this addition was to make it illegal for a bank in the United States knowingly to accept funds that were the proceeds of foreign corruption. The addition of foreign corruption crimes to the list of specified unlawful activities was based primarily on the Subcommittee’s 1999 private banking hearing which established that senior foreign political figures were using U.S. bank accounts to hide and profit from misappropriated funds looted from their home countries.

The aim of these laws and other related laws is to enlist U.S. financial institutions in the fight against money laundering. Together, they require financial institutions to refuse to engage in financial transactions involving criminal proceeds, to monitor transactions and report suspicious activity, and to operate active anti-money laundering programs.

## **B. Anti-Money Laundering Regulation and Oversight**

The Secretary of the Treasury is the primary federal regulator charged with enforcing the key federal anti-money laundering laws.<sup>11</sup> Last year, the Secretary established a new internal office, the Executive Office for Terrorist Financing and Financial Crime (EOTF/FC), headed by a Deputy Assistant Secretary. This office oversees the operation of the Financial Crimes Enforcement Network (FinCEN), a Treasury bureau which, among other duties, develops BSA regulations and guidance, analyzes currency transaction reports and suspicious activity reports filed by financial institutions, and interacts with local, state, federal, and international law enforcement as well as other financial intelligence units around the world. The EOTF/FC also oversees the Office of Financial Asset Control (OFAC) which, among other duties, is primarily responsible for identifying countries, terrorists and drug traffickers subject to sanction under U.S. law, and administering the statutory regime for freezing their financial assets and blocking them from using the U.S. financial system.

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<sup>9</sup> See, e.g., 31 U.S.C. §§ 5313 and 5318(g); 31 C.F.R. §§ 103.11 and 103.21 et seq.

<sup>10</sup> 18 U.S.C. §§ 1956-57.

<sup>11</sup> See, e.g., 31 U.S.C. §§ 5311 et seq. (Treasury Secretary charged with carrying out key anti-money laundering laws) and § 5341 (Treasury Secretary given lead role in development of national anti-money laundering strategy).

Also within the Treasury Department is the Office of the Comptroller of the Currency (OCC) which, among other duties, is responsible for overseeing the operation of banks holding a national banking charter. Like other financial regulators, including the Federal Reserve Board, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and National Credit Union Administration, the OCC routinely examines financial institutions under its jurisdiction to ensure their safety and soundness and compliance with all statutes and regulations, including anti-money laundering requirements. For large and mid-size banks within its jurisdiction, the OCC examines their operations on a continual basis, looking at routine issues as well as particular areas of concern. On a roughly annual basis, the OCC presents a Report on Examination to the bank's Board of Directors and meets with the Board to explain its findings and any concerns. The OCC analysis includes an overall safety and soundness rating for the bank using the CAMELS rating system.<sup>12</sup> CAMELS ratings are on a scale of 1 to 5, in which 1 signifies a safe and secure bank with no cause for supervisory concern, 3 signifies an institution with supervisory concerns in one or more areas; and 5 signifies an unsafe and unsound bank with severe supervisory concerns. OCC can also label a bank a "troubled institution" under 12 C.F.R. § 5.51 Subpart (d).

In 1998, federal bank regulators issued revised examination manuals to guide examiners conducting anti-money laundering reviews of financial institutions. Many elements in this guidance were the result of joint consultations among the banking regulators. In September 2000, the OCC issued a revised "Bank Secrecy Act/Anti-Money Laundering Handbook" to provide additional, updated guidance to financial institutions about effective anti-money laundering policies and procedures and areas of concern. Although the Patriot Act made numerous changes in the law in 2002, the AML examination manual used by the OCC has not been fully updated to include, for example, the new due diligence requirements.

Should the OCC determine that a bank is engaging in an unsafe or unsound practice or has violated any law, rule, regulation, or other requirement placed on the bank, the agency can take a variety of informal and formal enforcement actions. Informal actions can include requiring a safety and soundness plan, memorandum of understanding, Board resolution, or commitment letter pledging to take specific corrective actions by a date certain, or issuing a supervisory letter to the bank listing specific "matters requiring attention." These informal enforcement actions are generally not made public and are not enforceable in court. Formal enforcement actions include issuing a cease and desist order requiring the bank to stop the unsafe practice or violation or take affirmative action to correct identified problems;<sup>13</sup> imposing a civil monetary penalty on the

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<sup>12</sup> CAMELS is the commonly-used acronym for the Uniform Financial Ratings System employed by the Federal Financial Institutions Examination Council, an interagency body that issues uniform standards for the federal examination of financial institutions. Each letter in CAMELS refers to a key component of financial performance rated by federal examiners. The six key components are referred to as Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. For more information see, e.g., [www.obre.state.il.us/CBT/LEGAL/POLICY/ppg2008.htm](http://www.obre.state.il.us/CBT/LEGAL/POLICY/ppg2008.htm).

<sup>13</sup> See, e.g., 12 U.S.C. § 1818(b). A cease and desist order is also often referred to as a consent order if the subject financial institution agrees to its terms.

bank;<sup>14</sup> suspending or removing one or more individuals from the bank;<sup>15</sup> or referring misconduct for criminal prosecution.<sup>16</sup> In addition, if the OCC determines that a bank “has failed to establish and maintain” an AML program or “failed to correct” any previously identified AML problems, the law requires the OCC to issue an order directing the bank “to cease and desist from its violation” of federal AML law.<sup>17</sup>

## V. Riggs Bank

Riggs Bank failed to comply with its legal obligation to establish and maintain an effective anti-money laundering program. Two examples involving Riggs accounts associated with Augusto Pinochet and Equatorial Guinea illustrate the extent of the bank’s AML deficiencies.

### A. Riggs National Corporation and Riggs Bank

Riggs Bank N.A. is a well-known and long-standing financial institution which is incorporated in Delaware and operates throughout the Washington, D.C. metropolitan area.<sup>18</sup> Riggs Bank is wholly owned by Riggs National Corporation, a publicly traded bank holding company which is incorporated in Delaware and headquartered in Washington D.C. As of 2003, Riggs National Corporation reported approximately \$6.3 billion in assets, about 95% of which were held by Riggs Bank, its principal operating subsidiary.

Riggs Bank operates primarily in the United States, but also maintains several foreign offices. Its foreign banking operations have included Riggs Bank Europe, Ltd. in London and Berlin; The Riggs Bank & Trust Company (Bahamas) Ltd., later reorganized as a Riggs Bank branch office in the Bahamas; Riggs Bank and Trust Company Ltd. on the isle of Jersey; and Riggs & Co. International Ltd. (RCIL) in London. Riggs Bank announced earlier this year that it intends to close down its London and German banks. Riggs Bank has also maintained an Edge Act subsidiary in Miami called Riggs International Banking Corporation (RIBC), but has indicated that it intends to shut down this company as well. Riggs Bank maintains several subsidiaries involved in investment activities, including Riggs Investment Advisors, Inc. (formerly named Riggs Investment Management Corporation (RIMCO)), J. Bush & Co., Inc.;

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<sup>14</sup> See, e.g., 12 U.S.C. § 1818(i)(2).

<sup>15</sup> See, e.g., 12 U.S.C. § 1818(e).

<sup>16</sup> See, e.g., 12 U.S.C. § 1818(j).

<sup>17</sup> 12 U.S.C. § 1818(s).

<sup>18</sup> General information about Riggs National Corporation and Riggs Bank is taken from their filings with the U.S. Securities and Exchange Commission (SEC); Reports on Examinations prepared by the OCC from 1997 through 2004; the Riggs website; and a shareholder derivative action, Horgan v. Allbritton, (Civil Action No. 370-N, Delaware Court of Chancery for New Castle County) (complaint filed on 4/7/04).

Riggs Capital, Riggs Capital II, Riggs Capital Partners, LLC; and Riggs Capital Partners II, LLC. Riggs has often used a brand name, "Riggs & Co.," to refer to its wealth management companies.

**Major Lines of Business.** Riggs Bank has several major lines of business, including retail banking and lending services throughout the Washington metropolitan area; corporate and institutional banking services provided to businesses, government agencies, and non-profits; and wealth management services provided to high income individuals through the bank's domestic and international private banking departments.

"Private banking" is a term used to refer to financial services provided exclusively to wealthy individuals.<sup>19</sup> Assigned to each private banking client is a bank employee who acts as a personal liaison between the bank and the client to facilitate the client's use of the bank's financial services. For example, the bank employee, often called a relationship manager, private banker, or account manager, helps clients to open accounts in various countries, complete wire transfers, convert currencies, purchase certificates of deposit, open investment accounts, obtain financial advice and estate planning, and obtain various lines of credit. In many instances, a private banker will set up an offshore shell corporation for a client and open accounts in the name of that shell corporation, in order to disguise the client's ownership of the account or certain assets. All of these services were provided by Riggs to its domestic and international private banking clients.

Riggs has also been a leader in a specialized area known as Embassy Banking, opening and administering accounts to more than 95% of the foreign missions and embassies located throughout the Washington metropolitan area. Until recently, Riggs' guiding principle was to open Embassy Banking accounts for any country or individual holding diplomatic credentials from the U.S. State Department.<sup>20</sup> The Subcommittee's review indicates that many foreign embassies opened multiple accounts at Riggs, not only to facilitate the day-to-day management of the relevant embassy office, but also in some cases to serve the financial needs of its diplomatic personnel, their family members, and, at times, other governmental agencies, officials, and individuals from the relevant country. The Subcommittee found that many of the Embassy Banking accounts it studied had been opened for the personal use of senior foreign political leaders or their family members and functioned in the same manner as private banking accounts.

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<sup>19</sup> See Section 312(a) of the Patriot Act, codified at 31 U.S.C. § 5318(i)(4)(B), for a more detailed definition of private banking accounts. Among other measures, the definition describes private banking accounts as financial accounts which are opened for one or more individuals with a minimum of \$1 million in deposits. For more information about private banking and its vulnerability to money laundering, see the 1999 Subcommittee Private Banking Hearings, Minority staff report at 874-83.

<sup>20</sup> Subcommittee interviews of Ray Lund (2/20/04) and Steven B. Pfeiffer (7/2/04). See also OCC examination materials (1/23/03), OCC 0000028176.

Embassy Banking has represented a major line of business for Riggs Bank. In recent years, these accounts have produced about 20 percent of Riggs' total revenues in terms of deposits.<sup>21</sup> About 44 percent of the Embassy deposit base came from African and Caribbean countries, 24 percent from the Middle East, and 17 percent from Latin America, Portugal and Spain.<sup>22</sup> According to an OCC analysis, about 7 percent of the Embassy relationships involved jurisdictions designated as non-cooperative with international anti-money laundering efforts.<sup>23</sup> Riggs' two largest Embassy clients were Equatorial Guinea and Saudi Arabia. Only a few other banks, such as Wachovia National Bank and Congressional Bank, are also engaged in Embassy Banking.

**Riggs Leadership.** Riggs Bank has an 11-person Board of Directors which generally meets quarterly. Three long-time Board members are Joseph L. Allbritton, his wife Barbara B. Allbritton, and their son Robert L. Allbritton, who, together, represent the largest shareholders of Riggs National Corporation. Joseph Allbritton resigned from the Riggs Bank Board in 2001, and from the Riggs National Corporation Board in 2004, while Robert Allbritton now serves as Chairman of both. Ms. Allbritton served as a director of Riggs National Corporation from 1991 to 1996, and served on the Riggs Bank Board until her resignation in 2004.

The Riggs Bank Board of Directors has six committees that assist with overseeing bank operations. Each of these committees at the bank has a parallel committee at Riggs National Corporation, and the two Boards and the parallel committees often meet jointly. The bank's Executive, Risk Management and Budget Committee helps to ensure the overall efficient functioning of the bank. The Audit Committee oversees the bank's financial statements and work performed by its internal and external auditors. The Compensation Committee assists the Board with issues related to compensation and benefits. The Nominating/Corporate Governance Committee recommends Board nominations and monitors corporate governance issues. The International Committee provides a forum for strategic planning for the bank in the international arena, including development of its international private banking and Embassy accounts.<sup>24</sup> In 2004, in response to problems identified by federal regulators, the Riggs Bank and Riggs National Corporation Boards each established a Bank Secrecy Act Compliance Committee to monitor and coordinate the bank's adherence to its anti-money laundering obligations.

The Riggs National Corporation Board directors in 2004 are: Robert L. Allbritton, J. Carter Beese, Charles A. Camalier, Timothy C. Coughlin, Lawrence I. Hebert, Steven B. Pfeiffer, Robert L. Sloan, Jack Valenti, William L. Walton, and Eddie N. Williams.

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<sup>21</sup> Interview of Ray Lund (2/20/04).

<sup>22</sup> OCC examination materials (4/14/03), OCC 0000028223.

<sup>23</sup> Id.

<sup>24</sup> Interviews of Joseph Cahill (6/25/04) and Steven B. Pfeiffer (7/2/04).

The membership of the Riggs Bank Board of Directors overlaps that of the Riggs National Corporation Board, but also has other individuals. The Riggs Bank Directors in 2004 are: Ms. Allbritton, Robert Allbritton, Nathan Baxter, Jacqueline C. Duchange, Thomas F. Fitzgerald, Heather Foley, Mr. Hebert, Frederick J. Ryan, Jr., Robert Roane, John A. Sargent, and Stephen J. Trachtenberg.

One of the most senior and prominent members of the Riggs National Corporation Board over the years has been Joseph Allbritton, who served as a bank director for more than 20 years, from 1981 until 2004, when he resigned. For many years, Mr. Allbritton was the Chairman of the Board of both Riggs Bank and Riggs National Corporation. He also served as the Chief Executive Officer (CEO) of both from 1983 until 2001. In February 2001, Robert Allbritton succeeded his father as Chairman of the Board of Riggs Bank. He also became Chairman of the Board and CEO of Riggs National Corporation.

Many of the other Riggs National Corporation Board members have close ties to Riggs. For example, Mr. Hebert, a director since 1981 of Riggs Bank and since 1988 of the bank holding company, became president and CEO of Riggs Bank in 2001, when Joseph Allbritton vacated that post. He is also an officer and director of several other Allbritton businesses, including Perpetual Corp. which owns Allbritton Communications Co. Mr. Coughlin, also a director since 1988, was president of Riggs National Corporation from 1992 until June 2004, when he retired. Prior to 1992, he worked at Riggs Bank and briefly returned to the bank in December 2003, when he assumed responsibility for the E.G. relationship and then, in March 2004, for the Embassy Banking and International Private Banking Departments. Mr. Pfeiffer has been a director since 1989, Chairman of the Executive Committee, Chairman of the International Committee, and a member of the Audit Committee. He is also a senior partner at Fulbright & Jaworski, a law firm that performs legal services for the bank. Mr. Beese, a director since 2001, is also president of two venture capital firms owned by Riggs Bank and, in 2002, received about \$2.6 million in management fees from Riggs to administer certain venture capital investment companies. Mr. Camalier, a director since 2001, is managing partner of Wilkes Artis, another law firm that performs legal work for Riggs Bank.

Today, the most senior officer of Riggs Bank is Mr. Hebert, the President and CEO. The chief operating officer is Robert Roane. The general counsel of the bank is Joseph Cahill. The chief financial officer is Steven Tamburo. The chief risk officer is R. Ashley Lee. The head of the International Banking Group was Raymond Lund, who was asked to leave the bank in March 2004. The head of compliance and security was Paul Glenn, who was succeeded in 2003 by David Caruso.

**Anti-Money Laundering Efforts.** Despite having large numbers of foreign clients, including clients from countries with high risks of money laundering and foreign corruption, Riggs has repeatedly been cited for having weak anti-money laundering controls.

The elements of an effective anti-money laundering program are well established, and federal bank examiners have been reviewing banks' anti-money laundering efforts for nearly a decade. For example, in 1997, the Federal Reserve published detailed guidance on anti-money laundering safeguards for private banking operations.<sup>25</sup> Among other elements, this guidance urges "senior management's active oversight of private banking activities and the creation of an appropriate corporate culture" to ensure a "sound risk management and control environment." It recommends that banks develop written anti-money laundering procedures, including "know-your-customer" (KYC) policies and procedures.<sup>26</sup> It directs banks to perform careful due diligence reviews before accepting new clients and to compile "basic background information" on each client for whom an account is opened, including the client's name, address, form of identification, business, source of wealth, and the type and volume of transactions expected to be passing through the clients' accounts.<sup>27</sup> At private banks that maintain and manage accounts for clients' offshore corporations, the guidance recommends that the bank keep careful records of the corporation's beneficial owners.

Once accounts are opened, the guidance stresses the importance of management information systems that can compile comprehensive information on all accounts and financial services related to a particular client and can be used to monitor account activity to detect suspicious transactions. The guidance repeatedly stresses the need to monitor account transactions, including wire transfer activity, and report suspicious activity to law enforcement. The guidance also stresses the importance of internal bank supervision of account managers, stating: "Institutions should not rely exclusively on any individual relationship manager or immediate supervisor to, for example, waive documentation required to open an account, approve the client profile, authorize a new client relationship, fully identify (or 'know') the client, and monitor client accounts for unusual transactions." It recommends instead that independent personnel such as compliance officers, risk management officers, or senior management also exercise anti-money laundering oversight. The guidance stresses, in addition, the importance of internal audit reviews to test the effectiveness of a bank's anti-money laundering policies and procedures.

The Federal Reserve guidance is just one of many alternatives that provide extensive information about operating an effective anti-money laundering program. In 2000, for example, the OCC issued a "Comptroller's Handbook on Bank Secrecy Act/Anti-Money Laundering" to provide detailed guidance to financial institutions about effective anti-money laundering policies and procedures. Because OCC regulations have required all nationally chartered banks to have

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<sup>25</sup> "Guidance on Sound Risk Management Practices Governing Private Banking Activities," (Federal Reserve Bank of New York, July 1997).

<sup>26</sup> Anti-money laundering programs were made mandatory by the Patriot Act in 2001. See § 352 of the Patriot Act, codified at 31 U.S.C. § 5318(h).

<sup>27</sup> Client recordkeeping requirements and customer verification procedures were also made mandatory by the Patriot Act. See § 326 of the Patriot Act, codified at 31 U.S.C. § 5318(l).

an AML program since 1987, most banks have had years of experience in establishing and operating effective AML controls.<sup>28</sup>

Despite such long-standing guidance, the anti-money laundering program at Riggs Bank was almost completely dysfunctional. Identified deficiencies have included an inability to compile information on all of the accounts related to a specific client, inadequate information on client backgrounds and the source of wealth in client accounts, a failure to identify high risk accounts, inadequate monitoring of client transactions, inadequate systems for reporting suspicious activity to law enforcement, weak supervision of account managers, and weak leadership within the bank concerning the importance of anti-money laundering efforts.<sup>29</sup> These deficiencies were identified by the bank's primary regulator, the OCC, and the bank's own auditors, as early as 1997, and repeated in numerous examination and audit reports over the next five years.

In 2002 and 2003, Riggs Bank was the subject of media reports about questionable transactions and accounts involving officials from Saudi Arabia and Equatorial Guinea. In response, the OCC initiated intensive examinations of both sets of accounts. In July 2003, the OCC issued a cease and desist order requiring Riggs to revamp its anti-money laundering programs. Riggs consented to the order and agreed to undertake numerous reforms to strengthen its BSA operations. In May 2004, the OCC and FinCEN fined Riggs Bank \$25 million for willfully violating its legal obligations to implement an adequate anti-money laundering program and file currency transaction and suspicious activity reports, and for failing to comply with the consent order. This fine is the largest ever assessed under the Bank Secrecy Act. In addition, in May 2004, the Federal Reserve issued a cease and desist order requiring the Riggs National Corporation to improve its oversight of the bank, internal controls, and risk management.

Beginning in early 2003, the Subcommittee initiated its own investigation of private banking and Embassy accounts at Riggs Bank. The following information on Riggs' handling of accounts for Augusto Pinochet and Equatorial Guinea illustrates the bank's disregard for anti-money laundering requirements and its active facilitation of suspicious activity. Additional information about the bank's deficient anti-money laundering controls and the failure of federal bank regulators to correct them follows.<sup>30</sup>

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<sup>28</sup> See OCC regulations at 12 C.F.R. § 21.21.

<sup>29</sup> For more information, see Section VI(A) of this Report.

<sup>30</sup> The full Committee on Governmental Affairs is conducting an investigation of the accounts opened by Riggs for Saudi officials. Because this review is ongoing under the direction of Committee Chairman Susan Collins, this Report does not present information about the Saudi accounts.



## B. Augusto Pinochet

**Finding (1): Assisting Pinochet. Riggs Bank assisted Augusto Pinochet, former president of Chile, to evade legal proceedings related to his Riggs bank accounts and resisted OCC oversight of these accounts, despite red flags involving the source of Mr. Pinochet's wealth, pending legal proceedings to freeze his assets, and public allegations of serious wrongdoing by this client.**

Augusto Pinochet Ugarte, former president of Chile, is a controversial political figure whose name is known world wide. After taking power in a 1973 coup, he served as President of Chile until 1990, and as Commander-in-Chief of the Chilean army until 1998. After stepping down from the army, he became a "Senator for life."<sup>31</sup> Since the first days of his regime, Mr. Pinochet has been accused of involvement with human rights abuses, torture, assassinations, death squads, drug trafficking, arms sales, and corruption, but never convicted in a court of law.<sup>32</sup> Since 1996, he has been the subject of repeated litigation in Spain,<sup>33</sup> the United Kingdom,<sup>34</sup> Chile,<sup>35</sup> and other countries<sup>36</sup> by persons seeking to hold him accountable for crimes committed during his presidency. In each case to date, he has been found by the presiding court to be unavailable, unfit, or immune to prosecution.<sup>37</sup>

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<sup>31</sup> See "Pinochet Extradition Case: Selected Legal Issues," Congressional Research Service (CRS Report No. RL-30117, 3/3/00), at 1-2.

<sup>32</sup> See, e.g., "Chile: Political and Economic Conditions and U.S. Relations," Congressional Research Service (CRS Report No. RL-300035, 8/5/03) at 2; "Crime Without Punishment: Impunity in Latin America," Amnesty International (AMR 1/8/96) at <http://web.amnesty.org/> (as of 6/23/04).

<sup>33</sup> See, e.g., complaint filed by the Union of Progressive Prosecutors before Spain's highest criminal court (7/4/96), <http://www.derechos.org/nizkor/chile/juicio/denu.html> (as of 7/5/04).

<sup>34</sup> See, e.g., Regina v. Bartle, (Lords of Appeal, 3/24/99), <http://www.parliament.the-stationery-office.co.uk/pa/ld199899/ldjudgmt/jd990324/pinol.htm> (as of 6/24/04); CRS Report on "Pinochet Extradition Case," at 2-12.

<sup>35</sup> For a list of the 66 criminal complaints filed against Mr. Pinochet from 1998 to 2000 in the Santiago Court of Appeals, see [http://www.memoriayjusticia.cl/english/en\\_home.html](http://www.memoriayjusticia.cl/english/en_home.html) (as of 6/24/04).

<sup>36</sup> Litigation against Mr. Pinochet has also been filed, for example, in Argentina, Belgium, France, and Switzerland. CRS Report on "Pinochet Extradition Case," at footnote 2.

<sup>37</sup> See, e.g., CRS Report on "Pinochet Extradition Case," at footnote 2 and page 11; "Chilean Supreme Court Upholds Suspension of Legal Proceedings Against Pinochet," [http://www.elmostrador.cl/c\\_pais/pino\\_casacion.htm](http://www.elmostrador.cl/c_pais/pino_casacion.htm) (as of 6/24/04). In May 2004, a Chilean appellate court ruled that Mr. Pinochet's immunity to prosecution was no longer valid and he was fit for trial, making a criminal trial still possible. See, e.g., "Pinochet Prosecutions for Human Rights Violations: Latest Developments," Congressional Research Service (CRS Report No. 2004-918, June 2004) at 1.

The Subcommittee investigation has determined that Riggs served as a long-standing personal banker for Mr. Pinochet and deliberately assisted him in the concealment and movement of his funds while he was under investigation and the subject of a world-wide court order freezing his assets. The Subcommittee investigation found that, among other actions, Riggs opened multiple accounts for Mr. Pinochet with the knowledge and support of the bank's leadership; accepted millions of dollars in deposits from him with no serious inquiry into the source of his wealth; set up offshore shell corporations and opened accounts in the names of those corporations to disguise Mr. Pinochet's ownership of the account funds; altered the names of his personal account to disguise his ownership; secretly transferred \$1.6 million from London to the United States while Mr. Pinochet was in detention and under court order; conducted transactions through Riggs' own concentration accounts to hide Mr. Pinochet's involvement in some cash transactions; and delivered over \$1.9 million in four batches of cashiers checks to Mr. Pinochet in Chile to enable him to obtain substantial cash payments in that country. The Subcommittee investigation also determined that Riggs Bank concealed the existence of the Pinochet accounts from OCC bank examiners for two years, resisted OCC requests for information, failed to identify or report suspicious account activity, and closed the accounts only after a detailed OCC examination in 2002.

**The Pinochet Relationship.** The evidence uncovered by the Subcommittee indicates that Mr. Pinochet was a Riggs customer for at least eight years,<sup>38</sup> with multiple bank accounts, investments, and certificates of deposit (CDs) under his control. His total deposits at Riggs varied over the years from about \$4 to \$8 million.

The evidence shows that two Riggs employees were primarily responsible for handling the Pinochet accounts on a day-to-day basis. Carol Thompson, senior vice president for Latin America in the Embassy Banking Division, met with Mr. Pinochet twice each year, and spoke directly with him on at least a quarterly basis.<sup>39</sup> Fernando Baqueiro, Managing Director for Latin America in the International Private Banking Department, also handled the accounts but has indicated having much less direct contact with Mr. Pinochet.<sup>40</sup> Both reported to the head of the International Banking Group.

Evidence obtained by the Subcommittee indicates that senior Riggs officials actively sought the Pinochet accounts. In separate interviews, Riggs personnel interviewed by the Subcommittee

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<sup>38</sup> One KYC document states Mr. Pinochet became a Riggs customer in 1985. "Riggs & Co Know Your Customer Client Profile" for Ashburton Company Ltd. (7/9/98), Bates OCC 0000045887-91, at 45888. The earliest account opening documentation provided by Riggs, however, is for an account opened in December 1994. Riggs monthly statement for Account No. 76-750-393 opened in the name of "Augusto Pinoche Ugarte &/or Lucia Hiriart Rodriguez," (December 1994), Bates RNB 029595. The 1985 reference may derive from dealings between Riggs Bank and Mr. Pinochet in connection with a long-standing Riggs Bank relationship with the Chilean military.

<sup>39</sup> Interview of Carol Thompson (6/23/04).

<sup>40</sup> See, e.g., OCC document, "Targeted Examination: Accounts related to Mr. Augusto Pinochet" (7/9/02), Bates OCC 0000517598.

all agreed that a delegation of senior Riggs officials visited several Latin American countries, including Chile, met with Mr. Pinochet, and explicitly asked Mr. Pinochet to open an account with Riggs. They disagree, however, as to exactly which Riggs officials went on the trip and who made the actual account solicitation when speaking with Mr. Pinochet.<sup>41</sup>

**Establishment of Two Offshore Shell Corporations.** In July 1996, about 18 months after Riggs opened a personal account for Mr. Pinochet, a detailed indictment accusing Mr. Pinochet of crimes against humanity was filed in Spain.<sup>42</sup> In 1996, and again in 1998, Riggs helped Mr. Pinochet set up two offshore shell corporations in the Bahamas, Ashburton Company Ltd. and Althorp Investment Co., Ltd. Neither company had any employees or physical offices, but were listed as the nominal owners of Riggs bank accounts and CDs that benefitted Mr. Pinochet and his family.

Riggs Bank & Trust Co. (Bahamas) Ltd., a Riggs subsidiary in the Bahamas with authority to open bank accounts and establish trusts in that country, established the companies.<sup>43</sup> Ashburton was incorporated first, in or around April 1996.<sup>44</sup> The nominal owner of the company was the Ashburton Trust, which Riggs helped establish in the Bahamas in May 1996.<sup>45</sup> The trustee of the Ashburton Trust is Riggs Bank & Trust Co. (Bahamas) Ltd.; the settlors are Mr. and Mrs. Pinochet; and the trust beneficiaries are their five children. Deloitte & Touche personnel were named as the officers and directors of Ashburton, so that Mr. Pinochet's name

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<sup>41</sup> Riggs personnel have variously identified the trip participants as including then Riggs Bank Chairman Joseph Allbritton, President of Riggs National Corporation Timothy Coughlin, then head of International Banking Paul Cushman, and Embassy account manager Carol Thompson. Persons interviewed disagreed or expressed uncertainty as to whether Mr. Allbritton, Mr. Coughlin, or Mr. Cushman solicited the Pinochet account. Subcommittee interviews of Riggs personnel and OCC examiners. See also OCC document, "Targeted Examination: Accounts related to Mr. Augusto Pinochet" (7/9/02), Bates OCC 0000517598. OCC examination materials, Bates OCC 0000045627 ("Then-Chairman Joe Allbritton, then-Head of International Banking Paul Cushman, and President of [Riggs National Corporation] Tim Coughlin asked Mr. Pinochet for his account.").

<sup>42</sup> See complaint filed by the Union of Progressive Prosecutors before Spain's highest criminal court (7/4/96), at <http://www.derechos.org/nizkor/chile/juicio/denu.html> (as of 7/5/04).

<sup>43</sup> Riggs Bank & Trust Co. (Bahamas) Ltd. is now closed. When open, it operated as a shell bank – it had no actual employees or offices in the Bahamas. Instead, it was managed by the Bahamas office of Deloitte & Touche, with which Riggs Bank had a long-standing relationship. When Riggs Bank & Trust Co. (Bahamas) Ltd. set up a trust or corporation for a Riggs client, Deloitte personnel actually filled out the paperwork and made the necessary arrangements on behalf of Riggs, including supplying officers and directors for offshore entities. See, e.g., OCC examination materials, undated, Bates OCC 0000045858-59 and OCC 0000045608.

<sup>44</sup> See Riggs document agreeing to manage Ashburton Co. Ltd. (4/26/96), Bates OCC 0000045893-909.

<sup>45</sup> See Riggs document establishing the Ashburton Trust (5/16/96), Bates OCC 0000045893-909.

never appeared on the incorporation papers. Riggs incorporated the second offshore shell corporation, Althorp Investment Co., Ltd., in February 1998, using a similar structure.<sup>46</sup>

**Multiple Accounts.** From 1994 until 2002, Riggs opened at least three personal accounts for Mr. Pinochet, three more in the names of his offshore shell corporations, Ashburton and Althorp, and issued various certificates of deposit (CDs). Some of these accounts were at Riggs Bank in the United States; others were at Riggs Bank Europe, Ltd. in London, and Riggs produced varying amounts of documentation for each. Much of the documentation provided to the Subcommittee related to the Pinochet accounts in the United States; relatively little related to the accounts in London. According to an OCC analysis, in 2000, the Pinochet accounts were the fourth largest in Riggs' International Private Banking Department.<sup>47</sup> After a targeted examination of these accounts by the OCC in 2002, all of his accounts were closed.

**Personal Accounts.** The three personal accounts at Riggs opened under the name of Augusto Pinochet Ugarte and his wife were as follows.

(1) Account No. 76-750-393, a personal money market account, was opened at Riggs in the United States in December 1994, and closed on March 25, 1999.<sup>48</sup> Over five years, the account balance fluctuated between about \$50,000 and \$1.2 million.<sup>49</sup> The Pinochet Embassy account manager told the Subcommittee that the bank closed this account after a Mexican newspaper obtained a monthly bank statement and published the account number.<sup>50</sup> The account was then closed and the funds transferred to a newly opened personal account, described next.

(2) Account No. 76-835-282, a personal money market account, was opened at Riggs in the United States, on March 24, 1999, with funds from the closed account. Over the next three

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<sup>46</sup> See Bahamas Certificate of Incorporation of Althorp Investment Co., Ltd. (2/23/98), Bates RNB 030007; Riggs document establishing Althorp Investment Co., Ltd. (undated), Bates OCC 0000045883-86; Riggs document establishing the Althorp Investment Co., Ltd. Trust (4/8/98), Bates OCC 0000045878-80; list of signatories for Althorp account at Riggs Bank (6/12/01), Bates OCC 0000045872.

<sup>47</sup> OCC document entitled, "IPBD 10 Largest Clients," (2/28/01), Bates OCC 0000537037.

<sup>48</sup> Riggs monthly statement for Account No. 76-750-393 opened in the name of "Augusto Pinoche Ugarte &/or Lucia Hiriart Rodriguez," (December 1994), Bates RNB 029595.

<sup>49</sup> Riggs Bank monthly statements for Pinochet personal money market account (1/31/97-3/29/99), Bates RNB 006156-85.

<sup>50</sup> Interview of Carol Thompson (8/23/04).

years, the account balance fluctuated between about \$20,000 and \$550,000.<sup>51</sup> This account was closed in August 2002.

(3) Account No. 25-005-393, a personal checking account, was opened at Riggs in London on an unknown date and, in April 1997, was converted to a personal NOW account, Account No. 74-041-013. The NOW account was closed in May 2000.<sup>52</sup> From 1997 until 2000, the account balance fluctuated between about \$40,000 and \$1.1 million.<sup>53</sup> In 2000, when the account closed, funds were apparently transferred to a newly opened account at Riggs in the United States under the name of the Pinochet shell corporation, Althorp Investment, Ltd.

**Corporate Accounts.** Riggs opened several bank and investment accounts in the name of Ashburton and Althorp, and issued numerous 90-day certificates of deposit. Based upon the evidence reviewed by the Subcommittee, the key Riggs accounts opened in the name of Mr. Pinochet's two offshore shell corporations were as follows.

(1) Account No. 02121401, later changed to Account No. 64-0041-01-8, was a corporate investment management account for Ashburton.<sup>54</sup> It was opened at Riggs in the United States on an unknown date in 1996. This account was the largest Pinochet account and, in July 2002, contained at least \$4.5 million.<sup>55</sup> Riggs actively managed the funds in this account, making numerous securities sales. It was closed in August 2002.

(2) Account No. 76-715-547, a corporate money market account for Ashburton, was opened at Riggs in the United States in May 1996.<sup>56</sup> From 1997 to 2002, the account balance

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<sup>51</sup> Riggs Bank monthly statements for Pinochet personal money market account (3/24/99-7/30/02), Bates RNB 006187-6234.

<sup>52</sup> Riggs computer-generated record of transactions for Pinochet personal checking and NOW accounts in London (4/28/97-5/19/00), Bates RNB 029638-43. See also, e.g., OCC examination materials (undated), Bates OCC 0000013831.

<sup>53</sup> Id.

<sup>54</sup> See, e.g., Riggs & Co. monthly statements for Ashburton investment account (July and August 2002), Bates RNB 031129-47 and 030130-36. This investment account was apparently managed originally by Rigg Bank & Trust Co. (Bahamas) Ltd. and later by Riggs' internal broker, the Riggs Investment Management Company. See, e.g., OCC examination materials (undated), OCC 0000013831.

<sup>55</sup> Riggs & Co. monthly statements for Ashburton investment account (July 2002) at Bates RNB 031129. See also Riggs bank listing of Pinochet accounts as of 5/2/01 (In 2001, Account 64-0041-01-8 had \$4.79 million), Bates OCC 0000490714.

<sup>56</sup> "Riggs & Co Know Your Customer Client Profile" (7/9/98), Bates OCC 0000045887 and 92.

fluctuated between about \$4,000 and \$1.1 million.<sup>57</sup> Although the Subcommittee was not given specific account closing documentation, other evidence indicates that this account was closed in August 2002.

(3) Account No. 76-835-493 was a corporate money market account that was opened in 2000, in the name of "Ashburton Company, Ltd. #2," but then changed in 2001, to "Althorp Investment Co. Ltd.," Mr. Pinochet's other offshore shell corporation.<sup>58</sup> The account was opened at Riggs in the United States in May 2000, with funds transferred from Mr. Pinochet's personal NOW account at Riggs in London.<sup>59</sup> From 2000 to 2002, the account balance fluctuated between about \$200,000 and \$950,000.<sup>60</sup> This account closed in August 2002.

(4) Riggs issued seven CDs in the name of Ashburton. Each CD was funded with \$1 million, was allowed to mature, and the funds used to buy a new \$1 million CD. The first CD was issued in 1997, and the last in 1998, which was then repeatedly renewed.<sup>61</sup> In October 2001, about \$500,000 was withdrawn from the then existing CD and credited to the Ashburton money market account, Account No. 76-715-547.<sup>62</sup> This CD matured in August 2002, and the remaining \$493,000 plus interest was paid into the Ashburton money market account which closed soon after.<sup>63</sup>

(5) A Riggs CD was also issued in the name of Althorp at Riggs in London in April 1998, for £1 million British pounds.<sup>64</sup> Documents variously refer to it as either Account No. 17-

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<sup>57</sup> Riggs Bank monthly statements for Ashburton money market account (1/31/97-5/31/02), Bates RNB 029645-715.

<sup>58</sup> Compare, e.g., Riggs monthly statement for "ASHBURTON CO LTD #2" (August 2001), Bates RNB 028848, with Riggs monthly statement for "ALTHORP INVESTMENT CO LTD" (September 2001), Bates RNB 028849.

<sup>59</sup> See, e.g., OCC examination materials (undated), Bates OCC 0000013831.

<sup>60</sup> Riggs Bank monthly statements for Althorp money market account (5/15/00-8/1/02), Bates RNB 028832-60.

<sup>61</sup> The first six CDs were 90-day \$1 million CDs, beginning with Account No. 81-305-710 issued in May 1997, and ending with Account No. 81-403-302 in August 1998. The final CD, Account No. 81-440-234, was issued in November 1998, for a 90-day period, and repeatedly renewed. See, e.g., OCC examination materials (undated), Bates OCC 0000517594-95.

<sup>62</sup> See, e.g., OCC examination materials (undated), Bates OCC 0000517595-96.

<sup>63</sup> Riggs Certificate of Deposit Receipt (5/9/02), Bates RNB 030156; Riggs IPBD Deal Ticket (5/9/02), Bates RNB 030155.

<sup>64</sup> See, e.g., OCC examination materials (undated), Bates OCC 0000517592-93.

172-204 or Account 74-377-015. The CD was renewed for three 90-day periods. On March 26, 1999, prior to its maturity date, the CD was “broken,”<sup>65</sup> and funds totaling \$1,619,500 were transferred to a newly issued CD for Althorp at Riggs in the United States, described below.<sup>66</sup>

(6) The U.S. dollar CD for Althorp, Account No. 81-442-002, was issued by Riggs in the United States on March 26, 1999, with funds from the London CD described above. This CD was automatically renewed at 90-day intervals. It was initially funded with \$1.6 million, but \$500,000 was withdrawn on May 15, 2001, and credited to the Althorp money market account, Account No. 76-835-493. On April 5, 2002, another \$500,000 was withdrawn and credited to Mr. Pinochet’s personal money market account, Account No. 76-835-282. In June, the CD was renewed for another 90-day period with \$619,500.<sup>67</sup> Although the Subcommittee was not given documentation showing when this CD terminated, Riggs has indicated that all Pinochet-related accounts were closed in July or August 2002.<sup>68</sup>

**Know Your Customer Documentation.** Conducting due diligence reviews of prospective clients is a key safeguard against money laundering. This “know your customer” (KYC) requirement primarily entails compiling and verifying background information on new and existing customers to guard against money laundering. The KYC information compiled by Riggs for the accounts controlled by Mr. Pinochet, however, was clearly deficient.

Over the years, Riggs has issued strong policy statements requiring detailed KYC information for its client accounts. For example, its 2000 BSA Compliance Program states:

“Riggs Bank will conduct business only with individuals, companies, trusts (beneficial owners) and grantors/power holders of such trusts that we know to be of good reputation and, through proper and thorough due diligence, we know to have accumulated their wealth through legitimate and honorable means. Riggs will not accept as a customer any individual, company or trust relationship whom we have any reason whatsoever to believe has been convicted of any crime involving the misappropriation of funds or the use of trafficking of narcotics, or narcotics related material, or money laundering, or has obtained

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<sup>65</sup> Riggs debit receipt for \$1,619,500 (3/26/99), stating: “OPENEW CD#81442002/ALTHORP INV.Co.LTD,” Bates RNB 030053; Riggs instruction to “break” £1 million CD (3/26/99), Bates RNB 029894. See also OCC examination materials (undated) (CD “[b]roken 3/26/99 - funds used to open CD#81-442-002 in US”), Bates OCC 0000013831.

<sup>66</sup> Riggs Certificate of Deposit Receipt (3/26/99), Bates RNB 030052.

<sup>67</sup> See, e.g., Riggs Certificate of Deposit Receipt (3/26/99), Bates RNB 030052; OCC examination materials (undated), Bates OCC 0000517592-93.

<sup>68</sup> Some documentation reviewed by the Subcommittee referred to other CDs than the ones in this list. Due to insufficient documentation, the Subcommittee did not include them in this list of Pinochet accounts.

funds through illegal or illicit means. Riggs requires that thoroughly reviewed and corroborated information be provided to Riggs in order to make the determination of whether to accept an individual as a Riggs customer.”<sup>69</sup>

This statement is followed by policies and procedures for compiling KYC information. Riggs also has a detailed KYC compliance manual which states, inter alia, “[W]e will do business only with individuals and organizations we believe to be of sound character and good reputation.”<sup>70</sup>

Contrary to its KYC policy, however, Riggs did not conduct “thorough due diligence” to ensure that Mr. Pinochet had accumulated his wealth “through legitimate and honorable means” nor did the bank obtain “thoroughly corroborated information” from him. For example, the earliest Pinochet account known to the Subcommittee is the personal account opened in the United States in December 1994. Riggs did not produce any KYC documentation related to the opening of this account, which had been solicited by the most senior leadership in the bank.

Riggs did produce, however, three KYC client profiles prepared during 1998, 1999, and 2002. The earliest of these KYC documents is a 1998 “Know Your Customer Client Profile” on a “Riggs & Co.” form for Ashburton Company Ltd.<sup>71</sup> This form has an elaborate set of questions soliciting information about the client’s name, address, OFAC status, related accounts, source of funds, background, existing assets, product needs, expected account activity, references, and status as a “High Profile” client. It also includes a checklist for required KYC documentation. While the KYC form solicits useful information to evaluate a client’s money laundering risk, not all questions are answered and the provided information is brief, incomplete, and, at times, misleading.

The 1998 client profile appears to have been prepared for an existing Ashburton money market account opened two years earlier in May 1996. The profile never identifies Mr. Pinochet as Ashburton’s beneficial owner, stating instead that the owner’s name is “Kept in Vault.” The profile states that the owner has been an “[e]xisting [c]ustomer since 1985,” has an estimated current annual income of \$150,000-\$200,000, and an estimated personal net worth of \$50 to \$100 million. It also states: “Client is a private investment company domiciled in the Bahamas used as a vehicle to manage the investment needs of beneficial owner, now a retired professional, who achieved much success in his career and accumulated wealth during his lifetime for retirement in an orderly way.”

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<sup>69</sup> “Bank Secrecy Act Compliance Program for Riggs Bank N.A.,” (7/11/00), Bates OCC 0000536606–25 at 608.

<sup>70</sup> Know Your Customer Compliance Policies and Procedures Manual,” (1/16/01), Bates OCC 0000537092-121, at 96.

<sup>71</sup> “Riggs & Co Know Your Customer Client Profile” for Ashburton Company Ltd. (7/9/98), Bates OCC 0000045887-91.



The profile provides the following for the source of wealth and source of funds in the account: "High paying position in investment income. Family wealth. ... High paying position in Public Sector for many years. Investment Income." When asked to provide the "source used to verify" this information, the response is: "Position and wealth are a matter of public knowledge."

The profile states at one point that the client has \$5.3 million with Riggs, and at another point \$6.3 million, with another \$1-2 million "expected." The chart requesting a list of "related accounts" is marked "N/A" and no accounts are listed, even though Mr. Pinochet then had three other accounts and two CDs at Riggs.

The form is signed by three Riggs officials, a private banking account officer Fernando Baquero, a representative of Sean Terry, then head of International Banking, and a third "supervising officer" whose signature is illegible.

The 1998 profile never discloses that the Ashburton owner is a senior foreign political figure and former head of state. It never mentions long-standing and ongoing controversies over the sources of his wealth, including allegations of corruption, drug trafficking, and arms sales. The profile also fails to mention pending legal actions against the account's beneficial owner, including a 1996 indictment filed in Spain alleging his involvement with crimes against humanity.

Riggs also produced a Riggs & Co. "Know Your Customer Client Profile" for Althorp Investment Ltd.<sup>72</sup> This profile was completed in May 1999. Althorp had been incorporated a year earlier, in April 1998, and then had a CD at Riggs in London, worth £1 million.

This 1999 profile never identifies Mr. Pinochet as the owner of Althorp. Instead, it describes him as an "existing client" who "is retired." It states: "He was a senior member of his government and had a long relationship with Riggs in this capacity. This trust was established for grandchildren." The profile describes the source of funds in the account as "Personal Investments" and describes the source of wealth as: "Family and salary." When asked about the source used to verify this information, the response states: "Personal visits."

The profile estimates the owner's current annual income at \$100,000, and his net worth at \$5 million. The chart requesting a list of "related accounts" is, again, left blank, although the profile states at another point: "Beneficial owner has other investment company with Riggs." The profile is signed by Sean Terry and an illegible signature.

Like the 1998 profile, the 1999 client profile makes no reference to Mr. Pinochet's status as a controversial political figure. Nor does it mention the proliferating litigation pending against him, including a 1998 world-wide attachment order in Spain seeking to freeze his bank accounts.

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<sup>72</sup> "Riggs & Co Know Your Customer Client Profile" for Althorp Investment Ltd. (5/3/99), Bates OCC 00000490702-06.

The 1998 and 1999 profiles are the only KYC information produced by Riggs for the accounts held by the two offshore shell corporations.

In 2001, Riggs Bank prepared a list of the accounts related to Mr. Pinochet as of May 2nd, and another list as of September 12th.<sup>73</sup> It is unclear whether these lists were prepared as KYC documents or for another purpose. Both are written in Spanish, and the name “Pinochet” appears in handwriting at the top of the September list.<sup>74</sup> Both lists identify nearly \$8 million in assets, including a personal account “in Washington” with about \$23,000; three Ashburton accounts (including one CD) with nearly \$6 million; and two Althorp accounts (including one CD) with a combined total of about \$1.9 million. These listings establish that the bank was aware of the various accounts controlled by Mr. Pinochet.

Finally, Riggs provided a “KYC Profile” prepared by Riggs & Co. in March 2002, for Mr. Pinochet’s personal money market account.<sup>75</sup> This profile notes that the account had been opened three years earlier, in March 1999. It marks the client as a “High Profile Customer,” and states that a memorandum is attached, although none was provided to the Subcommittee. At a later point, the profile states: “Additional information on file with Group Head.” The form also states that a list of all related accounts is held in the “Vault.”

The profile states that the Pinochet relationship came to the International Private Banking Department “though Riggs Embassy Division due to our close professional relationship with the Chilean Embassy in the US.” It describes Mr. Pinochet as a “retired Army General,” and says the source of his initial wealth was “profits & dividends from several business[es] family owned.” It states that the source of his current income is “investment income, rental income, and pension fund payments from previous posts.” It estimates his annual income at \$300,000 to \$500,000, and leaves blank his estimated net worth. It predicts wire transfers of up to \$250,000, but an average account balance of only \$20,000, suggesting an expectation that the account would be used as a quick pass through for large sums.

The form is signed by Fernando Baqueiro in the International Private Banking Department, Sean Terry, then head of International Banking, and Richard Dunbar, Chief Operating Officer of the bank.

As with the earlier profiles, this 2002 profile contains no reference to or acknowledgment of the ongoing controversies and litigation associating Mr. Pinochet with human rights abuses, corruption, arms sales, and drug trafficking. It makes no reference to attachment proceedings

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<sup>73</sup> Riggs document entitled, “Resumen,” (9/12/01), Bates RNB 029982-85; Riggs document prepared by the International Private Banking Department (5/2/01), Bates RNB 029986-88.

<sup>74</sup> A version of the May 2001 list contained in OCC files states at the bottom: “Riggs - pinochet.max.” Riggs document prepared by the International Private Banking Department (5/2/01), Bates OCC 0000490713-15.

<sup>75</sup> “Riggs & Co. KYC Profile,” (3/24/02), Bates RNB 029979.

that took place the prior year, in which the Bermuda government froze certain assets belonging to Mr. Pinochet pursuant to a Spanish court order – even though, as explained further below, senior Riggs officials obtained a memorandum summarizing those proceedings from outside legal counsel in May 2001.

In 2002, Riggs created for the first time a personal KYC client profile for Mr. Pinochet and attempted to document the sources of his wealth. In an interview, the Embassy Banking account manager who handled the Pinochet accounts told the Subcommittee that while she had reviewed extensive financial documentation in previous meetings with Mr. Pinochet, she did not collect copies of this documentation until 2002, when she assembled a number of materials for the 2002 client profile.<sup>76</sup> These materials included his Chilean tax returns from 1998-2001, indicating an annual income of about \$90,000 per year,<sup>77</sup> an unsubstantiated chart summarizing certain travel and commissions allegedly owed to Mr. Pinochet,<sup>78</sup> and two formal statements by Mr. Pinochet, dated 1973 and 1989, in which he attested to his own assets.<sup>79</sup> The Embassy Banking account manager told the Subcommittee staff that Mr. Pinochet had also realized significant gains in the Chilean stock market, but did not substantiate these gains in the 2002 KYC profile.<sup>80</sup> When the OCC reviewed the assembled documentation as part of its 2002 examination of the Pinochet accounts, it determined that the information was insufficient to establish the source of Mr. Pinochet's wealth and noted that Mr. Lund from Riggs had agreed with this assessment.<sup>81</sup>

**Evading Detection.** In addition to opening multiple accounts for Mr. Pinochet in the United States and London, Riggs took several actions consistent with helping Mr. Pinochet evade a court order attempting to freeze his bank accounts and escape notice by law enforcement.

In October 1998, a Spanish magistrate issued two international arrest warrants for Mr. Pinochet for murder, torture, hostage-taking, and genocide.<sup>82</sup> On October 17, 1998, pursuant

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<sup>76</sup> Interview of Carol Thompson (6/23/04).

<sup>77</sup> "Riggs & Co. KYC Profile," (3/24/02), Bates OCC 0000045842-49.

<sup>78</sup> *Id.* at Bates OCC 0000045835-36. No proof of these assets is provided.

<sup>79</sup> *Id.* at Bates OCC 0000045850-52. No proof of these assets is provided.

<sup>80</sup> Interview of Carol Thompson (6/23/04). The International Banking Group head stated that Riggs independently confirmed that, over the relevant time period, the Chilean stock market had increased in value, and it was plausible that an investor could have earned a large profit. However, the bank made no specific inquiry into Mr. Pinochet's claimed profits. Interview of Ray Lund (7/7/04).

<sup>81</sup> OCC document, "Targeted Examination: Accounts related to Mr. Augusto Pinochet" (7/9/02), Bates OCC 0000517600.

<sup>82</sup> See copies of the two international arrest warrants at <http://www.derechos.org/nizkor/chile/juicio/dili.html> (as of 6/25/04); and <http://www.derechos.org/nizkor/chile/juicio/recurso6.html> (as of 6/25/04).

to those warrants, Mr. Pinochet was arrested at a London hospital where he was recuperating from back surgery. Months of litigation ensued in both Spanish and British courts.

Among other actions, a Spanish magistrate issued an attachment order in October 1998, against all bank accounts held directly or indirectly by Mr. Pinochet, his family members, or third parties in any country.<sup>83</sup> On November 5, 1998, Spain's highest criminal court, the Audiencia Nacional, affirmed criminal jurisdiction over Mr. Pinochet, and on December 10, 1998, ratified the attachment order against Pinochet bank accounts.<sup>84</sup> In the United Kingdom, on November 25, 1998, the British Law Lords denied Mr. Pinochet's claim of diplomatic immunity to prosecution, then set aside that determination on December 17, 1998.<sup>85</sup> On March 24, 1999, the Law Lords authorized an extradition hearing to determine whether Mr. Pinochet should be transferred to Spain.<sup>86</sup>

Two days later, on March 26, 1999, Riggs allowed Mr. Pinochet to prematurely terminate the £1 million CD held in the name of Althorp at Riggs in London, and transfer the funds, totaling \$1.6 million in U.S. dollars, to a new CD in the United States.<sup>87</sup> Riggs did not file any suspicious activity reports that would have alerted British or U.S. law enforcement to the existence of the Pinochet funds.<sup>88</sup>

In March 2000, the British Home Secretary determined that Mr. Pinochet was unfit to stand trial due to poor health and terminated the pending extradition proceedings.<sup>89</sup> Mr. Pinochet immediately departed for Chile, having spent more than 18 months under house arrest. Later in March, senior Riggs officials and Embassy account manager Carol Thompson traveled to Chile

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<sup>83</sup> See attachment order, Auto del Juzgado Central de Instruccion No. 5 (10/19/98); copy of appellate court decision ratifying this attachment order at <http://www.derechos.net/doc/pino/proceso.html> (as of 6/25/04); Fulbright & Jaworski memorandum by Andres Rigo to Steven B. Pfeiffer regarding "Attachment of bank accounts: status and background," (5/21/01), Bates OCC 0000045921.

<sup>84</sup> For a copy of the court decisions, see <http://www.derechos.org/nizkor/chile/juicio/audi.html> (as of 6/25/04); <http://www.derechos.net/doc/pino/proceso.html> (as of 6/25/04).

<sup>85</sup> Regina v. Bartle, 37 I.L.M. 1302 (U.K. House of Lords, 11/25/98); In re Pinochet, 237 N.R. 201 (U.K. House of Lords, 12/17/98).

<sup>86</sup> Regina v. Bartle, 38 I.L.M. 581 (U.K. House of Lords, 3/24/99) at 582.

<sup>87</sup> Riggs debit receipt for \$1,619,500 (3/26/99); Riggs Certificate of Deposit Receipt (3/26/99), Bates RNB 030052-3; Riggs instruction to "break" £1 million CD (3/26/99), Bates RNB 029894.

<sup>88</sup> There is also evidence that Riggs had helped Mr. Pinochet move funds from other banks in Spain to the United Kingdom. See OCC document, "Targeted Examination: Accounts related to Mr. Augusto Pinochet" (7/9/02), Bates OCC 0000517599-600.

<sup>89</sup> See, e.g., "Formally Freed, Pinochet Takes Flight," Financial Times (3/3/00).

as part of a larger trip to visit Riggs clients in South America and conduct bank business.<sup>90</sup> During this trip, the senior Riggs officials met with Mr. Pinochet. It is difficult to believe that Riggs top officials would have been unaware of Mr. Pinochet's recent detention and legal proceedings when they met with him so soon after he had left England and returned to Chile.

In April 2000, Chilean lawyers filed suit in Chile to remove Mr. Pinochet's immunity to prosecution due to his status as a Senator.<sup>91</sup> In May 2000, as litigation continued in the Chilean courts, Riggs closed the final Pinochet account in London and transferred the remaining funds to a newly-opened Ashburton account at Riggs Bank in the United States.<sup>92</sup> The evidence indicates that senior Riggs officials were informed of and agreed to the transfer of Pinochet funds to the United States.<sup>93</sup> Again, Riggs failed to file any suspicious activity report with any office of law enforcement.

Courts continued to consider legal action against Mr. Pinochet. In August 2000, a Chilean appellate court upheld a lower court decision eliminating his immunity from prosecution, and on December 1, 2000, a Chilean judge indicted Mr. Pinochet for human rights violations.<sup>94</sup>

On December 10, 2000, a British newspaper reported that Mr. Pinochet had over \$1 million in a bank account at Riggs in the United States.<sup>95</sup> In late December or early January 2001, Riggs altered the official names on the personal account controlled by Mr. Pinochet in the United States, changing the names from "Augusto Pinochet Ugarte & Lucia Hiriart de Pinochet" to

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<sup>90</sup> Riggs personnel disagree as to which Riggs officials went on this trip and other trips to Chile. For example, Riggs employees interviewed by the Subcommittee disagree on whether then Riggs Bank Chairman Joseph Allbritton made this particular trip to Chile.

<sup>91</sup> See, e.g., "Pinochet Hearings Continue," BBC News (4/28/00).

<sup>92</sup> At some point in 2000, Riggs apparently considered transferring management of the Pinochet trusts from its bank and trust company in the Bahamas, which was then closing, to a newly established Riggs bank and trust company in Jersey. When approached by Riggs, however, the Jersey Financial Services Authority apparently indicated that the trusts could not be transferred unless the source of wealth and funds in the Pinochet accounts were verified as having derived from wholly legitimate sources. Rather than undertake that exercise, Riggs officials decided to retain the Bahamas office of Deloitte & Touche as the trust manager for the Pinochet trusts. Subcommittee interviews of Joseph Cahill (6/25/04), Timothy Coughlin (7/6/04), and Ray Lund (7/7/04). See also OCC examination materials (6/24/02), Bates OCC 0000045622, and (4/4/02), Bates OCC 0000026623.

<sup>93</sup> Interview of Ray Lund (7/7/04). See also, e.g., Riggs debit receipt for \$1,619,500 (3/26/99) signed by Riggs officer Sean Terry, Bates RNB 030053; Riggs memorandum from Sean Terry to Stan Dore (6/21/902), Bates RNB 029064-65.

<sup>94</sup> For a copy of the indictment, see <http://docs.tercera.cl/casos/pinochet/documentos/proceso.html> (as of 6/28/04). For a copy of the court decision, see <http://www.derechos.org/nizkor/chile/juicio/desafuero2.html> (as of 6/27/04). See also "Ordered to Trial for Kidnapping," Los Angeles Times (12/2/00).

<sup>95</sup> "Revealed: Pinochet drug smuggling link," The Observer (12/10/00).

“L.Hiriart &/or A. Ugarte.”<sup>96</sup> By changing the official account names in this manner, Riggs ensured that any manual or electronic search for the name “Pinochet” would not identify any accounts at the bank.

On January 29, 2001, Mr. Pinochet was placed under house arrest in Chile.<sup>97</sup> On May 15, 2001, Bermuda officials announced that they had carried out an asset seizure in response to the Spanish attachment order and frozen accounts belonging to Mr. Pinochet in a Bermuda subsidiary of Standard Life Assurance.<sup>98</sup> In response, Pinochet lawyers were quoted in the news media as saying that Pinochet “has no bank accounts outside Chile.”<sup>99</sup>

A week later, on May 21, 2001, a lawyer at Fulbright & Jaworski provided a memorandum to Steven Pfeiffer, a senior partner at the law firm, about the international legal efforts to freeze Mr. Pinochet’s bank accounts.<sup>100</sup> Mr. Pfeiffer was both a senior partner at Fulbright & Jaworski and a long-time member of the Riggs National Corporation Board of Directors. The memorandum given to him by an associate describes the Spanish attachment order, some of the pending legal actions against Mr. Pinochet, and a pending indictment listing “thousands of people who were assassinated, tortured or disappeared during Mr. Pinochet’s tenure as president of Chile.” Attached to the memorandum were eleven news articles, from 1998 to 2001, discussing Mr. Pinochet, several of which alleged his involvement with corruption, narcotics, arms sales, and other misconduct. One of the articles quoted a Pinochet attorney denying the existence of Pinochet bank accounts in other countries.<sup>101</sup>

On the same day, Mr. Pfeiffer forwarded the memorandum and news articles to two senior Riggs officials, the general counsel and head of the International Banking Group. He included his own memorandum which began: “As requested by Ray last Friday, over the week-end we reviewed certain online public news sources for articles that address the source of General Augusto Pinochet’s wealth and/or attempts to freeze and/or seize General Pinochet’s assets.”<sup>102</sup>

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<sup>96</sup> Compare, e.g., Riggs account statement for Account No. 76-835-282 for the period, 12/22/00 through 1/23/01, Bates RNB 006212, with the Riggs account statement for the period, 1/24/01 through 2/22/01, Bates RNB 006213.

<sup>97</sup> See, e.g., “Pinochet Arrest Ordered,” BBC News (1/30/2001).

<sup>98</sup> See, e.g., “Pinochet Assets Frozen,” BBC News (5/15/2001).

<sup>99</sup> Id.

<sup>100</sup> Fulbright & Jaworski memorandum from Andres Rigo to Steven B. Pfeiffer (5/21/04), with attached media articles, Bates OCC 0000045921-42.

<sup>101</sup> “Lawyers dismiss Pinochet asset freeze report,” CNN.com (undated but likely May 15 or 16, 2001) (““There is no account in the Bermudas or anywhere else,” said Pinochet’s defense lawyer, Jose Maria Eyzaguirre.”).

<sup>102</sup> Fulbright & Jaworski memorandum from Steven B. Pfeiffer to Joseph Cahill and Raymond Lund (5/21/04), Bates OCC 0000045919-20.

The memorandum stated that, while the searches did not uncover much information on the source of Mr. Pinochet's wealth, they did identify articles discussing "demands by 'leading political figures' in Chile to investigate the source of the Pinochet family's fortune" and efforts by the Spanish judge "to search for assets of Pinochet in the United States, Switzerland and Luxembourg."

Mr. Pfeiffer told the Subcommittee staff that he had been unaware of the Pinochet accounts prior to receiving a request from the bank for this memorandum.<sup>103</sup> He said that he did not raise any concerns with the bank's having these accounts, because he assumed the bank had performed the proper due diligence before accepting Mr. Pinochet as a client. The memoranda he provided the bank demonstrate that senior Riggs officials were fully aware of the Pinochet attachment order and seizure actions taking place in other countries, the questions about the source of Mr. Pinochet's wealth, and the allegations of his involvement with a variety of crimes. They also suggest that the bank was analyzing its own legal obligations.

Mr. Pfeiffer told the Subcommittee staff that he was asked by Riggs to prepare a second memorandum on the Pinochet accounts a year later, in June 2002.<sup>104</sup> He indicated that the bank was considering closing the accounts and wanted to know whether it could send the funds to Mr. Pinochet directly or, due to the attachment proceedings, had to send the funds to a court or law enforcement entity. Mr. Pfeiffer declined to produce a copy of this second memorandum on the ground that it was protected from disclosure by the attorney-client privilege. Riggs ultimately decided to close the accounts and send the funds directly to Mr. Pinochet in 2002. Riggs, again, took no action to disclose the Pinochet accounts to any court or office of law enforcement.

**Issuance of Cashiers Checks.** In addition to assisting Mr. Pinochet evade legal proceedings to attach his bank accounts, Riggs took questionable actions over a two-year period, 2000 to 2002, to help him utilize the funds in his U.S. bank accounts while in Chile.

On August 18, 2000, using funds from Pinochet accounts in the United States, Riggs issued eight, sequentially numbered cashiers checks payable to Augusto Pinochet, each in the amount of \$50,000, for a total of \$400,000.<sup>105</sup> According to the OCC, Riggs then paid for the private banker who sometimes handled the Pinochet relationship to travel to Chile, so that he could hand deliver the checks to Mr. Pinochet.<sup>106</sup> Mr. Pinochet cashed these checks, \$50,000 at a time, at several

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<sup>103</sup> Subcommittee interview of Mr. Pfeiffer (7/2/04).

<sup>104</sup> Id.

<sup>105</sup> The Riggs Embassy account manager indicated that she had received telephone instructions from Mr. Pinochet to provide these cashiers checks. Subcommittee interview of Carol Thompson (6/23/04). See also OCC examination materials, Bates OCC 0000045860.

<sup>106</sup> OCC examination materials, Bates OCC 0000045627.

banks over the course of several months.<sup>107</sup> By sending him these cashiers checks, Riggs enabled Mr. Pinochet to obtain substantial cash payments while in Chile.

On May 15, 2001, Riggs did it again. It used Pinochet funds to issue ten, sequentially numbered cashiers checks, each in the amount of \$50,000, for a total of \$500,000.<sup>108</sup> These checks were made payable to Maria Hiriart and/or Augusto P. Ugarte. They were sent by overnight delivery to Chile.<sup>109</sup> Mr. Pinochet, again, cashed the checks at several banks over the course of several months.<sup>110</sup> Unlike the cashiers checks issued in 2000, however, these cashiers checks drew their funds, not from a Pinochet account directly, but from Riggs' own concentration account.<sup>111</sup> This action meant that Mr. Pinochet could cash the checks without fear that they could be traced back to one of his accounts at Riggs.

On October 11, 2001, Riggs repeated the action a third time, issuing ten sequentially numbered \$50,000 cashiers checks, drawn on Riggs' own concentration account, for a total of

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<sup>107</sup> See copies of these cleared checks, Bates OCC 0000045749-62.

<sup>108</sup> Riggs was unable to provide a written request from Mr. Pinochet for these cashiers checks, but did produce a letter of instruction signed by representatives of Ashburton. See OCC examination materials, Bates OCC 0000045860.

<sup>109</sup> Subcommittee interview of Carol Thompson (6/23/04); see also two handwritten notes from Ms. Thompson instructing a Riggs employee to send "10 checks totaling \$500,000" to "A.P. Ungarte" in Chile, (5/14/01), Bates RNB 029977-78.

<sup>110</sup> See copies of these cleared checks, Bates OCC 0000045746-47, 45771-88.

<sup>111</sup> A concentration account, also called a clearing, omnibus, or suspense account, is an account established and used by a bank for administrative purposes. It usually commingles funds from various sources prior to transferring them to specific accounts. Concentration accounts are not designed to be used by clients for their own transactions. In 1997, the Federal Reserve issued this warning to private banks:

"[I]t is inadvisable from a risk management and control perspective for institutions to allow their clients to direct transactions through the organization's suspense account(s). Such practices effectively prevent association of the clients' names and account numbers with specific account activity, could easily mask unusual transactions and flows, the monitoring of which is essential to sound risk management in private banking, and could easily be abused."

Guidance on Sound Risk Management Practices Governing Private Banking Activities (July 1997). In 1999, this Subcommittee detailed how Citicorp had misused its concentration account to transfer about \$67 million from Mexico to New York on behalf of a private banking client, interrupting the audit trail linking these funds to the client. See, e.g., 1999 Subcommittee Private Banking Hearings, Minority staff report at 892-93. In 2002, in response to this and other evidence that banks were misusing their concentration accounts to disguise a client's participation in particular transactions, Congress enacted Section 325 of the Patriot Act authorizing the issuance of regulations to ensure that bank concentration accounts "are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner." The Treasury Department has not, however, issued any regulations to date.



\$500,000.<sup>112</sup> Made payable to Maria Hiriart and/or Augusto P. Ugarte, these checks were, again, sent by overnight mail to Mr. Pinochet in Chile. Mr. Pinochet, again, cashed them over the course of several months.<sup>113</sup>

On April 8, 2002, Riggs performed the same service one last time, mailing ten sequentially numbered \$50,000 cashiers checks to Mr. Pinochet in Chile.<sup>114</sup> These checks were made payable to L. Hiriart and/or A.P. Ugarte, and totaled \$500,000. They were drawn directly from the Pinochet accounts rather than from the Riggs concentration account. Mr. Pinochet cashed them over several months.

Altogether, Riggs transferred \$1.9 million to Mr. Pinochet in Chile through four sets of cashiers checks. When asked why, on each occasion, it had supplied multiple cashiers checks in identical amounts instead of a single check for the full amount, the key Riggs employee told the Subcommittee that Mr. Pinochet had requested this approach so that he could distribute the checks to his descendants before his death.<sup>115</sup> Analysis of the cleared checks, however, shows that Mr. Pinochet personally signed and cashed them over several months, a pattern equally consistent with his using the funds for his own expenses.

When asked why Riggs didn't simply wire transfer the funds to a Pinochet account in Chile, which would have been faster, less expensive, and more secure than physically transporting checks to Chile, Riggs personnel were unable to provide a satisfactory explanation.<sup>116</sup> When asked why Riggs had debited some of the cashiers checks from its own concentration account instead of directly from Mr. Pinochet's accounts, Riggs personnel apparently told OCC examiners that the bank often handled cashiers checks in this manner to protect client "confidentiality."<sup>117</sup> When further pressed by the OCC about this action, Riggs informed the examiners that it "would immediately cease the practice."<sup>118</sup>

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<sup>112</sup> Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.

<sup>113</sup> See copies of these cleared checks, Bates OCC 0000045796-807.

<sup>114</sup> Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.

<sup>115</sup> Interview of Carol Thompson (6/23/04). See also OCC examination materials, Bates OCC 0000045860 (Pinochet wanted to "start distributing monies to his children and grandchildren before his death.").

<sup>116</sup> OCC examination materials, Bates OCC 0000045861.

<sup>117</sup> Id.

<sup>118</sup> Id.

**Concealment and Resistance to OCC Oversight.** Riggs did not, at any time, volunteer information about the Pinochet accounts either to a bank examiner or to law enforcement.

In fact, Riggs appeared to take affirmative steps to hide the Pinochet relationship from bank examiners. In July 2000, for example, when pursuant to a routine anti-money laundering examination the OCC requested from Riggs a list of accounts controlled by foreign political figures, Riggs omitted the Pinochet accounts from that list.<sup>119</sup> In 2001, an OCC bank examiner happened to review the Althorp account as part of a routine sampling of KYC data in 17 accounts at the International Private Banking Department. According to the handwritten notes of the examiner, when the OCC asked about Althorp's beneficial owner, Riggs personnel responded that the owner was "a publicly known figure" in Chile; his Chilean family members "were diplomats," the account came from "Embassy [Banking]," the family members were "landowners" with "vineyards," and the Riggs Chairman of the Board "knows" the beneficial owner.<sup>120</sup> Riggs never disclosed that the beneficial owner was the former head of state, Mr. Pinochet.

The OCC finally discovered the Pinochet accounts in the spring of 2002, during an examination conducted at multiple banks to test existing policies and procedures to detect and report terrorist financing. Riggs was one of more than two dozen banks chosen to undergo this targeted examination. It was during this examination that OCC examiners came across coded references in a Riggs' log of cashiers checks, asked Riggs for an explanation, and learned of the Pinochet accounts.<sup>121</sup>

When OCC examiners met with Riggs personnel to obtain additional information about these accounts, Riggs personnel initially resisted cooperating with OCC requests. For example, according to an OCC summary of the meeting, a representative from the Riggs legal department asked why the OCC "would need copies of documents from the Pinochet accounts," expressed concerns about "the confidentiality of the information," and indicated he "did not believe that [the OCC] needed copies of 'any' information."<sup>122</sup> The Embassy Banking account manager asked the OCC to "guarantee her that no information be provided to any other agency." When she began to hand the OCC a document, the Riggs legal representative prevented her from actually doing so. About a week later, the OCC met with Riggs again and informed the bank that

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<sup>119</sup> See, e.g., OCC examination materials (7/28/00), including list of "Politicians" with accounts in the International Private Banking Department, Bates OCC 0000045669-71; OCC document, "Targeted Examination: Accounts related to Mr. Augusto Pinochet" (7/9/02), Bates OCC 0000517597-603, at 517601.

<sup>120</sup> OCC document entitled, "Sample - IPB," (2/28/01), Bates OCC 0000537063.

<sup>121</sup> See, e.g., OCC email (3/20/03), Bates OCC 0000516987

<sup>122</sup> OCC document entitled, "MEETING RIGGS NATIONAL BANK," (6/18/02), Bates OCC 0000026570.

it was undertaking a targeted examination of the Pinochet accounts.<sup>123</sup> At that meeting, Riggs committed to fully cooperating with the OCC and providing all requested information.

OCC examination personnel then raised numerous questions about the Pinochet accounts. One examiner wrote:

[I] remain puzzled by the entire relationship with someone of this calibre by Riggs. The apparent secrecy is also puzzling. ... Even a casual interpretation of nominal adher[e]nce to any type of KYC [know-your-customer] efforts would leave at a loss why Riggs would put themselves at such risk by dealing with him. ... Even if a nominal amount of the allegations of the atrocities, human rights violations, drug and arms trafficking, as well as assass[s]ination stories are true, the risk to the bank would be high ... if Riggs relationship were known. Perhaps this is the reason for the secrecy. ... His total control over the Chilean economy adds more questions as to his source of funds. Coupled with the potential of funds derived from possible terror and personal funds of the thousands of missing people, his role in the dissolution of the economic structure in Chile during his extended term surely opened the door to possible sources of self enrichment and wealth. ... If the general public can access such information on Pinochet, then so could Riggs. ... The threshold for filing a SAR [suspicious activity report] is only 'suspicious activity' and this surely meets the test. ... It is troubling to me that even the nominal facts known by me, would surface many questions that management must also have. The hesitancy to file [a suspicious activity report] is significant and cannot be lightly dismissed."<sup>124</sup>

The OCC directed Riggs to file a Suspicious Activity Report (SAR) about the Pinochet accounts so that law enforcement would be aware of them. Riggs complied in July 2002. The OCC considered the report so deficient, however, that it filed its own SAR soon after.

**Role of Board and Officers of Pinochet Accounts.** Information reviewed by the Subcommittee indicates that key Riggs Board members and senior officers were well aware of the Pinochet accounts.

Senior bank officials had been instrumental in bringing the first Pinochet account to the bank in late 1994. The account manager said that she sometimes spoke directly to Mr. Allbritton about the Pinochet accounts. In 2000, key Riggs Board members and bank officers traveled to Chile to meet with clients, including Mr. Pinochet who had been released from house arrest in the United Kingdom weeks, if not days, before the meeting. In 2001, a Riggs Board member

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<sup>123</sup> OCC document entitled, "MEETING RIGGS NATIONAL BANK," (6/24/02), Bates OCC 0000547042.

<sup>124</sup> OCC examination materials, email dated 5/16/02, Bates OCC 0000045705.

informed senior officials at the bank about the Pinochet attachment order, pending legal actions against Mr. Pinochet, and accusations concerning his involvement with wrongdoing.<sup>125</sup>

In 2002, when the OCC began a targeted examination of the Pinochet accounts, senior Riggs officers who were also Board members attended some meetings with OCC staff. One Riggs officer told an OCC examiner that, “Mr. Pinochet has a relationship with the Chairman of Riggs.”<sup>126</sup> During the course of the examination, the head of the International Private Banking Group wrote to Riggs’ then top anti-money laundering officer:

“Riggs Bank Legal Affairs Division and Compliance Division have been aware of all activities relating to these accounts. At no time has the International Group acted on this account without the express consent of both the Legal Affairs and Compliance Divisions.”<sup>127</sup>

In mid-2002, a Riggs board member provided a requested legal memorandum to the bank on whether it could close the Pinochet accounts without incurring any liability from the client.

On October 15, 2002, the OCC presented its findings on the Pinochet accounts to the Riggs Board of Directors. According to OCC personnel present at the meeting, the Board reacted with resentment over how the OCC had handled the matter.<sup>128</sup> According to the OCC, Ms. Allbritton, a Board member, complained that the agency had effectively forced the bank to close the Pinochet accounts.<sup>129</sup> In July and August 2002, Riggs closed the Pinochet accounts.

### C. Equatorial Guinea

**Finding (2): Turning a Blind Eye. Riggs Bank managed more than 60 accounts and certificates of deposit for Equatorial Guinea, its officials, and their family members, with little or no attention to the bank’s anti-money laundering obligations, turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement.**

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<sup>125</sup> Fulbright & Jaworski memorandum from Steven B. Pfeiffer to Joseph Cahill and Raymond Lund (5/21/04), with attached materials, Bates OCC 0000045919-42.

<sup>126</sup> OCC examination materials (4/4/02), Bates OCC 0000026623.

<sup>127</sup> Internal Riggs memorandum dated 6/21/02, from Sean Terry, then head of the International Private Banking Group, to Stan Dore, then BSA Officer, Bates RNB 029064-65.

<sup>128</sup> Interviews with Lester Miller and David Hunter (6/4/04).

<sup>129</sup> Id.

In 1995, Riggs Bank opened its first Embassy accounts for Equatorial Guinea, a small country on the west coast of Africa. Over the next eight years, the bank opened nearly 50 additional accounts and a dozen certificates of deposit for not only the government of Equatorial Guinea (E.G.), but also a host of E.G. senior government officials and their family members. By 2003, the E.G. account had become the bank's largest single relationship, with balances and outstanding loans that together approached \$700 million.<sup>130</sup>

The Subcommittee investigation has determined that Riggs Bank serviced the E.G. accounts with little or no attention to the bank's anti-money laundering obligations, turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement. The Subcommittee investigation found that Riggs opened multiple personal accounts for the President of Equatorial Guinea, his wife and other relatives; helped establish offshore shell corporations for the E.G. president and his sons; accepted \$13 million in cash deposits into accounts controlled by the E.G. President and his wife with few questions asked; allowed wire transfers withdrawing more than \$35 million from the E.G. account containing oil revenues for transfer to two unknown companies with accounts in bank secrecy jurisdictions; and exercised such lax oversight over the E.G. account manager that, among other misconduct, he was able to wire transfer more than \$1 million in E.G. oil revenues to an account he controlled at another bank. Riggs Bank closed the accounts only after numerous questions raised concerns the bank was unable to resolve.

**The Country of Equatorial Guinea.** Equatorial Guinea is a West African country, composed of a mainland and five inhabited islands, with slightly less landmass than Maryland and a population of about 510,000.<sup>131</sup> Malabo, on the island of Bioko, is the capital and largest city. Spanish and French are the official languages, but Bantu languages are also spoken.

Equatorial Guinea was colonized by the Portugese in the late 1600s, ceded to Spain in 1778, and gained independence in the 1960s.<sup>132</sup> After a referendum and constitutional convention, Francisco Macias Nguema was elected President of Equatorial Guinea in 1968.<sup>133</sup> Macias subsequently abrogated the constitution, established a single-party dictatorship, and declared himself President for life. His rule occasioned the death or exile of about one-third of

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<sup>130</sup> See, e.g., OCC examination materials (11/21/03), Bates 001167.

<sup>131</sup> See CIA World Fact Book, [www.odci.gov/cia/publications/factbook/print/ek.html](http://www.odci.gov/cia/publications/factbook/print/ek.html) (as of 6/10/04).

<sup>132</sup> "Equatorial Guinea At The Crossroads: Report of a Mission to Equatorial Guinea" (International Bar Association Human Rights Institute), at [http://www.ibanet.org/pdf/Equatorial\\_Guinea\\_Report.pdf](http://www.ibanet.org/pdf/Equatorial_Guinea_Report.pdf) (as of 6/10/04), at 11.

<sup>133</sup> "Background Note: Equatorial Guinea," (U.S. Department of State) at [www.state.gov/r/pa/ei/bgn/7221.htm](http://www.state.gov/r/pa/ei/bgn/7221.htm) (as of 6/10/04).

the country's citizens.<sup>134</sup> In 1979, Macias was overthrown and executed by his nephew, Colonel Teodoro Obiang Nguema Mbasago.

Mr. Obiang declared himself President in his uncle's place. Twenty-five years later, he still holds that position. While a new E.G. constitution was enacted in 1982, and single-party rule was officially ended in 1991, free and fair elections have not followed.<sup>135</sup> In the most recent election in December 2002, in which President Obiang claimed victory with 97% of the vote, the U.S. State Department described the proceedings as "marred by extensive fraud and intimidation."<sup>136</sup> President Obiang is also depicted as dominating the E.G. government. In the words of the U.S. State Department, he "names and dismisses cabinet members and judges, ratifies treaties, leads the armed forces, and ... appoints the governors."<sup>137</sup> A review of top E.G. officials over the past few years shows that many are members of the President's extended family.

The State Department has also been highly critical of the country's human rights abuses, use of torture, and culture of corruption.<sup>138</sup> The IMF has also issued reports critical of the country's lack of transparency and accountability on fiscal matters.<sup>139</sup> Corruption allegations are also commonplace in articles about Equatorial Guinea. For example, one recent U.S. publication wrote: "In 1998, according to the IMF, [the E.G.] government received \$130 million in oil revenue, and Obiang simply pocketed \$96 million of it. Although three of every four

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<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* See also "Equatorial Guinea At The Crossroads," prepared by a delegation from the International Bar Association (October 2003), at 7 (Equatorial Guinea has "little respect for the rule of law), "no viable opposition or political pluralism," "critical lack of free speech, press, association, and no significant development of civil society," experienced "interference by the Executive in the operations of the judiciary," and poorly drafted laws which were "inconsistent with its constitution, outdated, or ad hoc.").

<sup>138</sup> See, e.g., "Background Note: Equatorial Guinea," (U.S. Department of State) at [www.state.gov/r/pa/ei/bgn/7221.htm](http://www.state.gov/r/pa/ei/bgn/7221.htm) (as of 6/10/04); State Department's 2003 Country Report on Human Right Practices in Equatorial Guinea ("The security forces committed numerous abuses, including torture, beating, and other physical abuse of prisoners and suspects"; they "generally committed abuses with impunity"; and they "used arbitrary arrest, detention, and incommunicado detention."); State Department's 2002 Country Report on Human Right Practices in Equatorial Guinea ("Poor fiscal management and a lack of transparency in public accounting of national finances have undermined the country's economic potential. There is little evidence that the country's oil wealth is being devoted to the public good."). See also U.N. Commission on Human Rights, "Report on the human rights situation in the Republic of Equatorial Guinea" (1/24/02, 58<sup>th</sup> Session) at 13 (In Equatorial Guinea, "arbitrary detentions, inhuman treatment and torture ... continue as if they were perfectly normal.").

<sup>139</sup> See, e.g., "IMF concludes 2001 Article IV Consultation with Equatorial Guinea," (Public Information Notice No. 01/106, 10/11/01); IMF Report on Equatorial Guinea entitled, "Staff Report for the 2003 Article IV Consultation" (10/28/03).

Equatoguineans suffer malnutrition, between 1997 and 2002, Obiang spent just over 1 percent of his budget on health, by far the lowest of the nine African countries the IMF surveyed. According to a 2002 State Department report, there is 'little evidence that the country's oil wealth is being devoted to the public good.'"<sup>140</sup>

Despite its poor record on human rights, civil liberty, and democracy, Equatorial Guinea has experienced rapid economic growth during the last five years due to development of its oil resources. Since 1997, U.S. oil companies, including Amerada Hess, ChevronTexaco, ExxonMobil, and Marathon have made substantial investments in oil fields off the E.G. coast as well as in E.G. methanol and liquified natural gas plants. Equatorial Guinea has also become an important source of oil for the United States.<sup>141</sup>

Diplomatic relations between Equatorial Guinea and the United States have varied over the years. In 1995, the United States closed its embassy in Equatorial Guinea. Eight years later, in 2003, the United States agreed to re-establish this Embassy, reportedly at the urging of U.S. oil companies doing business in Equatorial Guinea. President Obiang professes to be a strong supporter of the United States and frequently travels to this country. His wife and children own real estate in Maryland, California, New York, and elsewhere.

**Equatorial Guinea Relationship.** The evidence shows that Equatorial Guinea has had a eight-year relationship with Riggs Bank and is associated with more than 60 accounts and CDs at the bank.

Equatorial Guinea opened its first accounts at Riggs Bank in 1995. The evidence indicates that over the following eight years, a single Riggs account manager in the Embassy Banking Division, Simon Kareri, was primarily responsible for the E.G. accounts. Mr. Kareri also handled other Embassy accounts in Africa and the Caribbean. He reported to the head of the International Banking Group, Raymond Lund.

**Multiple Accounts.** Riggs opened numerous accounts for the E.G. government, its officials, and their family members. After a targeted examination of these accounts by the OCC in 2003 and 2004, it is the Subcommittee's understanding that all have been recently closed. These accounts can be generally categorized as follows.

(1) **E.G. Oil Account.** One of the earliest and largest of the E.G. accounts, Account No. 17-164-642, was opened in January 1996, as a standard business checking account in the

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<sup>140</sup> "Rigged," The New Republic (6/21/04). See also, e.g., "Petroleum: The Curious Bonds of Oil Diplomacy," Africa News (11/6/02), and Parade Magazine (2/22/04), which has twice named President Obiang as one of the "ten worst dictators" in the world.

<sup>141</sup> See, e.g., "Promoting Transparency in the African Oil Sector," report prepared by the Center for Strategic and International Studies Task Force on Rising U.S. Energy Stakes in Africa (March 2004). See also, e.g., "Petroleum: The Curious Bonds of Oil Diplomacy," Africa News (11/6/02).

name of the “Republica de Guinea Ecuatorial-Tesoreria General.” Virtually all of the deposits into this account were payments from oil companies doing business in Equatorial Guinea, primarily ExxonMobil Corporation. Most of the funds were transferred out of this account to the Central Bank of Africa and used to pay E.G. bills. Some funds were transferred directly from the oil account to pay for various E.G. projects. This account often held tens of millions of dollars at a time. The account signatories were E.G. President Obiang; his son, Gabriel M Obiang Lima, E.G. Minister of Mines; and his nephew, Melchor Esono Edjo, E.G. Secretary of State for Treasury and Budget. Two signatures, one of which had to be from the President, were required to withdraw funds from this account.<sup>142</sup>

(2) **E.G. Investment Accounts.** The second largest E.G. account, Account No. 76-952-200, was a standard money market account linked to two Riggs investment accounts, Account Nos. 68-002-6010 and 68-002-6028.<sup>143</sup> Opened in December 2001, these accounts had combined funds in 2003, of more than \$300 million and at times as much as \$500 million. The money market account had the same three signatories as the E.G. oil account, but any one signature was sufficient to withdraw funds.<sup>144</sup> The two linked investment accounts had only one required signatory, the E.G. President.<sup>145</sup>

(3) **Other E.G. Government Accounts.** Several other Riggs accounts and CDs were also opened in the name of the Republic of Equatorial Guinea. They included a CD for \$40 million, Account No. 81-710-0433, issued in May 2002;<sup>146</sup> a CD for \$1 million, Account No. 81-763-3375, issued in November 2002;<sup>147</sup> and a CD for \$5 million, Account No. 81-217-905, issued in June 1996 and closed in March 1998.<sup>148</sup> Account No. 25-711-327, a checking account, was opened in September 2003, in the name of the EG government, with loan proceeds intended to be used to purchase an airplane for the use of the E.G. President; at the end of 2003, its balance exceeded \$9 million.<sup>149</sup> An account related to the E.G.

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<sup>142</sup> See, e.g., Riggs Miscellaneous Change Memo (2/15/2003), listing signatories for E.G. Oil Account, Bates RNB 000005.

<sup>143</sup> See, e.g., Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, “Equatorial Guinea” (1/20/04), Bates OCC 0000528712-23, at 714.

<sup>144</sup> Riggs document listing signatories for E.G. Investment Account (12/7/01), Bates RNB 000007.

<sup>145</sup> OCC Supervisory Target Letter 2004-X, Bates OCC 0000502621-29, at 26.

<sup>146</sup> Riggs Negotiable CD (5/3/02), Bates RNB 000023.

<sup>147</sup> Riggs Certificate of Deposit Receipt (11/7/02), Bates RNB 000025.

<sup>148</sup> Riggs annual statements on Account No. 81-217-905 (1996-1998), Bates RNB 001303-05.

<sup>149</sup> See Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, “Equatorial Guinea” (1/20/04), Bates OCC 0000528712-23, at 714.



shipping registry, Account No.17-201-044, was opened in 1996, and went inactive in 2001. A checking account, Account No.17-231-999, which was apparently used to pay E.G. debts, was closed in 1999.

(4) **E.G. Embassy Accounts.** Eight accounts were opened at Riggs in the name of the “Embassy of Equatorial Guinea.” The earliest of these accounts was opened in 1996, and the latest in 2002. Most of these accounts appear to have been used to pay Embassy bills, including utilities, telephone expenses, payrolls, and at least one land purchase of a \$600,000 “chancery site.” One account appears to have been set up, but rarely used, to make currency investments in the Euro. Due to limited documentation, the Subcommittee could not determine the purpose of several others, some of which may have contained the proceeds of Riggs loans to the Embassy. The Subcommittee was not given signatory documentation for these accounts, but the signatory may have been Teodoro Biyogo Nsue, E.G. Ambassador to the United States.<sup>150</sup>

(5) **E.G. Student Accounts.** Two accounts were opened in the name of the E.G. government and used to pay the expenses of E.G. students studying in the United States. The first account, Account No. 17-328-504, was opened in the name of “Republica de Guinea Ecuatorial-Cuenta Estudiantes MME.” It was a corporate wholesale checking account opened in March 2001. The account signatories were Cristobal Manana Ela, E.G. Minister of Mines & Energy; and a son of the E.G. President, Gabriel Nguema Lima, E.G. Secretary of State Mines & Energy.<sup>151</sup> This account had fluctuating balances that often exceeded \$300,000. The second, Account No. 25-380-310, was opened in the name of “Republica de Guinea Ecuatorial-Fondo Especial para Becas.” It was a business money market account opened in May 2002, and the only signatory was the Riggs E.G. account manager, Simon Kareri.<sup>152</sup> This account was linked to a Riggs investment account of the

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<sup>150</sup> In the course of analyzing various transactions in the Riggs accounts, the Subcommittee identified four accounts at another bank, JPMorgan Chase, opened in the name of the “Permanent Mission of Equatorial Guinea.” Three were business checking accounts, and one was a business money market account. The earliest was opened in 2000, and the latest in 2003. One account had limited activity, but substantial funds, opening with \$5 million and experiencing ten major withdrawals – one nearly \$2 million – in less than a year. A second had regular, relatively modest account activity, with frequent deposits of \$5,400 from two oil companies doing business in Equatorial Guinea, CMS and Marathon, and a one-time deposit of \$5 million that passed through the account in 24 hours. The third account had significant account activity and account balances that fluctuated from about \$60 to about \$135,000, and appeared to reflect a variety of Embassy expenses. The fourth account had limited account activity and minor balances. Of these accounts, one was closed in 2000, two were closed in July 2004, and the fourth was in the process of being closed by JPMorgan Chase.

<sup>151</sup> Riggs account opening documentation (3/29/01), Bates RNB 000009.

<sup>152</sup> Riggs account opening documentation (5/12/02), Bates RNB 000014. But see Riggs memorandum to the file from Mr. Kareri (8/13/02) and new signature card changing signatory to the E.G. Secretary of State for Treasury, Bates RNB 013621-23.

same name, Account No. 68-002-6036. Both the special account and the investment account had, at times, funds equal to or exceeding \$1 million.<sup>153</sup>

(6) **Otong Accounts.** While E.G. President Obiang did not have any personal accounts at Riggs, he was the beneficial owner of one account and two CDs opened in the name of a Bahamian offshore shell corporation, called Otong S.A., which was under his control and had been established on his behalf with the assistance of Riggs. Account No. 76-863-013 was a money market account, which was opened in September 1999, and had fluctuating balances. The first CD was opened in June 2000, as Account No. 81-450-109; the second was opened in June 2002, as Account No. 81-723-162. In December 2002, the first CD had a value exceeding \$11.7 million, while the second CD had a value exceeding \$4.4 million.<sup>154</sup>

(7) **Constancia Mangué Nsue Accounts.** Five accounts and three CDs were opened in the name of the President's wife, Constancia Mangué Nsue. The earliest was opened in 1997, and the latest in 2002. Account No. 24-383-122 was a personal checking account that received several large cash deposits, as well as a few payments from ExxonMobil oil company totaling about \$385,000. From 1998 until 2003, the account balance fluctuated widely between about \$3,000 and \$2.7 million.<sup>155</sup> Over time, about \$2.8 million was withdrawn from this account and transferred to a CD in Ms. Nsue's name, Account No. 81-253-754.<sup>156</sup> Account No. 24-895-363 was a joint checking account with her brother, Teodoro Biyogo Nsue, the E.G. Ambassador to the United States. From 2000 until 2003, this account balance fluctuated widely between \$0 to about \$670,000, and included some large cash payments and wire transfers.<sup>157</sup> Account No. 25-475-010 was a money market account established in 2002 to receive rental payments of about \$5,000 per month on a Maryland property owned by Ms. Nsue. Two money market accounts and two CDs were opened in the name of Ms. Nsue on behalf of her teenage twin sons, Justo and Pastor Obiang. The money market accounts, Account Nos. 76-890-441 and 76-890-433, each had fluctuating balances of between about \$600 and \$270,000, and each periodically sent large

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<sup>153</sup> See, e.g., Riggs account statement for the investment account, (June 2002) Bates RNB 013878 (account balance exceeds \$1 million).

<sup>154</sup> See December 2002 account statements, Bates RNB 000333 and 336; Riggs statement of account (4/2/02), Bates RNB 007385-87.

<sup>155</sup> See, e.g., Riggs monthly account statements, RNB 000723-92.

<sup>156</sup> At the end of 2002, this CD had a value of about \$2.9 million. Riggs 2002 account statement, Bates RNB 000920.

<sup>157</sup> See, e.g., Riggs monthly account statements, RNB 000793-843.

sums for deposit into CDs.<sup>158</sup> Each of the sons' CDs, in Account Nos. 81-585-919 and 81-585-927, had a value at the end of 2002 of about \$625,000.<sup>159</sup>

(8) **Teodoro Nguema Obiang Accounts.** While the E.G. President's eldest son, Teodoro Nguema Obiang, the E.G. Ministry of Forestry, did not have any personal accounts at Riggs, he was the beneficial owner of three accounts opened in the name of companies he controlled. Two of these accounts were opened in the name of his California entertainment company, TNO Entertainment LLC. The first, Account No. 76-889-555, was opened in 2000 and closed in 2001, and the funds were transferred to Account 76-923-450, which was opened in 2001 and remained open in early 2004.<sup>160</sup> From 2001 to 2003, the second account had balances that fluctuated between about \$17,000 and \$11.6 million.<sup>161</sup> The third account, Account No. 25-380-038, was opened in the name of Awake Ltd., a Bahamian offshore shell company that Riggs helped to establish. This money market account, opened in 2002, saw virtually no account activity.<sup>162</sup>

(9) **Teodoro Biyogo Nsue and Elena Mensa Accounts.** Four accounts and two CDs were opened in the name of Teodoro Biyogo Nsue, the E.G. Ambassador to the United States, or his wife, Elena Mensa, all with modest balances. A savings account, Account No. 25-595-370 was opened in the name of the Ambassador on behalf of his daughter, Candida Nsue, held minor balances, and showed little account activity. His wife also opened a savings account on behalf of their daughter, Account No. 25-460-310. For herself, Ms. Mensa opened a personal checking account, Account No. 25-356-070, and a money market

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<sup>158</sup> Riggs monthly account statements, Bates RNB 000862-915.

<sup>159</sup> 2002 Riggs account statements, Bates RNB 000923 and 926.

<sup>160</sup> See, e.g., Riggs statement of account (12/13/03 - 1/15/04), Bates RNB 002398.

<sup>161</sup> See Riggs account statements, Bates RNB 000489-543.

<sup>162</sup> The Subcommittee also identified two other sets of bank accounts associated with the President's son, opened at JPMorgan Chase and Citigroup. At JPMorgan Chase, four accounts and three CDs were opened in the name of the President's son, including a savings account and three checking accounts which together held about \$75,000 in 2003. All three CDs had matured in 2002, and at that time had an aggregate value of more than \$1.7 million. The saving and checking accounts closed in July 2002. At Citigroup, the Subcommittee identified four accounts that had been opened in the name of the son's company, TNO Entertainment. The earliest of these accounts was opened in 1997, and all four were closed in early 2000. They included a checking account, money market account, Citigold account, and securities investment account. These accounts were apparently dormant at times, but in mid 1999, received deposits in a relatively short period totaling about \$11.8 million. After noting suspicious account activity, Citigroup closed these accounts in 2000. Riggs Bank apparently identified at least one additional set of accounts held by the E.G. President's son at City National Bank of Beverly Hills, California. Riggs internal memorandum by the Security & Investigations Department (12/18/03), Bates OCC 0000528401.

account, Account No. 65-197-510, that closed in 2002. Ms. Mensa also had two CDs, Account Nos. 81-676-503 and 81-763-965, that were opened in 2001 and 2002.<sup>163</sup>

(10) **Melchor Esono Edjo Accounts.** One account and two CDs were opened in the name of Melchor Esono Edjo, Secretary of State for Treasury and Budget in Equatorial Guinea. Account No. 76-827-522, was a money market account. The two CDs, Account Nos. 81-502-490 and 81-764-159, were opened in 1999 and 2003, and together had an aggregate value of more than \$183,000.

(11) **Armengol Ondo Nguema Accounts.** One account and one CD were opened in the name of Armengol Ondo Nguema, the E.G. President's brother and Director of National Security in Equatorial Guinea. Account No. 76-889-504 was a money market account, opened in 2000. From 2000 to 2003, the account balance fluctuated widely between about \$3,000 and \$775,000.<sup>164</sup> The CD, Account No. 81-657-484, was opened in June 2001, with \$700,000 transferred from the money market account. At the end of 2002, it had a value of slightly more than \$700,000.<sup>165</sup> Two more accounts were opened in the name of his daughter, Maria Ondo Mangué (also known as Maria Luisa Mangué Ondo), who was studying in the United States. Account No. 25-460-986 was a savings account that was opened in 2002 and closed in July 2003; Account No. 25-125-029 was a checking account opened in 2001, with minor balances.

(12) **Pastor Micha Ondo Bile Accounts.** Two accounts and four CDs were opened in the name of Pastor Micha Ondo Bile, Minister of Foreign Affairs in Equatorial Guinea and one-time E.G. Ambassador to the United States. Account No. 24-203-160, a checking account, and Account No. 76-787-356, a money market account, were both opened in 1995. Of the four CDs, Account Nos. 81-519-794, 81-770-495, 81-815-876, and 81-405-228, one was opened in 1998, and the other three in 2003. The Subcommittee did not obtain information on the aggregate value of these four CDs. One additional account, Account No. 25-731-088, was opened by the Minister's daughter, Sylvia Nachama Ondo, who is also a niece of President Obiang. It was a checking account with minor balances, opened while she was studying in the United States.

(13) **Boriko, Nseng, and Edjo Accounts.** Three separate money market accounts with relatively minor balances were opened in the names of three other E.G. officials. Account No. 75-841-201, opened in 1998 and dormant in 2003, was opened in the name of Miguel

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<sup>163</sup> The Subcommittee identified two additional accounts opened in the name of the Ambassador at JPMorgan Chase, as well as six at Citigroup. The Chase account was closed in February 2004. At least one of the accounts at Citigroup had fluctuating balances, large cash deposits of up to \$50,000, and suspicious wire transfers. Citigroup indicated that all of the Ambassador's accounts were closed in May 2002.

<sup>164</sup> See Riggs account statements (2/3/00-3/5/03), Bates RNB 000544-606.

<sup>165</sup> 2002 Riggs account statement, Bates RNB 000608.

Abia Biteo Boriko, former Minister of the Economy. Account No. 76-913-623, was opened in 2000, in the name of Juan Olo Mba Nseng, former Minister of Mining and now Director of Electricity in Equatorial Guinea. Account No. 76-841-236, was opened in 1998 in the name of Baltasar Engongo Edjo, Minister of Economic Affairs and Finance.

(14) **Makina Accounts.** Three accounts with minor balances were opened in the name of Sisinio E Mbana Makina, the former First Secretary of Equatorial Guinea who was employed at the E.G. Embassy. Two were “convenience plus money market accounts”; and one was a savings account that was opened in 2002 and closed in 2003.

(15) **Business Accounts.** Three accounts were opened in the name of E.G. businesses. Ecuato Guineana de Aviacion, the official E.G. airline, opened one money market account at Riggs in 2001, Account No. 76-939-372. GEPetrol, the official E.G. oil company established in June 2002, opened a corporate wholesale checking account and a business money market account, Account Nos. 17-340-829 and 76-812-478, in 2002, but did not use either account.

**KYC Information and Offshore Shell Corporations.** When asked about the decision to open and maintain the various E.G. accounts, Riggs Board members and senior officers stated as late as 2004, that the bank’s policy for Embassy accounts was to accept any country or individual holding diplomatic credentials from the U.S. Department of State, without regard to their “politics.” The problem with this approach, however, is that Riggs should have also, but did not, conduct a risk analysis of each potential accountholder’s possible involvement in money laundering or foreign corruption in order to safeguard the bank against these risks.

Riggs was clearly aware of the corruption concerns associated with Equatorial Guinea. For example, a Riggs analysis prepared in connection with a 2002 E.G. loan request included these observations about the country:

“The World Bank and IMF are under pressure to engage with Equatorial Guinea .... Although the government recently announced a program to improve transparency and accountability, any changes are unlikely to meet IMF criteria. With the establishment of a state oil company, GE Petrol, later in 2001, management of the oil sector may even become more opaque, and standards of governance are like to remain poor. ... The government cash-flow situation improved considerably during 1999-2000, reflecting growing oil revenue, but fiscal policy performance continued to weaken, as evidenced by the lack of control over government financial operations. ... The [E.G.] President has at least partly overcome US State Department concerns about human rights abuse and corruption. ... Allegations of human rights abuses following the announcement of the coup in March have been well documented, and have elicited international condemnation. However, any hesitancy on the part of the US or European countries towards Equatorial Guinea will be temporary, due to the rising importance of the oil sector .... Human rights have been an endemic problem in Equatorial Guinea. The UN Human Rights Commission voted to keep

Equatorial Guinea under scrutiny however; it is believed that the government's increasing capacity to buy diplomatic influence has caused several African countries to insist on softening the criticism."<sup>166</sup>

This pragmatic description of corruption and human rights abuses in Equatorial Guinea demonstrates that Riggs was fully aware of the corruption risks associated with the E.G. accounts. Despite this knowledge, Riggs failed to designate the E.G. accounts as high risk until October 2003, and failed to exercise enhanced scrutiny of the account activity, even for transactions involving large cash deposits or international wire transfers.

Of the 60 accounts and CDs opened for E.G. clients at Riggs, the evidence indicates that at least half functioned as private banking accounts for senior E.G. officials or their family members. In the case of the E.G. President, the Subcommittee found that, as part of its services, Riggs helped the E.G. President and his sons establish at least two offshore shell corporations and open bank accounts in their names.

In September 1999, Riggs helped the E.G. President establish Otong, S.A., an offshore corporation incorporated in the Bahamas.<sup>167</sup> In September 1999, Riggs opened its first account for Otong, Account No. 76-863-013. The Riggs account opening documentation for Otong states that the beneficial owner of Otong is "Teodoro Mbasogo" and gives his confidential address as "The Presidential Palace, Malabo, Equatorial Guinea."<sup>168</sup> The client profile states: "The President of Equatorial Guinea has been in office for twenty years. He has extensive farming [assets] and is a major partner of the telecommunication (phone system modernization) project in the country with France Telecom." It cites "[c]ocoa farming and businesses" as the client's original source of wealth, verified by "Incountry visits." Under "Additional Comments," it states: "We have known him [the E.G. President] for five years and [he] has been quite consistent with us. The President desires to have a personal relationship with us in order to facilitate his personal and family needs while in the U.S. These needs include health and management of his residence here in the U.S." The client profile does not contain required signatures from bank personnel approving the opening of the account.

Additional account opening documentation was completed for Otong when it opened two CD accounts in June 2000, Account Nos. 81-450-109 and 81-723-162.<sup>169</sup> The 2000 account

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<sup>166</sup> Riggs "Officers' Loan Committee Action" (11/26/02), Bates T 00003089-3101, at 3092-93.

<sup>167</sup> See Certificate of Incorporation (9/20/99), Bates RNB 007303-04; emails between Riggs and the Bahamas company incorporating Otong (9/20/99), Bates RNB 007287-90 and RNB 007305. Otong is authorized to issue both registered and bearer shares. See Memorandum of Association and Articles of Association of Otong S.A. (9/20/99), Bates RNB 007250-74.

<sup>168</sup> "Riggs & Co Know Your Customer Client Profile" (9/20/99), Bates RNB 007112-16.

<sup>169</sup> "Riggs & Co. Trust Services Account Approval & Opening Memo" (5/30/00), including "Riggs & Co. Know Your Customer Client Profile" (5/30/00), Bates RNB 007089-98.

opening documentation states that the beneficial owner of Otong is “T.Ngui,” but then repeats verbatim the language describing the E.G. President in the 1999 client profile.<sup>170</sup> Like the 1999 documentation, the 2000 documentation does not contain required signatures from bank personnel approving the opening of the accounts.

An updated client profile for the Otong accounts was completed in 2002.<sup>171</sup> This profile rated Otong a “high” risk account, stated the owner was a high profile government official, and identified the owner as the E.G. President. An attachment listed all three Otong accounts, while another provided a brief overview of the many E.G. businesses owned by the E.G. President.<sup>172</sup> The profile was signed by a Riggs employee who reported to the E.G. account manager.

As discussed later in this Report, the E.G. President made more than \$11.5 million in cash deposits to the Otong accounts from 2000 to 2002. While Riggs filed the required Currency Transaction Reports (CTR) on each occasion, the OCC later determined that the CTRs had repeatedly mischaracterized Otong, describing it as a timber export company rather than the E.G. President’s offshore corporation.<sup>173</sup>

In January 2001, Riggs helped establish Awake Ltd., another offshore corporation in the Bahamas.<sup>174</sup> The beneficial owners of this company are Teodoro Nguema Obiang and Pastor Obiang, both sons of the President. Riggs Bank opened an account for Awake Ltd. in June 2002.<sup>175</sup> The account opening documentation lists Teodoro Nguema Obiang as the president of

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<sup>170</sup> When asked about this discrepancy, the E.G. account manager apparently indicated T. Ngui and President Obiang were the same person, but provided no explanation for the changed name and no supporting documentation explaining the name switch. The website for the Government of Equatorial Guinea, however, indicates that the name of President Obiang’s mother was Mbasogo Ngui. See <http://www.ceiba-guinea-ecuatorial.org/guineeangl/indexbienv1.htm>. Whether “Nguí” is, thus, part of President Obiang’s name and why the President’s full name was not placed on the account opening documentation are issues that remain in question.

<sup>171</sup> Riggs “KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts,” (11/19/02), Bates RNB 000036-40.

<sup>172</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>173</sup> See, e.g., *In re Riggs Bank, N.A.*, “Assessment of Civil Money Penalty,” prepared by the Financial Crimes Enforcement Network (Case No. 2004-01), at Section III(D).

<sup>174</sup> See Certificate of Incorporation and related paperwork for Awake Ltd. (1/3/01), Bates OCC 0000513849-54. The evidence shows that Trident Corporate Services (Bahamas) Ltd., which has a long-standing working relationship with Riggs Bank, helped incorporate this company. Trident also sent notices about the company’s annual licensing fees to Awake Ltd. at the Riggs Bank address in Washington, to the attention of Simon Kareri. See Trident and Riggs documentation, Bates RNB 010157-58 and 010443-44.

<sup>175</sup> See Riggs account opening documentation for Awake Ltd. (6/11/02), Bates RNB 002064-65.

the company. The account documentation indicates that the account has been dormant since its opening, and it is unclear the extent to which Awake Ltd. became an active corporation.<sup>176</sup>

Riggs was aware that the President and his sons also had a number of E.G. companies under their control. These E.G. companies included the following:

(1) **Abayak.** Abayak, S.A. was and perhaps still is the only construction company in Equatorial Guinea, an importer of construction-related goods, and a participant in real estate deals on behalf of the E.G. President and his wife as described later in this Report. According to a Riggs' analysis and other documentation, Abayak is controlled by the E.G. President who is also identified in Riggs KYC documentation as the company's president.<sup>177</sup> Abayak is a participant in several other entities involving foreign individuals or companies. For example, Abayak has a 15 percent interest in a subsidiary of ExxonMobil called Mobil Oil Equatorial Guinea, an E.G. oil distribution business.<sup>178</sup> It also maintains an interest in Nusiteles, described below.

(2) **Grupo Sofana and Somagui Forestal.** According to a Riggs analysis, Grupo Sofana is a forestry company with exclusive rights of exploiting and exporting timber in Equatorial Guinea, and the President's son is the "sole owner" of this company.<sup>179</sup> After oil, timber exports are a leading source of foreign exchange in Equatorial Guinea. According to Riggs, Somagui Forestal is another timber company which is controlled by the President's son and affiliated with Sofana.<sup>180</sup>

(3) **Sonavi.** Sociedad Nacional de Vigilancia (Sonavi) is a company that provides security services within Equatorial Guinea and is controlled by the President's brother who was also, for a time, E.G. Director of National Security. As explained later in this Report, some U.S. oil companies have been told that Sonavi has a monopoly on security services in the country.

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<sup>176</sup> See Riggs account statements for Awake Ltd. (6/11/02 - 12/31/03), Bates RNB 002068-87.

<sup>177</sup> See Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040; Riggs "KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts" for Otong (11/19/02), Bates RNB 000037; Subcommittee interview of Bruce McColm (6/10/04). See also complaint in Foley Hoag LLP v. Republic of Equatorial Guinea, Et al., (U.S. Dist. D.C. 2004), Bates RNB 003359-003367.

<sup>178</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04) at 3.

<sup>179</sup> See Riggs "Credit Approval Memorandum" (7/22/02), Bates RNB 010512, approving a \$3.75 million loan to Teodoro Nguema Obiang, the President's son.

<sup>180</sup> See, e.g., Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, "Equatorial Guinea" (1/20/04), Bates OCC 0000528712-23, at 716; email from Simon Kareri to the OCC (1/5/04), Bates OCC 0000516892 ("Grupo Sofana & Somagui belongs to Teodoro Nguema 100%.").



(4) **Nusiteles.** Nusiteles, G.E. was established in 2000, as an E.G. telecommunications company intended to establish telephone and computer services within Equatorial Guinea. It is jointly owned by a number of parties, including the E.G. President through Abayak, the E.G. Minister of Foreign Affairs, the E.G. Director of National Security, the E.G. Minister of Justice and Religion, and International Decision Strategies, a Virginia corporation controlled by R. Bruce McColm.<sup>181</sup>

(5) **GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a state-owned E.G. company that was established in 1996, and may be partially privately held by E.G. officials. In response to Subcommittee questions, Marathon has informed the Subcommittee that, in January 2003, it was told by a GEOGAM representative that GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President.<sup>182</sup> GEOGAM is a 20 percent owner of a liquid petroleum gas facility on Bioko Island, and a 10 percent owner of a methanol plant that is also located on Bioko Island.

In November 2001, the Riggs account manager for the E.G. accounts wrote a memorandum to the file which stated in part:

“During my last trip to Equatorial Guinea, I was able to tour most of the businesses controlled by the President and his family. Due to the significant growth in the country, the businesses have grown exponentially from the sleepy businesses that I used to know to very active interests that are generating significant revenues.”<sup>183</sup>

The memorandum went on to observe that Abayak, “has become a significant earner of income for the President.” It states: “By far the most lucrative earner for the President is the new gas plant in Malabo of which he controls 25%.”<sup>184</sup> It also notes the President’s ownership of “the only two supermarkets in the country” and the largest hotels. This memorandum demonstrates that Riggs had a sophisticated understanding of the President’s personal stake in much of the economic activity within his country.

**Cash Deposits.** A key element of an effective anti-money laundering program involves proper handling of large cash transactions, including monitoring these transactions, refraining from cash transactions that appear suspicious, and reporting suspicious activity to law

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<sup>181</sup> For more information on Nusiteles, see below in this Section of the Report.

<sup>182</sup> Letter from Marathon Oil Corp. to the Subcommittee (7/13/04), attachment at 1.

<sup>183</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>184</sup> See also Riggs “KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts” for Otong (11/19/02), Bates RNB 000037.

enforcement. With respect to the E.G. accounts, however, Riggs accommodated a number of requests for large cash transactions with few questions asked.

The most dramatic example involves President Obiang's offshore shell corporation, Otong S.A., which was formed in 1999, and opened a money market account at Riggs in September 1999. Large cash deposits into that account began about seven months later.

On six occasions over a two-year period, from 2000 to 2002, Riggs accepted cash deposits of \$1 million or more for the Otong account. These cash deposits, which totaled \$11.5 million, took place as follows:

April 20, 2000	\$ 1.0 million cash deposit
March 8, 2001	\$ 1.0 million cash deposit
March 20, 2001	\$ 1.5 million cash deposit
Sept. 5, 2001	\$ 2.0 million cash deposit
Sept. 17, 2001	\$ 3.0 million cash deposit
April 12, 2002	<u>\$ 3.0 million cash deposit</u>
	\$11.5 million

When asked to describe how these large cash deposits were made and processed, one Riggs employee indicated that, on at least two occasions in which he was present, the cash was brought into the bank in suitcases transported by Mr. Kareri who said he had obtained the cash from senior E.G. officials such as the E.G. President or Ambassador.<sup>185</sup> The employee indicated that most of the cash was in unopened, plastic-wrapped bundles which did not have to be counted, while the remaining bills were counted using high-speed machines. Since \$1 million in hundred dollar bills weighs nearly 20 pounds, the currency brought into the bank would likely have weighed at least that much on each occasion. On the last two occasions involving \$3 million, the bank would've had to accept nearly 60 pounds in currency. The bank employee indicated that the large cash deposits he witnessed were not treated as unusual or requiring additional scrutiny.

Riggs did not decline to complete any of the requested transactions or identify or investigate any of them as suspicious activity. When later asked by the OCC about the source of these cash deposits, the E.G. account manager apparently told the OCC that the E.G. President had closed certain bank accounts in Europe and "maintain[ed] the funds in cash to avoid calls from would-be marketers looking for reinvestment opportunities."<sup>186</sup> An internal Riggs memorandum by the E.G. account manager in September 2001, offers an alternate explanation for the September 17 cash deposit, indicating that the E.G. President had sold "two properties in

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<sup>185</sup> Interview of Michael Parris (6/24/04).

<sup>186</sup> See, e.g., OCC examination materials (12/5/03), Bates OCC 0000517033-34 and (January 2004), Bates OCC 0000502623.

Spain in the amount of \$5 million” and sent the sale proceeds to Riggs.<sup>187</sup> A similar memorandum dated April 12, 2002, states: “We received proceeds from the sale of the properties in France in the amount of \$3 million.”<sup>188</sup>

For each of the cash deposits, Riggs completed the required Currency Transaction Report (CTR) for cash transactions exceeding \$10,000, and filed the report with the federal government. However, these reports incorrectly described Otong as an exporter of timber, rather than an offshore corporation controlled by the E.G. President. The inclusion of this inaccurate information in the CTRs on Otong is cited as one reason for the \$25 million civil fine later imposed on Riggs.<sup>189</sup>

Account documentation shows that the cash deposited into the Otong account was combined with other deposits and used to fund two CDs established in the name of Otong in 2000 and 2002. In December 2002, these CDs were valued at \$11.7 million and \$4.4 million.<sup>190</sup>

Large cash payments were also made to accounts opened in the name of the President’s wife, Constanca Nsue. On at least seven occasions over a two-year period, from 2000 to 2001, Riggs accepted cash payments ranging from \$20,000 to \$150,000, into Ms. Nsue’s personal

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<sup>187</sup> Riggs memorandum by Simon Kareri (9/17/01), Bates RNB 007070.

<sup>188</sup> Riggs memorandum by Simon Kareri (4/12/02), Bates RNB 007071. The cash deposits were not the only suspicious transactions involving the Otong account. For example, on 2/6/02, Riggs accepted for deposit a \$3 million check that was made out to Otong and dated 2/4/01, more than one year earlier. See copies of check, Riggs deposit ticket, and entry showing deposit, Bates RNB 007385-87 and 007396.

<sup>189</sup> See, e.g., In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (D).

<sup>190</sup> See December 2002 account statements, Bates RNB 000333 and 336.

checking account, Account No. 24-383-122.<sup>191</sup> These cash deposits, which totaled nearly \$500,000 in the aggregate, took place as follows:

Jan. 24, 2000	\$150,000.00 cash deposit
Feb. 1, 2000	\$ 20,000.00 cash deposit
Sept. 5, 2000	\$ 25,000.00 cash deposit
Sept. 13, 2000	\$ 50,000.00 cash deposit
March 8, 2001	\$ 50,875.00 cash deposit
March 8, 2001	\$100,000.00 cash deposit
Sept. 17, 2001	<u>\$100,000.00 cash deposit</u>
	\$495,875.00

On another ten occasions from 2000 to 2002, Riggs accepted cash payments ranging from \$20,000 to \$300,000, into a joint checking account, Account No. 24-895-363, that Ms. Nsue held with her brother, Teodoro Biyogo Nsue, the E.G. Ambassador to the United States. Four of these cash payments (on Jan. 24, 2000, Feb. 1, 2000, Sept. 5, 2000, and Sept. 17, 2001) took place on the same days as the cash payments to Ms. Nsue's personal checking account. The cash deposits to the joint account, which exceeded \$900,000 in the aggregate, took place as follows:

Jan. 24, 2000	\$ 50,000.00 cash deposit
Feb. 1, 2000	\$ 70,000.00 cash deposit
Feb. 4, 2000	\$ 20,000.00 cash deposit
Sept. 5, 2000	\$300,000.00 cash deposit
March 16, 2001	\$200,000.00 cash deposit
March 20, 2001	\$ 80,000.00 cash deposit
Sept. 17, 2001	\$ 20,000.00 cash deposit
Feb. 8, 2002	\$100,000.00 cash deposit
Sept. 5, 2002	\$ 20,000.00 cash deposit
Dec. 23, 2002	<u>\$ 74,209.00 cash deposit</u>
	\$934,209.00

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<sup>191</sup> This account also had numerous foreign currency transactions which allegedly involved checks written in Euros being converted into U.S. dollars by the bank before depositing the dollars into Ms. Nsue's account. Some of these transactions were marked at the time by bank personnel as "cash deposits." When asked by the OCC for copies of the Euro checks, the bank apparently failed in some cases to produce any copies. These transactions were as follows:

Sept. 20, 1999	\$114,134.71	Oct. 1, 2001	\$ 223,836.99
Nov. 19, 1999	\$201,382.86	Nov. 15, 2001	\$ 64,068.46
March 30, 2000	\$425,235.12	Jan. 15, 2002	\$ 413,337.15
July 11, 2000	\$494,811.32	April 6, 2002	\$ 58,421.24
Jan. 16, 2001	\$156,491.39	April 12, 2002	\$ 231,618.22
March 8, 2001	\$104,417.33	Aug. 26, 2002	\$ 168,066.49
May 8, 2001	\$274,762.41	Nov. 13, 2002	<u>\$ 139,435.95</u>
July 25, 2001	\$ 56,632.56	Total:	\$3,126,652.20

Altogether, Riggs allowed Ms. Nsue to deposit over \$1.4 million in cash into her accounts with few or no questions asked. When combined with the \$11.5 million in cash deposits to the Otong account, Riggs enabled the E.G. President and his wife to make cash deposits of nearly \$13 million over a three-year period into their Riggs accounts.

For each of the cash deposits, Riggs filed a currency transaction report. However, at the time of the transactions, the bank failed to file a single suspicious activity report despite the size of the transfers, the fact that the President's wife was depositing hundreds of thousands of dollars in cash into her personal account and the account shared with her brother, or the fact that the E.G. President was depositing millions of dollars in cash into his offshore shell corporation account.

**Million-Dollar Wire Transfers.** Regular reviews of wire transfer activity to identify suspicious transactions, especially for high risk accounts, is another important element of an effective anti-money laundering program. Riggs, however, did not conduct routine or special reviews of wire transfer activity, even for its high risk accounts. Until recently, the bank conducted no routine or special monitoring of wire transfer activity involving any of the E.G. accounts, despite frequent and sizeable transfers of funds across international lines.

In August 2003, Riggs hired an experienced investigator to conduct an in-depth review of the E.G. accounts and, among other duties, respond to requests for information. Over the next few months, this investigator identified numerous suspicious wire transactions involving the E.G. oil account. These transactions included, for example, wire transfers totaling nearly \$35 million from the E.G. oil account to two companies that were unknown to the bank and had bank accounts in jurisdictions with bank secrecy laws; three wire transfers totaling more than \$1 million that were sent to Jadini Holdings, an offshore shell corporation owned by the wife of the E.G. account manager at Riggs; and three transfers totaling nearly \$500,000 that were sent to the personal bank accounts of a senior E.G. official.

**Kalunga Wire Transfers.** Over three and one-half years, from June 2000 to December 2003, sixteen wire transfers were sent from the E.G. oil account to Kulunga Company SA, an E.G. corporation, totaling over \$26.5 million. These wire transfers included:

June 7, 2000	\$ 1,332,044.00 wire transfer
Aug. 10, 2000	\$ 1,110,000.00 wire transfer
Sept. 5, 2000	\$ 292,200.00 wire transfer
Oct. 16, 2000	\$ 1,362,500.00 wire transfer
Jan. 30, 2001	\$ 2,698,800.00 wire transfer
April 10, 2001	\$ 1,349,400.00 wire transfer
May 9, 2001	\$ 1,349,400.00 wire transfer
May 7, 2002	\$ 798,000.00 wire transfer
June 26, 2002	\$ 167,000.00 wire transfer

Oct. 31, 2002	\$ 336,934.57 wire transfer
April 7, 2003	\$ 7,425,000.00 wire transfer
July 24, 2003	\$ 770,567.00 wire transfer
Sept. 3, 2003	\$ 335,137.00 wire transfer
Nov. 21, 2003	\$ 4,800,000.00 wire transfer
Dec. 11, 2003	\$ 1,637,000.00 wire transfer
Dec. 11, 2003	<u>\$ 720,000.00 wire transfer</u>
	\$26,483,982.57

All of these wire transfers were sent from Riggs to a Kalunga Company account at Banco Santander in Madrid, Spain.

**Apexside Wire Transfers.** Ten wire transfers were sent from the E.G. oil account to Apexside Trading Ltd. over a two-year period, from July 2000 to November 2001, totaling \$8.1 million. About \$2 million of these transfers occurred over a single, 5-week period in the summer of 2001. These wire transfers included:

July 10, 2000	\$ 697,400.00 wire transfer
Aug. 28, 2000	\$ 1,096,800.00 wire transfer
Oct, 16, 2000	\$ 1,561,587.30 wire transfer
Jan. 10, 2001	\$ 538,953.00 wire transfer
April 10, 2001	\$ 2,127,385.00 wire transfer
May 30, 2001	\$ 45,580.00 wire transfer
July 18, 2001	\$ 246,707.05 wire transfer
July 25, 2001	\$ 167,304.76 wire transfer
Aug. 2, 2001	\$ 1,233,835.00 wire transfer
Aug. 22, 2001	<u>\$ 389,939.83 wire transfer</u>
	\$ 8,105,491.94

Nine of these wire transfers were sent from Riggs to an Apexside account at Credit Commercial de France in Luxembourg; one was sent to an Apexside account at HSBC in Luxembourg.

**Jadini Wire Transfers.** Three wire transfers were sent over an eight-month period from the E.G. oil account to Jadini Holdings, Ltd. at a bank account in Virginia:

July 5, 2001	\$ 700,000.00 wire transfer
July 5, 2001	\$ 329,926.00 wire transfer
March 20, 2002	<u>\$ 66,751.78 wire transfer</u>
	\$1,096,677.78 <sup>192</sup>

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<sup>192</sup> For additional information about these three wire transfers to Jadini Holdings, see below.

**Edjo Wire Transfers.** Three other wire transfers went from the E.G. oil account to personal accounts controlled by the E.G. Secretary of State for Treasury and Budget, Melchor Esono Edjo. These transfers included:

March 13, 1998	\$ 122,000.00 wire transfer
May 27, 1998	\$ 122,000.00 wire transfer
June 12, 2002	\$ 255,000.00 wire transfer
	<hr/>
	\$ 499,000.00 <sup>193</sup>

Riggs failed to flag any of these transactions as suspicious at the time they occurred, and apparently asked few questions about these or any other wire transfers until the Subcommittee began investigating the E.G. accounts in March 2003, and the OCC began its E.G. examination in October 2003. The Riggs investigator hired in August 2003 quickly identified a number of suspicious transactions involving several E.G. accounts, including a \$140,000 check that had been written by the President's son for the benefit of the E.G. account manager at Riggs.<sup>194</sup> This check led him to the discovery of Jadini Holdings, Ltd., the offshore shell corporation controlled by the account manager's wife,<sup>195</sup> and the three wire transfers sending more than \$1 million from the E.G. oil account to Jadini Holdings.

The investigator also raised questions about the Kalunga and Apexside wire transfers, among others.<sup>196</sup> On February 10, 2004, in an attempt to gather additional information, Riggs sent letters to several banks sponsoring accounts to which questionable wire transfers had been sent from the E.G. oil account. These letters requested information about the accounts under Section 314(b) of the Patriot Act, which allows financial institutions to share client and transaction information to guard against money laundering and terrorist financing. The Riggs letter to Banco Santander, for example, requested information about the identity of the owners or authorized signatories for accounts belonging to Kalunga.<sup>197</sup> A Riggs letter to HSBC Bank USA

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<sup>193</sup> See, e.g., Riggs internal memorandum by Security & Investigations Department (12/18/03), Bates OCC 0000528401-02.

<sup>194</sup> The check was made payable to "Bolly Ba," a friend of the E.G. account manager and his wife. See copy of check (11/28/03), Bates RNB 002234-35. The account manager answered some questions about the check, but then abruptly left the United States and went to Equatorial Guinea in January 2004. During his absence, the bank initially suspended and then fired him in January 2004.

<sup>195</sup> See Certificate of Incorporation in the British Virgin Islands and related paperwork (5/9/01), Bates SUNT 00709-40; SunTrust account opening documentation (7/01), Bates SUNT 00701-08.

<sup>196</sup> The four sets of wire transfers highlighted in this Section of the Report are representative of many other instances of questionable activity in the E.G. accounts. For example, E.G. account records also raise questions about wire transfers sending substantial funds to a company called West Africa Navigator Ltd.; to specific E.G. officials; for luxury cars; and for projects called Proyecto Annobon, Proyecto de El Salvador, and "Asistencia Tecnica y consultoria."

<sup>197</sup> Letter from Riggs Bank to Banco Santander (2/10/04).

requested information on the identity of the owners or authorized signatories for the account belonging to Apexside and another company.<sup>198</sup>

The New York office of Banco Santander responded with information that the Kalunga account had been opened by its parent bank in Madrid, Spain, but that its parent bank could not disclose the account's beneficial owners due to Spanish statutes barring disclosure of bank information, even in a case of suspected money laundering. In discussions with the Subcommittee, Banco Santander indicated that its parent bank had interpreted Spanish law to mean that it was barred from disclosing this account information not only to any third party, but also to its own subsidiary banks located outside of Spain.

HSCB USA provided a similar response. It confirmed that the Apexside account had been opened by an HSCB bank in Luxembourg and that HSBC USA had forwarded the funds to a U.S. correspondent account for its Luxembourg affiliate, but declined to disclose the identity of the persons behind Apexside due to Luxembourg bank secrecy laws. HSBC USA said that the funds for the second company had been sent to an HSBC bank in Cyprus which also has bank secrecy laws. HSBC USA claimed that Luxembourg and Cyprus laws barred disclosure of client information to both third parties and HSBC's own affiliates outside of the country.

The position taken by Banco Santander and HSBC USA means, in essence, that banks in the United States attempting to do due diligence on large wire transfers to protect against money laundering are unable to find out from their own foreign affiliates key account information. This bar on disclosure across international lines, even within the same financial institution, presents a significant obstacle to U.S. anti-money laundering efforts.<sup>199</sup>

When Banco Santander and HSBC declined to provide the requested information about Kalunga and Apexside, Riggs asked for the same information from the E.G. President and other E.G. officials in a personal meeting on February 23, 2003, in Washington, D.C. The E.G. officials declined to provide any further information about the companies or their owners, except that the wire transfers to these companies had been properly authorized by the account signatories.

**Lines of Credit.** Riggs also provided E.G. clients with a variety of credit arrangements, addressing governmental and Embassy concerns as well as individual officials' needs.

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<sup>198</sup> Letter from Riggs Bank to HSBC Bank USA (2/10/04).

<sup>199</sup> This Subcommittee first highlighted this problem in the 1999 Subcommittee Private Banking Hearings. See Minority Staff report at 877-78.



Riggs arranged, for example, several lines of credit for the E.G. government. It agreed to finance letters of credit for the E.G. government for up to \$25 million,<sup>200</sup> extended overdraft credit to the E.G. Embassy of \$30,000; and issued a \$40 million loan to the E.G. government which was secured by a CD and repaid in full. In 2001, Riggs issued a \$13.7 million loan to the government-owned E.G. airline, Ecuato-Guineana de Aviacion, to buy an airplane for flights within the country.<sup>201</sup> This loan was guaranteed by the E.G. government. In 2003, Riggs issued a \$29.8 million loan to the E.G. government to purchase an airplane for the use of the E.G. President.<sup>202</sup> Riggs also provided for a period of time certain debt management services to the E.G. government, which included keeping a detailed record of the government's public and private debt and making directed payments.<sup>203</sup>

Riggs also addressed the credit needs of some senior E.G. officials. For example, in 1999, with Riggs' assistance, the E.G. President paid \$2.6 million for a Potomac, Maryland residence.<sup>204</sup> Also in 1999, the bank provided a loan for nearly \$750,000 at a favorable rate to enable the E.G. President's wife to buy a second, \$1.15 million residence in Potomac, Maryland. Riggs provided an interest rate available for purchasing a personal residence, even though the bank knew the house was being purchased as a rental and, in fact, established an account to receive the rental payments. This loan was repaid in full within the year.<sup>205</sup> In 2000, Riggs provided a mortgage to Pastor Micha Ondo Bile, E.G. Minister of Foreign Affairs and one-time E.G. Ambassador, to buy a residence in Virginia.<sup>206</sup> Riggs apparently is also listed as the contact on a \$349,000 residence purchased in 2000, by the E.G. President's brother, Armengol Ondo

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<sup>200</sup> At least one of these letters of credit appears to have been used to finance arms sales. See, e.g., documentation associated with Letter of Credit No. 1998-11014 for \$2.5 million, issued on behalf of the E.G. government to purchase weaponized armored vehicles and related munitions from Sabiex International S.A., (11/5/98), Bates RNB 0011940-53, 0011970-79 and 003418-39.

<sup>201</sup> See Riggs "Officers' Loan Committee Action" (11/26/02), Bates T 00003089-3101.

<sup>202</sup> See Riggs "Officers' Loan Committee Action" (9/29/03), Bates T 00003904-15.

<sup>203</sup> See, e.g., memorandum from Simon Kareri to Joseph Allbritton (undated), Bates ZZ 000138.

<sup>204</sup> See Maryland real property records, which list the "New Owner's Mailing Address" as "c/o Simon Kareri, Riggs Bank." See also "Oil Boom Enriches African Ruler" (1/20/03), Los Angeles Times.

<sup>205</sup> See Riggs Loan No. 100-63136 (12/7/99).

<sup>206</sup> See Riggs Loan No. 13220. See also Riggs analysis of E.G. accounts, "Equatorial Guinea," (12/8/03), Bates OCC 0000503177-83, at 82.

Nguema.<sup>207</sup> In 2002, Riggs issued a \$3.75 million loan to the President's son, Teodoro Nguema Obiang, to help him buy a \$7.5 million penthouse apartment in California.<sup>208</sup>

Riggs also provided the President's wife and son, among other E.G. clients, with debit and credit cards. In March 2001, for example, at the request of the E.G. account manager, Riggs increased the daily limit on Ms. Obiang's debit card to \$10,000 per day.<sup>209</sup> Riggs also provided a reference letter to assist the President's son, Teodoro Nguema Obiang, gain entry into an American Express Preferred International Client Program.<sup>210</sup> In addition, Riggs provided E.G. clients with extensive foreign currency exchange services.

**Student Accounts.** Riggs also managed two accounts used to provide educational funding for E.G. students. Riggs records indicate that, from 2001 until 2003, more than 100 E.G. students received funding to study abroad, often in the United States, many of whom appeared to be children or relatives of wealthy or powerful E.G. officials.<sup>211</sup>

During the 1990s, Equatorial Guinea obtained commitments from several major oil companies, as part of their oil production agreements, to provide annual funding for E.G. students wishing to obtain advanced training or a university education. ChevronTexaco, CMS, ExxonMobil, Marathon, Triton, and Vanco all provided this funding, with annual payments totaling as much as \$275,000 per oil company. In earlier years, the oil companies paid students' tuition bills and living expenses directly. In 2001, however, Riggs opened the first E.G. student account and agreed to provide administrative support for the students funded out of it, all of whom were studying in the United States.<sup>212</sup> Several of the oil companies then halted direct

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<sup>207</sup> See Virginia real property records. See also "Oil Boom Enriches African Ruler" (1/20/03), Los Angeles Times.

<sup>208</sup> See Riggs loan documentation (7/22/02), Bates RNB 010508-18. Riggs also provided a reference letter to help him purchase a residence in New York. See, e.g., letter from Riggs to the Olympic Tower Condominium Board (3/16/00), Bates RNB 010465-67.

<sup>209</sup> Riggs memorandum from Simon Kareri to Ray Lund (3/9/01), Bates RNB 028505.

<sup>210</sup> See, e.g., letter from Riggs Bank to American Express TRS Co. (4/27/01), Bates RNB 009735.

<sup>211</sup> See, e.g., memorandum from Simon Kareri to Ray Lund (undated but likely in late 2002), Bates ZZ-000147 ("[W]e have increased the students that we manage for them from 26 to 117.").

<sup>212</sup> Apparently a contractor, Exploration Consulting Ltd. provides similar services for E.G. students studying in the United Kingdom. See letter from the law firm of Garvey Schubert Barer to the Subcommittee (6/18/04), conveying responses of Marathon, at 16.

funding of E.G. students, instead making deposits to the E.G. student account and relying on Riggs Bank to pay the students' bills.<sup>213</sup>

Riggs opened the first E.G. student account in March 2001, in the name of "Republica de Guinea Ecuatorial-Cuenta Estudiantes MME." The account signatories were Cristobal Manana Ela, E.G. Minister of Mines & Energy; and the President's son, Gabriel Nguema Lima, E.G. Secretary of State Mines & Energy. Documentation indicates that this account saw deposits of about \$300,000 per year and numerous disbursements to cover students' travel, tuition, and living expenses.<sup>214</sup>

Documentation shows that, from the beginning, the E.G. account manager expended considerable energy tracking the students' educational activities and paying their bills. For example, a letter sent by the E.G. account manager to the Minister of Mines thanking him for opening the account states: "We have started the process of contacting the students and will provide more details to you soon."<sup>215</sup> Six months later, in September 2001, a letter reporting on the status of the "program" recites numerous difficulties, including "students who were giving us incorrect banking information including some who were giving us information of their friends"; "determin[ing] whether all the students are in school"; dealing with students "receiving refunds from the schools;" and resolving "immigration visa issues."<sup>216</sup> A February 2002 letter reports that only five of the E.G. students were maintaining the required "B" grade average and recommends reducing the monthly stipends for poorly performing students.<sup>217</sup> A list of disbursements for just the first seven months of 2003, is six pages long with reduced-size type.<sup>218</sup>

One of the oil companies, Marathon, told the Subcommittee that, in 2003, in the course of its normal due diligence efforts, its personnel asked Riggs about its management of the student program and how the funds were used. Marathon reported to the Subcommittee that Riggs informed them that it paid tuition bills directly to students' universities, rental incomes directly to landlords, health insurance premiums directly to the health insurer, and monthly stipends and travel costs directly to the students. Marathon also reported that, "[a]ttendance and grades were

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<sup>213</sup> See, e.g., communications between CMS Energy and Simon Kareri regarding four students (8/21/01 and 8/23/01), Bates RNB 006340-43 and 46-56. A few of the oil companies continued to fund directly the expenses of a few E.G. students studying in the United States.

<sup>214</sup> See, e.g., Riggs account statement (3/4/03-3/21/03), Bates RNB 000010-11; Riggs listing of account disbursements from January-July 2003, Bates RNB 006602-09.

<sup>215</sup> Letter from Simon Kareri to Cristobal Manana Ela (3/29/01), Bates RNB 006383.

<sup>216</sup> Letter from Simon Kareri to Cristobal Manana Ela (9/19/01), Bates RNB 006820-21.

<sup>217</sup> Letter from Simon Kareri to Gabriel Nguema Lima (2/19/02), Bates RNB 006698-702.

<sup>218</sup> Riggs listing of account disbursements from January-July 2003, Bates RNB 006602-09.

monitored by Riggs, with the information being sent directly by the schools,” and that “Riggs assisted the [E.G.] Ministry in the selection of schools.”<sup>219</sup>

In May 2002, Riggs opened a second E.G. student account in the name of “Republica de Guinea Ecuatorial-Fondo Especial Para Becas.” The only signatory for this money market account was the Riggs E.G. account manager, Simon Kareri.<sup>220</sup> Riggs Bank has indicated that senior officials had been unaware that a Riggs employee was the signatory on a client account and that this arrangement was contrary to its practice. However, a June 2002 memorandum prepared by the E.G. account manager providing an “Equatorial Guinea Update” to the bank’s Chairman of the Board, President, and other top officials, states in part: “I have been appointed as the head of a commission for higher education and a decree was issued that I should be the sole signatory of the permanent fund to manage the Scholarships to be granted for Universities. ... We are in the process of admitting 50 students this year as the first phase of the program begins.”<sup>221</sup>

The money market account was also linked to a Riggs investment account of the same name, Account No. 68-002-6036. Riggs produced account documentation for both accounts which shows that, on June 25, 2002, \$1 million was transferred from the money market account to the investment account.<sup>222</sup> That \$1 million was then returned to the money market account on November 5, 2002, presumably for disbursement on student expenses. The Subcommittee has been told that the funds in these accounts were paid to only one school, the Institute Pacem In Terris of La Roche University in Pittsburgh, Pennsylvania, which had enrolled more than 50 E.G. students.

**Other Services.** In addition to the student accounts, the E.G. account manager at Riggs provided other questionable services to the E.G. government, related to procurement matters and financial advice.

For example, the E.G. account manager appears to have provided certain procurement services related to a project to build a 100 kilometer roadway in Bata, Equatorial Guinea. In a

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<sup>219</sup> Letter from the law firm of Garvey Schubert Barer to the Subcommittee (6/18/04), conveying responses of Marathon to Subcommittee questions, at 17.

<sup>220</sup> Riggs account opening documentation for second E.G. student account, Account No. 25-380-310 (5/12/02), Bates RNB 000014.

<sup>221</sup> Internal Riggs memorandum from Simon Kareri to Robert Allbritton and Lawrence Hebert, with copies to five other Riggs officials, including Tim Coughlin and Ray Lund, “Equatorial Guinea Update” (undated, but likely 6/28/02), Bates ZZ 000123-24. But see Riggs memorandum to the file from Mr. Kareri (8/13/02) and new signature card changing the account signatory to the E.G. Secretary of State for Treasury, Bates RNB 013621-23.

<sup>222</sup> See Riggs account statements for the investment account, (June 2002) Bates RNB 013878 and (October 2002), Bates RNB 013837. See also, e.g., OCC examination materials, Bates OCC 0000510316 (on 6/19/02, Account No. 25-380-310 had a credit of \$1.25 million).

meeting between Riggs and E.G. officials at the bank on February 23, 2004, the E.G. officials apparently informed the bank that the E.G. government had authorized Mr. Kareri to make two payments of \$329,000 and \$66,000 to three U.S. vendors, Soils Control International, Pro Form Systems Inc., and Business Investments Consolidated (BIC) International, for providing goods and services to the E.G. government.<sup>223</sup> Bank records show, however, that funds totaling \$1,096,677.78 were withdrawn from the E.G. oil account and paid to Jadini Holdings, Ltd., the offshore shell corporation controlled by the account manager's wife, at least partly in connection with this project. The funds were the result of three wire transfers made from the E.G. oil account to Jadini Holdings. The first two wire transfers took place on July 5, 2001, for \$329,926 and \$700,000.<sup>224</sup> The third wire transfer was on March 20, 2002, for \$66,751.78.<sup>225</sup> The E.G. officials told the bank that the government had never authorized the \$700,000 payment to Mr. Kareri, and that the three vendors had been owed only \$307,000.<sup>226</sup> Riggs told the OCC that it has been unable to identify an E.G. request for the \$700,000 wire transfer, and that Mr. Kareri may have simply instructed an unsuspecting assistant to complete the transfer without having proper authorization.<sup>227</sup>

Leaving aside the issue of whether the E.G. account manager improperly withdrew excess funds from the E.G. oil account, the facts indicate that the account manager had been authorized by the E.G. government to make certain payments on its behalf. More, the evidence shows that

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<sup>223</sup> OCC internal emails (2/24/04-2/25/04), Bates B 03141-03144. Correspondence found in Mr. Kareri's files indicate a link between the Bata road project and Soils Control International, but not the other two companies. For example, two letters dated 7/16/01 and 9/18/01, Bates OCC 0000547503-04, from Mr. Kareri to Soils Control International, Inc., provide payments totaling \$92,156 for "TopSeal," a liquid sealant to be used in the construction of the E.G. road. The September 2001 letter states: "Please do not include any invoices on the shipping documents." A third letter, dated 5/14/01, Bates OCC 0000547499, from Mr. Kareri to E.G. President Obiang, submits invoices for the TopSeal. This invoice appears to be from Jadini Holdings, rather than Soils Control International. The letter states: "Pursuant to our discussion regarding road construction using TopSeal, I am pleased to submit the attached invoice. The invoice reflects the cost of purchasing and shipment of 2,650 barrels of TopSeal to Bata for the construction of a 100 kilometer road. In addition, training and supervision will be provided ...." Three different invoices, numbered 1035, 1036 and 1039, Bates OCC 0000547500-02, follow. The first invoice, numbered 1039, is for \$230,000 for a 5-kilometer "test road." The next two invoices each exceed \$3 million in total cost. These two invoices are nearly identical, with the same date, products, and shipping instructions, but each lists a different unit price per barrel for the TopSeal, resulting in an overall difference in cost of \$622,750.00. The Subcommittee was told that these three invoices, which together total about \$7.4 million, were never actually presented to the E.G. government for payment. See also OCC emails, Bates B 03144. The Subcommittee has not found similar documentation linking Pro Form Systems Inc. and Business Investments Consolidated (BIC) International to the road construction project. The Riggs Electronic Payment Advice for the \$66,751.78 wire transfer on March 20, 2002, instead references a "Housing Contract."

<sup>224</sup> Riggs document, "Transaction Detail Report," (7/5/01), Bates RNB 001743-001744.

<sup>225</sup> Riggs document, "Electronic Payment Advice," (3/20/02), Bates OCC 0000509453.

<sup>226</sup> OCC internal emails (2/24/04-2/25/04), Bates B 03529-03531.

<sup>227</sup> OCC internal emails (2/24/04-2/25/04), Bates B 03141-03144.

the account manager's offshore corporation, Jadini Holdings, was playing a central role in these procurement matters, sending payments to one of the vendors and issuing invoices to the attention of the E.G. President. Riggs management has told the Subcommittee that it had been unaware of Mr. Kareri's corporation and had not approved its involvement in any of the bank's dealings with Equatorial Guinea.

**Services Related to Nusiteles.** Nusiteles, G.E. is a telecommunications company incorporated in Equatorial Guinea and owned by a number of E.G. high government officials.<sup>228</sup> The stated purpose of Nusiteles is to develop, implement, install and maintain a broadband telecommunications system for Equatorial Guinea.<sup>229</sup> In December 2000, Mr. Kareri and the E.G. Minister of Justice and Religion, Dr. Ruben Maye Nsue Mangué,<sup>230</sup> entered into a contract that established Riggs Bank as the principal financing advisor and placement agent for Nusiteles. The contract also named Taylor-DeJongh, Inc. as a cooperating advisor. Under the contract, Riggs was to provide "advisory and placement services related to structuring, solicitation, and negotiation of political risk insurance and commercial risk guarantees from ... Export Credit Agencies ..., and debt financing from bilateral and multilateral institutions."<sup>231</sup> Riggs' compensation included a \$30,000 non-refundable monthly retainer and two percent of the nominal value of the financing obtained.<sup>232</sup>

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<sup>228</sup> The shareholders of Nusiteles include: Dr. Ruben Maye Nsue Mangué, the President of Nusiteles and E.G. Minister of Justice and Religion; Pastor Micha Ondo Bile, E.G. Minister of Foreign Affairs; Armengol Ondo Nguema, E.G. Director of National Security; Socio Abayak, S.A., an E.G. corporation controlled by President Obiang; and International Decision Strategies, a Virginia corporation controlled by R. Bruce McColm. See the complaint in Foley Hoag LLP v. Republic of Equatorial Guinea, Et al., (U.S. Dist. D.C.), Bates RNB 003359-003367. Mr. McColm is the Vice President of Nusiteles and also the President of the Institute for Democratic Strategies, an organization which monitored the most recent municipal, parliamentary, and presidential elections in Equatorial Guinea. See Riggs document, "W-9 Certification" (12/21/01), Bates RNB 003447; and "Summary of the Findings on the December Presidential Elections in Equatorial Guinea" (12/20/02), Bates RNB 003671-003678. The mailing address of Nusiteles is also the mailing address of the Institute for Democratic Strategies, "W-9 Certification" (12/21/01), Bates RNB 003447. The Institute for Democratic Studies received \$525,000 in four transfers drawn on an E.G. oil account between March 2000 and October 2002. See Riggs documents, Bates RNB 000172, 001697, 001840, and 001886.

<sup>229</sup> Riggs document, "Proposal for the Role of Financial Advisor and Placement Agent for Nusiteles, GE" (9/22/00), Bates RNB 003462-003482.

<sup>230</sup> At the time of the execution of the contract Dr. Mangué served as the Minister of Justice and Religion for Equatorial Guinea; he has since been removed from that position. See "New Government Appointed in Equatorial Guinea," World Markets Analysis (6/18/04).

<sup>231</sup> "Proposal for the Role of Financial Advisor and Placement Agent for Nusiteles, GE" at 1, Bates RNB 003463.

<sup>232</sup> Id. at 3, Bates RNB 003468.

The Riggs general counsel told the Subcommittee that, under Riggs' policy, he should have had supervisory authority over this contract, but had never seen or approved it.<sup>233</sup> R. Bruce McColm, Vice President of Nusiteles, told the Subcommittee that the E.G. officials responsible for the initial funding of the Nusiteles contract never provided any funds to Riggs, and consequently Riggs has not provided any services under the contract to date.<sup>234</sup>

#### **Role of Bank Board and Officers Concerning Equatorial Guinea Accounts.**

Information reviewed by the Subcommittee indicates that Riggs Board members and senior bank officers were well aware of the E.G. accounts. Within five years of its opening in 1995, the E.G. relationship became the largest single relationship in Riggs Bank. The E.G. account manager sent top Riggs officials, including the Chairman of the Board, the President, and the International Banking Group head, periodic memoranda about developments related to the E.G. accounts.<sup>235</sup> Senior Riggs officials also met on several occasions with top E.G. officials, including the E.G. President. In 2001, several senior Riggs Board members and bank officers formed a high level committee which met quarterly each year to provide special attention to the E.G. relationship.

On May 17, 2001, for example, the top officials of Riggs Bank wrote to President Obiang thanking him "for the opportunity you granted to us in hosting a luncheon in your honor here at Riggs Bank."<sup>236</sup> The letter states that Riggs has "formed a committee of the most senior officers of Riggs Bank that will meet regularly to discuss our relationship with Equatorial Guinea and how best we can serve you. This committee, which includes the undersigned, has held its first meeting and requests that you provide us with any projects that you would like us to review on your behalf and make suggestions." The letter signatories were the Riggs Chairman of the Board, Riggs Bank President, and Riggs National Corporation President, as well as the E.G. account manager.

About a month later, the E.G. account manager sent the Chairman, President, and six other senior Riggs officials a memorandum describing a week-long business trip to Equatorial Guinea,

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<sup>233</sup> Subcommittee Interview with Joseph Cahill (6/25/04).

<sup>234</sup> Subcommittee interview with R. Bruce McColm (6/10/04).

<sup>235</sup> See, e.g., memoranda by Simon Kareri sent to top Riggs officials concerning: "Equatorial Guinea" (undated but likely 4/17/97), Bates ZZ-000160-62; "Equatorial Guinea" (undated but likely 10/12/00), Bates ZZ-000138; "Lunch with the President of Equatorial Guinea" (undated but likely 2/28/01), Bates ZZ 000143; "Equatorial Guinea Contacts" (undated but likely 5/18/01), Bates ZZ 000146; "Equatorial Guinea trip briefing," (undated but likely June 2001), Bates ZZ 000118-20; "Equatorial Guinea Update" (undated but likely 3/1/02), Bates ZZ 000158; "Equatorial Guinea Update" (undated but likely 6/26/02), Bates ZZ 000123-24; "Bush meetings with African Presidents" (undated but likely 6/28/02), Bates ZZ 000159; "Posting of International Operations Assistant II" (undated but likely 9/17/02), Bates ZZ 000147; "Equatorial Guinea article" (12/12/02), Bates ZZ 000163; "Equatorial Guinea" (6/23/03), Bates ZZ 000148; "Equatorial Guinea" (undated but likely 6/23/03), Bates ZZ 000149; and "Equatorial Guinea" (7/9/03), Bates ZZ 000165.

<sup>236</sup> Letter from Riggs Bank to President Obiang (5/17/01), Bates RNB 003828.

from May 20 to May 28, 2001.<sup>237</sup> The memorandum spelled out, day-by-day, which E.G. officials he met with and what was discussed. At one point during that trip, the E.G. account manager delivered to the E.G. President a personal letter from one of the Riggs Board members, Frederick J. Ryan, Jr., inviting the E.G. President to visit the Ronald Reagan Library in California.<sup>238</sup>

In June 2002, another memorandum from the E.G. account manager to the Chairman, President, and five other senior Riggs officials provided an "Equatorial Guinea Update."<sup>239</sup> This memorandum provided specific data on the growth in E.G. accounts during the first half of 2002, stating that "the relationship has simply grown by 52.75% to \$408.1 million." It continued: "We have established four more Government accounts for a total of eight excluding the Embassy. This fits quite well with our strategy to enhance and deepen the relationship with the Government." The memorandum also discussed oil discoveries, housing construction, and a new account for E.G. student scholarships. It announced that the Equatorial Guinea government had appointed the Riggs account manager to be the head of an E.G. "commission for higher education" and "sole signatory" of a fund to manage E.G. scholarships.

In December 2002 and, again, in January 2003, the Los Angeles Times published articles on how the oil boom in Equatorial Guinea appeared to be enriching the E.G. President and other E.G. officials.<sup>240</sup> The second article also prominently mentioned E.G. accounts at Riggs Bank. At one point, in response, the E.G. account manager at Riggs sent a memorandum to the Riggs Bank President, disparaging the reporter, identifying allegedly inaccurate statements in the first article, and responding to allegations of corruption as follows:

"Regarding the issue of the President of Equatorial Guinea being corrupt, I take exception to that because I know this person quite well. We have reviewed for Ray the transactions of Equatorial Guinea with Riggs since inception and not once did Riggs send money to any 'shady' entity or destination. I am best advised to work diligently to serve our clients than to worry over the wrangling of an angry individual who sees conspiracy in everything."<sup>241</sup>

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<sup>237</sup> Internal Riggs memorandum from Mr. Kareri to Mr. Allbritton, Mr. Hebert, and six other senior Riggs officials, "Equatorial Guinea trip briefing," (undated but likely June 2001), Bates ZZ 000118-20.

<sup>238</sup> Id. President Obiang eventually visited the Reagan Library in August or September 2001. Subcommittee communication with Reagan Library (7/13/04). See also, e.g., email from Mr. McColm to Simon Kareri, "Equatorial Guinea-Los Angeles," (8/27/01), Bates RNB 003696.

<sup>239</sup> Internal Riggs memorandum from Mr. Kareri to Mr. Allbritton and Mr. Hebert, with copies to five other Riggs officials, "Equatorial Guinea Update" (undated but likely 6/28/02), Bates ZZ 000123-24.

<sup>240</sup> See "The Crude Politics of Trading Oil," Los Angeles Times (12/6/02); and "Oil Boom Enriches African Ruler," Los Angeles Times (1/20/03).

<sup>241</sup> Memorandum by Simon Kareri to Larry Hebert on "Equatorial Guinea article" (12/12/02), Bates ZZ 000163.



Six months later, in June 2003, Riggs Bank hosted the E.G. President and a number of E.G. Ministers at a private meeting at the bank. Riggs attendees included the Chairman of the Board of Riggs Bank, the President of Riggs Bank, the President of Riggs National Corporation, and the E.G. account manager. The discussion included “various aspects of the existing relationship and the future of Equatorial Guinea’s oil revenue.”<sup>242</sup> Riggs officials interviewed by the Subcommittee said that corruption issues were never raised or discussed during this meeting.

**Riggs Resistance to Oversight of E.G. Accounts.** Riggs Bank initially failed to identify to the Subcommittee a number of E.G. accounts at the bank and produced limited electronic mail.

In March 2003, the Subcommittee issued its first subpoena to Riggs Bank for information related to the E.G. accounts. Riggs initially identified for the Subcommittee only about 30 E.G. accounts, when it actually had over 60 accounts and CDs associated with the E.G. relationship. Riggs told the Subcommittee that the errors were because the bank had to compile the information manually and accounts had inadvertently been left out. When an OCC examiner received the same treatment in late 2003, she wrote in an internal email: “The bank did not have a comprehensive list of all EG accounts until after I compiled a list of about two dozen more accounts [than] they told me about – even though management has designated this a ‘high risk’ account and it is the largest (at over \$600MM) relationship in the bank – incomprehensible.”<sup>243</sup>

Initial document production was apparently largely controlled by the E.G. account manager, and resulted in Riggs failing to produce numerous documents subject to the Subcommittee’s subpoena, including memoranda to top Riggs officials about the E.G. accounts and materials related to the E.G. account manager’s handling of certain procurement matters for the E.G. government, including some which resulted in wire transfers from the E.G. oil account to Jadini Holdings, the offshore corporation controlled by the account manager. After the E.G. account manager was fired in January 2004, and almost one year after first receiving a Subcommittee subpoena, Riggs produced a substantial volume of additional documents responsive to the Subcommittee’s request, but did not produce certain account documentation, including electronic mail communications by personnel who serviced the E.G. accounts.

In addition to slow and incomplete document production, Riggs failed to undertake a detailed internal review of the E.G. accounts until late 2003, despite receiving the first Subcommittee subpoena in March 2003, and an early warning from the OCC of an upcoming targeted review of the E.G. accounts which actually began in October 2003. Riggs apparently initiated its “comprehensive” review of the E.G. relationship in September 2003, after hiring

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<sup>242</sup> Riggs “Officers’ Loan Committee Action” (9/29/03), Bates T 00003904-915, at 911.

<sup>243</sup> OCC email (12/16/03), Bates OCC 0000516986.

additional investigative personnel to verify information supplied by the E.G. account manager.<sup>244</sup> This review, which included a detailed examination of E.G. account transactions, immediately uncovered suspicious activity, including a \$140,000 check that had been issued by the son of the E.G. President for the E.G. account manager at Riggs, a number of wire transfers withdrawing millions of dollars from the E.G. oil account, and \$11.5 million in cash deposits to the Otong account.

In December 2003, the OCC met with the Riggs Board of Directors at both the bank and the bank holding company to discuss its annual Report on Examination of the bank, as well as its ongoing examination of the E.G. accounts.<sup>245</sup> The OCC expressed a number of concerns about the E.G. accounts “center[ing] on the source of funds and ensuring that none are diverted for personal use.” At one point, the OCC “observed that the account officer might not be completely objective and advised Compliance and Security to monitor the account carefully.”<sup>246</sup> During this discussion, Joseph Allbritton, one of the Board members, stated in the presence of the OCC, that the bank had no intention of closing the E.G. accounts. However, Robert Allbritton told the Subcommittee staff that, while his father did make that statement during the Board meeting, it did not reflect the views of all Board members.<sup>247</sup>

**Closure of E.G. Accounts.** On February 23, 2004, Riggs officials met with the E.G. President and other E.G. officials to discuss the E.G. accounts and certain transactions.<sup>248</sup> An initial meeting took place at a hotel in downtown Washington, D.C. with the E.G. President in attendance, followed by a lengthier meeting at the bank between Riggs officials and E.G. officials other than the E.G. President. Among other questions, Riggs asked the President for additional information about certain companies, including Apexside Trading and Kalunga, which were recipients of more than \$35 million in wire transfers from the E.G. oil account. The E.G. President declined to provide any additional information about the wire transfers to these companies, other than to say that the wire transfers had been authorized. Riggs subsequently advised the E.G. officials that the bank had decided to close the accounts. The accounts were actually closed beginning in March through July 2004.

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<sup>244</sup> See, e.g., internal memorandum from the Riggs Security & Investigations Group (12/18/03), Bates OCC 0000528401-406 (summarizing a “comprehensive review of the Equatorial Guinea (EG) relationship” that was “recently ... undertaken by the Security and Investigations Group.”)

<sup>245</sup> See minutes of Board meeting (12/17/03), Bates RNB-GA 025183-91.

<sup>246</sup> *Id.* at Bates RNB-GA 025184.

<sup>247</sup> Subcommittee interview of Robert Allbritton (7/8/04).

<sup>248</sup> See, e.g., minutes of Riggs Audit Committee (2/25/04), Bates A 05728.

## VI. Riggs' AML Deficiencies and Regulators' Inadequate Oversight

### A. Riggs' Indifference to its Anti-Money Laundering Obligations

**Finding (3): Dysfunctional AML Program.** For many years, Riggs Bank ignored repeated directives by federal bank regulators to improve its anti-money laundering program, instead employing a dysfunctional system that failed to safeguard the bank against money laundering or foreign corruption.

The evidence shows that, since at least 1997, Riggs had a dysfunctional anti-money laundering program, with major deficiencies. The list of major deficiencies is a long one.

For more than five years, for example, the information systems used at Riggs Bank were unable to identify all the accounts opened for a single client. When asked to perform the basic task of listing a client's accounts, bank personnel had to compile this information manually. This manual tasking impeded effective oversight by consuming disproportional time and resources.<sup>249</sup> When asked for a list of Equatorial Guinea accounts, for example, Riggs took weeks to produce it and omitted key accounts. This problem was identified in several OCC examinations.<sup>250</sup> Computer software capable of listing client accounts did not become operational at Riggs until the fourth quarter of 2003.<sup>251</sup>

Another major problem was that Riggs had not developed a system for identifying which of its clients had low, medium, or high money laundering risks so that it could allocate its AML resources and attention accordingly. Riggs' failure to identify high risk clients was repeatedly identified in OCC examinations as a problem.<sup>252</sup> In July 2003, the Federal Reserve found that Riggs' overall risk management policies and procedures were so inadequate that it required the Riggs National Corporation Board to issue a corporate resolution committing to improvements.<sup>253</sup> In 2004, FinCEN based its assessment of a civil monetary penalty against Riggs in part upon Riggs' continuing failure to "implement an effective system to identify and assess the BSA/AML risk present throughout the institution. ... [M]anagement was unable to

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<sup>249</sup> The Subcommittee identified this problem in its last hearings on private banking and money laundering. See 1999 Subcommittee Private Banking Hearings, at 881.

<sup>250</sup> See, e.g., OCC examination materials (11/21/03), Bates 001167-68; (3/20/03), Bates OCC 0000516987.

<sup>251</sup> Subcommittee interview of Ray Lund (6/7/04).

<sup>252</sup> See, e.g., OCC examination materials (10/23/00), Bates 0000536186-88; (6/21/02), Bates OCC 000029229; and (9/18/02), Bates OCC 0000028073.

<sup>253</sup> See letter from Federal Reserve to Riggs National Corporation (7/1/03), Bates OCC 0000014259.

define and analyze concentrations of risk in the accounts, customers, locations, and products of Riggs.”<sup>254</sup>

Another key problem at Riggs was poor KYC documentation for international private banking clients and Embassy accounts. This documentation problem was repeatedly cited in OCC examinations and in audit reports prepared for the bank. For example, in 2000, an OCC examination stated, “[C]ustomer profile information ... is poor and inconsistent.”<sup>255</sup> In 2001, a KPMG audit that examined 13 Embassy accounts at Riggs found that all 13 “had no documented OFAC checks performed,” “had no completed KYC form,” “no documented due diligence,” and “no source funds listed.”<sup>256</sup> KPMG stated that, in 2001, Riggs did not even require KYC forms for Embassy accounts. In 2002, an OCC examination stated: “KYC information on existing account relationships in the Embassy and IPB departments is not being updated and in many instances, contains only sparse information.”<sup>257</sup> In 2004, when a senior Riggs official took control of the Embassy Banking and International Private Banking departments, he told the Subcommittee staff that, of the 15,000 client files in those departments, he estimated 85 percent had KYC documentation problems and reported that information to the Riggs Board.<sup>258</sup> The FinCEN filing in May 2004, stated that Riggs’ customer due diligence program remained “weak,” “was not implemented in an effective or consistent manner,” and resulted in due diligence information that “was frequently missing.”<sup>259</sup> These documentation deficiencies occurred despite strong policy statements by Riggs requiring detailed KYC information for client accounts.

Riggs also failed to have an effective system for identifying and monitoring accounts opened by political figures. Although its KYC forms had a box that could be checked for these accounts as early as 1997, Riggs failed to develop a procedure for readily identifying and monitoring them. In July 2000, for example, when the OCC asked Riggs for a list of accounts held by political figures, Riggs compiled the list manually and left off such key names as E.G. President Obiang and former Chilean President Pinochet. In 2003, a KPMG internal audit determined that there was no bank-wide policy on accounts for politically exposed persons, an incomplete list of these accounts, inadequate training of personnel, and a failure by both the

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<sup>254</sup> See In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (B)(1).

<sup>255</sup> OCC examination materials (10/23/00), Bates 0000536184.

<sup>256</sup> Memorandum to the file by Andersen (12/14/01), regarding “Embassy Banking,” Bates OCC 0000536382-85, at 384.

<sup>257</sup> OCC examination materials (6/21/02), Bates OCC 000029229.

<sup>258</sup> Subcommittee interview of Timothy Coughlin (7/7/04).

<sup>259</sup> See In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (B)(1).

International Private Banking and Embassy Departments to subject these high risk accounts to additional scrutiny.<sup>260</sup>

The OCC also repeatedly criticized Riggs for failing to conduct routine monitoring of any of its high risk accounts, including accounts in the International Private Banking and Embassy Departments, accounts held by persons in countries with poor anti-money laundering controls, and persons engaged in high risk businesses such as money transmitters.<sup>261</sup> In 2000, an OCC examination stated: “High risk accounts are not being appropriately identified, documented and monitored.”<sup>262</sup> One example from the Riggs case study is Riggs’ failure to question or track the multi-million dollar cash deposits to the Otong account, which over a two-year period from 2000 to 2002, totaled \$11.5 million. Although Riggs had computer software that enabled its BSA officer to review large transactions on a daily basis, there is little evidence that such reviews actually took place or had any effect on account management.

Another major deficiency in Riggs’ AML program was its failure to oversee clients’ wire transfer activity to identify suspicious transactions. This major gap in Riggs’ AML controls was identified in multiple OCC examinations, and may not yet be corrected.<sup>263</sup> One example of the importance of this deficiency is the wire transfers from the Equatorial Guinea oil account which sent over \$35 million to unknown companies with bank accounts in Spain, Luxembourg, and Cyprus. These wire transfers took place over a two-year period, 2000-2002, with virtually no questions asked by Riggs personnel. A BSA investigator hired by Riggs in 2003, however, reviewed the wire transfer records and immediately identified these transfers as suspicious. Subsequent inquiries have since indicated that one or more of the unknown companies may be partly or wholly owned by the President of Equatorial Guinea.

Riggs also failed to implement an effective procedure for filing the Suspicious Activity Reports (SARs) required by the Bank Secrecy Act (BSA). The FinCEN civil monetary penalty assessment states that Riggs violated the BSA by “failing to file or by delinquent filing approximately 33 SARs” representing “at least \$98 million in suspicious transactions.” It states that another 61 SARs were filed more than 60 days after the suspicious activity occurred; some

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<sup>260</sup> See, e.g., OCC memorandum on “KPMG Report on Politically Exposed Persons,” (10/30/03), Bates OCC 0000555085-86. Section 312 of the Patriot Act requires enhanced due diligence of private banking accounts opened for senior foreign political figures or their families. 31 U.S.C. § 5318(i)(3).

<sup>261</sup> See, e.g., OCC examination materials (10/23/00), Bates 0000536186-88; (6/21/02), Bates OCC 000029229. See also In re Riggs Bank N.A. (Case No. 2004-44), prepared by the Office of the Comptroller of the Currency, at 3.

<sup>262</sup> OCC examination materials (10/23/00), Bates 0000536186.

<sup>263</sup> See, e.g., OCC examination materials (10/23/00), Bates 0000536186; (6/21/02), Bates OCC-000029229-30.

of these SARs referenced suspicious activity that occurred two or three years beforehand.<sup>264</sup> The Pinochet and Equatorial Guinea accounts provide specific examples of situations where Riggs failed to file a SAR despite clear evidence of suspicious activity. The evidence reviewed by the Subcommittee is consistent with the statement in the FinCEN filing that: “Riggs’ procedures to identify, analyze, and report suspicious activity were either non-existent or not implemented.”<sup>265</sup>

Another problem was that Riggs had an ineffective system for alerting its personnel to the bank’s receipt of a subpoena requesting information about a particular account, even though subpoenas often play an instrumental role in identifying high risk accounts and evaluating suspicious activity. According to the OCC, Riggs’ standard procedure was to send any subpoena to its general counsel for processing.<sup>266</sup> The general counsel’s office handled the information request and normally did not inform anyone else at the bank about the subpoena, including the Security Department, Compliance Department, or relevant account manager, instead following a policy of keeping the information confidential. The result was that few bank personnel knew when law enforcement or other inquiries were being made about specific accounts.<sup>267</sup> In the case of the Senate Subcommittee subpoena requesting information related to the Equatorial Guinea accounts, the initial subpoena was issued in March 2003, but most of Riggs senior officers were apparently unaware of it for some time, and the Riggs Board was not informed of the Senate inquiry until a year later.<sup>268</sup>

Still another serious deficiency was the bank’s lax internal audit department. The OCC criticized Riggs’ BSA audits in several BSA examinations as inadequate.<sup>269</sup> In 2003, the Federal Reserve found Riggs’ internal audit function to be unsatisfactory due to untimely audits,

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<sup>264</sup> See In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (C)(1) and (2).

<sup>265</sup> Id.

<sup>266</sup> During his Subcommittee interview, Riggs General Counsel, Joseph Cahill, declined to discuss these matters in light of ongoing enforcement actions and a pending shareholder derivative suit. Subcommittee interview of Mr. Cahill (6/25/04).

<sup>267</sup> See, e.g., In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (B)(1) (“Riggs did not have procedures or internal controls to ensure that subpoenas and other government requests regarding accountholders were referred to the division responsible for investigating potential suspicious activity.”).

<sup>268</sup> See, e.g., minutes of a special Riggs Board meeting (3/2/04), Bates RNB-GA 025253-59, at 56 (“On February 6, [2004], Riggs was informed that there would be a Senate investigation into the EG account manager’s activities.”).

<sup>269</sup> See, e.g., OCC examination materials (10/23/00), Bates 0000536184; (9/18/02), Bates OCC 0000028073-74.

insufficient audit reports, and poor communications with the Riggs Board's Audit Committee.<sup>270</sup> In 2004, the OCC stated that Riggs' audits "did not review all of the necessary areas, did not uncover or disclose the severity or the extent of weaknesses in the Bank's BSA compliance, and contained flawed testing and sampling."<sup>271</sup> In response to these and other criticisms, Riggs terminated its chief auditor in 2003, and agreed to establish a new auditing function that will report directly to the bank's Audit Committee.

Riggs has also been cited repeatedly for poor AML training of its employees.<sup>272</sup> Criticisms included inadequate training for completing KYC documentation, filing Currency Transaction Reports on cash transactions, reporting suspicious activity, and handling accounts for political figures. FinCEN also cited Riggs' poor training, stating that "[t]raining on monitoring and detecting suspicious activity was particularly weak at Riggs."<sup>273</sup>

In addition to all of these deficiencies, Riggs had a poor system for supervising its account managers. Account managers in the private banking and Embassy banking departments are required to fill contradictory roles – to develop a personal relationship with their clients and solicit their business, while also monitoring the clients' accounts for suspicious activity and questioning specific transactions. Human nature makes these contradictory roles difficult to perform, and anti-money laundering duties often suffer. Banks have dealt with this problem by setting up systems to ensure the actions of their account managers are reviewed by third parties, such as management supervisors, compliance personnel, auditors, or legal counsel.

In the case of Riggs, however, third party oversight did little to correct the deficient practices of its account managers. The key supervisor of the International Private Banking and Embassy Banking Departments, for example, the head of the International Banking Group, appears not to have objected to or corrected any of the actions taken by the account managers handling the Pinochet or E.G. accounts. Compliance personnel also did little to improve account management. As stated in the FinCEN civil monetary penalty assessment when discussing Riggs' compliance personnel: "Day-to-day oversight and monitoring of high-risk transactions, high-risk customers, and high-risk geographies were minimal."<sup>274</sup> Riggs internal auditors also did little BSA work, and the bank's general counsel told the Subcommittee that he had no role in

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<sup>270</sup> See letter from Federal Reserve to Riggs National Corporation (7/1/03), Bates OCC 0000014259.

<sup>271</sup> See In re Riggs Bank N.A. (Case No. 2004-44), prepared by the Office of the Comptroller of the Currency, at 4.

<sup>272</sup> See, e.g., OCC examination materials (10/23/00), Bates 0000536189; (6/21/02), Bates OCC 000029229; and (9/18/02), Bates OCC 0000028072-73.

<sup>273</sup> See In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (B)(4).

<sup>274</sup> See In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (B)(3).

any ongoing BSA matters and provided no supervision to anyone in this area. Board oversight was also so weak that, in 2003, the Federal Reserve required the Board to hire an independent consultant to report on how Board oversight could be strengthened.<sup>275</sup>

The corporate culture at Riggs failed to communicate the importance of the bank's anti-money laundering program. The Subcommittee was told that the bank's senior leadership clearly valued the Embassy accounts and accounts opened for foreign leaders, and stressed the importance of customer service. The 1994 trip to Chile by senior Board members to solicit the Pinochet account and the 2001 luncheon in honor of the Equatorial Guinea President illustrate the Board's personal involvement in these accounts. In 2002 and 2003, some Board members expressed opposition to closing the Pinochet and Equatorial Guinea accounts due to money laundering concerns. In March 2003, senior bank officers complained to the OCC about forcing the bank to adopt a rigorous AML program. These are not the actions or sentiments of a Board committed to AML excellence.

Even more telling is the fact that the Riggs Board failed over a five-year period to ensure that regulators' directives to improve the bank's AML program were implemented. Neither the bank nor the bank holding company took the steps necessary to make needed investments in information systems, BSA personnel, BSA training, or practical procedures to safeguard the bank against money laundering. Instead, Riggs tolerated fundamental deficiencies in its AML program year after year, exhibiting indifference at best to regulators' directives. The Subcommittee's investigation is wholly consistent with FinCEN's assessment that Riggs "willfully violated" the requirements of U.S. anti-money laundering laws.

## **B. Inadequate Regulatory Oversight of AML Deficiencies**

**Finding (4): Regulatory Failure at Riggs.** For many years, OCC examiners accurately and repeatedly identified major anti-money laundering deficiencies at Riggs Bank, but OCC supervisors failed to take strong action to require improvements. OCC regulators were tolerant of the bank's weak anti-money laundering program, too willing to rely on bank promises to correct repeat deficiencies, and failed initially to use available enforcement tools. Federal Reserve regulators were slow and passive.

**Finding (5): Conflicts of Interest.** By taking a job at Riggs in 2002, after the OCC failed to take enforcement action against the bank in 2001 and 2002 for AML deficiencies, the former OCC Examiner-in-Charge at Riggs created, at a minimum, an appearance of a conflict of interest. In addition, despite federal law barring former employees from appearing before their former agencies on certain matters, and OCC rules barring former employees from attending meetings with the agency for two years without prior approval from the OCC ethics office, the former Examiner

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<sup>275</sup> See letter from Federal Reserve to Riggs National Corporation (7/1/03), Bates OCC 0000014259.



**attended multiple meetings with OCC personnel related to Riggs' AML compliance, without obtaining the required clearance.**

Given the widespread and fundamental deficiencies in Riggs' AML program, it is difficult to understand why federal regulators failed to act sooner to require the bank to correct them.

Several federal regulators have responsibility for AML oversight at Riggs. The OCC is the bank's primary regulator, with responsibility to oversee the safety and soundness of Riggs Bank, including its compliance with anti-money laundering laws. The Federal Reserve Bank in Richmond has oversight authority over the bank holding company, Riggs National Corporation, while the Federal Reserve Bank in Atlanta exercised oversight of Riggs International Banking Corporation, an Edge Act subsidiary in Miami, Florida. FinCEN has been delegated authority to impose civil monetary penalties on financial institutions that violate the Bank Secrecy Act.

As primary regulator of Riggs Bank, the OCC had the greatest responsibility for ensuring Riggs' AML compliance. The Comptroller of the Currency John D. Hawke, Jr. has already stated publicly, "it is clear to me that there was a failure of supervision" and that "we should have taken stronger action earlier."<sup>276</sup>

The Subcommittee reviewed over 60 boxes of materials related to OCC examinations of Riggs' anti-money laundering efforts since 1997, including examination reports, workpapers, correspondence, and electronic mail.<sup>277</sup> The Subcommittee also reviewed a more limited set of examination materials from the Federal Reserve. The evidence obtained by the Subcommittee shows that federal bank regulators, particularly the OCC, conducted numerous examinations of Riggs' AML compliance since 1997, including annual and targeted examinations resulting in about 20 detailed reports or memoranda.

The evidence shows that virtually all of the Riggs AML examinations identified major deficiencies with its anti-money laundering efforts. At the same time, all of the examinations prior to 2002, gave the bank's AML efforts a generally positive rating. This positive rating, according to OCC personnel, was given primarily because Riggs management had committed to correcting the identified deficiencies. But Riggs Bank did not carry through on its commitment, and some of the later examinations noted repeat deficiencies from earlier years. The OCC took no enforcement action, however, until negative press reports in 2002 and 2003 began concentrating public attention on questionable accounts at Riggs Bank involving Saudi Arabia and Equatorial Guinea. More thorough reviews followed, documenting widespread deficiencies and a lack of corrective action, and the OCC began to consider taking formal enforcement action

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<sup>276</sup> Testimony of Mr. Hawke before the U.S. Senate Committee on Banking, Housing, and Urban Affairs (6/3/04).

<sup>277</sup> The Subcommittee did not, however, review materials related to the OCC's examination of Riggs' accounts related to Saudi Arabia, since that information is currently being reviewed by the full Committee on Governmental Affairs.

against the bank. In July 2003, the OCC issued its first cease and desist order against Riggs Bank, directing the bank to revamp its AML programs. In May 2004, the OCC issued a second cease and desist order and a \$25 million civil monetary fine for failing to comply with the 2003 order. FinCen issued a concurrent \$25 million fine for the bank's willful violations of anti-money laundering laws. The Federal Reserve issued its first cease and desist order against the bank holding company in May 2004.

**OCC Examinations In General.** Much of the OCC workforce is devoted to conducting or supporting examinations of national banks. In general, for a mid-size bank like Riggs, an "Examiner-in-Charge" (EIC) is assigned on a full time basis to the bank. The EIC is responsible for developing an annual examination plan to review key components within the bank and ensure its safety and soundness. This plan often includes routine examinations that examine required components of bank operations on a periodic basis, as well as one-time examinations that target special areas of concern. The plan may also include one or more targeted examinations being conducted at multiple banks to examine particular issues of concern in the banking industry.

Once the annual plan is developed and approved, the OCC assigns a "National Bank Examiner" (NBE) to conduct the scheduled examinations at the bank. Throughout each examination, the assigned NBE keeps the EIC informed about the progress of the review, obtains guidance on how to handle specific matters, and provides a written report to the EIC at the conclusion of the examination. When an examination is completed, the EIC and NBE may hold an exit meeting with senior bank officials to inform them of the results. Once each year, the EIC prepares a "Report on Examination" summarizing the examinations conducted during the prior 12-month period, and presents the OCC's findings to the Board of Directors at the bank. EICs also typically communicate on a regular basis with bank personnel, and may speak more often with the bank's Board of Directors if specific concerns arise.

All examination reports and key memoranda are supposed to be included in an electronic database at the OCC known as Examiner View (EV). Key examination workpapers and supporting bank documentation are also required to be preserved for specified periods of time, either in paper or electronic form.<sup>278</sup>

If a bank is operating in an unsafe or unsound manner, or fails to comply with banking regulations or supervisory conditions, an EIC can recommend a variety of informal and formal enforcement actions. If sufficiently serious, proposed enforcement actions are referred for review to the Washington Supervisory Review Committee, which is composed of the OCC's top supervisory and enforcement officials. This Committee is also routinely alerted when problems are discovered related to a bank's AML compliance.<sup>279</sup> After reviewing the referred matter, the Committee can recommend an enforcement action to the Deputy Comptroller. The Deputy

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<sup>278</sup> See policy requirements in "Supervision Work Papers" (No. PPM 5400-8, revised).

<sup>279</sup> Subcommittee interview of Ashley Lee (6/30/04).

Comptroller reviews the matter and, in turn, makes a recommendation to the Comptroller of the Currency. The Comptroller then makes the final determination on how to handle the specified matter.

From 1998 to 2002, the EIC at Riggs Bank was R. Ashley Lee. On August 8, 2002, Mr. Lee recused himself from further dealings with Riggs Bank, because the bank had approached him about a possible position with the bank. Mr. Lee was assigned to other duties within the OCC until October 3, 2002, when he retired, departed from the agency, and began employment at Riggs Bank. Mr. Lee was replaced in the fall of 2002, by Lester Miller, who is the current EIC at Riggs.

From 1997 to 2003, the Riggs EIC reported to John Noonan, Deputy Assistant Comptroller for the Northeast District. In 2002, the OCC reorganized its supervisory structure, but kept Mr. Noonan in charge of Riggs Bank due to ongoing examinations uncovering serious problems. In 2003, Mr. Noonan retired from the OCC, and the Riggs EIC began reporting to Robert P. Sejnoha, Assistant Deputy Comptroller for Mid-size Banks. Mr. Sejnoha reports to Jennifer C. Kelly, Deputy Comptroller for Mid-size and Credit Card Bank Supervision. Ms. Kelly reports, in turn, to Timothy W. Long, Senior Deputy Comptroller, who reports to the Comptroller of the Currency John D. Hawke, Jr.

### **(1) Summary of Riggs Examinations**

The key OCC examinations and supervisory actions over the last five years relating to Riggs' anti-money laundering efforts can be summarized as follows.<sup>280</sup>

**1997 Consumer Compliance Examination.** In August 1997, the OCC completed a consumer compliance examination of Riggs Bank, including its compliance with AML requirements. The examination stated that Riggs' AML efforts were satisfactory, but listed deficiencies in AML internal controls and training as matters requiring attention. Among other measures, the examination directed Riggs to improve AML and KYC training in several areas of the bank, including private banking; enhance KYC procedures in certain lines of business; and implement a system to identify suspicious wire transfers.

**1998 AML Examination.** In June 1998, the OCC completed an examination of Riggs' AML compliance efforts in its private banking and trust departments. The examination stated that Riggs' overall AML efforts were adequate, but listed as a deficiency poor KYC information in client profiles. Among other measures, the examination directed Riggs to

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<sup>280</sup> This information is derived from a number of OCC examination materials, including an OCC document entitled, "Riggs Bank N.A. Timeline on OCC Supervision of Bank Secrecy Act/Anti-money Laundering" (hereinafter "OCC Timeline") (undated), Bates OCC 0000547377-83; and another OCC document entitled, "Riggs Bank N.A. Timeline on OCC Supervision of BSA/AML Pre 9/11" (undated), Bates OCCX 00001-2.

strengthen its SARs policies and procedures, and improve its monitoring of international wire transfers.

**1999 Consumer Compliance Examination.** In July 1999, the OCC completed a consumer compliance examination of Riggs, including AML compliance efforts in its Embassy and retail banking departments. The examination stated that the Embassy Banking's overall AML efforts were satisfactory, but listed deficiencies in audit independence, frequency, and documentation; AML training; and bank information systems which failed to identify all unusual transactions.

**1999 Russian AML Examination.** In September 1999, the OCC completed a limited AML examination of Riggs' accounts for Russian clients. The examination found no indications of money laundering requiring a full-scope examination, but directed the bank to improve its documentation for correspondent bank accounts and establish procedures to monitor high risk accounts.

**2000 AML Examination.** In October 2000, the OCC completed an examination of Riggs' AML compliance efforts in its private banking, trust, and wire transfer departments. The examination stated that Riggs' overall AML compliance was "satisfactory," but certain "improvements are necessary."<sup>281</sup> A memorandum shared with the bank listed deficiencies in AML audits, poor KYC documentation, and inadequate AML training, all of which were described as "repeat supervisory concerns from previous examinations." The memorandum also stated that high risk accounts were "not being appropriately identified, documented, and monitored." When the Subcommittee asked the OCC why the bank's AML efforts were rated "satisfactory" in light of the listed deficiencies, the EIC indicated that the rating was justified because the bank was planning to remedy the identified deficiencies, and it had the necessary AML systems in place – it just wasn't using them.<sup>282</sup>

**2000 London AML Examination.** Also in 2000, the OCC completed AML examinations of six London banks, including Riggs Bank Europe, Ltd. (RBEL). The December 2000 examination report on RBEL stated that AML risk at the London bank was "high and increasing." The examination listed deficiencies which included inadequate account monitoring, poor audit documentation, and weak risk management.

**2001 AML Uncooperative Countries Examination.** In February 2001, the OCC completed a targeted examination of Riggs to determine the extent to which the bank was engaging in transactions involving countries deemed to be uncooperative with international

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<sup>281</sup> OCC examination materials (10/23/00), Bates OCC 0000536182-89.

<sup>282</sup> Subcommittee interview of Ashley Lee (6/30/04).

money laundering efforts.<sup>283</sup> The examination found that Riggs did not have extensive transaction activity with the listed countries, but also noted a number of problems with its AML operations, including a lack of KYC information and monitoring of high risk accounts. The report listed a number of measures that should be taken to improve the bank's AML operations.<sup>284</sup>

**2001 Supervisory Review Committee Meeting.** In June 2001, top OCC enforcement officials at the Washington Supervisory Review Committee reviewed a draft Report on Examination (ROE) summarizing the 2000 examinations of Riggs Bank, in part because the draft report discussed three targeted AML examinations which had found serious AML deficiencies at Riggs in both the United States and United Kingdom.<sup>285</sup> The Committee considered whether an enforcement action against the bank should be taken.<sup>286</sup> The EIC at Riggs recommended against any formal enforcement action, because the London deficiencies "have been largely addressed," the bank "generally does a satisfactory job of complying ... [i]n high risk areas," and management was committed to correcting other AML deficiencies.<sup>287</sup> The Committee accepted this recommendation, but also required the ROE to list the specific AML deficiencies and include strong language making it clear that the bank needed to correct them. The minutes stated that the identified AML deficiencies had been outstanding since 2000, with no acknowledgment that similar deficiencies had been identified since at least 1997.

**2000 Annual Report on Examinations (ROE).** In late 2001, the OCC completed the annual report summarizing OCC examinations of Riggs Bank in 2000, including the AML examinations.<sup>288</sup> This ROE carries an official date of February 28, 2001, but was actually issued much later in the year. It stated that Riggs' AML compliance "needs further improvement." It stated that the Riggs Board had made AML progress "a top priority for

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<sup>283</sup> The Financial Action Task Force has issued a list of these countries.

<sup>284</sup> In addition, in December 2001, an internal audit of Riggs Embassy accounts by KPMG found that 13 out of 13 files reviewed had missing KYC documentation and poor due diligence information.

<sup>285</sup> See OCC memorandum, "District SRC Minutes for meeting of June 28, 2001," (9/21/01), Bates 557411-14. The three examinations were the 2000 examination of the bank's overall AML compliance, the 2000 examination of AML compliance at Riggs Bank Europe, Ltd. in London, and the 2001 examination of Riggs' handling of accounts in countries that do not cooperate with international AML efforts.

<sup>286</sup> Although 12 U.S.C. § 1818(s) states that a cease and desist order "shall" be issued by the OCC for a bank that has failed to establish an AML program or has failed to correct identified AML deficiencies, the OCC has apparently interpreted this statute as giving it the discretion to decide whether or not such an order should, in fact, be issued.

<sup>287</sup> OCC memorandum, "District SRC Minutes for meeting of June 28, 2001," (9/21/01), Bates 557411-14, at 557413.

<sup>288</sup> Report on Examination (2/28/01), Bates OCC 0000557861-97.

2001 and improvements has been achieved,” but “deficiencies remain and continued attention is warranted.” The ROE prominently listed a number of AML deficiencies in the areas of account monitoring, audits, KYC documentation, training, and suspicious activity referrals. It also contained the statement that “[t]horough AML transaction monitoring procedures for the ‘high-risk’ areas were implemented in December 2000 and are effective,” which later proved factually incorrect.

**2002 Consumer Compliance Examination.** In January 2002, the OCC completed a consumer compliance examination of Riggs Bank, including AML compliance. The examination stated that AML deficiencies were being addressed and were in various stages of correction, to be completed by the end of the first quarter in 2002. It rated the quality of risk management as satisfactory, with moderate compliance risk. The examination noted the departure of the bank’s compliance officer and the hiring in June 2001, of a new compliance officer with 15 years of experience.

**2002 AML Examination.** In June 2002, the OCC completed an examination of Riggs’ AML compliance efforts in its private banking, Embassy Banking, and wire transfer departments, and Bahamas operations. The examination stated that while Riggs’ overall AML compliance had “improved,” further improvements were needed, particularly regarding wire transfers. A memorandum shared with the bank listed a number of deficiencies, including inadequate KYC information and training, inadequate monitoring of high risk accounts, and a lack of policies to govern cash transactions made Payable Upon Proper Identification (PUPID).<sup>289</sup> The memorandum did not indicate whether any of these AML deficiencies were repeat problems from 2000. The memorandum listed eight action items for the bank, and indicated that bank management had committed to addressing them by the end of 2002. They included improving KYC documentation and training, improving use of electronic monitoring systems for wire transfers, establishing PUPID policies and procedures, and strengthening analysis of wire transfer activity.

**2002 Pinochet Examination.** In July 2002, the OCC completed a targeted examination of the Pinochet accounts at Riggs bank.<sup>290</sup> OCC examiners had come across these accounts by chance in the course of another AML examination. The memorandum stated that the Pinochet accounts represented “a high risk to the bank’s reputation as well as potential laundering of illegally obtained funds.” It cited inadequate KYC documentation for the source of wealth in the accounts, questionable account transactions, and a failure by the bank to report suspicious activity. For reasons explained further below, this memorandum was never issued as a final examination report, was never communicated in a formal

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<sup>289</sup> OCC examination materials (6/21/02), Bates OCC 0000029228-30.

<sup>290</sup> “Targeted Examination: Accounts related to Mr. Augusto Pinochet” (7/9/02), Bates OCC 0000517597-603.

document given to the bank, and was not included in the OCC's electronic files for Riggs examinations.

**2001 Annual Report on Examination (ROE).** In August 2002, the OCC completed an annual Report on Examination summarizing the examinations of Riggs Bank during the prior year, including AML examinations. The ROE carries an official date of April 9, 2002, but was actually issued four months later. Despite an earlier AML examination which identified a number of AML deficiencies, the last ROE that emphasized the importance of the bank's completing needed AML improvements, and the recently completed Pinochet examination which identified troubling AML practices at the bank, the ROE paid minimal attention to AML issues. It stated briefly that AML "compliance needs lasting and progressive attention," but also stated that bank "[m]anagement has largely addressed or is in the process of addressing the significant deficiencies noted in our prior examination."<sup>291</sup> Many pages later, the ROE stated: "The bank has made good progress in addressing the issues and concerns surrounding the Bank Secrecy Act. However, the April 2002 BSA exam of Embassy Banking, International Private Banking, and wire transfer department identified various concerns that still need management's attention." The ROE does not list any of the outstanding AML deficiencies or set a deadline for the bank to make the necessary AML improvements. The 2001 ROE simply fails to follow through on the strong AML message sent in the 2000 ROE about the need for Riggs to implement an effective AML program.

**2002 AML/ATF Examination.** In October 2002, the OCC completed a targeted examination to assess the bank's AML risk management, policies and procedures to detect and report terrorist financing, and actions taken to improve AML operations since the 9-11 attack on the United States. Riggs was one of about two dozen banks to undergo this targeted review. An examination memorandum shared with the bank in October stated that AML risk at Riggs was "high and increasing," due to the bank's large volume of higher risk accounts and "the fact that controls are still being developed and/or enhanced."<sup>292</sup> It stated that the bank was "making progress" in AML compliance, but "further improvements are needed." The memorandum directed the bank to improve its AML procedures in five areas, including to re-assess the risk associated with certain accounts, develop better "risk matrices" to assign risk ratings to accounts in various areas of the bank, better document decisions on whether to file suspicious activity reports, improve AML training, and develop adequate AML audits. The memorandum does not indicate that any of the identified AML deficiencies were repeats from prior examinations.

**2002 Meeting with Riggs Board of Directors.** On October 15, 2002, the OCC met with the Riggs Board of Directors about its 2001 Report on Examination for the period, April

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<sup>291</sup> Report on Examination (4/9/02), Bates OCC 0000557969-8000, at 975 and 990.

<sup>292</sup> OCC examination materials (9/18/02), Bates OCC 0000028071-74.

2001 to April 2002, and also discussed the targeted anti-terrorist financing and Pinochet examinations. Despite the bank's ongoing AML deficiencies and the disturbing AML practices uncovered during the Pinochet examination, the OCC told the Board that the bank's overall AML compliance was "satisfactory." The OCC also called on the bank to correct the remaining deficiencies, and the bank committed to resolving them by the end of 2002. One Board member, Ms. Allbritton, complained to the OCC about losing the Pinochet accounts.

**2003 Saudi Targeted Examination.** About a month after the Board meeting, beginning on November 22, 2002, media stories reported that a Riggs account associated with the Embassy of Saudi Arabia had allegedly sent funds that ended up benefitting two of the Saudi terrorists involved in the 9-11 attack on the United States, and the FBI was investigating.<sup>293</sup> The OCC has indicated that it first learned of the concerns associated with the Saudi accounts from these media reports.<sup>294</sup> In December 2002, the OCC met with senior bank management about the Saudi accounts, and, in January 2003, began a targeted examination of them. Initially planned to last one month, this examination uncovered increasingly serious problems and continued for more than five months.

**2003 Equatorial Guinea Subpoena.** In January 2003, another press report appeared alleging that Riggs accounts associated with Equatorial Guinea containing millions of dollars in oil revenues were being misused by E.G. officials. In March 2003, this Subcommittee issued its first subpoena to Riggs Bank requesting documents associated with the E.G. accounts. Later in 2003, the Subcommittee also issued subpoenas to the OCC to review its Riggs examination materials.

**2003 Ongoing AML Examination.** In March and April 2003, the OCC issued memoranda with AML updates. Both found significant ongoing AML deficiencies. One commented that Riggs' "efforts to correct previously identified deficiencies [are] less than satisfactory."<sup>295</sup> The OCC also held several meetings with Riggs officers. In one meeting in early March, Riggs officers complained that the AML examinations were "putting a tremendous burden on the bank" and asked whether Riggs was subject to an annual or

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<sup>293</sup> Several investigations of these funds transfers are still underway. At least one, by the Presidential Commission on 9-11 determined that no credible evidence exists that any 9/11 operatives received substantial funding from any person in the United States. See "Staff Statement No. 16: Outline of the 9/11 Plot," National Commission on Terrorist Attacks Upon the United States (6/16/2004).

<sup>294</sup> OCC Timeline, Bates OCC 0000547380.

<sup>295</sup> OCC memorandum, "Bank Secrecy Act (BSA) Examination—Issues Update," (3/13/03), Bates OCC 0000028582-87. See also OCC memorandum, "Riggs Bank, NA, BSA/AML examination recap," (4/28/03), Bates OCC 0000028400-10.



three-year cycle of AML examinations.<sup>296</sup> The EIC at Riggs noted, “The BSA exam will continue to be challenging as the OCC and bank management have different views on the level of risk and potential impact to the bank.” A few weeks later, however, the OCC offered a more positive assessment of Riggs’ reaction, stating that after a March 17, 2003, meeting, Riggs “responded very quickly and strongly”; “developed a comprehensive action plan ... to address deficiencies; established a Board level BSA Committee to provide oversight; created a management BSA/AML Task Force to direct the implementation of the action plan; and has hired a new BSA Officer with strong credentials with more staff to be added. The bank estimates spending approximately \$12 [million] to upgrade BSA systems.”<sup>297</sup>

**2003 Enforcement Action Considered.** In May 2003, the OCC’s Washington Supervisory Review Committee met to consider taking a formal enforcement action against Riggs for its ongoing AML deficiencies. OCC officials discussed issuing both a cease and desist order and a civil monetary penalty against the bank. OCC officials were split on whether to impose a civil fine on the bank and, in June, referred the Riggs matter to FinCEN for the first time, asking FinCEN whether it would want to join in an enforcement action against the bank.

**2002 Special Report on Examination (ROE).** In June 2003, the OCC completed a special Report on Examination (ROE) which focused solely on its recently completed AML examination of Riggs.<sup>298</sup> This ROE identified a long list of serious AML deficiencies. The OCC discussed the findings in the ROE at a special Riggs Board meeting on June 25, 2003, and gave Riggs a letter asking why a civil monetary penalty should not be assessed against the bank.

**2003 Cease and Desist Order.** On July 16, 2003, the OCC issued a cease and desist order against Riggs Bank, to which the Board members consented. No civil fine was imposed on the bank at that time.

**2002 Report on Examination (ROE).** Later in 2003, the OCC completed a second Report on Examination (ROE) for Riggs Bank, summarizing the examinations of the bank from December 2002 through March 2003, including on AML issues. This ROE prominently mentioned the special ROE on AML problems and the July consent order, as well as other

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<sup>296</sup> OCC examination materials, “Meeting with Riggs Bank N.A. Senior Management,” (3/5/03), Bates OCC 0000026292-94.

<sup>297</sup> OCC Timeline at Bates OCC 0000547381.

<sup>298</sup> The OCC gave this report a formal date of January 6, 2003, even though it was actually issued six months later. The continual discrepancy between official OCC report dates and the dates the reports are actually issued – here represented by a six-month gap – is a confusing and misleading practice that should be discontinued.

issues involving capital, asset quality, management, earnings, liquidity and risk management issues.

**2003 Targeted Equatorial Guinea Examination.** In October 2003, the OCC initiated a targeted examination of the Equatorial Guinea accounts at Riggs Bank. This examination eventually found numerous serious problems with the management of these accounts, including substantial evidence that the bank had not implemented many of the corrective actions that were supposed to have been completed by the end of 2002.

**2003 RBEL AML Examination.** In December 2003, the OCC completed an AML examination of Riggs Bank Europe, Ltd. in London. This examination found numerous AML deficiencies, with weak compliance management and high compliance risk.

**2003 Meeting with Riggs Board.** On December 17, 2003, the OCC met with the Riggs Board to present its Report on Examination for 2002, and its ongoing review of the E.G. accounts. Despite the special ROE in June 2003, identifying a long list of AML deficiencies, a Federal Reserve examination in May 2003, which cited the bank holding company for inadequate Board oversight, and the significant AML problems identified in the July 2003 consent order, OCC personnel told the Riggs Board that “[s]atisfactory progress is being made with the Consent Order”; “[o]verall board and management supervision is satisfactory”; and the OCC “had found no instances of money laundering or violations of BSA at Riggs.”<sup>299</sup> The OCC did express concerns about the Equatorial Guinea accounts “center[ing] on the source of funds and ensuring that none are diverted for personal use,” and the need to control the high money laundering risks associated with the bank’s Embassy Banking and International Private Banking accounts. In response, a prominent Board member, Joseph Allbritton, told the OCC that the bank had no intention of closing the E.G. accounts.

**2004 AML Update.** In early January 2004, the OCC issued a supervisory target letter stating that the bank was making “satisfactory progress” in its AML efforts and in complying with the 2003 consent order. The letter recommended additional steps that needed to be taken, particularly with respect to Embassy Banking and International Private Banking accounts. About a week later, however, Riggs investigators examining the E.G. accounts uncovered additional serious problems, including misconduct by the E.G. account manager, questionable wire transfers, and multi-million-dollar cash deposits. By the end of January, the bank had fired the E.G. account manager and in March 2004, fired the head of its International Banking Group.

**2004 Meeting with Riggs Management.** On March 2, 2004, the OCC held an exit meeting with Riggs senior management regarding the E.G. accounts. At this meeting, the OCC informed the bank that although progress had been made in some AML areas,

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<sup>299</sup> See minutes of Riggs Board meeting (12/17/03), Bates RNB-GA 025183-91, at 84.

significant deficiencies remained, the bank's ratings would be downgraded, and the bank would likely be subject to additional enforcement action. The OCC delivered another 15-day letter asking the bank why it should not be subject to a civil monetary penalty.

**2003 Report on Examination (ROE).** In the first quarter of 2004, the OCC completed a Report on Examination (ROE) summarizing the examinations of Riggs Bank during the prior six months. This report prominently mentioned AML concerns and noted "unsafe and unsound practices involving the management, oversight, and control of the EG relationship; additional BSA violations ... and noncompliance with three key articles of the Consent Order."<sup>300</sup> It extensively detailed the OCC's concerns with the E.G. relationship. The ROE stated that the bank's ratings had been downgraded, and the bank was considered a "troubled institution."

**2004 Cease and Desist Order and Civil Fine.** On May 13, 2004, the OCC issued a second cease and desist order and, under 31 U.S.C. §1818(u), imposed a civil monetary penalty on the bank of \$25 million. On the same date, under 31 U.S.C. § 5321, FinCEN imposed a concurrent civil fine of \$25 million on the bank for willfully violating its anti-money laundering obligations. Riggs consented to both the cease and desist order and to the \$25 million fine.

**Federal Reserve Examinations.** At the same time the OCC was examining Riggs Bank, the Federal Reserve was conducting AML examinations of the bank holding company, Riggs National Corporation (RNC), and the Edge Act subsidiary, Riggs International Banking Corporation (RIBC) in Miami, Florida. The key Federal Reserve examinations and supervisory actions over the last few years relating to Riggs' anti-money laundering efforts can be summarized as follows.<sup>301</sup>

**2000 Annual Report on Examination.** In 2000, the Federal Reserve completed a report on its inspection of Riggs National Corporation. This report mentioned AML compliance issues only in passing. It stated that the OCC had identified deficiencies in AML audit, monitoring, and training, and that "potentially high-risk areas are not being reviewed on a timely basis due to [personnel] vacancies."

**2002 Annual Report on Examination.** In June 2002, the Federal Reserve completed a report on its inspection of Riggs National Corporation covering both 2001 and the first quarter of 2002. This report, like the 2000 report, mentioned AML compliance issues only briefly. It stated that the OCC had identified some AML concerns at Riggs Bank

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<sup>300</sup> Report on Examination (9/30/03), Bates OCC 0000557735-69.

<sup>301</sup> This information is derived from Federal Reserve examination materials, and a Subcommittee interview of Federal Reserve officials (7/2/04).

which “are receiving adequate attention by management.” It also noted “[a]dditional reputational risks are associated with” AML issues, but did not go into any detail.

**2002 Board Meeting.** On October 16, 2002, the Federal Reserve Bank of Richmond presented its annual examination findings to the RNC Board of Directors. After the meeting, the Chairman of the Board, Joseph Allbritton, told a senior Federal Reserve Bank official that, the day before, the OCC had expressed concerns about certain accounts which had been controlled by Augusto Pinochet and which Riggs had closed in response to OCC concerns, and he requested the Federal Reserve’s views on the matter. The Federal Reserve representative did not express an opinion at that time, but did ask the OCC about the accounts. A month later, in November, negative media stories about Saudi Arabia accounts at Riggs Bank began, and by January 2003, the OCC had initiated its targeted examination of the Saudi Arabia accounts. A Federal Reserve examiner participated in the OCC examination, which uncovered questionable account activity and fundamental AML deficiencies.

**2003 Targeted Examination of RNC Corporate Governance.** In May 2003, the Federal Reserve completed a targeted examination of corporate governance practices at Riggs National Corporation, including Board oversight of Riggs Bank. The examination identified several deficiencies, including weak Board oversight, weak risk management, and unsatisfactory internal audits in which too few audits were completed, others took too long, and there was poor communication of audit results to the Board’s Audit Committee. On July 1, 2003, the Federal Reserve sent a letter to Riggs requesting it to adopt a Board resolution that, among other measures, would require a consultant’s report on the Board’s composition, expertise and oversight, and revamped risk management and audit controls.

**2003 Targeted RIBC AML Examination.** In June 2003, the Federal Reserve completed a targeted examination of AML compliance at Riggs International Banking Corporation (RIBC) in Miami, Florida. The examination identified numerous AML deficiencies, including poor KYC documentation, inadequate monitoring of accounts, and inadequate procedures to identify and report suspicious activity. The examination directed the bank to undertake corrective actions.

**2003 Annual Report on Examination.** In September 2003, the Federal Reserve completed a report on its inspection of Riggs National Corporation covering the latter half of 2002 and the first half of 2003. The examination identified AML deficiencies and other problems, including poor corporate governance and risk management, inadequate audits, ongoing AML deficiencies identified by the OCC, and increasing operational and reputational risks. The report stated the Federal Reserve would monitor ongoing corrective actions.

**2003 Targeted Equatorial Guinea Examination.** In October 2003, the OCC initiated a targeted examination of the Equatorial Guinea accounts at Riggs Bank. A Federal Reserve

examiner participated in that examination which eventually found questionable account activity and ongoing AML deficiencies.

**2004 Targeted RIBC AML Examination.** In April 2004, the Federal Reserve completed a targeted examination of RIBC's AML compliance. The report found ongoing "serious deficiencies," including a lack of account monitoring, poor KYC documentation that was not improved over the last year, inadequate AML training, AML policies and procedures that lack detail, CTR reports with a high error rate, and weak internal audit function. The report also stated: "Of particular concern is the fact that significant weaknesses in [RIBC's] BSA/AML program were identified at the previous examination and received minimal management attention." In addition, in January 2004, the OCC initiated an examination of Riggs' compliance with the OCC's 2003 consent order. A Federal Reserve examiner was kept informed of the OCC's examination findings and Riggs' failure to correct its AML deficiencies.

**2004 Cease and Desist Order.** On May 14, 2004, the day after the OCC and FinCEN imposed a \$25 million civil fine on Riggs Bank, the Federal Reserve issued a cease and desist order against Riggs National Corporation, to which the Riggs Board members consented. The order noted that the bank holding company intended to close RIBC, and required the bank holding company to undertake a number of measures to strengthen management expertise, Board oversight, risk management practices, the internal audit function, and the bank's AML compliance.

## **(2) Analysis of the Issues**

This brief summary of federal examiners' AML oversight at Riggs Banks establishes a number of facts and raises a number of concerns.

**AML Deficiencies Identified.** First, the record establishes that OCC examiners were doing a careful job of reviewing Riggs' AML compliance efforts, and these examiners accurately and repeatedly identified major AML deficiencies at the bank. Riggs was not a case of federal regulators' being unaware of AML compliance problems at Riggs.

**Tolerance of AML Deficiencies.** Second, the facts demonstrate a willingness by federal bank regulators to tolerate weak AML controls at Riggs and to allow even fundamental AML deficiencies to continue year after year without forceful action to stop them. Repeatedly, examination reports labeled Riggs' AML program as "satisfactory," while also identifying major AML deficiencies, a practice that sent contradictory signals about the bank's AML performance and need to improve.

Fundamental problems were identified in virtually every Riggs' AML examination since 1997, but for years, as long as Riggs promised to take corrective action, the OCC took no formal enforcement action against the bank. One of the OCC supervisors interviewed by the

Subcommittee was blunt in explaining that the Riggs AML deficiencies went on so long, because the agency believed the bank's continual promises to do better. Given the significance of AML controls in fighting terrorism, corruption, drug trafficking, and other crimes, this tolerance of major AML deficiencies is not only inappropriate, but also contrary to law under 12 U.S.C. § 1818(s), which requires federal banking agencies to address repeat AML deficiencies with, at a minimum, a cease and desist order.

In the case of Riggs, an OCC examiner who had reported on AML deficiencies at the bank for several years in a row made an eloquent plea to her superiors for an "exhaustive" AML review, presumably to prompt a sustained effort by regulators to force Riggs to change its ways. In a lengthy email to her superiors in March 2003, listing numerous examples of questionable actions by Riggs, she stated in part:

"Having just gone through ... several frustrating and stressful weeks uncovering and reporting the findings of our BSA examination at Riggs, discovering highly suspicious transactions and seriously deficient bank processes, our discovery on Tuesday ... compels me to formally express my fear of what we have yet to uncover at this bank. ... The bank failed to disclose to us at least two-dozen official embassy accounts in response to our request for a list of all embassy accounts. They only acknowledged the omitted accounts when we showed them a list we obtained from other sources .... I know first hand that a similar omission occurred during our 2000 BSA examination, where we requested ... a list of all accounts belonging to political figures. Nowhere listed was the highly controversial Augusto Pinochet .... During our 2000 BSA examination we found money exchangers, including one in Syria, for which the bank had insufficient customer information to support multi-million dollars in international wires. Bank management ... stated that it would close the accounts 'as soon as possible'. Our examiners returned six months later to find that the accounts were still open. ... How many times will we conduct an exam and find some new significant problem before we decide to complete an exhaustive review once and for all? I wonder (at the risk of paraphrasing and butchering a perfectly good quote) if not Riggs who and if not now, when?"<sup>302</sup>

The length of this communication and the detailed nature of its evidence suggest an examiner who was fed up with repeat deficiencies at the bank.

Her supervisor responded: "Thanks ... for taking the time to put all of this together and raise it up for consideration. ... Clearly, Riggs' management has failed to respond properly to previously identified BSA related issues. And OCC (me) failed to take sufficient steps to assure that the bank's response was complete, and implemented."<sup>303</sup>

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<sup>302</sup> Email from Lois Trojan (3/20/03), Bates OCC 0000489185-87.

<sup>303</sup> Email from John Noonan (3/25/03), Bates OCC 0000489185.

**Undemanding Examiner-In-Charge.** A third issue raised by the Riggs case history involves the role played by the OCC's Examiner-in-Charge (EIC) at the bank, including whether over the years he had become more of an advocate for Riggs than an arms-length regulator. EICs are often housed at the banks they oversee, and over the years become well acquainted with their banks' senior management. It is not unusual for EICs to be hired by the bank they oversaw. The OCC has estimated that this job switch happens once or twice each year.

In the case of Riggs, Mr. Lee was the EIC from 1998 until 2002. During that time, he took several actions that suggested overly close relations with the bank. At the Washington Supervisory Review Committee in 2001, for example, it was Mr. Lee who recommended against taking an enforcement action against the bank, despite three AML examinations identifying AML deficiencies, including poor KYC documentation, inadequate account monitoring, and audit problems. The Committee accepted the EIC's recommendation, instead settling for strong language in the 2000 Report on Examination listing the AML deficiencies and directing the bank to correct them. Over the next year, the EIC appears to have done little to ensure the promised corrective actions were actually carried out.

Another troubling incident was the EIC's decision in 2002 to exclude the memorandum and workpapers related to the OCC examination of the Pinochet accounts from the OCC's electronic database called Examiner View (EV). The purpose of EV is to ensure that key examination materials are preserved and readily accessible to OCC regulators overseeing financial institutions. OCC personnel interviewed by the Subcommittee spoke about the importance of entering examination materials into the EV, and the key role played by this database in ensuring the agency has a full understanding of a bank's examination record.

It is beyond dispute that the Pinochet examination memorandum and supporting workpapers were not included in the EV, and that only paper copies were retained. The key NBE who performed the Pinochet examination and who co-authored the memorandum told the Subcommittee that, in the presence of another NBE, the EIC specifically instructed him not to include the memorandum in the Riggs EV file. When asked how often he had received a similar instruction for other examination materials, the NBE replied, "Never." Other OCC personnel also expressed surprise and concern that an EIC would instruct an NBE not to include a key examination in the EV. When asked by the Subcommittee about this matter, the EIC denied telling the NBE not to include the memorandum in the EV, suggesting that the NBE must have been confused after they discussed the need to maintain the confidentiality of the examination results. However, both the NBE, and the second NBE present at the time, insist there was no confusion – that the instruction by the EIC was clear.<sup>304</sup>

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<sup>304</sup> In addition, the OCC has determined that, instead of including the Pinochet memorandum and workpapers in the EV, the EIC instructed one of the NBEs to insert a notice at the end of an unrelated examination report stating that a paper copy of the Pinochet examination results and related documentation is "maintained in the OCC's Washington/National Capital Area Field Office (located in the OCC's national headquarters)." See internal OCC emails exchanged between Ashley Lee, Lois Trojan and Joe Boss (7/15/02-7/23/02), Bates ZZ 000169; and copy of notice placed in the EV, Bates ZZ 000170. Insertion of this notice in the EV in July 2002, is additional

Still another indication of how close the EIC was to Riggs was the fact that, when the bank learned Mr. Lee was going to retire from the OCC, it promptly offered him a senior position with the bank. After being approached by Riggs, Mr. Lee recused himself, on August 8, 2002, from further dealings with the bank. On October 3, 2002, he voluntarily retired from the OCC and assumed his new position at Riggs Bank.

Before he left the agency, OCC ethics officials informed Mr. Lee of certain post-employment restrictions on his allowable contacts with OCC personnel.<sup>305</sup> To prevent conflicts of interest, federal law has long barred federal employees who worked personally and substantially on a particular matter for the government from leaving their agency, turning around, and representing the other side in the same matter before their former agency.<sup>306</sup> The law also bars former employees for two years from communicating with or appearing before their former agency on a particular matter which the former employee knows or should have known was actually pending under his or her official responsibility during the year before the employee left the agency.<sup>307</sup> Violations of these post-employment restrictions are punishable by up to one year in prison and a civil fine equal to the greater of \$50,000 for each violation or certain compensation earned by the former employee. Willful violations are punishable by up to five years in prison and a criminal fine of up to \$50,000 for each violation.

The OCC has implemented these post-employment restrictions by publishing guidelines and requiring its ethics office to inform departing employees about their post-employment obligations.<sup>308</sup> OCC ethics officials advised Mr. Lee to consult with the ethics office prior to engaging in any contacts with OCC personnel, so that the OCC could advise him as to whether the proposed contact was permissible. These restrictions were conveyed to Mr. Lee through emails exchanged with the OCC ethics office, including a memorandum prepared for him by the

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proof that the EIC made a specific decision in 2002 to exclude the Pinochet examination memorandum and workpapers from the EV database. A bank examiner wishing to read the referenced materials would not be able to access these materials on an OCC computer, but would have to track down the actual paper copies kept in storage at the specified OCC office.

<sup>305</sup> See, e.g., memorandum from Jason D. Redwood, counsel in the OCC ethics office, to Mr. Lee and John Noonan (9/12/02), Bates OCC 0000557526-27.

<sup>306</sup> See post-employment restrictions contained in 18 U.S. § 207(a)(1).

<sup>307</sup> See post-employment restrictions contained in 18 U.S. § 207(a)(2).

<sup>308</sup> See, e.g., "OCC Ethics Rules, A Plain English Guide" (12/97, revised 3/12/04); "Guidelines for OCC Employees on How to Handle Contacts with Former OCC Employees" (OCC Ethics bulletin Board, 1/8/01); "Ethics Rules for Resigning or Retiring OCC Employees," (Document No. 1997-215A, 5/8/02).



ethics office.<sup>309</sup> Mr. Lee was clearly aware of the restrictions and understood how to contact the OCC ethics office for additional guidance, since he actually requested and obtained approval of his meeting with OCC officials about a new Riggs loan review system that had not been at the bank during his OCC tenure.<sup>310</sup>

Evidence obtained by the Subcommittee shows, however, that Mr. Lee failed to respect the OCC post-employment restrictions. On several occasions in 2004, without obtaining prior approval from the OCC ethics office, Mr. Lee attended meetings at which OCC personnel discussed Riggs' AML compliance.<sup>311</sup> As explained earlier, Mr. Lee had supervised a number of AML examinations of Riggs during his OCC tenure, and made specific recommendations about enforcement actions in this area.<sup>312</sup> Despite his past involvement with and supervision of AML issues at Riggs, he failed to consult with the OCC ethics office about whether it would be a post-employment violation if he attended meetings with the OCC related to Riggs' AML issues. When the Subcommittee asked him about these meetings, Mr. Lee acknowledged attending them, but claimed that he made a deliberate decision not to speak at them so that he would not violate the post-employment ban.<sup>313</sup> His decision not to speak, however, could also be viewed as an admission that Mr. Lee knew he had supervised Riggs' AML compliance issues, at a minimum,

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<sup>309</sup> See, e.g., memorandum from Jason D. Redwood, counsel in the OCC ethics office, to Mr. Lee and Mr. Noonan (9/12/02), Bates OCC 0000557526-27. This memorandum states in part: "The two rules that apply to Ashley are the permanent representational bar, applicable to 'particular matters' that he 'personally and substantially' participated in while at the OCC, and the two-year representational bar, applicable to matters Ashley supervised during his last year at the OCC. ... I believe the most important points to be remembered are .... To the maximum extent possible, refrain from direct communications between OCC examiners and Ashley until about November, 2004, and permanently with regard to particular matters in which he was personally and substantially involved. ... If direct communications with Ashley potentially involve matters that were under Ashley's supervision as EIC of Riggs, please obtain my prior approval in writing." Mr. Lee responded in another email: "I will ensure that I operate within these rules." Email from Mr. Lee to Mr. Redwood and Mr. Noonan (9/13/02), Bates OCC 0000557529.

<sup>310</sup> See emails exchanged between Mr. Lee, Mr. Redwood, and Mr. Noonan (9/12-13/02), Bates OCC 0000557529.

<sup>311</sup> See, e.g., OCC document, "Riggs EBD Weekly Update Meeting" (3/25/04), Bates OCC 0000542891 ("We met with Tim Coughlin - Head of Embassy Banking and Risk Manager Ashley Lee to get a weekly update of actions taken in the Embassy Banking Division (EBD) to ensure the area meets compliance with the Consent Order."); minutes of Riggs Audit Committee meeting (2/25/04), Bates A 05723-35 (Ashley Lee attended executive session in which OCC discussed E.G. examination); minutes of Riggs BSA Compliance and Audit Committees meeting (3/22/04), Bates A 05795-803 (Ashley Lee attended meeting in which OCC discussed high risk accounts and AML compliance). See also Subcommittee interviews of Ashley Lee (6/30/04) and Joseph Cahill (6/25/04).

<sup>312</sup> See, e.g., OCC Interim Target Memorandum on "Riggs Bank, N.A.: Bank Secrecy Act," from Ashley Lee to Riggs Bank officers (10/23/00), Bates OCC 0000536182-89; OCC Interim Target Memorandum on "Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Exam," from Ashley Lee to Riggs Bank officers (6/21/02), Bates OCC 0000029228-31.

<sup>313</sup> Subcommittee interview of Ashley Lee (6/30/04).

and should not have been in any contact with the OCC on Rigg's AML issues without getting prior clearance from the OCC ethics office.

In addition, OCC guidance for current OCC employees states:

“When an OCC examiner goes to work for a bank where he or she served as EIC within the year preceding his or her departure from the OCC, the current EIC at the bank shall advise the former EIC that he or she will not be permitted to attend meetings with the OCC or otherwise communicate with or appear before the OCC for a period of two years following his or her departure, unless approval is granted in writing by the appropriate OCC ethics official prior to the meeting, communications, or appearance.”<sup>314</sup>

It is undisputed that Mr. Lee did not obtain prior written approval from the OCC ethics office before attending meetings in which the OCC discussed Riggs' AML compliance issues. It is also clear that no one from the OCC took the steps required by this guidance to exclude Mr. Lee from those meetings so that no post-employment violation would occur.

Mr. Lee's actions – recommending against a formal enforcement action, suppressing the Pinochet examination materials, accepting a job offer at the bank he regulated, and ignoring post-employment restrictions on OCC contact – all suggest this Examiner had become much too close to Riggs during the years he was responsible for overseeing it.

**Failure to Use Enforcement Tools.** The facts also demonstrate a clear reluctance by OCC supervisors to make use of available enforcement tools to compel compliance with the anti-money laundering laws. In 2001, for example, the OCC's Washington Supervisory Review Committee reviewed three examinations detailing major, repeat AML deficiencies at Riggs. The Committee knew or should have known that these deficiencies had been outstanding for at least three years. Despite these compelling facts, the Committee went along with the EIC's recommendation against taking any enforcement action against the bank, and settled instead for including forceful language in the annual 2000 Report on Examinations given to Riggs. This ROE prominently listed the bank's AML deficiencies and directed the bank to correct them. After the sternly worded report was issued in 2001, however, no OCC supervisor took the steps necessary to follow through and ensure the bank actually corrected the identified problems.

In 2002, while the OCC carefully investigated the Pinochet accounts and raised appropriate questions about the attendant money laundering risks, the OCC appears not to have even considered taking enforcement action against the bank for hiding these accounts from the OCC

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<sup>314</sup> OCC guidance, “Contacts with Former OCC Employees,” (undated), Bates OCCX 00032-33. See also government-wide guidance issued by the federal Office of Government Ethics indicating that a former federal employee's mere presence at a meeting with his or her former agency can constitute a violation. Memorandum entitled, “Regarding Revised Post-Employment Restrictions of 18 U.S.C. § 207,” (10/26/90), at 4 (“An ‘appearance’ extends to a former employee's mere physical presence at a proceeding when the circumstances make it clear that his attendance is intended to influence the United States.”).

for two years and ignoring the money laundering risk. In fact, the record suggests senior OCC officials spent more time reassuring Riggs that it would keep the Pinochet accounts confidential than considering whether to initiate an enforcement action. In the end, the OCC failed even to issue a final examination report on the Pinochet matter.

In 2003, after uncovering extremely troubling information in connection with accounts associated with Saudi Arabia, the OCC took its first enforcement action against the bank, issuing a cease and desist order requiring it to revamp its AML program. While this order was a more comprehensive and formal directive compared to those in prior examination reports, it imposed no punitive measures such as a civil fine. OCC enforcement officials were clearly considering imposing a fine as demonstrated by their delivery in June 2003 of a “15-day letter” to Riggs. These letters give the recipient 15 days to explain why the OCC should not impose a civil fine for misconduct.

Riggs responded with a letter opposing imposition of a civil fine for its AML deficiencies. After reviewing the letter, some OCC enforcement personnel supported going ahead with the fine, while some OCC personnel from the bank supervisory office advised against it.<sup>315</sup> Rather than resolve the issue internally at that time, the OCC decided to refer the Riggs case to FinCEN, which has delegated authority under 31 U.S.C. § 5321 to impose civil fines for willful AML violations. This referral took place in June 2003. It is difficult to understand, however, why FinCEN had not already been informed about the case, given its publicity. FinCEN and the OCC then took another year before, in May 2004, imposing a civil fine on the bank for \$25 million.

It is also worth noting that the key OCC enforcement actions that were taken against Riggs Bank took place after negative press reports began raising public questions about Riggs’ AML safeguards. For example, the OCC’s in-depth review of the Saudi accounts followed press articles that began appearing in November 2002, suggesting links between certain Riggs accounts and the 9-11 terrorist attack. This examination resulted in the OCC’s identifying the same deficiencies as in earlier years, but in contrast to the agency’s prior willingness to rely on oral promises by the bank to improve, the OCC issued a public cease and desist order requiring corrective action. The OCC’s examination of the E.G. accounts in 2003 and 2004 was, in turn, prompted by a negative press article in January 2003, and by the Subcommittee’s investigation of these accounts throughout 2003. The OCC has indicated that it was the E.G. examination that opened their eyes to still more bank misconduct and to evidence of the bank’s utter failure to implement promised AML reforms, resulting in the decision to impose a civil fine on the bank.

The OCC has acknowledged that it acted too slowly in the Riggs case. At a hearing, the Comptroller of the Currency John D. Hawke, Jr. admitted that, “We gave the bank too much time.” In May 2004, he sent a memorandum to the OCC’s Quality Management Division to review the Riggs case and, among other matters, assess “whether our examination team took

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<sup>315</sup> Subcommittee interviews of OCC personnel.

appropriate and timely actions to address any shortcomings they found in the bank's processes and in its responses to matters noted by the examiners."<sup>316</sup>

**AML Assessments.** A final issue raised by the Riggs case history involves the treatment of AML deficiencies in the examination reports actually given to the bank. A careful reading of the OCC examination reports shows that AML deficiencies did not receive consistent treatment in the annual Reports of Examination (ROE) given to the Riggs Bank Board of Directors. A ROE has special significance, because it is the standard mechanism used by the OCC to convey to the Board a comprehensive assessment of the bank's safety and soundness, and bank directors are typically required to sign the last page of the ROE, certifying that they have personally reviewed it. The ROE typically provides a bank's latest CAMELS ratings and offers assessments of the bank's performance on a number of key factors: capital adequacy, asset quality, bank management, earnings, liquidity, sensitivity to market risk, management of nine risk factors, financial analysis, information technology systems, and consumer compliance. The ROE also provides examination conclusions and comments, and "matters requiring attention" by the bank. Currently, the ROE does not routinely offer an assessment of a bank's anti-money laundering program. Instead, if an AML problem arises, the topic is dealt with in the ROE on an ad hoc basis, with a special section or discussions in the management, risk assessment, or consumer compliance sections.

In the case of Riggs, the ROEs issued by the OCC in 1998 and 1999, contained virtually no AML information, other than a brief mention near the end of each report that an AML examination had taken place during the year. Neither report conveyed any AML examination results or other AML assessment. Neither report gave any hint to the Board of Directors that AML deficiencies had been identified in 1997, 1998, and 1999 AML examinations of Riggs.

In contrast, the 2000 ROE prominently identified a host of AML deficiencies at the bank, with strong language calling for immediate corrective action. The discussions of AML problems appeared in a special section and in several standard sections of the ROE. In 2001, the approach taken in the ROE changed again. The ROE made a brief statement that AML compliance "needs lasting and progressive attention," but also stated that the bank had made "good progress in addressing the issues" and devoted little overall space to the bank's AML performance. The 2001 ROE was also issued much later in the year – in mid 2002.

The subsequent ROE, which supposedly covered 2002, was actually issued in late 2003. In contrast to the low-key approach taken in 2001, this ROE again treated AML deficiencies as a major concern, citing numerous deficiencies and the consent order issued in July 2003. In addition, the OCC issued a special ROE devoted solely to AML problems at the bank and required all Riggs directors to review and sign it. Although this ROE carries an official date of January 6, 2003, it was actually issued six months later in June 2003.

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<sup>316</sup> Memorandum from John D. Hawke, Jr. to Ronald A. Lindhart (5/20/04), "Engagement Memorandum: Retrospective of BSA/AML violations at Riggs Bank, N.A., McLean, Virginia."

Viewed together, the ROEs issued to Riggs Bank from 1998 to 2003, demonstrate that current practice at the OCC is to communicate AML assessments to Boards on an ad hoc basis.<sup>317</sup> This ad hoc treatment can, and in the Riggs case did, lead to confusing signals regarding the extent of AML deficiencies, whether the bank was doing enough to correct them, and the importance placed on corrective action by the OCC. A more uniform treatment of AML issues in the annual ROEs given to Board members would elevate the importance of these issues, and possibly increase both consistent treatment by regulators and completed corrective actions by banks.

### C. AML Oversight Generally

**Finding (6): Uneven AML Enforcement. Current AML enforcement efforts by federal agencies are uneven and, at times, ineffective, as demonstrated by cases in which federal regulators have allowed AML compliance problems to persist at some financial institutions for years, failed after three years to issue final regulations implementing the Patriot Act's due diligence requirements, and failed to issue revised guidelines for bank examiners testing AML compliance with the Patriot Act's due diligence requirements combating money laundering and foreign corruption.**

The failure to take quick and forceful enforcement action in the Riggs matter is not an isolated case. It is symptomatic of uneven and, at times, ineffective enforcement by all federal bank regulators of bank compliance with their anti-money laundering obligations.

In addition to Riggs, a number of AML cases demonstrate that federal banking regulators have allowed AML compliance problems to persist for years without correction. Recently, the General Accounting Office (GAO) testified before the Senate Committee on Banking, Housing, and Urban Affairs and described several of these cases.<sup>318</sup>

GAO reported, for example, that the Federal Reserve Bank of New York (FRBNY) allowed AML problems to continue at Banco Popular de Puerto Rico for four years before taking enforcement action.<sup>319</sup> This bank's AML program had numerous fundamental flaws which, among other problems, allowed an individual later convicted of money laundering to make repeated cash deposits at the bank, from 1995 to 1998, totaling \$21.5 million. During this period, the FRBNY conducted four examinations of the bank, but none identified AML

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<sup>317</sup> Federal Reserve Banks issue a "Report of Bank Holding Company Inspection" that is similar to the OCC's ROE. In the Riggs case, these reports also treated AML concerns in an inconsistent, ad hoc fashion, and would also benefit from standard, annual AML assessments.

<sup>318</sup> See "Anti-Money Laundering: Issues Concerning Depository Institution Regulator Oversight," (Report No. GAO-04-833T, 6/3/04), testimony provided by the General Accounting Office before the U.S. Senate Committee on Banking, Housing, and Urban Affairs.

<sup>319</sup> Id. at 6-7.

deficiencies. In 1999, four years after the money launderer began making cash deposits, the FRBNY received a law enforcement tip about possible drug proceeds being laundered through the bank, initiated an in-depth examination of the bank's AML program, and found widespread, significant AML deficiencies. In 2000, the FRBNY and FinCEN imposed a civil fine of \$20 million on the bank, required it to revamp its AML program, and participated with the Department of Justice in entering into an agreement with the bank which deferred a criminal prosecution against the financial institution.

GAO also reported on a case in which the OCC allowed AML problems to persist for six years at Broadway National Bank, a small community bank in New York City.<sup>320</sup> This bank's AML program was also fundamentally flawed; its deficiencies included a complete absence of any policies or procedures to identify or report suspicious activity. In 1998, over 100 suspect accounts were identified at the bank, including 12 accounts controlled by an individual who later pled guilty to laundering money for a Colombian drug cartel and who made repeated cash deposits of \$100,000 or more from 1992 until 1998. In March 1998, alone, this individual deposited \$4 million in cash at the bank and withdrew \$3.2 million through 90 wire transfers, of which 87 went to Colombia. The bank also allowed other clients to engage in multiple structured cash deposits to avoid reporting requirements. During the relevant time period, the OCC conducted a single AML examination of this small community bank and found its overall 1995 AML compliance "satisfactory." In 1998, the OCC received a law enforcement tip that caused it to conduct an in-depth examination of the bank's AML program and uncovered significant AML deficiencies. In 1998, the OCC issued a cease and desist order requiring the bank to revamp its AML program. In 2002, the bank pleaded guilty to three felony charges for failing to maintain an AML program, failing to file suspicious activity reports related to \$123 million in cash deposits, and helping customers structure \$76 million in cash transactions to evade currency reporting requirements. The bank agreed to pay a \$4 million criminal fine. In 2003, the bank's two most senior officers each paid the OCC a civil fine of \$35,000.

A third example involves a credit union which GAO reported had ongoing AML violations for eight years before the National Credit Union Administration (NCUA) took enforcement action.<sup>321</sup> From 1989 to 1997, the Polish and Slavic Federal Credit Union in Brooklyn, New York, failed to file numerous Currency Transaction Reports (CTR) for cash transactions exceeding \$10,000. It also improperly exempted from its CTR filings the credit union's former Chairman of the Board, who owned a travel agency and money remitter business and did not qualify for a CTR exemption. This individual's remitter business reportedly made over 1,000 cash deposits in excess of \$10,000 during the eight years, but no CTRs were filed. In 1997, the NCUA initiated a series of enforcement actions against the credit union, and in 1999, placed it in conservatorship due to inadequate internal controls. In 2000, three years after the misconduct,

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<sup>320</sup> *Id.* at 9. The Subcommittee also investigated this bank, conducting several interviews of Broadway National Bank officials in 1999, as part of an ongoing money laundering investigation at that time. The information recited here is derived from both the GAO testimony and the Subcommittee's 1999 investigation.

<sup>321</sup> GAO testimony, at 7-8.

FinCEN determined that the credit union had failed to establish an adequate AML program, and assessed a civil fine of \$185,000.

Another example involves a bank which had ongoing AML violations for a number of years before the Federal Deposit Insurance Corporation (FDIC) and Federal Reserve Board took enforcement action. According to FinCEN, the Korean Exchange Bank, which has branches and subsidiaries in major cities across the United States, allowed customers to make suspicious cash deposits, engage in structured cash transactions, and send suspicious wire transfers, without filing suspicious activity reports.<sup>322</sup> For example, the bank accepted without inquiry 37 cash deposits totaling \$1.2 million over a two-month period from a company that allegedly imported wigs, while allowing an allegedly related company to deposit \$16 million in repeated cash deposits from 1986 to 1999. A New York account for the second company, opened in 1998, received cash deposits of over \$3.8 million in eight months and withdrew most of the deposited funds within a short time through 70 wire transfers sent to various beneficiaries in Korea and Japan. The FDIC conducted at least three examinations of the bank from 1999 to 2001, which identified major AML deficiencies. In 2000, the FDIC, Federal Reserve, and four state banking agencies issued a joint consent order requiring the bank to revamp its AML program. Three years later, in 2003, FinCEN imposed a \$1.1 million civil fine on the bank, for failing to file 39 suspicious activity reports from 1998 to 2001, involving nearly \$32 million, and for failing to verify the identity of persons who were not regular bank customers but claimed cash from wire transfers of \$3,000 or more.

A final example involves thrifts overseen by the Office of Thrift Supervision (OTS). GAO reported that in September 2003, the Inspector General (IG) of the Treasury Department reviewed OTS enforcement actions taken against thrifts with substantive AML violations.<sup>323</sup> The IG report stated that OTS examiners had found substantive AML violations at 180 of 986 thrifts examined from January 2000 through October 2002, a rate of about 18 percent. OTS had issued written enforcement actions for only 11 of the 180 thrifts, which is about six percent. Moreover, five of the 11 enforcement actions were described by the IG as untimely, incomplete, or ineffective. The IG also reported that, of 68 sampled cases in which the OTS had “relied on moral suasion and thrift management assurances” to obtain AML compliance, 47 thrifts, or 69 percent, took the required corrective action, but 21 thrifts, or 31 percent, did not. In fact, at some of the 21 thrifts that took no corrective action, the IG reported that BSA compliance worsened.

These cases indicate that all of the federal banking regulators, not just the OCC, need to strengthen their AML enforcement efforts. The Federal Reserve, FDIC, NCUA, and OTS each allowed AML deficiencies to continue for years before taking any enforcement act. They took one or more additional years to impose civil fines. Regulators need to make more prompt use of

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<sup>322</sup> See In re Korea Exchange Bank (Case No. 2003-04, 6/20/03), in which the Financial Crimes Enforcement Network imposes a \$1.1 million civil monetary penalty on the bank. This example was not discussed in the GAO testimony.

<sup>323</sup> Id., at 9-10.

available enforcement tools, including civil fines, when financial institutions ignore their AML obligations.

In addition to uneven enforcement actions, the U.S. Department of Treasury, FinCen, and all of the federal bank regulatory agencies, have failed to take needed regulatory actions to ensure consistent implementation and enforcement of the Patriot Act provisions combating money laundering and foreign corruption. First, despite enactment in October 2001, three years ago, neither Treasury nor any of the federal agencies has issued a final rule implementing the Patriot Act's requirements for financial institutions to exercise due diligence when opening certain accounts for foreign clients, including private banking accounts for senior foreign political figures.<sup>324</sup> A proposed due diligence rule was issued by Treasury and FinCEN in mid-2002, and attracted significant public comment at the time, but years later has yet to be finalized.<sup>325</sup> The proposed rule included some controversial interpretations of the law's due diligence requirements<sup>326</sup> and, in some cases, omitted guidance that would have provided useful direction to both financial institutions and regulators interpreting the law.<sup>327</sup>

Instead of issuing a final rule, on July 23, 2002, the Treasury Department issued an "interim final rule" which essentially repeated the statutory language in the Patriot Act, and directed banks to implement a due diligence program "that comports with existing best practice standards" and, in the case of senior foreign political figures, is "consistent with" Federal Reserve guidance on private banking activities issued in 1997, and federal guidance on "enhanced scrutiny for transactions that may involve the proceeds of foreign corruption issued jointly by Treasury, the bank regulators, and the State Department in January 2001."<sup>328</sup> This interim rule provides general direction on banks' due diligence obligations, but virtually none of the specifics in the proposed rule. One senior OCC enforcement official commented in 2003: "[T]here is no final rule out on section 312, and the interim rule imposes little more than a 'good faith' standard."<sup>329</sup> By failing to devote the resources needed to finalize the Section 312 due

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<sup>324</sup> See Section 312 of the Patriot Act, codified at 31 U.S.C. § 5318(i).

<sup>325</sup> See 67 F.R. 37,736 (5/30/02).

<sup>326</sup> For example, the proposed regulations suggested creating a due diligence exception for certain offshore shell banks that had no basis in the statutory language. See comment letter on the proposed regulation submitted by Senators Levin, Grassley and Kerry (10/11/02), at 4-7.

<sup>327</sup> For example, the proposed regulations failed to provide any guidance on the enhanced due diligence obligations of banks wishing to open accounts for senior foreign political figures or their family members. See *id.* at 8.

<sup>328</sup> See 67 F.R. 48,348 (7/23/02). The interim final rule also completely exempted a number of categories of financial institutions from any duty to comply with the Patriot Act's due diligence requirements. The interim final rule states: "Treasury anticipates issuing a final rule no later than October 25, 2002."

<sup>329</sup> Internal OCC email (10/16/03), Bates OCC 0000505424.



diligence rule, the Treasury Department has left both regulators and financial institutions without appropriate guidance.

In addition to failing to issue a final due diligence rule, federal banking agencies have also failed to update their AML examination manuals to include guidance on ensuring bank compliance with the due diligence requirements in the Patriot Act. OCC examiners, for example, are using a four-year-old examination manual, issued in 2000, which contains no reference to the due diligence requirements that became effective in July 2002, for private banking accounts, including accounts opened by senior foreign political figures.

## VII. Foreign Corruption and Oil Transparency

**Finding (7): Unseen Payments. Oil companies operating in Equatorial Guinea may have contributed to corrupt practices in that country by making substantial payments to, or entering into formal business ventures with, individual E.G. officials, their family members, or entities they control, with minimal public disclosure of their actions.**

The Riggs case history has additional significance for international anti-corruption efforts. Over the past decade, Africa has become an increasingly important source of oil and natural gas for the United States.<sup>330</sup> U.S. oil companies have dedicated increasing resources to the discovery and development of African reserves and production facilities. Nigeria, Angola, Gabon, and Equatorial Guinea are now the top four producers of oil on the continent, and each is a supplier to the United States. Each is also known to have major problems with corruption, poverty, and violence. As international and non-governmental organizations intensify their efforts to ensure that oil and gas proceeds are not misappropriated, natural resource development does not destabilize the region, and oil wealth is used to advance the well-being of Africa's population,<sup>331</sup> the Riggs case history offers useful information about how oil companies sometimes operate within a developing economy.

When analyzing large transactions involving the E.G. oil account and other E.G. accounts at Riggs Bank, the Subcommittee staff became aware of a number of substantial payments made by oil companies to particular E.G. government offices, E.G. officials, their family members, or entities controlled by the officials or their family members. Research into these payments uncovered a number of business transactions between the oil companies and E.G. individuals that may have attracted little or no public notice. The nature of these transactions and the amount of

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<sup>330</sup> See, e.g., "Promoting Transparency in the African Oil Sector," report prepared by the Center for Strategic and International Studies Task Force on Rising U.S. Energy Stakes in Africa (March 2004); "Doing the Sums on Africa - Developing Africa's Economy - By Invitation," The Economist, (5/20/2004)(West Africa could supply up to 25% of the U.S.'s hydrocarbon imports within a decade).

<sup>331</sup> See, e.g. "Oil, Diamonds, and Sunlight: Fostering Human Rights Through Transparency in Revenues from Natural Resources," Andreanna M. Truelove, 35 *Geo. J. Int'l L.* 207 (Fall 2003).

money involved raise legitimate questions about these and other business dealings within the country.

Among other information uncovered during research into various oil company payments, the Subcommittee's investigation found that some E.G. officials and their families had come to dominate certain sectors of the E.G. economy and, in some cases, had become virtual economic gatekeepers for foreign companies wishing to do business in the country. For example, according to internal Riggs documents, the E.G. President controls several E.G. businesses which virtually monopolize the E.G. construction, supermarket, and hotel industries and generate significant revenues in other areas as well.<sup>332</sup> The E.G. President's son apparently dominates the timber industry and also has key companies in other economic sectors.<sup>333</sup> The E.G. President and his wife also appear to control significant parcels of E.G. land which they have leased or sold to some foreign corporations. This type of economic dominance compels foreign companies wishing to operate in Equatorial Guinea to do business with the E.G. President, his relatives, or the entities they control, at times providing them with lucrative returns. How oil companies can and should respond to this situation raises a number of difficult policy issues.

#### **A. Oil Companies in Equatorial Guinea**

Over the past decade, oil companies with a major presence in Equatorial Guinea include: ChevronTexaco Corporation; CMS Energy Corporation whose E.G. oil interests were purchased by Marathon Oil Company in 2002; Devon Energy Corporation; ExxonMobil Corporation; Triton which was acquired in 2001 by Amerada Hess Corporation; and Vanco Energy Company. Currently, ExxonMobil, Hess, and Marathon have substantially greater E.G. operations than the others.

To do business in Equatorial Guinea, each of these oil companies entered into one or more oil production sharing contracts with the E.G. government. These contracts require the oil companies to provide a certain percentage of the oil they discover to the E.G. government and to pay E.G. taxes on the profits they make in the country.

The E.G. government instructs the oil companies where to send payments owed to the government. The records examined by the Subcommittee indicate that most of the payments made by the oil companies went to E.G. government accounts, including many that went to the E.G. oil account at Riggs. However, the records also show a number of payments to other accounts or individuals. For example, Marathon made a number of payments to E.G. accounts other than the oil account, including accounts for the E.G. Embassy Missions in Washington and New York.<sup>334</sup> Hess made payments to approximately 33 different E.G. government vendors

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<sup>332</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>333</sup> See Riggs "Officers' Loan Committee Action" (7/18/02), Bates RNB 010508-18, at 12.

<sup>334</sup> Letter from Marathon Oil Company to the Subcommittee (6/18/04), at 6.

between May 1997 and March 2004.<sup>335</sup> In addition, some of the oil companies have, on occasion, entered into business ventures with E.G. officials, their family members, or entities they control.

## **B. Oil Company Payments**

The Subcommittee's review of E.G. account documents and related materials indicates that three of the oil companies have, on occasion, made large payments to individual E.G. officials, their family members, or entities controlled by them. These payments were for leases, land purchases, services, employment of E.G. nationals, and Embassy operations. All six oil companies made payments for educational expenses for E.G. students. A brief description of these payments follows.

### **(1) Payments for Leases and Land Purchases**

A memorandum to the file written by the Riggs E.G. account manager on the President's business holdings states that land leases from certain oil companies were generating significant revenues for the E.G. President, since the large-acreage compounds used by the companies were located on farm land leased from him.<sup>336</sup>

ExxonMobil's E.G. subsidiary, Mobil Equatorial Guinea Inc. ("MEGI"), leases buildings and land in what MEGI refers to as the "Abayak Compound," which is an area of approximately 50 acres for offices and employee living facilities.<sup>337</sup> From March 19, 1996 until June 22, 2001, MEGI leased the Abayak Compound using two leases – a buildings lease and a land lease – each of which was obtained directly from the E.G. President's wife.<sup>338</sup> On June 22, 2001, the leases were amended to change the lessor to Abayak S.A., an E.G. company controlled by the E.G. President.<sup>339</sup> According to ExxonMobil, the E.G. President's wife is actively involved in the management and administration of the property.<sup>340</sup> MEGI delivers rental checks to the Lessor's

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<sup>335</sup> Letter from Amerada Hess Corporation to the Subcommittee (5/03/2004), attachment 2.1(a).

<sup>336</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>337</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 1.

<sup>338</sup> Id. The "buildings lease" is for the original buildings in the Abayak Compound. The initial rent under this lease was \$130,000 per year and increased to \$175,500 in 2001, with an escalation provision of no more than 15% every three years by mutual agreement of the parties. The "land lease" covers land that was undeveloped forest when first leased. The initial annual rent was \$7,000 per year, which was increased to \$10,000 per year when a 2001 amendment added approximately 5 acres of adjacent land.

<sup>339</sup> Id.

<sup>340</sup> Letter from ExxonMobil Corp. to the Subcommittee (4/20/04), attachment 1, at 5.

representative, as instructed, some of which were deposited into a Riggs account held in the name of the President's wife.<sup>341</sup>

In addition, between 2001 and 2003, pursuant to a lease agreement for the rental of a house for an ExxonMobil area manager, another ExxonMobil subsidiary, Mobil Oil Guinea Equatorial (MOGE), paid \$45,020 to Francisco Pascual Obama Asue, the E.G. Minister of Agriculture. Between 2000 and May 2004, MOGE also paid \$236,160 to ATSIGE, a labor contractor owned by the E.G. Interior Minister.<sup>342</sup>

In addition, the Amerada Hess Corporation (Hess) has paid E.G. officials and their relatives nearly \$1 million for building leases.<sup>343</sup> Of the 28 leases Hess identified for rentals in Malabo, Equatorial Guinea, 18 were leased from persons connected to the government or the Obiang family.<sup>344</sup> With the exception of four houses and one office, Hess indicated that it planned to cancel all of these leases by April 30 of this year. One of these leases was negotiated and executed in 2000 by Triton (which was acquired by Hess in late 2001) and involved leasing property from a fourteen-year-old relative of the President, who was represented by his mother. Under this lease, Hess and Triton have paid \$445,800 to the relative and his mother.<sup>345</sup>

Triton also purchased a tract of land near Bata Airport from military officer General Antonio Obana Ndong for approximately \$300,000 for use as a heliport.<sup>346</sup>

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<sup>341</sup> Riggs account records show, for example, that ExxonMobil made a rental payment to the President's wife for about \$111,000 on 6/11/98, Bates RNB 000975-000976; and another for about \$161,000 on 5/16/00, letter from ExxonMobil Corp. to the Subcommittee (6/2/04), attachment 1, at 2. See also a 4/12/99 payment by ExxonMobil of about \$93,000 to the E.G. President's wife, Riggs account records, Bates RNB 028695, which also was a Abayak Compound rental payment.

<sup>342</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04), attachment 1, at 2.

<sup>343</sup> Letter from Amerada Hess Corp. to the Subcommittee (4/23/04), at attachment 4.1, Bates AHC 00030; letter from Amerada Hess Corp. to the Subcommittee (6/02/04) at attachment to paragraph 4, Bates AHC 00104.

<sup>344</sup> Id.

<sup>345</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 3 and at attachment to paragraph 4, Bates AHC 00104. In an interview with Subcommittee staff, a Hess representative explained that in 2003, Hess was served with a court order instructing it to stop paying the President's relative and make rental payments to another Equatorial Guinea citizen whom the court declared had documented that he was the legitimate property owner. Hess complied, and approximately two months later a Minister of the E.G. government asked Hess why it had stopped making payments on the lease and informed Hess that the youth was his Godson. When Hess informed the Minister of the court order, the Minister called the judge who had issued the court order. According to Hess, while on the telephone with the Minister, the judge rescinded the court order, and Hess started paying the relative for the lease again.

<sup>346</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 1.

\_\_\_\_\_ Marathon has paid or agreed to pay the E.G. President over \$2 million for the purchase of land. In January 2004, to expand its Alba Field operations and liquid petroleum gas plant, Marathon negotiated with Abayak S.A. for the purchase of 50 hectares of land located in Punta Europa, Equatorial Guinea.<sup>347</sup> Marathon delivered to Abayak a check for more than \$611,000 made out to D. Teodoro Obiang Nguema.<sup>348</sup> In January 2004, Marathon also negotiated with Abayak, as the agent for D. Teodoro Obiang Nguema, for the purchase of an additional 208 hectares of Punta Europa land to be used for a proposed liquified natural gas plant.<sup>349</sup> As of June 18, 2004, this purchase was still pending, but the agreed upon purchase price was about \$1.4 million.<sup>350</sup>

## (2) Payments for Services

**Security Services.** Two of the oil companies doing business in Equatorial Guinea, Hess and ExxonMobil, told the Subcommittee that they buy their security services through Sociedad Nacional de Vigilancia (Sonavi), a company owned by the President's brother, Armengol Ondo Nguema. These companies told the Subcommittee staff that Sonavi has a monopoly on security services in E.G., and Hess told the Subcommittee that Soanvi's rates were not negotiable as they are driven by E.G. law.<sup>351</sup> Between January 2000 and May 2004, Hess paid a total of about \$300,500 to Sonavi.<sup>352</sup> Hess planned to end its contract with Sonavi, but told the Subcommittee that there was a possibility that it would be ordered to continue employing government-nominated companies like Sonavi for security services, and prevented from using exclusively its own security guards.<sup>353</sup>

From August 1997 to October 2000, ExxonMobil, the other oil company that uses Sonavi, had one of its subsidiaries pay Sonavi \$683,900 for security services in Equatorial Guinea.<sup>354</sup> In addition, between 2000 and 2003, a different ExxonMobil entity paid approximately \$26,400 to Sonavi for security.<sup>355</sup> ExxonMobil told the Subcommittee that it had determined that its

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<sup>347</sup> Letter from Marathon Oil Co. to the Subcommittee (4/16/04), at 3.

<sup>348</sup> Id.

<sup>349</sup> Id. See also letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment 1, at 2.

<sup>350</sup> Id.

<sup>351</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 2.

<sup>352</sup> Id.

<sup>353</sup> Id.

<sup>354</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 2.

<sup>355</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04), attachment 1, at 4.

relationship with Sonavi was at arm's length and that payments made had been consistent with market rates.<sup>356</sup>

Four other oil companies told the Subcommittee that they are allowed to get their security services from other sources.

**Employing E.G. Nationals.** Marathon told the Subcommittee that, after acquiring CMS Energy's E.G. oil interests in 2002, Marathon continued CMS's practice of obtaining laborers through APEGESA, an entity Marathon believes is partially owned by Juan Olo, the former E.G. energy minister and current President of the Board of Directors of GEOGAM. Marathon reimburses APEGESA for the compensation it pays to workers, and also pays a fee of approximately 20% of the salaries of the workers. Since 2002, Marathon has paid APEGESA about \$7.5 million.<sup>357</sup>

Between 2002 and May 2004, Marathon also used the services of a company called Multi-Services Systems (MSS) to employ local nationals. E.G. officials are believed to hold an interest in and serve as officers of MSS. Marathon's payments to MSS cover the compensation paid to the workers, and a fee of approximately 20% of the salaries of the workers. The total amount paid to MSS during this period was about \$6.9 million.<sup>358</sup>

### **(3) Payments to Support E.G. Mission and Embassy**

In some instances, E.G. officials have directed some oil payments be paid to support E.G. embassies. At the request of the E.G. Minister of Mines and Energy, for example, Marathon has directed \$5,400 per month via wire transfer to a Chase Manhattan Bank account for the Permanent Mission of Equatorial Guinea in support of the E.G. Permanent Mission to the United Nations in New York.<sup>359</sup> According to the company, these payments have been deducted from the E.G. government's royalties.

Under another production sharing contract, Marathon is also required to pay \$7,000 a month to assist the E.G. government in maintaining an embassy in Washington D.C. At the

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<sup>356</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 2.

<sup>357</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), at 3.

<sup>358</sup> *Id.*, at 5.

<sup>359</sup> *Id.*, at 6-7.

request of the Minister of Mines and Minerals, Marathon also pays \$3,500 a month for the Embassy personnel's medical insurance and \$2,700 for social security payments.<sup>360</sup>

Marathon also told the Subcommittee that under one of its production contracts it is required to purchase services, materials and equipment for the government's use as reasonably requested by the government. The company is authorized to deduct the cost of such purchases from amounts payable to the E.G. government.<sup>361</sup>

#### **(4) Payments for E.G. Students**

Evidence obtained by the Subcommittee indicates that all six of the oil companies also made significant payments for expenses incurred by E.G. students seeking to obtain advanced training or a university education outside of Equatorial Guinea. Many and perhaps all of these students were the children or relatives of E.G. officials, but the evidence is unclear regarding the extent to which each of the oil companies was aware of the students' status. Making these payments is apparently a required condition in some oil production sharing agreements.<sup>362</sup>

The evidence indicates that some of the oil companies directly paid students' tuition bills and living expenses. In March 2001, however, Riggs Bank opened the first of two accounts intended to be used for E.G. student expenses<sup>363</sup> and agreed to provide administrative support for the students who were studying in the United States and were funded out of a Riggs account. A U.K. company, Exploration Consulting Ltd. ("ECL"), apparently provided similar services for E.G. students studying in the United Kingdom.<sup>364</sup> Some of the oil companies then halted direct funding of E.G. students, instead making deposits to one or more E.G. student accounts administered by Riggs or ECL, and relied on these third parties to pay the students' bills.<sup>365</sup>

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<sup>360</sup> *Id.* Payments are made by wire transfer to Riggs Bank for the account of the Embassy of the Republic of Equatorial Guinea, Account No. 76772007. Marathon was advised in May 2004 by the E.G. Ambassador, Teodoro Biyogo Nsue, that the Riggs Bank account had been closed and future payments to the E.G. Embassy were to be made to an account at The Congressional Bank, Potomac, MD.

<sup>361</sup> *Id.*

<sup>362</sup> See, e.g., letter from Marathon Oil Co. to the Subcommittee (4/16/04), attachment at 3 ("Marathon is required under both the Alba Production Sharing Contract and the Block D Production Sharing Contract to contribute, at the Ministry of Mines and Mineral's request, to a fund maintained by the Ministry for the training of citizens of the Republic of Equatorial Guinea.").

<sup>363</sup> For a description of these two Riggs accounts, see Section V(C) of this Report. The first account was opened in the name of "Republica de Guinea Ecuatorial-Cuenta Estudiantes MME," and the second, opened in May 2002, was in the name of "Republica de Guinea Ecuatorial-Fondo Especial Para Becas."

<sup>364</sup> See letter from Marathon Oil Co. to the Subcommittee (6/18/04), at 16.

<sup>365</sup> See, e.g., communications between CMS and Simon Kareri regarding four students (8/21/01 and 8/23/01), Bates RNB 006340-43 and 46-56.

According to ChevronTexaco, it provided \$150,000 each year between 2001 and 2004 for E.G. student training expenses to various E.G. Ministry of Mines and Energy accounts. The 2001 and 2002 payments were made to an account at Societe Generale in Equatorial Guinea. The 2003 payments were made by wire transfers of \$90,000 to Riggs in Washington, D.C. and \$60,000 to Lloyds in the United Kingdom. The 2004 payment was made to an account at Lloyds.<sup>366</sup>

Devon indicated to the Subcommittee that in June 2003, pursuant to the educational training obligations contained in two of its Production Sharing Contracts, it made a payment of approximately \$150,000. In January 2004 it made a similar payment of \$200,000. The payments were made by check to either the Ministry of Mines and Energy or the Treasury of the Republic of E.G. as required by the contract.<sup>367</sup>

ExxonMobil did not provide the Subcommittee with any information indicating it had made payments in support of E.G. students. A Riggs document states, however, that ExxonMobil, along with Marathon, directly funded 28 to 35 E.G. students in 2003.<sup>368</sup> The document does not provide a dollar amount.

Between 2001 and 2003, Hess made payments totaling at least \$1.9 million in support of E.G. students studying in the United States or Canada. Hess (via its predecessor Triton) made these payments through a Triton subsidiary, Triton Equatorial Guinea, Inc.<sup>369</sup> Triton also directly funded two E.G. students at the University of South Carolina paying more than \$50,000 per student.<sup>370</sup> In addition, on or about March 6, 2001, as a favor, Triton Equatorial Guinea, Inc. transferred over \$250,000 to a Riggs account established to provide funding for the education of

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<sup>366</sup> Letter from ChevronTexaco to the Subcommittee (7/8/04), attachment at 2. For 2003 Riggs payment, see also Riggs listing of account activity from January-July 2003, Bates RNB 006602-09, at 606.

<sup>367</sup> Letter from Devon Energy Corp. to the Subcommittee (4/26/04), at 3.

<sup>368</sup> See email from Riggs to the OCC (12/4/03), Bates OCC 0000510314, listing students "funded directly by the Exxon and Marathon Oil Companies."

<sup>369</sup> See letter from Amerada Hess Corp. to the Subcommittee (5/3/04), attachment 2.1(b) entitled, "Houston/Dallas Payments to the EG Government During the Period May 2, 1997 to December 31, 2003," Bates AHC 00086. See also, e.g., letter from Riggs Bank to President Obiang (2/8/02), Bates RNB 006703.

<sup>370</sup> See "Follow Up Questions for Hess," (7/13/04), containing responses from Amerada Hess to questions from the Subcommittee, at 1.



the children of Armengol Ondo Nguema, the E.G. President's brother, using funds he supplied.<sup>371</sup> These payments exceed \$2 million altogether.

Marathon is obligated under its Production Sharing Contracts to pay almost \$300,000 a year for E.G. student training. For its 2002 obligations, Marathon made a payment of \$150,000 to the E.G. student account at Riggs, and a payment of \$70,000 to a similar account at Lloyds Bank in London.<sup>372</sup> Marathon indicated to the Subcommittee that it anticipates making an additional \$590,000 in similar payments for its 2003 and 2004 obligations.<sup>373</sup> CMS and Riggs records dated before Marathon's acquisition of CMS's interests in 2002 indicate that in August 2001 CMS paid \$275,000 into one of the E.G. student accounts at Riggs Bank.<sup>374</sup>

Marathon also provided direct support to students.<sup>375</sup> Records indicate that CMS (which later sold its E.G. interests to Marathon) directly funded four E.G. students between 1996 and 2001.<sup>376</sup> After Marathon purchased CMS' oil interests in Equatorial Guinea in 2002, Marathon funded two students who had previously been supported by CMS.<sup>377</sup> Marathon told the Subcommittee that "it came to the attention of Marathon that the two students might be related to President Obiang. Although this was never verified with certainty, Marathon informed the [E.G.] Minister on August 27, 2003, that Marathon would discontinue this practice. ... The last payment Marathon made in support of these students was in November of 2003."<sup>378</sup> In fiscal year 2003 alone, the funding Marathon provided for these two students exceeded \$14,000.<sup>379</sup>

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<sup>371</sup> See letter from Amerada Hess to the Subcommittee (6/2/04), attaching copies and English translations of a letter from Andy Mormon, Temporary General Manager, Triton Equatorial Guinea, to Armengol Ondo Nguema (3/5/01), "Reference: \$250,000 Transfer for your children who are studying in the United States and Canada," and a letter from E.G. Minister Baltasar Engonga Edjo to Andy Mormon (3/6/01), "Reference: USD \$250,000 transfer in favor of Armengol Ondo Nguema, relating to the funding of his children's school expenses," Bates AHC 00095-97 and 00101-03.

<sup>372</sup> Letter from Marathon Oil Co. to the Subcommittee (04/16/04), attachment at 4.

<sup>373</sup> Letter from Marathon Oil Co. to the Subcommittee (06/18/04), at 7.

<sup>374</sup> *Id.*, Bates RNB 006340-43, at 41.

<sup>375</sup> See email from Riggs to the OCC (12/4/03), Bates OCC 0000510314, listing 28-35 students "funded directly by the Exxon and Marathon Oil Companies."

<sup>376</sup> See communications between CMS and Riggs Bank regarding four students (8/21/01 and 8/23/01), Bates RNB 006341-43, at 41, and 006346-56, at 53-55.

<sup>377</sup> These students attended the Berlitz Language Center in Houston to learn English and then the Houston Community College. See letter from the Marathon Oil Co. to the Subcommittee (6/18/04), at 17.

<sup>378</sup> *Id.* at 18.

<sup>379</sup> See letter from Max Birley, Vice President of Marathon E.G. Production Limited, to Cristobal Manana Ela, E.G. Minister of Mines and Energy, (10/16/03), Bates RNB 006261-006263.

Vanco also made four payments to accounts for the Ministry of Mines and Energy for the training of E.G. students. Two payments totaling about \$158,000 were made between 2000 and 2001 to Lloyds Bank London, and two payments exceeding \$190,000 were made between 2002 and 2003 into an E.G. student account at Riggs Bank.<sup>380</sup>

Altogether, the Subcommittee was able to document payments in excess of \$4 million made by oil companies to support more than 100 E.G. students studying abroad, most of whom were the children or relatives of wealthy or powerful E.G. officials.

### C. Joint Business Ventures

In a few instances, some oil companies have also entered into business ventures with companies owned or controlled by high ranking E.G. officials or their family members.

**Mobile Oil Guinea Ecuatorial (MOGE).** In 1998, for example, ExxonMobil entered into a business venture with Abayak S.A., the construction and real estate company controlled by the E.G. President, to form Mobile Oil Guinea Ecuatorial (“MOGE”), an oil distribution business in Equatorial Guinea that supplies Mobile Equatorial Guinea Inc. (“MEGI”).<sup>381</sup> According to ExxonMobil, Mobil International Petroleum Corporation owns 85 percent of MOGE and Abayak owns 15 percent.<sup>382</sup> Dividends declared by MOGE in 2001, 2002, and 2003, resulted in dividend payments to Abayak of approximately \$10,500 each year.<sup>383</sup>

**GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a special purpose, state-owned corporation that was established in 1996, and may be partially privately held by E.G. officials.<sup>384</sup> Marathon has entered into two business ventures with GEOGAM. The first is Atlantic Methanol Production LLC (AMPCO), a company which owns and operates a methanol plant in Equatorial Guinea. Marathon and one other oil company each own 45% of AMPCO, while 10% is owned by GEOGAM. Between 2002 and May 2004, AMPCO paid dividends to GEOGAM totaling over \$4 million.<sup>385</sup>

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<sup>380</sup> Letter from Vanco Energy Company to the Subcommittee (06/08/2004), attachment 3. For Riggs payments see also Riggs listing of account activity from January-July 2003, Bates RNB 006602-09, at 605; and letter from Riggs Bank to President Obiang (2/8/02), Bates RNB 006703.

<sup>381</sup> Letter from ExxonMobil Corp. to the Subcommittee (06/17/04), attachment 1, at 3.

<sup>382</sup> Id.

<sup>383</sup> Id., at 3-4.

<sup>384</sup> See, e.g. letter from Marathon Oil Co. to the Subcommittee (7/13/04), attachment at 1 (according to a GEOGAM representative, GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President).

<sup>385</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment at 16.

Marathon's second business venture with GEOGAM is Alba Plant, LLC, a company that owns a liquid petroleum gas facility in Equatorial Guinea. Marathon owns 52.17% of Alba Plant LLC, while GEOGAM owns 20%.<sup>386</sup> In 2002, Alba Plant paid dividends to GEOGAM totaling more than \$87,000.<sup>387</sup>

**GEPetrol.** GEPetrol is a special purpose, state-owned corporation that may also be partially privately held, possibly by E.G. government officials. Marathon has told the Subcommittee that it believes GEPetrol is owed 100% by the government,<sup>388</sup> but some evidence obtained by the Subcommittee suggests that GEPetrol could have one or more E.G. officials as part owners.

Marathon has entered into three business ventures with GEPetrol. The first is a company called LNG Holdings Limited, which is developing the LNG project. Marathon owns 75 percent of LNG Holdings, while GEPetrol owns 25 percent.<sup>389</sup> GEPetrol also has an interest in the Alba Block Production Sharing Contract, which includes the producing Alba Field, as well as an interest in an area known as Block D.<sup>390</sup>

Another joint venture potentially involving GEPetrol is found on what is known as Block N, located on the Corisco Bay shelf. Devon Energy Company's wholly-owned subsidiary owns 31 percent of the participating interest in Block N. The E.G. Ministry of Mines and Energy holds another 15 percent of Block N, but the Production Sharing Contract provides that this interest can be assigned to GEPetrol.<sup>391</sup>

#### **D. Transparency Initiatives**

Earlier this year, the Center for Strategic and International Studies issued a report describing the increasing importance to the United States of oil-producing countries in Africa.<sup>392</sup> This report also called for major U.S. and international efforts to increase transparency efforts in these countries to reduce corruption. The report explained:

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<sup>386</sup> Letter from Marathon Oil Co. to the Subcommittee (4/16/04), attachment at 13.

<sup>387</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment at 13.

<sup>388</sup> *Id.*, at 18.

<sup>389</sup> *Id.*, at 19.

<sup>390</sup> *Id.*, at 18.

<sup>391</sup> Letter from Devon Energy Corp. to the Subcommittee (4/26/04), at 2.

<sup>392</sup> "Promoting Transparency in the African Oil Sector," report prepared by the Center for Strategic and International Studies Task Force on Rising U.S. Energy Stakes in Africa (March 2004).

“The task force concluded that a key to promoting political, economic, and social reform is transparency in public finance. If leaders tell their citizens how much revenue the government takes in and where it is spent, the resulting transparency will engender more realistic public expectations, more plausible national development programs, and better means to combat corruption and promote democracy, respect for human rights, and the rule of law. Transparency will benefit U.S. companies as well. Respect for the rule of law, codified regulatory practices, and transparent bidding and award practices deter corruption and encourage a level playing field for U.S. companies.”

The report called on the United States to undertake a sustained, high-level effort to promote transparency efforts in West and Central Africa and commended, in particular, three international transparency initiatives: the Extractive Industries Transparency Initiative, G-8 Anti-Corruption and Transparency Initiative, and the Publish What You Pay Campaign.

**Extractive Industries Transparency Initiative (EITI).** EITI is a voluntary program launched by U.K. Prime Minister Tony Blair at the World Summit on Sustainable Development in Johannesburg in September 2002. The initiative is administered by the U.K.’s Department for International Development. It encourages (a) governments, (b) publicly traded, private and state-owned extractive companies, and (c) international organizations, non-governmental organizations (NGOs), and others with an interest in the extractive industries sector to work together voluntarily to develop a framework to promote transparency of payments and revenues in the extractive sector in countries heavily dependent upon these resources.<sup>393</sup>

The EITI would require that host governments report, in an accessible and timely manner, all significant “Benefit Streams” from certain extractive industries activities on a consolidated cash-basis and that they request companies to do what is necessary to enable this consolidated reporting. Host governments would also be responsible for ensuring that all relevant future contracts and agreements are designed in a manner that allows all parties to adhere to the Reporting Guidelines and asking companies to do the same. To facilitate this consolidated reporting, state-owned companies would be required to report their equity share of significant benefit streams to host governments from their extractive industries activities on a consolidated cash-basis.<sup>394</sup>

A number of countries, including Equatorial Guinea, have made public statements regarding their willingness to participate in EITI. However, only a few nations have actually begun taking steps toward implementation.<sup>395</sup> As these and other countries develop their

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<sup>393</sup> See [www.dfid.gov.uk/News/News/files/eiti\\_stat\\_of\\_principals.htm](http://www.dfid.gov.uk/News/News/files/eiti_stat_of_principals.htm).

<sup>394</sup> “Revised Draft Reporting Guidelines,” Extractive Industries Transparency Initiative, (5/23/03), [http://62.189.42.51/DFIDstage/News/News/files/eiti\\_draft\\_report\\_guidelines.pdf](http://62.189.42.51/DFIDstage/News/News/files/eiti_draft_report_guidelines.pdf).

<sup>395</sup> Subcommittee staff communications with the EITI Team Leader at the U.K. Department for International Development (June and July 2004).

reporting guidelines, it is important that the EITI ensure that all payments are included in the disclosure. The current draft guidelines define “Host Government” to include “the governing regimes and institutions of a state within whose territorial boundaries companies within the Extractive Industries operate. [It also] includes local, regional, state and federal representatives of these regimes and institutions and entities that are controlled by these regimes and institutions.”<sup>396</sup> Implementing countries should clarify this definition to ensure that it encompasses payments not only to agencies and government officials, but also to their relatives and entities controlled by these officials and their relatives. Furthermore, since the draft guidelines classify state-owned oil companies as companies rather than part of the host government,<sup>397</sup> EITI must make sure that there are mechanisms to ensure that funds routed to state-owned companies are fully reflected, even if a portion of the funds go to private individuals as appears to be the case in Equatorial Guinea’s GEOGAM.

**G-8 Anti-Corruption and Transparency Initiative.** On July 3, 2003, the G-8 nations adopted at their Evian Summit an “Action Plan on Fighting Corruption and Improving Transparency.”<sup>398</sup> This initiative is significantly broader than the EITI as it does not focus on one particular industry sector, but rather on the entire budget of a country. As described at the Sea Island G-8 summit in June 2004, the focus of the initiative is “transparency in public budgets, including revenues and expenditures, government procurement, the letting of public concessions and the granting of licenses. Special emphasis will be given to cooperation with countries with large extractive industries sectors.”<sup>399</sup>

Four pilot “Compacts to Promote Transparency and Combat Corruption” are currently underway with four different countries.<sup>400</sup> For countries with significant extractive industries, the G-8’s Action Plan, as outlined at the 2003 Evian summit, sets out principles that include encouraging governments and companies to disclose to an independent third party such as the IMF, World Bank, or Multilateral Development Banks, revenue from the extractive sectors. This information would be published at an aggregated level, in accessible and understandable ways, while protecting proprietary information and maintaining contract sanctity. The principles outlined for the pilot programs include working with participating governments to develop and implement action plans for establishing standards of transparency with respect to all budget flows

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<sup>396</sup> Id. at 5.

<sup>397</sup> Id.

<sup>398</sup> See [www.g8.fr/evian/english/navigation/2003\\_g8\\_summit/summit\\_documents/fighting\\_corruption\\_and\\_improving\\_transparency\\_-\\_a\\_g8\\_action\\_plan.html](http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_action_plan.html). The G-8 nations are: United States, France, Russia, United Kingdom, Italy, Germany, Japan, and Canada.

<sup>399</sup> See [http://www.g8usa.gov/d\\_061004e.htm](http://www.g8usa.gov/d_061004e.htm).

<sup>400</sup> See <http://www.g8usa.gov/documents.htm>. The countries are Georgia, Nicaragua, Nigeria, and Peru.

(revenues and expenditures) and with respect to the awarding of government contracts and concessions.<sup>401</sup>

**Publish What You Pay Coalition.** Publish What You Pay (PWYP) is a third initiative organized by a coalition of more than 190 non-governmental organizations. This initiative calls for publicly-traded natural resource and oil companies to be required by market regulators, as a condition of public listing, to disclose aggregate information about tax payments, royalty fees, license fees, share purchases, revenue sharing payments, payments-in-kind, forward sales of future revenues, and commercial transactions with governments or public sector entities, for the products of every country in which they operate. The campaign was founded by Global Witness, Open Society Institute, Oxfam, Save the Children UK, CAFOD, and Transparency International UK.<sup>402</sup>

Unlike the EITI, PWYP focuses solely on disclosure by extraction companies. Another significant difference between PWYP and EITI is that PWYP seeks mandatory rather than voluntary compliance.

The PWYP coalition has highlighted a number of ways to promote revenue transparency in the extractive industries. These include: (a) non-legislative adjustments to accounting requirements and stock market listing rules; (b) a future International Financial Reporting Standard for the extractive industries to be developed by the International Accounting Standards Board; and (c) legislative adjustments to existing anti-bribery ‘books and records’ provisions enforced by national securities and financial regulators.<sup>403</sup>

On March, 30, 2004, the European Parliament approved by a vote of 390-8, with 102 abstentions, an amendment to the “Transparency Obligations Directive” in the European Union’s (EU) Financial Services Action Plan calling on E.U. member states to promote public disclosure of payments to governments by extractive companies listed on European stock exchanges. This directive is expected to introduce minimum requirements for information that must be provided by companies listed on securities markets in the European Union.<sup>404</sup>

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<sup>401</sup> See [www.g8.fr/evian/english/navigation/2003\\_g8\\_summit/summit\\_documents/fighting\\_corruption\\_and\\_improving\\_transparency\\_-\\_a\\_g8\\_action\\_plan.html](http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_action_plan.html).

<sup>402</sup> See [www.publishwhatyoupay.org](http://www.publishwhatyoupay.org).

<sup>403</sup> Id.

<sup>404</sup> Id.

### **E. Foreign Corrupt Practices Act**

In 1977, Congress enacted the Foreign Corrupt Practices Act (“FCPA”) to criminalize illicit payments to foreign public officials by U.S. businesses and individuals.<sup>405</sup> The FCPA has two basic sets of provisions: (a) the anti-bribery provisions, which prohibit domestic and foreign companies and U.S. citizens and aliens from paying anything of value to any foreign official, government employee, officers of a public international organization, foreign political party or candidate, or any agent of those entities, if the purpose is to cause the payee to act, or refrain for acting, in a way to assist the company in obtaining or retaining business; and (b) the accounting provisions, which impose certain accounting and record-keeping requirements on publicly traded companies.<sup>406</sup>

Based on guidelines issued by the U.S. Sentencing Commission, federal courts are required to take into account the existence or absence of effective corporate compliance programs when handing down criminal sanctions with respect to violations of the FCPA.<sup>407</sup> The presence of an effective compliance program can significantly reduce a corporation’s sentence as well as prevent a breach of fiduciary duty by the company’s board of directors.

Each of the six major oil companies doing business in Equatorial Guinea has a written FCPA compliance policy. These policies and the resulting FCPA practices vary significantly from company to company. It is also not clear that the written policies are fully effective in monitoring the companies’ business dealings in Equatorial Guinea. For example, when asked to list payments to E.G. officials and their family members, ExxonMobil said it did not have a complete listing and would need additional time to research about 500 contracts.<sup>408</sup> Another company, Amerada Hess, told the Subcommittee that because it is very common for E.G. officials to have shares in private companies or family interests in private concerns, there may be a number of such instances of which the company is unaware.<sup>409</sup>

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<sup>405</sup> See 15 U.S.C. § 78dd-1 et seq.

<sup>406</sup> Id. See also “The Foreign Corrupt Practices Act and the Due Diligence Process,” 1368 PLI/Corp 579, 583 (2003).

<sup>407</sup> See U.S.S.G. § 2(b)4.1.

<sup>408</sup> Subcommittee staff discussion with ExxonMobil (6/7/04).

<sup>409</sup> Letter from Amerada Hess Corp. to the Subcommittee (4/23/04), at 2.

## VIII. Recommendations

Based upon its investigation, the Subcommittee Minority staff makes the following recommendations.

- (1) **Strengthen Enforcement.** To strengthen anti-money laundering (AML) enforcement, federal bank regulators should require prompt correction of AML deficiencies identified by their examiners, make greater use of formal enforcement tools, including more timely use of civil fines, and consider developing a policy requiring mandatory enforcement actions within a specified period of time against any financial institution with repeat AML deficiencies.
- (2) **Take Regulatory Action.** By the end of 2004, federal regulators should issue final regulations and revised examination guidelines implementing the due diligence requirements of the Patriot Act, including for private banking accounts opened for senior foreign political figures or their family members.
- (3) **Issue Annual AML Assessments.** Federal bank regulators should include on a routine basis AML assessments in the Report on Examination given to banks each year, and should make those AML assessments available to the public, both to increase bank compliance with requirements to combat money laundering and foreign corruption, and to alert other financial institutions to banks with inadequate AML controls.
- (4) **Strengthen Post-Employment Restrictions.** Using 41 U.S.C. § 423(d) as a model, Congress should enact legislation to impose a one-year cooling-off period for federal Examiners-in-Charge of a financial institution before they can accept a position with the financial institution they oversaw.
- (5) **Authorize Intra-bank Disclosures.** The United States should work with the European Union and other international bodies to enable financial institutions with U.S. and foreign affiliates to exchange client information across international lines to safeguard against money laundering and terrorist financing.
- (6) **Increase Transparency.** Oil companies operating in Equatorial Guinea should publicly disclose all payments made to or business ventures entered into with individual E.G. officials, their family members, or entities controlled by them, and should prohibit future business ventures in which senior government officials or their family members have a direct or beneficial interest. Congress should amend the Foreign Corrupt Practices Act to require U.S. companies to disclose substantial payments made to, or business ventures entered into with, a country's officials, their family members, or entities controlled by them.



*United States Senate*

**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**

*Committee on Homeland Security and Governmental Affairs*

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*Carl Levin, Chairman*

*Tom Coburn, Ranking Minority Member*

**KEEPING FOREIGN CORRUPTION OUT  
OF THE UNITED STATES:  
FOUR CASE HISTORIES**

**MAJORITY AND MINORITY  
STAFF REPORT**

**PERMANENT SUBCOMMITTEE  
ON INVESTIGATIONS**

**UNITED STATES SENATE**



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**KEEPING FOREIGN CORRUPTION OUT  
OF THE UNITED STATES: FOUR CASE HISTORIES**

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# # #

# **KEEPING FOREIGN CORRUPTION OUT OF THE UNITED STATES: FOUR CASE HISTORIES**

This Report examines how politically powerful foreign officials, their relatives, and close associates – referred to in international agreements as “Politically Exposed Persons” or PEPs – have used the services of U.S. professionals and financial institutions to bring large amounts of suspect funds into the United States to advance their interests. Using four case histories, this Report shows how some PEPs have used U.S. lawyers, real estate and escrow agents, lobbyists, bankers, and even university officials, to circumvent U.S. anti-money laundering and anti-corruption safeguards. This Report also offers recommendations to stop the abuses.

## **I. EXECUTIVE SUMMARY**

Combating corruption is a key U.S. value and goal, due to its corrosive effects on the rule of law, economic development, and democratic principles. In 2001, the Patriot Act made the acceptance of foreign corruption proceeds a U.S. money laundering offense for the first time, and required banks to apply enhanced scrutiny to private banking accounts opened for senior foreign political figures, their relatives, and close associates. In 2003, the United States supported the United Nations Convention Against Corruption, now ratified by over 140 countries. Also in 2003, U.S. Immigration and Customs Enforcement (ICE) formed an investigative group dedicated to combating foreign corruption by PEPs. In 2004, President Bush issued Presidential Proclamation 7750 denying U.S. visas to foreign officials involved with corruption, and Congress later enacted supporting legislation. A 2009 study sponsored by the World Bank analyzed PEP controls worldwide and recommended stronger measures to reduce corruption.

The Permanent Subcommittee on Investigations (Subcommittee) initiated this investigation to learn how U.S. laws apply to PEPs utilizing the domestic financial system, and examine how foreign senior political figures, their relatives, and close associates may be circumventing or undermining AML and PEP controls to bring funds that may be the product of foreign corruption into the United States. It is the latest in a series of Subcommittee hearings examining foreign corruption and its U.S. aiders and abettors.

During the course of its investigation, the Subcommittee staff conducted over 100 interviews, including interviews of lawyers, real estate agents, escrow agents, lobbyists, bankers, university professionals, and government officials. The Subcommittee issued over 50 subpoenas and reviewed millions of pages of documents, including bank records, correspondence, contracts, emails, property records, flight records, news articles, and court pleadings. In addition, the Subcommittee consulted with foreign officials, international organizations, financial regulators, and experts in anti-money laundering and anti-corruption efforts.

The Subcommittee has developed four case histories that expose some of the tactics being used by PEPs and their facilitators to bring suspect funds into the United States, and identify some of the legal gaps, poor due diligence practices, and inadequate PEP controls that, at times, have made these tactics possible.

**Obiang Case History.** From 2004 to 2008, Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea, has used U.S. lawyers, bankers, real estate agents, and escrow agents to move over \$110 million in suspect funds into the United States. Mr. Obiang is the subject of an ongoing U.S. criminal investigation, has been identified in corruption complaints filed in France, and was a focus of a 2004 Subcommittee hearing showing how Riggs Bank facilitated officials from Equatorial Guinea in opening accounts and engaging in suspect transactions.

Two lawyers, Michael Berger and George Nagler, helped Mr. Obiang circumvent U.S. anti-money laundering (“AML”) and PEP controls at U.S. financial institutions by allowing him to use attorney-client, law office, and shell company accounts as conduits for his funds and without alerting the bank to his use of those accounts. If a bank later uncovered Mr. Obiang’s use of an account and closed it, the lawyers helped him open another. The U.S. shell companies they formed for Mr. Obiang included Beautiful Vision Inc., Unlimited Horizon, Inc., Sweetwater Malibu LLC, Sweetwater Management Inc., and Sweet Pink Inc.

Two real estate agents, Neal Baddin and John Kerrigan, helped Mr. Obiang buy and sell high-end real estate in California including his purchase of a \$30 million Malibu residence with funds wire transferred from Equatorial Guinea, operating without any legal obligation to inquire into the source of his funds. Mr. Obiang also used a U.S. escrow agent to purchase a \$38.5 million U.S.-built Gulfstream jet. When one escrow agent, McAfee & Taft, as a voluntary anti-money laundering precaution, refused to proceed without information about the source of the funds for the purchase, another escrow agent, International Airline Title Services Inc., stepped in and completed the transaction with no questions asked. U.S. law currently exempts both escrow agents and realtors from the Patriot Act’s requirement to establish anti-money laundering programs.

Mr. Obiang also brought large amounts of suspect funds into the United States by taking advantage of banking systems that were not programmed to block wire transfers bearing his name.

**Bongo Case History.** From 2003 through at least 2007, Omar Bongo, President of Gabon for 41 years until his death in June 2009, employed a U.S. lobbyist, Jeffrey Birrell, to purchase six U.S.-built armored vehicles and obtain U.S. government permission to buy six U.S.-built C-130 military cargo aircraft from Saudi Arabia to support his regime. President Omar Bongo was a focus of a 1999 Subcommittee hearing showing how he used offshore shell companies to move over \$100 million in suspect funds through accounts at Citibank Private Bank. He has been mentioned in connection with the ELF oil scandal in France, and has been identified in corruption complaints filed in France.

As part of the armored car and C-130 transactions, over \$18 million was wire transferred from Gabon into U.S. bank accounts held in the name of The Grace Group LLC, a U.S. corporation formed by Mr. Birrell. Mr. Birrell received the funds primarily from President Omar Bongo and an entity called Ayira. He later transferred \$9.2 million of the funds provided by Ayira to a foreign account held in the name of President Omar Bongo in Malta. He also wire transferred over \$4.2 million to foreign bank accounts opened in the name of a senior Bongo adviser, and over \$1 million in payments to foreign bank accounts held in the name of various “consultants.” Mr. Birrell’s corporate accounts served as a conduit for those Bongo funds.

In addition, President Omar Bongo provided large amounts of cash to his daughter, Yamilee Bongo-Astier, who deposited the cash into bank accounts and safe deposit boxes at U.S. financial institutions in New York from 2000 to 2007. Ms. Bongo-Astier made multiple large dollar deposits into her accounts at banks that were unaware of her PEP status, but knew she was an unemployed student. One bank closed her account after receiving an \$183,500 wire transfer from the Republic of Gabon; another did so after discovering she had \$1 million in \$100 shrink-wrapped bills in her safe deposit box, which she said her father had brought into the United States using his diplomatic status and without declaring the cash to U.S. authorities.

Another member of the Bongo family, Inge Lynn Collins Bongo, is the wife of Ali Bongo, the current President of Gabon and its former Minister of Defense. In 2000, she formed a U.S. trust, the Collins Revocable Trust, and opened accounts in the name of that Trust at banks in California. For three years, from 2000 to 2003, Ms. Inge Bongo accepted multiple large offshore wire transfers into the Trust accounts and used the funds to support a lavish lifestyle and move money among a network of bank and securities accounts benefiting her and her husband.

Due to inadequate PEP lists prepared by third party vendors, the financial institutions hosting the Bongo accounts were, more often than not, unaware of their clients' PEP status and did not subject their accounts to enhanced monitoring.

**Abubakar Case History.** From 2000 to 2008, Jennifer Douglas, a U.S. citizen and the fourth wife of Atiku Abubakar, former Vice President and former candidate for President of Nigeria, helped her husband bring over \$40 million in suspect funds into the United States, through wire transfers sent by offshore corporations to U.S. bank accounts. In a 2008 civil complaint, the U.S. Securities and Exchange Commission alleged that Ms. Douglas received over \$2 million in bribe payments in 2001 and 2002, from Siemens AG, a major German corporation. While Ms. Douglas denies wrongdoing, Siemens has already pled guilty to U.S. criminal charges and settled civil charges related to bribery and told the Subcommittee that it sent the payments to one of her U.S. accounts. In 2007, Mr. Abubakar was the subject of corruption allegations in Nigeria related to the Petroleum Technology Development Fund.

Of the \$40 million in suspect funds, \$25 million was wire transferred by offshore corporations into more than 30 U.S. bank accounts opened by Ms. Douglas, primarily by Guernsey Trust Company Nigeria Ltd., LetsGo Ltd. Inc., and Sima Holding Ltd. The U.S. banks maintaining those accounts were, at times, unaware of her PEP status, and they allowed multiple, large offshore wire transfers into her accounts. As each bank began to question the offshore wire transfers, Ms. Douglas indicated that all of the funds came from her husband and professed little familiarity with the offshore corporations actually sending her money. When one bank closed her account due to the offshore wire transfers, her lawyer helped convince other banks to provide a new account.

In addition, two of the offshore corporations wire transferred about \$14 million over five years to American University in Washington, D.C., to pay for consulting services related to the development of a Nigerian university founded by Mr. Abubakar. American University accepted the wire transfers without asking about the identity of the offshore corporations or the source of their funds, because under current law, the University had no legal obligation to inquire.



**Angola Case History.** The final case history examines three Angolan PEP accounts, involving an Angolan arms dealer, an Angolan government official, and a small Angolan private bank that caters to PEP clients, to show how the accountholders gained access to the U.S. financial system and attempted to exploit weak U.S. AML and PEP safeguards.

Pierre Falcone is a notorious arms dealer who supplied weapons during the Angola civil war, a close associate of Angolan President Jose Eduardo Dos Santos, and the target of lengthy criminal investigations resulting in his recent imprisonment in France. He used personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of accounts. Mr. Falcone was imprisoned in France for one year beginning in 2000, was a fugitive from a 2004 French global arrest warrant, and was convicted in France in 2007 and 2009, on charges related to illegal arms dealing, tax fraud, and money laundering. He is now serving a six-year prison sentence. Bank of America maintained nearly 30 accounts for the Falcone family from 1989 to 2007, did not treat Mr. Falcone as a PEP, and did not consider his accounts to be high risk, even after learning in 2005 that he was an arms dealer and had been imprisoned in the past. In 2007, after receiving a Subcommittee inquiry about the Falcone accounts, the bank conducted a new due diligence review, closed the accounts, and expressed regret at providing Mr. Falcone with banking services for years.

Dr. Aguinaldo Jaime, a senior Angolan government official, was head of Banco Nacional de Angola (BNA), the Angolan Central Bank, when he attempted, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States, only to have the transfers reversed by the U.S. financial institutions involved. Dr. Jaime invoked his authority as BNA Governor to wire transfer the funds to a private bank account in California during the first attempt and, during the second attempt, to purchase \$50 million in U.S. Treasury bills for transfer to a private securities account in California. Both transfers were initially allowed, then reversed by bank or securities firm personnel who became suspicious of the transactions. Partly as a result of those transfers and the corruption concerns they raised, in 2003, Citibank closed not only the accounts it had maintained for BNA, but all other Citibank accounts for Angolan government entities, and closed its office in Angola. In contrast, HSBC continues to provide banking services to BNA in the United States and elsewhere, and may be providing the Central Bank with offshore accounts in the Bahamas.

Banco Africano de Investimentos (“BAI”) is a \$7 billion private Angolan bank whose largest shareholder is Sonangol, the Angolan state-owned oil company. It offers banking services to Sonangol, Angolans in the oil and diamond industries, and Angolan government officials. Over the last ten years, BAI gained entry to the U.S. financial system through accounts at HSBC in New York, using HSBC wire transfer services, foreign currency exchange, and U.S. dollar credit cards for BAI clients, despite providing troubling answers about its ownership and failing to provide a copy of its AML procedures to HSBC after repeated requests. Despite the presence of PEPs in BAI’s management and clientele, HSBC decided against designating BAI as a “Special Category of Client” requiring additional oversight until November 2008, years after the account was first opened.

Together, these four case histories demonstrate the need for the United States to strengthen its PEP controls to prevent corrupt foreign officials, their relatives, and close

associates from using U.S. professionals and financial institutions to conceal, protect, and utilize their ill gotten gains.

## A. FINDINGS

This Report makes the following findings of fact.

- (1) **Lawyers.** Two U.S. lawyers helped Teodoro Obiang, son of the President of Equatorial Guinea, circumvent anti-money laundering and PEP controls at U.S. banks by allowing him to secretly use a series of attorney-client, law office, and shell company accounts to be used as conduits for his funds.
- (2) **Realtors.** Two realtors helped Mr. Obiang buy and sell multi-million-dollar residences in California, and a real estate escrow agent facilitated his purchase of a \$30 million property by handling millions of dollars wire transferred from Equatorial Guinea, without verifying the source of the funds, since they had no legal obligation to do so.
- (3) **Escrow Agents.** After one U.S. escrow agent, as an AML precaution, refused to complete the purchase of a Gulfstream jet without obtaining information on the source of \$38.5 million to be paid for the aircraft, another U.S. escrow agent stepped in and completed the transaction with no questions asked. The escrow agents had no legal obligation under current law to inquire about the source of the funds.
- (4) **Lobbyist.** A U.S. lobbyist helped President Omar Bongo of Gabon obtain six U.S.-built armored cars and U.S. government permission to buy six U.S.-built military cargo aircraft from Saudi Arabia to support his regime, while allowing his U.S. bank accounts to be used as a conduit for \$18 million in suspect funds in connection with those transactions, with no questions asked.
- (5) **Offshore Corporations.** Jennifer Douglas, a PEP through her marriage to Atiku Abubakar, former Vice President of Nigeria, used a series of U.S. bank accounts to bring over \$25 million in suspect funds into the United States via wire transfers from offshore corporations.
- (6) **University.** A U.S. university accepted over \$14 million in wire transfers from unfamiliar offshore shell corporations to pay for consulting services related to development of a university in Nigeria founded by Mr. Abubakar.
- (7) **Personal Accounts.** Pierre Falcone, a PEP through his close association with the President of Angola and appointment as an Angolan Ambassador, was able to use personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of Falcone accounts, despite his status as an arms dealer and a long history of involvement in criminal proceedings in France.

- (8) **Government Accounts.** Dr. Aguiñaldo Jaime, using his authority as head of the Angolan Central Bank, attempted without success, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States.
- (9) **Correspondent Accounts.** Banco Africano de Investimentos, a \$7 billion private Angolan bank that caters to PEPs, is not treated as a PEP client subject to enhanced monitoring by its U.S. correspondent bank.
- (10) **Vendor PEP Lists.** Some vendors relied on by U.S. financial institutions to screen clients for PEPs used incomplete and unreliable PEP lists.

## B. RECOMMENDATIONS

This Report makes the following recommendations.

- (1) **World Bank PEP Recommendations.** Congress should enact a law and the U.S. Treasury Department should promulgate rules implementing the key recommendations of a recent World Bank study to strengthen bank controls related to Politically Exposed Persons (“PEPs”), including by requiring banks to use reliable PEP databases to screen clients, use account beneficial ownership forms that ask for PEP information, obtain financial declaration forms filed by PEP clients with their governments, and conduct annual reviews of PEP account activity to detect and stop suspicious transactions.
- (2) **Real Estate and Escrow Agent Exemptions.** Treasury should repeal all of the exemptions it has granted from the Patriot Act requirement for anti-money laundering (AML) programs, including the 2002 exemption given to real estate and escrow agents handling real estate closings, and sellers of vehicles, including escrow agents handling aircraft sales, and use its existing statutory authority to require them to implement AML safeguards and refrain from facilitating transactions involving suspect funds.
- (3) **Attorney-Client and Law Office Accounts.** Treasury should issue an AML rule requiring U.S. financial institutions to obtain a certification for each attorney-client and law office account that it will not be used to circumvent AML or PEP controls, accept suspect funds involving PEPs, conceal PEP activity, or provide banking services for PEPs previously excluded from the bank; and requiring enhanced monitoring of such accounts to detect and report suspicious transactions.
- (4) **U.S. Shell Corporations.** Congress should enact legislation requiring persons forming U.S. corporations to disclose the names of the beneficial owners of those U.S. corporations.
- (5) **Immigration Restriction.** Congress and the Administration should consider making significant acts of foreign corruption a legal basis for designating a PEP and any family member inadmissible to enter, and removable from, the United States.
- (6) **Visa Restriction.** The State Department should strengthen its enforcement of the law and Presidential Proclamation 7750 denying U.S. visas to foreign PEPs

involved with corruption, and law enforcement agencies should increase the assistance they provide to State Department investigations of PEPs under review.

- (7) **Professional Guidelines.** Professional organizations, including the American Bar Association, National Association of Realtors, American League of Lobbyists, and American Council for Education, should issue guidance to their members prohibiting use of any financial account to accept suspect funds involving PEPs, conceal PEP activity, facilitate suspect transactions involving PEPs, or circumvent AML or PEP controls at U.S. financial institutions.
- (8) **FATF Recommendations.** The United States should work with the international Financial Action Task Force on Money Laundering to amend its existing 40+9 Recommendations to strengthen anti-corruption and PEP controls.

## II. FOREIGN CORRUPTION AND MONEY LAUNDERING

Corruption has been increasingly condemned by the United States and the international community for impeding the development of honest government, democratic principles, and the rule of law. It is also blamed for distorting markets, deterring investment, deepening poverty, undermining international aid efforts, and fostering crime.<sup>1</sup> Some have drawn connections between corruption, failed states, and terrorism. Corruption also continues to be a massive problem. The World Bank has estimated that \$1 trillion in bribes alone exchange hands worldwide each year.<sup>2</sup>

Combating corruption has long been an aim of the United States. In 1977, for example, the United States became the first country in the world to prohibit the payment of bribes to foreign public officials.<sup>3</sup> In 1999, the Clinton Administration launched a major anti-corruption initiative, sponsoring an international conference under the leadership of Vice President Gore to increase the visibility of the issue. In 2001, Congress enacted anti-corruption provisions in the Patriot Act, as explained below. In 2004, the Bush Administration issued Presidential Proclamation 7750, providing a legal basis for denying visas to foreign officials involved in corruption.<sup>4</sup> In 2006, President Bush issued a national strategy to convince other nations to do the same.<sup>5</sup> In 2009, Congress enacted legislation requiring the State Department to maintain “a list of officials of foreign governments and their immediate family members who the Secretary has credible evidence have been involved in corruption relating to the extraction of natural resources” and making such persons “ineligible for admission to the United States.”<sup>6</sup>

**Subcommittee Work.** The Permanent Subcommittee on Investigations has contributed to the anti-corruption battle by conducting several investigations over the past ten years into how politically powerful foreign officials, their relatives, and close associates utilize U.S. financial institutions to conceal, transfer, and spend funds suspected to be the proceeds of corruption.

In 1999, for example, the Subcommittee released a report and held a hearing on four case histories of heads of states or their relatives who used Citibank Private Bank to deposit at least

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<sup>1</sup> See, e.g., statement by the World Bank that corruption is “the single greatest obstacle to economic and social development. It undermines development by distorting the rule of law and weakening the institutional foundation on which economic growth depends.” David Chaikin and J.C. Sharman, “Corruption and Money Laundering: A Symbiotic Relationship,” Palgrave, 2009, at 11.

<sup>2</sup> The World Bank, “The Costs of Corruption,” April 4, 2004, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190187~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

<sup>3</sup> See Foreign Corrupt Practices Act, 15 USC 78dd-1 et seq.

<sup>4</sup> Presidential Proclamation 7750 (January 2004), [www.whitehouse.gov/news/releases/2004/01/20040112-3.html](http://www.whitehouse.gov/news/releases/2004/01/20040112-3.html). Prior to this proclamation, corrupt foreign officials could and still can be denied visas on other grounds, including involvement with organized crime, drug trafficking, money laundering, trafficking in human persons, crimes of moral turpitude, and conduct detrimental to the interests of the United States. See, e.g., Section 212(f) of the Immigration and Naturalization Act, 8 U.S.C. 1182 et seq.

<sup>5</sup> See “U.S. National Strategy to Internationalize Efforts Against Kleptocracy” (August 2006), available at [www.state.gov/p/inl/rls/fs/70365](http://www.state.gov/p/inl/rls/fs/70365).

<sup>6</sup> See Section 7084 of the 2010 Omnibus Appropriations Act.

\$100 million each in suspect funds.<sup>7</sup> In 2001, the Subcommittee Chairman, Senator Carl Levin, working with the Chairman of the Senate Banking, Housing, and Urban Affairs Committee, Senator Paul Sarbanes, won enactment of provisions in the Patriot Act which, for the first time, made the knowing acceptance of foreign corruption proceeds a money laundering offense.<sup>8</sup> They also successfully included Patriot Act provisions which required U.S. financial institutions to exercise enhanced due diligence before opening a private banking account for a senior foreign political figure, immediate relative, or close associate; conduct enhanced monitoring of such accounts; and report suspicious transactions to law enforcement.<sup>9</sup>

In addition, the Patriot Act required a long list of U.S. financial institutions to implement anti-money laundering (“AML”) programs, with written policies, procedures and controls, an AML compliance officer, employee training, and internal audits, unless explicitly exempted by the Treasury Secretary.<sup>10</sup> It also required them to obtain customer identification information for each account opened.<sup>11</sup> Regulations issued by Treasury over the next few years implemented those Patriot Act provisions, requiring U.S. banks, securities firms, insurance companies, futures commission merchants, jewelry businesses, and money service businesses, among others, to develop the specified AML programs. At the same time, however, Treasury exempted several groups from having to establish AML programs, including hedge funds, the real estate industry, and escrow agents.<sup>12</sup>

In 2004, the Subcommittee released a report and held a hearing examining the extent to which U.S. financial institutions were complying with the new Patriot Act provisions, using Riggs Bank in Washington, D.C. as an example.<sup>13</sup> At that time, Riggs Bank provided banking services for most of the foreign embassies in the nation’s capital as well as for many heads of states, foreign government officials, and their relatives. The Subcommittee presented evidence of the Bank’s poor compliance with the Patriot Act provisions, using two case histories.

The first case history found that Riggs Bank had opened over 60 accounts for the government of Equatorial Guinea (EG), the EG President Teodoro Nguema Obiang Mbagasa, senior EG officials, and their relatives; created offshore corporations and opened accounts in the names of those offshore corporations for the President and his sons; accepted millions of dollars in cash deposits from the President, his wife, and other EG officials; and facilitated numerous suspect transactions involving millions of dollars without alerting law enforcement. The second

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<sup>7</sup> “Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities,” U.S. Senate Permanent Subcommittee on Investigations, S.Hrg. 106-428, (Nov. 9 and 10, 1999)(case histories involved Raul Salinas, brother to the President of Mexico; Omar Bongo, President of Gabon; Ali Zadari, husband to the Prime Minister of Pakistan; and two sons of Sani Abacha, then President of Nigeria).

<sup>8</sup> See Section 315 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 18 USC §1956(c)(7)(B)(iv)(adds as a predicate offense for a money laundering prosecution “bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official”).

<sup>9</sup> See Section 312 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 31 USC § 5318(i).

<sup>10</sup> See Section 352 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 31 USC § 5318(h).

<sup>11</sup> See Section 326 of the Patriot Act, P.L. 107-56 (Oct. 26, 2001), codified at 18 USC § 5318(l).

<sup>12</sup> See, e.g., See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).); Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Requirements for ‘Persons Involved in Real Estate Closings and Settlements,’ 68 FR 17569 (April 10, 2003).

<sup>13</sup> “Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act,” U.S. Senate Permanent Subcommittee on Investigations, S.Hrg. 108-633 (July 15, 2004).

case history showed that Riggs Bank had secretly opened accounts for the former President of Chile, Augusto Pinochet, created offshore corporations for him, accepted about \$8 million in suspect deposits, and secretly couriered millions of dollars in cashiers checks to him in Chile. In 2005, a supplemental report by the Subcommittee showed that Mr. Pinochet and his family members had opened a secret network of over 125 accounts under a variety of names at financial institutions operating in the United States.<sup>14</sup>

The investigation also determined that U.S. bank regulators, including the Office of the Comptroller of the Currency and the Federal Reserve, had identified serious deficiencies in Riggs' AML procedures, instructed Riggs to improve, but then took no supervisory action when Riggs failed to do so. The investigation showed that the supervisory failures at Riggs were part of a larger pattern of lax AML oversight. In response, beginning in 2005, U.S. bank regulators strengthened their AML oversight efforts and initiated a number of enforcement actions to compel stronger AML programs at U.S. financial institutions.

In 2005, Riggs Bank paid a \$16 million criminal fine and a \$25 million civil fine for failing to report suspicious activities to law enforcement and to correct deficiencies in its AML program.<sup>15</sup> The owners of the bank also paid a \$5 million fine to a Spanish court for failing to observe a court-ordered freeze on assets related to Augusto Pinochet. Later that same year, PNC purchased the bank, and the Riggs name disappeared from U.S. banking.<sup>16</sup>

The Subcommittee's past work and the findings in this Report should be seen in the context, not only of U.S. efforts to combat corruption, but also of the international community's increasing efforts to prevent, detect, and stop corruption. Some highlights of those efforts include the following.

**FATF Anti-Corruption Recommendations.** One key source of international efforts to combat corruption dates back to the 1989 formation of the Financial Action Task Force on Money Laundering ("FATF"), which is the leading international body opposing money laundering. Since its establishment, FATF has focused on exposing money laundering and terrorist financing threats, setting international standards to meet those threats, and conducting peer reviews to encourage compliance with its standards. About 170 jurisdictions have pledged to comply with FATF standards. In 2003, FATF strengthened its longstanding 40 Recommendations to combat money laundering, and issued 9 Special Recommendations to combat terrorist financing.<sup>17</sup> The FATF 40+9 Recommendations include provisions to combat the laundering of corruption proceeds, including Recommendation No. 6 which directs FATF member countries to require their financial institutions to screen clients to identify "Politically Exposed Persons" (PEPs) – defined as individuals entrusted with prominent public functions, their relatives, and close associates -- "take reasonable measures to establish the source of wealth and the source of funds" in PEP transactions, and "conduct enhanced ongoing monitoring of the business relationship."

<sup>14</sup> "Supplemental Staff Report on U.S. Accounts Used by Augusto Pinochet," U.S. Senate Permanent Subcommittee on Investigations, S.Prt. 109-25, (March 16, 2005).

<sup>15</sup> *U.S. v. Riggs Bank*, CR 05-35 (RMU), 2005; *In Re Riggs Bank*, Case 2005-1, May 13, 2004.

<sup>16</sup> See, e.g., Associated Press, "Final Chapter Nears in Riggs Bank Drama," March 29, 2005.

<sup>17</sup> [http://www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1.00.html](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1.00.html).

**1997 OECD Anti-Bribery Convention.** Another major development was the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which obligates its signatories to criminalize the bribery of foreign officials.<sup>18</sup> Prior to this convention, payments made to foreign officials to obtain contracts or other goods or services were not always viewed as crimes; some countries even viewed such payments as tax deductible business expenses.<sup>19</sup> The OECD Convention rejected that approach and instead followed the lead of the U.S. Foreign Corrupt Payments Act in outlawing such payments as bribes. To comply with the Anti-Bribery Convention's requirements, signatories must enact domestic laws making the payment of bribes to foreign officials a criminal offense. The OECD concentrated at first on encouraging its member countries to enact those domestic laws. In recent years, the focus of the Anti-Bribery Convention has shifted to encouraging countries to enforce the laws now on the books.<sup>20</sup>

**2001 Basel Directive.** In 2001, the Basel Committee on Banking Supervision, an international body of banking supervisors that formulates banking policy and guidance, brought the corruption issue to the attention of banks worldwide when it issued a statement on "customer due diligence." That statement included strong language on the need for banks to identify PEPs and avoid the acceptance of corrupt proceeds:

"Accepting and managing funds from corrupt PEPs will severely damage the bank's own reputation and can undermine public confidence in the ethical standards of an entire financial centre, since such cases usually receive extensive media attention and strong political reaction. ... [I]t is clearly undesirable, unethical and incompatible with the fit and proper conduct of banking operations to accept or maintain a business relationship if the bank knows or must assume that the funds derive from corruption or misuse of public assets. There is a compelling need for a bank considering a relationship with a person whom it suspects of being a PEP to identify that person fully, as well as people and companies that are clearly related to him/her."<sup>21</sup>

**2003 UN Convention Against Corruption.** Still another key development was the 2003 United Nations Convention Against Corruption (UNCAC). Currently, over 140 countries have signed the UNCAC, which entered into force in 2005.<sup>22</sup> It requires signatories to criminalize a wide range of corrupt acts, including not only bribery and embezzlement, but also influence peddling and money laundering. Among other provisions, the UNCAC directs signatories to require their banks "to verify the identity of customers, to take reasonable steps to determine the identity of beneficial ownership of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and associates."

<sup>18</sup> See OECD website, [http://www.oecd.org/document/20/0,3343,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/20/0,3343,en_2649_34859_2017813_1_1_1_1,00.html).

<sup>19</sup> See, e.g., [http://www.oecdobserver.org/news/fullstory.php/aid/245/Writing\\_off\\_tax\\_deductibility\\_.html](http://www.oecdobserver.org/news/fullstory.php/aid/245/Writing_off_tax_deductibility_.html).

<sup>20</sup> In June 2009, Transparency International found that only Germany, Norway, Switzerland, and the United States were adequately enforcing anti-bribery laws. See [http://www.transparency.org/news\\_room/latest\\_news/press\\_releases/2009/2009\\_06\\_23\\_2009\\_oecd\\_progress\\_report](http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_06_23_2009_oecd_progress_report). In one highly visible case, in 2006, the U.K. Serious Fraud Office scuttled an investigation into alleged bribe payments made by a large company, BAE, to Saudi Arabian officials to secure a large arms contract. <http://www.oecd.org/dataoecd/43/13/38962457.pdf>.

<sup>21</sup> Basel Committee on Banking Supervision, "Customer Due Diligence for Banks," (Bank for International Settlements, October 2001), paragraphs 42-43.

<sup>22</sup> [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)



In addition, UNCAC strengthened international anti-corruption efforts by requiring signatories to provide mutual legal assistance to extradite and prosecute offenders, including by gathering and providing evidence to the prosecuting country. UNCAC also required signatories to support the tracing, freezing, and seizure of illicit funds, placing a special focus on recovery of assets stolen by corrupt officials. UNCAC was further strengthened at a recent conference in Doha, when the signatories agreed to undergo a peer review process to evaluate their compliance with its provisions.

**StAR Initiative and 2009 PEP Study.** Still another major anti-corruption advance occurred in 2007, when the World Bank and the United Nations Office on Drugs and Crime (UNODC) launched the Stolen Asset Recovery Initiative (StAR). StAR's key mission is to help developing countries recover funds lost due to corruption. On its website, it states: "StAR's objective is to reduce barriers to asset recovery and thereby encourage and facilitate more systematic and timely return of stolen assets."<sup>23</sup> To accomplish this objective, StAR works with countries around the world to build national capacity to detect and respond to corruption, finances training, develops "how to" guides and information systems, and assists with the preparation of reports, legal research, financial analyses, and mutual legal assistance requests.

In November 2009, the StAR Initiative trained a spotlight on PEP issues by releasing a study examining how banks handle PEP accounts and transactions.<sup>24</sup> The report concluded: "The picture today is of an overall failure of effective implementation of international PEP standards" and "surprisingly low compliance" with FATF requirements on PEPs.<sup>25</sup> The report identified a number of problems, including a lack of political will to address PEP issues, the absence of enforceable legal and regulatory frameworks to address PEP issues, limited due diligence requirements, inadequate PEP databases, and use of associates, intermediaries, and legal entities to hide PEP involvement. To "prevent corrupt PEPs from abusing domestic and international financial systems to launder the proceeds of corruption," the report recommends that banks strengthen PEP identification systems and use regulator-approved PEP databases; eliminate artificial limits on how long an individual can be considered a PEP; obtain written beneficial ownership information for each account to detect PEPs using third parties to hide their activities; request public officials to provide any asset and income disclosure forms filed with their government authorities; and conduct at least annual reviews of PEP accounts to get a complete view of the relationship and identify any suspicious transactions.

**G-8 and G-20 Anti-Corruption Efforts.** In addition to the FATF, Basel, OECD, UN, and World Bank efforts, the G-8 and G-20 groups of countries have also undertaken anti-corruption efforts. In 2003, for example, at the Evian Summit, the G-8 group of countries released an action plan entitled, "Fighting Corruption and Improving Transparency."<sup>26</sup> This statement laid out concrete steps aimed at fighting corruption, such as conditioning budgetary support and trade agreements on tackling corruption, encouraging participation in fiscal

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<sup>23</sup> [www.worldbank.org/star](http://www.worldbank.org/star).

<sup>24</sup> The World Bank StAR Initiative, "Politically Exposed Persons: A Policy Paper on Strengthening Preventative Measures" (November 2009), [www.worldbank.org/star](http://www.worldbank.org/star).

<sup>25</sup> *Id.* at XV.

<sup>26</sup> See [http://www.g8.fr/evian/english/navigation/2003\\_g8\\_summit/summit\\_documents/fighting\\_corruption\\_and\\_improving\\_transparency\\_-\\_a\\_g8\\_action\\_plan.html](http://www.g8.fr/evian/english/navigation/2003_g8_summit/summit_documents/fighting_corruption_and_improving_transparency_-_a_g8_action_plan.html).

transparency programs, and passing domestic laws aimed at requiring financial institutions to conduct adequate due diligence to halt suspect transactions. It also stated that the G-8 countries supported requiring financial institutions to establish “procedures and controls to conduct enhanced due diligence on accounts of ‘politically exposed persons,’ and thereby to detect and report transactions that may involve proceeds of foreign official corruption.”<sup>27</sup>

More recently, in March 2009, the G-20 group of nations called for stronger enforcement of anti-corruption measures involving PEPs, in a Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets.<sup>28</sup> In September 2009 at the Pittsburgh summit, the G20 Heads of State issued an official statement asking FATF “to help detect and deter the proceeds of corruption by prioritizing work to strengthen standards on customer due diligence, beneficial ownership, and transparency.”<sup>29</sup> The Heads of State also confirmed their commitment to enforcement of transnational anti-bribery laws, ratification of the UN Convention Against Corruption, and adoption of a mechanism to measure compliance with that Convention.

**2008 Wolfsberg PEP Guidelines.** The financial industry has also contributed to anti-corruption efforts. About ten years ago, eleven of the world’s largest financial institutions formed the Wolfsberg Group as a voluntary private association dedicated to combating money laundering.<sup>30</sup> In May 2008, as part of that effort, the Wolfsberg Group updated its 2003 guidelines on handling PEPs and applied them to all PEP accounts rather than just private banking accounts.<sup>31</sup> The guidelines discuss identification of PEPs, and use of relatives, third parties, and legal entities to disguise PEP activities. It recommends that banks ask potential clients whether they are PEPs, screen clients against PEP databases, and establish a procedure for senior bank officials’ approval of PEP clients. The guidelines also recommend enhanced monitoring of accounts controlled by PEPs, and training employees to increase awareness of the associated risks. The guidelines caution that existing customers may become PEPs in the future, and recommend enhanced due diligence when a PEP controls a corporation that has or is attempting to establish a relationship with the bank.

**Public Interest Organizations.** Many other public interest organizations are also active in the battle against corruption. Transparency International, for example, works with local anti-corruption groups around the world and publishes an annual Corruption Perceptions Index that focuses attention on corruption problems. Global Witness investigates and exposes corruption problems in specific countries. The Extractive Industries Transparency Initiative (EITI), launched in 2002, seeks to curb corruption primarily in the oil, gas, and mining sectors. EITI requires corporations involved in extractive industries to disclose royalty and other payments made to government officials, and then requires the recipient governments to disclose the

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<sup>27</sup> Id. at paragraph 4.2.

<sup>28</sup> G20 Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets (SG2), March 27, 2009, at paragraph 41.

<sup>29</sup> G20, “Leaders’ Statement, The Pittsburgh Summit,” (September 24-25, 2009), at paragraph 42, <http://www.pittsburghsummit.gov/mediacenter/129639.htm>.

<sup>30</sup> The participating banks are Banco Santander, Bank of Tokyo-Mitsubishi, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, J.P. Morgan Chase, Societe Generale, and UBS.

<sup>31</sup> See “Wolfsberg Frequently Asked Questions (‘FAQs’) on Politically Exposed Persons (‘PEPs’),” <http://www.wolfsberg-principles.com/pdf/PEP-FAQ-052008.pdf>.

revenues produced from those sectors, with the aim of increasing transparency and reducing corruption. Publish What You Pay (PWYP) is another group aimed at holding governments accountable for revenues derived from the oil, gas, and mining sectors. Active in nearly 70 countries, PWYP urges governments to disclose not just company payments and government revenues, but also license agreements and contracts, while supporting a variety of transparency and anti-corruption initiatives. Still other groups, such as the Global Financial Integrity Program, the Tax Justice Network, and Sherpa contribute to anti-corruption efforts in a variety of ways, encouraging academic research, building anti-corruption capabilities, filing legal actions, and adding to the visibility and urgency of the issue.

This Report seeks to contribute to U.S. and international anti-corruption efforts by exposing some of the tactics being used by PEPs to bring suspect funds into the United States and offering recommendations to strengthen U.S. AML and PEP controls. The Subcommittee's investigation shows that, although U.S. financial institutions have become more vigilant over time and less willing to harbor suspect funds, PEPs are still often able to bring millions of dollars into the United States without having to answer questions about the source of their funds. Some of these PEPs escape detection for years at a time due to inadequate screening of potential PEP clients by banks, by using routine bank accounts not subject to enhanced monitoring, or by finding banks with lax due diligence procedures. Other PEPs conceal their transactions by acting through third parties, using shell company, attorney-client, law office, escrow agent, trust, and other accounts to move their funds into the U.S. financial system. Still others exploit weak controls in U.S. wire transfer systems to bypass AML or PEP scrutiny. The Report's four case studies present actual examples of how some foreign officials, their relatives, or close associates have persuaded U.S. lawyers to help them circumvent AML and PEP safeguards at U.S. banks, convinced U.S. real estate and escrow agents to handle suspect funds, used a U.S. lobbyist's bank account to distribute offshore funds, and even convinced U.S. university officials to accept millions of dollars from unknown offshore corporations.

In addition to exposing some of these tactics, the Report offers a range of recommendations to stop the abuses. They include tightening bank procedures for screening PEP clients, requiring written beneficial ownership forms for accounts to detect PEP involvement, and conducting annual reviews of PEP accounts to identify suspicious transactions; eliminating existing AML exemptions for real estate and escrow agents handling millions of dollars in realty and vehicle transactions; cracking down on the misuse of attorney-client and law office accounts to carry out PEP transactions outside of bank AML and PEP controls; urging professional organizations to issue guidance to their members against facilitating suspect transactions for PEPs; calling on the United States to make better use of its visa and immigration systems to deny entry to corrupt foreign officials; and supporting the ongoing international effort to strengthen the anti-corruption and PEP provisions in FATF's 40+9 Recommendations.

Senior foreign officials engaged in large-scale corruption can have a disproportionate impact on a country, a region, even a generation of citizens victimized by a corrupt society. They can export problems by spreading corruption internationally, undermining the rule of law, encouraging crime, and even opening the door to terrorism. In some cases, those engaged in large-scale corruption have sought the services provided by a modern financial system that can store, protect, invest, and transfer their funds efficiently. To keep that corruption out of the

United States, it is time to build stronger legal barriers, not only in our banks, but in a range of U.S. professions.

### **III. OBIANG CASE STUDY: USING U.S. LAWYERS, REAL ESTATE AND ESCROW AGENTS, AND WIRE TRANSFER SYSTEMS TO BRING SUSPECT FUNDS INTO THE UNITED STATES**

Teodoro Nguema Obiang Mangue is the 40-year-old son of Teodoro Nguema Obiang Mbasogo, the President of Equatorial Guinea (“EG”). For more than ten years, he has held the post of EG Minister of Agriculture and Forestry, and has been seen as a likely successor to the EG Presidency. Mr. Obiang and his father have also long been suspected of accumulating substantial wealth from acts of corruption. This case study examines how, from 2004 to 2008, Mr. Obiang employed the services of a variety of U.S. professionals, including attorneys, real estate and escrow agents, insurance brokers, and others, to bring more than \$100 million in suspect funds into the United States to advance his interests. At times, the U.S. professionals he employed acted openly on his behalf; at other times, they hid his involvement in transactions, especially from U.S. banks on guard against handling suspect funds. This case history details how Mr. Obiang employed these U.S. professionals to help him move money through at least six large and small U.S. banks, often by using attorney-client, escrow, or shell company accounts or by using wire transfer systems unequipped to detect or block incoming wire transfers from Obiang accounts abroad.

This case history demonstrates, for example, how Mr. Obiang employed two U.S. attorneys, Michael Berger and George Nagler, to help him bring millions of dollars in suspect funds from Equatorial Guinea into the United States, carry out certain transactions, and pay his bills and expenses. These attorneys, each of whom operated independently of the other, formed U.S. shell companies under California law for Mr. Obiang’s use, including Beautiful Vision Inc., Unlimited Horizon Inc., Sweetwater Malibu LLC, Sweetwater Management Inc., and Sweet Pink Inc. Each attorney helped open U.S. bank accounts for those shell corporations and helped use some of those corporate accounts to pay Mr. Obiang’s bills and expenses. In addition, each allowed his own attorney-client and law office accounts to serve as conduits for Obiang funds, accepting millions of dollars in wire transfers from Equatorial Guinea, moving those funds into other Obiang-related accounts, and using the funds to pay Obiang-related bills and expenses. Each attorney also worked with other U.S. professionals, including bankers, property managers, insurance brokers, and real estate and escrow agents, to advance Mr. Obiang’s interests.

In addition, Mr. Obiang employed two U.S. real estate agents, Neil Baddin and John Kerrigan, to buy and sell high-end California real estate, including a 2006 purchase of a \$30 million residence in Malibu and 2004 sale of a \$7.7 million residence near Los Angeles. A U.S. escrow company, First American Trust, helped Mr. Obiang purchase the Malibu property without using a mortgage, accepting \$30 million in wire transfers from Equatorial Guinea to complete the transaction. Another U.S. escrow company, Insured Aircraft Title Services, Inc. (IATS), facilitated Mr. Obiang’s purchase of a Gulfstream jet, again without a mortgage, by accepting \$38.5 million in wire transfers from Equatorial Guinea and forwarding those funds through U.S. bank accounts for the seller of the aircraft. IATS agreed to handle the Gulfstream transaction after another U.S. escrow company, McAfee & Taft, had declined, as an anti-money laundering precaution, to complete the purchase without information on the source of the \$38.5 million.

Documents also show that, throughout the four years examined by the Subcommittee, Mr. Obiang exploited lax anti-money laundering (“AML”) and PEP controls at U.S. financial institutions. Documents reviewed by the Subcommittee show, for example, that Mr. Obiang surreptitiously used attorney-client, law office, shell company, and other third party accounts to obtain access to the U.S. financial system, even at banks that had previously closed his accounts and declined to do business with him. In addition, from 2004 to 2008, he brought over \$100 million into the United States using wire transfer systems at just two U.S. financial institutions, Wachovia Bank and Citibank. Neither system had been programmed to detect or block wire transfers bearing his name. In 2009, Wachovia took steps for the first time to block wire transfers with Mr. Obiang’s name, while Citibank declined to take the same action due to projections that identifying, freezing, and investigating these wire transfers would generate too much work for its anti-money laundering staff.

Many of the U.S. professionals examined in this case history were under no legal obligation to take anti-money laundering precautions when dealing with a PEP, to evaluate the source of funds supplied by a PEP, or to refrain from handling suspect funds involving a PEP. For example, attorneys are currently not required by U.S. anti-money laundering (AML) statutes to establish AML controls to prevent or detect money laundering, and no U.S. professional rules or voluntary AML guidelines require attorneys to perform due diligence before accepting a client, evaluate the source of client funds, or refrain from using their attorney-client or law office accounts to conceal PEP transactions from the financial institution providing the accounts.<sup>32</sup>

In 2008, for the first time, the Financial Action Task Force on Money Laundering (“FATF”) issued international guidance for members of the legal profession to address many AML issues.<sup>33</sup> The FATF guidance recommends, for example, that attorneys perform due diligence before accepting clients, evaluate the risk posed by particular clients, analyze the

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<sup>32</sup> Attorneys are not subject to the major U.S. AML laws that require banks and other entities to establish AML programs to prevent, detect, and report suspicious transactions to law enforcement. See, e.g., list of covered entities at 31 U.S.C. §5312(a)(2). The American Bar Association does not provide official guidance for U.S. attorneys on how to handle AML issues or establish AML programs, although discussions and work to develop such guidance have been underway since at least 2002. The American Bar Association’s existing Model Rules of Professional Conduct also do not explicitly address AML issues. See American Bar Association Model Rules of Professional Conduct, [http://www.abanet.org/cpr/mrpc/rule\\_1\\_15.html](http://www.abanet.org/cpr/mrpc/rule_1_15.html), (9/16/2009). For example, while the Model Rules require attorneys to track and safeguard client property held in attorney-client accounts, they do not address issues related to using an attorney-client account to conceal a client’s transactions or circumvent AML or PEP controls at a financial institution. The Model Rules do caution attorneys against engaging in criminal or fraudulent conduct. See, e.g., Model Rule 1.2(d) (an attorney “shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent”); Rule 8.4 (it is professional misconduct for an attorney to engage in conduct “involving dishonesty, fraud, deceit or misrepresentation”). Attorneys are also subject to U.S. criminal prohibitions against participating in a money laundering offense, see, e.g., 18 U.S.C. §§ 1956, 1957; and doing business with terrorists, narcotics traffickers, or other criminals identified on lists compiled by the Office of Foreign Assets Control, see OFAC lists, U.S. Dept. of Treasury, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>. In addition, attorneys engaged in a business are required to file reports, Form 8300, with the Internal Revenue Service if they receive cash payments of \$10,000 or more. (“Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300.”) See <http://www.irs.gov/pub/irs-pdf/f8300.pdf>. See also *United States v. Moffitt, Zwerling & Kemler*, 83 F.3d 660 (4<sup>th</sup> Cir. 1996)(law firm that did not examine the source of its fees can be required to forfeit them as proceeds of narcotics trafficking).

<sup>33</sup> See FATF, “RBA Guidance for Legal Professionals,” October 23, 2008.

source of client funds, and monitor client activity for suspicious transactions. Paragraph 109 of the FATF guidance recommends that attorneys treat PEPs as high risk clients requiring enhanced due diligence and monitoring. In addition, Paragraph 110 recommends that attorneys treat certain services as high risk, including services in which attorneys “handle the receipt and transmission of funds through accounts they actually control.” This guidance, however, was issued after most of the events reviewed in this Report and was never intended to be legally binding on U.S. attorneys.

With respect to real estate and escrow agents, since 1988, U.S. AML laws have identified “persons involved with real estate closings and settlements” and “business[es] engaged in vehicle sales, including automobile, airplane, and boat sales” as vulnerable to money laundering abuses and in need of AML safeguards, due to the large amounts of money involved in their transactions.<sup>34</sup> In 2001, after the 9-11 terrorist attack and as part of its effort to strengthen U.S. AML safeguards, the Patriot Act explicitly required such businesses to establish AML programs, unless exempted by the Treasury Department.<sup>35</sup> Six months later, however, in 2002, the Treasury Department “temporarily” exempted both categories of businesses from having to establish AML programs.<sup>36</sup> In 2003, Treasury solicited comments to develop a proposed AML rule for real estate businesses, but took no further action.<sup>37</sup> Today, eight years after enactment of the Patriot Act, the Treasury Department has yet to propose or finalize a rule requiring businesses engaged in either real estate closings or vehicle sales, including aircraft sales, to establish AML safeguards. In addition, none of the relevant business sectors has developed voluntary AML guidance for their members.<sup>38</sup>

In contrast, since 2001, U.S. financial institutions have been required by law to set up AML programs, with AML policies, procedures, and controls; a compliance officer; employee training; and an internal audit function to ensure compliance.<sup>39</sup> Their AML programs typically require personnel to know their customers, evaluate the source of client funds, identify high risk clients, apply enhanced monitoring to high risk clients, and report suspicious transactions to law enforcement. Despite these requirements, some of the banks handling Obiang-related accounts

<sup>34</sup> See 31 USC § 5312(a)(2)(T) and (U).

<sup>35</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

<sup>36</sup> See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

<sup>37</sup> See Advance Notice of Proposed Rulemaking on Anti-Money Laundering Program Requirements for ‘Persons Involved in Real Estate Closings and Settlements,’ 68 FR 17569 (April 10, 2003), [http://www.fincen.gov/statutes\\_regs/frn/pdf/352\\_real\\_estate\\_04102003.pdf](http://www.fincen.gov/statutes_regs/frn/pdf/352_real_estate_04102003.pdf).

<sup>38</sup> The National Association of Realtors, for example, has developed a detailed Code of Ethics for real estate agents, but none of the Code provisions addresses AML concerns. See 2010 Code of Ethics and Standards of Practice of the National Association of Realtors, [www.realtor.org](http://www.realtor.org). The Association has instead developed educational materials for its members on money laundering and terrorist financing, without official guidance on how to address the issues. See, e.g., “The Basics, Money Laundering and Terrorist Financing,” [http://www.realtor.org/government\\_affairs/gapublic/business\\_issues\\_money\\_laundering](http://www.realtor.org/government_affairs/gapublic/business_issues_money_laundering); Subcommittee interview with National Association of Realtors, January 13, 2010. Real estate and escrow agents, like attorneys, are subject to U.S. criminal prohibitions against participating in a money laundering offense, see, e.g., 18 U.S.C. §§ 1956, 1957, and doing business with terrorists, narcotics traffickers, or other criminals identified on lists compiled by the Office of Foreign Assets Control, <http://www.ustreas.gov/offices/enforcement/ofac/sdn/>. Real estate and escrow agents are also required to file Form 8300 reports with the Internal Revenue Service if they receive cash payments of \$10,000 or more.

<sup>39</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

did not designate the accounts as high risk and allowed them to receive suspect funds from Equatorial Guinea.

## A. Background

**Equatorial Guinea.** Equatorial Guinea is a small country of about 600,000 persons located on the west coast of Africa between the countries of Cameroon and Gabon.<sup>40</sup> Its official languages are Spanish and French.<sup>41</sup> Originally a Portuguese colony, Equatorial Guinea was ceded to Spain in 1778, which granted it independence 190 years later in 1968.<sup>42</sup>

Equatorial Guinea (EG) possesses substantial natural resources. Following the discovery of oil in 1996, Equatorial Guinea has become the third largest oil producer in sub-Saharan Africa,<sup>43</sup> generating about 500,000 barrels per day by 2007.<sup>44</sup> In 2007 alone, Equatorial Guinea reportedly sold about 1.8 billion barrels of oil for \$4.3 billion, which comprised about 90 percent of the EG economy.<sup>45</sup> U.S. oil companies help produce roughly 75 percent of Equatorial Guinea's oil,<sup>46</sup> leading to the institution of direct airline flights between Houston, Texas and the EG capital city, Malabo.<sup>47</sup> In addition to oil, Equatorial Guinea has significant timber resources, which provides its second major export commodity.

EG oil and timber resources have done little, however, to raise the living standards of the EG population. Although the country ranks in the top fifth of nations in gross domestic product per capita due largely due to its oil revenues,<sup>48</sup> poverty is widespread. Equatorial Guinea ranks, for example, 115th of 179 nations on the United Nation's Human Development Index.<sup>49</sup> EG citizens have a low life expectancy and suffer from the 17<sup>th</sup> highest infant mortality rate in the world.<sup>50</sup> The World Bank has determined that, between 1995 and 2002, roughly 39 percent of

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<sup>40</sup>2008 World Fact Book, U.S. Central Intelligence Agency.

<sup>41</sup> Id.

<sup>42</sup> U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>; 2008 World Fact Book, U.S. Central Intelligence Agency.

<sup>43</sup>The World Bank, Equatorial Guinea, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EOGUINEAEXTN/0,,menuPK:352197~pagePK:141132~piPK:141109~theSitePK:352171,00.html>.

<sup>44</sup> U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>.

<sup>45</sup> "Equatorial Guinea; Poverty Rife in Africa's Kuwait," Africa News (10/6/2008), citing Bank of Central African States. <http://allafrica.com/stories/200810061482.html>.

<sup>46</sup> "Equatorial Guinea; Poverty Rife in Africa's Kuwait," Africa News (10/6/2008). <http://allafrica.com/stories/200810061482.html>.

<sup>47</sup> The Independent, "A Murderous Dictator, His Rapper Son and a \$700M-a-Year Oil Boom," March 16, 2004. <http://www.independent.co.uk/news/world/africa/a-murderous-dictator-his-rapper-son-and-a-700mayear-oil-boom-566494.html>.

<sup>48</sup> 2008 World Fact Book, U.S. Central Intelligence Agency.

<sup>49</sup> The Human Development Index is a product of the United Nations Development Programme (UNDP). It "provides a composite measure of three dimensions of human development: living a long and healthy life (measured by life expectancy), being educated (measured by adult literacy and enrolment at the primary, secondary and tertiary level) and having a decent standard of living (measured by purchasing power parity, PPP, income)." See: [http://hdrstats.undp.org/en/countries/country\\_fact\\_sheets/cty\\_fs\\_GNQ.html](http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_GNQ.html).

<sup>50</sup> 2008 World Fact Book, U.S. Central Intelligence Agency; See also U.N. Human Development Reports, <http://hdr.undp.org/en/statistics/>.



EG children under the age of five were malnourished, and only 44 percent of the population had access to safe drinking water.<sup>51</sup>

Equatorial Guinea has had only two presidents since gaining independence in 1968. Francisco Macias Nguema was elected the first EG President in 1968. By 1972, he had taken the title of “President-for-Life,”<sup>52</sup> and during ten years of autocratic rule, saw the EG population contract by one-third. In 1979, his nephew, Teodoro Obiang Nguena Mbasogo, led a successful coup, executed his uncle, and assumed the presidency.

Over the next 30 years, President Obiang was declared the winner of five successive elections to seven-year terms, in 1982, 1989, 1996, 2002, and 2009.<sup>53</sup> International observers have criticized the fairness of those elections, questioning vote totals that, for example, in 1996 and 2002, showed President Obiang winning 98% and 97% of the vote, respectively.<sup>54</sup> His vote total in 2009 was announced as 95%.<sup>55</sup> Critics have also condemned his administration for widespread human rights abuses and suppression of political opposition.<sup>56</sup> In its 2008 Human Rights Report, the U.S. State Department noted improvements from past years, but also criticized a host of EG human rights abuses, including “limited ability of citizens to change their government; increased reports of unlawful killings by security forces; government-sanctioned kidnappings; systematic torture of prisoners and detainees by security forces; life threatening conditions in prisons and detention facilities; impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents with limited due process; judicial corruption and lack of due process; restrictions on the right to privacy; restrictions on freedom of speech and of the press ... [and] government corruption.”<sup>57</sup>

Transparency International’s Corruptions Perception Index has consistently ranked Equatorial Guinea as having one of the most corrupt images in the world, with the 2008 index ranking it 171 out of the 180 countries evaluated.<sup>58</sup> During the same time period, President Obiang’s personal wealth appears to have increased. In 2006, President Obiang was named by Forbes as one of the world’s ten wealthiest rulers, with an estimated personal wealth of \$600 million.<sup>59</sup> In 2008, Parade Magazine named President Obiang as one of the world’s worst dictators.<sup>60</sup>

<sup>51</sup>The World Bank, Equatorial Guinea, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/AFRICAEXT/EOGUINEAEXTN/0..menuPK:352197~pagePK:141132~piPK:141109~theSitePK:352171,00.html>.

<sup>52</sup> U.S. Department of State, Background Notes: Equatorial Guinea, <http://www.state.gov/r/pa/ei/bgn/7221.htm>.

<sup>53</sup> Id.

<sup>54</sup> Id.

<sup>55</sup> See 12/2/09 statement issued by the EG Ambassador to the United States, Purificacion Angue Ondo, “Republic of Equatorial Guinea Releases Final Presidential Election Results,” available on PRNewsire-USNewsWire.

<sup>56</sup> See, e.g., CBS News: 60 Minutes, “Kuwait of Africa,” July 18, 2004.

<http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.

<sup>57</sup> U.S. Department of State, 2008 Human Rights Report: Equatorial Guinea, February 25, 2009.

<sup>58</sup> Transparency International, “Transparency International 2008 Corruption Perceptions Index.”

[http://www.transparency.org/news\\_room/in\\_focus/2008/cpi2008/cpi\\_2008\\_table](http://www.transparency.org/news_room/in_focus/2008/cpi2008/cpi_2008_table).

<sup>59</sup> See Forbes.com, “Fortunes of Kings, Queens, and Dictators,” May 5, 2006, see online at

[http://www.forbes.com/2006/05/04/rich-kings-dictators\\_cz\\_1k\\_0504royals.html](http://www.forbes.com/2006/05/04/rich-kings-dictators_cz_1k_0504royals.html).

<sup>60</sup> Parade Magazine, “The World’s Worst Dictators,” 2008 <http://www.parade.com/dictators/2008/index.jsp>.

**Teodorin Obiang.** Teodoro Nguema Obiang Mangue, nicknamed “Teodorin,” is the eldest son of President Obiang and First Lady Constançia Mangue Nsue Okomo.<sup>61</sup> For at least ten years, he has held the post of EG Minister of Agriculture and Forestry. He reportedly collects an official government salary of approximately \$5,000 per month or \$60,000 per year.<sup>62</sup> Despite this modest salary, Mr. Obiang is known to live a lavish lifestyle with multiple real estate holdings, automobiles, and extravagant spending sprees.<sup>63</sup>

In 2004, as part of an investigation into how Riggs Bank was implementing Patriot Act provisions to curb money laundering and foreign corruption, the Subcommittee released documents related to 60 Riggs Bank accounts that had been opened by Equatorial Guinea, EG officials, and their relatives, including Teodorin Obiang. One Riggs Bank analysis evaluated Mr. Obiang’s business activities, noting that in addition to his government position, he was the sole owner of a key EG forestry company, Grupo Sofana, with exclusive rights to export EG timber, and controlled an affiliated EG timber company, Somagui Forestal.<sup>64</sup> The Riggs documentation also showed that, from 1997 through 2003, Mr. Obiang was associated with over a dozen U.S. bank accounts which, at times, received millions of dollars in deposits. The 2004 report released by the Subcommittee summarized these accounts as follows.

“While the E.G. President’s eldest son, Teodoro Nguema Obiang, the E.G. Minister of Forestry, did not have any personal accounts at Riggs, he was the beneficial owner of three accounts opened in the name of companies he controlled. Two of these accounts were opened in the name of his California entertainment company, TNO Entertainment LLC. The first, Account No. 76-889-555, was opened in 2000 and closed in 2001, and

<sup>61</sup> The Scotsman, “Coup Plot Conviction Increases the Pressure on Mark Thatcher,” August 28, 2004. <http://news.scotsman.com/topstories/Coup-plot-conviction-increases-the.2559206.jp>.

<sup>62</sup> See African Development Information Service – People Record: Teodoro Nguema Obiang, [http://www.afdevinfo.com/htmlreports/peo/peo\\_8085.html](http://www.afdevinfo.com/htmlreports/peo/peo_8085.html).

<sup>63</sup> See, e.g., The Times Online, “Playboy Waits for His African Throne,” September 3, 2006, <http://www.timesonline.co.uk/tol/news/world/article626511.ece>; The Star, “African Oil Sheik Goes on South African Spending Spree,” July 20, 2005, page 1. Mr. Obiang’s well-publicized spending sprees include the following.

- According to press reports, on one weekend in 2005, Mr. Obiang purchased two Bentleys, a Lamborghini, and two multi-million dollar luxury houses in Cape Town, South Africa. [http://www.iol.co.za/index.php?set\\_id=1&click\\_id=86&art\\_id=vn20050720063046112C699596](http://www.iol.co.za/index.php?set_id=1&click_id=86&art_id=vn20050720063046112C699596); Times Online “President’s Playboy Son Splashes Out £1M in Luxury Car Spree,” July 21, 2005. <http://www.timesonline.co.uk/tol/news/world/article546244.ece>; The Star, “Playboy’s High Life: Dictator’s Son Spends Millions on Cars, Houses, and Champagne in SA,” July 20, 2005. <http://www.thestar.co.za/index.php?fArticleId=2631945>.
- In 2003, Mr. Obiang was observed traveling around Paris in a Lamborghini and purchasing as many as 30 designer suits in one afternoon while being followed by French media. CBS News: 60 Minutes, “Kuwait of Africa,” July 18, 2004. <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.
- According to another press report, in 2006, Mr. Obiang spent nearly \$700,000 to rent Microsoft founder Paul Allen’s yacht “Tatoosh” for a Christmas cruise off St. Barts to entertain a former girlfriend. NY Daily News, “Has Eve’s Fling Brought Her a Despot of Gold,” February 20, 2006. [http://www.nydailynews.com/archives/gossip/2006/02/20/2006-02-20\\_has\\_eve\\_s\\_fling\\_brought\\_her\\_.html](http://www.nydailynews.com/archives/gossip/2006/02/20/2006-02-20_has_eve_s_fling_brought_her_.html).

<sup>64</sup> “Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act,” U.S. Senate Permanent Subcommittee on Investigations, July 15, 2004 (hereinafter “2004 Subcommittee Investigation into Riggs Bank”)

the funds were transferred to Account 76-923-450, which was opened in 2001 and remained open in early 2004. From 2001 to 2003, the second account had balances that fluctuated between about \$17,000 and \$11.6 million. The third account, Account No. 25-380-038, was opened in the name of Awake Ltd., a Bahamian offshore shell company that Riggs helped to establish. This money market account, opened in 2002, saw virtually no account activity.<sup>65</sup> ...

“The Subcommittee also identified two other sets of bank accounts associated with the President’s son, opened at JPMorgan Chase and Citigroup. At JPMorgan Chase, four accounts and three CDs were opened in the name of the President’s son, including a savings account and three checking accounts which together held about \$75,000 in 2003. All three CDs had matured in 2002, and at that time had an aggregate value of more than \$1.7 million. At Citigroup, the Subcommittee identified four accounts that had been opened in the name of the son’s company, TNO Entertainment. The earliest of these accounts was opened in 1997, and all four were closed in early 2000. They included a checking account, money market account, CitiGold account, and securities investment account. These accounts were apparently dormant at times, but in mid 1999, received deposits in a relatively short period totaling about \$11.8 million. After noting suspicious account activity, Citigroup closed these accounts in 2000. Riggs Bank apparently identified at least one additional set of accounts held by the E.G. President’s son at City National Bank of Beverly Hills, California.”<sup>66</sup>

Mr. Obiang has admitted in a number of settings that, in addition to his government post, he owns a number of companies. For example, in 2004, when a U.S. bank asked him to explain the source of funds for a substantial wire transfer, he sent an email explaining: “The wire transfer was from one of my companies in Equatorial Guinea. The funds that were transferred to me did not come from any illegal source. It was either from Somagui Forestal or Sofona.”<sup>67</sup> In a 2006 court proceeding examining ownership of two houses in South Africa, Mr. Obiang produced wire transfers showing that he had paid for the houses with funds from an EG account held by Socage. In a sworn and signed affidavit submitted to the court, he wrote: “One of the companies that I own is SOCIEDAD DE CARRETERAS DE GUINEA ECUATORIAL (“SOCAGE”), with a bank account at the CCEI BANK GE, in BATA, the commercial capital of the country.”<sup>68</sup>

Many of the transactions examined in this Report involve wire transfers sent by Somagui Forestal or Socage from bank accounts in Equatorial Guinea; a few involve funding transfers from accounts opened in the name of TNO Entertainment LLC, a California corporation that is associated with Mr. Obiang and was still active in 2009.<sup>69</sup>

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<sup>65</sup> 2004 Subcommittee Investigation into Riggs Bank at 159.

<sup>66</sup> Id. at 160.

<sup>67</sup> 9/30/04 Declaration of Teodoro Ngeuma Obiang, Obiang v. City National Bank, Case No. SC 083177, explaining the source of funds for a substantial wire transfer he had sent to the bank, CNB0004068.

<sup>68</sup> 8/8/06 Second Respondent’s Answering Affidavit, Maseve Investments 7 (PTY) Ltd. v. Equatorial Guinea, (High Court of South Africa (Cape Provincial Division), Case No. 1407/2006, at 13. (Emphasis in original.)

<sup>69</sup> “TNO” apparently stands for Teodoro Nguema Obiang. Mr. Obiang is also active in the media in Equatorial Guinea, apparently owning the only privately-held radio station, Radio Asonga, and serving as director of the state owned TV Asonga.

During the course of the investigation, Subcommittee staff has communicated with Mr. Obiang's attorneys, raising questions as to the source of his funds. Most recently, in December of 2009, the Subcommittee contacted Mr. Obiang and again offered an opportunity for him to provide information to the Subcommittee. The Embassy of Equatorial Guinea responded and noted that it had passed the Subcommittee's request along to Mr. Obiang. Subcommittee staff then met with Mr. Obiang's attorney who promised to provide information as to the source of Mr. Obiang's funds.

**Corruption Allegations.** Members of the Obiang family have long been suspected of misappropriating Equatorial Guinea's oil and timber wealth for personal gain.<sup>70</sup> In addition to allegations in the media, over the past five years several civil and criminal legal actions have raised corruption concerns involving President Obiang, his son, and other relatives.

In 2004, this Subcommittee charged that Riggs Bank in Washington, D.C. had opened more than 60 accounts and certificates of deposit for the EG government, EG officials, and their relatives and, when administering them, had "turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement." Documents released by the Subcommittee showed that the bank had opened multiple personal accounts for the EG President and his wife, helped establish two offshore corporations controlled by President Obiang, and over a three-year period from 2000 to 2002, had "facilitated nearly \$13 million in cash deposits into Riggs accounts controlled by the E.G. President and his wife."<sup>71</sup> The Subcommittee also released documents showing that about \$35 million had been withdrawn from the country's oil revenue accounts at Riggs Bank and wire transferred to accounts opened in the name of Apexside Trading Ltd. and Kalunga Co., offshore shell corporations associated with EG officials, including President Obiang.<sup>72</sup>

In 2006, a civil complaint was filed in the High Court of South Africa by a South African firm, Maseve Investments, which was attempting to collect on a debt that it claimed the EG government owed in connection with a contract to construct an EG airport. To collect the debt, the plaintiff attempted to seize two luxury Cape Town homes that were owned by Mr. Obiang, but which the plaintiff alleged had been purchased with EG government funds sent from an account at Riggs Bank.<sup>73</sup> Mr. Obiang filed a sworn affidavit in response, producing wire transfers showing that the houses had been purchased with funds from an EG account held in the name of a company he owned, Socage.<sup>74</sup> He stated in the affidavit:

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<sup>70</sup> See, e.g., Washington Post, "Oil Gives African Nation a Chance for Change: Despite Leader's Promises, Many Fear People of Equatorial Guinea Will Not Benefit From Windfall," May 13, 2001; CBS News: 60 Minutes, "Kuwait of Africa," July 18, 2004. <http://www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml>.

<sup>71</sup> 2004 Subcommittee Investigation into Riggs Bank at 129.

<sup>72</sup> Id. at 167.

<sup>73</sup> See Maseve Investments 7 (Pty) Ltd. v. Republic of Equatorial Guinea, (High Court of South Africa, Cape Provincial Division), Case No. 1407/2006. See also The Cape Times, "Equatorial Guinea playboy's Cape homes seized," February 16, 2006; The Guardian, "The tiny African State, the President's Playboy Son and the \$35M Malibu Mansion," November 10, 2006.

<sup>74</sup> 8/8/06 Affidavit of Teodoro Nguema Obiang, Second Respondent, Maseve Investments 7 (PTY) Ltd. v. Equatorial Guinea, (High Court of South Africa, Cape Provincial Division), Case No. 1407/2006.

“Cabinet ministers and public servants in Equatorial Guinea are by law allowed to own companies that, in consortium with a foreign company, can bid for government contracts and should the company be successful, then what percentage of the total cost of the contract the company gets, will depend on the terms negotiated between the parties. But in any event, it means that a cabinet minister ends up with a sizeable part of the contract price in his bank account.”<sup>75</sup>

The U.S. Department of Justice later characterized this statement as follows: “Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue.”<sup>76</sup>

In March 2007, three nonprofit anti-corruption organizations, Sherpa, Survie, and the Federation of the Congolese Diaspora, filed a legal complaint before the French Public Prosecutor alleging the ruling families of Equatorial Guinea, Gabon, Angola, Burkina Faso, and Congo owned millions of dollars worth of properties in France “that could not be the fruits of their official salaries ... but would have likely required the use of stolen public assets.”<sup>77</sup> The complaint attached articles and reports with alleged information about property and vehicles owned by the Heads of State and their relatives, including the Obiangs. According to a later legal pleading filed in the case, in June 2007, a police investigation was launched in response to the complaint which confirmed most of the allegations and uncovered additional luxury properties, vehicles, and bank accounts belonging to the cited Heads of State and their relatives.<sup>78</sup> The police allegedly confirmed, for example, that “Teodorin Obiang, son of the President of Equatorial Guinea, acquired at least 5 million Euros worth of luxury cars.”<sup>79</sup> In November 2007, however, the police investigation was halted by the Public Prosecutor.

On July 9, 2008, another nonprofit organization dedicated to combating corruption, Transparency International France (“TI France”), together with two citizens from Gabon and the Congo, re-filed the complaint before the French Public Prosecutor with the goal of asking an investigating judge to reopen the investigation.<sup>80</sup> On December 2, 2008, after the Public

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<sup>75</sup> Id. at 12.

<sup>76</sup> 9/4/07 memorandum from the U.S. Department of Justice to the Central Authority of France, MEW:SCR.PJR 182-21407, at 5-6, no bates number. See also The Financial Times, “Taking a Cut Acceptable, Says African Minister,” October 25, 2006. [http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick\\_check=1](http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick_check=1).

<sup>77</sup> Legal memorandum prepared by Sherpa & Transparency International France (“TI France”), Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1. This memorandum recounts the history of the anti-corruption case filed by the three organizations from 2007 to 2009. The initial 2007 complaint is *Plainte Pres le Tribunal de Grande Instance de Paris*, undated, PSI-OECD-00001-13.

<sup>78</sup> Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 1.

<sup>79</sup> Id. Later, in 2009, a 600-page compilation of documents related to the French police investigation was leaked to the press. Among other information, those documents indicate that the police had identified a luxury Paris apartment owned by Teodorin Obiang as well as eight luxury cars worth a total of \$6.2 million. MWC News, October 30, 2009, “France Halts African Leaders Probe,” [mwcnews.net/content/view/34091/51/](http://mwcnews.net/content/view/34091/51/). See also Agence France, “French Corruption Suit Targets African Leaders,” December 2, 2008.

<sup>80</sup> Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France’s complaint with civil party petition, (French court of appeals, June 2009), at 2.

Prosecutor declined to pursue the case, TI France filed a civil party petition with an investigating judge alleging that the presidents of Equatorial Guinea, Gabon, and Congo had acquired luxury homes and other property in France with embezzled public funds and requesting that an investigation be undertaken.<sup>81</sup> On April 8, 2009, the Public Prosecutor recommended that the TI France petition be ruled inadmissible due to a lack of standing.<sup>82</sup> On May 5, 2009, the Dean of investigating judges rejected that recommendation and instead held that the case could continue.<sup>83</sup> The Public Prosecutor appealed the Dean's decision, and in October 2009, a French appeals court ruled that TI France did not have standing to file the petition and dismissed it.<sup>84</sup> That ruling is now on appeal to France's highest court.<sup>85</sup>

While this lengthy civil proceeding was unfolding in court, in September 2007, the U.S. Department of Justice (DOJ) sent a formal request to the "Central Authority of France" requesting assistance with an ongoing U.S. criminal investigation into Teodorin Obiang and his associates.<sup>86</sup> The 2007 DOJ memorandum making this request was leaked to the press in November 2009.<sup>87</sup> The memorandum stated that Mr. Obiang "has been the subject of various U.S. government inquiries for several years."<sup>88</sup> It stated that DOJ and the U.S. Department of Homeland Security's Immigration and Customs Enforcement (ICE) were "investigating suspected criminal conduct of Teodoro Nguema OBIANG and his associates involving the illicit transfer and laundering of assets believed to be derived from extortion, bribery and/or the misappropriation, theft, or embezzlement of public funds." It continued:

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<sup>81</sup> Plainte Avec Constitution de Partie Civile Pres le Tribunal de Grande Instance de Paris, undated, PSI-OECD-00014-38; legal memorandum prepared by Sherpa & TI France, Admissibility of TI France's complaint with civil party petition, (French court of appeals, June 2009), at 2. The civil party petition was also filed by Gregory Ngbwa Mintsu, a Gabonese citizen.

<sup>82</sup> Legal memorandum prepared by Sherpa & TI France, Admissibility of TI France's complaint with civil party petition, (French court of appeals, June 2009), at 3.

<sup>83</sup> Ordonnance D'Irrecevabilite Partielle De Plainte Avec Constitution De Partie Civile, Tribunal de Grande Instance de Paris, May 5, 2009, PSI-Transparency-USA.org 00001-00005; legal memorandum prepared by Sherpa & TI France, Admissibility of TI France's complaint with civil party petition, (French court of appeals, June 2009), at 5; TI France Press Release, "Corruption case filed by Transparency International France and a Gabonese citizen ruled partially admissible," May 5, 2009. See also BBC News, "Lawsuit on Africa Leaders 'Valid,'" May 6, 2009, <http://news.bbc.co.uk/2/low/africa/8035218.stm>; Connect Africa, "African Leaders to be Tried by French Magistrate," May 6, 2009. <http://connectafrica.wordpress.com/2009/05/06/african-leaders-to-be-tried-by-french-magistrate/>

<sup>84</sup> Cour D' Appel De Paris Pole 7 Deuxieme Chambre De L'Instruction, Appel D'une Ordonnance De Recevabilite De Constitution De Partie Civile Arret, October 29, 2009, PSI-Transparency-usa.org 00006-15. See also TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009; MWC News, "France Halts African Leaders Probe," October 30, 2009; Agence France, "French Corruption Suit Targets African Leaders," December 2, 2008; Impunity Watch, "French Court Halts Corruption Probe," October 31, 2009, [http://www.impunitywatch.com/impunity\\_watch\\_europe/2009/10/french-court-halts-corruption-probe.html](http://www.impunitywatch.com/impunity_watch_europe/2009/10/french-court-halts-corruption-probe.html).

<sup>85</sup> TI France Press Release, "Appealing for justice: three African presidents and their French assets," October 29, 2009.

<sup>86</sup> 9/4/07 memorandum from the U.S. Department of Justice to the Central Authority of France, MEW:SCR.PJR 182-21407, no bates number (hereinafter "2007 DOJ memorandum").

<sup>87</sup> The DOJ memorandum was posted on the website of the *New York Times* on November 17, 2009. See *New York Times*, *Taint of Corruption is No Barrier to U.S. Visa*, November 16, 2009, <http://www.nytimes.com/2009/11/17/us/17visa.html>

<sup>88</sup> 2007 DOJ memorandum at 3.

“[S]ources have informed investigators that Teodoro Nguema OBIANG, in his official capacity, has instituted a large ‘revolutionary tax’ on timber, but insisted that the payments be made directly to him, either in cash or through checks to SOMAGUI FORESTAL, a forestry company owned by Teodoro Nguema OBIANG. ... [I]n August 2006, Teodoro Nguema OBIANG filed an affidavit with the High Court of South Africa in a civil matter regarding whether funds held by Teodoro Nguema OBIANG belonged to the Equatorial Guinea government, a contention that Teodoro Nguema OBIANG contested. In his affidavit, Teodoro Nguema OBIANG admitted that cabinet ministers in Equatorial Guinea form private companies which act in consortia with foreign companies when obtaining government contracts and, as a consequence, ‘a cabinet minister ends up with a sizeable part of the contract price in his bank account.’ Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue.”<sup>89</sup>

The memorandum concluded: “The prosecutors suspect that most, if not all, of Teodoro Nguema OBIANG’s assets are derived from extortion, bribery or the misappropriation of public funds.”<sup>90</sup>

A presentation by ICE in support of the 2007 request for assistance provided additional information. It stated that Mr. Obiang “[t]ravels frequently to the United States as an ‘A-1’ diplomat, although he is seldom on official business,” and “[r]outinely travels to the United States with over \$1 million in cash, and fails to declare,” which is a federal crime punishable by up to five years in prison.<sup>91</sup> The ICE presentation also stated that Mr. Obiang was the “[t]arget of multiple [Suspicious Activity Reports] for suspected money laundering from different financial institutions,”<sup>92</sup> and identified multiple assets and bank accounts associated with Mr. Obiang in France, South Africa, and the United States.

The Subcommittee attempted to confirm the 2007 criminal investigation discussed in the DOJ and ICE materials. Neither DOJ nor ICE would confirm the investigation or provide an update of its status. To date, no federal criminal indictment or civil asset forfeiture action involving Mr. Obiang had been made public.

In 2008, a complaint was filed in a Spanish court by the Open Society Institute and Soros Foundation, alleging money laundering of misappropriated oil revenues by EG officials. According to press articles, the complaint alleges that President “Teodoro Obiang has controlled close to 16 billion Euros [roughly US \$22 billion] worth of oil revenues since he took power in 1979.”<sup>93</sup> The complaint also alleges that President Obiang and his relatives purchased more than \$26 million in Spanish real estate with suspect funds. According to press reports, this civil complaint remains active.

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<sup>89</sup> 2007 DOJ memorandum at 5-6. See also Financial Times, “Taking a Cut Acceptable, Says African Minister,” October 25, 2006. [http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick\\_check=1](http://www.ft.com/cms/s/0/98cb7e86-645a-11db-ab21-0000779e2340.html?nclick_check=1)

<sup>90</sup> 2007 DOJ memorandum at 11.

<sup>91</sup> U.S. Immigration and Customs Enforcement powerpoint presentation, undated but likely in 2007, “Teodoro Nguema OBIANG, et al,” slides 9 and 10.

<sup>92</sup> Id. at slide 10.

<sup>93</sup> See El Mundo, “Obiang Lauanders over \$26 Million, Buying Real Estate in Spain,” December 9, 2008.

Together, these investigations and complaints over the past five years have raised substantial public concerns about the Obiang family in general and Mr. Obiang in particular, and suggest that the funds in their possession should be viewed as suspect.

## **B. Obiang Use of Attorneys To Bring Suspect Funds Into the United States**

For the four year period, 2004 to 2008, examined in this case history, Mr. Obiang employed members of the U.S. legal profession to help him bring millions of dollars in suspect funds from Equatorial Guinea into the United States through U.S. bank accounts. Two of the attorneys he employed in those efforts were Michael Berger who worked for him for four years, and George Nagler who worked for him for two years. Both attorneys were aware of the allegations of corruption related to Mr. Obiang, but facilitated his efforts to use shell company, attorney-client, law office, and other third party accounts at six U.S. banks as hidden conduits for his funds.

### **(1) Attorney Michael J. Berger**

Documentation obtained by the Subcommittee shows that, from at least 2004 to 2008, Mr. Obiang employed Michael Jay Berger, a California attorney, to carry out a variety of personal and business transactions. Among other services, Mr. Berger incorporated two U.S. shell companies called Beautiful Vision Inc. and Unlimited Horizon Inc. on behalf of Mr. Obiang; opened bank accounts in the names of those shell companies; and used those shell company accounts, as well as Mr. Berger's own attorney-client and law office accounts, to bring at least \$3 million in suspect funds from Equatorial Guinea into the United States and pay Mr. Obiang's bills and expenses. The documents indicate that Mr. Berger actively assisted Mr. Obiang in using these third party accounts as conduits for his funds, at times helped conceal Mr. Obiang's activities from the banks administering the accounts, and thereby helped Mr. Obiang bypass AML and PEP safeguards designed to detect and analyze high risk transactions. Mr. Berger also assisted Mr. Obiang in the purchase of a \$30 million California residence, as explained later in this section.

The documents indicate that, while working for Mr. Obiang, Mr. Berger was well aware of Mr. Obiang's political status and suspect wealth. Mr. Berger maintained a collection of press articles related to Mr. Obiang, for example, many of which described corruption problems within Equatorial Guinea, alleged that the wealth accumulated by Mr. Obiang's father, the President of Equatorial Guinea, originated as the proceeds of corruption, and criticized Mr. Obiang's lavish lifestyle.<sup>94</sup>

Mr. Berger received hundreds of thousands of dollars in compensation for his services as well as other benefits. Although he provided documents in response to a Subcommittee subpoena, Mr. Berger declined to answer Subcommittee questions regarding his dealings with Mr. Obiang, asserting his Constitutional rights under the Fifth Amendment.

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<sup>94</sup> Various periodicals, SEN000535-84; 11/21/06 email from Mr. Berger to Mr. Obiang, SEN004492; 9/15/07 email from Mr. Berger to Mr. Obiang, SEN004620 ; 10/28/07 email from Mr. Berger to Mr. Obiang, SEN004389.



### (a) Incorporating Shell Companies and Paying Bills

Mr. Berger is a California attorney who, according to his website, specializes in bankruptcy law.<sup>95</sup> He started his own firm in 1983, and his web site describes his clients as ranging from high-profile to working-class.<sup>96</sup> His relationship with Mr. Obiang, which dates back to at least 2004, involved his providing a variety of services to support Mr. Obiang's interests in the United States.

Mr. Berger formed two U.S. corporations for Mr. Obiang. The first was Beautiful Vision, Inc., a California corporation which was formed on October 12, 2004, and whose incorporation papers list Mr. Berger as the company president.<sup>97</sup> Although none of the incorporation documents mentions Mr. Obiang by name, he was the sole signatory on a Beautiful Vision account at Bank of America and, in a later sworn statement in an arbitration case, Mr. Obiang described Beautiful Vision as "my company."<sup>98</sup>

One year later, on October 21, 2005, Mr. Berger formed a second California corporation for Mr. Obiang called Unlimited Horizon Inc. Its incorporation papers identify Mr. Berger as the agent to accept service of process, but do not identify any officers or directors by name.<sup>99</sup> The incorporation documents do not mention Mr. Obiang. Mr. Berger later identified himself in bank account opening documentation as the president of Unlimited Horizon.<sup>100</sup>

From 2004 to 2007, Mr. Berger opened multiple bank accounts in the names of Beautiful Vision Inc. and Unlimited Horizon Inc., and used those accounts to pay bills and expenses associated with Mr. Obiang.

One of the documents reviewed by the Subcommittee illustrates the types of services performed by Mr. Berger for Mr. Obiang in connection with these shell corporations. On July 17, 2006, Mr. Berger entered into a written agreement with Mr. Obiang to perform services related to Unlimited Horizon Inc.<sup>101</sup> The contract identified five services to be provided by Mr. Berger: (1) paying household bills associated with Mr. Obiang's residence at 3620 Sweetwater Mesa Road in Malibu, California; (2) hiring a payroll service company to pay the salaries of the employees of Unlimited Horizon Inc., and compute any taxes owed in connection with these salaries; (3) hiring an accountant to perform that tax work; (4) obtaining worker's compensation insurance for Unlimited Horizon, Inc.; and (5) reviewing and paying Mr. Obiang's personal bills upon request.<sup>102</sup>

<sup>95</sup> Michael Jay Berger, Esq. <http://www.bankruptcypower.com/>.

<sup>96</sup> Id.

<sup>97</sup> See incorporation papers for Beautiful Vision, Wells Box 1, no bates number. See also Coldwell Banker agreement signed by Mr. Berger as president of Beautiful Vision, PSI Coldwell Banker 01-000501.

<sup>98</sup> January 2007 Declaration of Teodoro Nguema Obiang, Mirzo International, Inc. v. Hyland, Case No. AB06-15 (Beverly Hills/Greater Los Angeles Association of Realtors Arbitration Complaint Case), SEN007574-76 ("On or about November 1, 2004, I authorized Mr. Berger, as then President of my company, Beautiful Vision, Inc., to sign an Exclusive Retainer Agreement").

<sup>99</sup> See Unlimited Horizon articles of incorporation, PSI-Union\_BK\_Calif-01-000007 to 000012, at 12. C0000016; SEN004292; 8/23/05 Bank of America Investigative File on Unlimited Horizon Inc. account, BAC-PSI-05948.

<sup>100</sup> See, e.g., 8/28/06 account opening documentation for Unlimited Horizon account at Union Bank of California, PSI-Union\_BK\_Calif-01-000007 to 000012.

<sup>101</sup> 7/17/06 agreement between Mr. Berger and Mr. Obiang, SEN000001-5.

<sup>102</sup> Id.

Other documents show that Mr. Berger's tasks included such matters as screening, hiring, and facilitating the payroll of the domestic staff at the \$30 million Malibu residence Mr. Obiang had purchased, including private security guards, butlers, chefs, drivers, and other caretakers.<sup>103</sup> One bill showed, for example, that over the course of seven months in 2007, Mr. Berger paid over \$330,000 for two bodyguards available 24 hours per day at \$38 per hour, and over \$7,400 for "The Fish Physician" to provide services related to Mr. Obiang's fish tank and Koi pond.<sup>104</sup> These funds were disbursed from an Unlimited Horizon account at Union Bank of California.<sup>105</sup>

Mr. Berger also assisted Mr. Obiang in his 2006 purchase of the \$30 million Malibu property, as detailed later in this section. An October 2006 email from Mr. Berger to Mr. Obiang shows that he also helped negotiate contracts with third parties regarding that property. In the message, Mr. Berger describes meeting with an interior decorator to discuss a \$4 million budget for decorating Mr. Obiang's Malibu residence:

"I met for 2 hours today with your designer .... I convinced them to accept 25% commission on all items, not the 30% in their draft contract. ... The job has an approximate budget of \$4,000,000.00. 5% of \$4,000,000.00 is \$200,000.00. I feel good about saving you money .... I enjoy working for you."<sup>106</sup>

### **(b) Bringing In and Moving Suspect Funds**

From at least 2004 to 2008, Mr. Obiang utilized a variety of U.S. bank accounts and wire transfer systems to bring millions of dollars in suspect funds from Equatorial Guinea into the United States to support his U.S. activities. Documents reviewed by the Subcommittee show that Mr. Berger helped Mr. Obiang conceal his U.S. financial activities, primarily by opening and using shell company accounts and his own attorney-client and law office accounts at U.S. banks as conduits for Obiang funds. Mr. Berger does not appear to have taken any steps to ensure that the funds he helped bring into the United States were legitimate.

From 2004 to 2007, Mr. Obiang used accounts at three U.S. banks, Union Bank of California, Bank of America, and Citibank, often with Mr. Berger's assistance, to deposit, transfer and spend nearly \$10 million. Most of these funds were wire transferred from accounts in Equatorial Guinea held in the name of Mr. Obiang or two EG companies he controlled, Somagui Forestal and Socage. The EG wire transfers often deposited funds into attorney-client or law office accounts controlled by Mr. Berger, who then transferred the funds to other Obiang-related accounts. This two-step process helped mask the fact that the other accounts were receiving funds from Equatorial Guinea, which most banks flag as a high risk country due to its weak AML controls and reputation for corruption. Mr. Berger also used the EG funds to pay Obiang-related bills and expenses. Over time, as the three banks discovered the EG wire transfers or Mr. Obiang's use of their accounts, they closed the accounts he was using. The two banks with a Berger attorney-client or law office account also terminated their relationships with him, due to the incoming EG wires and Mr. Obiang's surreptitious use of the accounts. Each

<sup>103</sup> 1/10/08 Fax from Mr. Berger to Mr. Obiang, SEN000008.

<sup>104</sup> Various dates, checks from Unlimited Horizon, Inc. General Account at Union Bank of California, PSI-Union\_Bk\_Calif-01-000048-397 ; See also 10/10/06 Invoice from Saurman Investigative Services, Inc. and 10/28/06 check from Unlimited Horizon, Inc., SEN000874.

<sup>105</sup> Id.

<sup>106</sup> 10/18/06 email from Mr. Berger to Mr. Obiang, SEN003438.

time an account was closed, however, Mr. Obiang responded by finding another U.S. bank account, often with Mr. Berger's assistance, that he could utilize.

Mr. Berger's matter-of-fact reaction to the account closings is instructive. On June 12, 2007, Union Bank of California closed Unlimited Horizon Inc. General Account No. 0720115409, less than a year after it was opened, due to suspicious transactions.<sup>107</sup> Following the account closure, Mr. Berger wrote an email to Mr. Obiang explaining the status of the account, steps he was taking to avoid any complications from the closure, and alternative funding channels that could be used, including an Unlimited Horizon account at Citibank, a Berger attorney-client account at Bank of America, and perhaps a new account at another bank.

"Attached hereto is a copy of the check register of the general account at Union Bank from June 1, 2007 through June 12, 2007, the date it was closed by the bank. There is currently a zero balance in said account. Checks that were written but did not clear before the account was closed are listed. ... Most of these checks have already been replaced with new checks from the Citibank account. I have not yet heard from DMV with respect to replacement of 2 registration checks that did not clear: checks for your 2005 Lamborghini and your 2005 Mercedes. I will replace these checks as soon as I receive a bill from DMV, as I did for your 2005 Porche.

Also attached hereto is a copy of the Check register for the general account at Citibank from its opening on 6/25/07 through today, 7/11/07. The remaining balance in this account is \$19,664.96. I am saving this money for the next payroll which will take place on Friday, July 13.

Also attached hereto is an account of the funds that were deposited by me into my Bank of America Client Trust Account on your behalf, and the checks I wrote on your behalf. You have \$9,727.55 remaining in my Bank of America Client Trust Account. Per our discussion, I will use these funds to open up another bank account at another bank or, if needed, deposit these funds into the existing Citibank account.

... I have prepared and attached an invoice to you requesting a wire transfer of \$200,000.00 to my Bank of America Client Trust Account. I will need these funds to pay additional bills for you. A copy of my Bank of America Client Trust Account Wire Transfer Information is attached hereto.

As always, I appreciate the opportunity to work for you."<sup>108</sup>

As this email and other documents demonstrate, Mr. Berger actively assisted Mr. Obiang in bypassing U.S. AML and PEP safeguards intended to keep foreign corruption out of the United States.

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<sup>107</sup> 06/12/07 Union Bank of California cashier's check to Unlimited Horizon, Inc., SEN004570. See also 8/28/06 Bank- Depositor Agreement of Union Bank of California and Unlimited Horizon, Inc., PSI-Union\_BK\_Calif-01-000007 to 000012.

<sup>108</sup> 7/11/07 email from Mr. Berger to Mr. Obiang, SEN004574.

### (i) Union Bank of California

For more than four years, from 2004 to 2008, Mr. Obiang used accounts at Union Bank of California (UBOC) to bring suspect funds into the United States to support his activities. Using multiple shell company, law office, and other third party accounts, none of which were opened in his own name, Mr. Obiang was able to wire transfer nearly \$8 million in suspect funds into UBOC accounts. Mr. Berger was instrumental in opening the shell company and law office accounts, moving Obiang funds through them, and masking Mr. Obiang's financial activities from the bank.

From 2001 to 2004, Mr. Obiang sent multiple wire transfers from Equatorial Guinea, including one for over \$6.2 million, to UBOC accounts, including one opened in the name of an individual employed by Mr. Obiang and another opened by an Obiang-related shell company, Sweet Pink Inc. After detecting these EG wire transfers in 2004, the bank closed both accounts in 2005. In 2006, Mr. Berger opened two accounts for another Obiang shell company, Unlimited Horizon, as well as a law office account at UBOC, without disclosing that Mr. Obiang would be using them. Over a ten-month period from 2006 to 2007, EG wire transfers totaling more than \$1.7 million were deposited into the new Berger law office account. Over that same time period, Mr. Berger transferred those funds to the two Unlimited Horizon accounts which he then used to pay Mr. Obiang's bills and expenses.

While the \$1.7 million in EG wire transfers triggered internal UBOC AML alerts, UBOC did not review the transactions for about six months, because it was negotiating a deferred prosecution agreement with the U.S. Justice Department over deficiencies in UBOC's AML program. In June 2007, UBOC finally reviewed the transactions. Bank personnel concluded that the EG wire transfers were suspicious, raising both fraud and AML concerns, and UBOC immediately closed all three accounts.

But Mr. Obiang still wasn't done making surreptitious use of UBOC accounts. UBOC later discovered that, in 2008, Mr. Obiang wire transferred nearly \$30,000 to a UBOC account held by the mother of a woman he was dating, and then withdrew the funds via cash withdrawals at ATM machines and casinos in the United States.

**Wire Transfers and Kulungian Account.** UBOC told the Subcommittee that it first became aware of Obiang-related account activity in 2004, after UBOC deemed Equatorial Guinea to be a high-risk country and conducted a search for EG wire transfers.<sup>109</sup> The search identified one large 2001 wire transfer of \$6.2 million and seven smaller wire transfers from 2003 to 2004, totaling about \$18,700, that had been sent from an Obiang account at Riggs Bank, Account No. 76923450, to accounts at UBOC. The \$6.2 million wire transfer had been sent to a UBOC account for Beverly Hills Escrow in connection with Mr. Obiang's purchase of a residence near

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<sup>109</sup> Subcommittee interview with Union Bank, February 25, 2009; 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0449-52 (providing results of search related to "Equatorial Guinea Government and related officials/family members scrub"). According to UBOC employees, each year UBOC ranked various countries by risk, using recommendations and reports of the Financial Action Task Force (FATF), the U.S. State Department, Transparency International, and other sources. UBOC assigned each country a risk rating of high, medium, or low. UBOC's monitoring software then screened wire transfers and other transactions on a monthly basis to identify high risk activity for further review.

Los Angeles as explained below.<sup>110</sup> The remaining wire transfers had been sent to UBOC Account No. 1301073100, held in the name of Carla Kulungian.<sup>111</sup> Still another wire transfer for more than \$14,700 had been sent from an Obiang company, Somagui Forestal, to the Kulungian account.<sup>112</sup> UBOC told the Subcommittee that it was able to determine that Ms. Kulungian worked as a secretary for Mr. Obiang, and had accepted the wire transfers into her account pursuant to her employment.<sup>113</sup> On November 19, 2004, UBOC closed the Kulungian account.<sup>114</sup>

**Sweet Pink Account.** Nearly a year later, on September 29, 2005, a UBOC checking account, Account No. 1300052831, was opened in the name of Sweet Pink, Inc.<sup>115</sup> Sweet Pink, Inc. is a California shell corporation, formed in 2005, by another attorney who worked for Mr. Obiang, George Nagler, as described later in this section. During October 2005, two wire transfers, each for nearly \$30,000, were deposited into the account by Somagui Forestal, Mr. Obiang's EG company.<sup>116</sup> The bank learned of the EG wire transfers and closed the Sweet Pink account on October 27, 2005, less than a month after it had been opened.<sup>117</sup>

**Unlimited Horizon and Law Office Accounts.** Undeterred by the closing of the two accounts, a year later Mr. Obiang struck again, this time using Mr. Berger to open the accounts. In August 2006, Mr. Berger opened two accounts at UBOC for Unlimited Horizon Inc., without mentioning Mr. Obiang's connection to the company. Mr. Berger initially funded the accounts with Obiang funds held in his attorney-client account at Bank of America.<sup>118</sup> Two months later, Mr. Berger opened a law office account at UBOC, and immediately began accepting EG wire transfers into that account. Over a ten-month period from 2006 to 2007, EG wire transfers deposited more than \$1.7 million into the UBOC Berger law office account. During that same period, Mr. Berger transferred the funds via check to the two Unlimited Horizon accounts and then used those accounts to pay Mr. Obiang's bills and expenses. By allowing his law office account to function as a pass-through for the EG funds, Mr. Berger helped Mr. Obiang circumvent UBOC's AML and PEP controls and bring suspect funds into the United States.

Mr. Berger opened the two Unlimited Horizon accounts at Union Bank of California on August 28, 2006, Accounts No. 0720115409 and No. 0720115417.<sup>119</sup> The account opening

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<sup>110</sup> 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0450, 0452.

<sup>111</sup> Id. at 0450. See also Subcommittee interview of Union Bank, February 25, 2009.

<sup>112</sup> 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0450.

<sup>113</sup> Subcommittee interview of Union Bank, February 25, 2009.

<sup>114</sup> 10/21/04 UBOC Case Report, PSI-Union\_Bank\_of\_California-04-0177; Subcommittee interview with Union Bank, February 25, 2009.

<sup>115</sup> UBOC Case Report on Sweet Pink Inc. Wire Review, PSI-Union\_Bank\_of\_California-04-0191.

<sup>116</sup> Id.

<sup>117</sup> Id.

<sup>118</sup> 8/28/06 check from the Law Offices of Michael Jay Berger Attorney-Client Trust Account to Unlimited Horizon Inc., PSI-Union\_Bank\_of\_California-01-000026.

<sup>119</sup> 8/28/06 Bank- Depositor Agreement of Union Bank of California and Unlimited Horizon, Inc., PSI-Union\_Bank\_of\_California-01-000007-11. The first account was designated a "general" account for Unlimited Horizon Inc., while the second was designated a "special" account for Unlimited Horizon.

documentation shows that Mr. Berger listed himself as the sole signatory for both accounts.<sup>120</sup> The documentation makes no mention of Mr. Obiang.

An August 28, 2006 email shows that Mr. Berger and Mr. Obiang explicitly agreed from the beginning to channel Obiang funds through the two Unlimited Horizon accounts. The email also makes it clear that both men knew Mr. Berger was using his attorney-client account to transact business and execute funding transfers for Mr. Obiang. Mr. Berger wrote:

“Dear Mr. Nguema:

Attached hereto is proof of my opening two business checking accounts for Unlimited Horizon, Inc. at Union Bank today and wire transfer information for these two accounts. From the funds that I am holding for you in my client trust account, I deposited \$20,000.00 into the general account for Unlimited Horizon, Inc. and \$10,000.00 into the special account for Unlimited Horizon, Inc.”<sup>121</sup>

Two months later, on October 15, 2006, Mr. Berger sent Mr. Obiang the following email:

“As of today, I have spent or transferred to the Unlimited Horizon Accounts all of the funds that you wired to my client trust account. ... Unlike my client trust account [at Bank of America] which is used for many clients, the 2 Unlimited Horizon Accounts are used exclusively for your business. ... [T]he need for the transfer of additional funds is clear. ... By separate email and fax, I am sending you a request for a wire transfer of \$200,000.00.”<sup>122</sup>

The following day, October 16, 2006, Mr. Berger opened a third account at UBOC, the Michael Jay Berger DBA Law Office of Michael Jay Berger, Account No. 0720115581.<sup>123</sup> He was the only authorized signatory on the account.<sup>124</sup> He immediately began using his law office account as a pass-through for EG wire transfers, accepting large wire transfers from Somagui Forestal and Obiang accounts in Equatorial Guinea and forwarding the funds via check to the Unlimited Horizon general account at UBOC.

Two weeks after opening the new account, for example, on November 1, 2006, Mr. Berger sent Mr. Obiang an email asking him to wire \$200,000 to Mr. Berger’s new law office account at UBOC and explaining that he would then transfer the funds to the Unlimited Horizon account and, in turn, pay Mr. Obiang’s bills and expenses.

“Dear Mr. Nguema:

Our July, 2006 agreement requires me to send you an e-mail “whenever the balance in the checking account of Unlimited Horizon, Inc. falls below \$50,000.00.” The balances as of today in the two Unlimited Horizon, Inc. accounts are as follows (after the clearing of all checks that have been written and sent out):

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<sup>120</sup> Id.

<sup>121</sup> 8/28/06 email from Mr. Berger to Mr. Obiang, SEN004449.

<sup>122</sup> 10/15/06 email from Mr. Berger to Mr. Obiang, SEN004465.

<sup>123</sup> 10/16/06 Bank of California Bank-Depositor Agreement, PSI-Union\_BK\_Calif-01-000629-30.

<sup>124</sup> Id.

General Account \$53,354.51  
 Special Account \$ 336.46

Per our in person discussion on October 29, 2006, I suggest that the wire transfer be sent to my new client trust account at Union Bank. I will transfer it from there to the Unlimited Horizon, Inc. General Account. I will send you a separate e-mail and fax requesting a \$200,000 wire transfer and providing wire transfer information for this new account.”<sup>125</sup>

On November 24, 2006, Somagui Forestal wired nearly \$200,000 to Mr. Berger’s new law office account.<sup>126</sup>

From November 24, 2006 through June 6, 2007, eight EG wire transfers from Somagui Forestal or Mr. Obiang, totaling over \$1.7 million, were deposited into the new Berger law office account at UBOC.<sup>127</sup> Bank records indicate that soon after receiving each wire transfer, Mr. Berger transferred the funds received by writing a check to Unlimited Horizon Account No. 0720115409.<sup>128</sup> The funds deposited into the Unlimited Horizon account were then used to pay Mr. Obiang’s bills, including household expenses, parking tickets, car repairs, clothing, home furnishings, and electronics.<sup>129</sup>

In addition, from October 2006 to March 2007, on a monthly basis, Mr. Berger wrote himself a \$5,000 self-endorsed check from the Unlimited Horizon account, presumably as compensation for his services.<sup>130</sup>

The \$1.7 million in EG wire transfers sent to the Berger law office account did not go unnoticed; they triggered several internal UBOC anti-money laundering (“AML”) alerts.<sup>131</sup> The bank’s review of these alerts was delayed, however, due to a deferred prosecution agreement that it was then negotiating with the U.S. Department of Justice arising from deficiencies in UBOC’s AML program.<sup>132</sup> As part of the deferred prosecution agreement, UBOC was required to complete a number of pending compliance matters that delayed its review of the 2006 and 2007 EG wire transfers.<sup>133</sup>

On or about June 11, 2007, Union Bank of California initiated an internal review of the EG wire transfers into the Berger law office account extending back to November 2006, and that

<sup>125</sup> 11/1/06 email from Mr. Berger to Mr. Obiang, SEN004477. Although the account is held in the name of Mr. Berger’s law office, he refers to the account in this email as his “new client trust account.”

<sup>126</sup> 11/24/06 wire transfer from Somagui Forestal, PSI-Union\_Bk\_Calif-01-000642.

<sup>127</sup> Wire transfers from Somagui Forestal, PSI-Union\_BK\_Calif-01-000642 to 000650.

<sup>128</sup> UBOC account statements, PSI-Union\_BK\_Calif-01-000631 to 000641 R 1491; UBOC wire transfer records, PSI-Union\_BK\_Calif-01-000652, 000657, 000660, 000667, 000678, 000686, 000697, 000718.

<sup>129</sup> Various dates, checks from Unlimited Horizon Inc. to a variety of service vendors, PSI-Union\_Bk\_Calif-01-000048 to 000397.

<sup>130</sup> Various dates, checks from Unlimited Horizon Inc. to Mr. Berger, PSI-Union\_Bk\_Calif-01-000391, 000331, 000274, 000239, 000182, 000140.

<sup>131</sup> Union Bank of California wire monitoring software screens every field of wire transfer data for certain names, countries, and dollar amounts. Subcommittee interview with Union Bank, February 25, 2009.

<sup>132</sup> Subcommittee interview with Union Bank, February 25, 2009.

<sup>133</sup> Subcommittee staff interview with Union Bank officials, February 25, 2009.

account's subsequent transfers to the Unlimited Horizon accounts.<sup>134</sup> Bank personnel concluded that the EG wire transfers were suspicious, raising both fraud and AML concerns. The investigative report of the UBOC Financial Intelligence Unit stated the following.

“The investigation found the use of multiple corporate vehicles by Michael Berger, the lawyer of a Politically Exposed Person (PEP), to disguise the identity of the PEP as well as layer and integrate funds derived via international wire transactions from a high risk jurisdiction [Equatorial Guinea], which had the appearance of money laundering activity. ... Several problematic areas were detected in the client's business account activity. ... [S]pecifically, the client (1) received multiple wire transactions from Teodoro Nguema Obiang and his company in Equatorial Guinea (EG), Somagui Forestal, (2) processed 3<sup>rd</sup> party checks payable to Teodoro Nguema Obiang through his IOLTA [law office] account in order to conceal the identity of the listed payee, and (3) operated a California LLC, Sweetwater Malibu LLC, in order to layer and integrate funds which originated in a high-risk jurisdiction. The ultimate benefactor of the transactions was Teodoro Nguema Obiang with the funds being utilized to pay for his estate and living expenses in the United States. ...

The aggregate total of all suspicious credits to the client's IOLTA account was \$1,752,520. ... [T]he total debits from the client's IOLTA account which were deemed suspicious in nature totaled \$1,551,855.00. ... [T]he total of [all debits paid from Ultimate [sic] Horizon accounts deemed suspicious] was \$1,656,359.00. ... [T]he aggregate total of all suspicious activity detected during this investigation was \$4,960,734.00.

This suspicious activity consisted of the use of multiple corporate vehicles by Michael Berger, the lawyer of Politically Exposed Person (PEP) Teodoro Nguema Obiang, in order to disguise the identity of his client as well as to place, layer, and integrate Obiang's funds derived via international wire transactions from Equatorial Guinea, a high risk jurisdiction. Therefore, the detailed actions had the appearance of money laundering activity conducted by a UBOC client on behalf of Obiang.”<sup>135</sup>

On June 12, 2007, UBOC closed the Berger law office account.<sup>136</sup> The bank gave Mr. Berger a cashiers check with the remaining funds, which Mr. Berger deposited into his attorney-client account at Bank of America.<sup>137</sup> UBOC also sent a letter to Unlimited Horizon, addressed to Mr. Berger, stating that “we do not believe it is in the best interest to continue your relationship with Union Bank.”<sup>138</sup> On June 12, 2007, UBOC issued a second cashiers check in the amount of \$250,014.65 to Unlimited Horizon.<sup>139</sup>

**Johnson Account.** Even after the closure of the Unlimited Horizon and Berger accounts, Mr. Obiang did not cease his efforts to make use of UBOC accounts. In 2009, UBOC discovered

<sup>134</sup> 6/15/07 UBOC Case Notes on Berger-Wire Review, PSI-Union\_Bank\_of\_California-04-0272.

<sup>135</sup> 6/15/07 UBOC Case Summary on the Berger Wire Review, PSI-Union\_Bank\_of\_California-04-0269.

<sup>136</sup> 6/12/07 letter from Union Bank of California to Mr. Berger, SEN000998. See also 6/15/07 UBOC Case Notes on Berger-Wire Review, PSI-Union\_Bank\_of\_California-04-0272.

<sup>137</sup> Subcommittee staff interview of UBC officials, February 25, 2009.

<sup>138</sup> 6/12/07 letter from UBOC to Unlimited Horizon Inc. and Mr. Berger, SEN007797.

<sup>139</sup> 6/12/07 cashier's check from UBOC to Unlimited Horizon Inc., SEN004570.



that, on March 28, 2008, Mr. Obiang sent a wire transfer from Equatorial Guinea for nearly \$30,000 to a UBOC account belonging to Rayshonda Johnson for her daughter Roxanna Galbran.<sup>140</sup> It is unclear why the bank did not detect and ask questions about the EG wire transfer at the time, given the prior problems with Mr. Obiang. According to a 2009 internal UBOC investigation, Ms. Johnson explained that her daughter was engaged to an African prince, Mr. Obiang, and that the funds were to be used for her daughter's housing expenses. UBOC told the Subcommittee that it had learned the daughter had already lost her home, possibly to foreclosure, and that the funds appeared to have been withdrawn via large cash withdrawals at ATM machines and casinos in the United States.<sup>141</sup> The bank told the Subcommittee that it had concluded Mr. Obiang had once again used a UBOC customer to receive funds in the United States on his behalf, continuing a multi-year pattern of activity to circumvent UBOC's attempts to restrict his financial activity at the bank.

### (ii) Bank of America

From 2004 to 2007, Mr. Obiang was also able, with the assistance of Mr. Berger, to deposit over \$9.7 million, including over \$2 million in wire transfers from Equatorial Guinea and over \$4 million from the sale of property in Los Angeles, into accounts at Bank of America, none of which were opened in Mr. Obiang's name. The EG wire transfers generally went to an attorney-client account that Mr. Berger had long maintained at the bank. Mr. Berger then transferred some of these funds into two Bank of America accounts opened for an Obiang shell company, Beautiful Vision Inc. Mr. Berger and Mr. Obiang then used the Beautiful Vision accounts to pay Obiang-related bills and expenses, until Bank of America closed them in 2005. After that, Mr. Berger used the EG funds in his attorney-client account to either pay Obiang-related bills directly or transfer funds to the Unlimited Horizon accounts at Union Bank of California or Citibank. By using his attorney-client account as a conduit for the EG funds, Mr. Berger helped disguise the real source of funding for the Beautiful Vision and Unlimited Horizon accounts and enabled Mr. Obiang to utilize those accounts for a substantial period of time. In 2007, after the bank conducted an internal investigation into whether Mr. Obiang was secretly utilizing the Berger attorney-client account, Bank of America closed the account, terminated its relationship with Mr. Berger, and told the Subcommittee that it had taken steps to prevent such tactics in the future.

**Beautiful Vision Accounts.** From 2004 to 2005, Mr. Berger opened several Bank of America accounts in the name of Beautiful Vision, Inc. Those accounts were used to pay millions of dollars in Obiang-related bills as well as supply Mr. Obiang with two cashier's checks totaling in excess of \$3.4 million.

On October 19, 2004, one week after Mr. Berger incorporated Beautiful Vision Inc., he opened two Bank of America accounts in the name of the company, listing himself in the bank records as the company's owner and president.<sup>142</sup> Beautiful Vision Account No. 02137-06466 was set up as a business checking account,<sup>143</sup> while Beautiful Vision Account No. 02139-06465 was designated a "special" checking account.<sup>144</sup> Mr. Berger was designated the sole signatory

<sup>140</sup> Subcommittee interview with Union Bank, February 25, 2009.

<sup>141</sup> Id.

<sup>142</sup> 8/23/05, Bank of America, Master Case Information, BAC-PSI-05948.

<sup>143</sup> Bank of America, Master Agreement: Business Deposit Accounts, BAC-PSI-03036-39.

<sup>144</sup> Id.

for the business checking account,<sup>145</sup> while the sole signatory for the special checking account was Mr. Obiang.<sup>146</sup> Mr. Berger also set up accounts to purchase two CDs in the name of Beautiful Vision, CD Nos. 02135-00057 and 02132-00049.<sup>147</sup> Although Mr. Obiang was the sole signatory on one of the accounts, Bank of America did not perform any due diligence related to him during the account opening process and did not learn of his PEP status.

About two weeks after the accounts were established, on November 1, 2004, Mr. Berger wrote three checks providing \$3.1 million in initial funding to the accounts. All three checks were drawn on his Bank of America attorney-client account, and used Obiang-related funds sent from Equatorial Guinea. One check deposited \$500,000 into the Beautiful Vision business checking account;<sup>148</sup> a second deposited \$1 million into the Beautiful Vision special checking account,<sup>149</sup> and a third provided \$1.6 million to purchase the two CDs.<sup>150</sup> Three weeks later, on November 19, 2004, the Beautiful Vision special checking account received a wire transfer for another \$4 million from D&G Escrow Corporation, the escrow agent that handled the September 2004 sale of a Los Angeles residence owned by Mr. Obiang, as explained further below.<sup>151</sup> Over the next year, Mr. Berger made additional deposits totaling about \$2.5 million.<sup>152</sup> This chart shows the primary deposits into the Beautiful Vision accounts.

<b>Major Deposits into Beautiful Vision Accounts</b>			
<b>Date</b>	<b>"To:"</b>	<b>Amount</b>	<b>Bates</b>
11/1/2004	Beautiful Vision, Inc. 02139-06465 (check from Berger attorney-client account)	\$1,000,000.00	BAC-PSI-02398
11/1/2004	Beautiful Vision, Inc. 02137-06466 (check from Berger attorney-client account)	\$500,000.00	BAC-PSI-02399
11/1/2004	Beautiful Vision, Inc. 02135-00057 (CD) & 02132-00049 (CD) (check from Berger attorney-client account)	\$1,600,000.00	BAC-PSI-02400
11/12/04	Beautiful Vision, Inc. 02139-06465	\$500,000.00	BAC-PSI-02473
11/19/2004	Beautiful Vision, Inc. 02139-06465 (wire transfer from D&G Escrow)	\$4,054,408.33	BAC-PSI-02474
12/2/04	Beautiful Vision, Inc. 02139-06465	\$500,000.00	BAC-PSI-02479
3/4/2005	Beautiful Vision, Inc. 02139-06465	\$605,288.43	BAC-PSI-02492

<sup>145</sup> Id.

<sup>146</sup> 8/23/05 Bank of America, Master Case Information, BAC-PSI-05948.

<sup>147</sup> Id.

<sup>148</sup> BAC-PSI-03067-8.

<sup>149</sup> BAC-PSI-02398.

<sup>150</sup> BAC-PSI-02400.

<sup>151</sup> November 2004 statement for Beautiful Vision special checking account, BAC-PSI-02474. Less than two weeks later, a wire transfer for \$3.5 million was sent from the Beautiful Vision account to an account for Mr. Obiang, but that wire transfer was reversed on 12/10/04, and the funds were returned to the account. Id. at BAC-PSI-02474 and 02479.

<sup>152</sup> See 2004-2005 account statements for Beautiful Vision special checking account, BAC-PSI-02470-515.

7/29/2005	Beautiful Vision, Inc. 02139-06465 (check from Berger attorney-client account after City National Bank closed Obiang account)	\$669,691.02	BAC-PSI-02401
8/8/2005	Beautiful Vision, Inc. 02139-06465 (wire transfer from Teodoro Obiang)	\$299,933.50	BAC-PSI-02510
<b>Source-Bank of America</b>		<b>Total- \$9,729,321.28</b>	

Prepared by Subcommittee

The two Beautiful Vision checking accounts were used to pay bills and expenses associated with Mr. Obiang. The business checking account, for example, issued multiple checks, signed by Mr. Berger, which together totaled about \$532,000. While most were for amounts of less than \$10,000, one large check for \$266,944.45 paid for purchases at a high-end retail store. The special checking account also issued multiple checks, all of which were signed by Mr. Obiang and together exceeded \$7.6 million.<sup>153</sup> The following chart lists the Beautiful Vision checks in excess of \$50,000 that were funded from the Beautiful Vision special checking account for which Mr. Obiang was the sole signatory.

<b>Beautiful Vision Checks in Excess of \$50,000</b>				
<b>Date</b>	<b>Check Amount</b>	<b>"Pay to the Order of"</b>	<b>"For"</b>	<b>Bates</b>
11/1/2004	\$82,900.00	Naurelle	Furniture	BAC-PSI-02564
11/1/2004	\$137,312.71	Ferrari of Beverly Hills	Maserati BVH	BAC-PSI-02565
11/5/2004	\$63,326.25	Soofer Gallery	Carpet	BAC-PSI-02571
11/5/2004	\$332,243.21	Ferrari of Beverly Hills	Ferrari	BAC-PSI-02566
11/8/04	\$66,893.11	Summit	(Illegible)	BAC-PSI-02568
11/12/2004	\$80,287.95	Gucci		BAC-PSI-02572
11/13/2004	\$51,288.00	Dolce & Gabbana		BAC-PSI-02563
11/13/2004	\$121,976.56	Fields Pianos	Piano	BAC-PSI-02575
11/16/2004	\$50,000.00	Ferrari of Beverly Hills	Deposit 6/2 Order	BAC-PSI-02574
11/13/04	\$59,850.00	Soofer Gallery	Rugs	BAC-PSI-02573
11/22/2004	\$280,409.00	Auto Star Signature	Ferrari (Illegible)	BAC-PSI-02567
11/26/2004	\$50,000.00	Lamborghini Beverly Hills		BAC-PSI-02570
11/26/2004	\$288,523.29	Lamborghini Beverly Hills		BAC-PSI-02569
11/26/2004	\$181,265.32	GlobalJet Corp.		BAC-PSI-02578
1/5/2005	\$393,192.90	GlobalJet Corp.		BAC-PSI-02580
1/6/2005	\$55,193.00	Dolce & Gabbana		BAC-PSI-02579
3/4/2005	\$3,300,000.00	Cash		BAC-PSI-02585
3/4/2005	\$285,567.33	GlobalJet Corp.		BAC-PSI-02586
3/5/2005	\$58,500.00	L.A. Audio Video, Inc.	Installation of Bang & Olufsen Home Theatre	BAC-PSI-02587
3/5/2005	\$118,244.66	ADT Security Services	Teodoro Nguema Obiang	BAC-PSI-02591
7/30/2005	\$330,173.96	Gara Coach Company, LLC	Pay off 2005 Lamborghini Roadster	BAC-PSI-02591
8/6/2005	\$102,053.29	ADT Security Services	Teodoro Nguema Obiang	BAC-PSI-02592
8/15/05	\$100,000.00	Beautiful Vision	General Acct. Payroll	BAC-PSI-02593
9/16/2005	\$179,522.54	Cash		BAC-PSI-02595
<b>Total- \$6,968,723.08</b>		<b>Source-Bank of America</b>		

Prepared by Subcommittee

<sup>153</sup> See 2004-2005 account statements for Beautiful Vision special checking account, BAC-PSI-02470-515.

The largest Beautiful Vision check, dated March 4, 2005, and signed by Mr. Obiang, was made out to “cash” in the amount of \$3.3 million. Mr. Obiang used it to purchase a Bank of America cashier’s check on the same day in the same amount, made payable to himself.<sup>154</sup> A little over a week later, on March 15, 2005, the cashier’s check was cash at CCEI Bank in Equatorial Guinea.<sup>155</sup> Despite the large amount of money and high risk jurisdiction involved in this transaction, it did not trigger a review by Bank of America or direct the bank’s attention to Mr. Obiang.

Bank of America closed the first Beautiful Vision business checking account, Account No. 02137-06466, on or about August 10, 2005,<sup>156</sup> and a week later, on August 18, 2005, replaced it with a new checking account, Beautiful Vision Account No. 02139-41114.<sup>157</sup> This new account was initially funded with a \$100,000 check, signed by Mr. Obiang, drawn on the Beautiful Vision special checking account.<sup>158</sup> A month later, a \$50,000 check, again signed by Mr. Obiang and drawn on the Beautiful Vision special checking account, was also deposited into the new Beautiful Vision account.<sup>159</sup> The account then paid bills related primarily to activities at the Grand Wailea Resort in Hawaii, the Venetian Hotel in Las Vegas, and the L’ermitage Hotel in Beverly Hills, on dates that correspond to travel by Mr. Obiang to those cities.<sup>160</sup> In addition, two large wire transfers from the account, listing Mr. Berger as the originator, sent \$70,000 to the Grand Wailea Resort on August 24, 2005, and \$37,093.55 to the same resort on September 12, 2005.<sup>161</sup>

This activity triggered a review of the new account.<sup>162</sup> During the review, Bank of America immediately discovered Mr. Obiang’s role and immediately closed the account on September 12, 2005, a month after it was opened. The review also led to Bank of America’s discovering that Mr. Obiang was using the second Beautiful Vision account, and the bank closed that account as well, two months later in November 2005.<sup>163</sup> Bank of America told the Subcommittee that it closed both accounts due to Mr. Obiang’s involvement with Beautiful Vision Inc.<sup>164</sup> The bank did not, however, take any action regarding Mr. Berger’s accounts, even though he was the president of Beautiful Vision, had opened both accounts, and had hidden from the bank that Mr. Obiang was the beneficial owner of the company.

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<sup>154</sup> See copy of 3/4/05 check and 3/4/05 cashier’s check from Bank of America, BAC-PSI-06020.

<sup>155</sup> See copy of 3/4/05 cashier’s check, BAC-PSI-07630.

<sup>156</sup> 10/29/04 account statement from Bank of America, BAC-PSI-03040. 08/10/05 account statement from Bank of America, BAC-PSI-03065.

<sup>157</sup> 8/31/05 account statement from Bank of America, BAC-PSI-02516; 9/16/05 account statement from Bank of America, BAC-PSI-02520. The funds in the closed account were transferred to other Beautiful Vision accounts and used to pay Obiang-related bills and expenses. Subcommittee interview of Bank of America, December 18, 2009.

<sup>158</sup> 8/18/05 Bank of America deposit ticket and 8/15/05 check to Beautiful Vision Inc. signed by Mr. Obiang, BAC-PSI-02596-97.

<sup>159</sup> 9/12/05 Bank of America deposit ticket and 9/9/05 check signed to Beautiful Vision Inc. signed by Mr. Obiang, BAC-PSI-02598-99.

<sup>160</sup> 8/31/05 account statement from Bank of America, BAC-PSI-02516. 9/16/05 account statement from Bank of America, BAC-PSI-02520.

<sup>161</sup> Id. at BAC-PSI-02520.

<sup>162</sup> Subcommittee interview with Bank of America, December 18, 2009.

<sup>163</sup> Subcommittee interview with Bank of America, March 25, 2009 and December 18, 2009.

<sup>164</sup> Subcommittee interview with Bank of America, April 22, 2009.

**Berger Attorney-Client Account.** After Bank of America closed the Beautiful Vision accounts in 2005, Mr. Obiang did not withdraw from the bank. Instead, he made greater use of Mr. Berger's attorney-client account to continue to bring suspect funds into the United States through Bank of America.

Mr. Berger first opened his attorney-client account at Bank of America in 1996, under the name of Law Offices of Michael Jay Berger Attorney-Client Trust Account No. 16646-09603.<sup>165</sup> Mr. Berger first began accepting wire transfers from Mr. Obiang in 2004, when he began working for him, and continued to accept them, including wire transfers from Equatorial Guinea, until his account was closed by the bank in 2007. Altogether over three years, the Berger attorney-client account accepted and disbursed over \$4.8 million to pay Obiang-related bills or forward funds to other Obiang-related accounts. By using his attorney-client account as a conduit for Obiang funds, Mr. Berger helped Mr. Obiang conceal his activities at Bank of America and circumvent the bank's AML and PEP controls.

For example, on June 24, 2005, City National Bank sent two checks to the Berger attorney-client account at Bank of America in the amounts of \$500,000 and \$199,691.02, for a total of \$699,691.02.<sup>166</sup> These funds came from an Obiang account that had been closed by the bank. Mr. Obiang had earlier told the bank that the source for these funds was one of his companies in Equatorial Guinea.<sup>167</sup> Mr. Berger deposited both checks in his attorney-client account.<sup>168</sup>

On July 28, 2006, Mr. Berger sent Mr. Obiang instructions for wiring funds to his attorney-client account.<sup>169</sup> A week after those instructions were sent, on August 4, 2006, Mr. Obiang's EG company, Socage, wire transferred nearly \$300,000 to the Berger attorney-client account.<sup>170</sup> It was the first of six large EG wires from Socage or Somagui Forestal, totaling nearly \$1.3 million, sent to the account between August 2006 and September 2007.<sup>171</sup> Each time these EG funds were deposited into the account, Mr. Berger responded by using the money to pay Obiang-related bills or forwarding the funds to other Obiang-related accounts.<sup>172</sup>

On October 20, 2006, for example, the Berger attorney-client account received a wire transfer for \$199,931.17 from Socage.<sup>173</sup> Three days later, on October 23, 2006, Mr. Berger wrote a check from his attorney-client account to "cash" for \$199,931.17, placing a note on the check, "For UHI (illegible) account."<sup>174</sup> "UHI" refers to Unlimited Horizon Inc. which cashed

<sup>165</sup> 8/2/96 SQN scanned signature for account 16646-09603, BAC-PSI-04678.

<sup>166</sup> 7/6/05 City National Bank account statement, CNB0005540.

<sup>167</sup> 9/30/04 Declaration of Teodoro Nguema-Obiang to the Superior Court of California, County of Los Angeles, CNB0004068.

<sup>168</sup> Various dates, wire transfer records from Bank of America, BAC-PSI-02424, 02425.

<sup>169</sup> SEN 004438 (Mr. Berger wrote: "Here is the updated information that you need to wire transfer money to my Attorney Client Trust Account at Bank of America. Name of Account: Law Offices of Michael Jay Berger Attorney-Client Trust Account").

<sup>170</sup> 8/4/06 wire transfer record, BAC-PSI-02445.

<sup>171</sup> Various dates, wire transfer records from Bank of America, BAC-PSI-02442 to 02469. This \$1.3 million is in addition to the \$9.7 million deposited into the Beautiful Vision account from 2004 to 2005.

<sup>172</sup> BAC-PSI-02395-441; See also Citibank account file, C0000003-56.

<sup>173</sup> Various dates, wire transfer records from Bank of America, BAC-PSI-02445-54.

<sup>174</sup> The check amount corresponds to a \$200,000 incoming wire amount, less a \$45 wire transfer fee. 10/31/06 account statement from Bank of America, BAC-PSI-02371.

the check the same day, and deposited the funds into its account at Union Bank of California, Account No. 0720115409.<sup>175</sup> This transaction was described in an email from Mr. Berger to Mr. Obiang as follows:

“Dear Mr. Nguema:

This confirms my receipt of a wire transfer from you in the amount of \$199,941.17 [sic]. This money was received in my attorney client trust account at Bank of America on October 20, 2006. Per our telephone conversation today, I will transfer said funds to the Unlimited Horizon General Checking Account at Union Bank on Monday (when Union Bank opens) and use said funds to pay your bills. ...

Sincerely,  
Michael Berger”<sup>176</sup>

On July 26, 2007, the Berger attorney-client account received another EG wire transfer from Socage for \$199,948.82.<sup>177</sup> The same day, Mr. Berger wrote a check on his account to “cash” for \$199,948.82 with a note “for cashier’s check for client.” The check was deposited into an Unlimited Horizon account at Citibank, Account No. 202018867.<sup>178</sup>

On August 5, 2007, Mr. Berger sent the following email asking Mr. Obiang to send \$200,000 to the Berger attorney-client account at Bank of America so that the money could be used to pay Mr. Obiang’s bills.

“Dear Mr. Nguema:

... All approved check requests have been paid, with the following 4 exceptions:

Hagerty Insurance Agency \$8,165.00 (add on Bentley Azure)  
Gearys \$1,734.17 (2 wine glasses)  
South Coast Water \$3,221.31 (portable car wash machine)  
Xtreme Marine \$8,044.26 (service speed boat)

I did not have enough money to pay these 4 bills[.]

I have prepared and attached an invoice to you requesting a wire transfer of \$200,000.00 to my Bank of America Client Trust Account. I will need these funds to pay additional bills for you. A copy of my Bank of America Client Trust Account Wire Transfer Information is attached hereto. ...

Sincerely,  
Michael Berger”<sup>179</sup>

<sup>175</sup> 9/28/07 account statement from Bank of America, BAC-PSI-02394; 10/23/06 check to UHI, BAC-PSI-02406.

<sup>176</sup> 10/21/06 email from Mr. Berger to Mr. Obiang, SEN012377.

<sup>177</sup> 7/31/07 account statement from Bank of America, BAC-PSI-02390.

<sup>178</sup> 7/31/07 account statement from Citibank, C0000027.

<sup>179</sup> 8/5/07 email from Mr. Berger to Mr. Obiang, BATES SEN004594.

Shortly afterward, on August 16, 2007, Somagui sent a wire transfer from Equatorial Guinea for \$199,908.45 to the Berger attorney-client account.<sup>180</sup> On the same day, Mr. Berger wrote a check on that account to “cash” for \$199,908.45 with a note for “Unlimited Horizon, Inc. Cashier’s Check.” The check was deposited into the Unlimited Horizon account at Citibank, Account No. 202018867.<sup>181</sup>

A final example occurred on September 11, 2007, when Somagui sent an EG wire transfer for \$199,934.10 to the Berger attorney-client account.<sup>182</sup> On the same day, Mr. Berger wrote a check on that account to “cash” for \$199,934.10 with a note for “Cashier’s Check.” As before, the check was deposited into the Unlimited Horizon account at Citibank.<sup>183</sup>

The following chart lists key EG incoming wires to the Berger attorney-client account at Bank of America from 2005 to 2007.

<b>Select Incoming EG Wires to Berger Attorney-Client Account at Bank of America</b>						
<b>Date</b>	<b>Amount</b>	<b>Originator</b>	<b>Ordering Bank</b>	<b>Correspondent</b>	<b>Ultimate Beneficiary</b>	<b>Bates</b>
8/8/2005	\$299,933.50	Teodoro Obiang	Belgolaise Bank in Paris	None specified	Beautiful Vision Account 02139-06465 at Bank of America	BAC-PSI-02914
8/4/2006	\$299,923.68	SOCAGE, BATA	NATEXIS BANQUES	None Specified	Funded multiple checks drawn on Berger Attorney-Client Account 16646-09603 at Bank of America	BAC-PSI-02445
9/26/2006	\$199,975.90	SOCAGE, BATA	CCEI Bank GE	ING Belgium	Funded multiple checks drawn on Berger Attorney-Client Account 16646-09603 at Bank of America	BAC-PSI-02449
10/20/2006	\$199,976.17	SOCAGE, BATA	CCEI Bank GE	ING Belgium	Unlimited Horizon Account 0720115409 at Union Bank of California	BAC-PSI-02454
7/26/2007	\$199,948.82	SOCAGE, BATA	CCEI Bank GE	Northern Trust Int’l Bank	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02458
8/14/2007	\$199,933.45	SOMAGUI, BATA	NATEXIS BANQUES	None Specified	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02462
9/11/2007	\$199,934.10	SOMAGUI, BATA	CCEI Bank GE	Northern Trust Int’l Bank	Unlimited Horizon Account 202018867 at Citibank	BAC-PSI-02466
<b>TOTAL- \$1,599,625.62</b>			<b>SOURCE- Bank of America</b>			

Prepared by Subcommittee

<sup>180</sup> BATES BAC-PSI-02462 to BAC-PSI-02465.

<sup>181</sup> SEN004605; 8/31/07 account statement from Citibank, C0000030; 6/26/07 Citibank account enrollment form for Unlimited Horizon Inc., C0000018.

<sup>182</sup> 4/26/04 wire transfer, BATES BAC-PSI-02466 to BAC-PSI-02469. This amount was the amount sent by wire transfer less a wire transfer fee.

<sup>183</sup> SEN004605; 9/30/07 account statement from Citibank, C0000033; 6/26/07 Citibank account enrollment form for Unlimited Horizon Inc., C0000018.

By 2006, Bank of America knew that Mr. Berger was working with Mr. Obiang and had established the Beautiful Vision accounts for him, but took no action for more than two years to review the EG wires going into the Berger attorney-client account.

In the meantime, Mr. Berger used his attorney-client account to transfer funds to both the Beautiful Vision and Unlimited Horizon accounts, as well as to pay some Obiang bills and expenses. This chart lists significant disbursements totaling in excess of \$4.8 million from the Berger attorney-client account from 2004 to 2007.

<b>Select Disbursements from Berger Attorney-Client Account at Bank of America</b>			
<b>Date</b>	<b>"To:"</b>	<b>Amount</b>	<b>Bates</b>
11/1/2004	Beautiful Vision Account 02139-06465 at Bank of America	\$1,000,000.00	BAC-PSI-02398
11/1/2004	Beautiful Vision Account 02139-06466 at Bank of America	\$500,000.00	BAC-PSI-02399
11/1/2004	Beautiful Vision Accounts 02135-00057 (CD) & 02132-00049 (CD) at Bank of America	\$1,600,000.00	BAC-PSI-02400
7/29/2005	Beautiful Vision Account 02139-06465 at Bank of America	\$669,691.02	BAC-PSI-02401
8/31/2006	Saurman Investigative Services "For: Sweetwater Malibu, LLC"	\$56,544.00	BAC-PSI-02404
10/4/2006	Saurman Investigative Services "For: Sweetwater Malibu, LLC"	\$54,720.00	BAC-PSI-02405
10/23/2006	Cash ("For: Cashier's Check UHI Gen. Acct.") – Unlimited Horizon Account at Union Bank of California	\$199,931.17	BAC-PSI-02406
7/6/2007	Saurman Investigative Services "For: TNO June 2007"	\$54,720.00	BAC-PSI-02408
7/10/2007	Cash "For Cashier's Check Unlimited Horizons, Inc." / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$100,000.00	BAC-PSI-02409
7/27/2007	Cash "For: Cashier's Check for Client" / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$199,948.82	BAC-PSI-02407
8/16/2007	Cash "For: Unlimited Horizon, Inc. Cashiers Check" / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$199,908.45	BAC-PSI-02410
9/11/2007	Cash "For: Cashier's Check / Deposited to Unlimited Horizon Account 202018867 at Citibank	\$199,934.10	BAC-PSI-02411
<b>Source- Bank of America</b>		<b>Total- \$4,835,397.56</b>	

Prepared by Subcommittee

A comparison of the two charts shows five instances in which an incoming EG wire transfer into the Berger attorney-client account was followed by an outgoing check in the same amount to an Unlimited Horizon account. The timing and amounts of those transfers suggest that the funds were deliberately sent to the attorney-client account first, even though the funds were ultimately intended for an Unlimited Horizon account at another bank. The transfers suggest that Mr. Obiang, with the assistance of Mr. Berger, was making a deliberate effort to conceal the source of funding for the Unlimited Horizon accounts. By routing the funds through the Berger attorney-client account at Bank of America first, the funds deposited into the Unlimited Horizon accounts at UBOC and Citibank were presented as transfers from the account of a U.S. lawyer rather than from a company in Equatorial Guinea. Mr. Berger assisted in this scheme by accepting the EG wire transfers and then transferring the same amount of funds via checks to the Unlimited Horizon accounts. Essentially, Mr. Berger allowed his attorney-client



account to function as a pass-through account and conceal the fact that the Unlimited Horizon accounts at UBOC and Citibank were recipients of suspect funds from Equatorial Guinea.

In June 2008, the Subcommittee contacted the bank and inquired about whether the Berger attorney-client account was being used as a conduit for Obiang funds. Bank of America told the Subcommittee that an analysis performed in response to the Subcommittee's inquiry uncovered the Obiang and EG connections to the Berger attorney-client account.<sup>184</sup> Bank of America told the Subcommittee that it "wasn't comfortable" with the transactions, viewed them as suspicious, and closed the attorney-client account in July 2008.<sup>185</sup>

### (iii) Citibank

Still another U.S. bank account utilized by Mr. Obiang, with the assistance of Mr. Berger, was an account opened by Mr. Berger in the name of Unlimited Horizon Inc. at Citibank in Beverly Hills, California. Beginning in July 2007, more than \$1 million in suspect funds from Equatorial Guinea were transferred from the Berger attorney-client account to this account and used to pay Mr. Obiang's bills and expenses. Citibank closed the account in May 2008, ten months after it was opened.<sup>186</sup>

Mr. Berger opened Citibank Account No. 202018867 in the name of Unlimited Horizon Inc. on June 25, 2007, thirteen days after the closing of the Unlimited Horizon account at Union Bank of California.<sup>187</sup> Mr. Berger was the sole signatory on the account, and apparently actively hid from Citibank the company's connection to Mr. Obiang.<sup>188</sup>

At the time of the account opening, Citibank conducted a due diligence review of Unlimited Horizon, including by reviewing its corporate records, requiring completion of a know-your-customer form, and conducting a physical site inspection of the company using the address provided by Mr. Berger.<sup>189</sup> As part of this due diligence process, Mr. Berger provided a copy of Unlimited Horizon's incorporation documents and identified himself as the company president.<sup>190</sup>

Mr. Berger also filled out a Citibank form entitled, "Senior Public Figure Screening," requesting details on any politically connected signatory or owner of more than a 25% of the company's shares. Mr. Berger indicated on the form that no signatory or account owner was a citizen of a country other than the United States. By answering in the negative, Mr. Berger was not required to and did not answer the following question which asked: "If yes, are any of such owners a Senior Political Figure (for example, a current or former Senior Public Figure or Senior

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<sup>184</sup> Subcommittee interview with Bank of America, April 22, 2009.

<sup>185</sup> Subcommittee interview with Bank of America, March 25, 2009; document disclosing Mr. Berger's accounts, BAC-PSI-07607.

<sup>186</sup> Mr. Obiang also had a Citibank credit card in his own name from June 30, 2005 to March 2008, when the account was closed. The credit card account had been inactive since March 2007. See 3/19/09 letter from Citibank to the Subcommittee, PSI-Citi-34-0001-08, at 0006.

<sup>187</sup> 7/11/07 email from Mr. Berger to Mr. Obiang, C0000006; SEN004574.

<sup>188</sup> 6/26/07 Citibank account enrollment form for Unlimited Horizon Inc., C0000018.

<sup>189</sup> 6/27/07 Citibank Single Stock Holder Checklist, C0000005.

<sup>190</sup> 10/27/05 Articles of Incorporation for Unlimited Horizon Inc. as provided to Citibank, C0000016; Citibank account file for Unlimited Horizon cover sheet, C0000004, R948.

Official in the executive, legislative, administrative, military or judicial branch of government) or a close associate/family member ....”<sup>191</sup>

The final step in Citibank’s due diligence process was a site inspection of the place of business listed on the account opening forms. On June 26, 2007, one day after the account application, a Citibank personal banker toured the address of Unlimited Horizon Inc. provided by Mr. Berger.<sup>192</sup> The banker’s report described the type of business as providing legal accounting services, the number of employees present as three, and other characteristics of the office.<sup>193</sup> Mr. Berger had provided the address for his own law offices. The Citibank report states: “Mr. Berger also owns Law Offices of Michael Jay Berger and D&B verification result showed a confidence code: 6. Same address and phone number.”<sup>194</sup>

Mr. Berger failed to disclose that the beneficial owner of Unlimited Horizon – the true beneficiary of the company – was Mr. Obiang.<sup>195</sup> He also represented that his law offices served as the physical office of Unlimited Horizon, without disclosing that Unlimited Horizon was a shell company with no employees or physical presence of its own. He allowed the Citibank banker to think that Unlimited Horizon provided legal accounting services, when it did not. Mr. Berger also failed to disclose that the company had a direct connection to a senior foreign official, Mr. Obiang, who was then serving as the Minister of Agriculture and Forestry in Equatorial Guinea.

Based upon the information it was provided, Citibank agreed to open the account for Unlimited Horizon on June 25, 2007. Citibank records show that the account was first funded two weeks later, on July 10, 2007, with a \$100,000 cashier’s check from Bank of America.<sup>196</sup> This cashier’s check had been paid for with funds from the Berger attorney-client account. A July 12, 2007 email from Mr. Berger to Mr. Obiang makes it clear that these were Obiang-related funds:

“Dear Mr. Nguema, ... I went to Bank of America, withdrew \$100,000.00 of your money from my Bank of America client trust account, purchased a cashier's check for \$100,000.00 made out to Unlimited Horizon, Inc. and deposited said cashier's check into the new Unlimited Horizon, Inc. account at Citibank.”<sup>197</sup>

Over the next five months, the Unlimited Horizon account received five more large deposits, totaling nearly \$1 million, all of which were secretly linked to Mr. Obiang. On July 27, 2007, for example, following a wire transfer for nearly \$200,000 from “Somagui” in Equatorial Guinea to the Bank of America attorney-client account, Mr. Berger withdrew the same amount from that account and deposited it into the Unlimited Horizon account at Citibank.<sup>198</sup> Three weeks later, on August 16, 2007, Mr. Berger withdrew nearly \$200,000 from his attorney-client

<sup>191</sup> 6/22/07 Citibank: CitiBusiness Deposit Account Application, Senior Public Figure Application, C0000014.

<sup>192</sup> 6/26/07 Citibank, Observations at Place of Business, C0000021.

<sup>193</sup> Id.

<sup>194</sup> Id.

<sup>195</sup> See, e.g., 10/15/06 email from Mr. Berger to Mr. Obiang, SEN004465 (Mr. Berger wrote: “Unlike my client trust account which is used for many clients, the 2 Unlimited Horizon Accounts [at Union Bank of California] are used exclusively for your business.”).

<sup>196</sup> 7/31/07 account statement from Citibank, C0000026; SEN004595.

<sup>197</sup> 7/12/07 email from Mr. Berger to Mr. Obiang, SEN004586.

<sup>198</sup> BAC-PSI-02458; BAC-PSI-02407; SEN004598; 7/31/07 account statement from Citibank, C0000027.

account at Bank of America and deposited the same amount into the Unlimited Horizon account at Citibank.<sup>199</sup> A month after that, on September 11, 2007, he did it again. After receiving a wire transfer for nearly \$200,000 from “Somagui” in Equatorial Guinea to his Bank of America attorney-client account, Mr. Berger withdrew the same amount from that account and deposited it into the Unlimited Horizon account at Citibank.<sup>200</sup> On October 12, 2007, it happened a fourth time. Mr. Berger withdrew nearly \$200,000 from his Bank of America attorney-client account and deposited the same amount into the Unlimited Horizon account at Citibank. Finally, on November, 9, 2007, he withdrew nearly \$170,000 from the same attorney-client account and deposited the same amount into the Unlimited Horizon account at Citibank.<sup>201</sup> These five deposits, in addition to the initial deposit of \$100,000, meant that the Citibank account collected over \$1 million in less than six months.

The funds sent to Mr. Berger’s attorney-client account at Bank of America could have been sent directly to the Unlimited Horizon account at Citibank, but if they had been, Citibank would have been alerted the funds were being wired from Equatorial Guinea. The fact that the funds were routed first through the attorney-client account suggests that Mr. Berger was deliberately assisting Mr. Obiang in hiding his involvement in the funding of the Citibank account.

The Obiang-related funds in the Berger attorney-client account were used to pay Obiang-related bills and expenses, including payroll expenses associated with his Malibu residence. On May 20, 2008, less than one year after the account was opened, Citibank closed the Unlimited Horizon account, because “activity in the account was inconsistent with the account profile.”<sup>202</sup> A little over \$6,000 was in the account when it was closed.<sup>203</sup>

#### (iv) PayPal

Mr. Berger used three U.S. banks, Union Bank of California, Bank of America, and Citibank, to help Mr. Obiang bring millions of dollars in suspect funds into the United States, through shell company, attorney-client, and other accounts. He apparently also considered using other payment systems for this purpose. On June 8, 2007, for example, Mr. Obiang’s assistant Suellen Everett wrote to Mr. Berger requesting that he purchase a product called “jumping stilts” for Mr. Obiang:

“The boss saw a guy running down the street in these contraptions and wanted them. In order to get them by Saturday we must pay via the link below ....”<sup>204</sup>

Mr. Berger replied:

“I have set up a PayPal account for Unlimited Horizon, Inc. It will take 2 or three business days to get verified. At that point, I will be able to use PayPal to make payments for Unlimited Horizon in any amount up to the balance of the account. This

<sup>199</sup> 8/31/07 account statement from Citibank, C0000030; BAC-PSI-02410; SEN004605.

<sup>200</sup> BAC-PSI-02411; BAC-PSI-02466; SEN004605; 9/30/07 account statement from Citibank, C0000033.

<sup>201</sup> SEN004652, 004675.

<sup>202</sup> 3/19/09 letter from Citibank to the Subcommittee, PSI-Citi-34-0001-01, at 0007.

<sup>203</sup> 2/29/08 account statement from Citibank, C0000056.

<sup>204</sup> 6/7/07 email from Ms. Everett to Mr. Berger, SEN002185.

will be a good thing for the future and will give Mr. Nguema extra flexibility in ordering and paying for items...”<sup>205</sup>

By setting up a PayPal account in the name of a shell company, Mr. Berger could have enabled Mr. Obiang once more to hide his involvement in making purchases that, while trivial here, could involve a more serious expenditure of suspect funds in the future.

When Paypal was contacted by the Subcommittee, however, it was unable to find any account that had been opened in the name of Unlimited Horizon Inc., Beautiful Vision Inc., or other corporations associated with Mr. Obiang. Nor had any account been opened in the name of Mr. Obiang. The Subcommittee was thus unable to confirm, despite Mr. Berger’s 2007 email, that any PayPal account for Mr. Obiang had actually been established.

### **(c) Compensation**

The total amount and form of the compensation provided by Mr. Obiang to Mr. Berger in return for his services are unclear. Mr. Berger periodically requested wire transfers from Mr. Obiang in amounts ranging from \$200,000 to \$400,000 to be sent to Mr. Berger’s attorney-client accounts to pay for “legal services to be rendered to you and costs to be paid for you pursuant to our July 26, 2006 personal services agreement.”<sup>206</sup> These funds were provided on at least a monthly basis, but it is unclear how much Mr. Berger retained as compensation for his own services.<sup>207</sup> The records also show that, from October 2006 to March 2007, Mr. Berger wrote himself a monthly \$5,000 self-endorsed check from the Unlimited Horizon account at UBOC, for a total of \$30,000 over six months.<sup>208</sup> Still another document indicates that Mr. Berger was paid a \$60,000 fee for referring Mr. Obiang to a California real estate agent who helped him purchase his \$30 million Malibu residence, as explained further below.<sup>209</sup>

In addition to this cash compensation, as a result of his relationship with Mr. Obiang, Mr. Berger was invited to exclusive social events and venues in Southern California. After a party called the “Nguema Summer Bash” on September 14, 2007, for example, Mr. Berger sent the following email to Mr. Obiang:

“Thank you very much for inviting me to your party and for being so nice to me at the party. I appreciate the super VIP treatment that you gave me. I appreciate you telling your friends that I am your attorney. I am proud to work for you. ... The food was

<sup>205</sup> Mr. Berger previously established an account at Union Bank of California in the name of Unlimited Horizon Inc.; see also 6/7/07 email from Mr. Berger to Ms. Everett, SEN002184.

<sup>206</sup> See, e.g., 8/23/07 invoice from Mr. Berger to Mr. Obiang, SEN007758; 8/5/07 invoice from Mr. Berger to Mr. Obiang, SEN007767; 8/5/07 wire transfer information, SEN007769; 11/29/07 invoice from Mr. Berger to Mr. Obiang, SEN007785; 10/30/07 invoice from Mr. Berger to Mr. Obiang, SEN007786; 9/25/07 invoice from Mr. to Mr. Obiang, SEN007796.

<sup>207</sup> Id.

<sup>208</sup> Various dates, checks from Unlimited Horizon to Mr. Berger, PSI-Union\_Bk\_Calif-01-000391; 000331, 000274, 000239, 000182, 000140.

<sup>209</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell Banker-03-0003.

great, the drinks were better than great, the house, the view, the DJ, the white tiger were all SO COOL! Best of all were the people that I met there because of you.”<sup>210</sup>

Mr. Obiang also arranged for Mr. Berger to be invited to the 2007 “Kandy Halloween Bash” at the Playboy Mansion.<sup>211</sup> After the party, Mr. Berger wrote:

“Dear Mr. Nguema:

Thank you very much for inviting me to the Kandy Halloween party @ The Playboy Mansion and getting me the VIP treatment. I had an awesome time. I met many beautiful women, and I have the photos, e-mail addresses and phone numbers to prove it. If the word gets out that you are looking for a bride, women all over the world will go even more crazy for you. ...

Your loyal friend and attorney,  
Michael Berger.”<sup>212</sup>

These documents suggest that, through Mr. Obiang, Mr. Berger gained access to exclusive settings that might otherwise have been inaccessible to him.

## **(2) Attorney George I. Nagler**

For a two-year period from 2005 to 2007, Mr. Obiang employed a second California attorney, George I. Nagler, to advance his interests in the United States. Mr. Nagler helped Mr. Obiang purchase and manage the Malibu property, incorporated shell companies for Mr. Obiang, persuaded others to open accounts in the names of those companies, and for a short time allowed Obiang funds to be funneled through his own attorney-client and law office accounts. Altogether, Mr. Nagler helped Mr. Obiang bring over \$2.1 million in funds from Equatorial Guinea into the United States. In addition, Mr. Nagler worked with a colleague in the insurance industry to help Mr. Obiang obtain insurance for his fleet of 32 cars and motorcycles. Mr. Nagler and Mr. Berger met, but appeared to work independently of each other.

Mr. Nagler is a graduate of Harvard University and has been admitted to practice law in California since 1970.<sup>213</sup> According to his website, his areas of practice include real estate, business law, and limited liability companies, among others.<sup>214</sup> Mr. Nagler provided documents in response to a Subcommittee subpoena and answered written questions from the Subcommittee.

According to Mr. Nagler, he provided legal services to Mr. Obiang for two years, from approximately September 2005 through September 2007.<sup>215</sup> Those services related primarily to Mr. Obiang’s purchase of the \$30 million Malibu residence, and included assisting Mr. Obiang

<sup>210</sup> 9/15/07 email from Mr. Berger to Mr. Obiang, SEN004620. See also copy of photographs of Mr. Berger at the Ngeuma Summer Bash., SEN007698 at 7718.

<sup>211</sup> 10/12/07 email from Mr. Berger to Mr. Obiang accepting the invitation to the Kandy Halloween party, SEN004651.

<sup>212</sup> 10/28/07 email from Mr. Berger to Mr. Obiang, SEN004389.

<sup>213</sup> Lawyers.com, <http://www.lawyers.com/California/Beverly-Hills/George-I.-Nagler-78953-a.html>.

<sup>214</sup> Law Offices of George I. Nagler, <http://www.georgenagler.com/>.

<sup>215</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0002.

in the formation of three shell companies, arranging for the purchase and management of his Malibu property, and handling various insurance matters.<sup>216</sup> Mr. Nagler told the Subcommittee that in performing these duties he did “not believe that he ever concealed or mischaracterized the Client’s association with any account.”<sup>217</sup> The documentation also indicates that, like Mr. Berger, Mr. Nagler was well aware of the suspect origins of Mr. Obiang’s funds. Mr. Nagler told the Subcommittee that he was paid fees for his services which, over the two years, totaled about \$196,500.<sup>218</sup>

### (a) Incorporating Shell Companies

Mr. Nagler told the Subcommittee that he helped Mr. Obiang establish three California corporations, Sweet Pink Inc., Sweetwater Malibu LLC, and Sweetwater Management Inc.

**Sweet Pink Inc.** According to Mr. Nagler, he began working for Mr. Obiang in September 2005, after being contacted through the Internet by Mr. Obiang’s executive assistant, Rosalina Romo.<sup>219</sup>

Mr. Nagler told the Subcommittee that he was asked at that time to form a corporation “to employ individuals at the home the Client maintained before he purchased the Malibu Property and to handle payroll and other matters related to the employment of those individuals.”<sup>220</sup> In an email dated September 15, 2005, Mr. Nagler asked Ms. Romo to provide him with two or three names for the corporation.<sup>221</sup> Later that same day, he requested articles of incorporation be filed with the California Secretary of State for “Sweet Pink Inc.”<sup>222</sup> The Statement of Information for Sweet Pink Inc. listed Ms. Romo as the company’s Chief Executive Officer, Secretary, and Chief Financial Officer.<sup>223</sup> Mr. Obiang is listed as “assistant treasurer,”<sup>224</sup> but Mr. Nagler told the Subcommittee that it was his understanding that Mr. Obiang “was the sole owner” of the corporation and was the “sole source of funding” for the corporation.<sup>225</sup>

On September 22, 2005, Mr. Nagler faxed an “engagement letter” to Marvin Freedman, a certified public accountant, with instructions to immediately open a bank account for Sweet Pink Inc. and obtain wiring instructions so that Mr. Obiang could fund the account.<sup>226</sup>

“He [Mr. Obiang] wants you to open a bank account as soon as you can forward the wiring instructions so he can wire funds. You should plan to have two or three people in

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<sup>216</sup> Id.

<sup>217</sup> Id. at PSI-Nagler-02-0009.

<sup>218</sup> Id. at PSI-Nagler-02-0002.

<sup>219</sup> Id. at PSI-Nagler-02-0010.

<sup>220</sup> Id. at PSI-Nagler-02-0004.

<sup>221</sup> 9/15/05 email from Mr. Nagler to Ms. Romo, SEN005785.

<sup>222</sup> 9/15/05 fax from Mr. Nagler, SEN005786.

<sup>223</sup> State of California, Statement of Information for a Domestic Stock Corporation, SEN013765.

<sup>224</sup> Id.

<sup>225</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0004-05.

<sup>226</sup> 9/22/05 fax from Mr. Nagler to Mr. Freedman, SEN005761.

your office authorized to sign the account. You should add him as the assistant treasurer as able to sign alone. ... He is in Paris and can arrange to wire the funds from there.”<sup>227</sup>

A few days later, Mr. Nagler was told that Eve Jeffers, a hip-hop musician and Mr. Obiang’s then girlfriend, would become the president of the corporation. On September 28, 2005, Mr. Nagler sent the following instructions to Mr. Freedman and Ms. Romo regarding signatory authority for the Sweet Pink account at Union Bank of California:

“I understand that Eve Jeffers, the President, Secretary, and Chief Financial Officer will be coming in to the Encino branch of Union Bank to sign the signature card today. She signing alone will have signing authority, Mr. Obiang will also have signing authority acting alone when he can come in and sign and you will initially be authorized. Three other people from your office will be authorized to sign so long as two of you sign all checks. You expect that the other three will sign the signature card some time this week. In the interim you will be authorized to sign alone.

Lina, by copy [being] sent to you, please ask Eve to call you when she has signed. You should then call or fax Mr. Freedman and tell him that the card has been signed. Mr. Freedman can then open the account and send the complete wiring instructions to you by fax. I understand that the funds will be wired by Mr. Obiang from a bank out of town.”<sup>228</sup>

The next day, September 29, 2005, a checking account in the name of Sweet Pink Inc., Account No. 1300052831, was opened at Union Bank of California. Ms. Jeffers was a signatory along with 4 other persons from Mr. Freedman’s firm. Mr. Obiang was not on the signature card.<sup>229</sup> During October 2005, two wire transfers, each for nearly \$30,000, were deposited into the account from Somagui Forestal, one of Mr. Obiang’s EG companies.<sup>230</sup> Union Bank of California learned of the large wire transfers from Equatorial Guinea, which it had designated as a high-risk jurisdiction. On October 27, 2005, less than one month after the account opening, the bank closed the Sweet Pink account.

**Sweetwater Malibu LLC.** In February 2006, Mr. Nagler formed a second California corporation for Mr. Obiang, Sweetwater Malibu LLC. Mr. Nagler told the Subcommittee that this corporation was formed “to take title to the Malibu Property,”<sup>231</sup> which was then in the process of being purchased. In a memorandum he sent to Mr. Obiang, Mr. Nagler provided this explanation of the company:

“Sweetwater Malibu, LLC. This limited liability company will be the buyer of the Malibu. I had it formed on Tuesday, February 7, 2006, by sending the papers to the Secretary of State. I need you to give me the name of the person who you want to act as

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<sup>227</sup> Id.

<sup>228</sup> 9/28/05 fax from Mr. Nagler to Mr. Freedman, SEN005736.

<sup>229</sup> UBOC signature card, PSI-Union\_Bank\_of\_California-04-0191.

<sup>230</sup> 3/2/09 Union Bank of California Case Report on Sweet Pink Inc., PSI-Union\_Bank\_of\_California-04-0191.

<sup>231</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003. See also 4/3/06 fax from Mr. Nagler to the First American Title Co., SEN006103 (Sweetwater Malibu LLC was formed for the purpose of “purchasing, owning and operating a residence commonly known as 3620 Sweetwater Mesa Road, Malibu, CA 90265.”).

manager. I need someone who is a US taxpayer so that we can apply for a tax identification number for the company. If you do not give me a name, I will show you as the manager.”<sup>232</sup>

The Sweetwater Malibu LLC articles of organization were filed with the California Secretary of State on February 8, 2006.<sup>233</sup> They identified Mr. Nagler as the initial agent for service of process and stated that Sweetwater Malibu LLC would be managed by a single manager who was not named.<sup>234</sup> The articles made no mention of Mr. Obiang, however, a week later, on February 15, 2006, Mr. Obiang signed an “Operating Agreement for Sweetwater Malibu, LLC” identifying him as the “sole member of the company.”<sup>235</sup>

Three weeks after the formation of the corporation, on February 27, 2006, a grant deed was signed and notarized selling the Malibu property to Sweetwater Malibu LLC.<sup>236</sup> The grantor requested that notification of the recording of the deed be sent to “Sweetwater Malibu LLC, care of George Nagler.”<sup>237</sup>

On March 31, 2006, a confidentiality agreement was signed by the realty company that handled the sale, Coldwell Banker, to prohibit disclosure of Mr. Obiang as the purchaser of the property, the terms of the purchase, or the value of the property, for a period of 50 years.<sup>238</sup> According to the agreement, any disclosure made pursuant to legal process required notification to Mr. Nagler and the seller’s attorney.<sup>239</sup> Hilton & Hyland, the seller’s agent, told the Subcommittee that both the seller and Mr. Obiang had wanted the confidentiality agreement.

About six months later, on September 15, 2006, a Statement of Information for Sweetwater Malibu, LLC was filed with the California Secretary of State and listed Mr. Obiang as the sole manager of the corporation.<sup>240</sup> Mr. Nagler told the Subcommittee that Mr. Obiang “was the sole manager” of Sweetwater Malibu LLC “after March 2, 2006.”<sup>241</sup> He said that Sweetwater Malibu LLC “had no employees.”<sup>242</sup>

**Sweetwater Management Inc.** A few weeks after setting up Sweetwater Malibu LLC, Mr. Nagler established a third California corporation for Mr. Obiang called Sweetwater Management Inc. A February 21, 2006, memorandum from Mr. Nagler to Mr. Obiang describes the corporation as follows:

“New Management Company. You asked me to form a new management company to handle the payroll and to employ all the employees that you now have and will have at the Malibu house. You also asked me to prepare a draft of an employment agreement.

<sup>232</sup> 2/21/06 fax from Mr. Nagler to Mr. Obiang, SEN0011704

<sup>233</sup> 2/8/06 Sweetwater Malibu LLC Articles of Organization, PSI-Pacific\_Mercantile\_Bank-01-0263.

<sup>234</sup> Id.

<sup>235</sup> 2/15/06 Operating Agreement for Sweetwater Malibu LLC, PSI-Pacific\_Mercantile\_Bank-01-0266-73.

<sup>236</sup> 2/27/06 Grant Deed of 3620 Sweetwater Mesa Road, PSI-Coldwell\_Banker-01-000069.

<sup>237</sup> Id.

<sup>238</sup> 3/31/06 Broker Confidentiality Agreement, PSI-Coldwell\_Banker-01-000509.

<sup>239</sup> Id. at PSI-Coldwell\_Banker-01-000510.

<sup>240</sup> 9/25/06 Statement of Information regarding Sweetwater Malibu LLC, signed by Mr. Obiang, PSI-Pacific\_Mercantile\_Bank-01-0262.

<sup>241</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0003.

<sup>242</sup> Id.



We talked about using the name Sweetwater Management, Inc. You thought that name was acceptable. Do you want me to form this company?"<sup>243</sup>

On May 16, 2006, Sweetwater Management Inc. was incorporated using Mr. Nagler's business address in Beverly Hills, California.<sup>244</sup> The California "Statement of Information" listed Mr. Obiang as the company's sole director and identified Mr. Nagler as the agent for service of process.<sup>245</sup> Another document filed a week later named Mr. Obiang as the president, chief financial officer, and secretary of Sweetwater Management Inc.<sup>246</sup> An employee contract later described the purpose of Sweetwater Management Inc. as "providing various services to Sweetwater Malibu LLC."<sup>247</sup>

Documentation obtained by the Subcommittee shows that bank accounts that were later opened in the name of Sweetwater Management provided funds for employee and other expenses associated with Mr. Obiang's Malibu property.<sup>248</sup> The documents also show that Mr. Nagler helped manage the domestic staff payroll through Sweetwater Management and paid a number of bills associated with that property as well as other expenses incurred by Mr. Obiang.<sup>249</sup>

### **(b) Bringing In and Moving Suspect Funds**

During the two years that he was employed by Mr. Obiang, from September 2005 to September 2007, Mr. Nagler helped Mr. Obiang open accounts at three small California banks, Cal National Bank, City National Bank, and Pacific Mercantile Bank. These accounts included accounts opened in the name of two Obiang shell companies that Mr. Nagler helped form, Sweetwater Malibu LLC and Sweetwater Management Inc.; Mr. Nagler's own attorney-client and law office accounts; and a personal account in Mr. Obiang's own name which Mr. Nagler helped to open. The shell company and Obiang accounts did not last long; the banks closed each account after it received a single large wire transfer from Equatorial Guinea, but together these accounts managed to bring in over \$1.75 million through EG wire transfers. Mr. Nagler accepted another \$400,000 in Obiang-related funds into his own attorney-client and law firm accounts and used the funds to pay Obiang-related bills and expenses for a three-month period in the summer of 2006, but then stopped doing so. By September 2007, Mr. Obiang stopped using Mr. Nagler's services, and Mr. Nagler ended his efforts to locate bank accounts that Mr. Obiang could use to bring money into the United States from Equatorial Guinea.

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<sup>243</sup> 2/21/06 fax from Mr. Nagler to Mr. Obiang, SEN011704.

<sup>244</sup> See 5/16/06 Sweetwater Management Inc. Articles of Incorporation, PSI-Pacific\_Mercantile\_Bank-01-0215-16; SEN005882.

<sup>245</sup> See 6/21/06 Sweetwater Management Inc. Statement of Information, PSI-Pacific\_Mercantile\_Bank-01-0217; SEN009061-72.

<sup>246</sup> 5/23/06 "Action by Unanimous Written Consent in Lieu of First Meeting of the Incorporator and Board of Directors of Sweetwater Management, Inc.," SEN009183. See also 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0003.

<sup>247</sup> 12/12/06 Employment Agreement of Suellen Everett at Sweetwater Management Inc., SEN004220.

<sup>248</sup> 12/12/06 Employment Agreement of Suellen Everett at Sweetwater Management Inc., SEN004220; 7/30/07 Sweetwater Management Inc. Semi-Monthly Payroll, SEN007509; 6/10/07 Sweetwater Management Inc. Over Time Approval, SEN007510.

<sup>249</sup> 1/26/07 email from Mr. Nagler to Ms. Everett, SEN013560; R 2415.

### (i) Cal National Bank

A few months after Mr. Obiang purchased the Malibu property in April 2006, Mr. Nagler facilitated the opening of Sweetwater Malibu and Sweetwater Management accounts at Cal National Bank in Westwood, California even though Cal National Bank had a policy against doing business with PEPs. Mr. Nagler asked a property management company that was known to the bank to open the accounts without disclosing Mr. Obiang's involvement. The bank initially opened the accounts, but after receiving a \$250,000 wire transfer from Equatorial Guinea and an inquiry from an Obiang employee, the bank learned of Mr. Obiang's ownership of the Malibu property being managed, closed the accounts, and transferred the remaining funds to Mr. Nagler's attorney-client account at City National Bank.

**Opening the Accounts.** During late 2005 and early 2006, Mr. Nagler actively assisted Mr. Obiang in the purchase of the Malibu residence, which was ultimately purchased in the name of Sweetwater Malibu LLC in April 2006. In May 2006, Mr. Obiang, as owner of Sweetwater Malibu LLC, entered into an agreement with Ed Mizrahi of American Equity Properties Inc. to manage the property.<sup>250</sup> In connection with that agreement, Mr. Nagler asked Mr. Mizrahi to open accounts in the name of Sweetwater Malibu LLC and Sweetwater Management Inc. at the bank used by his property management firm, so that those accounts could be used to pay for expenses related to the Malibu property, but not to disclose Mr. Obiang identity or involvement with the property or the corporations.

Cal National Bank officials told the Subcommittee that Mr. Mizrahi was well known to them as a professional property manager who managed multiple properties and maintained numerous accounts for those properties at Cal National Bank.<sup>251</sup> They said that, on or about May 30, 2006, Mr. Mizrahi asked the branch manager to open property management accounts for an individual described as "high profile" who "needed his identity to remain anonymous."<sup>252</sup> The bank agreed to open the shell company accounts without obtaining the identity of the person or determining whether he qualified as a PEP, even though U.S. financial institutions are routinely required to obtain this type of information to prevent money laundering.

In response to Mr. Mizrahi's request, on May 30, 2006, the bank opened Account No. 50317171 in the name of "American Equity Properties, Inc. ITF: Sweetwater Malibu."<sup>253</sup> Mr. Mizrahi was the sole account signatory.<sup>254</sup> As part of the account opening documentation, the bank obtained a copy of the management agreement between American Property Management and Sweetwater Malibu, LLC.<sup>255</sup>

The next day, Mr. Mizrahi, accompanied by Melinda Dehaven, an Obiang employee, opened three additional accounts: Account No. 50317197 for Sweetwater Management, Inc. –

<sup>250</sup> 5/23/06 Management Agreement, PSI-Cal\_Nat'l\_Bank-01-0020-24; Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>251</sup> Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>252</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat'l\_Bank-01-0048; Also see Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>253</sup> 5/31/06 Cal National Bank Business Signature Card and Resolution of Corporation, PSI-Cal\_Nat'l\_Bank-01-0091-92. Subcommittee interview with Cal National Bank, February 27, 2009. "ITF" means "in trust for."

<sup>254</sup> Subcommittee interview with Cal National Bank, Nov. 9, 2009.

<sup>255</sup> 5/23/06 Management Agreement, PSI-Cal\_Nat'l\_Bank-01-0020 to 0024.

Payroll; Account No. 50317205 for Sweetwater Management, Inc. – Household; and Account No. 50317254 for Sweetwater Management, Inc. -- Corporate. Ms. Dehaven was a signatory on all three accounts and apparently funded them with money transferred from her personal account at Bank of America.<sup>256</sup> Mr. Mizrahi was also a signatory.<sup>257</sup>

Mr. Nagler sent the following email to Mr. Obiang regarding the opening of the Cal National Bank accounts:

“Mr. Nguema,

Ed [Mizrahi] called me from the bank. He has been able to open the accounts with Melinda in the name of Sweetwater Management, Inc. for both the payroll and the household accounts. To do this, we need to have Melinda elected the Secretary instead of being an assistant secretary. I will change the first minutes to show her as the secretary. You can remove her as secretary any time you wish but it now gives her the authority with the bank to open the bank accounts. It avoids you having to go into the bank and sign the documents.”<sup>258</sup>

The Subcommittee does not know whether Mr. Nagler actually “changed” the minutes dating from the first Sweetwater Management board meeting as suggested in this email.

**Account Activity.** About two weeks later, on June 12, 2006, Cal National Bank received a wire transfer for nearly \$250,000, sent by Socage in Equatorial Guinea, to the American Equity Properties, Inc. ITF: Sweetwater Malibu account.<sup>259</sup> The next day, June 13, 2006, Ms. Dehaven contacted the bank about the wire transfer and apparently asked to have the money moved from the American Equity account, where she was not a signatory, to one of the Sweetwater Management accounts where she was a signatory.<sup>260</sup>

According to bank officials interviewed by the Subcommittee, after receiving her inquiry, the branch manager reviewed the American Equities-Sweetwater agreement it had on file, examined the information provided on ownership of the company, and learned that Mr. Obiang was listed as the sole owner and manager of Sweetwater Malibu LLC.<sup>261</sup> The branch manager then conducted an Internet search, learned that Mr. Obiang was an EG Minister and the son of the EG President, and read about Riggs Bank’s involvement with Equatorial Guinea and the Obiang family.<sup>262</sup> He then contacted a Cal National Bank compliance officer for guidance.<sup>263</sup>

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<sup>256</sup> Subcommittee interview with Cal National Bank, February 27, 2009. See also deposit tickets and checks from Ms. Dehaven, PSI-Cal\_Nat'l\_Bank-01-0089-90. The Subcommittee did not examine her account to determine whether it, too, operated as a conduit for Obiang funds.

<sup>257</sup> 5/31/06 Cal National Bank Business Signature Card and Resolution of Corporation, PSI-Cal\_Nat'l\_Bank-01-0091-2.

<sup>258</sup> 5/31/06 email from Mr. Nagler to Mr. Obiang, SEN011169.

<sup>259</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat'l\_Bank-01-0055.

<sup>260</sup> SEN010959.

<sup>261</sup> 5/16/06 State of California, Articles of Incorporation for Sweetwater Management Inc., PSI-Cal\_Nat'l\_Bank-01-0024.

<sup>262</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat'l\_Bank-01-0048.

<sup>263</sup> Id.

The branch manager also contacted Mr. Mizrahi who sent the following email to Ms. Dehaven, with a copy to Mr. Nagler:

“I was just informed by the Manager at Cal National Bank that you were inquiring why the \$249,899.80 wire was transferred into the American Equity Properties, Inc. ITF Sweetwater Malibu account and not the Household account (that you are a signer on) or the payroll account. ... In the future, if you have questions concerning the transfers of monies you should address them with me or George Nagler, and **not the bank manager**.”<sup>264</sup> [Emphasis in original.]

Ms. Dehaven sent the following apology:

“Sorry if I didn’t go about it the correct way. I didn’t realize that speaking with [the branch manager] wasn’t proper.”<sup>265</sup>

Mr. Mizrahi later sent another email to Mr. Nagler:<sup>266</sup>

“Cal National Bank decided to review the files and researched the Owner and Ownership of the property. Upon doing so, the Bank Manager advised me of his finding and said that the Bank’s policy is to have ‘clients that are not politically connected.’ He further informed me that the bank accounts (that were just opened) could potentially be closed by the bank due to their findings.”<sup>267</sup>

**Account Closings.** On June 22, 2006, less than a month after the account was opened, Cal National Bank notified American Equity Properties by letter that it was closing all four Sweetwater accounts.<sup>268</sup> Following the account closure, Cal National Bank placed Mr. Obiang and Melinda Dehaven on its “hot list,” which restricted them from receiving banking services through the bank.<sup>269</sup> The funds remaining in the American Equity Properties, Inc. ITF: Sweetwater Malibu account, totaling about \$203,000, were wire transferred to Mr. Nagler’s attorney-client trust account at City National Bank.<sup>270</sup>

Cal National Bank chose not to take any action against Mr. Mizrahi, the property manager, even though he opened the Sweetwater accounts and hid Mr. Obiang’s involvement from the bank.

## (ii) City National Bank

After the closure of the Cal National Bank accounts in June 2006, for the next three months, Mr. Nagler allowed his attorney-client and law office accounts at City National Bank to

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<sup>264</sup> SEN010959.

<sup>265</sup> SEN010958.

<sup>266</sup> SEN010959.

<sup>267</sup> 6/13/06 email from Mr. Nagler to Mr. Obiang, SEN010943.

<sup>268</sup> 7/06 Cal National Bank Account Review and Summary, PSI-Cal\_Nat'l\_Bank-01-0049.

<sup>269</sup> Subcommittee interview with Cal National Bank, February 27, 2009.

<sup>270</sup> 6/26/06 wire transfer, PSI-Cal\_Nat'l\_Bank-01-0051. See also Subcommittee interview with Cal National Bank, February 27, 2009.

serve as conduits for about \$400,000 in Obiang funds. Mr. Nagler told the Subcommittee that he did not recall using these accounts to pay for Obiang-related expenses at any other time.<sup>271</sup>

Mr. Nagler told the Subcommittee that during the summer of 2006, at Mr. Obiang's request, he accepted a number of Obiang-related wire transfers into his attorney-client and law office accounts at City National Bank, and then used those funds to pay Mr. Obiang's "household and living expenses" while Mr. Obiang made other arrangements.<sup>272</sup> To pay the bills, Mr. Nagler instructed a payroll company to produce checks imprinted with the Sweetwater Management Inc. name at the top and his attorney-client or law office account number at the bottom, and used those checks to pay the Obiang bills.

More than a year later, after the bank received an inquiry from the Subcommittee, City National Bank conducted a search of its records and learned for the first time that, for a three-month period during the summer of 2006, Mr. Obiang had utilized the Nagler attorney-client and law office accounts. Because there was no sign that Mr. Obiang had continued to use them, City National Bank did not close the Nagler accounts, but rated them "high risk" subject to additional monitoring. City National Bank also confirmed that it had earlier maintained personal and corporate accounts for Mr. Obiang, but had closed the last of those accounts in 2004.

**Obiang Accounts.** Mr. Obiang had already had five years of involvement with City National Bank prior to his utilization of the Nagler accounts in 2006. From at least 2001 to 2004, Mr. Obiang had maintained six corporate and personal accounts at the bank. In 2003, City National Bank closed the five corporate accounts. In 2004, the bank opened and then closed a personal account for Mr. Obiang due to suspicious transactions, froze \$700,000 of his funds, and returned those funds to Mr. Obiang only after ordered by a court to do so.

The first set of accounts at the bank were opened in the name of TNO Entertainment LLC, the California company owned by Mr. Obiang.<sup>273</sup> These accounts were:

- Account No. 101-672085 "TNO ENTERTAINMENT, LLC";
- Account No. 101-770427 "TNO ENTERTAINMENT, LLC (PETTY CASH ACCOUNT)";
- Account No. 101-800261 "TNO ENTERTAINMENT, LLC (SPECIAL ACCOUNT)";
- Account No. 101-862860 "TNO ENTERTAINMENT, LLC (PAYROLL ACCOUNT)";
- Account No. 101-862852 "TNO ENTERTAINMENT, LLC (MUSIC DIVISION ACCOUNT)".<sup>274</sup>

In account opening documents for Account No. 101-672085, Mr. Obiang identified himself as the managing member of TNO Entertainment LLC, and listed his occupation as

<sup>271</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008. See also See 7/20/06 email from Mr. Nagler to Pacific Mercantile Bank, PSI-Pacific\_Mercantile\_Bank-01-0016 (Mr. Nagler wrote: "Currently, I ... have been paying [the Malibu property] bills out of my trust account.").

<sup>272</sup> Id. at 08-09.

<sup>273</sup> Subcommittee interview with City National Bank, March 9, 2009. "TNO" refers to Teodoro Ngeuma Obiang.

<sup>274</sup> 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067; 5/8/01 Operating Agreement of TNO Entertainment LLC, CNB0004863 to CNB0004868.

“Recording Executive.”<sup>275</sup> Between February and December of 2001, Mr. Obiang made three large deposits to that account totaling \$3.5 million.<sup>276</sup> Those deposits were funded by checks drawn against a Riggs Bank account, numbered 76923450, that had been opened in the name of TNO Entertainment.<sup>277</sup>

Bank records show that numerous checks drawn on Account No. 101-672085 were used to pay for high-end retail purchases. For example, the account was used to pay for a \$25,000 bill from Versace, a \$23,000 bill from Dolce & Gabbana, and a \$14,000 bill from Gucci, three high-end clothiers.<sup>278</sup> Sometime in 2003, the bank initiated an evaluation of the account activity and determined that it was inconsistent with the profile for an entertainment company.<sup>279</sup> At the end of 2003, the bank closed all five TNO Entertainment accounts, because of rapidly diminishing funds in the accounts, account activity inconsistent with other entertainment accounts handled by the bank, and difficulties contacting the accountholder, Mr. Obiang.<sup>280</sup> Although City National Bank closed the accounts, the bank told the Subcommittee that it did not view them as suspicious, and did not place any restrictions on Mr. Obiang’s doing business with the bank in the future.<sup>281</sup>

About three months later, on March 2, 2004, Mr. Obiang opened a personal checking account at City National Bank, Account No. 009-609326, apparently using an invalid Social Security number and an invalid date of birth.<sup>282</sup> At account opening, the bank used a database known as Chex System to verify the Social Security number without receiving any alert of a problem.<sup>283</sup> Mr. Obiang apparently did not alert the bank to his PEP status. Mr. Obiang initially funded the account with a \$300,000 check drawn on a Riggs Bank account, Account No. 25773624, but the check was returned unpaid.<sup>284</sup> On March 15, 2004, Mr. Obiang sent a wire transfer for nearly \$1 million from his account at CCEI Bank Guinea Equatorial.<sup>285</sup> City National Bank allowed the transfer without making any inquiries into the source of the funds.

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<sup>275</sup> 12/4/03 City National Bank Business Account Agreement, CNB0001049.

<sup>276</sup> 2/28/01 account statement from City National Bank CNB0000614; 11/30/01 account statement from City National Bank, CNB0000655; 11/30/01 account statement from City National Bank, CNB0000659, R. 2589; 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067.

<sup>277</sup> 1/28/01 account statement from City National Bank CNB0000614; 11/30/01 account statement from City National Bank, CNB0000655; 11/30/01 account statement from City National Bank, CNB0000659; 5/28/04 City National Bank Suspicious Activity Report: Part IV Suspicious Activity Information Explanation/Description, CNB0001067.

<sup>278</sup> 5/16/01 check from TNO Entertainment to Versace, CNB0001200; 5/18/01 check from TNO Entertainment to Dolce & Gabbana, CNB0001201; 8/3/01 check from TNO Entertainment to Gucci, CNB0001229 .

<sup>279</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>280</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>281</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>282</sup> 3/21/04 City National Bank Personal Account Agreement, CNB0001043. Mr. Obiang has been issued a valid Social Security Number, apparently in connection with his California corporation. See 12/10/09 letter from Social Security Administration to the Subcommittee, no bates number.

<sup>283</sup> Subcommittee interview with City National Bank, March 9, 2009. CNB advised the Subcommittee that at time of account opening, the banking center manager may not have been aware of policies respective to screening and banking PEPs, and that bank policies regarding PEPs were not as strong as they are currently as a result of improvements made pursuant to a 2005 Consent Order with the Office of the Comptroller of the Currency (OCC).

<sup>284</sup> 3/31/04 account statement from City National Bank, CNB0000057.

<sup>285</sup> Id.

A few months earlier, in December 2003, the bank had received a Section 314(b) request from Riggs Bank requesting information related to Mr. Obiang.<sup>286</sup> The letter clearly disclosed Mr. Obiang's PEP status. In addition, City National Bank had become aware of adverse media reports concerning Equatorial Guinea and the Obiang family. In response, a City National Bank compliance officer performed a search of the bank records, identified the Obiang checking account, and began to review the account activity.<sup>287</sup> On June 2, 2004, the compliance officer wrote to other bank officials, raising a number of concerns regarding the Obiang account:

“We have identified a number of issues with this client, which should be addressed immediately.

- 1) Your branch is unable to locate the signature card. Account opened on 3-2-2004.
- 2) Public records indicate, the Social Security number used belongs to another individual.
- 3) Opening deposit of \$300,000.00 was returned unpaid by Riggs Bank (own check).
- 4) Discrepancy in date of birth.
- 4) Wire transfer for \$999,950.00 from Equatorial Guinea, which should have been-reported as suspicious and unusual.
- 5) Internet shows that the client is the Minister of State for Forestry, Fishing, & Environment of Equatorial Guinea. It appears, he is related to the President of that country, Obiang Nguema Mbasogo. He may qualify as a political exposed person, requiring enhanced due diligence. Refer to Legal & Compliance Manual.

Since the client provided false information, we should close the account.”<sup>288</sup>

On the same day, June 2, 2004, City National Bank sent a letter notifying Mr. Obiang of its intention to terminate its banking relationship with him, asked him to close his account by June 8, and instructed him to cease all banking activity with the bank.<sup>289</sup> City National Bank closed the account on or about June 14, 2004.<sup>290</sup> Following the account closure, the bank placed Mr. Obiang on its “hot list,” effectively blocking him from banking through City National Bank in the future.<sup>291</sup> The bank also issued and held two checks with the funds remaining in the account totaling \$669,691.02.<sup>292</sup>

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<sup>286</sup> Subcommittee interview with City National Bank, March 9, 2009. Section 314(b) of the 2001 Patriot Act encourages financial institutions and associations of financial institutions located in the United States to share information in order to identify and report activities that may involve terrorist activity or money laundering.

<sup>287</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>288</sup> 6/2/04 internal City National Bank email, CNB0004800.

<sup>289</sup> 6/2/04 letter from City National Bank to Mr. Obiang, CNB0004101.

<sup>290</sup> 11/15/04 City National Bank's Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

<sup>291</sup> Subcommittee interview with City National Bank, March 9, 2009.

<sup>292</sup> 11/15/04 City National Bank's Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

On July 30, 2004, Mr. Obiang called the bank to discuss closure of the account. An email by the bank official who spoke with Mr. Obiang described the conversation as follows:

“In our conversation he asked me why we closed the account. I told him that we were provided with the incorrect social security number and that we had tried to reach him on many occasions and we were unsuccessful. After I told him that, he said, ‘I thought it was due to our country and the oil.’ He then asked me if we could reopen the account if he were to come in and provide us with the correct social. I told him that since we were unable to get a hold of him, the legal department is now involved.”<sup>293</sup>

Earlier the same month that this conversation took place, on July 15, 2004, the Subcommittee held its hearing and released its report on Riggs Bank’s handling of the Equatorial Guinea accounts. The Subcommittee’s report specifically referenced Mr. Obiang’s TNO Entertainment accounts at City National Bank.<sup>294</sup> The bank learned of the Subcommittee report as well as a report issued by the U.S. State Department warning that Equatorial Guinea was mishandling its growing oil wealth.<sup>295</sup> In addition, on August 19, 2004, the bank received a law enforcement subpoena requesting documentation that, among other individuals, related to Mr. Obiang.<sup>296</sup>

In August 2004, Mr. Obiang requested delivery of the \$700,000 from his closed account.<sup>297</sup> In response, City National Bank requested that Mr. Obiang identify the source of the funds. Mr. Obiang provided the following declaration:

“The wire transfer was from one of my companies in Equatorial Guinea. The funds that were transferred to me did not come from any illegal source. It was either from Somagui Forestal or Sofona.”<sup>298</sup>

According to documents reviewed by the Subcommittee, City National Bank learned from press reports that Obiang accounts at Riggs Bank had been frozen by the U.S. Government and believed that law enforcement expected delivery of the remaining funds in the Obiang account at its bank, pursuant to the subpoena served on the bank.<sup>299</sup> City National Bank determined that it should hold onto the funds in expectation of a request from law enforcement.

Mr. Obiang filed suit in the Superior Court of California, County of Los Angeles, to recover the funds.<sup>300</sup> He was represented in that matter by attorney Michael Jay Berger. A federal court had previously determined that the U.S. Government had no interest in the funds.<sup>301</sup> When no other party filed a claim in the suit, the California court ordered the funds paid to Mr.

<sup>293</sup> 11/30/04 internal City National Bank email CNB0004799.

<sup>294</sup> 2004 Subcommittee Investigation of Riggs Bank at 44, footnote 162.

<sup>295</sup> CNB0003931-32.

<sup>296</sup> 11/15/04 City National Bank’s Cross-Complaint, Obiang v. City National Bank, Case No. SC 083177, CNB0003931.

<sup>297</sup> Id.

<sup>298</sup> Id. at CNB0004068.

<sup>299</sup> Id.

<sup>300</sup> 6/24/05 Teodoro Nguema Obiang’s Ex Parte Application to Approve Judgment, Obiang v. City National Bank, Case No. SC 083177, CNB0005561.

<sup>301</sup> Id.



Obiang.<sup>302</sup> On June 24, 2005, City National Bank issued two checks payable to a Berger attorney-client account at Bank of America in the amounts of \$500,000 and \$199,691.02, for a total of \$699,691.02.<sup>303</sup> Mr. Berger deposited both checks in that account.<sup>304</sup>

**Nagler Attorney-Client and Law Office Accounts.** Despite the actions taken by City National Bank to close the Obiang checking account in June 2004, bar Mr. Obiang from doing business with the bank, and freeze \$700,000 of his funds until the June 2005 court decision, Mr. Obiang did not object when Mr. Nagler suggested using City National Bank accounts during the summer of 2006, to pay Mr. Obiang's bills and expenses. For the three-month period from June to August 2006, Mr. Obiang managed once more, without the bank's knowledge, to funnel money through its accounts, using an account Mr. Nagler had opened years earlier to handle client funds, Account No. [xxx-xxxx]27, and an account opened in the name of "Law Offices of George I. Nagler," Account No. [xxx-xxxx]43.<sup>305</sup>

Mr. Nagler told the Subcommittee that he had maintained an attorney-client account at City National Bank "for many years."<sup>306</sup> In 2005, this account began receiving the first of several wire transfers from Equatorial Guinea, which Mr. Nagler said were sent by Somagui Forestal to pay Mr. Obiang's legal fees. Mr. Nagler told the Subcommittee that he received nearly \$40,000 in this manner, citing an October 19, 2005 wire transfer for nearly \$12,000; a January 18, 2006 wire transfer for nearly \$12,000; and a March 23, 2006 wire transfer for about \$14,200.<sup>307</sup>

In mid-2006, the Nagler attorney-client account received another influx of Obiang-related funds totaling more than \$360,000. All of these funds came from U.S. bank accounts, rather than directly from Equatorial Guinea. On May 2, 2006, First American Title Company wire transferred \$107,581.11 from its U.S. account to the Nagler attorney-client account, marked "FBO Teodoro Nguema Obiang."<sup>308</sup> City National Bank did not block this wire transfer even though, in 2004, it had placed Mr. Obiang on its "hot list" to prevent his doing any more business with the bank.

Mr. Nagler told the Subcommittee that these funds had been left over in the escrow account at the title company after Mr. Obiang's purchase of the Malibu property.<sup>309</sup> He said that he used \$50,000 of the transferred funds to pay Mr. Obiang's legal fees, sent about \$4,400 to the IRS to settle a tax matter involving Mr. Obiang, and set aside the rest in a "subaccount" for Mr. Obiang.<sup>310</sup>

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<sup>302</sup> Id.

<sup>303</sup> 7/1/05 internal legal memorandum from City National Bank, CNB0005553.

<sup>304</sup> BAC-PSI-02424, 02425. Mr. Berger later transferred these funds to one of the Beautiful Vision accounts as explained earlier.

<sup>305</sup> Various dates, variety of checks from Sweetwater Management Inc., CNB0001955 to CNB0001963.

<sup>306</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0006.

<sup>307</sup> Id. at 08.

<sup>308</sup> 7/7/08 Transaction Detail Report from First American Title Co., CNB0001651. "FBO" typically means "for the benefit of." Mr. Nagler told the Subcommittee that this transfer occurred on May 5, 2006. 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>309</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>310</sup> Id. at 08-09.

On June 26, 2006, another \$213,149.30 was transferred into the Nagler attorney-client account from the closed Sweetwater accounts at Cal National Bank.<sup>311</sup> On July 27, 2006, First American Title Company sent another \$47,500 to the Nagler attorney-client account with instructions “FBO Teodoro Nguema Obiang.”<sup>312</sup> Again, the bank did not block the wire transfer even though Mr. Obiang was on the bank’s internal “hot list.” Mr. Nagler told the Subcommittee that these funds came from rent that had been paid by the seller for occupying the Malibu property after the closing.<sup>313</sup>

After receiving these funds, Mr. Nagler transferred at least \$27,000 to his law office account. On May 6, 2006, for example, Mr. Nagler transferred \$15,052.38 from his attorney-client account into his law office account.<sup>314</sup> On June 30, 2006, Mr. Nagler wrote a \$12,683.05 check drawn against his attorney-client account and deposited it into his law office account with the notation for “Sweetwater Mgt - payroll.”<sup>315</sup>

In addition, he arranged for a payroll company, Paychex Inc., to provide him with checks which were imprinted with Sweetwater Management Inc. at the top and his law office account number, No. [xxx-xxxx]43, at the bottom. Beginning on June 30, 2006, Mr. Nagler began using those checks “to pay wages due to the employees of Sweetwater Management, Inc. and the appropriate payroll tax obligations of the company.”<sup>316</sup> Mr. Nagler told the Subcommittee that he paid these expenses at the direction of Mr. Obiang.<sup>317</sup>

The following chart lists the checks that were imprinted with Sweetwater Management Inc., drawn on the Nagler law office account, and paid to Obiang-related employees during June 30 to July 31, 2006.

<b>Sweetwater Management Checks Drawn on Nagler Law Office Account to Sweetwater Employees</b>			
<b>Date</b>	<b>Check #</b>	<b>Amount</b>	<b>Bates</b>
6/30/2006	11003	\$719.87	CNB0001956
6/30/2006	11008	\$983.50	CNB0001956
6/30/2006	11004	\$2360.63	CNB0001957
6/30/2006	11006	\$731.06	CNB0001957
6/30/2006	11009	\$992.67	CNB0001957
6/30/2006	11007	\$2072.95	CNB0001955
7/14/2006	11013	\$1460.27	CNB0001963
7/14/2006	11012	\$2322.95	CNB0001958
7/14/2006	11011	\$2360.63	CNB0001958
7/14/2006	11010	\$1404.63	CNB0001959
7/31/2006	11018	\$1460.27	CNB0001959
7/31/2006	11015	\$2360.63	CNB0001957

<sup>311</sup> 6/30/06 account statement from City National Bank, CNB00000227; 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>312</sup> 7/7/08 Transaction Detail Report from First American Title Co., CNB0001654.

<sup>313</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0009.

<sup>314</sup> 5/30/03 account statement from City National Bank, CNB0000153.

<sup>315</sup> 6/30/06 check from Mr. Nagler to himself, CNB0002320.

<sup>316</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0004.

<sup>317</sup> Id. at 08.

7/31/2006	11014	\$1442.64	CNB0001962
7/31/2006	11017	\$2115.21	CNB0001961
7/31/2006	11016	\$2322.95	CNB0001961
<b>Source- City National Bank</b>		<b>Total- \$25,110.86</b>	

Prepared by Subcommittee

Mr. Nagler also had checks imprinted with Sweetwater Management Inc. at the top and the number of his attorney-client account, No. [xxx-xxxx]27, at the bottom. In a written response to questions from this Subcommittee, Mr. Nagler's attorney stated that from "June 26, 2006 through August 23, 2006, Mr. Nagler paid certain of Client's household and living expenses from his trust account, at the Client's request and with funds provided by the Client for that purpose."<sup>318</sup> The "Client" referred to is Mr. Obiang. Altogether, his account disbursed more than \$368,000 in Obiang-related funds.<sup>319</sup>

During this period, Mr. Obiang relied heavily on Mr. Nagler to pay his bills. In July 2006, for example, after Mr. Nagler advised Mr. Obiang's assistant, Melinda Dehaven, that he would be out of town for four days,<sup>320</sup> Ms. Dehaven sent him the following email:

"Mr. Nguema left me a message and wanted me to ask you if you go out of town on those dates who will be available to write checks while you are away. ... [T]here are numerous bills that are awaiting his approval along with purchases that he will be making upon his arrival and will need to be paid by check. ... [P]lease advise so I can let him know."<sup>321</sup>

According to Mr. Nagler's attorney, Mr. Nagler stopped paying Mr. Obiang's expenses on or about August 23, 2006.<sup>322</sup> Mr. Berger had already agreed to undertake this task in an agreement he had signed the prior month with Mr. Obiang.<sup>323</sup> Even after Mr. Nagler stopped paying Mr. Obiang's bills, however, he apparently retained some Obiang-related funds in his accounts. An email dated May 10, 2007, for example, sent by Mr. Nagler to Mr. Obiang indicates that he was then holding more than \$4,000 in Obiang funds in his attorney-client account at City National Bank:

"Mr. Nguema, I note that I am still holding \$4,185.10 of your funds in my trust account from last August. This amount was intended to cover check #3039 to Raffles L'Ermitage...to cover 5 nights at the hotel."<sup>324</sup>

**Obiang Connection Uncovered.** In July 2008, the Subcommittee asked City National Bank for records related to Mr. Obiang. In response, the bank conducted a search and learned for the first time that Mr. Obiang had used the Nagler attorney-client and law office accounts to

<sup>318</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0008.

<sup>319</sup> Id. at 09.

<sup>320</sup> 7/8/06 email from Mr. Nagler to Ms. DeHaven, SEN010356.

<sup>321</sup> 7/9/06 email from Ms. DeHaven to Mr. Nagler, SEN010356.

<sup>322</sup> 8/1/08 letter from Mr. Nagler's legal counsel to the Subcommittee, PSI-Nagler-02-0009.

<sup>323</sup> See 7/17/06 contract between Mr. Berger and Mr. Obiang in which Mr. Berger agreed to assist Unlimited Horizon Inc. in managing Mr. Obiang's Malibu property and to pay Mr. Obiang's personal bills upon request, SEN000001.

<sup>324</sup> 5/10/07 email from Mr. Nagler to Mr. Obiang, SEN004055.

pay his expenses during the summer of 2006.<sup>325</sup> The bank also learned of the checks that Mr. Nagler had created. City National Bank told the Subcommittee that it did not view these transactions as suspicious, but did deem them to be inconsistent with the purposes of the Nagler attorney-client and law office accounts.<sup>326</sup> City National Bank told the Subcommittee that it had determined not to close the Nagler accounts, but rate them as “high risk” subject to enhanced monitoring.<sup>327</sup>

In 2004, City National Bank’s regulator, the Office of the Comptroller of the Currency (OCC), had determined that the bank’s anti-money laundering controls were inadequate. In 2005, the OCC entered into a Consent Agreement with the bank to strengthen its AML and other compliance programs, including by establishing controls to detect and report potential money laundering by immediate family members of senior foreign political figures.<sup>328</sup> Despite this instruction from its regulators to tighten its controls to detect PEP activities, City National Bank did not investigate the EG wire transfers into the Nagler attorney-client and law office accounts, even when the wire transfers explicitly named Mr. Obiang; did not detect Mr. Obiang’s use of those accounts; and did not take any action against Mr. Nagler, even after discovering how he had hidden Mr. Obiang’s utilization of his accounts in 2006.

### (iii) Pacific Mercantile Bank

At the same time that Mr. Nagler was using his City National Bank attorney-client and law office accounts to pay Mr. Obiang’s bills, he was working to help Mr. Obiang open accounts at another bank. In July 2006, Mr. Nagler contacted an acquaintance at Pacific Mercantile Bank (PMB) in Beverly Hills, California, and urged the bank to open accounts for Mr. Obiang. PMB is a small state-chartered bank, with less than ten branches in southern California.<sup>329</sup> The bank agreed to open five accounts in the name of Mr. Obiang and his Sweetwater corporations. For the first three months, the accounts were inactive. Then, after an EG wire transfer deposited nearly \$500,000 into Mr. Obiang’s personal checking account and he disbursed nearly all of the funds over the course of the next month, PMB decided it was ill-equipped to oversee such high risk transactions and closed the accounts.

**Account Opening.** The documents reviewed by the Subcommittee show that, on July 20, 2006, Mr. Nagler sent an email to an acquaintance who worked as an Executive Vice President at the PMB Beverly Hills branch.<sup>330</sup> Mr. Nagler stated in the email that he wanted to introduce Mr. Obiang to the bank, describing him as the son of the EG President, an EG Minister, and someone who wanted to become active in the U.S. entertainment industry. Mr. Nagler described Equatorial Guinea as “an ally of the United States and a major supplier of oil to this country,” and downplayed the negative reports on the country’s interactions with Riggs

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<sup>325</sup> Subcommittee staff interview with City National Bank officials, March 9, 2009.

<sup>326</sup> Id.

<sup>327</sup> Id.

<sup>328</sup> See Office of Comptroller of the Currency, Consent Order # 2005-16, In the Matter of City National Bank; Subcommittee staff interview with City National Bank officials, March 9, 2009.

<sup>329</sup> See PMB press release, November 12, 2009, on its website, [www.pmbank.com](http://www.pmbank.com).

<sup>330</sup> 7/20/06 email from Mr. Nagler to PMB, PSI-Pacific\_Mercantile\_Bank-01-0114-15.

Bank. He wrote: “I suggest that Mr. Nguema will become a valued customer of the bank and someone with whom you will be proud to have a business relationship.”<sup>331</sup>

Mr. Nagler also wrote that Mr. Obiang “has formed two entities, a corporation and a limited liability company, to hold and manage his residence here and would like to establish one or more bank accounts for these entities. ... Currently, I am the sole signing officer on his funds and have been paying bills out of my trust account.”<sup>332</sup>

According to Mr. Nagler, on or about September 15, 2006, he accompanied Mr. Obiang to the bank and introduced him to the PMB Executive Vice President.<sup>333</sup> That same day, Mr. Obiang completed paperwork to open five accounts for himself and his companies.<sup>334</sup> Account No. 3109386 was a personal checking account in his name, and was opened with an initial cash deposit of \$3,000.<sup>335</sup> According to PMB, this was the only account of the five that was actually funded.<sup>336</sup>

Account No. 3401130 was a personal savings account in Mr. Obiang’s name.<sup>337</sup> On the account opening form, he indicated that he would be making an initial deposit of \$500,000, but this deposit was not actually made.<sup>338</sup> Account No. 3109378 was opened in the name of Sweetwater Malibu LLC,<sup>339</sup> with the account opening documentation identifying Mr. Obiang as the company’s sole owner and manager.<sup>340</sup> Account No. 3109360 was opened in the name of Sweetwater Management Inc.,<sup>341</sup> with the account opening documentation identifying Mr. Obiang as the company president,<sup>342</sup> chief executive officer, director,<sup>343</sup> and sole owner.<sup>344</sup> According to PMB, despite the completed paperwork, neither of these corporate accounts was ever funded. Mr. Obiang also completed a form to purchase a Certificate of Deposit (CD) at the bank to be funded with a \$1 million wire transfer.<sup>345</sup> Again, however, according to PMB, this CD was never actually purchased.

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<sup>331</sup> Id. at 0115.

<sup>332</sup> Id.

<sup>333</sup> 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0005.

<sup>334</sup> 9/15/06 PMB account opening documentation, SEN008935-9021. See also handwritten notations regarding these accounts, PSI-Pacific\_Mercantile\_Bank-01-0201; 9/15/06 email from Mr. Nagler to PMB regarding accounts, PSI-Pacific\_Mercantile\_Bank-01-0220.

<sup>335</sup> 9/15/06 PMB cash receipt, PSI-Pacific\_Mercantile\_Bank-01-0016.

<sup>336</sup> Subcommittee interview of Pacific Mercantile Bank, November 16, 2009.

<sup>337</sup> 9/15/06 PMB form, PSI-Pacific\_Mercantile\_Bank-01-0196-98; Subcommittee interview with Pacific Mercantile Bank, Nov. 16, 2009.

<sup>338</sup> 9/15/06 PMB account opening form, SEN008956; Subcommittee interview with Pacific Mercantile Bank, Nov. 16, 2009.

<sup>339</sup> 9/15/06 PMB account opening documentation, PSI-Pacific\_Mercantile\_Bank-01-0256-75.

<sup>340</sup> 9/15/06 PMB account opening documentation, PSI-Pacific\_Mercantile\_Bank-01-0259-60, 262-63, 281, 290, R 2857; 9/15/06 Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Substitute Form W-8BEN, PSI-Pacific\_Mercantile\_Bank-01-0223.

<sup>341</sup> 9/15/06 PMB account opening documentation, PSI-Pacific\_Mercantile\_Bank-01-0210-219.

<sup>342</sup> Id. at 213, 222, 232-33, and 242.

<sup>343</sup> Id. at 217.

<sup>344</sup> Id. at 221. See also 9/15/06 Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Substitute Form W-8BEN, PSI-Pacific\_Mercantile\_Bank-01-0223.

<sup>345</sup> See 9/15/06 PMB form to purchase a CD, PSI-Pacific\_Mercantile\_Bank-01-0184; 9/18/06 PMB Certificate of Deposit Receipt, PSI-Pacific\_Mercantile\_Bank-01-0188. Despite these documents, PMB told the Subcommittee that the \$1 million wire transfer never arrived, and the CD was never actually purchased. Subcommittee interview

Mr. Obiang provided slightly different information on the various account opening forms. In one, he described his “Employer” as: “Self[;] Minister of Agriculture/Forestry.”<sup>346</sup> In others, he described himself as an “Investor” or “Self Employed.”<sup>347</sup> He gave the Malibu residence as his home address.<sup>348</sup> He also provided a copy of a U.S. social security card in his name.<sup>349</sup>

In addition, Mr. Obiang provided the following memorandum bearing his signature to Pacific Mercantile Bank:

“If Teodoro Nguema Obiang is out of the country and needs to conduct an internal transfer via phone, it is acceptable between personal and business accounts, and vice versa...This internal transfer from business to personal is approved by [the PMB Executive Vice President].”<sup>350</sup>

This document established a clear link between the Obiang personal and corporate accounts.

**Due Diligence Review.** Within a few days after opening the five accounts, PMB initiated a due diligence review of Mr. Obiang. On July 21, 2006, the PMB Vice President sent an email to his colleagues: “This is a prospect who really we need to check his background with regard to all regulatory compliances including OFAC and Bank Secrecy Act/MLA. ... Pat, I would suggest that you check his background thoroughly through all means available and then we can decide if the risk is warranted to have him as a client.”<sup>351</sup> On July 25, 2006, his colleague responded:

“I can relay that the country is not on any government AML watch-list, including the FATF. The individual is not an SDN on OFAC and has no derogatory information in Lexis Nexis. Our main challenge is the BSA [Bank Secrecy Act] monitoring, especially as it relates to an attorney representing a PEP (Professional Front Scheme is a common AML scheme and one the regulators will be right on top of when they monitor our accounts). So it becomes a business risk decision, and keeping in mind that we have a BSA Officer (in contract to a dept that larger banks have to monitor.”<sup>352</sup>

Three weeks later, on September 18, 2006, PMB’s outside vendor, E-Funds, which performed “verification checks” for prospective clients reported that Mr. Obiang was a government official in Equatorial Guinea and a Politically Exposed Person (“PEP”), but also incorrectly stated that he was a U.S. citizen.<sup>353</sup> PMB told the Subcommittee that it found “no

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with Pacific Mercantile Bank, November 17, 2009. See also 8/1/08 letter from Mr. Nagler’s legal counsel to the Subcommittee, PSI-Nagler-02-0005.

<sup>346</sup> 9/15/06 PMB Individual Account Holder form, PSI-Pacific\_Mercantile\_Bank-01-0194-95. See also PMB Individual Account Holder form, PSI-Pacific\_Mercantile\_Bank-01-0280, 01-0177.

<sup>347</sup> PMB new account forms, See PSI-Pacific\_Mercantile\_Bank-01-0184, 198, 210.

<sup>348</sup> See, e.g., 9/15/06 PMB Individual Account Holder form, PSI-Pacific\_Mercantile\_Bank-01-0194.

<sup>349</sup> See copy of social security card, PSI-Pacific\_Mercantile\_Bank-01-0203. Document is under seal. This social security number was assigned to Mr. Obiang by the Social Security Administration, apparently in connection with his California corporation. 12/10/09 letter from the Social Security Administration to the Subcommittee, no bates number.

<sup>350</sup> 9/15/06 memorandum from Mr. Obiang to PMB, SEN008995.

<sup>351</sup> 7/21/06 internal PMB email, PSI-Pacific\_Mercantile\_Bank-01-0114.

<sup>352</sup> 7/25/06 internal PMB email, PSI-Pacific\_Mercantile\_Bank-01-0114.

<sup>353</sup> E-Funds ID Verification Results for Teodoro N Obiang, PSI-Pacific\_Mercantile\_Bank-01-0179-81.

derogatory information in Lexis Nexis” about Mr. Obiang, even though in 2004, the Subcommittee had issued a widely-publicized report and held hearings which raised questions about him.<sup>354</sup> In addition, because Equatorial Guinea was not on any government AML watch-list, PMB decided to rank it as a “low risk” country.<sup>355</sup>

After collecting the due diligence information, PMB used an internal risk scoring model which determined that Mr. Obiang was a high-risk client.<sup>356</sup> Under PMB’s individual scoring model, 0 to 5 points was a low risk client; 6 to 9 points was a moderate risk client; and 10 or more points was a high risk client requiring “enhanced due diligence.”<sup>357</sup> The model automatically assigned a score of 15 to any PEP client.<sup>358</sup> PMB documents indicate that its personnel performed two risk ratings of Mr. Obiang, scoring him at 25 and 34, with his elevated scores due primarily to his PEP status.<sup>359</sup> PMB also told the Subcommittee that Mr. Obiang was the bank’s first and only PEP client. According to PMB, while it concluded in 2006 that it could open an account for Mr. Obiang with enhanced AML monitoring, it said that, under its current policy, it would no longer open an account for him due the difficulty associated with monitoring PEP accounts.<sup>360</sup>

On September 19, 2006, PMB sent a letter to Mr. Obiang stating: “Thank you for choosing Pacific Mercantile Bank and the opportunity to serve you.” It confirmed the opening of his accounts and assigned him a “personal banker.”<sup>361</sup> A copy of the letter was sent to Mr. Nagler.

For the first three months they were open, the accounts were apparently unused. Then on December 14, 2006, Mr. Obiang’s personal checking account received a wire transfer for nearly \$500,000 from Somagui Forestal in Equatorial Guinea.<sup>362</sup> Over the next month, Mr. Obiang wrote eight checks for various purposes, including one to pay for more than \$253,000 in California property taxes. Those disbursements, which exceeded \$446,000, consumed nearly all the available funds in the account. The eight checks were as follows.

Transactions Involving Obiang Account at PMB December 2006-January 2007				
Date	Transaction	Amount	Source or Recipient	Bates
12/14/2006	Wire deposit	\$499,943.53	“Somagui Forestal”	PSI-Pacific_Mercantile_Bank-01-0020
12/18/2006	Check No. 1001	\$5,400.00	“Las Vegas Golf & Tennis”	PSI-Pacific_Mercantile_Bank-01-0023

<sup>354</sup> Subcommittee interview with Pacific Mercantile Bank, November 16, 2009.

<sup>355</sup> See, e.g., PMB Individual Scoring Model, PSI-Pacific\_Mercantile\_Bank-01-0094.

<sup>356</sup> PMB Individual Scoring Model, PSI-Pacific\_Mercantile\_Bank-01-0092-95.

<sup>357</sup> Id. at 93.

<sup>358</sup> Id.

<sup>359</sup> Id. at 92, 95. This is a Sealed Exhibit.

<sup>360</sup> Subcommittee interview with Pacific Mercantile Bank, November 17, 2009.

<sup>361</sup> 9/19/06 letter from PMB to Mr. Obiang, PSI-Pacific\_Mercantile\_Bank-01-0089.

<sup>362</sup> 5/18/06 PMB Wire Original Information Report, PSI-Pacific\_Mercantile\_Bank-01-0020.

12/19/2006	Check No. 1002 <sup>a</sup>	\$2,174.00	"DMV" for "Porsche"	PSI-Pacific_Mercantile_Bank-01-0025
12/20/2006	Check No. 1007	\$22,289.00	"Dolce & Gabana"	PSI-Pacific_Mercantile_Bank-01-0027
12/21/2006	Check No. 1008	\$54,720.00	"Saurman Inv. SC"	PSI-Pacific_Mercantile_Bank-01-0029
12/21/2006	Check No. 1009	\$51,903.14	"Starlink Tours"	PSI-Pacific_Mercantile_Bank-01-0031
12/21/2006	Check No. 1010	\$50,000	"Washington Mutual" <sup>363</sup>	PSI-Pacific_Mercantile_Bank-01-0087, 0088
12/21/2006	Check No. 1011	\$253,204.46	"LA County Tax Collector" for "Tax-property 07"	PSI-Pacific_Mercantile_Bank-01-0033
1/04/2007	Check No. 1012	\$56,544.00	"Saurman Inv.Svc"	PSI-Pacific_Mercantile_Bank-02-0001
<b>Source- Pacific Mercantile Bank</b>		<b>Total Deposits - \$499,943.53</b> <b>Total Disbursements - \$496,234.60</b>		

Prepared by Subcommittee

PMB told the Subcommittee that the \$500,000 wire transfer in mid-December triggered a review of the account.<sup>364</sup> In addition, other documentation indicates that Washington Mutual contacted PMB to inquire about the authenticity of a \$50,000 check drawn on the Obiang checking account, which further directed the bank's attention to the account activity.<sup>365</sup> On February 8, 2007, PMB closed Mr. Obiang's checking account and issued a cashier's check to him for the remaining balance of \$56,693.93.<sup>366</sup> PMB told the Subcommittee that it closed the account, because as a small bank, monitoring the account of a known PEP was too burdensome.<sup>367</sup> According to PMB, it also viewed at least some of the account activity as suspicious.

### (c) Obtaining Insurance for Obiang Assets

In addition to incorporating shell companies, paying his bills, and helping Mr. Obiang open U.S. bank accounts, Mr. Nagler worked with Paul Finestone of Finestone Insurance Agency to obtain insurance for Mr. Obiang's Malibu residence and a fleet of 32 vehicles.<sup>368</sup>

<sup>363</sup> This check apparently was not cashed. An internal PMB email indicated that the check was intended to pay a Washington Mutual credit card bill, but Washington Mutual told PMB that the credit card limit was lower. See PSI-Pacific\_Mercantile\_Bank-01-0087, 0088.

<sup>364</sup> Subcommittee interview with Pacific Mercantile Bank, November 17, 2009.

<sup>365</sup> See 1/11/07 internal PMB email, PSI-Pacific\_Mercantile\_Bank-01-0087; 1/11/07 review of checking account activity, PSI-Pacific\_Mercantile\_Bank-01-0090. See also 2/5/07 review of checking account, PSI-Pacific\_Mercantile\_Bank-01-0096.

<sup>366</sup> 2/8/07 check from PMB to Mr. Obiang, PSI-Pacific\_Mercantile\_Bank-01-0038.

<sup>367</sup> Subcommittee interview with Pacific Mercantile Bank, November 17, 2009.

<sup>368</sup> 12/12/06 email from Mr. Nagler to Mr. Finestone, SEN013561; 6/14/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010929; 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.



After several U.S. insurance companies declined to provide either homeowners or automobile insurance to Mr. Obiang, at Mr. Nagler's request, Mr. Finestone undertook an extensive effort to secure insurance for Mr. Obiang's U.S. assets, including by contacting numerous companies, defending Mr. Obiang's reputation, considering leasing arrangements, and utilizing renters and temporary insurance.

**Homeowners Insurance for Malibu Property.** In 2006, Mr. Nagler asked Mr. Finestone to obtain homeowners insurance for Mr. Obiang's newly purchased residence at 3620 Sweetwater, Malibu, California. Initially, Mr. Finestone sought to transfer the coverage maintained by the previous homeowner.<sup>369</sup> Mr. Finestone told Mr. Nagler in an email that given the carrier's history of coverage of the residence, the transfer should be "very easily accomplished" "[a]s long as your client is not 'notorious.'"<sup>370</sup> The existing carrier did not, however, agree to transfer coverage, and in May 2006, Mr. Finestone began contacting other insurance companies.<sup>371</sup> On June 2, 2006, Mr. Finestone notified Mr. Nagler that American International Group, Inc. (AIG) had decided to withdraw an offer after learning more about Mr. Obiang.<sup>372</sup>

"We have very bad news indeed. We have this instant received a fax from the AIG underwriters representative who advises that they have reviewed web sites concerning Teodoro Obiang and that they are withdrawing the written quotations submitted to us for you on all of the coverage for the estate."<sup>373</sup>

Another insurance company submitted five questions to Mr. Finestone seeking additional information about Mr. Obiang, including his occupation and need for armed security guards at the Malibu residence.<sup>374</sup> Mr. Finestone responded that Mr. Obiang was "independently wealthy," an "investor and collector," and required armed security because of the threat of kidnapping and ransom inherent with his wealth.<sup>375</sup> Additionally, Mr. Finestone noted that Equatorial Guinea "is a major supplier of oil to America and a critical interest of American energy needs;" and stated that "the father [President Obiang] is no better and no worse than the Saudi Royal family. ... We insure billions and billions of dollars of Saudi property bought with our oil money here in America and AIG has no problem handling a great deal of that business."

On June 9, 2006, Mr. Finestone advised Mr. Nagler that Homeland Insurance had offered to provide one year of homeowners coverage for about \$85,000.<sup>376</sup> In his email to Mr. Nagler, Mr. Finestone wrote: "WE ARE CERTAIN THAT THE INSURER KNOWS WHO THEY ARE INSURING."<sup>377</sup> On June 14, 2009, Mr. Nagler advised Mr. Obiang to accept the coverage, because it was the only policy available.<sup>378</sup>

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<sup>369</sup> 5/5/05 email from Mr. Finestone to Mr. Nagler, SEN011296.

<sup>370</sup> Id.

<sup>371</sup> 5/24/06 email from Mr. Finestone to Mr. Nagler, SEN011148.

<sup>372</sup> 6/2/06 email from Mr. Finestone to Mr. Nagler, SEN011137.

<sup>373</sup> Id.

<sup>374</sup> 6/7/06 email from Mr. Finestone to Mr. Nagler, SEN011068.

<sup>375</sup> Id at 11069.

<sup>376</sup> Id. at 11069.

<sup>377</sup> 6/9/06 email from Mr. Finestone to Mr. Nagler, SEN011045.

<sup>378</sup> 6/14/06 email from Mr. Nagler to Mr. Obiang, SEN010918.

Mr. Nagler provided Mr. Obiang with a “Homeowner’s Summary” from Mr. Finestone showing that he had contacted eleven insurance agencies and only one had agreed to provide insurance on the Malibu property.<sup>379</sup> The summary prepared by Mr. Finestone showed that two major insurers, Chubb Insurance and AIG Private Client, had declined to provide the homeowners insurance, because “client profile too high” and “will not write due to political exposure.”<sup>380</sup> Although others cited brush fire dangers and a high property value as reasons for the declination, Mr. Finestone noted in his summary that “clearly politics is part of the placement process on this property.”<sup>381</sup> Mr. Finestone characterized one insurer’s decision, presumably that of Homeland Insurance, to provide property damage but not liability insurance, in the following email to Mr. Nagler:

“We had a single market prepared to accept coverage on the homeowners and they refused liability coverage given whom the client is and their perceived exposure to political risk and ‘social’ risk.”<sup>382</sup>

He also wrote that “Farmers Insurance does not fully appreciate whom their client is at this time and we hesitate to trip them into a detailed review given the current automobile savings.”<sup>383</sup> Mr. Finestone was negotiating with Farmers at the time to provide both homeowners and automobile insurance to Mr. Obiang.<sup>384</sup>

Approximately one year later, in August 2007, it appears that, although Homeland Insurance had provided property damage coverage, property liability insurance had still not been obtained.<sup>385</sup> In an email to Mr. Obiang, Mr. Nagler recommended that he create the impression he was leasing the Malibu property to justify rental insurance that would provide added liability protection:

“[Y]ou should have a lease prepared between the limited liability company that owns your Sweetwater home and you individually showing that you are leasing the house from the company. This will support the so called renters policy that provides liability protection for your protection.”<sup>386</sup>

This email suggests that Mr. Nagler, a licensed attorney, was advising his client to create a fictitious lease between himself and Sweetwater Malibu LLC to “support” a renters insurance policy for the Malibu residence when, in fact, Mr. Obiang was the beneficial owner of that company and thus would be leasing the house from himself.

**Automobile Insurance.** Mr. Nagler and Mr. Finestone also worked together to obtain insurance for Mr. Obiang’s fleet of 32 motorcycles and automobiles.

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<sup>379</sup> 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

<sup>380</sup> Id.

<sup>381</sup> Id.

<sup>382</sup> 4/29/07 email from Mr. Finestone to Mr. Nagler, SEN013836.

<sup>383</sup> 6/14/06 email from Mr. Finestone to Mr. Nagler and Ms. DeHaven, SEN010919.

<sup>384</sup> 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010297.

<sup>385</sup> 8/11/07 email from Mr. Nagler to Mr. Obiang, SEN004091, R.2395.

<sup>386</sup> Id.

On June 12, 2006, Mr. Finestone notified Mr. Nagler that Mr. Obiang's lack of a valid California driver's license was prohibitive to obtaining reasonably priced motorcycle insurance.<sup>387</sup> Apart from recommending that Mr. Obiang obtain a California license, he proposed two alternatives to secure the necessary insurance. First, he proposed that Mr. Obiang lease the motorcycles to Mr. Nagler for \$1 per year to be lent back to Mr. Obiang.<sup>388</sup> Second, he proposed acquiring insurance for the entire fleet of vehicles, using licensed drivers in addition to Mr. Obiang.<sup>389</sup> Mr. Finestone wrote:

“[I]f there were a couple of relatively clean drivers with CA information that the underwriters could verify on the drivers list which forms part of the application, it makes it easier for them to reasonably accept a foreign non California licensed driver as the primary driver. We continue to look for every possibility to best secure and put to bed all of the various problems for Mr. Obiang”<sup>390</sup>

The two alternatives suggested by Mr. Finestone involve creating either a fictitious lease or the misimpression that other California drivers would be using the vehicles owned by Mr. Obiang.

In July 2006, automobile insurance for all of Mr. Obiang's vehicles was still unresolved. It appears that Mr. Obiang was receiving temporary coverage for at least some vehicles through State Farm using a 15-day grace period on pending applications for insurance.<sup>391</sup> However, on July 24, State Farm advised Mr. Finestone that the temporary coverage would expire on July 26.<sup>392</sup> To keep Mr. Obiang covered for an additional 15 days, it appears that Mr. Finestone used his friendship with a State Farm employee to renew the pending applications, as explained in this email he sent to Mr. Nagler.

“We are going to get another 15 days by collapsing the current applications. ... My friend will then re enter all of the data for a second new application in return for an outrageously expensive sushi dinner at his favorite place. ... I think I can only do this once (depending on his appetite for a sushi fix and the risk of doing this if his superiors observe the action – they would not approve) .... [T]hat gives us another 15 days from today to get this done.”<sup>393</sup>

Mr. Finestone openly advised Mr. Nagler of this deceptive scheme to obtain a continuance of automobile insurance for Mr. Obiang in violation of State Farm policy.

Billing records obtained by the Subcommittee indicate that Mr. Obiang was able to obtain automobile and motorcycle insurance for the year 2007 to 2008, from Hagerty Insurance, Essex Insurance, and Progressive Insurance, at a cost of more than \$274,000. These policies appear to have insured 32 motorcycles and automobiles, including seven Ferraris, five Bentleys, four Rolls

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<sup>387</sup> 6/12/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010987.

<sup>388</sup> Id.

<sup>389</sup> 6/14/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010929.

<sup>390</sup> Id. Mr. Finestone also provided Mr. Nagler with a sample letter from the Government of Equatorial Guinea to certify that Mr. Obiang had a clean driving record in that country. 6/13/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010960-61.

<sup>391</sup> 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEN010297.

<sup>392</sup> 7/25/06 email from Ms. DeHaven to Mr. Finestone, SEN010306.

<sup>393</sup> 7/26/06 email from Mr. Finestone to Ms. DeHaven and Mr. Nagler, SEB010297.

Royces, two Lamborghinis, two Maybachs, two Mercedes, two Porches, one Aston-Martin, and one Bugatti, with a collective insured value of \$9.5 million.<sup>394</sup>

#### **(d) Awareness of the Suspect Origins of Obiang Funds**

During the two years that Mr. Nagler worked for Mr. Obiang, he was well aware of Mr. Obiang's background and the suspect origins of his funds. On August 11, 2005, approximately one month before Mr. Nagler began working for Mr. Obiang, Rosalina Roma, an Obiang assistant, informed Mr. Nagler in an email that his future client "is Teodoro Nguema Obiang from Equatorial Guinea, his father is the president of this country."<sup>395</sup> In July 2006, Mr. Nagler sent a previously-cited email to Pacific Mercantile Bank defending Mr. Obiang's reputation and noting that, "Neither Mr Nguema nor his father has ever been convicted or even charged with violating US law."<sup>396</sup> Throughout 2006, in connection with his work to obtain home and automobile insurance for Mr. Obiang, Mr. Nagler was exposed to insurance company concerns about Mr. Obiang's reputation and source of funds.

In late 2006, Mr. Nagler asked the public relations firm Winner & Associates to propose a strategic communications plan for Mr. Obiang. On November 21, 2006, Winner & Associates sent Mr. Nagler a proposal which stated in part:

"[W]e understand that Mr. Nguema desires to communicate on a range of issues including the progress being made by Equatorial Guinea. Several of the issues that have helped bring about that progress involve positive developmental programs that are unknown or misunderstood by certain non-governmental organizations which have been communicating negatively about Mr. Nguema and the government of Equatorial Guinea. ... [W]e believe that our services in the areas of crisis communication, media relations, third-party advocacy, and strategic positioning can assist in communicating positive information about Mr. Nguema, his government, and his country, while at the same time curtailing what has become a tide of misinformation put into a negative context by Mr. Nguema's adversaries. ... The negative communications we are monitoring seem to be more frequent and the sooner we can intervene, the better."<sup>397</sup>

Approximately one month later on January 19, 2007, Winner & Associates emailed Mr. Nagler an article entitled, "Malibu Bad Neighbor; A Dictator in Training Buys His Way in as Politically Active Superstars Stay Mum."<sup>398</sup> The next month, on February 6, 2007, apparently without an agreement to provide services, Winner & Associates sent Mr. Nagler an article entitled, "Dictator's Son Moves in; Time for Malibu to Speak Out," and warned: "Dear George, The communications context for your client appears to be going further downhill. There will be a point beyond which we will be unable to help."<sup>399</sup>

<sup>394</sup> 9/17/07 policy statement from Hagerty Insurance, SEN000213 to SEN000221; 10/15/07 invoice from Finestone Insurance Agency, SEN000222; 6/21/07 invoice from Finestone Insurance Agency, SEN000293.

<sup>395</sup> 8/11/05 email from Ms. Romo to Mr. Nagler, SEN005794.

<sup>396</sup> 7/20/06 email from Mr. Nagler to PMB, PSI-Pacific\_Mercantile\_Bank-01-0114-15.

<sup>397</sup> 11/21/06 email from Winner & Associates to Mr. Nagler, SEN008925, R 2380.

<sup>398</sup> 19/19/07 email from Winner & Associates to Mr. Nagler, SEN008895, R 2381.

<sup>399</sup> 2/6/07 07 email from Winner & Associates to Mr. Nagler, SEN008880.

On another occasion in June 2006, when Mr. Obiang had instructed his staff to secure space for a private jet he had just purchased,<sup>400</sup> the owner of an airplane hangar who was an acquaintance of Mr. Nagler sent him the following email:

“I got the feeling when I did not get the material that he was not interested in disclosing his client’s [Mr. Obiang’s] background. I don’t feel comfortable in being responsible for someone I have no idea who he is and on top of that, one who has diplomatic credentials.”<sup>401</sup>

Mr. Nagler responded with a recommendation for Mr. Obiang in which he listed four professional references, two associated with his luxury car collection, one associated with his private jet, and Neil Baddin, a Coldwell Banker realtor who helped arrange Mr. Obiang’s purchase of his Malibu property.<sup>402</sup> Mr. Nagler also disclosed that Mr. Obiang was the EG Minister of Agriculture and Forests, requested that information be kept confidential, and asked the hangar owner to call him directly to discuss his concerns.<sup>403</sup>

Two months later, on August 14, 2007, an Obiang employee, Ms. Romo, sent an email to Mr. Berger stating that Mr. Obiang had terminated his relationship with Mr. Nagler.<sup>404</sup> Mr. Nagler told the Subcommittee that his employment by Mr. Obiang ended in September 2007.

### (3) Analysis

The Obiang case history demonstrates how a determined PEP can employ the services of U.S. attorneys to bring millions of dollars in suspect funds into the United States through U.S. financial institutions. Mr. Berger and Mr. Nagler helped Mr. Obiang utilize accounts at six different U.S. banks, both large and small, from 2004 to 2008. Most of these accounts were not opened in Mr. Obiang’s name, but were set up for him to use without alerting the host bank and often without triggering the bank’s AML and PEP controls for months or sometimes years. The tactics used in this case history expose a variety of AML and PEP deficiencies at U.S. banks that ought to be strengthened.

Union Bank of California, for example, had designated Equatorial Guinea as a high-risk country in 2004, and identified and closed an Obiang employee account and a shell company account receiving EG funds. The bank did not know for three years, until 2007, that Mr. Obiang was still using the bank’s services by utilizing two U.S. shell company accounts for Unlimited Horizon as well as Mr. Berger’s law office account at the bank. Mr. Berger opened each of those accounts, but did not disclose that Mr. Obiang was the beneficial owner of Unlimited Horizon or that the law office account would be conducting transactions on Mr. Obiang’s behalf. In 2006, UBOC’s routine monitoring systems flagged high-dollar EG wires that had begun to be sent to the Berger law office account. But UBOC personnel took six months to initiate a review of those wire transfers, ironically because its AML personnel were negotiating a deferred prosecution

<sup>400</sup> 6/7/06 fax from Mr. Nagler SEN011075.

<sup>401</sup> 6/7/06 email to Ms. DeHaven, SEN011096.

<sup>402</sup> 6/7/06 fax from Mr. Nagler to airport hanger contact, SEN011075.

<sup>403</sup> Id.

<sup>404</sup> 8/14/07 email from Ms. Romo to Mr. Berger, SEN000589. Throughout the email, Ms. Romo referred to a “Mr. Smith,” seemingly in place of Mr. Obiang’s name. This practice has been noted in other messages as well. See, e.g., SEN011704 -05; SEN010918; SEN005767; SEN004091.

agreement with the U.S. Justice Department over its inadequate AML program. When the AML department finally reviewed the EG wire transfers, UBOC immediately uncovered Mr. Obiang's use of the shell company and law office accounts, and immediately closed them. The key AML deficiencies that allowed Mr. Obiang to take advantage of UBOC were the absence of beneficial ownership information for Unlimited Horizon and the bank's failure to promptly review the data it had collected on high risk wire transfers.

Bank of America also opened accounts for a U.S. shell company, Beautiful Vision, at the request of Mr. Berger, a longstanding customer of the bank. Mr. Berger did not disclose that Mr. Obiang was the beneficial owner of the company or explain why Mr. Obiang was the sole signatory on one of the Beautiful Vision accounts. From 2004 to 2005, Mr. Obiang made open use of one of the Beautiful Vision accounts by signing numerous, high-dollar checks that together exceeded \$7.6 million in less than a year, but Bank of America did not conduct a due diligence review of him, did not learn of his PEP status, and did not review the account activity, even after Mr. Obiang used Beautiful Vision account funds to purchase a \$3.3 million cashier's check and cashed it in Equatorial Guinea. In 2005, a flurry of wire transfers involving a newly-opened Beautiful Vision account did trigger a review, and Bank of America quickly discovered Mr. Obiang's connection to the company, and closed its accounts. However, the bank took no action against the Berger accounts, even though he had opened the Beautiful Vision accounts in the first place and hidden Mr. Obiang's involvement. Over the next year, Mr. Obiang sent a number of high-dollar EG wire transfers to Mr. Berger's attorney-client account at Bank of America, most of which Mr. Berger transferred within days to other Obiang-related accounts, but the bank did not review the account activity. It was only in 2007, that Bank of America conducted a review, quickly discovered Mr. Obiang's use of the account, and closed it. The AML deficiencies here include the failure to review high-risk wire transfers sent to an attorney-client account; the failure to take action against an attorney who violated bank policy by hiding the beneficial owner behind a shell company account; the failure to examine shell company accounts with multi-million-dollar account activity; and the failure to perform a due diligence of all account signatories.

Like UBOC and Bank of America, Citibank also opened a U.S. shell company account at the request of Mr. Berger, but before doing so, conducted a much more detailed due diligence review of Unlimited Horizon. Citibank asked, for example, for information about the company's beneficial owners, inquired about any PEP involvement, and physically visited the business address of the company. Its oversight efforts, however, were frustrated by Mr. Berger's willingness to provide deceptive information about the company. Mr. Berger was also careful to ensure that no high-dollar EG wire transfers were sent to the Unlimited Horizon account at Citibank that might trigger a bank review, instead providing funding through checks drawn on his attorney-client account at Bank of America. Despite these precautions, Citibank's monitoring of the account activity led the bank to question the transactions taking place, and it closed the account ten months after it opened. Despite its reasonable AML efforts, Citibank was taken advantage of by Mr. Obiang and Mr. Berger. The key problem was Citibank's inability to identify the true owner of Unlimited Horizon, a problem that would have been less difficult if U.S. shell companies were required to identify their beneficial owners, under oath, to the State where the company was formed. That type of incorporation requirement might also have led Mr. Berger to provide accurate beneficial ownership information for the company to protect his law license.

Cal National Bank opened accounts for still another set of U.S. shell companies associated with Mr. Obiang, Sweetwater Malibu and Sweetwater Management. Unlike Citibank, however, Cal National Bank knowingly allowed a property manager, who was a long-time customer of the bank, to open these accounts without disclosing the beneficial owners of the companies. Due to a fortunate series of events, within one month, Cal National Bank discovered Mr. Obiang's connection to the companies and, in light of the bank's policy against opening accounts for PEPs, immediately closed them. It also placed Mr. Obiang on a "hot list" to prevent him from using bank services in the future. The bank took no action, however, against the property manager, even though he was the one who hid Mr. Obiang's involvement from the bank and violated its no-PEP policy. The key AML deficiencies exposed here include the bank's willingness to allow a longstanding customer to skip a basic disclosure requirement and then, after discovering the customer took advantage of the bank, to continue to do business with him.

City National Bank had the longest history with Mr. Obiang of the six banks examined in this case history. From 2001 to 2003, the bank allowed Mr. Obiang to open five accounts for his California company, TNO Entertainment, without learning of his PEP status. In 2004, the bank allowed Mr. Obiang to open a personal checking account, again without learning of his PEP status. When a \$1 million EG wire transfer triggered a review of the account two months later, the bank learned for the first time that Mr. Obiang was an EG official, the son of the EG President, and the subject of corruption allegations. The bank immediately closed the account and put Mr. Obiang on a "hot list" to block his doing business with the bank. Despite this action, during the summer of 2006, Mr. Nagler printed checks with Sweetwater Management Inc. at the top and the account number of his attorney-client or law office account at the bottom and used them to pay Obiang bills and expenses. In 2008, Mr. Obiang sent an EG wire transfer to still another third party account at City National Bank and then withdrew the funds at ATM machines and casinos in the United States.

City National Bank's experiences with Mr. Obiang expose a variety of tactics that can be used to access U.S. bank accounts, even after a PEP is explicitly barred from a bank. Key AML and PEP deficiencies include the bank's poor due diligence efforts that failed to uncover Mr. Obiang's PEP status from 2001 until 2004; and Mr. Nagler's use of his attorney-client and law office accounts as checking accounts for Mr. Obiang's shell companies. In addition, after learning of the checks that Mr. Nagler created, the bank chose not to close the Nagler accounts, but simply designate them as "high risk" warranting enhanced monitoring. That decision, like that of Cal National Bank regarding the property manager, demonstrates banks' reluctance to end relationships with longstanding customers, even when they are discovered to be facilitating a PEP's use of bank services without informing the bank. A final problem is City National Bank's failure to detect and block high risk wire transfers before they deliver funds to an account, including the \$1 million EG wire transfer in 2006, the \$40,000 in EG wire transfers sent to the Nagler attorney-client account, and the \$30,000 in EG wire transfers to the third party account in 2008. City National Bank had added Mr. Obiang's to its internal "hot list" to block his use of bank services, but its interdiction software failed to block wire transfers bearing his name or to flag wire transfers from Equatorial Guinea for further inspection.

Pacific Mercantile Bank is the only one of the six banks that opened an account in the name of Mr. Obiang, while knowing of his PEP status. It did so in 2006, after Mr. Nagler supplied a letter of recommendation, its staff conducted a limited due diligence review that

missed press articles containing negative information about Mr. Obiang, and its staff reached the surprising conclusion that Equatorial Guinea was a low risk country. On the other hand, to the bank's credit, when the Obiang account received a \$500,000 EG wire transfer and disbursed nearly all of the funds within a month, the bank decided that it was ill-equipped to oversee such high risk transactions and immediately closed the account.

Together, these six banks provide evidence that U.S. financial institutions need to strengthen their AML and PEP controls if they are to keep foreign corruption out of the United States. Stronger measures include using better PEP lists to identify PEP clients and obtain accurate information about them; obtaining beneficial ownership information for U.S. shell companies; providing prompt reviews of high-dollar wire transfers from high risk jurisdictions; and strengthening the monitoring of PEP, attorney-client, law office, and shell company accounts by designating them as high risk accounts. Banks should also consider obtaining a written certification from each attorney-client and law office account that the account will not be used to bypass AML or PEP controls at the bank, conceal PEP activity from the bank, bring suspect funds into the bank, or provide services to a PEP who had been excluded from the bank.

### **C. Obiang Use of Real Estate and Escrow Agents to Purchase U.S. Property With Suspect Funds**

In addition to members of the U.S. legal profession, Mr. Obiang employed members of the U.S. real estate industry to help him buy and sell high-end real estate in California, using millions of dollars in suspect funds transferred from Equatorial Guinea. Neal Baddin, a real estate agent at Coldwell Banker, helped Mr. Obiang purchase the \$30 million property in Malibu, while John Kerrigan, a real estate agent with Mirzo International Inc., helped Mr. Obiang sell a Los Angeles area house for \$7.7 million. First American provided key escrow services for the Malibu purchase, accepting \$30 million in wire transfers from Equatorial Guinea to complete the transaction. Neither the real estate agents nor the escrow company asked Mr. Obiang about the source of his funds, even when he made a multi-million-dollar real estate purchase without using a mortgage and wire transferred the needed funds from a country known for corruption, since none had a legal obligation to inquire.

As explained earlier, since 1988, U.S. AML laws have identified “persons involved in real estate closings and settlements” as vulnerable to money laundering abuses due to the large sums of money involved in their transactions.<sup>405</sup> The 2001 Patriot Act required this group to establish AML programs, unless exempted by the Treasury Department.<sup>406</sup> In 2002, the Treasury Department issued a “temporary” exemption for persons involved in real estate closings and settlements from the new requirement; eight years later, the Treasury Department still has not required them to establish AML programs.<sup>407</sup> Nor has the real estate industry issued AML guidance to its members. That means, under current law, U.S. real estate and escrow agents operate without any legal obligation to know their customers, evaluate the source of their funds, or exercise special precautions when dealing with PEPs.

<sup>405</sup> See 31 USC § 5312(a)(2)(U)(including “persons involved in real estate closings and settlements” in the list of “financial institutions” subject to U.S. AML requirements).

<sup>406</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

<sup>407</sup> See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002)).



### **(1) Real Estate Agent Neil Baddin**

Neal Baddin has been involved in the real estate business for 29 years.<sup>408</sup> Originally from Minnesota, he moved to Los Angeles in 1979, and over the years worked at a number of real estate firms. He currently works as an independent contractor in a branch office of Coldwell Banker.

Mr. Baddin's office is located in the Hollywood Hills, and he told the Subcommittee that he works with many people in the entertainment industry.<sup>409</sup> He stated that he usually works with clients seeking property in the \$800,000 to \$2 million price range. Mr. Baddin said he attracts clients through referrals, telephone calls, and advertising. He indicated that the \$30 million purchase of the Malibu property by Mr. Obiang was the largest transaction he has worked on.

**Introduction to Mr. Obiang.** Mr. Baddin stated that he was introduced to Mr. Obiang by Michael Jay Berger, whom he has known since the early 1990s when Mr. Berger moved into Mr. Baddin's neighborhood.<sup>410</sup> Mr. Baddin stated that Mr. Berger called him in August or September 2004, said he was representing a wealthy client who wanted to buy a property, and the client was looking for a new real estate agent. Mr. Baddin wasn't sure if Mr. Berger mentioned the client's name at that time, but understood that it would be a "delicate and intricate sales transaction."

Mr. Baddin said that, in or around October 2004, Mr. Berger arranged a meeting at the Beverly Wilshire Hotel where he introduced Mr. Baddin to Mr. Obiang.<sup>411</sup> Mr. Baddin said the meeting took place in a suite, that Mr. Obiang was accompanied by a woman that may have been his girlfriend, and that his impression was that Mr. Obiang was "bigger than life." Mr. Baddin reported that they spoke very little about real estate, except in general terms. Mr. Baddin said Mr. Berger had told him that Mr. Obiang had a house in mind and had made previous bids on the residence without success. At the end of the meeting, Mr. Baddin said that he did not know if he would ultimately be representing Mr. Obiang.

Mr. Baddin said that, about a month later, Mr. Berger telephoned and told him that Mr. Obiang wanted to work with him.<sup>412</sup> On November 1, 2004, Mr. Baddin entered into an exclusive retainer agreement to locate property for Mr. Obiang. The retainer agreement said that the real estate agent fee for the purchase of a property would comply with the Multiple Listing Service (MLS), and that, "The first and only house for now to be covered by this agreement is

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<sup>408</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>409</sup> Id.

<sup>410</sup> Id.

<sup>411</sup> Id. Prior to meeting Mr. Obiang, Mr. Baddin stated that in or around April 2004, he had visited Mr. Obiang's then residence on Antelo Road during an open house. Mr. Baddin wrote: "Regarding my visit to Mr. Ngeuma's house on Antelo, My wife and I saw it advertised as an Open House on a Sunday approximately around 4/04. ... Mr. Kerrigan was holding it open. We were amazed at this round Nautilus shaped house, but what was more amazing was the car collection in the garage that John showed us. We asked John, 'who owns this house?' He said, I shouldn't really say, but he's a minister of a very wealthy country in Africa. ... I did not try to make contact with the Owner. ... By coincidence and by a mutual friend, I was introduced to Mr. Nguema around 10/04." Memorandum from Mr. Berger, PSI-Coldwell\_Banker-01-000502.

<sup>412</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

3620 Sweetwater Mesa Road, Malibu CA.”<sup>413</sup> The agreement was signed by Mr. Berger as president of Beautiful Vision Inc.<sup>414</sup> Mr. Baddin told the Subcommittee he didn’t know why the retainer agreement was signed by Mr. Berger or what business Beautiful Vision was engaged in, but knew that it was a company that had been created by Mr. Obiang with Mr. Berger, and had no employees.<sup>415</sup>

**Bidding on the Property.** In November 2004, Mr. Baddin and Mr. Berger went to look at the Sweetwater property in an exclusive gated community in Malibu, California. Mr. Baddin said that the property was “one of the most extraordinary pieces of property I’ve ever seen in my life.”<sup>416</sup> He described it as “12 acres of land overlooking one of the most famous surfing beaches in California. The main house was 15,000 square feet in a Mediterranean style. There was a 2500 square foot guest house, 2 gate houses, a pool overlooking the ocean, a small putting green, and a tennis court.” The asking price was \$35 million. Mr. Baddin said that an assistant from the listing company, Hilton & Hyland, met them at the property to show it to them.

Over the course of more than a year, he said that Mr. Obiang made five offers on the property. The first, in November, was for \$27 million.<sup>417</sup> Mr. Baddin submitted this offer in person to Hilton & Hyland which countered with an offer of \$32 million.<sup>418</sup> Mr. Obiang responded with an offer of \$27.5 million.<sup>419</sup> Mr. Baddin said that, on November 8, 2004, Hilton & Hyland countered with \$31.5 million.<sup>420</sup>

Mr. Baddin said that about six months then went by without further developments.<sup>421</sup> He said that he ran into Mr. Berger and inquired about the property but received no new information. In September 2005, Mr. Baddin stated that he received a call from either Mr. Obiang or Mr. Berger informing him that Mr. Obiang wanted to make a new offer. Mr. Baddin confirmed that the property was still on the market, and called Mr. Obiang with that information. He said that

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<sup>413</sup> 11/1/04 Exclusive Retainer Agreement to Locate Real Property, PSI-Coldwell\_Banker 01 000501.

<sup>414</sup> Id. This was the only retainer agreement that was signed between Mr. Baddin and Mr. Berger acting as an agent of Mr. Obiang.

<sup>415</sup> In a statement later submitted in connection with an arbitration proceeding, Mr. Obiang described Beautiful Vision as “my company.” January 2007 Declaration of Michael Berger, Mirzo International, Inc. v. Hyland, Case No. AB06-15 (Beverly Hills/Greater Los Angeles Association of Realtors Arbitration Complaint Case), SEN007574-76, at 7575.

<sup>416</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>417</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker 03-0002.

<sup>418</sup> Mr. Baddin reported that although he submitted this offer, he understood that another real estate agent, John Kerrigan, had submitted an offer for Obiang prior to the offer Mr. Baddin submitted. In a written statement, Mr. Baddin wrote, “I asked both Mr. Berger and Mr. Ngeuma why they weren’t continuing to work with Mr. Kerrigan. They both explained to me jointly and separately that Mr. Kerrigan had bungled the sale of Mr. Nguema’s property on Antelo. They said he let the Buyer move in to Antelo before the close of escrow without Mr. Nguema’s permission. The Buyer also refused to close the escrow on time and the transaction became litigious.” Memorandum from Mr. Baddin, PSI Coldwell Banker 01 000502.

<sup>419</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI Coldwell Banker-03-0002. Mr. Baddin noted that throughout the negotiations, Mr. Obiang was very difficult to reach and didn’t always return Mr. Baddin’s phone calls. He also noted that at times he would have an appointment with Mr. Obiang, and he would spend hours waiting at his house and Mr. Obiang wouldn’t come downstairs or he wouldn’t show up.

<sup>420</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell Banker-03-0002.

<sup>421</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

Mr. Obiang said “Let’s give it another try,” and informed him that another attorney who specialized in real estate, George Nagler, would be involved in the transaction. Mr. Baddin said that he began dealing with Mr. Nagler as well as Mr. Berger, but that Mr. Obiang remained the primary contact.<sup>422</sup> On September 30, 2005, Mr. Obiang submitted a new offer for \$28.5 million.<sup>423</sup>

In November 2005, Mr. Baddin took Mr. Nagler to see the property.<sup>424</sup> On December 21, 2005, Mr. Baddin submitted a fourth offer on behalf of Mr. Obiang to buy the property for \$30 million.<sup>425</sup> The seller countered on December 28 for \$31 million. Mr. Baddin said at that point, the transaction was becoming complicated, and the attorneys began dealing directly with one another.<sup>426</sup> In December 2005, Mr. Obiang contacted Mr. Baddin who presented Hilton & Hyland with a fifth offer for \$30.5 million. In early January 2006, Mr. Nagler called Mr. Baddin and informed him that the seller had accepted the offer. According to Mr. Baddin, the final price was \$30 million for the residence and \$750,000 for specified furnishings in the house.<sup>427</sup>

**Escrow Deposits.** To complete the purchase of the Malibu property, in January 2006, Hilton & Hyland and Coldwell Banker opened an escrow account at First American Title Company.<sup>428</sup> Mr. Baddin stated that the seller chose the escrow agent.<sup>429</sup>

Mr. Baddin told the Subcommittee that, a few months earlier, Hilton & Hyland had asked for funds to be placed in escrow at Coldwell Banker to demonstrate that Mr. Obiang was making a serious bid on the Malibu property. In an email dated October 3, 2005, Hilton & Hyland wrote: “In order for us to present your offer on Sweetwater Mesa to the owner’s attorney, we need verification of funds from your buyer.”<sup>430</sup> Mr. Baddin said that, in response, Mr. Obiang transferred \$500,000 to an escrow account at West Coast Escrow, which was affiliated with Coldwell Banker.<sup>431</sup> On December 22, 2005, Mr. Obiang sent an additional \$900,000 to the escrow account, sending the funds from another U.S. account rather than from Equatorial

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<sup>422</sup> A September 29, 2005, email from Lina Romo, an Obiang assistant, confirms Mr. Nagler’s involvement in the transaction when she asks Mr. Nagler to send the documents for the Malibu property to Mr. Obiang at the Hotel Crillon in Paris. See 11/29/05 email from Ms. Romo to Mr. Baddin, PSI Coldwell Banker 01-000385.

<sup>423</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker 03-0002.

<sup>424</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>425</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker 03-0002.

<sup>426</sup> According to Mr. Baddin, the complicating factors included whether or not the furniture would remain with the house and the date when the seller would vacate the property.

<sup>427</sup> 3/11/09 legal counsel to Neal Baddin’s written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0002.

<sup>428</sup> California law requires that the real estate buyer place money in escrow. First American Title Company owns First American Trust Company; First American Title Company is, in turn, owned by its parent company, First American Corporation. Subcommittee interview with First American, January 15, 2010.

<sup>429</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>430</sup> 10/3/05 email from Hilton & Hyland to Mr. Berger, PSI-Coldwell-Banker-01-000386 R. 1396. In a February 1, 2008 telephone call with the Subcommittee, Alla Furman of Hilton & Hyland stated that she knew something was unusual with this transaction because it was “all confidential” and it “sounded weird to us.”

<sup>431</sup> See fax from Mr. Baddin PSI Coldwell Banker 01-000706-7 (instructions from Mr. Baddin to Mr. Obiang’s attorney, Mat Hsu, to send funds to the West Coast Escrow account at Comerica Bank).

Guinea.<sup>432</sup> On February 2, 2006, West Coast Escrow, on behalf of Mr. Obiang, wire transferred the \$900,000 to First American Title Company as a down payment on the purchase of the Malibu residence. The funds were placed in First American's escrow account at Wachovia Bank.<sup>433</sup>

Mr. Baddin told the Subcommittee that, after the price was agreed on and the escrow deposits made, he spent the next 45 days, from January into February 2006, helping to conduct detailed inspections of the property.<sup>434</sup> He said that Mr. Obiang did not accompany him, and he dealt exclusively with Mr. Nagler. He said that several repairs were needed, and the seller agreed to credit \$80,000 to \$100,000 back to the buyer for the repairs.

**Confidentiality Agreement.** Mr. Baddin told the Subcommittee that, on March 31, 2006, just prior to the purchase of the Malibu property, Coldwell Banker was asked to and did sign a confidentiality agreement regarding the purchase.<sup>435</sup> The agreement stated that the identity of Mr. Obiang was "confidential" and "not to be disclosed to anyone."<sup>436</sup>

Mr. Baddin stated that he had signed a few confidentiality agreements in the past, "usually for a celebrity type of person." Mr. Baddin stated that being asked to sign a confidentiality agreement did not raise a red flag for him, because people are "nosy." Hilton & Hyland told the Subcommittee that both the seller and the buyer wanted a confidentiality agreement.<sup>437</sup>

Mr. Baddin told the Subcommittee that, in addition to signing the confidentiality agreement, he decided not to list his name in the real estate MLS system as the buyer's real estate agent. Mr. Baddin said that he didn't want to be listed in the MLS system, because it was a very high end sale and if he had been listed, he would have been "bombarded" by other agents. Mr. Baddin reported that Hilton & Hyland had asked him if he wanted to be listed as the buyer's agent, and he declined. He said that he usually puts his name in the system, and there have been only a few times when he hasn't. Mr. Baddin noted that he could have been fined \$250 for not putting his name in the system.

**\$30 Million in EG Wire Transfers.** The grant deed for the Malibu property indicates that the seller sold the residence to Sweetwater Malibu LLC on February 27, 2006.<sup>438</sup> According to Mr. Baddin, while the deed was signed and notarized on February 27<sup>th</sup>, the deal was not

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<sup>432</sup> See 12/22/05 letter from Sidley Austin to Citibank Private Bank requesting the wire transfer to West Coast Escrow, and accompanying emails showing the transfer was completed, no bates numbers. The \$900,000 was wire transferred by Sidley Austin LLP, a law firm, from its account at Citibank Private Bank to the West Coast Escrow account at Comerica Bank, on behalf of Mr. Obiang. Sidley Austin had received a much larger sum from a U.S. escrow account at Gulfstream Aerospace Corporation, which had been negotiating with Mr. Obiang over the purchase of an aircraft, as explained below. The negotiations were unsuccessful, and Gulfstream had returned Mr. Obiang's escrowed funds, sending them to Sidley Austin at his direction. See 12/17/09 letter from Sidley Austin to the Subcommittee, no bates number.

<sup>433</sup> 2/6/06 receipt for deposit from First American Title Co., SEN011816.

<sup>434</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>435</sup> 3/31/06 Broker Confidentiality Agreement, PSI-Coldwell-Banker-01-000509-10.

<sup>436</sup> Id. Mr. Baddin had signed the confidentiality agreement a few days earlier, on March 23, 2006, but the manager of his branch office officially signed it on behalf of Coldwell Banker. 3/23/06 Broker Confidentiality Agreement, SEN012339-41.

<sup>437</sup> Subcommittee interview with Jeffrey Hyland, December 20, 2007.

<sup>438</sup> 2/20/06 Grant Deed from First American Title Co., PSI-Coldwell\_Banker-01-000069-70. The seller sold the property under the name Sweetwater Mesa LLC.

recorded and therefore not finalized until April 27, 2006, because the property was not actually delivered until April.<sup>439</sup>

Mr. Baddin also told the Subcommittee that the original offer for the property had been made in the name of Beautiful Vision Inc., but the final offer had been made in the name of Teodoro Nguema Obiang. During the escrow process, Mr. Baddin said that Mr. Nagler arranged to remove Mr. Obiang's name from the deed and for the title to be recorded in the name of Sweetwater Malibu LLC, a shell company Mr. Nagler had formed two months earlier in February 2006.<sup>440</sup>

In April 2006, Mr. Obiang actually paid for the purchase of the Malibu residence, which Forbes magazine later described as the sixth most expensive residential purchase in the United States that year.<sup>441</sup> In doing so, Mr. Obiang did not use a mortgage. Instead, according to the settlement document, Mr. Obiang paid for the property outright, in six installments, as follows:

- On February 6, 2006, he paid \$900,000.
- On April 5, 2006, he paid \$5,908,400.
- On April 10, 2006, he paid \$5,908,400.
- On April 19, 2006, he paid \$5,908,400.
- On April 21, 2006, he paid \$5,908,400.
- On April 26, 2006, he paid \$5,908,400.<sup>442</sup>

Documentation reviewed by the Subcommittee shows that Mr. Obiang provided the initial payment of \$900,000 from a bank account belonging to a U.S. law firm, as explained earlier.<sup>443</sup> The remaining payments were wire transferred directly from Equatorial Guinea to the First American Trust escrow account at Wachovia Bank. Specifically, the funds originated at Societe General de Banque in Equatorial Guinea where Mr. Obiang had a personal account; passed through correspondent accounts held by the Bank of Central African States and Banque de France; and were deposited with Wachovia Bank in California, where First American Trust had its escrow account. This chart summarizes the five EG wire transfers used to fund the purchase of the Malibu residence.

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<sup>439</sup> Subcommittee interview of Mr. Baddin, May 12, 2008. Mr. Baddin stated in another document that "the deed to the buyer was executed prior to close of the sale. The deed remained in escrow until the Buyer placed sufficient funds into escrow, when the sale closed. During most of this time the buyer's contingencies had not been removed. A supplemental escrow instruction dated April 16, 2006, to the effect that the buyer would release another \$500,000 to the seller to extend the escrow to May 15, 2006, was circulated by the escrow holder." 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0003.

<sup>440</sup> 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0002. See 3/23/06 supplemental escrow instructions submitted by Mr. Nagler to First American Title Company, SEN011514. These instructions stated that Mr. Obiang would take title to the property in the name of Sweetwater Malibu LLC and asked for all documentation to reflect that vesting change.

<sup>441</sup> Forbes Magazine, "Most Expensive Home Sales 2006," December 12, 2006.

[http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx\\_mw\\_1212mostexpensivehomesales\\_slide\\_7.html?thisSpeed=15000](http://www.forbes.com/home/2006/12/11/most-expensive-sales-forbeslife-cx_mw_1212mostexpensivehomesales_slide_7.html?thisSpeed=15000).

<sup>442</sup> 4/28/06 Buyer's Final Settlement Statement from First American Title Co., PSI-Coldwell\_Banker-02-000367.

<sup>443</sup> The U.S. law firm was Sidley Austin Brown & Wood LLP (now Sidley Austin LLP) which sent the \$900,000 to West Coast Escrow in December 2005. On February 6, 2006, West Coast Escrow sent the funds to First American. 2/6/06 receipt for deposit from First American Title Co., SEN011816.

<b>EG Wire Transfers To Purchase Malibu Residence</b>					
<b>Date</b>	<b>Amount</b>	<b>Originating Institution</b>	<b>Through</b>	<b>Beneficiary</b>	<b>Bates</b>
4/05/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00004
4/10/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00010
4/19/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00016
4/21/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00019
4/26/06	\$5,908,400.00	Obiang Account at Societe Generale de Banque-Equatorial Guinea	Bank of Central African States → Banque De France	First American Trust Account at Wachovia	BF-G-00022
<b>Total- \$29,542,000.00</b>			<b>Source- Wachovia</b>		

Prepared by Subcommittee Staff

Mr. Baddin told the Subcommittee that the Obiang purchase was unique in his experience, not only because of the high price involved, but also because no mortgage was used.<sup>444</sup> When questioned, he stated that none of the parties involved in the transaction had asked how Mr. Obiang would provide the funds needed for the purchase price. Mr. Baddin noted that it is up to the seller to determine whether or not they believe the buyer has the ability to pay for the property.

When questioned about whether Mr. Baddin knew the source of Mr. Obiang's funds, Mr. Baddin responded that he did not. He said that he knew Mr. Obiang was involved in the government in his country, and that Mr. Berger had told him Mr. Obiang was qualified to purchase the property. Mr. Baddin stated that he never asks his clients questions about their finances, since he had no legal obligation to do so and such questions made most clients uncomfortable. He said that, from his viewpoint, there were "no red flags" raised by either the transaction or Mr. Obiang.

First American told the Subcommittee that it had a voluntary AML program and that, among other measures, each time it receives a wire transfer from a foreign account, it checks the name of the originator against lists compiled by OFAC of terrorists, narcotics traffickers, and other criminals, as required by law.<sup>445</sup> It noted that Mr. Obiang was not on the OFAC list. Its

<sup>444</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

<sup>445</sup> Subcommittee interview of First American, January 11, 2010. All U.S. financial institutions also perform this wire transfer screening, so Wachovia, as First American's bank, would also have performed this function.

other AML controls did not prevent First American from accepting the wire transfers from Mr. Obiang.

First American's bank, Wachovia, told the Subcommittee that its systems automatically screen all incoming wire transfers against the OFAC lists, as required by law.<sup>446</sup> Wachovia indicated that, because the Obiang name is not on the OFAC lists, the wire transfers from Equatorial Guinea did not trigger a review, even though Wachovia had designated Equatorial Guinea as a high risk country. Instead, the \$30 million in EG wire transfers were deposited into the First American escrow account with no questions asked. Wachovia noted that, under current law, it has no legal obligation to perform due diligence on the clients of its client, First American.<sup>447</sup>

**Split Commission.** One last issue related to the purchase of the Malibu residence involves the \$615,000 commission paid to the real estate agent. Mr. Baddin said that, in September 2005, about a year after he began working with Mr. Obiang, Rosalina Romo, an Obiang assistant, telephoned and asked him if he would be willing to credit half of his commission on the Malibu purchase back to Mr. Obiang. Mr. Baddin said that he agreed. While unusual, Mr. Baddin noted that he had split his commission with clients in the past, though not often. He said he agreed to it in this case, because he did not want Mr. Obiang to back out of the deal and knew the commission would be large due the high purchase price.

On September 18, 2005, Mr. Baddin handwrote a letter in which he agreed to split his commission with Mr. Obiang. The letter stated: "This is a letter to confirm the agreement that Neal Baddin of Coldwell Banker will share the commission on 3620 Sweetwater 50/50 with Teodoro Ngeuma Obiang."<sup>448</sup> The letter was signed by both Mr. Baddin and Mr. Obiang. Mr. Baddin said that he was later told by Mr. Obiang's attorney, Matt Hsu, that Mr. Obiang wanted to amend the letter agreement. On December 16, 2005, Mr. Obiang sent Mr. Baddin a more formal letter stating that Mr. Baddin was representing Mr. Obiang as his real estate agent and asking Mr. Baddin to provide Mr. Obiang with 50% of his commission on the Malibu property.<sup>449</sup>

The total commission on the Malibu property was \$615,000.<sup>450</sup> Mr. Obiang received \$305,000, and Mr. Baddin received \$305,000, although after taxes and processing fees, Mr. Baddin ultimately received about \$241,000.<sup>451</sup> The remaining \$5,000 was retained by Coldwell Banker. Mr. Baddin also paid Mr. Berger a referral fee of \$60,000.<sup>452</sup>

**Ongoing Relationship.** Mr. Baddin told the Subcommittee that he continued to work with Mr. Obiang after the closing on the Malibu property.<sup>453</sup> About a month or two after the

<sup>446</sup> 11/21/08 legal counsel to Wachovia's written response to Subcommittee questions, PSI Wachovia 10-0002.

<sup>447</sup> Id. At 5, 8. Wachovia has since informed the Subcommittee that it has added Mr. Obiang to an internal list within the bank that blocks wire transfers bearing specified names, as explained further below.

<sup>448</sup> 9/18/05 letter from Mr. Baddin to Mr. Obiang, PSI-Coldwell\_Banker-01-000388.

<sup>449</sup> 12/16/05 letter from Obiang to Mr. Baddin, PSI-Coldwell\_Banker-01-000505.

<sup>450</sup> 3/27/06 NRT cash receipt statement, PSI-Coldwell\_Banker-01-000549.

<sup>451</sup> 3/27/06 NRT cash receipt statement, PSI-Coldwell\_Banker-01-000549; 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0003.

<sup>452</sup> 3/11/09 legal counsel to Neal Baddin's written response to Subcommittee questions, PSI-Coldwell\_Banker-03-0003.

<sup>453</sup> Subcommittee interview of Mr. Baddin, May 12, 2008.

closing, Mr. Obiang called Mr. Baddin and asked him if he knew a good interior decorator. Mr. Baddin recommended a decorator, and he and the decorator met with Mr. Obiang at the Pacific Design Center.

In the fall of 2006, Mr. Obiang called Mr. Baddin and told him that he wanted to purchase a condominium. An Obiang assistant, Melinda DeHaven, arranged to view four to six properties with Mr. Baddin, but at the last minute canceled and did not reschedule. In 2007, Mr. Obiang called again and asked Mr. Baddin to show him properties of interest. Mr. Baddin said he took Mr. Obiang to see two or three houses in the Los Angeles area, but Mr. Obiang was not interested in any of them.

Mr. Baddin stated that Mr. Obiang still occasionally calls him. He stated that Mr. Obiang called him in early 2008, and said he was thinking about selling the Malibu property. Mr. Baddin said that he was not surprised since Mr. Obiang did not live there very much and traveled a great deal.

## **(2) Real Estate Agent John Kerrigan**

Prior to Mr. Baddin, Mr. Obiang worked with another California real estate agent, John Kerrigan. Mr. Kerrigan told the Subcommittee that he had been in the real estate business since 1984, and currently worked for Mirzo International Inc.<sup>454</sup> He said that, from 1999 to 2004, he had shown Mr. Obiang a number of properties for sale, but was never selected as the buying agent. In 2004, however, Mr. Kerrigan helped Mr. Obiang sell a Los Angeles residence for \$7.7 million.

Mr. Kerrigan has also filed a complaint against real estate agent Neil Baddin, alleging that he inappropriately lured away his client by offering to split the commission related to the purchase of the Malibu property.<sup>455</sup> That complaint was referred for arbitration, and a number of pleadings were filed in the arbitration case providing information about the Antelo and Malibu properties.

**Introduction to Mr. Obiang.** Mr. Kerrigan said that, in 1999, when he was working at Remax, he received a “cold call” from Mr. Obiang who was looking for properties in the \$10 to \$15 million range.<sup>456</sup> Mr. Kerrigan reported that soon after he received the call, he met Mr. Obiang at the Beverly Hills Hotel and showed him photographs of residences for sale. Mr. Kerrigan stated that, from 1999 to 2003, he showed Mr. Obiang approximately 20 to 30 properties in the \$15 to \$20 million price range and, in 2004, made multiple offers on his behalf to purchase the Malibu property that Mr. Obiang eventually purchased in 2006, using a different real estate agent, Mr. Baddin.<sup>457</sup>

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<sup>454</sup> Subcommittee interview with Mr. Kerrigan, May 15, 2008.

<sup>455</sup> Mirzo International, Inc. v. Hyland, Case No. AB06-15. 11/6/06 email from Mr. Baddin to Mr. Obiang, PSI-Coldwell Banker-01-000498-514.

<sup>456</sup> “Exhibit 1A, Detailed Information by John Kerrigan on the Agency Relationship of John Kerrigan with the Buyer, Leading up to the Purchase of the Malibu Property,” (hereinafter “Kerrigan Statement”), Mirzo International v. Hyland, Arbitration Complaint Case Number AB06-15, PSI-Coldwell Banker-01-000014; Subcommittee interview of Mr. Kerrigan, May 15, 2008.

<sup>457</sup> Kerrigan Statement, Mirzo International, Inc. v. Hyland, Case No. AB06-15. PSI Coldwell Banker-01-000014.



In a statement submitted in connection with his complaint against Mr. Baddin, Mr. Kerrigan described his relationship with Mr. Obiang in the following manner:

“I have had [an] extensive, continuous, and ongoing real estate agency relationship with the Buyer, Mr. Teodoro Nguema Obiang, for the past seven years, from September 1999 all the way to the present, October 2006. In addition to helping Mr. Ngeuma with his real estate needs, I have been closely connected to helping him adjust to living here in the U.S. over the last seven years. Whenever he came to town I would always make myself available to him, at his request, to run errands, help him out with selecting furniture, finding the best hotels online for him to travel to on vacation, and finding rental apartments for his friends, all with no commission compensation to me. ... I was always willing to help him any way I could in order to build a strong working relationship with this client.”<sup>458</sup>

Mr. Kerrigan also stated that he showed Mr. Obiang:

“a number of condominiums that he wanted to lease or purchase because he was getting tired of staying in hotels. He wanted a condo in addition to a large home and the plan was to let his out of town friends stay in the condo after he purchased a home. He put in offers to purchase with me on two penthouse condos for \$8,000,000 and \$7,500,000 on Wilshire Blvd. Corridor. The offer for \$7,500,000 was accepted and he opened escrow in May 2002. Then, two and a half months later, he abruptly cancelled the escrow for no reason in August 2002 and walked away from most of his deposit. I continued to work with him.”<sup>459</sup>

**Antelo Property Sale.** According to Mr. Kerrigan, in 2001, Mr. Obiang purchased a very contemporary house on Antelo Road, in the Los Angeles area, for \$6.5 million.<sup>460</sup> Mr. Obiang did not use him as his agent when he purchased the Antelo property.<sup>461</sup> Mr. Kerrigan told the Subcommittee that he understood Mr. Obiang had purchased the property in his own name, did not use a mortgage, and provided funds to pay the entire \$6.5 million cost.<sup>462</sup> The Subcommittee subsequently located documentation of a wire transfer sent on March 19, 2001, for \$6.2 million from an Obiang account at Riggs Bank, Account No. 76923450, to a Union Bank of California account for Beverly Hills Escrow in connection with property on Antelo Road in Los Angeles.<sup>463</sup> Mr. Kerrigan told the Subcommittee that he was not aware of and did not ask about the source of Mr. Obiang’s funds.<sup>464</sup>

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<sup>458</sup> Id.

<sup>459</sup> Id. at 15-16.

<sup>460</sup> Id. at 15.

<sup>461</sup> Id. at 15. Mr. Kerrigan told the Subcommittee that he had told Mr. Obiang about the Antelo property, and Mr. Obiang “did not want to see it because it was a contemporary style and he preferred Mediterranean. After all the time and effort I spent I was disappointed that he did not buy it from me but I continued to work with him just the same.”

<sup>462</sup> Subcommittee interview of Mr. Kerrigan, May 15, 2008.

<sup>463</sup> See 10/21/04 UBOC Case Report with information on this wire transfer, PSI-Union\_Bank\_of\_California-04-0452.

<sup>464</sup> Id.

Mr. Kerrigan said that a few years later, in or around March 2004, Mr. Obiang decided to sell the Antelo property, and telephoned him to act as his agent in the sale.<sup>465</sup> Mr. Kerrigan said that Mr. Obiang had never actually moved into the property. He said he originally listed the property for \$10 million at Mr. Obiang's request, even though that was an unrealistically high price. On October 8, 2004, the Antelo property sold for \$7.7 million, which meant that Mr. Obiang had secured a gross profit of more than \$1 million from the \$6.5 million purchase price he had paid in 2001.<sup>466</sup>

On October 19, 2004, the escrow agent who handled the Antelo property sale, D&G Escrow Corp., transferred over \$4 million from the purchase price to a Beautiful Vision Inc. account at Bank of America.<sup>467</sup> Beautiful Vision had been formed the prior week by Mr. Berger, on October 12, 2004. It's not clear where the remainder of the \$7.7 million was sent.

Subsequent to the sale, disagreements apparently arose among Mr. Kerrigan, Mr. Berger, and Mr. Obiang.<sup>468</sup>

**Malibu Property.** Mr. Kerrigan stated that, in 2003, he showed Mr. Obiang the Malibu property that Mr. Obiang eventually purchased in 2006.<sup>469</sup> He said that he showed the property to Mr. Obiang several times from 2003 to 2005, and, at Mr. Obiang's direction, submitted multiple offers for the property, in the range of \$21 to \$29 million, none of which were accepted.<sup>470</sup> Mr. Kerrigan stated that as late as December 2005, he was still communicating with Mr. Obiang about purchasing the Malibu property.

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<sup>465</sup> Id.

<sup>466</sup> See 10/15/04 Grant Deed, signed by Mr. Obiang, from Commonwealth Land Title Co., SEN003674.

<sup>467</sup> November 2004 statement for Beautiful Vision special checking account, BAC-PSI-02474.

<sup>468</sup> Mr. Kerrigan told the Subcommittee that, as part of the Antelo sale, he entered into an agreement with the buyer's representative, R & B Realty, to provide it with 1% of the commission, while Mr. Kerrigan would keep 4%. Mr. Kerrigan said that normally on a 5% commission, the buyer and seller's agent split the commission evenly. Mr. Kerrigan said that Mr. Berger "made an issue" of the commission division and "tried to disrupt the escrow." Mr. Kerrigan stated that, in the end, he received a \$308,000 commission and the buyer's agent received \$77,000 for the Antelo property. Subcommittee interview with Mr. Kerrigan, May 15, 2008.

Mr. Kerrigan also stated that, prior to the sale, the Antelo property needed repair work. Mr. Kerrigan said that a Riggs Bank employee, Simon Kareri, asked him to recommend a construction firm. Mr. Kerrigan recommended Pacific National Construction (PNC) which was selected for the work. He said the repair work ultimately cost \$80,000, and Mr. Berger would not pay the bill. Mr. Kerrigan stated that PNC put a lien on the property and was ultimately paid for its work.

In a written statement, Mr. Baddin wrote: "I asked both Mr. Berger and Mr. Nguema why they weren't continuing to work with Mr. Kerrigan. They both explained to me jointly and separately that Mr. Kerrigan had bungled the sale of Mr. Nguema's property on Antelo. They said he let the Buyer move in to Antelo before the close of escrow without Mr. Nguema's permission. The Buyer also refused to close the escrow on time and the transaction became litigious." Memorandum by Mr. Baddin, PSI Coldwell Banker 01-000502. According to Mr. Kerrigan, Mr. Berger had authorized the new client moving in early.

<sup>469</sup> Subcommittee interview of Mr. Kerrigan, May 15, 2008.

<sup>470</sup> According to Mr. Kerrigan, Mr. Obiang had authorized him to submit a written offer on the property on October 18, 2003, for \$21 million. 10/18/03 Residential Purchase Agreement, PSI-Coldwell\_Banker-01-000179-190. On January 29, 2004, Mr. Kerrigan submitted a second offer for \$24 million (see 1/29/04 California Residential Purchase Agreement, PSI-Coldwell\_Banker-01-000148-159, Record 1818) and received a counter offer for \$33.9 million (see 2/3/04 counter offer form, PSI-Coldwell\_Banker-01-000144-147). On February 5, 2004, Mr. Obiang submitted a written offer of \$27 million (see 2/5/04 counter offer form, PSI-Coldwell\_Banker-01-000140). On February 9, 2004 the seller sent back a counter offer of \$33.5 million (see 2/9/04 counter offer form, PSI-

Mr. Kerrigan wrote that, in December 2005, “Jeff Hyland reluctantly told me that my client Teodoro Ngeuma had been to the property in the late summer of 2005 with Neal Baddin.”<sup>471</sup> Mr. Kerrigan wrote that he called Mr. Obiang and asked him whether he was working with Mr. Baddin, and Mr. Obiang said that Mr. Baddin “had offered to kick him back 50% of the selling commission if he bought the Malibu property through him.”<sup>472</sup> Mr. Kerrigan later filed suit against Mr. Baddin for allegedly inappropriately luring away his client.

**No Questions.** When asked about the source of Mr. Obiang’s funds, Mr. Kerrigan indicated that he had no legal obligation to ask such questions and didn’t inquire. He told the Subcommittee that he did not know who Mr. Obiang was initially, but ultimately “found out his family was running Equatorial Guinea.” He said he did an Internet search, learned that Mr. Obiang was the son of the EG President whom some people were trying to overthrow. He said he didn’t know how much to believe regarding what he saw on the Internet. He said he had no understanding of where Mr. Obiang’s money came from, but assumed it was legitimate. Mr. Kerrigan stated: “Who am I to question it?”

Mr. Kerrigan said that Mr. Obiang “rolled up to showings in a Bentley,” and he wasn’t about to turn Mr. Obiang away. He told the Subcommittee: “If he said ‘I want to buy a house for \$10 million’ and I said, ‘no,’ he’d go to someone else.” He also noted that clients don’t want to divulge financial information, and he never talked to Mr. Obiang about finances because he didn’t want to “get someone upset.”

When questioned about whether or not real estate agents should conduct due diligence in order to know who their clients are and avoid facilitating real estate purchases with suspect funds, Mr. Kerrigan responded that if those were legal requirements, real estate agents would comply with the law.

### (3) Analysis

Real estate agents, Mr. Baddin and Mr. Kerrigan, assisted Mr. Obiang in his efforts to buy and sell high-end real estate in California. They operated, and continue to operate, without any legal obligation to know their customers, analyze the source of their funds, or exercise special precautions when dealing with PEPs. The escrow agents who handled the Malibu purchase, West Coast Escrow and First American, together accepted more than \$30 million in suspect funds wire transferred from Equatorial Guinea. D&G Escrow Corporation, which handled the Antelo property sale, received \$7.7 million from the buyer and transferred the sale proceeds to Obiang-controlled accounts, including \$4 million to a shell company account at Bank of America. Those sale proceeds included a \$1 million profit on the funds that Mr. Obiang had used to buy the property three years earlier. Like their real estate agent counterparts, these escrow agents operated, and continue to operate, without any legal obligation to know their

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Coldwell\_Banker-01-000139). On August 27, 2004, Mr. Kerrigan submitted a written offer for \$28 million (see PSI-Coldwell\_Banker-01-000113-124. R. 1818). On September 1, 2004, the seller countered with a written offer of \$32 million (see PSI-Coldwell\_Banker-01-000109-112) Mr. Kerrigan wrote: “We had not come to an agreement on price yet, but as time went on we were getting closer to making a deal on the Malibu home.” Kerrigan statement, Mirzo International, Inc. v. Hyland, Case No. AB06-15, PSI-Coldwell\_Banker-01-000017-18.

<sup>471</sup> Statement of Facts Describing the Controversy, Mirzo International, Inc. v. Hyland, Case No. AB06-15, PSI-Coldwell\_Banker-01-000024. Mr. Kerrigan reported that he never signed a retainer agreement with Mr. Obiang.

<sup>472</sup> Id.

customers, analyze the source of their funds, or exercise special precautions when dealing with PEPs.

In addition, the banks that housed the escrow agent accounts did not stop the multi-million-dollar wire transfers sent to or from the accounts of the escrow agents, relying on the principle that a bank is not obligated to know the clients of its client. These banks' AML and PEP controls depended upon the escrow agents policing their own clients, but under current law, U.S. escrow agents selling multi-million-dollar real estate are not required to have AML safeguards in place.

Because of these gaps in U.S. AML law, Mr. Obiang was able to buy and sell U.S. real estate without having to account for the source of the funds he used in his transactions. The end result was that he sent millions of dollars in suspect funds into and out of the United States in connection with his real estate transactions. If AML safeguards are to be applied to these types of transactions in the future, real estate and escrow agents should be required to establish AML programs.

#### **D. Obiang Use of a U.S. Escrow Agent to Purchase A Private Jet with Suspect Funds**



In 2006, Mr. Obiang used a shell corporation called Ebony Shine International, Ltd. to purchase a private jet with \$38.5 million wire transferred from Equatorial Guinea to a U.S. escrow agent that facilitated the purchase. After one U.S. escrow agent, McAfee & Taft, learned of Mr. Obiang's involvement in the purchase and refused to complete the transaction without information on the source of the funds being supplied by him, another U.S. escrow agent, Insured Aircraft Title Services Inc. (IATS), stepped in and completed the transaction without questioning the source of the funds. The \$38.5 million was transferred from an Obiang account in Equatorial Guinea to an IATS escrow account at UBS Bank in London, and later to various U.S. bank accounts. Mr. Obiang now routinely uses the jet to travel throughout the United States and around the world.

Like persons involved with real estate closings and settlements, since 1988, "business[es] engaged in vehicle sales, including automobile, airplane, and boat sales," have been identified in

U.S. AML laws as vulnerable to money laundering abuses due to the large sums involved in their transactions.<sup>473</sup> The 2001 Patriot Act required such businesses to establish AML programs, unless exempted by the Treasury Department.<sup>474</sup> In 2002, the Treasury Department provided a “temporary” exemption from the statutory requirement to “seller[s] of vehicles, including automobiles, airplanes, and boats.”<sup>475</sup> Today, eight years after enactment of the Patriot Act, the Treasury Department has yet to propose an AML rule for businesses engaged in vehicle sales. Treasury has also never made it clear whether such an AML rule would extend to escrow agents holding the funds needed to complete the vehicle sales. This business sector has also failed to develop AML guidance for its members. That means, under current law, U.S. escrow agents that handle aircraft sales operate without any legal obligation to know their customers, evaluate the source of funds used to purchase aircraft, or exercise special precautions when dealing with a PEP.

**2005 Purchase Attempt.** In February 2005, Mr. Obiang employed a U.S. law firm, Sidley Austin Brown & Wood LLP (now Sidley Austin LLP), to help him purchase an aircraft from Gulfstream Aerospace Corporation (“Gulfstream”).<sup>476</sup> At some point, Mr. Obiang sent more than \$21 million to an escrow account associated with Gulfstream for the purchase of the aircraft,<sup>477</sup> but according to the law firm, the “negotiations between Gulfstream and Mr. Obiang were unsuccessful.”<sup>478</sup> Sidley Austin agreed to accept a wire transfer of the \$21 million from Gulfstream, after first obtaining a letter from the U.S. Department of Justice that, “at the present time,” it had “no basis for either restraining or seizing proceeds used to finance this proposed sale as potentially forfeitable property” and “no basis for believing that the monies used to purchase the aircraft would violate the U.S. money laundering laws.”<sup>479</sup>

On July 28, 2005, Gulfstream wire transferred the \$21 million to Sidley Austin’s attorney-client account at Citibank Private Bank.<sup>480</sup> According to the law firm, the transfer “was done at the direction of Mr. Obiang with the understanding that the funds would be remitted to Mr. Obiang.”<sup>481</sup> The funds remained at the law firm for more than four months. On December 8, 2005, at Mr. Obiang’s request, Sidley Austin wire transferred \$250,000 of his funds to Aero Records & Title Co. Escrow.<sup>482</sup> Sidley Austin also applied about \$266,000 of the funds to pay Mr. Obiang’s outstanding legal fees and accepted another \$100,000 “as a retainer payment.”<sup>483</sup>

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<sup>473</sup> See 31 USC § 5312(a)(2)(T)(including “a business engaged in vehicle sales, including automobile, airplane, and boat sales; in the list of “financial institutions” subject to U.S. AML requirements).

<sup>474</sup> See Section 352 of the Patriot Act of 2001, P.L. 107-56 (October 26, 2001), codified at 31 USC § 5318(h).

<sup>475</sup> See 31 CFR § 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

<sup>476</sup> 12/17/09 letter from Sidley Austin LLP to Subcommittee, no bates number, at 1.

<sup>477</sup> Id.

<sup>478</sup> Id.

<sup>479</sup> 4/18/05 letter from U.S. Department of Justice to Sidley Austin Brown & Wood LLP, no bates number.

<sup>480</sup> See Sidley Austin Trust Transaction Detail Report for 1/1/04 to 1/1/07 For the Republic of Equatorial Guinea and Minister Obiang, no bates number.

<sup>481</sup> 12/17/09 letter from Sidley Austin LLP to Subcommittee, at 1, no bates number.

<sup>482</sup> Id. at 2. This money was placed in escrow and used in Mr. Obiang’s second, ultimately successful attempt to purchase a Gulfstream jet in 2006, as explained below.

<sup>483</sup> Id.

The next day, December 22, 2005, at Mr. Obiang's direction, Sidley Austin wire transferred \$900,000 of his funds to West Coast Escrow.<sup>484</sup>

Sidley Austin attempted to send the remaining funds, about \$19.5 million, to Mr. Obiang's personal bank account in Equatorial Guinea. On December 21, 2005, Sidley Austin sent a wire transfer of the funds to Societe Generale de Banques in Equatorial Guinea for Mr. Obiang's account, but Societe General "did not approve the transfer."<sup>485</sup> A month later, on January 24, 2006, after obtaining a second letter from the U.S. Justice Department that the transfer did not violate U.S. AML laws, Sidley Austin sent a second wire transfer with the \$19.5 million to Societe General in Equatorial Guinea. That time, the bank accepted the transfer and credited the funds to Mr. Obiang's account.<sup>486</sup>

**2006 Purchase Offer.** In 2006, Mr. Obiang made a second attempt to purchase a Gulfstream aircraft, this time from an owner rather than the manufacturer. On February 23, 2006, Ebony Shine International, Ltd., acting on behalf of Mr. Obiang, submitted a purchase offer to Blue Sapphire Services, Ltd. to buy a Gulfstream G-V jet airplane registered in the United States.<sup>487</sup> Ebony Shine International, Ltd. is a British Virgin Islands (BVI) shell company. Mr. Obiang was represented in the transaction by a non-U.S. attorney, Duret Sieraczek-Abilan, also known as Eric Duret.

Blue Sapphire Services, Ltd. is also a BVI shell corporation, that was used to facilitate the sale of the aircraft by the Bakrie family of Indonesia.<sup>488</sup> The Bakrie family was represented in the transaction by a non-U.S. citizen referred to as Dick Brown. At the time of the transaction, the aircraft was registered with the Federal Aviation Administration (FAA) in Oklahoma City, but physically located in Singapore.<sup>489</sup> Because U.S. registered aircraft require a U.S. registered owner, Blue Sapphire employed Wells Fargo Bank Northwest as the aircraft's registered owner.<sup>490</sup>

McAfee & Taft, a U.S. company headquartered in Oklahoma City, initially acted as the escrow agent in the sale. According to McAfee officials, their company was chosen because it

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<sup>484</sup> Id. See also 12/22/05 letter from Sidley Austin to Citibank Private Bank regarding the wire transfer, and several emails of the same date showing the transfer was completed, no bates numbers. The \$900,000 was placed in escrow and later used in Mr. Obiang's purchase of the Malibu residence, as explained earlier.

<sup>485</sup> Id.

<sup>486</sup> Id.

<sup>487</sup> The Gulfstream G-V is a high performance corporate-style jet airplane that seats up to sixteen passengers and crew, and has an ultra-long flight range of 6,500 nautical miles. It is manufactured in the United States by Gulfstream Aerospace Corp., a subsidiary of General Dynamics. The Gulfstream G-V can be used to transport senior government officials or corporate management, and serve military and homeland defense roles. See Gulfstream Aerospace Corp, News Release, November 6, 2008.

<http://www.gulfstream.com/news/releases/2007/070618a.htm>

<sup>488</sup> Subcommittee staff interview with McAfee & Taft officials, 2/20/09. See also 2/23/05 Offer to Purchase from Ebony Shine International LTD, BSSL000001.

<sup>489</sup> As is common with foreign owners of U.S. registered aircraft, Blue Sapphire Services, Ltd. had entered into an owner-trustee relationship with Wells Fargo Bank N.A. to hold title of the aircraft to satisfy domestic ownership requirements for registration purposes. See also 2/23/05 Offer to Purchase from Ebony Shine International LTD, BSSL000001.

<sup>490</sup> See 6/29/06 FAA Aircraft Bill of Sale and 8/16/06 letter from Wells Fargo canceling U.S. registration of the aircraft, PSI-Insured\_Aircraft-01-0159-60.

had assisted in the original purchase of the jet by Blue Sapphire Services, and so was familiar with the unique leasing structure used to finance that purchase.<sup>491</sup>

The February 2006 purchase offer proposed a total purchase price of \$38.5 million payable in three installments to the escrow agent, consisting of an initial payment of \$4.7 million at the time of the offer; a second payment of \$10.3 million due at the pre-purchase inspection of the jet on or about March 25, 2006; and a final payment of \$23.5 million upon delivery of the aircraft.<sup>492</sup> The offer was signed by Mr. Duret on behalf of Ebony Shine International and by Irma Pujiastuti on behalf of Blue Sapphire Services.<sup>493</sup> An escrow agreement, that was drafted but not signed by either party, indicated that all payments would be made to an escrow account at McAfee & Taft in Oklahoma City.<sup>494</sup>

A second U.S. company, Insured Aircraft Title Services (IATS) of Oklahoma City, was selected to serve as the escrow agent for Ebony Shine International. On February 27, 2006, IATS sent an email to Eric Duret, the attorney representing Ebony Shine International, stating that IATS had received a deposit of about €3.9 million from Mr. Obiang to purchase the aircraft.<sup>495</sup> The funds had been deposited into an IATS escrow account at UBS bank in London.

Those funds were supposed to be transferred to the seller's escrow agent, McAfee & Taft, which had its account at Bank of America in Oklahoma City.<sup>496</sup> On March 6, 2006, however, Mr. Duret sent an email to McAfee & Taft, with a copy to Blue Sapphire's representative, Dick Brown, requesting alternate wire arrangements:

“Further to Dick’s correspondence he has noted deposit to be made in a bank in Oklahoma [C]ity.

The future owner of this plane is from an African origin and therefore it is complicated for him to make a wire transfer to the USA instead of Europe or to Asia.

He presently hold[s] an account with UBS London. Would it be possible for you to manage this escrow account in London in order to proceed further with this transaction and guarantee our client interest.”<sup>497</sup>

McAfee & Taft replied the same day, stating: “We cannot manage an account with UBS London. With that said, the parties may choose to use another escrow agent for funds (possibly a London firm/company) and we would simply hold the documents in escrow.”<sup>498</sup> Mr. Brown of Blue Sapphire Services, however, insisted on using McAfee & Taft as the escrow agent for the funds, sending the following email:

“As I advised from the outset of this transaction, the funds have to be in Escrow with MCAFEE & TAFT. We have no way of managing funds in overseas accounts. If your

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<sup>491</sup> Subcommittee interview with McAfee & Taft, 2/20/09.

<sup>492</sup> 2/23/06 Offer to Purchase, BSSL000001, 10–11.

<sup>493</sup> Id. at 03.

<sup>494</sup> Id. at 11.

<sup>495</sup> Id. at 04.

<sup>496</sup> Escrow Agreement, BSSL000054.

<sup>497</sup> 3/6/06 email from Mr. Brown BSSL000093.

<sup>498</sup> 3/6/06 email from McAfee & Taft, BSSL000145.

client has an account with UBS in London, he can transfer the funds from Africa to his UBS account in London, and from there it is a simple transaction to move the funds to McAfee & Taft.

If you can't have these funds moved into an Escrow acceptable to McAfee & Taft, then I don't see how we are going to get this deal done."<sup>499</sup>

On March 15, 2006, an internal McAfee & Taft email noted that the company had not received any funds regarding the Gulfstream purchase, and that Ebony Shine must "direct IATS to transfer the \$3,912,504.94 to our escrow account."<sup>500</sup> On March 16, 2006, Mr. Brown emailed Mr. Duret to request the immediate transfer of the funds:

"Eric, we have not received any advice from [McAfee & Taft] that they have received funds into Escrow despite your advice earlier in the week that the funds have been sent. This is very disturbing and it is a long way from your commitment."<sup>501</sup>

Mr. Duret replied:

"[F]unds will arrive on Wednesday. As I told you in my email of March 6<sup>th</sup>, my client is [of] African origin and therefore it is complicated for him to make a wire transfer to the USA. That's the reason why the funds [are] not in your account. Please be patient."<sup>502</sup>

**McAfee & Taft Raises Patriot Act Concerns.** After reviewing the IATS wire transfer documentation, McAfee & Taft became aware of Mr. Obiang's involvement in the transaction.<sup>503</sup> It then researched Mr. Obiang, learned of his political status and reputation, and became concerned about the source of the funds he would be supplying to purchase the aircraft.<sup>504</sup>

Although in 2002, the U.S. Treasury Department exempted U.S. businesses engaged in aircraft sales from requirements in the 2001 Patriot Act to establish AML programs, McAfee & Taft told the Subcommittee that it had voluntarily chosen to implement the Patriot Act's AML safeguards to avoid facilitating transactions involving suspect funds.<sup>505</sup> The 2006 escrow agreement to be used in the Gulfstream purchase, for example, stated that McAfee & Taft "maintains a Customer Identification Program (CIP) in accordance with the Patriot Act."<sup>506</sup> McAfee & Taft told the Subcommittee that its CIP program required it to identify the officers and principals of the purchasing company, Ebony Shine International; to understand the source of the purchaser's funds; and to ensure that the funds were sent from an account held in the name

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<sup>499</sup> 3/6/06 email from Mr. Brown to McAfee & Taft, BSSL000093.

<sup>500</sup> 3/15/06 internal McAfee & Taft email, BSSL000100.

<sup>501</sup> 6/16/06 email from Mr. Brown to Mr. Duret, BSSL000144.

<sup>502</sup> 3/17/06 email from Mr. Duret to Mr. Brown, BSSL000144.

<sup>503</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>504</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>505</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>506</sup> 3/06 Escrow Agreement Draft 46, BSSL000205.



of the purchaser, Ebony Shine International, rather than from a parent, subsidiary, related company, officer, or director.<sup>507</sup>

On March 19, 2006, McAfee & Taft sent an email to Mr. Brown and Mr. Duret stating: “We need some information to assure compliance with the U.S. Patriot Act. Funds must arrive from an account held in the name of Ebony Shine International Ltd. (“Ebony”). We also need copies of Ebony’s formation documents, list of officers and principals and identity of the source of funds.”<sup>508</sup>

On March 23, 2006, IATS wire transferred about \$4.7 million from its UBS account in London to a McAfee & Taft escrow account at Bank of America in Oklahoma City. An email from a McAfee employee stated that the funds were to be held pending further instruction from Teodoro Nguema Obiang.<sup>509</sup>

McAfee & Taft sent an email to Mr. Brown confirming receipt of the funds but also noting: “The funds, until such time as a final escrow agreement is executed by all parties, [are] being held by us and subject to the discretion of the purchaser. We of course will not execute the escrow agreement until we are satisfied that the Patriot Act documentation is sufficient. We have not received any further documentation from Eric, since our last meeting.”<sup>510</sup>

McAfee & Taft and Mr. Brown sent multiple emails to Mr. Duret and his assistant, Christine Nasrallah, in an attempt to obtain the information about Ebony Shine International and the source of its funds to satisfy the company’s compliance with the Patriot Act.<sup>511</sup> On March 30, 2006, Mr. Brown sent the following email to Mr. Duret:

“We are approaching the end of another week, and nothing has been done by you to enable compliance with the Patriot Act. I have sent you several emails on this matter and have not even had the courtesy of a reply.

As explained to you previously, because you have not complied with the requirements of the Patriot Act, we do not have a deposit as required under the Sale and Purchase Agreement. The fact that you have actually transferred the funds to the Escrow Account has no meaning if you are unable to comply with the Patriot Act.

In the absence of a constructive reply from you by return, we will have to assume that you no longer wish to continue with this transaction.”<sup>512</sup>

Ignoring the McAfee & Taft requests for additional customer information, Mr. Obiang wire transferred \$10.3 million from his account in Equatorial Guinea to the McAfee & Taft escrow account at Bank of America in Oklahoma City, in three installments:

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<sup>507</sup> See 3/06 Escrow Agreement Draft 46, BSSL000205; and 3/19/06 email from McAfee & Taft to Mr. Brown and Mr. Duret, BSSL000159.

<sup>508</sup> 3/19/06 email from McAfee & Taft to Mr. Brown and Mr. Duret, BSSL000159.

<sup>509</sup> See 3/23/06 email from McAfee & Taft, BSSL000222; 3/23/06 email from McAfee & Taft to Mr. Brown, BSSL000223; 3/24/06 email from McAfee & Taft to Mr. Brown, BSSL000226.

<sup>510</sup> 3/24/06 email from McAfee & Taft to Mr. Brown, BSSL000226, See also 3/06 Escrow Agreement Draft 46, BSSL000205.

<sup>511</sup> See 3/17/ - 3/28/06 emails between McAfee & Taft, Mr. Brown, and Mr. Duret, BSSL000230-236.

<sup>512</sup> 3/30/06 email from Mr. Brown to Duret, BSSL000238.

On April 4, 2006, Mr. Obiang wired \$2,575,000 to the McAfee & Taft escrow account. The originating institution was Societe Generale De Banque (SGDB) in Equatorial Guinea.<sup>513</sup>

On April 6, 2006, he wired another \$2,575,000 from SGDB to the McAfee & Taft escrow account.<sup>514</sup>

On April 7, 2006, Mr. Obiang wired \$5,150,000 from SCDB to the McAfee & Taft escrow account in Oklahoma City.<sup>515</sup>

In each case, the funds moved from his bank in Equatorial Guinea to a correspondent account at Wachovia Bank which then transferred the funds to Bank of America in Oklahoma City. The plan was that, once the sale of the jet was complete, the funds would move from the McAfee & Taft escrow account at Bank of America to an account for the benefit of the seller, Blue Sapphire.<sup>516</sup>

On April 7, 2006, Mr. Duret's assistant, Ms. Nasrallah, wrote to Mr. Brown about the \$10.3 million that had been transferred to the U.S. escrow account as follows:

“The 1<sup>st</sup> and 2<sup>nd</sup> settlements of \$2,175,000.00 each were transferred to the credit of [McAfee & Taft's] account value April 6<sup>th</sup>, 2006 and the 3<sup>rd</sup> \$5,150,000.00 value April 7<sup>th</sup>. ... We have contacted the Wells Fargo Bank re the compliances of Patriot Act. Taking into account the difficulties linked with their client's political activities, we have decided not to proceed with a U.S. registration but to go for a registration in the Caymand [sic] Islands or Bermuda.”<sup>517</sup>

On April 7, 2006, Mr. Brown responded with an email to Mr. Duret, Ms. Nasrallah, McAfee & Taft, and others:

“We seem to have reached an impass[e] on the Patriot Act compliance. ... The buyer has decided to take the aircraft off the US Register because they feel that complying with the requirements of the Patriot Act for Well[s] Fargo will take too long. ... We are just about at the stage where we will have to either restructure this sale to take it entirely outside the Patriot Act (i.e. we sell it to one of their associates in Singapore, and accept payment there).”<sup>518</sup>

Minutes later, McAfee & Taft replied:

“I just want to make sure everyone is on the same page and aware that for us to continue to hold the funds I must be provided with the Patriot Act due diligence by Monday morning. ... [I]f I don't have the information or if I am in anyway unsure, I will wire the

<sup>513</sup> 4/5/06 wire transfer record, BSSL000254.

<sup>514</sup> Id. at BSSL000255.

<sup>515</sup> 4/6/06 wire transfer record, BSSL000258.

<sup>516</sup> Wells Fargo was the appointed trustee for Blue Sapphire. See 7/26/06 Escrow Agreement, PSI-Insured\_Aircraft-00202.

<sup>517</sup> 4/7/06 email Ms. Nasrallah to Mr. Brown, Mr. Duret, McAfee & Taft, BSSL000259.

<sup>518</sup> 4/7/06 email from Mr. Brown to McAfee & Taft, Mr. Duret, and other others, BSSL000279.

funds back to the account of the party sending said funds to us. Or we can wire the funds back to IATS if they are willing to act as escrow agent.

The parties could use the same form of escrow agreement with IATS.”<sup>519</sup>

Five days later, on April 12, 2006, having received no information from Ebony Shine International, McAfee & Taft cancelled the transaction and returned the funds that had been provided to them to purchase the Gulfstream jet. McAfee & Taft told the Subcommittee that it expected an angry phone call from Mr. Duret, but received no further communication from him.<sup>520</sup> On April 12, 2006, McAfee & Taft sent three wire transfers totaling \$10,299,950.00 to Mr. Obiang in Equatorial Guinea and one wire transfer for \$4,723,262.22 to IATS at UBS in London.<sup>521</sup> These amounts corresponded to the “initial payment” and “second payment” amounts specified in the draft escrow agreement, less fees.

**IATS Steps In.** After McAfee & Taft declined to complete the transaction without information on the source of the \$38.5 million being provided to purchase the Gulfstream jet, IATS stepped in, agreeing to serve as escrow agent for the transaction and to facilitate the purchase of the jet by Mr. Obiang’s company.

On April 20, 2006, Ms. Nasrallah sent an email to IATS noting that “the transaction was cancelled via Mcafeetaft” and requesting IATS to open an escrow account in the name of “Blue Sapphire (NGUEMA).”<sup>522</sup> Later that day, IATS sent Mr. Duret a confirmation that it had deposited \$4.7 million into an IATS escrow account at UBS Bank in London for “Blue Sapphire Services LTD (Nguema).”<sup>523</sup> Mr. Duret subsequently provided IATS with a Power of Attorney form, signed by Mr. Obiang, in which Mr. Obiang authorized Mr. Duret to represent him in the purchase of the aircraft.<sup>524</sup>

Two weeks later, on May 4, 2006, Mr. Brown emailed Mr. Duret and Ms. Nasrallah to warn them “if the deposit held by IATS is not made non refundable (in accord with the Purchase Agreement) and confirmed as non refundable by IATS, by close of business tomorrow Friday May 5, then we will have to abort the sale to your client.”<sup>525</sup> The next day, on May 5, 2006, Mr. Brown wrote:

“It is good to hear that your client still wants to buy the aircraft, and we are still interested to sell him the aircraft, but weeks go by and there is no progress and no action from your side. We can understand the problems that have occurred with the banking, but not the long periods on no action by your side were the major contributor to the banking problems.

Your client has indeed sent the US\$4,700,000 back to [IATS] however the funds are still held by IATS for the account of your clients, and not for the escrow account of Blue

<sup>519</sup> 4/7/06 email from McAfee & Taft, BSSL000280.

<sup>520</sup> Subcommittee interview with McAfee & Taft, February 20, 2009.

<sup>521</sup> 4/11/06 internal McAfee & Taft email, BSSL000331; 4/12/06 Bank of America wire transfer record, BSSL000335-38.

<sup>522</sup> 4/19/06 email from Ms. Nasrallah to IATS, PSI-Insured\_Aircraft-01-0222.

<sup>523</sup> 4/20/06 IATS Deposit Confirmation, PSI-Insured\_Aircraft-01-0229.

<sup>524</sup> 4/20/06 Bordreau De Transmission, PSI-Insured\_Aircraft-01-0226 to 0228.

<sup>525</sup> 5/4/06 email from Mr. Brown to Mr. Duret and Ms. Nasrallah, PSI-Insured\_Aircraft-01-00258.

Sapphire in accordance with the Purchase Agreement. Your client still has total control over these funds, we do not have them.

The Pre Purchase inspection can be scheduled as soon as the funds are moved into escrow on a non refundable basis in accordance with the terms of the Purchase Agreement.

Please contact Eric by phone today to get this matter resolved.”<sup>526</sup>

Mr. Brown sent a second email on May 5, 2006, as follows:

“As explained in my earlier email the US\$4,700,000 is in the IATS Escrow Account and is being held for the Credit of your client. ... We can be patient while all the other problems are sorted out, but we must have the US\$4,700,000 made non refundable in accordance with the terms of the Sale and Purchase Agreement. ... I would suggest you contact Fred Weissmann and arrange for Jet Aviation to advise you on this matter and assist you in completing this transaction. They are experts in these matters and can help you get this transaction finalized.”<sup>527</sup>

On May 9, 2006, Ms. Nasrallah sent an email stating: “The management of the aircraft will be done by Jet Aviation in accordance to the instructions of the buyer.”<sup>528</sup>

That same day, Mr. Obiang sent the second installment of \$10.3 million to purchase the aircraft, using three wire transfers to do so. Each transfer was sent from an Obiang account at Societe Generale De Banque in Equatorial Guinea to the IATS account at UBS in London. On May 9, 2006, UBS notified IATS that \$2,574,975 had arrived from Banque De France by order of Mr. Obiang.<sup>529</sup> This email clearly disclosed Mr. Obiang’s involvement in the aircraft sale. On May 10, 2006, UBS received an additional \$5,149,975 from Banque De France by order of Mr. Obiang.<sup>530</sup> And again, on May 11, 2006, another \$2,574,975 was sent from Banque De France by order of Mr. Obiang.<sup>531</sup> At that point, IATS held about \$15 million in its escrow account at UBS in London.

On May 18, 2006, IATS notified Mr. Brown of Blue Sapphire Services and Mr. Duret of Ebony Shine International, among others, that IATS was in possession of the first and second payments specified in the draft escrow agreement for the purchase of the jet.<sup>532</sup>

**Seller Invokes Patriot Act.** On May 23, 2006, Mr. Brown sent an email to Mr. Duret notifying him that the seller of the aircraft, Blue Sapphire, wanted a legal opinion that the proposed purchase was not subject to provisions of the Patriot Act:

<sup>526</sup> 5/5/06 email from Mr. Brown to Ms. Nasrallah and Mr. Duret, PSI-Insured\_Aircraft-01-00257.

<sup>527</sup> 5/5/06 email from Mr. Brown to Mr. Duret and Ms. Nasrallah, PSI-Insured\_Aircraft-01-0250.

<sup>528</sup> 5/9/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured\_Aircraft 01-0265; see also 5/9/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured\_Aircraft-01-0268.

<sup>529</sup> 5/5/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0275.

<sup>530</sup> 5/10/06 email IATS to UBS, PSI-Insured\_Aircraft-01-0264.

<sup>531</sup> 5/11/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0276.

<sup>532</sup> 5/18/06 email from IATS to Mr. Brown, PSI-Insured\_Aircraft-01-0281.

“The owner of the GV is very concerned that this sale to your client is not in compliance with the Patriot Act. As such he requires a Legal Opinion from IATS’s Counsel that the transaction as structured by IATS is not subject to the provisions of the Patriot Act, or if it is, that all requirements of the Patriot Act have been complied with.”<sup>533</sup>

Wells Fargo Bank Northwest, which acted as Blue Sapphire’s U.S. registered owner of the aircraft, normally complied with the Patriot Act’s AML provisions and wanted a legal determination to whether the \$38.5 million being paid in the sale was subject to a due diligence review to evaluate the source of the funds.

Ms. Nasrallah responded with an email on May 31, 2006, arguing that the Patriot Act was not applicable to the transaction:

“Please allow me to pinpoint the following points: the client is Indonesian, the sale will take place in Singapore between 2 [BVI] companies out of which one is detained by an African, the guarantee is based in London, both intermediaries (you and me) are non US Citizens. Based on the above, could you please explain to me how an American law can be applied to this contract knowing that the plane has already been re-registered at the Cayman Islands?”<sup>534</sup>

Despite this email, the escrow agreement had been revised to require the purchaser to provide a legal opinion that the transaction was exempt from the Patriot Act.<sup>535</sup> On June 9, 2006, William J. Robinson, an Oklahoma City attorney, provided the requested legal opinion to Blue Sapphire, Ebony Shine International, IATS, and Wells Fargo Bank. He wrote in part:

“In accordance with Paragraph 4 of the June 5, 2006 Aircraft Sale and Purchase Amendment Agreement herein relative to the applicability of the Uniting and Strengthening America By Providing Appropriate Tolls Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act Of 2001 thereto, you are advised that while the transaction may not be specifically ‘exempt’ from same, it is my opinion, subject to qualification hereinafter expressed, that nothing in said Act prevents the parties hereto, or their agents, from consummating the purchase and sale or identifies the transaction as a violation of said Act.”<sup>536</sup>

On June 27, 2006, Mr. Robinson provided a supplemental legal opinion further explaining his reasoning. First, he observed that IATS was not a “financial institution” as defined in the Patriot Act.<sup>537</sup> Second, he noted that it was the banks that were wiring funds in connection with the transaction that were subject to the Patriot Act.<sup>538</sup> Finally, he stated that the two banks that would be involved with completing the sale, Wells Fargo Bank and the International Bank of Commerce, were both in compliance with the Patriot Act.<sup>539</sup>

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<sup>533</sup> 5/23/06 email from Mr. Brown to Mr. Duret, PSI-Insured\_Aircraft-01-0328.

<sup>534</sup> 5/31/06 email from Ms. Nasrallah to Mr. Brown, PSI-Insured\_Aircraft-01-0327.

<sup>535</sup> See 5/6/06 Escrow Agreement, PSI-Insured\_Aircraft-01-0326.

<sup>536</sup> 6/9/06 legal opinion, PSI-Insured\_Aircraft-01-0299.

<sup>537</sup> 6/27/06 legal opinion, PSI-Insured\_Aircraft-01-0309.

<sup>538</sup> Id.

<sup>539</sup> Id. International Bank of Commerce administered IATS’ escrow accounts in the United States.

Apparently this legal analysis was sufficient for Wells Fargo and International Bank of Commerce to accept the funds supplied by Mr. Obiang in his purchase of the jet.

**Purchase Completed.** On June 26, 2006, Mr. Brown emailed IATS that the “full amount of funds were in escrow with IATS” to complete the sale of the aircraft.<sup>540</sup> On June 27, 2006, Mr. Brown forwarded a revised escrow agreement to IATS. The revisions included identifying IATS instead of McAfee & Taft as the escrow agent for the buyer’s funds, specifying that the escrow account was at UBS London, and deleting the requirement that the escrow agent maintain a Customer Identification Program in compliance with the Patriot Act.<sup>541</sup> On June 28, 2006, Mr. Obiang and Blue Sapphire Services, Ltd. executed a final Escrow Agreement and Instructions to Fund the purchase of the aircraft.<sup>542</sup>

The following charts summarize the source of the \$38.5 million used to purchase the aircraft and what happened to the funds.<sup>543</sup> Essentially, the funds were provided by Mr. Obiang from his personal account in Equatorial Guinea. Because his payments were in U.S. dollars, they went through several correspondent accounts, including Wachovia Bank in the United States, before arriving at the IATS account at UBS in London.<sup>544</sup> Once IATS received the funds, it divided the purchase price among five parties. It wire transferred the largest amount, over \$27 million to PMA Capital Management, an escrow agent based in the Cayman Islands with an affiliate in Hong Kong, which used the funds to pay off an outstanding mortgage on the aircraft.<sup>545</sup> IATS wire transferred the next largest amount, over \$11 million, to a Blue Sapphire account at Credit Suisse in Singapore. Since the funds were in U.S. dollars, they went through Credit Suisse’s U.S. dollar correspondent account at Bank of New York. IATS then transferred about \$22,000 to its U.S. account at International Bank of Commerce in Oklahoma as its escrow fee, and sent additional amounts to two lawyers.<sup>546</sup>

FUNDS SENT TO IATS ACCOUNT AT UBS LONDON IN 2006 AIRCRAFT SALE					
Date	Amount	Originating Institution	Through	Beneficiary	Bates
4/13/2006	\$4,723,262.22	McAfee & Taft Escrow Account at Bank of America (returning Obiang funds)		Insured Aircraft Title Service, Inc.	BSSL0003321, 38
5/9/2006	\$2,574,975.00	Teodoro Obiang	Bank of Central	Insured	BF-G-0025, 26

<sup>540</sup> 6/26/06 email from Mr. Brown to IATS, BSSL000339.

<sup>541</sup> See Escrow Agreement, BSSL000344-353; Escrow Agreement Draft 46, BSSL000204-213; and 6/28/06 Escrow Agreement, PSI-Insured\_Aircraft-01-0313

<sup>542</sup> 6/28/06 Escrow Agreement, BSSL000364-366.

<sup>543</sup> See Escrow Worksheet, PSI-Insured\_Aircraft-01-0182; list of transaction parties, PSI-Insured\_Aircraft-01-0202; 6/16/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0306; 5/10/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0264; and 5/11/06 email from UBS to IATS, PSI-Insured\_Aircraft-01-0276.

<sup>544</sup> See chart in next section identifying the transfers.

<sup>545</sup> See, e.g., 6/29/06 FAA Release and Disclaimer, signed by PMA Capital Management Ltd, PSI-Insured\_Aircraft-01-0161.

<sup>546</sup> See 4/20/06 Escrow Report, PSI-Insured\_Aircraft-01-0225; Subcommittee interview of IATS, December 17, 2009.

		Account at Societe Generale de Banque - Equatorial Guinea	African States → Banque De France	Aircraft Title Service, Inc	
5/11/2006	\$5,149,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0028, 29
5/12/2006	\$2,574,975.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0031, 32
6/13/2006	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0034, 35
6/13/2006	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0037, 38
6/19/2006	\$7,833,308.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France	Insured Aircraft Title Service, Inc	BF-G-0040, 41
<b>Source: Wachovia and McAfee &amp; Taft</b>			<b>TOTAL- \$38,523,112.21</b>		

<b>FUNDS DISBURSED FROM IATS ACCOUNT AT UBS LONDON IN 2006 AIRCRAFT SALE</b>				
<b>Date</b>	<b>Funds Sent To</b>	<b>Account</b>	<b>Amount</b>	<b>Bates</b>
6/29/2006	PMA Capital Management Ltd.	HSBC account in Hong Kong (through a US dollar correspondent account at HSBC in New York)	\$27,238,963.17	BSSL000347
6/29/2006	Blue Sapphire Services, Ltd.	Credit Suisse account in Singapore (through a US dollar correspondent account at Bank of New York)	\$11,232,011.83	BSSL000347
6/29/2006	Insured Aircraft Title Services, Ltd.	International Bank of Commerce account in Oklahoma	\$22,525.00	BSSL000347
6/29/2006	Clifford Chance, LLP	HSBC account in Hong Kong (through a US dollar correspondent account at HSBC in New York)	\$6,500.00	BSSL000347
6/30/2006	WJ Robin	Account information not available	\$4,000.00	PSI-Insured_Aircraft-01-0225
<b>Source: McAfee &amp; Taft</b>			<b>TOTAL- \$38,504,000.00</b>	

Charts prepared by Subcommittee

On June 28, 2006, Mr. Obiang signed a Form of Acceptance acknowledging receipt of the Gulfstream G-V jet airplane, as well as a memorandum verifying completion of the aircraft

inspection.<sup>547</sup> In a subsequent email, Mr. Brown requested a 48 hour hold on the Transfer of Title to allow the jet to be flown from Singapore to Basel, Switzerland.<sup>548</sup> Documents reviewed by the Subcommittee indicate that the jet was registered in the Cayman Islands under the management of a private company, Jet Aviation, using registration Tail No. VP-CES.<sup>549</sup> Other documentation obtained by the Subcommittee indicates that, in June 2006, Mr. Obiang was looking for space in an aircraft hangar in California to house a private jet.<sup>550</sup>

Flight records reviewed by the Subcommittee for Mr. Obiang's Gulfstream V aircraft show that over the last two and a half years, from March 2007 through November 2009, Mr. Obiang's aircraft has arrived and departed from the United States thirty-five times.<sup>551</sup> These flights have originated or departed from a variety of countries, including Bermuda, Brazil, the Dominican Republic, Dubai, France, and Switzerland. Common locations in the United States were airports at Los Angeles, Miami, New Jersey, Tucson, and Yuma, a small airport in Arizona near the Mexican border.

**Analysis.** Mr. Obiang's 2006 purchase of the Gulfstream jet involved multi-million-dollar funding transfers across international lines to and from the escrow agents retained by the buyer and seller. The seller's original escrow agent, McAfee & Taft, as an AML precaution, asked for information on the source of the \$38.5 million sent to its escrow account in the United States. When Mr. Obiang's associates refused to disclose the source of the funds, McAfee & Taft declined to complete the transaction and returned the funds it had been given. In contrast, its competitor IATS chose not to question the source of the funds, but to facilitate the purchase.

In addition, none of the banks who administered accounts for the escrow agents stopped the transfers. The banks were relying on the escrow agents themselves to police their clients, but under current law, U.S. escrow agents selling multi-million-dollar aircraft have no legal obligation to know their customers, evaluate the source of the funds used in aircraft purchases, or take special precautions when dealing with PEPs. Because of this gap in U.S. AML law, Mr. Obiang was able to send \$38.5 million in suspect funds into the United States to purchase the Gulfstream jet. To prevent similar suspect sales of aircraft in the future – as well as sales of luxury automobiles, yachts, and other high-end vehicles using escrow accounts – escrow agents need to be required to establish AML programs.

### **E. Obiang Use of U.S. Wire Transfer Systems To Move Millions of Dollars in Suspect Funds**

In addition to making use of U.S. lawyers, real estate and escrow agents, Mr. Obiang has made frequent use of U.S. wire transfer systems to bring millions of dollars in suspect funds from Equatorial Guinea into the United States. He has used these EG wire transfers to send funds, not only to U.S. bank accounts that he controlled or utilized, but also to purchase U.S.

<sup>547</sup> 6/28/06 inspection memorandum, BSSL000368; 6/28/06 Form of Acceptance Certificate, BSSL000369, R 2260.

<sup>548</sup> 6/28/06 email from Mr. Brown, BSSL000372.

<sup>549</sup> 7/6/06 email from Mr. Brown, PSI-Insured\_Aircraft-01-0184; 10/7/07 email from Jet Aviation to Ms. Romo, SEN006229.

<sup>550</sup> 6/7/06 fax from Mr. Nagler, SEN011075; 6/7/06 email from Ms. DeHaven to Mr. Nagler, SEN011096, R 736.

<sup>551</sup> See 1/6/10 letter from Customs and Border Protection (CBP) to the Subcommittee, with attached flight records, PSI-CBP-01-00001-03. CBP began tracking flight information for private aircraft in 2007.



goods and services and transact other business in the United States. Mr. Obiang has been able to utilize U.S. wire transfer systems, because major U.S. banks that provide correspondent accounts to foreign banks have not established procedures which would allow them routinely to detect, block, and analyze high-dollar wire transfers sent by PEPs from high-risk jurisdictions.

Two examples illustrate the problem: over a two-month period in 2006, Mr. Obiang was able to move \$73 million from Equatorial Guinea into the United States using wire transfer systems operated by Wachovia Bank; and over a four-year period from 2002 to 2006, he was able to move \$37 million through wire transfer systems operated by Citibank.

### **(1) \$73 Million Wired through Wachovia Bank**

In just over two months, from April 5, 2006 to June 19, 2006, Mr. Obiang was able to complete fourteen wire transfers that brought more than \$73 million in suspect funds from Equatorial Guinea into the United States through a Banque de France correspondent account at Wachovia Bank.<sup>552</sup> Mr. Obiang used these funds to complete the purchase of the \$30 million Malibu residence and the \$38.5 million Gulfstream G-V jet airplane described earlier in this section.<sup>553</sup>

This section has already examined the roles of the real estate and escrow agents and their banks in those transactions; this section takes the next step and examines the role of the U.S. banks that provide correspondent accounts that serve as gateways into the U.S. financial system for foreign banks sending wire transfers on behalf of their customers. Such correspondent accounts are not the final destination of the funds sent by wire transfer, but serve as intermediary accounts that link the originator of the wire transfer to its final beneficiary. Normally, U.S. correspondent accounts automatically transmit numerous wire transfers each day, and the funds represented by the wire transfers remain only briefly in the correspondent accounts. However, all U.S. banks are equipped with interdiction software that can detect and block wire transfers bearing particular names or countries to meet the requirements of U.S. law, such as prohibitions against transmitting wire transfers for terrorists, narcotics traffickers, and other criminals specified on OFAC lists or for countries against which the United States has imposed trade sanctions. This interdiction software has rarely been employed, however, in the battle to keep foreign corruption outside of the United States.

The \$73 million in wire transfers sent through Wachovia's correspondent account in the spring of 2006, occurred nearly two years after this Subcommittee held a hearing and released a well-publicized report describing how EG officials including Mr. Obiang, had used accounts at Riggs Bank to move suspect funds. Related criminal and regulatory investigations led to a \$16 million criminal fine, a \$25 million civil fine, and the sale of Riggs Bank.<sup>554</sup> The report also sparked tougher oversight by federal regulators of bank procedures to combat money laundering and foreign corruption, including by PEPs.

<sup>552</sup> 4/5/06 – 6/19/06 Integrated Funds Transfer System, History Transaction Listings, BF-G-00001 to 56.

<sup>553</sup> \$44,099,999.99 was wired to McAfee & Taft and Insured Aircraft Title Services, Ltd. for escrow and title services related to the purchase of Gulfstream G-V S/N 669; and \$29,542,000.00 was wired to First American Title Company for the purchase of 3620 Sweetwater Blvd., Malibu, CA.

<sup>554</sup> Associated Press, "Final Chapter Nears in Riggs Bank Drama," March 29, 2005.

Wachovia told the Subcommittee that, in response to the Subcommittee's investigation, in 2005, the bank had designated Equatorial Guinea as a high-risk jurisdiction in its "enterprise-wide list."<sup>555</sup> Wachovia also told the Subcommittee that it considered Mr. Obiang to be a senior foreign political figure whose financial activities required enhanced due diligence.<sup>556</sup> Nevertheless, Wachovia failed to identify or stop the \$73 million in wire transfers that passed through the bank from April to June 2006. Each of these fourteen wire transfers involved a minimum of \$2 million, referenced Mr. Obiang on the wire transfer documentation, and showed the funds originating from a bank in Equatorial Guinea, but Wachovia's interdiction software did not block any of the transfers. In each case, Wachovia had relied on its client – Banque De France, the foreign bank transmitting the funds to the United States – to ensure that it was not transmitting suspect funds. This case history shows that reliance was not well placed.

In January 2007, the Foreign Corruption Unit of the U.S. Immigration and Customs Enforcement (ICE) division alerted Wachovia to Mr. Obiang's wire activity through the bank during the prior year, directing Wachovia's attention to the Banque De France correspondent account.<sup>557</sup> Even after receiving this warning, however, Wachovia did not place the Banque De France correspondent account under any additional scrutiny, or take steps to restrict wire transfers bearing Mr. Obiang's name.<sup>558</sup>

After the 2006 wire transfers involving the \$73 million, Mr. Obiang did not openly use the Wachovia wire transfer system for over a year. Then, in 2008, he struck again. In response to a Subcommittee inquiry seeking Obiang-related financial records, Wachovia conducted a search of its wire transfer records and found that, in February and July of 2008, Mr. Obiang had sent two wire transfers totaling about \$145,000 from his personal account at a bank in Equatorial Guinea, through Fortis Bank, a French bank with a correspondent account at Wachovia, to accounts at other banks in the United States.<sup>559</sup> Wachovia had again served as the gateway into the United States for his suspect funds.

This chart summarizes the Obiang wire transfers that were sent through foreign bank correspondent accounts at Wachovia from 2006 to 2008, and enabled Mr. Obiang to bring \$73 million in suspect funds into the United States.

<b>OBIANG WIRE TRANSFERS THROUGH WACHOVIA 2006-2008</b>					
<b>Date</b>	<b>Amount</b>	<b>Originating Institution</b>	<b>Through</b>	<b>Beneficiary</b>	<b>Bates</b>
4/05/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00001-03
4/05/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque -	Bank of Central African States → Banque De France	First American Title Company at First American Trust, F.S.B.	BF-G-00004-06

<sup>555</sup> Subcommittee interview with Wachovia Bank, 2/6/09; PSI-WACHOVIA-10-0007.

<sup>556</sup> Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>557</sup> 1/16/07 email from ICE to Wachovia, BF-F00007.

<sup>558</sup> 11/21/08 Wachovia's written responses to Subcommittee questions, PSI-WACHOVIA-10-0004; Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>559</sup> 2/7/08 -7/31/08 Wachovia Transaction Reports, BF-G-00043-56. Fortis Bank is affiliated with BNP Paribas.

		Equatorial Guinea	→ Wachovia		
4/10/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00007-09
4/10/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00010-12
4/10/06	\$5,150,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	McAfee & Taft account at Bank of America	BF-G-00013-15
4/19/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00016-18
4/21/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00019-21
4/26/06	\$5,908,400.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	First American Title Company at First American Trust, F.S.B.	BF-G-00022-24
5/09/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00025-27
5/11/06	\$5,150,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00028-30
5/12/06	\$2,575,000.00	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00031-33
6/13/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00034-36
6/13/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00037-39
6/19/06	\$7,833,333.33	Teodoro Obiang Account at Societe Generale de Banque - Equatorial Guinea	Bank of Central African States → Banque De France → Wachovia	Insured Aircraft Title Service account at UBS London	BF-G-00040-42
2/06/08	\$144,017.99	Teodoro Obiang Account at CCEI Bank GE	Fortis Bank → Wachovia	Tia Ping Carpets account at Wachovia	BF-G-00050-56
7/30/08	\$1,458.51	Teodoro Obiang Account at CCEI Bank GE	Fortis Bank → Wachovia	Eulalia Salome Obono Nze account at Wachovia	BF-G-00043-49
<b>Total- \$72,687,476.49</b>			<b>Source- Wachovia</b>		

Prepared by Subcommittee

Wachovia has advised the Subcommittee that as of January 2009, it has taken steps for the first time to restrict Mr. Obiang's ability to wire funds through Wachovia's wire transfer system.<sup>560</sup> According to Wachovia, it has added Mr. Obiang and his family members to the bank's pre-execution interdiction filter for wire clearing operations. Wachovia told the Subcommittee that any wires blocked by this software related to Mr. Obiang or his family would be scrutinized by funds transfer specialists for a determination of legitimacy, referred to anti-money laundering specialists where appropriate, and, if necessary, returned to the originating financial institution.<sup>561</sup> Wachovia's actions show that U.S. banks offering correspondent accounts to foreign banks can become powerful guardians of the gateways into the U.S. financial system and provide vital services in the battle to keep foreign corruption outside of the United States.

## **(2) \$37 Million Wired Through Citibank**

A second example of Mr. Obiang's ability to take advantage of U.S. wire transfer systems involves wire transfers sent through Citibank. Wire transfer records reviewed by the Subcommittee indicate that, over a four-year period from 2002 to 2006, Mr. Obiang benefited from wire transfers sent through Citibank totaling in excess of \$37 million.<sup>562</sup>

Most of these wire transfers sent funds from Equatorial Guinea to the United States, drawing on accounts held by two Obiang companies, Somagui Forestal and Socage, or accounts held in the name of Mr. Obiang personally. Some of these wire transfers appear to have deposited substantial sums into Obiang-related accounts in the United States. For example, on July 11, 2003, \$1.5 million was deposited into an Obiang account at Riggs Bank.<sup>563</sup> On May 21, 2004, \$1 million was deposited into an account held by his company, TNO Entertainment LLC.<sup>564</sup> Other wire transfers appear to have been direct payments to U.S. high-end retail establishments, presumably to pay Obiang-related bills. For example, on September 23, 2004, Somagui Forestal wire transferred \$97,588.05 to a Beverly Hills Porsche Audi dealership.<sup>565</sup> Payments also went to a U.S. yacht company, corporate jet service, high-end automobile dealers, and a luxury vacation retailer. Still other wire transfers, totaling nearly \$2.5 million, appear to have been payments to satisfy American Express credit card charges.<sup>566</sup>

One of the wire transfers, for \$19.5 million in January 2006, was sent by a U.S. law firm, Sidley Austin, to Mr. Obiang in Equatorial Guinea, returning funds that he had sent to an escrow account related to an attempted purchase of a Gulfstream jet, as explained earlier. Before initiating this wire transfer, Sidley Austin obtained a letter from the U.S. Department of Justice confirming that the funds transfer would not violate U.S. AML laws and there was no basis to restrain or freeze such proceeds at the time of transfer.<sup>567</sup>

<sup>560</sup> Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>561</sup> Subcommittee interview with Wachovia Bank, 2/6/09.

<sup>562</sup> 2002-2006 wire transfer records, C00000065 to 116, R 2718.

<sup>563</sup> 7/11/06 wire transfer record, C00000116.

<sup>564</sup> 5/21/04 wire transfer record, C00000085.

<sup>565</sup> 9/23/04 wire transfer record, C00000105.

<sup>566</sup> 11/12/04 wire transfer record, C00000070; 7/14/04 wire transfer record, C00000075; 7/20/04 wire transfer record, C00000083.

<sup>567</sup> 12/17/09 letter from Sidley Austin to the Subcommittee, PSI Sidley Austin 01-000001.

This chart summarizes the Obiang-related wire transfers that moved through Citibank from 2002 to 2006.

<b>OBIANG WIRE TRANSFERS THROUGH CITIBANK 2002-2006</b>					
<b>Date</b>	<b>Amount</b>	<b>Originator</b>	<b>Through</b>	<b>Beneficiary</b>	<b>BATES</b>
6/19/02	\$150,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	T.N.O. ENTERTAINMENT LLC	C00000090
7/22/02	\$50,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	T.N.O. ENTERTAINMENT LLC	C00000089
3/19/03	\$33,638.28	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → BANK OF AMERICA	TIMESHARE SPECIALISTS - MEGA YACHT SERVICES	C00000088
3/19/03	\$300,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	T.N.O.	C00000087
7/11/03	\$1,500,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000116
9/17/03	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000086
3/9/04	\$1,000,000.00	SOCAGE	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000068
3/15/04	\$999,975.00	SOCAGE	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	TEODORO NGUEMA OBIANG	C00000066
3/18/04	\$500,000.00	SOCAGE	CCEI BANK GE → CITIBANK → BANK ONE	GULF STREAM AEROSPACE CORPORATION	C00000067
5/6/04	\$42,595.50	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000078
5/21/04	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	TEODORO NGUEMA OBIANG (T.N.O. ENTERTAINMENT LLC)	C00000085
6/24/04	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → RIGGS BANK	TEODORO NGUEMA OBIANG	C00000091
6/29/04	\$30,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CALIFORNIA BANK AND TRUST	PACIFIC NATIONAL CONSTRUCTION	C00000076
6/29/04	\$50,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO BANK	PLATINUM MOTORS, LLC	C00000072
7/7/04	\$182,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000073
7/13/04	\$1,000,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → CITY NATIONAL BANK	TEODORO NGUEMA OBIANG	C00000074
7/14/04	\$999,975.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → AMERICAN EXPRESS	JP MORGAN CHASE AMERICAN EXPRESS	C00000075
7/20/04	\$999,950.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → AMERICAN EXPRESS	JP MORGAN CHASE AMERICAN EXPRESS	C00000083

8/4/04	\$270,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000077
8/24/04	\$421,155.09	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → COMERICA BANK	MILLER-DM INC	C00000071
8/24/04	\$1,328,739.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO BANK	JAMES W HARRIS	C00000079
8/31/04	\$397,594.21	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → BANK OF AMERICA	O'GARA COACH, LLC	C00000080
9/13/04	\$297,490.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	INVESTMENT CARS (SA)	C00000081
9/13/04	\$250,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	PEARL AUTOMOTIVE PTY LTD (SA)	C00000082
9/16/04	\$580,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO	JAMES W HARRIS	C00000103
9/20/04	\$230,400.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → BANK OF AMERICA	SVETLANA SAFIEVA	C00000108
9/22/04	\$27,428.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → WELLS FARGO BANK	SAVE-ON INSURANCE	C00000107
9/23/04	\$312,473.59	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → COMERICA BANK	MILLER-DM INC	C00000106
9/23/04	\$97,588.05	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → MERCANTILE BANK	BEVERLY HILLS PORCHE AUDI	C00000105
10/7/04	\$225,986.05	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000104
10/28/04	\$218,099.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST ARIZONA SAVINGS	GLOBAL JET CORPORATION	C00000109
11/12/04	\$500,000.00	CCEIGQGQ	CCEI BANK GE → CITIBANK → JP MORGAN CHASE	AMERICAN EXPRESS	C00000070
11/17/04	\$314,440.65	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	PEARL AUTOMOTIVE PTY LTD (SA)	C00000102
11/30/04	\$325,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → UBS AG	G5 EXECUTIVE AG	C00000101
12/17/04	\$50,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	TEODORO NGUEMA OBIANG	C00000100
1/27/05	\$274,610.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → FIRST NATIONAL BANK	INVESTMENT CARS (SA)	C00000099
2/11/05	\$75,000.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → MELLON BANK	ADT SECURITY SERVICES	C00000098
2/28/05	\$74,950.00	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → MELLON BANK	ADT SECURITY SERVICES	C00000097
4/13/05	\$599,069.46	SOMAGUI FORESTAL	CCEI BANK GE → CITIBANK → COMERICA BANK	MILLER-DM INC	C00000096
5/9/05	\$79,960.22	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	TJB GEARYS LLC	C00000095

1/24/06	\$19,570,635.18	SIDLEY & AUSTIN	CITIBANK → SOCIETE GENERALE S.A. (NY) → SOCIETE GENERALE DE BANQUE -EQUATORIAL GUINEA	ACCOUNT OF TEODORO NGUEMA OBIANG	C00000112
2/23/06	\$59,970.01	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	ROLAND SANDS DESIGN INC	C00000094
2/23/06	\$69,090.95	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	EVE JEFFERS	C00000093
3/7/06	\$157,794.68	SOMAGUI FORESTAL	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	PARADISE ISLAND VACATIONS	C00000092
6/16/06	\$68,965.50	SOCAGE	NATEXIS BANQUES POPULAIRES → CITIBANK → CITI NATIONAL BANK	EVE JEFFERS	C00000065
<b>TOTAL: \$37,714,573.42</b>		<b>Source- Citigroup</b>			

Prepared by Subcommittee

The transactions identified in this chart involve wire transfers that moved funds through a foreign bank correspondent account at Citibank on the way to an account at another bank. Citibank is a major provider of U.S. dollar correspondent accounts for foreign financial institutions, and often serves as an intermediary in wire transfers by foreign banks seeking to pay a beneficiary with U.S. dollars. According to Citibank, it screens all of its correspondent wire activity through real-time interdiction filters designed to comply with legal prohibitions on transmitting certain funds, such as funds transmitted by persons on the OFAC lists.<sup>568</sup>

Citibank told the Subcommittee that, although it is aware of Mr. Obiang's PEP status and deliberate use of U.S. wire transfer systems to bring suspect funds into the United States, it currently does not plan to set up procedures to block his wire transfers and automatically refer them for analysis to its AML specialists.<sup>569</sup> Citibank explained that any addition to its current blocking lists could result in thousands of false positives that would delay the completion of the affected wire transfers, and significantly increase the workload of its AML and compliance staff to clear the wire transfers that would be frozen as a result.<sup>570</sup> Citibank also noted that, under existing law, it already conducts careful reviews of the foreign financial institutions for which it opens correspondent accounts and relies on those institutions to adequately screen their own customers. Citibank officials characterized the bank's role in correspondent wire transfer transactions as extremely brief and expressed concern over any expectation that it be required to screen its customers' customers.

**Analysis.** Right now, U.S. banks that provide correspondent accounts to foreign banks do not generally screen the wire transfers that go through these accounts for high-dollar amounts sent by PEPs from high-risk countries. Adding such a requirement to U.S. AML and PEP

<sup>568</sup> Subcommittee interview with Citibank, 4/24/2009.

<sup>569</sup> Id.

<sup>570</sup> Id.

controls would provide a powerful new weapon in the battle to keep foreign corruption out of the United States.

## **F. Conclusion**

This case history shows how a controversial political figure, from the ruling family of a country plagued by corruption, moved vast amounts of wealth into the U.S. financial system, by employing American professionals such as attorneys, real estate and escrow agents to help him bypass U.S. AML and PEP controls, and by taking advantage of U.S. wire systems unequipped to screen out high-dollar transfers sent by PEPs from high-risk countries. Over a four year period, from 2004 to 2008, Teodoro Obiang was able to move over \$100 million in suspect funds into or through the US. financial system. If the United States is to keep foreign corruption outside of its borders, U.S. AML and PEP safeguards have to be further strengthened, not only at U.S. financial institutions, but also at law firms, real estate agencies, and escrow companies.





## 2006 Country Reports on Human Rights Practices

Equatorial Guinea

Bureau of Democracy, Human Rights, and Labor

2006

March 6, 2007

Equatorial Guinea is nominally a multiparty constitutional republic, with a population estimated at between 540,000 and over one million. All branches of government are dominated by President Teodoro Obiang Nguema Mbasogo and his inner circle, mostly of the Fang ethnic group. The international community judged the most recent elections, in 2002 (presidential) and 2004 (parliamentary), to be seriously flawed. While civilian authorities generally maintained effective control of security forces, there were instances in which elements of the security forces acted independently of government authority. The government's human rights record remained poor, and the government continued to commit and condone serious abuses.

The following human rights problems were reported: abridgement of citizens' right to change their government; torture, beating, and other physical abuse of prisoners and detainees by security forces; harsh and life-threatening prison conditions; impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents; judicial corruption and lack of due process; restrictions on the right to privacy; severe restrictions on freedom of speech and of the press; restrictions on the right of assembly, association, and movement; government corruption; violence and discrimination against women; trafficking in persons; discrimination against ethnic minorities; restrictions on labor rights and child labor; and forced child labor.

Improvements were noted in some areas. A law criminalizing torture was passed, and reports of abuses decreased compared to previous years. In addition the first groups of mid-level police officers were trained on professional subjects, including human rights.

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Section 6 Worker Rights

a. The Right of Association

The law provides workers the right to establish unions and affiliate with unions of their choice, without previous authorization or excessive requirements; however, the government placed practical obstacles before groups wishing to organize. The Union Organization of Small Farmers continued to be the only legal, operational labor union. According to the International Trade Union Confederation, the authorities continued to refuse to register the Equatorial Guinea Trade Union. The law stipulates that a union must have at least 50 members who are from a specific workplace to register; this rule effectively blocked union formation. Authorities refused to legalize the public sector union, the Independent Syndicated Services, despite it having met the requirements of the law.

According to regional representatives of the International Labor Organization, the government continued to influence employment in all sectors. Requirements to utilize employment and security agencies controlled largely by the president's relatives continued.

There was no law prohibiting antiunion discrimination. However, unlike in 2005, there were no reports that workers tried to form unions, or that police visited their homes and threatened them if they persisted.

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Property Restitution

The law provides for restitution or compensation for the taking of private property, but in practice people forced from their homes or land seldom received adequate compensation, if any. The civil code Law of State Patrimony, Law of the Soil, states that all land ultimately belongs to the state, thus, the government could take possession when it determined it was "in the state's interest." Individuals may hold property title to pieces of land, but the state in the last instance is owner.

During the year the government leveled many residential areas, ostensibly in the interest of urban renewal; however, government officials reportedly had personal financial interests in the redevelopment. According to AI, officials often stated the seized land was for public utility development, but the land was not used for that purpose; instead, the land was usurped by the president, his family, and other members of the government to build luxury homes, supermarkets, or other businesses for themselves.

New social housing projects were underway, but they did not benefit the poor. High government officials and their relatives reportedly bought new social housing that was completed in "Bata 2" (a suburb of Bata).

According to AI, typically the government allowed no consultation with the communities affected, provided little or no prior notice, and allowed no right to contest the evictions. Hundreds of homes and businesses were destroyed; many were solid structures in well-established neighborhoods, and residents had no other place to go and no money to relocate. For example, more than 600 persons were made homeless in Malabo's Atepa district on July 22 when the government destroyed their homes without warning. The next day homes were similarly demolished in Malabo's Camaremy district. In both cases soldiers shoved, slapped, and intimidated residents who protested.

The government sometimes offered partial payment to those who proved title and expenses of purchase or construction. In many cases written title was nonexistent, although land had been in the hands of a family for generations.

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<http://www.state.gov/g/drl/rls/hrrpt/2006/78732.htm>



# U.S. DEPARTMENT OF STATE

DIPLOMACY IN ACTION



2009 Human Rights Report: Equatorial Guinea  
BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR  
**2009 Country Reports on Human Rights Practices**  
**March 11, 2010**

Equatorial Guinea, with an estimated population of approximately one million, is nominally a multiparty constitutional republic. All branches of government were dominated by President Teodoro Obiang Nguema Mbasogo, who has ruled since seizing power in a military coup in 1979, along with his clan from the majority Fang ethnic group and his political party the Democratic Party of Equatorial Guinea (PDGE). On November 29, President Obiang was reelected with 95.37 percent of votes cast. The lopsided results and weak independent monitoring of the electoral process raised suspicions of systematic vote fraud. Foreign diplomatic observers noted numerous irregularities and the presence of military personnel at all voting stations. While civilian authorities generally maintained effective control of security forces, there were instances in which elements of the security forces acted independently.

The following human rights problems were reported: limited ability of citizens to change their government; unlawful killings by security forces; torture of detainees and prisoners by security forces; life-threatening conditions in prisons and detention facilities; official impunity; arbitrary arrest, detention, and incommunicado detention; harassment and deportation of foreign residents with limited due process; judicial corruption and lack of due process; restrictions on the right to privacy; restrictions on freedoms of speech, press, assembly, association, and movement; government corruption; violence and discrimination against women; suspected trafficking in persons; discrimination against ethnic minorities; and restrictions on labor rights.

Following a February 17 armed attack on the presidential palace, which was later blamed on a Nigerian rebel group, the government rounded up, arbitrarily arrested without warrant, and held

without charge numerous persons, one of whom died from beatings during interrogation and two of whom were tortured.

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#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions, but the government often did not respect these prohibitions in practice. Security forces violated homes and arrested suspected dissidents, criminals, foreign nationals, and others--often without judicial orders, which are not required for certain officials to enter and search homes--and confiscated their property with impunity.

Government informers reportedly monitored opposition members, nongovernmental organizations (NGOs), and journalists. Most residents and journalists believed the government monitored telephone calls.

The law provides for restitution or compensation for the taking of private property; however, the government seldom provided equitable compensation or alternate housing when it forced persons from their homes or land. Individuals may hold property title to pieces of land, but the state has full power of eminent domain, which it often exercised in the interests of development. During the year regeneration of the main cities continued to result in forced evictions. Scores of families were forcibly evicted from their homes to make room for roads and luxury housing developments, especially in Malabo and Bata. The local Red Cross, Catholic Church, human rights lawyers, and opposition members expressed concerns about the displacement of poor communities.

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#### Section 4 Official Corruption and Government Transparency

Laws provide severe criminal penalties for official corruption; however, the government did not implement these laws effectively, and officials frequently engaged in corrupt practices with impunity. Corruption continued to be a severe problem. No corruption cases were prosecuted during the year.

The president and members of his inner circle continued to amass huge personal profits from the oil windfall. According to Human Rights Watch, Teodorin Obiang, the president's son, spent more on luxury goods during 2004-2007 than the government's 2005 budget for education; purchases included a \$35 million mansion, a \$37 million jet, and luxury cars worth at least \$2.6 million. President Obiang claimed information on oil revenues was a "state secret" and resisted calls for transparency and accountability. According to international NGO Global Witness, the government has not disclosed the location of more than two billion dollars in public funds.

In December 2008 anticorruption activist groups, including the French chapter of AI, filed a lawsuit in Paris against President Obiang and two other African heads of state, accusing them of acquiring luxury homes in France with embezzled public funds. The plaintiffs stated there was "no doubt that these assets could not have been acquired solely with the salaries and benefits of these heads of state."

Also in December 2008, a Spanish human rights group filed a formal complaint with anticorruption public prosecutors in Spain, claiming members of President Obiang's family and high-ranking political officials close to the president had illegally embezzled 12.7 billion CFA francs (\$27.73 million) from a state petrol company to buy homes in Spain and had laundered these public funds between 2000 and 2003 in foreign banks. According to media reports, Spain's anticorruption prosecutor had begun investigating allegations against these individuals at year's end.

Officials by law must declare their assets, although no declarations were published publicly. There was no requirement for officials to divest themselves of business interests in potential conflict with official responsibilities, and no law prohibiting conflict of interest. Most ministers continued to moonlight and conduct businesses they conflated with their government responsibilities. For example, the minister of justice had his own private law firm, and the minister of transport and communications was director of the board and owned shares in the parastatal airline and the national telephone company.

The presidency and Prime Minister's Office were the lead agencies for anticorruption efforts. A number of ministers were reportedly replaced following the May 2008 elections as a result of corrupt practices.

During the year the government made additional progress toward meeting objectives required to join the Extractive Industries Transparency Initiative (EITI), a multinational civil society initiative to encourage transparency and accountability in extractive industries, developing an approved work plan and achieving candidate status. However, there remained significant challenges in meeting EITI requirements concerning the development of civil society, and there continued to be lack of transparency in the extractive industries.

In October 2008 the government began disbursing funds for social projects under the social development fund (SDF), a mechanism developed jointly with a foreign donor designed to enhance the transparency of social spending in line with international development norms. Irregularities in handling the funds occurred during the year. For example, funds for selected projects were deposited in the purported bank accounts of various ministries; however, critics charged the accounts actually belonged to the ministers who headed those ministries, thus placing the funds under their direct personal control. One minister reportedly ignored the bids of companies responding to an open solicitation and selected a company he owned, although his company had not submitted a bid; the minister claimed his company was eligible to accept SDF money from the account he controlled.

The law did not provide for public access to government information, and citizens and noncitizens, including foreign media, were generally unable to access government information. A lack of organized record keeping, archiving, and public libraries also limited access.

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<http://www.state.gov/g/drl/rls/hrrpt/2009/af/135951.htm>

192 1.º El funcionario público que, no siendo Autoridad judicial, entrare en el domicilio de un súbdito español sin su consentimiento, fuera de los casos permitidos por las leyes.

2.º El funcionario público que, no siendo Autoridad judicial, y fuera de los casos permitidos por las leyes, registrare los papeles de un súbdito español y los efectos que se hallaren en su domicilio, a no ser que el dueño hubiere prestado su consentimiento.

Si no devolviera al dueño, inmediatamente después del registro, los papeles y efectos registrados, las penas serán las de inhabilitación especial y multa de 5.000 a 25.000 pesetas.

Si los sustrajere y se los apropiare, será castigado como reo de delito de robo con violencia en las personas.

3.º El funcionario público que, con ocasión de lícito registro de papeles y efectos de un súbdito español, cometiere cualquiera vejación injusta contra las personas o daño innecesario en sus bienes.

*Por Decreto 168/1963, de 24 de enero, se elevó la cuantía de las multas, que originariamente era de 1.000 a 2.500 pesetas y 2.500 a 5.000 pesetas, respectivamente.*

192. El funcionario público que, sin las debidas atribuciones, detuviere cualquier clase de correspondencia privada, incurrirá en la multa de 5.000 a 25.000 pesetas.

Incurrirá, además, si la abriere, en suspensión, 196 y si la sustrajere, en inhabilitación absoluta.

*La multa originariamente era de 1.000 a 5.000 pesetas y fué elevada por Decreto 168/1963, de 24 de enero.*

193. La Autoridad gubernativa que, fuera de los casos permitidos por las leyes, estableciere la censura previa de imprenta, recogiere ediciones de libros o periódicos o suspendiere su publicación, incurrirá en la pena de inhabilitación absoluta.

194. Incurrirá en la pena de inhabilitación especial la Autoridad o el funcionario público que impidiere a una persona el ejercicio de los derechos cívicos reconocidos por las leyes.

195. El funcionario público que, una vez disuelta cualquier reunión o manifestación, o suspendida cualquier asociación o su sesión, se negare a poner en conocimiento de la Autoridad competente que se lo reclamare, las causas que hubieren motivado la disolución o suspensión, será castigado con la pena de inhabilitación absoluta y multa de 5.000 a 25.000 pesetas.

*Esta multa era inicialmente de 1.000 a 5.000 pesetas y se elevó por Decreto 168/1963, de 24 de enero.*

196. El funcionario público que expropiare de sus bienes a un nacional o extranjero, fuera de los casos permitidos y sin cumplir los requi-



197 sitios legales, incurrirá en las penas de suspensión y multa de 5.000 a 25.000 pesetas.

*Sobre la cuantía de la multa véase la nota al artículo anterior.*

197. El funcionario público que ordenare la clausura o disolución de cualquier establecimiento privado de enseñanza, fuera de los casos prevenidos en las leyes, incurrirá en las penas de suspensión y multa de 5.000 a 25.000 pesetas.

*Véase la nota al artículo 185.*

198. La Autoridad o funcionario público que, prevaleándose de su cargo, ejerciere alguna profesión directamente relacionada con la esfera de sus atribuciones oficiales o interviniera directa o indirectamente en empresas o asociaciones privadas con móvil de lucro, incurrirá en la pena de inhabilitación especial y multa de 5.000 a 250.000 pesetas.

*Originariamente la cuantía de la multa era de 5.000 a 50.000, pero fué elevada por Decreto 188/1963, de 24 de enero.*

199. Incurrirá en la pena de inhabilitación especial el funcionario público que atentare contra la independencia de los Jueces y Magistrados.

200. El Ministro que mandare pagar un impuesto no autorizado por las leyes, será castigado

con la pena de inhabilitación absoluta y multa 203 de 10.000 a 500.000 pesetas.

*El límite máximo de la multa era de 100.000 pesetas y fué elevado por Decreto 188/1963, de 24 de enero.*

201. La Autoridad que mandare pagar un impuesto provincial o municipal no aprobado legalmente por la respectiva Diputación o Ayuntamiento, será castigada con las penas de inhabilitación absoluta y multa de 5.000 a 50.000 pesetas.

*Por Decreto 188/1963, de 24 de enero se elevó la cuantía de la multa, que originariamente era de 1.000 a 10.000 pesetas.*

202. Los funcionarios públicos que exigieren a los contribuyentes para el Estado, la Provincia o el Municipio el pago de impuestos no autorizados por las leyes o Corporaciones respectivas, incurrirán en las penas de suspensión y multa de 5.000 a 50.000 pesetas.

Si la exacción se hubiere hecho efectiva, se impondrán las penas anteriores en su grado máximo.

Si se hubiere empleado el apremio u otro medio coercitivo, las penas serán la inhabilitación absoluta y la multa sobredicha.

*Véase la nota al artículo anterior.*

203. Si el importe cobrado no hubiere entrado, según su clase, en las Cajas del Tesoro, de la Provincia o del Municipio, por culpa del que lo

316 316. El funcionario que para ejecutar cualquier falsificación en perjuicio del Estado, o de una Corporación de quien dependa hiciera uso de sustancias, materias, útiles, máquinas o instrumentos legítimos que le estuvieren confiados, incurrirá en las mismas penas pecuniarias y personales que correspondan a la falsedad cometida, imponiéndoselas en su grado máximo, y, además, en la de inhabilitación absoluta.

*Redactado conforme a la Ley de 27 de diciembre de 1947 (artículo 4.º).*

REDACCIÓN ORIGINAL:—«El funcionario que para ejecutar cualquier falsificación en perjuicio del Estado o de una Corporación de quien dependa, hiciera uso de útiles o instrumentos legítimos que le estuvieren confiados, incurrirá en las mismas penas pecuniarias y personales que correspondan a la falsedad cometida, imponiéndoselas en su grado máximo, y, además, en la de inhabilitación absoluta.»

317. Los que, sin estar comprendidos en el artículo anterior, se apoderaren de las sustancias, materias, útiles, máquinas o instrumentos legítimos que en el mismo se expresan e hicieren uso de ellos para ejecutar cualquier falsificación en perjuicio del Estado, de una Corporación o de un particular a quien pertenecieren, incurrirán en las mismas penas pecuniarias y personales que correspondan a la falsedad cometida.

*Redactado conforme a la Ley de 27 de diciembre de 1947 (artículo 4.º).*

REDACCIÓN ORIGINAL:—«Los que, sin estar comprendidos en el artículo anterior, se apoderaren de

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los útiles o instrumentos legítimos que en el mismo se expresan e hicieren uso de ellos para ejecutar cualquier falsificación en perjuicio del Estado, de una Corporación o de un particular a quien pertenecieren, incurrirán en las mismas penas pecuniarias y personales que correspondan a la falsedad cometida.» 319

318. En todos los casos comprendidos en este capítulo y en los capítulos precedentes, con excepción del segundo, los Tribunales, teniendo en cuenta la gravedad del hecho y sus circunstancias, la naturaleza del documento, las condiciones del culpable y la finalidad perseguida por éste, podrán imponer la pena inferior en un grado a la respectivamente señalada.

*Redactado conforme a la Ley de 27 de diciembre de 1947 (artículo 4.º).*

REDACCIÓN ORIGINAL:—«En todos los casos comprendidos en este capítulo y en los cuatro anteriores, los Tribunales, teniendo en cuenta la gravedad del hecho y sus circunstancias, la naturaleza del documento, las condiciones del culpable y la finalidad perseguida por éste, podrán imponer la pena inferior en un grado a la respectivamente señalada.»

## CAPITULO VI

### DE LA OCULTACIÓN FRAUDULENTA DE BIENES O DE INDUSTRIA

*tal vez* 319. El que, requerido por el competente funcionario administrativo, ocultare el todo o parte de sus bienes, o el oficio o la industria que ejer-

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320 clere, con el propósito de eludir el pago de los impuestos que por aquéllos o por ésta debiere satisfacer, incurrirá en una multa del tanto al quintuplo del importe de dichos impuestos, sin que en ningún caso pueda bajar de 5.000 pesetas.

*Originalmente el límite mínimo de la multa era de 1.000 pesetas y fué elevado por Decreto 168/1963, de 24 de enero (art. 2.º).*

#### CAPITULO VII

##### DE LA USURPACIÓN DE FUNCIONES Y CALIDAD Y DEL USO INDEBIDO DE NOMBRES, TRAJES, INSIGNIAS Y CONDECORACIONES

320. El que sin título o causa legítima ejerciere actos propios de una Autoridad o funcionario público, atribuyéndose carácter oficial, será castigado con la pena de prisión menor.

Con la misma pena será castigado el que usurpare carácter que habilite para el ejercicio de actos propios de Ministro de culto o ejerciere dichos actos.

El que atribuyéndose facultades que legalmente no tiene reconocidas, otorgare gracias o dignidades de carácter nobiliario, o cualesquiera otras distinciones honoríficas, será castigado con la pena de arresto mayor o multa de 5.000 a 25.000 pesetas.

*El párrafo tercero fué adicionado por el Decreto 168/1963, de 24 de enero, que desarrolló la Ley 79/1961, de Bases para la revisión parcial del Código Penal.*

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321. El que ejerciere actos propios de una profesión sin poseer el correspondiente título oficial, o reconocido por disposición legal o Convenio internacional, incurrirá en la pena de prisión menor.

Si el culpable se atribuyere públicamente la cualidad de profesional, se le impondrá además la pena de multa de 10.000 a 50.000 pesetas.

*Redactado conforme al Decreto 168/1963, de 24 de enero, que desarrolló la Ley 79/1961, de Bases para la revisión parcial del Código Penal.*

*Redacción enmendada.*—«El que atribuyéndose la cualidad de profesor ejerciere públicamente actos propios de una Facultad que no se puedan ejercer sin título oficial, incurrirá en la pena de prisión menor.»

322. El que públicamente usare un nombre supuesto o se atribuyere títulos de nobleza que no le pertenecieren, incurrirá en las penas de arresto mayor y multa de 5.000 a 10.000 pesetas.

Cuando el uso del nombre o título supuestos tuviere por objeto ocultar algún delito, eludir una pena o causar algún perjuicio al Estado o a los particulares, se impondrán al culpable las penas de arresto mayor y multa de 5.000 a 25.000 pesetas.

No obstante lo dispuesto en este artículo, el uso del nombre supuesto podrá ser autorizado

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393 dádiva o promesa, sin que pueda bajar de 5.000 pesetas.

*El límite mínimo de la multa estaba fijado originariamente en 1.000 pesetas y fue elevado por Decreto 188/1963, de 24 de enero.*

393. En todo caso, las dádivas o presentes serán decomisados.

#### CAPITULO X

##### DE LA MALVERSACIÓN DE CAUDALES PÚBLICOS

394. El funcionario público que sustrajere o consintiere que otro sustraiga los caudales o efectos públicos que tenga a su cargo o a su disposición por razón de sus funciones será castigado:

- 1.º Con la pena de arresto mayor si la sustracción no excediere de 2.500 pesetas.
- 2.º Con la de presidio menor si excediere de 2.500 pesetas y no pasare de 50.000 pesetas.
- 3.º Con la de presidio mayor si excediere de 50.000 y no pasare de 250.000 pesetas.
- 4.º Con la de reclusión menor si excediere de 250.000 pesetas.

El Tribunal impondrá la pena que estime procedente de las señaladas en los números anteriores si, a su juicio, hubo sustracción, sin estar comprobada la cuantía de la misma.

En todos los casos se impondrá además la pena de inhabilitación absoluta.

*Redactado conforme a la Ley 3/1967, de 8 de abril.*

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393 - 394 - 395  
Código Penal  
art. 393

395 **REDACCIÓN ORIGINAL.**—«El funcionario público que sustrajere, o consintiere que otro sustraiga, los caudales o efectos públicos que tenga a su cargo o a su disposición por razón de sus funciones, será castigado:

- 1.º Con la pena de arresto mayor, si la sustracción no excediere de 1.000 pesetas.
- 2.º Con la de presidio menor, si excediere de 1.000 pesetas y no pasare de 50.000.
- 3.º Con la de presidio mayor, si excediere de 50.000 pesetas y no pasare de 250.000.
- 4.º Con la de reclusión menor, si excediere de 250.000 pesetas.

El Tribunal impondrá la pena que estime procedente de las señaladas en los números anteriores si, a su juicio, hubo sustracción, sin estar comprobada la cuantía de la misma.

En todos los casos se impondrá, además, la pena de inhabilitación absoluta.»

395. El funcionario que por abandono o negligencia inexcusables diere ocasión a que se efectúe por otra persona la sustracción de caudales o efectos públicos de que se trata en los números 2.º, 3.º y 4.º del artículo anterior, incurrirá en la pena de multa de la mitad al tanto del valor de los caudales o efectos sustraídos, sin que pueda bajar de 5.000 pesetas.

Si el funcionario culpable reintegrase antes del juicio dichos caudales o efectos, o con sus gestiones se lograre el reintegro, la pena será la de represión pública.

*El límite mínimo de la multa estaba fijado originariamente en 1.000 pesetas y fue elevado por Decreto 188/1963, de 24 de enero.*

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396 396. El funcionario que aplicare a usos propios o ajenos los caudales o efectos puestos a su cargo, será castigado con la pena de inhabilitación especial, si resultare daño o entorpecimiento del servicio público, y con la de suspensión, si no resultare.

No verificándose el reintegro dentro de los diez días siguientes al de la incoación del sumario, se le impondrán las penas señaladas en el artículo 394.

397. El funcionario público que diere a los caudales o efectos que administrare una aplicación pública diferente de aquella a que estuvieren destinados, incurrirá en las penas de inhabilitación especial y multa del 5 al 50 por 100 de la cantidad distraída, si resultare daño o entorpecimiento del servicio a que estuvieren consignados, sin que pueda bajar dicha multa de 5.000 pesetas, y en la de suspensión si no resultare.

*Redactado conforme al Decreto 168/1963, de 24 de enero (artículo 2.º), que desarrolló la Ley 79/1961, de 23 de diciembre, de Bases para la revisión parcial del Código Penal.*

REDACCIÓN ORIGINAL.—«El funcionario público que diere a los caudales o efectos que administrare una aplicación pública diferente de aquella a que estuvieren destinados, incurrirá en las penas de inhabilitación especial y multa de 5 al 50 por 100 de la cantidad distraída, si resultare daño o entorpecimiento del servicio a que estuvieren consignados, y en la de suspensión, si no resultare.»

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398. El funcionario público que debiendo hacer un pago como tenedor de fondos del Estado no lo hiciere, será castigado con las penas de suspensión y multa del 5 al 25 por 100 de la cantidad no satisfecha. 400

Esta disposición es aplicable al funcionario público que, requerido por orden de autoridad competente, rehusare hacer entrega de una cosa puesta bajo su custodia o administración.

La multa se graduará en este caso por el valor de la cosa y no podrá bajar de 5.000 pesetas.

*Véase la nota al artículo 395.*

399. Las disposiciones de este capítulo son extensivas a los que se hallaren encargados por cualquier concepto de fondos, rentas o efectos provinciales o municipales, o pertenecientes a un establecimiento de instrucción o beneficencia, y a los administradores o depositarios de caudales embargados, secuestrados o depositados por autoridad pública, aunque pertenezcan a particulares.

#### CAPITULO XI

##### DE LOS FRAUDES Y EXACCIONES ILEGALES

400. El funcionario público que interviniendo por razón de su cargo en alguna comisión de suministros, contratos, ajustes o liquidaciones de efectos o haberes públicos, se concertare con los

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401 Interesados o especuladores, o usare de cualquier otro artificio para defraudar al Estado, Provincia o Municipio, incurrirá en las penas de presidio menor e inhabilitación especial.

401. El funcionario público que, directa o indirectamente, se interesare en cualquiera clase de contrato u operación en que deba intervenir por razón de su cargo, será castigado con las penas de inhabilitación especial y multa del tanto al triplo del interés que hubiere tomado en el negocio.

Esta disposición es aplicable a los peritos, árbitros y contadores particulares, respecto de los bienes o cosas en cuya tasación, partición o adjudicación hubieren intervenido, y a los tutores o albaceas respecto de los pertenecientes a sus pupilos o testamentarias.

402. El funcionario público que exigiere, directa o indirectamente, mayores derechos de los que le estuvieren señalados por razón de su cargo, será castigado, sin perjuicio de los reintegros a que vinere obligado por otro concepto, con una multa del duplo al cuádruplo de la cantidad exigida, sin que pueda bajar de 5.000 pesetas.

El culpable habitual de este delito incurrirá, además, en la pena de inhabilitación especial.

Véase la nota al artículo 395.

403. El funcionario público que, abusando de su cargo, cometiere alguno de los delitos expre-

sados en el capítulo IV, secciones II y IV, título XIII de este Libro, incurrirá en las penas allí señaladas y además en la de inhabilitación especial. 404

## CAPITULO XII

### DE LAS NEGOCIACIONES PROHIBIDAS A LOS FUNCIONARIOS

404. Los Jueces, los funcionarios del Ministerio fiscal, los Jefes militares, gubernativos o económicos, con excepción de los Alcaldes, que durante el ejercicio de sus cargos se mezclaren directa o indirectamente en operaciones de agio, tráfico o granjería, dentro de los límites de su jurisdicción o mando, sobre objetos que no fueren producto de sus bienes propios, serán castigados con las penas de suspensión y multa de 5.000 a 25.000 pesetas.

Esta disposición no es aplicable a los que impulsaren sus fondos en acciones de Banco o de cualquiera empresa o compañía, siempre que no ejerzan en ellas cargo ni intervención directa, administrativa o económica.

*La cuantía de la multa era ordinariamente de 1.000 a 5.000 Pesetas y fué elevada por Decreto 169/1963 de 24 de enero.*

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528. El que defraudare a otro en la sustancia, cantidad o calidad de las cosas que le entregare en virtud de un título obligatorio será castigado:

- 1.º Con la pena de presidio mayor si la defraudación excediere de 100.000 pesetas.
- 2.º Con la de presidio menor excediendo de 25.000 pesetas y no pasando de 100.000 pesetas.
- 3.º Con la pena de arresto mayor si la defraudación fuere superior a 2.500 pesetas y no excediere de 25.000 pesetas.
- 4.º Con la de arresto mayor si no excediese de 2.500 pesetas y el culpable hubiere sido condenado anteriormente por delito de robo, hurto, estafa, apropiación indebida, cheque en descuento o receptación, o dos veces en juicio de faltas por hurto, estafa o apropiación indebida.

Redactado conforme a la Ley 3/1967, de 8 de abril.

1. REDACCIÓN ORIGINAL.—El que defraudare a otro en la sustancia, cantidad o calidad de las cosas que le entregare en virtud de un título obligatorio será castigado:

- 1.º Con la pena de presidio mayor, si la defraudación excediere de 25.000 pesetas.
- 2.º Con la de presidio menor, excediendo de 5.000 y no pasando de 25.000 pesetas.
- 3.º Con la pena de arresto mayor, si la defraudación fuere superior a 250 pesetas y no excediere de 5.000.
- 4.º Con la de arresto mayor, si no excediere de 250 pesetas y el culpable hubiere sido condenado

—Criminalística—  
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—Criminología—  
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anteriormente por delito de robo, hurto o estafa, o dos veces en juicio de faltas por estafa o hurto.» 529

2. REDACCIÓN CONFORME AL DECRETO DE 14 DE MARZO DE 1964.—«El que defraudare a otro en la sustancia, cantidad o calidad de las cosas que le entregare en virtud de un título obligatorio, será castigado:

- 1.º Con la pena de presidio mayor, si la defraudación excediere de 50.000 pesetas.
- 2.º Con la de presidio menor, excediendo de 10.000 y no pasando de 50.000 pesetas.
- 3.º Con la pena de arresto mayor, si la defraudación fuere superior a 500 pesetas y no excediere de 10.000.
- 4.º Con la de arresto mayor, si no excediere de 500 pesetas y el culpable hubiere sido condenado anteriormente por delito de robo, hurto, estafa o apropiación indebida o dos veces en juicio de faltas por hurto, estafa, o apropiación indebida.»

529. Incurrirá en las penas del artículo anterior:

- 1.º El que defraudare a otro usando de nombre fingido, atribuyéndose poder, influencia o cualidades supuestas, aparentando bienes, crédito, comisión, empresa o negociaciones imaginarias, o valiéndose de cualquier otro engaño semejante que no sea de los expresados en los casos siguientes.
- 2.º Los plateros y joyeros que cometieren defraudación alterando en su calidad, ley o peso los objetos relativos a su arte o comercio.
- 3.º Los traficantes que defraudaren, usando de pesos o medidas falsos, en el despacho de los objetos de su tráfico.
- 4.º Los que defraudaren con pretexto de su puestas remuneraciones a funcionarios públicos,



## 1. Penal Code of 1963

### GENERAL PART

Article 119. For criminal purposes, Authority shall be construed to mean one who, as an individual or as a member of any legal entity or tribunal, holds a mandate or exercises original jurisdiction. The officials of the Attorney General's office (*Ministerio Fiscal*) shall also be construed as Authorities. Public official shall be understood as all persons who, by means of immediate provisions of law, by election or through appointment by competent Authority, engage in the performance of public functions.

### SPECIAL PART

Title II: Offences against the internal security of the State.

[...]

**196.** Any public official who confiscates the property of a citizen or foreign person, other than in those cases allowed, and in breach of legal requirements, shall suffer the penalties of suspension and a fine of 5,000 to 25,000 *pesetas*.

*See the preceding note regarding the amount of the fine.*

**197.** Any public official who shall order the closure or dissolution of any private educational establishment, in any case other than those prescribed by law, shall suffer the penalties of suspension and a fine of 5,000 to 25,000 *pesetas*.

*See note to Article 195.*

**198.** Any authority or public official who, taking advantage of his official position, practices any profession directly related to the sphere of his official attributions or intervenes directly or indirectly in companies or private for-profit associations shall suffer the penalty of special disqualification and a fine of 5,000 to 250,000 *pesetas*.

*Originally, the amount of the fine originally was 5,000 to 50,000, but was increased by Decree 168/1963, of January 24.*

**199.** Any public official who shall take action threatening the independence of judges or magistrates shall suffer the penalty of special disqualification.

**200.** Any Minister who shall order the payment of a tax not prescribed by law shall suffer the penalty of absolute disqualification and a fine of 10,000 to 500,000 *pesetas*.

*The maximum limit of the fine was 100,000 pesetas and was increased by Decree 168/1963, of January 24.*

**201.** Any official who shall order the payment of a provincial or municipal tax that is not legally approved by the respective City Council or Municipality shall suffer the penalties of absolute disqualification and a fine of 5,000 to 50,000 pesetas.

*The fine, which originally stood at 1,000 to 10,000 pesetas, was increased pursuant to Decree 168/1963, of January 24*

**202.** Any public official who demands from taxpayers the payment of taxes that are not authorized by the respective laws or Legal Entities (*Corporaciones*) for the State or a Province or Municipality shall suffer the penalties of suspension and a fine of 5,000 to 50,000 pesetas.

Should payment be exacted, the aforementioned penalties shall be imposed in the maximum degree.

Should compulsion or other coercive methods be employed, the penalties shall be absolute disqualification and the aforementioned fine.

*See note to the preceding article.*

[...]

**316.** Any official who, in order to effect any forgery at the expense of the State or of a Legal Entity (*Corporación*) dependent thereon, makes use of substances, materials, tools, machines or legitimate instruments entrusted to him shall suffer the same fines and personal punishments as those corresponding to the forgery committed, to the maximum extent, as well as absolute disqualification.

*Text pursuant to Law of December 27, 1947 (article 4).*

Original text: "Any official who, in order to effect any forgery at the expense of the State or of a Legal Entity dependent thereon, makes use of tools or legitimate instruments entrusted to him shall suffer the same fines and personal punishments as those corresponding to the forgery committed, to the maximum extent, as well as absolute disqualification."

**317.** Any person not comprised in the preceding article who shall have in his possession the substances, materials, tools, machines or legitimate instruments set forth above and makes use of them to perform any form of forgery to the detriment of the State, a Legal Entity or a private person to whom they belong shall suffer the same fines and personal punishments as those corresponding to the forgery committed.

*Text pursuant to Law of December 27, 1947 (article 4)*

Original text: "Any person not comprised in the preceding article who shall have in his possession the tools or legitimate instruments set forth above and makes use of them to perform any form of forgery to the detriment of the State, a Corporation or a private person to whom they belong shall suffer the same fines and personal punishments as those attached to the falsehood committed."

**318.** In all cases addressed in this chapter and in the preceding chapters, with the exception of the second, the Courts, taking into account ‘the gravity of the event and the circumstances thereof, the nature of the document, the standing of the culprit and his purpose, may impose the penalty next lower in degree than that provided therein.

*Text pursuant to Law of December 27, 1947 (article 4).*

Original text: In all cases addressed in this chapter and in the preceding four chapters, the Courts, taking into account the gravity of the event and its circumstances, the nature of the document, the standing of the culprit and his purpose, may impose the penalty next lower in degree than that provided therein.”

## CHAPTER VI

### ON THE FRAUDULENT CONCEALMENT OF GOODS OR OF INDUSTRY

**319.** He who, upon request of competent administrative official, conceals in whole or in part his goods, trade or industry in order to avoid paying the taxes due upon said goods or industry shall be liable for a fine of five times the amount of those taxes, but in no case less than 5,000 pesetas.

*Originally, the minimum limit of the fine was 1,000 pesetas, and was increased by Decree 168/1963, of January 24 (art. 2).*

## CHAPTER VII

### ON THE USURPATION OF AUTHORITY AND TITLE AND THE IMPROPER USE OF NAMES, UNIFORMS, INSIGNIA AND DECORATIONS

**320.** One who represents himself to be an Authority or public official without legitimate title or justification to do so shall suffer the penalty of *prisión menor* (six months and one day to six years incarceration).<sup>1</sup>

The same penalty shall be applied to one who falsely represents himself as empowered to minister ecclesiastical acts or so administers them.

One who attributes to himself powers that he has not been lawfully granted, [or] grants favors or titles of nobility or any other honorary distinctions, shall suffer the penalty of *arresto mayor* (one month and one day to six months imprisonment) or a fine of 5,000 to 25,000 *pesetas*.

*Paragraph three was added pursuant to Decree 168/1963, of January 24, which further implemented Law 79/1961 on Grounds for the partial revision of the Penal Code.*

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<sup>1</sup> [Translator’s Note: The translations of the sentencing guidelines presented throughout this text are based on the Spanish penal code of 1963]

**321.** One who engages in acts pertaining to a profession without the corresponding official degree or recognition by law or international Treaty shall suffer the penalty of *prisión menor* (six months and one day to six years incarceration).

Should the culprit publicly claim such professional status, a fine of 10,000 to 50,000 pesetas shall also be imposed.

*Text pursuant to Decree 168/1963, of January 24, which further implemented Law 79/1961 on Grounds for the partial revision of the Penal Code.*

Original text: He who unduly poses as a professor and publicly practices at a school requiring an official degree shall suffer the penalty of *prisión menor*.

**322.** One who publicly uses a fictitious name or unduly represents himself as holding titles of nobility shall suffer the penalties of *arresto mayor* (one month and one day to six months imprisonment) and a fine of 5,000 to 10,000 pesetas.

When the use of the name or assumed title are devised to conceal a crime, evade punishment or cause harm to the State or private parties, the culprit shall suffer penalties of *arresto mayor* (one month and one day to six months imprisonment) and a fine of 5,000 to 25,000 pesetas.

The provisions of this article notwithstanding, the use of the assumed name may be authorized ... [sentence incomplete in original].

[...]

## **CHAPTER IX ON BRIBERY**

**385.** Any public official who shall solicit or receive a gift or present, either personally or through an intermediary, or accepts an offer or promise to perform an act relating to the performance of his duties that constitutes a crime, shall suffer the penalty of *prisión menor* (six months and one day to six years incarceration) and a fine three times the value of the gift, without prejudice to any penalty corresponding to the crime committed on account of the gift or promise.

**386.** Any public official who shall solicit or receive a gift or present, either personally or through an intermediary, or accepts an offer or promise to perform an unfair act relating to the performance of his duties which does not constitute a crime, and who performs said act, shall suffer the penalty of *presidio menor* (six months and one day to six years of incarceration) and a fine in the amount of three times the value of the gift; if said unfair act shall not have been accomplished, the official shall suffer the penalties of *arresto mayor* (one month and one day to six months imprisonment) and a fine in the amount twice the value of such gift.

**387.** If the purpose for which the gift was solicited, received or promised was to induce the public official to refrain from performing an act it was his official duty to effect, he shall suffer the penalties of *arresto mayor* (one month and one day to six months imprisonment) and a fine three times the value of such gift.

**388.** The provisions contained in the preceding paragraphs shall be applicable to *jurados* (triers of fact), *árbitros* (adjudicators/arbitrators), *arbitradores* (arbitrators/mediators), *hombres buenos* (arbitrators) or any other persons performing a public function.

**389.** The persons found criminally liable for the crimes prescribed in the preceding articles shall further suffer the penalty of special disqualification.

**390.** Any public official who accepts gifts offered to him by reason of his office or to procure an appropriate action for which compensation should not be received, shall suffer the penalty of suspension and a fine of 5,000 to 25,000 pesetas.

*Decree 168/1963, of January 24, increased the amount of the fine, which was originally 1,000 to 5,000 pesetas.*

**391.** Those who corrupt or seek to corrupt public officials by means of gifts, presents, offers or promises, or accept the requests thereof, shall suffer the same penalties [imposed upon the corrupted official], except that of disqualification.

**392.** When a bribe is made in a criminal case in favor of the defendant by his spouse or any ascendant or descendant, sibling or relatives to the same degree of kinship, the briber shall only be subject to a fine in an amount equal to the gift or promise, but may not be less than 5,000 *pesetas*.

*The minimum limit of the fine was originally set at 1,000 pesetas and was increased pursuant to Decree 168/1963, of January 24.*

**393.** In all cases, the gifts or presents shall be confiscated.

## **CHAPTER X**

### **ON MISAPPROPRIATION OF PUBLIC FUNDS OR PROPERTY**

**394.** Any public official who appropriates or permits another to appropriate the public funds or property for which he is responsible or which is available thereto by reason of the duties of his office, shall suffer:

1. The penalty of *arresto mayor* (one month and one day to six months imprisonment) if the amount appropriated does not exceed 2,500 pesetas.

2. The penalty of *presidio menor* (six months and one day to six years of incarceration) if it is more than 2,500 pesetas but does not exceed 50,000 pesetas.

3. The penalty of *presidio mayor* (six years and one day to twelve years of incarceration) if it is more than 50,000 pesetas but less than 250,000 pesetas.

4. The penalty of *reclusión menor* (twelve years and one day to twenty years of incarceration) if the amount exceeds 250,000 pesetas.

The Court shall impose the penalty it deems appropriate from those enumerated above when it appears that misappropriation has occurred even if the amount thereof has not been established.

In all cases, the penalty of absolute disqualification shall be imposed.

*Text pursuant to Law 3/1967, of April 8.*

Original text: "Any public official who appropriates or permits another to appropriate the public funds or property for which he is responsible or which is available thereto by reason of the duties of his office, shall suffer:

1. The penalty of *arresto mayor* if the amount misappropriated does not exceed 1,000 pesetas.

2. The penalty of *presidio menor* if it is more than 1,000 pesetas but does not exceed 50,000 pesetas.

3. The penalty of *presidio mayor* if it is more than 50,000 pesetas but less than 250,000 pesetas.

4. The penalty of *reclusión menor* if the amount exceeds 250,000 pesetas.

The Court shall impose the penalty it deems appropriate from those enumerated above when it appears that misappropriation has occurred even if the amount thereof has not been established.

In all cases, the penalty of absolute disqualification shall be imposed.

**395.** Any public official who, due to neglect or inexcusable negligence, allows for another person to appropriate the public funds or property set forth in paragraphs 2, 3, and 4 above shall be fined in an amount equivalent to half the value of the funds or property appropriated but no less than 5,000 pesetas.

Should the guilty official return the funds or property prior to trial, or secure their return by means of his actions, the penalty shall be public censure.

*The minimum limit of the fine was originally set at 1,000 pesetas and was increased pursuant to Decree 168/1963, of January 24.*

**396.** Any public official who shall apply any public fund or property under his administration to his own private use or that of third parties shall suffer the

penalty of special disqualification should any damages or impediments result for the public service affected, or suspension if there were none.

Should the official fail to reimburse the funds or property within ten days of the commencement of the preliminary investigation (*sumario*), the penalties set forth in Article 394 shall be imposed.

**397.** Any public official who shall apply any public fund or property under his administration to any public use other than that for which such fund or property was allocated shall suffer the penalty of special disqualification and a fine of 5 to 50 percent of the amount misused if, by reason of such misapplication, any damages or interruptions have resulted to the public service affected, with a minimum fine of 5,000 pesetas, and [a penalty of] suspension if no such damage or interruption should occur.

*Text pursuant to Decree 168/1963, of January 24 (article 2) and Law 79/1961 of December 23 on Grounds for a partial revision of the Penal Code.*

Original text: "Any public official who shall apply any fund or property under his administration to any public use other than for which such fund or property was allocated shall suffer the penalty of special disqualification and a fine of 5 to 50 percent of the amount misused if, by reason of such misapplication, any damages or interruptions have resulted to the public service affected and [a penalty of] suspension if no such damage or interruption should occur.

**398.** Any public official under obligation to make payment from government funds in his possession who shall fail to make such payment shall be punished by suspension and a fine of between 5 and 25 percent of the unpaid sum.

This provision shall apply to any public official who, being ordered by competent authority to deliver any property in his custody or under his administration, shall refuse to make such delivery.

The fine shall be graduated in such case by the value of the thing, and may not be less than 5,000 pesetas.

*See comment on Article 395.*

**399.** The provisions of this chapter shall apply to any individuals who, in any capacity whatsoever, have charge of any provincial or municipal funds, revenues, or property or belonging to an educational establishment or charity, and to any administrator or depository of funds or property attached, seized or deposited by public authority, even if such property belongs to a private individual.

## CHAPTER XI

### ON FRAUD AND EXTORTION

**400.** Any public official that participates as a result of his official capacity in dealings with regard to the furnishing of supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds, who shall enter into an agreement with any interested party or speculator or make use of any other scheme to defraud the State, Province or Municipality, shall suffer the penalty of *presidio menor* (six months and one day to six years of incarceration) and special disqualification.

**401.** Any public official who directly or indirectly shall become interested in any contract or transaction in which it is his official duty to intervene shall be subject to the penalties of special disqualification and a fine in an amount triple that of the interest obtained from in the transaction.

This provision is applicable to experts, arbitrators and private accountants with regard to the appraisals, distributions or adjudications of goods or property in which they may act and to guardians and executors with respect to the property belonging to their wards or estate.

**402.** Any public official who directly or indirectly demands the payment of sums larger than those authorized by reason of his office shall, without prejudice to the reimbursements that may be required of him under separate provision, suffer a fine of twice to four times the amount demanded and, in no case, less than 5,000 pesetas.

A repeat culprit of this crime shall also suffer special disqualification.

*See comment on Article 395*

**403.** Any public official who, taking advantage of his official position, shall commit any of the crimes enumerated in Chapter IV, Sections II and IV or Title XIII of this Code shall receive the penalties listed therein as well as that of special disqualification.

## CHAPTER XII

### ON PROHIBITED TRANSACTIONS FOR PUBLIC OFFICIALS

**404.** The judges, officials of the Attorney General's Office, military chiefs, governmental or economic officers, with the exception of mayors, who during the course of their tenure become involved directly or indirectly in speculation, trafficking or profiteering within the territory subject to their jurisdiction or command, covering items that are not the proceeds of their own property, shall suffer the penalty of suspension and a fine of 5,000 to 25,000 pesetas.

This provision shall not apply to those who invest their funds in shares of banks or any other firm or company, so long as they do not hold any posts or participate therein directly, administratively or economically.



*The amount of the fine was originally 1,000 to 5,000 pesetas and was increased by Decree 168/1963 of January 24.*



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PRESIDENCIA

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Ref. \_\_\_\_\_

Seco. \_\_\_\_\_

Decreto-Ley Número 4 /2004, de fecha 5  
de febrero, sobre la Ética y Dignidad en el  
ejercicio de la Función Pública.

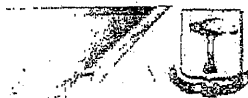
### PREAMBULO

Considerando que la honestidad, la probidad, la rectitud, la buena fe y la austeridad republicana, son conductas obligatorias para alcanzar el cumplimiento eficiente de los contenidos administrativos.

Convencidos de que solo por medio de la ejecución satisfactoria de conductos públicos transparentes por los agentes de la Función Pública es posible dar signos de certeza y de honradez ética a la sociedad.

Desde esta línea de pensamiento, al Gobierno de la Nación le incumbe la responsabilidad de regular procedimientos compatibles con el resultado final de eficacia a lograr la gestión pública, promoviendo mecanismos que garantizan el mejor producto de la gestión, con la correcta y honesta utilización de los medios encauzados al fin propuesto. En definitiva, con la presente disposición se pretende que el actuar transparente de la Administración, la finalidad pública, debe regir para todos los procedimientos administrativos, tanto de preparación como de la voluntad administrativa bilateral.

En su virtud, a propuesta del Ministerio de la Función Pública y Reforma Administrativa y previa deliberación del Consejo de Ministros en su reunión de fecha 30 de Enero.



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DISPONGO:

**CAPITULO I**

**DEL OBJETO, SUJETOS, DEBERES Y  
PAUTAS DE COMPORTAMIENTO ETICO**

Artículo 1.- El fin de la Función Pública es el bien común, ordenado por las disposiciones por la Ley Fundamental de Guinea Ecuatorial, los Tratados Internacionales ratificados y las normas destinadas a su regulación.

El funcionario público tiene el deber primero de lealtad a la República de Guinea Ecuatorial, a través de las instituciones democráticas de la Nación con prioridad a sus personas e instituciones legalmente establecidas y reconocidas.

Artículo 2.- La presente Ley de Etica en el ejercicio de la Función Pública establece un conjunto de deberes, prohibiciones e incompatibilidades aplicables, sin excepción, a todas las personas que se desempeñen en la función pública en todos sus niveles y jerarquías, en forma permanente o transitoria, por elección popular, designación directa, por concurso o por cualquier otro medio legal, extendiéndose su aplicación a todo el personal y empleados del Estado.

Se entiende por función pública, toda actividad temporal o permanente remuneradora u horaria, realizada por una persona en nombre del Estado o al servicio del Estado o de sus entidades, en cualquiera de sus niveles jerárquicos.



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Artículo 3.- Los sujetos comprendidos en esta Ley se encuentran obligados a cumplir con los siguientes deberes y pautas de comportamiento ético:

a).- Cumplir y hacer cumplir estrictamente la Ley Fundamental de Guinea Ecuatorial, las leyes y los reglamentos que en su consecuencia se dicten y defender el Sistema Republicano y Democrático de Gobierno.

b).- Desempeñar con la observancia y respeto de los principios y pautas éticas establecidas en la presente Ley; honestidad, probidad, rectitud, buena fe y austeridad republicana.

c).- Velar en todos sus actos por los intereses del Estado, orientados a la satisfacción del bienestar general, privilegiando de esta manera el interés público sobre el particular.

d).- No recibir ningún beneficio personal indebido vinculado a la realización, retardo u omisión de un acto inherente a sus funciones, ni imponer condiciones especiales que deriven de ello.

e).- Fundar sus actos y mostrar la mayor transparencia en las decisiones adoptadas sin restringir información, a menos que una norma o el interés público claramente lo exijan.

f).- Proteger y conservar la propiedad del Estado y solo emplear sus bienes para fines autorizados. Abstenerse de utilizar la información adquirida en el cumplimiento de sus funciones para realizar actividades no relacionadas con sus tareas oficiales o de permitir su uso en beneficio de intereses privados.



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g).- Abstenerse de utilizar las instalaciones y servicios del Estado para beneficio particular o para el de sus familiares, allegados o personas ajenas a la función social, a fin de avalar o promover algún producto, servicio o empresa.

h).- Observar en los procedimientos de contrataciones públicas en los que intervengan, los principios de publicidad, igualdad de concurrencia y razonabilidad.

i).- Abstenerse de intervenir en todo asunto respecto al cual se encuentre comprendido en alguna de las causas de recusación previstas en las leyes civiles.

j).- Obligarse a tramitar y resolver los asuntos sometidos a su consideración dentro de los plazos marcados por la Ley.

Artículo 4.- Todos los sujetos comprendidos en el artículo 1, deberán observar como requisito de permanencia en el cargo, una conducta acorde con la ética pública en el ejercicio de sus funciones. Si así no lo hicieren serán sancionados o removidos por los procedimientos establecidos en el régimen propio de su función.

CAPITULO II

REGIMEN DE DECLARACIONES  
JURADAS Y ANTECEDENTES

Artículo 5.- Las personas referidas en el artículo 5 de la presente Ley, deberán presentar una declaración jurada patrimonial integral dentro de los treinta días hábiles desde la asunción de sus cargos.



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Excmo. \_\_\_\_\_ Artículo 6.- Quedan comprendidos en la obligación de presentar la declaración jurada:

- a) Los Miembros del Poder Ejecutivo.
- b) Los Representantes del Pueblo en la Cámara.
- c) Los Magistrados y Jueces del Poder Judicial y del Tribunal Constitucional.
- d) El Fiscal General de la República y demás Fiscales de los Tribunales y Juzgados.
- e) Consejeros y Asesores.
- f) Los Secretarios Generales y Directores Generales.
- g) Los Gobernadores Provinciales, Delegados y Delegados Adjuntos del Gobierno.
- h) Alcaldes Presidentes de los Ayuntamientos.
- i) Los Embajadores, Cónsules y Funcionarios destacados en misión oficial permanente en el exterior.
- j) El personal en actividad de las Fuerzas Armadas y de la Seguridad del Estado.
- k) Los Rectores, Decanos y Secretarios de las Universidades Estatales.



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- 1) Los Funcionarios o empleados que prestan servicios en las administraciones públicas, centralizada o descentralizada, las Empresas y Sociedades del Estado, y el personal designado a propuesta del Estado en las sociedades de economía mixta, en las sociedades anónimas con participación estatal y en otros entes del sector público.

Artículo 7.- La declaración jurada deberá contener una nómina detallada de todos los bienes, propios del declarante, propios de su cónyuge, los que integran la sociedad conyugal y los de sus hijos menores en el país o en el extranjero. En especial se detallarán los que se indican a continuación.

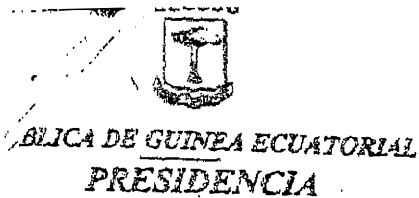
a).- Bienes inmuebles y acciones que se hayan valorizado sobre dichos inmuebles.

b).- Bienes muebles registrables.

c).- Otros bienes muebles, determinado su valor en conjunto. En caso de que uno de ellos supone la suma de cinco millones de FCFA, deberá ser individualizado;

d).- Capital invertido en títulos, acciones y demás valores cotizables o no en bolsa, o en explotaciones personales o societarias.

f).- Ingresos y egresos anuales derivados del trabajo en relación de dependencia o del ejercicio de actividades independientes y/o profesionales.



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g) Ingresos y egresos anuales derivados de rentas o de sistemas provisionales. Si el obligado a presentar la declaración jurada estuviera inscrito en el Régimen de impuesto a las ganancias o sobre bienes personales no incorporados al proceso económico, deberá acompañar también la última presentación hubiese realizado ante la Dirección General de Impuestos.

Artículo 8.- Las declaraciones juradas quedarán depositadas en los respectivos organismos que deberán remitir, dentro de treinta días, copia autenticada a la Comisión Nacional de Etica Pública; la falta de remisión dentro del plazo establecido, sin causa justificada, será considerada falta grave del funcionario responsable del área.

Artículo 9.- Las personas que no hayan presentado sus declaraciones juradas dentro del plazo establecido, serán amonestadas en forma escrita para que lo hagan en el plazo de quince días. Si el amonestado no cumpliera con la presentación de la declaración, no podrá ejercer la función pública, sin perjuicio de otras sanciones que pudieran corresponder.

\* Artículo 10.- El listado de declaraciones juradas de las personas señaladas en el artículo 5 deberá estar custodiado por la Comisión Nacional de Etica Pública y solo podrá ser publicado, total o parcialmente, para los fines de verificación y comprobación de la situación patrimonial real.

Artículo 11.- Aquellos funcionarios cuyo acceso a la función pública no sea un resultado directo del sufragio universal, incluirán en la declaración jurada sus antecedentes laborales al solo efecto de facilitar un mayor control respecto de los posibles conflictos de intereses que puedan plantearse.





REPUBLICA DE GUINEA ECUATORIAL  
PRESIDENCIA

-8-

Núm. \_\_\_\_\_

Ref. \_\_\_\_\_

Secc. \_\_\_\_\_

### CAPITULO III

### INCOMPATIBILIDADES Y CONFLICTOS DE INTERESES

Artículo 12.- Es incompatible con el ejercicio de la función pública:

a).- Dirigir, administrar, representar, patrocinar, asesorar, o de cualquier otra forma, prestar servicios a quien gestione o tenga una concesión o sea proveedor del Estado, o realice actividades reguladas por ésta, siempre que el cargo público desempeñado tenga competencia funcional directa, respecto de la contratación, obtención, gestión o control de tales concesiones, subvenciones o actividades.

b).- Ser proveedor por sí o por terceros de todos organismos del Estado en donde desempeñe sus funciones.

Artículo 13.- Aquellos funcionarios que hayan tenido intervención decisoria en la planificación, desarrollo y concreción de concesiones de empresas o servicios públicos, tendrán vedada su actuación en los entes o comisiones reguladoras de esas empresas o servicios.

Artículo 14.- Las inhabilidades o incompatibilidades establecidas en los artículos precedentes regirán, a todos sus efectos, aunque sus causas procedan o sobrevengan al ingreso o egreso del funcionario público, durante el año inmediatamente anterior o posterior, respectivamente.

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Artículo 15.- Estas incompatibilidades se aplicarán sin perjuicio de las que están determinadas en el régimen específico de cada función.

Artículo 16.- Cuando los actos emitidos por los sujetos del artículo 1 estén alcanzados por los supuestos de los artículos 13, 14, y 15, serán de nulidad absoluta. sin perjuicio de los derechos de terceros de buena fe. Si se tratare del dictado de un acto administrativo, éste se encontrará viciado de nulidad absoluta en los términos del artículo 45 de la Ley del Régimen Jurídico de la Administración Central del Estado.

Las empresas contratantes o concesionarias serán solidariamente responsables por la reparación de los daños y perjuicios que por esos actos le ocasionen al Estado.

#### CAPITULO IV

#### REGIMEN DE OBSEQUIOS A FUNCIONARIOS PUBLICOS Y PREVENCIÓN SUMARIA

Artículo 17.- Los funcionarios públicos no podrán recibir regalos, obsequios o donaciones, sean de cosas, servicios o bienes con motivo o en ocasión del desempeño de sus funciones. En el caso de que los obsequios sean de cortesía o de costumbre diplomática la autoridad de aplicación reglamentará su registro y en qué casos y cómo deberán ser incorporadas al patrimonio del Estado, para ser destinados a fines de salud acción social y educación o al patrimonio histórico cultural si correspondiere, o del Departamento.

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A fin de investigar supuestos de enriquecimiento injusto en la función pública y de violaciones a los deberes y al régimen de declaraciones juradas e incompatibilidades establecidas en la presente Ley, la Comisión Nacional de Ética Pública deberá realizar una prevención sumaria.

Artículo 18.- La investigación podrá promoverse por iniciativa de la Comisión. A requerimiento de las autoridades superiores del investigado o por denuncia.

La reglamentación determinará el procedimiento con la debida garantía del derecho a la defensa.

El investigado deberá ser informado del objeto de la investigación y tendrá derecho a ofrecer la prueba que estime conveniente para el ejercicio de su defensa.

Artículo 19.- Cuando en el curso de la tramitación sumaria sugiera la presunción de la comisión de un delito, la Comisión deberá poner de inmediato el caso en conocimiento del Juez o Fiscal competente, remitiéndole los antecedentes reunidos.

La instrucción de la prevención sumaria no es un requisito perjudicial para la sustanciación del proceso penal.

Artículo 20.- Dentro del plazo de noventa días contados a partir de la publicación de la presente Ley, deberá publicarse la reglamentación pertinente a la prevención sumaria contemplada en este capítulo.

## CAPITULO V

### COMISION NACIONAL DE ETICA PUBLICA

Artículo 21.- Se crea en el ámbito de la Jefatura del Estado, la Comisión Nacional de Etica Pública que funcionará como órgano independiente y actuará con autonomía funcional, en garantía del cumplimiento de lo normado en la presente Ley.

Artículo 22.- La Comisión estará integrada por un presidente y seis miembros, ciudadanos de reconocida solvencia moral y prestigio público que durarán cuatro años en su función pudiendo ser reelegidos por un período igual.

Serán designados por el Presidente de la República.

Artículo 23.- La Comisión tendrá las siguientes funciones:

a).- Recibir las denuncias de personas o de entidades intermediarias registradas legalmente respecto de conductas de funcionarios o agentes de la administración contrarias a la ética pública. Las denuncias deberán ser acompañadas de la documentación y todo otro elemento probatorio que las fundamente. La Comisión remitirá los antecedentes al organismo competente según la naturaleza del caso, pudiendo recomendar, conforme su gravedad, la suspensión preventiva en la función o en el cargo, y su tratamiento en el plazo perentorio.

b).- Recibir las quejas por falta de actuación de los organismos de aplicación, frente a las denuncias ante ellos incoados promoviendo en su caso la actuación de los procedimientos de responsabilidad correspondiente.

c).- Redactar el Reglamento de Ética Pública, según los principios generales y criterios del artículo 2. Dicho cuerpo normativo deberá elevarse al Consejo de Ministros a efectos de su aprobación mediante la firma y sanción del Presidente de la República.

d).- Recibir y en su caso exigir de los organismos de aplicación copias de las declaraciones juradas de los funcionarios mencionados en el artículo 5 y conservarlos hasta diez años después del cese en la función.

e).- Garantizar el cumplimiento de lo establecido en los artículos 10 y 11 de la presente ley y aplicar la sanción prevista en este último.

f).- Registrar con carácter público las sanciones administrativas y judiciales aplicadas por violaciones a la presente Ley, las que deberán ser comunicadas a la autoridad competente.

g).- Asesorar y evacuar consultas, sin efectos vinculante, en la interpretación de situaciones comprendidas en la presente Ley.

h).- Diseñar y proponer programas de capacitación y divulgación del contenido de la presente ley para el personal comprendido en ella.

i).- Requerir colaboración de las distintas dependencias del Estado, dentro de su ámbito de competencia, a fin de obtener los informes necesarios para el desempeño de sus funciones.

j).- dictar su propio reglamento y proponer al Presidente de la República el nombramiento de su personal.

k) Elaborar un informe anual de carácter público dando cuenta de su labor, debiendo asegurar su difusión.

l).- Requerir cuando lo considere pertinente. La presentación de las correspondientes declaraciones juradas a los sujetos comprendidos en el artículo 5 de la presente ley.

## CAPITULO VI

### PUBLICIDAD Y DIVULGACIÓN

Artículo 24.- La Comisión de Ética Pública y las autoridades de aplicación en su caso, podrán dar la publicidad por los medios que consideren necesarios, de acuerdo a las características de cada caso y a las normas que rigen el mismo, las concluidas obtenidas sobre la producción de un acto que se considere violatorio de la ética pública.

Artículo 25.- Las autoridades de aplicación promoverán programas permanentes de capacitación y de divulgación del contenido de la presente ley y sus normas reglamentarias, para que las personas involucradas sean debidamente informadas.

Artículo 26.- La enseñanza de ética pública se instrumentará como un contenido específico de todos los niveles educativos.

Artículo 27.- La publicidad de los actos, programas, obras, servicios y campaña de los órganos públicos deberán tener carácter educativo informativo o de orientación social no pudiendo constar en ella, nombres, símbolos o imágenes que supongan promoción personal de las autoridades o funcionarios públicos.

## CAPITULO VII

### VIGENCIA Y DISPOSICIÓN TRANSITORIA

Artículo 28.- Los funcionarios y empleados públicos afectados por el régimen de declaraciones juradas establecidos en la presente ley, que se encontraren en funciones a la fecha en que el régimen se ponga en vigencia, deberán cumplir con las presentaciones dentro de los treinta días siguientes a dicha fecha.

Artículo 29.- Los funcionarios y empleados públicos que se encuentren comprendidos en el régimen de incompatibilidades establecido en la presente ley a la fecha de entrada en vigencia de dicho régimen, deberán optar entre el desempeño de su cargo y la actividad incompatible, dentro de los treinta días siguientes a dicha fecha.

### DISPOSICIÓN DEROGATORIA

Quedan derogadas cuantas disposiciones de igual o inferior rango que se opongan a lo establecido en esta Ley.

**Decree-Law No. 1 / 2004, of February 5, on Ethics and Dignity in the  
Performance of Public Functions**

PREAMBLE

Whereas honesty, probity, rectitude, good faith and republican austerity constitute mandatory behavior in the attainment of effective compliance with administrative mandates.

Convinced that it is only possible to convey predictability and ethical trustworthiness in civil service institutions to society through the successful implementation of public transparency mechanisms.

In this context, the national government is responsible for regulating procedures compatible with the goal of achieving effective governance, for promoting mechanisms that ensure optimum administrative results and for the proper and honest use of resources channeled toward that end. In short, this [decree] seeks to ensure transparent acts of the Administration, the public interest, shall govern all administrative proceedings, including preparatory proceedings and those applicable to administrative bilateral relationships.

In light thereof, at the proposal of the Ministry of Civil Service and Administrative Reform (*Ministerio de la Función Pública y Reforma Administrativa*) and after deliberation by the Council of Ministers (*Consejo de Ministros*) at its meeting on January 30,

I HEREBY ORDER:

**CHAPTER I**

**ON THE PURPOSE, SCOPE, DUTIES  
AND GUIDELINES FOR ETHICAL BEHAVIOR**

**Article 1.** The purpose of the public function (*función pública*) is the common good, pursuant to the provisions of the Fundamental Law of Equatorial Guinea (*Ley Fundamental de Guinea Ecuatorial*), ratified international treaties and the corresponding implementing legislation.

Public officials owe their first loyalty to the Republic of Equatorial Guinea through the Nation's democratic institutions with a priority on its legally-established and recognized individuals and institutions.

**Article 2.** This Law on Ethics (*Ley de Etica*) in the performance of Public Functions establishes a set of duties, prohibitions and incompatibilities applicable, without exception, to all persons who provide public services at all levels and hierarchies, whether permanently or temporarily, by popular vote, direct appointment, by competition or any other legal means, and is applicable to all personnel and employees of the State.



Public function means all temporary or permanent work, paid or unpaid, performed by an individual on behalf of or in the service of the State or its bodies, at all levels of hierarchy.

**Article 3.** The individuals covered by this law are required to comply with the following duties and standards of ethical behavior:

- a). To strictly comply with and enforce the Fundamental Law of Equatorial Guinea [and] the laws and regulations enacted in pursuance thereof, and to defend the republican and democratic system of government.
- b). To [perform their duties] in observance of and respect for the ethical principles and guidelines set forth in this Law: honesty, probity, rectitude, good faith and republican austerity.
- c). To ensure that all acts are performed taking into account the interests of the State, directed towards the general well-being, thus putting the public interest before personal interests.
- d). To refrain from receiving undue personal benefits connected to the performance, deferral or omission of official acts or duties, and from imposing special conditions arising from said acts or duties.
- e). To act on the basis of reason and show the greatest degree of transparency in all decisions made, without restricting access to information, unless regulations or the public interest clearly so require.
- f). To protect and conserve State property and only use such assets for authorized purposes. To refrain from using information acquired while performing their duties in furtherance of activities unrelated to their official work or to permit the use thereof to the benefit of private interests.
- g). To refrain from using the facilities or services of the State for personal benefit or that of family, friends or persons foreign to the social function in endorsing or promoting any product, service or business.
- h). To respect the principles of openness, fair competition and suitability in the public procurement procedures in which they participate.
- i). To refrain from intervening in any matter with respect to which the disqualification provisions of the civil statutes are applicable.
- j). To commit to process and resolve the matters submitted for their consideration within the timeframes established by law.

**Article 4.** All individuals covered by Article 1 shall, in order to remain in office, behave in keeping with public ethics in performing their functions. Failure to do so shall lead to punishment or removal by means of the procedures set forth for said purpose in the system applicable to their function.

## CHAPTER II

### SYSTEM OF AFFIDAVITS AND EXPERIENCE STATEMENTS

**Article 5.** The persons referred to in Article 5 [*sic*] of this Law shall present a comprehensive asset affidavit within thirty business days of taking office.

**Article 6.** The following individuals are required to present an affidavit:

- a) Members of the Executive Branch.
- b) The People's Representatives in the House (*Representantes del Pueblo en la Cámara*)
- c) Justices and Judges of the Judiciary and the Constitutional Court (*Tribunal Constitucional*).
- d) The Attorney General of the Republic (*Fiscal General de la República*) and other Prosecutors of the Tribunals and Courts.
- e) Directors and Advisors.
- f) General Secretaries and General Directors.
- g) Provincial Governors, Delegates and Deputy Delegates of Government.
- h) Mayors of Municipalities.
- i) Ambassadors, consuls and officials seconded to permanent missions abroad.
- j) The active staff of the Armed Forces and State Security.
- k) Rectors, Deans and Secretaries of State Universities.
- l) Public officials or employees who serve in government, whether centralized or decentralized, State-run companies and partnerships, and staff appointed at the proposal of the State to mixed economy partnerships, stock corporations in which the State participates and other public sector bodies.

**Article 7.** The affidavit shall contain a detailed list of the affiant's own assets, those of his/her spouse and their community property and those of his/her minor children in the country or abroad. Special reference shall be made to the assets listed below:

- a) Real estate and improvements made to such properties.
- b) Recordable chattels.
- c) Other chattels, expressed as a single sum. Should any item be valued at five million CFA francs, it shall be severalized.

d) Capital invested in bonds, shares and other listed or non-listed securities, or personal or corporate investments.

f) [*sic*]<sup>1</sup> Annual income and expenditures arising from work as an employee or as an independent and/or professional practitioner.

g) Annual revenue and expenditures derived income or pension systems. Should the affiant be registered with the tax regime for capital gains or personal assets unaffiliated with the economic process, he/she shall also present the latest submission to the General Tax Service (*Dirección General de Impuestos*).

**Article 8.** The affidavits shall be deposited with the respective agencies, which must forward a certified copy thereof to the National Public Ethics Commission (*Comisión Nacional de Ética Pública*) within thirty days; failure to forward said document within the prescribed period without sufficient grounds shall be considered a serious breach by the official responsible for the area.

**Article 9.** Persons who fail to submit their affidavits upon entering the administration within the corresponding time period shall be officially cautioned to do so within fifteen days. Should the individual so cautioned fail to present the affidavit, he/she may not engage in public service, without prejudice to any other applicable sanctions.

**Article 10.** A list of affidavits from the individuals referred to in Article 5 shall be maintained by the National Public Ethics Commission and may only be published, in whole or in part, for purposes of verifying and confirming the affiant's actual assets.

**Article 11.** Those officials whose access to the public function by any means other than direct universal suffrage shall include their work experience in their affidavit for the sole purpose of facilitating greater oversight with regard to potential conflicts of interests that may arise.

### CHAPTER III

#### INCOMPATIBILITIES AND CONFLICT OF INTEREST

**Article 12.** It is incompatible with the performance of the public function to:

a). Direct, manage, represent, sponsor, advise or in any other fashion provide services to an individual who manages or holds a concession from the State, to a State supplier, or to those engaged in activities regulated by the State, when the public office held has direct operational responsibility in matters of contracting, obtaining, managing or overseeing such concessions, benefits or activities.

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<sup>1</sup> [TN: Letter e) missing in the original text.]

b). Be a provider, directly or through third parties, to any entity of the State where functions are performed.

**Article 13.** Those officials who have played a decisive role in the planning, development or implementation of concessions to private firms or public utilities shall be barred from serving on the bodies or entities that regulate such firms or services.

**Article 14.** The disqualifications or incompatibilities provided for in the preceding Articles shall be fully in effect during the year immediately before or after the public official takes or leaves office, respectively, even when the grounds thereof precede or supersede said entry or departure.

**Article 15.** These incompatibilities shall be applied without prejudice to those applicable pursuant to the specific rules governing of each [public] function.

**Article 16.** When instruments issued by the individuals cited in Article 1 are effected under the premises of the provisions of Articles 13, 14 and 15, said instruments shall be deemed absolutely null and void, without prejudice to the rights of third parties acting in good faith. Should the matter involve the issuance of an administrative instrument, it shall be deemed absolutely null and void under the terms of Article 45 of the Law on the Legal Regime of the Central Administration of the State (*Ley del Régimen Jurídico de la Administración Central del Estado*).

## CHAPTER IV

### RULES ON GIFTS TO PUBLIC OFFICIALS AND ADMINISTRATIVE INQUIRY

**Article 17.** Public officials may not receive presents, gifts or donations, whether of things, services or property, by reason or occasion of the performance of their duties. In the event the gifts are the result of courtesy or diplomatic custom, the enforcement authority shall regulate the registration thereof and determine in what cases and how such a gift should be incorporated into the public domain, to be apportioned for health purposes, social action or education or cultural heritage if applicable, or for the Department.

The National Public Ethics Commission shall conduct an administrative inquiry (*prevención sumaria*) to investigate cases of unjust enrichment in the public function and violations of duties and rules regarding affidavits and incompatibilities established herein.

**Article 18.** The inquiry may commence at the initiative of the Commission, at the request of investigated individual's superiors, or by complaint.

The regulations shall determine the proper procedure for ensuring the right to defense.

The person under investigation shall be informed of the purpose of the inquiry and shall be entitled to proffer the evidence he/she deems appropriate in his/her defense.

**Article 19.** When, in the course of the administrative inquiry, the presumption arises that a crime has been committed, the Commission shall immediately put the case before the competent judge or prosecutor, forwarding thereto the evidence gathered.

An administrative inquiry is not a prerequisite for the filing of criminal proceedings.

**Article 20.** The corresponding regulations on the administrative inquiry set forth herein must be published within ninety days of the publication of this Law.

## CHAPTER V

### NATIONAL PUBLIC ETHICS COMMISSION

**Article 21.** A National Public Ethics Commission is hereby created under the Head of State, which shall operate as an independent body and with functional autonomy in securing compliance with the provisions of this Law.

**Article 22.** The Commission shall consist of a chairperson and six members who shall be upstanding, prestigious citizens who shall serve for a term of four years and may be reelected for a similar period.

[The Commissioners] shall be appointed by the President of the Republic.

**Article 23.** The Commission shall have the following functions:

a). To receive claims from individuals or legally-registered intermediary entities with regard to the ethical misconduct of officials or agents of the administration. Claims shall be supported by documentation and all other substantiating evidence. The Commission shall send the records to the competent body in keeping with the nature of the case and may recommend, based on the gravity thereof, the preventive suspension of service or office and the immediate review of the case.

b). To receive complaints about a lack of action by oversight agencies with regards to claims filed before them and, as appropriate, take appropriate corrective action.

- c). To draft public ethics implementing legislation pursuant to the general principles and criteria contained in Article 2. Said body of law shall be submitted to the Council of Ministers for approval thereof by the signature and sanction of the President of the Republic.
- d). To receive and, when so required, to request from public agencies copies of the affidavits of the officials set forth in Article 5 and retain them for ten years following cessation of the function.
- e). To ensure compliance with the provisions of Articles 10 and 11 of this law and apply the penalty set forth in the latter.
- f). To keep a public record of the administrative and judicial sanctions applied as a result of violations of this law, which must be reported to the competent authority.
- g). To provide non-binding advice and guidance on the interpretation of the situations described in this Law.
- h). To design and promote training programs and the dissemination of the contents of this law for the public officials affected by it.
- i). To request the cooperation of the various bodies of the State, within the scope of its competency, to obtain the necessary reports for the performance of its functions.
- j). To establish its own regulations and propose to the President of the Republic the appointment of its staff.
- k). To draft an annual public report on the Commission's work and ensure the dissemination thereof.
- l) To request, when deemed pertinent, the submission of affidavits by the individuals covered by Article 5 of this law.

## CHAPTER VI

### PUBLICITY AND DISSEMINATION

**Article 24.** The Public Ethics Commission and enforcement authorities, when appropriate, may make public, through the means they deem necessary and in keeping with the features of each case and the rules governing the same, the findings on acts deemed to constitute a violation of public ethics.

**Article 25.** The authorities shall promote the implementation of ongoing training

programs and programs on dissemination of the text of this law and its implementing regulations so that those involved are properly informed.

**Article 26.** The teaching of public ethics shall be instituted as a specific subject matter at all levels of education.

**Article 27.** The dissemination of the acts, programs, works, services and campaigns of public bodies shall be of an educational and informative nature or provide social guidance and may not contain names, symbols or images that support the personal advancement of authorities or public officials.

## CHAPTER VII

### ENTRY INTO FORCE AND TRANSITIONAL PROVISION

**Article 28.** The public officials subject to the affidavit system set forth herein who hold office on the date said system takes effect shall comply with the requisite presentation within thirty days of such date.

**Article 29.** Within thirty days of the entry into force of the incompatibility rules contained herein, the incumbent public officials subject thereto shall choose between performing their duties and the compatible activity.

### REPEALMENT PROVISION

Any provisions of equal or lower rank contrary to the provisions herein stand repealed.

## U.S. Bank Accounts Used By Teodoro Obiang 2004-2008

	Union Bank of California	Bank of America	Citibank	California National Bank	City National Bank	Pacific Mercantile Bank	Wachovia
<b>Time period account used</b>	2001-2007 intermittently	2004-2007	July 2007-May 2008	May-June 2006	2001-2006 intermittently	February-July 2007	April 2006-June 2006
<b>Obiang-related funds at bank</b>	\$1.8 million in deposits  \$6.2 million in wire transfers	\$9.7 million in deposits	\$1 million in deposits	\$250,000 in deposits	\$4.9 million in deposits	\$500,000 in deposits	\$29.5 million in deposits  \$38.5 million in wire transfers
<b>Funds from Equatorial Guinea</b>	\$1.8 million	\$1.6 million	0	\$250,000	\$1.4 million	\$500,000	\$68 million
<b>Number of accounts used</b>	6	4	1	4	8	5	1
<b>Accounts Used</b>	3-shell company accounts (Unlimited Horizon, Sweet Pink);  1-law office account (Berger);  1-Obiang employee account (Kulungian);  1-third party account (Johnson)	3-shell company accounts (Beautiful Vision);  2-certificates of deposit (Beautiful Vision);  1-attorney client account (Berger)	1-shell company account (Unlimited Horizon)	4-shell company accounts (Sweetwater Malibu, Sweetwater Management)	5-corporate accounts (TNO Entertainment);  1-personal account (Obiang);  1-law office account (Nagler);  1-attorney-client account (Nagler)	2-personal accounts (Obiang);  1-certificate of deposit (Obiang);  2-shell company accounts (Sweetwater Malibu, Sweetwater Management)	1-escrow account (First American)  Wire transfers to UBS London account (Insured Aircraft Title Services Inc.)

Prepared by U.S. Senate Permanent Subcommittee on Investigations, February 2010

Permanent Subcommittee on Investigations  
**EXHIBIT #1a.**



## UBOC Case Report

15-Jun-07

**Case ID:** 2007233872

**Date Opened:** 6/4/2007  
**Date Closed:** 6/15/2007  
**Priority:** Medium  
**Status:** ██████████

**Resolution:**  
**Manager Closed:** No

**Loss Branch ID:** 4072

**Loss Cost Center:**

**Loss Branch Location:** BEVERLY HILLS  
9460 WILSHIRE BLVD.  
BEVERLY HILLS CA

**Legal Entity:** Union Bank of California, NA  
**Category:** 911 Wire Review-High Risk/Terroris  
**SubCategory:**  
**Type:** External

BERGER, M-Wire Review-High Risk/Terroris

██████████  
FIU Vice President I 359  
FIU Vice President: John McCarthy  
Shared Investigator ID:  
Shared Investigator:

**Risk:** \$0.00  
**Prevented:** \$0.00  
**Proc Prevent:** \$0.00  
**Proc Recovery:** \$0.00  
**Inv Risk:** \$0.00  
**Inv Recovery:** \$0.00  
**Net Loss:** \$0.00  
**Settlements:** \$0.00  
**NLAS:** \$0.00  
**BSA Amount:** \$4,960,734.00

### Lost or Stolen Items

**When Lost:**  
**# of Items Lost:** 0  
**Check Numbers Starting:** 0  
**Ending Check Number:** 0  
**Other Missing Items:**

**Address Lost:**  
**PIN With Card:** No  
**PIN Revealed:** No  
**Other Used:** No  
**New Account #**

**Case Closing Notes** Investigation detected suspicious activity related to the appearance of money laundering on behalf of PEP. ██████████

**Executive Summary** Investigation initiated due to internal monitoring alert.

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## UBOC Case Summary

Case ID 2007233872

15-Jun-07

BERGER,M-Wire Review-High Risk/Terroris

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Investigator John McCarthy

Case Summary  
UBOC 2007233872  
BERGER, Michael

— = Redacted by the Permanent  
Subcommittee on Investigations

### Introduction:

This investigation, Michael Berger, case #2007233872, was the result of a Union Bank of California (UBOC) internal monitoring system alert that detailed wire transfers greater than \$50,000 from a high risk jurisdiction. A review was conducted of credit and debit items in the client's accounts for the period of 08/01/06 to 06/11/07. The investigation found the use of multiple corporate vehicles by Michael Berger, the lawyer of a Politically Exposed Person (PEP), to disguise the identity of the PEP as well as layer and integrate funds derived via international wire transactions from a high risk jurisdiction, which had the appearance of money laundering activity. [REDACTED]

### Details of Investigations:

Michael Berger, an active California attorney, has maintained a relationship with UBOC since October 2006 by means of an Lawyer's Trust (IOLTA) Checking account, [REDACTED], a Basic Business Checking account, # [REDACTED], and a personal Regular Checking account, # [REDACTED]. All accounts were opened at the Beverly Hills UBOC branch, #072, located at 9460 Wilshire Boulevard, Beverly Hills, California 90212-2732 in October 2006. Account # [REDACTED] and # [REDACTED] were DBA accounts for the Law Office of Michael Jay Berger with the client listed as the sole authorized signer. Account # [REDACTED] listed the client as the sole authorized signer.

Ultimate Horizon, Inc. has maintained a relationship with UBOC since August 2006 by means of two Basic Business Checking accounts, [REDACTED] and # [REDACTED], opened at the Beverly Hills UBOC branch in August 2006. The accounts were held by Ultimate Horizon, Inc. with Michael Berger as the sole authorized signer on the account.

Additional checks of available UBOC systems failed to identify any associated accounts related to the client or his businesses.

This investigation was initiated as the result of a UBOC internal monitoring system alert that detected wire transfers greater than \$100,000 from a high risk jurisdiction. Specifically, the alert detailed two \$199,930 wire credits to account # [REDACTED] from CCEI Bank GE in Equatorial Guinea by order of Teodoro Nguema Obiang, a PEP, on 01/03/07 and 01/30/07.

[REDACTED]

## UBOC Case Summary Continuation

Case ID 2007233872

15-Jun-07

BERGER, M-Wire Review-High Risk/Terroris

The investigation examined all items in the listed business and personal deposit accounts for the period of 08/01/06 to 06/11/07. Several problematic areas were detected in the client's business account activity which will be detailed below. Specifically, the client (1) received multiple wire transactions from Teodoro Nguema Obiang and his company in Equatorial Guinea (EG), Somagui Forestal, (2) processed 3<sup>rd</sup> party checks payable to Teodoro Nguema Obiang through his IOLTA account in order to conceal the identity of the listed payee, and (3) operated a front corporation, Ultimate Horizon, Inc., to facilitate the fund movement of the received wire transactions to a California LLC, Sweetwater Malibu LLC, in order to layer and integrate funds which originated in a high-risk jurisdiction. The ultimate benefactor of the transactions was Teodoro Nguema Obiang with the funds being utilized to pay for his estate and living expenses in the United States.

Teodoro Nguema Obiang, a recognized PEP, is the eldest son of EG President Obiang Nguema Mbasogo and the alleged successor to the presidency of the country. He is the EG Minister of State for Forestry, Fishing, and the Environment and owns two companies in EG, Grupo Sofana and Somagui Forestal, which have a monopoly in the country's timber industry, as well as the country's only private radio and TV stations. Information derived from World Check indicated Obiang was sentenced twice for narcotics trafficking in France in the 1990s and alleges he diverted government funds to accounts in the United States and Switzerland for personal benefit. Information derived from a 2004 U.S. Senate Permanent Subcommittee on Investigations report, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank*, indicated the régime of President Obiang, which specifically included his son, Teodoro, was involved in large scale money laundering and public corruption, as detailed in the Riggs Bank case study. In February 2006, two luxury homes owned by Teodoro Nguema Obiang valued at \$7 million (USD) were seized by South African authorities to secure payment in a case involving a South African bribery and corruption case against the EG government. During the proceedings of the South African case in November 2006, Obiang testified that "it was normal for members of the [EG] government to become partners in foreign companies in public tenders and, in return, to receive a percentage of the contract awarded."

In February 2006, internet research indicated Obiang purchased a Malibu estate which was listed for sale at \$35 million. The exact sales price was not released and unable to be determined during this investigation, however it was noted that there was no mortgage listed for the property. The purchaser of the property was Sweetwater Malibu which listed Obiang as the sole manager for the company.

The UBOC accounts held by Michael Berger and Ultimate Horizon, Inc. have the appearance of being opened and utilized for the transfer, layering, integration, and ultimate use of Teodoro Nguema Obiang's funds from EG. All accounts have the appearance of being used predominantly for the benefit of Obiang, with corporate vehicles established to mask this fact.

The investigation determined that in July 2006, as noted in the memo section of check #1153 from account # [REDACTED], Teodoro Nguema Obiang agreed to retain the client, Michael Berger, at a rate of \$5,000 per month for unspecified services. On 08/28/06, Michael Berger established non-managed UBOC accounts, # [REDACTED] and # [REDACTED] in the name of Unlimited Horizon, Inc. at the Beverly Hills UBOC branch. On 10/16/06, Berger DBA Law Office of Michael Jay Berger established non-managed UBOC accounts, # [REDACTED] #0 [REDACTED] and #0 [REDACTED] at the Beverly Hills UBOC branch. These accounts included a lawyer's trust account (IOLTA), [REDACTED]

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

## UBOC Case Summary Continuation

Case ID 2007233872

15-Jun-07

BERGER, M-Wire Review-High Risk/Terroris

Once these accounts were established, the client began to receive wire credits from Equatorial Guinea (EG). Between 11/24/06 and 06/06/07, the client received eight wires in amounts just under \$200,000 each from EG. The originator on the wires was Teodoro Nguema Obiang, Somagui Forestal or Somagui. The originating banks for the wires were Fortis Banque France, Puteaux, France; CCEI Bank GE, Malabo, EG; and Natixis, Paris, France. Although all the funds did not originate from high-risk jurisdictions, all of the wire transfers were originated from Obiang, a known PEP involved in past and current cases involving money laundering, political corruption, bribery, and narcotics trafficking, or one of his known companies. Therefore, these wire credits were deemed suspicious in nature. The aggregate total of all suspicious wire transactions received from Obiang in the client's IOLTA was \$1,599,419. Additionally, on 06/01/07, the client deposited a \$153,101 cashier's check from Comerica Bank payable to Teodoro Nguema Obiang into the IOLTA account. The memo section of the cashier's check noted "To Close Acct. [REDACTED]." For the same reason as indicated with the wire credits, this deposit was also considered suspicious in nature. The aggregate total of all suspicious credits to the client's IOLTA account was \$1,752,520.

Once the wire credits were received in the client's IOLTA account, the client would write checks payable to his company, Unlimited Horizon, Inc., for roughly the same amount of each wire credit. Between 11/29/06 and 05/11/07, the client wrote seven checks totaling \$1,399,485 to Unlimited Horizon, Inc. Additionally, the client sent a \$152,370 wire to Guernsey's Auction House in New York City on 06/08/07. Although this investigation was unable to specifically identify the source or purpose of the transaction, the wire transaction to Guernsey's was made seven days after the deposit of the \$153,101 Comerica cashier's check and two days after the receipt of the 06/06/07 \$199,906 wire from Obiang. This wire transaction was deemed suspicious in nature due to the fact that criminal elements often purchase high-value goods, such as art pieces and precious metals, items exclusively handled by auction houses, in order to further obscure the origin of illegal funds. Therefore, the total debits from the client's IOLTA account which were deemed suspicious in nature totaled \$1,551,855.

The investigation determined that once the funds were deposited from the client's IOLTA account into account # [REDACTED], the client utilized the funds in order to support the activities of a third corporate entity, Sweetwater Malibu LLC. Sweetwater Malibu LLC, whose managing member was listed as Teodoro Nguema Obiang, was listed as a realty management company by LexisNexis; however, a review of all debits made by Ultimate Horizon, Inc. showed that Sweetwater Malibu was merely a vehicle to fund the personal activities and estate of Teodoro Nguema Obiang. In examining all items related to the accounts of Ultimate Horizon, Inc. since the account was opened, this investigation found no legitimate business purpose for the Ultimate Horizon, Inc. other than to fund the activities of Sweetwater/Obiang and obscure the source of funds used to support Obiang's affluent lifestyle at his estimated \$35 million estate located at 3620 Sweetwater Mesa Road, Malibu, California 90265-4939. Examples of debits examined in the Ultimate Horizon, Inc. account, [REDACTED] include roughly \$54,000 per month for a personal security detail from Saurman Investigative Services, more than \$10,000 per month in electricity bills, the payroll expenses of staff at Obiang's estate, and Department of Motor Vehicle registration renewals for a Rolls Royce limousine, Ferraris, and a Bentley. Information obtained from internet research indicated the Obiang's monthly Minister of Forestry salary was only \$5,000. Since the client was deemed to be utilizing his UBOC accounts to (1) operate a shell company in order to obscure the true origin of funds derived from questionable sources and (2) utilized those deposits in Ultimate Horizon accounts to fund the activities of another corporate vehicle to further obscure the nature of transactions, all debits paid from the Ultimate Horizon, Inc. accounts, # [REDACTED] and [REDACTED], were deemed suspicious in nature. The total of these suspicious transactions was \$1,656,359.

The aggregate total of all suspicious activity detected during this investigation was \$4,960,734. This suspicious activity consisted of the use of multiple corporate vehicles by Michael Berger, the lawyer of Politically Exposed Person (PEP) Teodoro Nguema Obiang, in order to disguise the identity of the his client as well as to place, layer, and integrate Obiang's funds derived via international wire transactions from Equatorial Guinea, a high risk jurisdiction. Therefore, the detailed actions had the appearance of money laundering activity conducted by a UBOC client on behalf of Obiang.

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

## UBOC Case Summary Continuation

Case ID 2007233872

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BERGER,M-Wire Review-High Risk/Terroris

No Cash Transaction Reports (CTRs) were detected based on the client's tax identification numbers or account numbers. A check of the UBOC Retail KYC system did not detect a current KYC profile for the client or his businesses.

No additional suspicious activity was detected in any of the examined accounts which would indicate a violation of the Bank Secrecy Act (BSA) or other criminal statutes.

LexisNexis, civil court and criminal history, public records and World Check searches were conducted on Michael Berger, Teodoro Nguema Obiang, Ultimate Horizon, Inc., Sweetwater Malibu LLC, and other individuals identified during the investigation. Information derived from LexisNexis indicated Michael Berger had multiple past personal civil judgments and active tax liens. Information obtained from internet research also indicated Michael Berger had his law license suspended by the California State Bar in 1997 for a fraud scheme involving one of his clients. Furthermore, in 2004 Michael Berger represented Teodoro Nguema Obiang in a Federal Civil matter where Obiang sued City National Bank for closing his bank account for suspicious transactions and releasing those deposits to the District Attorney for New York County. The case was remanded to a California State court, where no additional information was available on the matter. A synopsis of information obtained regarding the activities of Teodoro Nguema Obiang was detailed in previous paragraphs, however LexisNexis indicated that Obiang had a Social Security Number (SSN) linked to another subject, identified as [REDACTED]. Given Obiang's status as a government minister of a foreign country, it was deemed highly unlikely that he would hold a valid Social Security Number. No additional negative information pertaining to this investigation was revealed in the queries.

### Subjects:

Michael Jay Berger  
DBA Law Office of Michael Jay Berger  
7566 Mulholland Drive  
Los Angeles, CA 90046-1239  
SSN: [REDACTED]  
DOB: [REDACTED]  
CADL: [REDACTED]

[REDACTED] = Redacted by the Permanent  
Subcommittee on Investigations

Teodoro Nguema Obiang  
3620 Sweetwater Mesa Road  
Malibu, CA 90265-4939  
SSN: [REDACTED]  
DOB: [REDACTED]  
CADL: UNKNOWN

\*\* - INFORMATION OBTAINED FROM LEXISNEXIS

Unlimited Horizon, Inc.  
9454 Wilshire Boulevard, Suite 625  
Beverly Hills, CA 90212-2900  
EIN: [REDACTED]

Sweetwater Malibu LLC  
468 North Camden Drive #200  
Beverly Hills, CA 90210-4507  
EIN: UNKNOWN

\*\* - INFORMATION OBTAINED FROM LEXISNEXIS

### Conclusion:

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## UBOC Case Summary Continuation

Case ID 2007233872

15-Jun-07

BERGER,M-Wire Review-High Risk/Terroris

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This investigation, Michael Berger, case #2007233872, determined that during the review period of 08/01/06 to 06/11/07, the client conducted suspicious activity consistent with the appearance of money laundering activity on behalf of a PEP, identified as Teodoro Nguema Obiang. [REDACTED]

### Items in Case File:

- Statements
- Selected Credit Items
- Selected Debit Items
- Signature Cards
- Wire Reports
- LexisNexis Person Reports
- LexisNexis Business Reports
- World Check Summaries
- Internet Research
- Internal Email Communications
- Account Analysis Worksheets
- Miscellaneous Documents



U.S. Department of Justice

Criminal Division

MEW:SCR:PJR  
152-21497

Washington, D.C. 20535

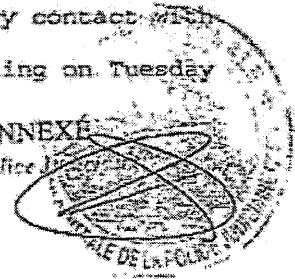
September 4, 2007

TO: The Central Authority of France

SUBJECT: Request for Assistance in the Investigation of Teodoro Nguema OBIANG and his associates

The Central Authority of the United States requests the assistance of the appropriate authorities in France pursuant to the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT). The Fraud Section and Asset Forfeiture and Money Laundering Section of the Criminal Division of the Department of Justice and Immigration and Customs Enforcement (ICE) are investigating suspected criminal conduct of Teodoro Nguema OBIANG and his associates involving the illicit transfer and laundering of assets believed to be derived from extortion, bribery and/or the misappropriation, theft, or embezzlement of public funds. Teodoro Nguema OBIANG is the Minister of Agriculture and Forestry of Equatorial Guinea and is the son of Teodoro Nguema OBIANG MBASOGO, the president of Equatorial Guinea. As set forth below, the prosecutors request an urgent September meeting with the Paris High Court Public Prosecutor and the Office Central Pour La Répression de la Grande Délinquance Financière (OCRGDF) for the purposes of sharing information. ICE officials made preliminary contact with both of these offices and tentatively agreed on a meeting on Tuesday

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Permanent Subcommittee on Investigations  
EXHIBIT #41



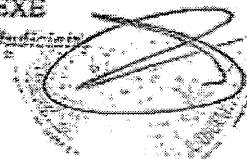
September 18th, 2007 at 09:30 a.m., pending formal approval of this request by the Ministry of Justice. We understand that among the pertinent French investigators are Jean-Michel Aldebert, Vice Procureur de la République de Paris, and Chief Superintendent Christophe Pérez-Beguey of the OCEMDF, who are handling an investigation of President OBIANG MBASOGO.

REQUEST FOR CONFIDENTIALITY

Because of the sensitive nature of this investigation involving senior foreign public officials and because criminal charges have not yet been filed, we ask that the subject of this request and the existence of a U.S. investigation on this subject be kept strictly confidential in accordance with the Mutual Legal Assistance Treaty between the United States and France and French law.

THE FACTS

As a result of an expansion in oil exploration and development beginning in the 1990's, Equatorial Guinea has become the third largest producer of oil in Sub-Saharan Africa, with estimated revenues of \$3.3 Billion in 2006. Although hydrocarbons account for the vast majority of exports from Equatorial Guinea, timber production accounts for approximately 2% of export earnings and is the second major export commodity. Teodoro Nguema OBIANG MBASOGO has held the position of President of Equatorial Guinea since 1979, after leading a successful coup d'etat against the autocratic government of his uncle. His relatives have held prominent government office during his presidency, including his son Teodoro Nguema OBIANG who occupies the post of





Ministry of Agriculture and Forestry,

1. Investigations of Teodoro Nguema OBIANG and associates

The conduct of the Teodoro Nguema OBIANG MBASOGO family, including Teodoro Nguema OBIANG, has been the subject of various U.S. government inquiries for several years. In 2004, the U.S. Senate published the results of the investigation of one of its subcommittees into the activities of Riggs Bank in Washington, D.C. The Senate subcommittee determined that, from 1995 until 2004, Riggs Bank administered more than 60 accounts and certificates of deposit for the Government of Equatorial Guinea (GOEG), its officials, or their family members. In 2003, these accounts represented the largest relationship at Riggs Bank, with aggregate deposits ranging from \$400 to \$700 million at a time. Among other findings, the Senate investigation revealed that Riggs Bank opened an account for the GOEG to receive funds from oil companies doing business in Equatorial Guinea, allowing only two signatures on the account: those of President OBIANG MBASOGO and his son Gabriel Nguema OBIANG. Three other Riggs Bank accounts belonged to Teodoro Nguema OBIANG, two of which were in the name of his California entertainment company, TNO Entertainment LLC, and the third of which was opened for a Bahamian off-shore corporation named Awake Ltd. According to the Senate subcommittee, Riggs Bank helped establish offshore corporations, including Awake Ltd., for the benefit of President OBIANG MBASOGO and his sons.

The Senate investigation determined that Riggs Bank served

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accounts of the GOBS, its officials and family members paying little or no attention to the bank's anti-money laundering obligations or to evidence suggesting the bank was handling the proceeds of foreign corruption. The Senate concluded that Riggs Bank had allowed numerous suspicious transactions to take place without meeting its suspicious activity reporting obligations.

The matter was then pursued criminally by the United States Attorney's Office for the District of Columbia, the Department of Justice, Criminal Division, the Federal Bureau of Investigation, the Secret Service, and the Internal Revenue Service. That investigation ultimately led to the plea and conviction of Riggs Bank on criminal violations of U.S. banking laws and a \$ 16 million fine in January 2005. It also resulted in the plea by a Riggs Bank vice president and his wife to conspiracy, bank fraud, and money laundering. No members of the OBIANG MBASOGO family were charged at the time. The Riggs bank accounts were closed as a result of this investigation, and the roughly \$700 million were wired elsewhere.

Since the time of those closures, evidence indicates that Teodoro Nguema OBIANG has engaged in transactions consistent with foreign official corruption. As Minister of Agriculture and Forestry, Teodoro Nguema OBIANG is paid an annual salary of \$60,000. However, from April 2005 through 2008, at least \$73 million was wire transferred to the United States on behalf of Teodoro Nguema OBIANG. These funds were utilized to purchase a luxury home in Malibu, California valued at approximately \$35 million and a luxury jet bought for approximately

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L'Officier de Police judiciaire

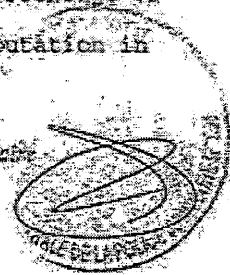


\$33.2 million. The home in Malibu was purchased in the name of a shell corporation, Sweetwater Management, Inc., of which Teodoro Nguema OBIANG is listed as president. Similarly, Teodoro Nguema OBIANG purchased the aircraft using another shell corporation, Ebony Spine International, Ltd., that was registered in the British Virgin Islands.

Additional information available to the investigation suggests a possible illicit origin of assets under the control of Teodoro Nguema OBIANG. First, sources have informed investigators that Teodoro Nguema OBIANG, in his official capacity, has instituted a large "revolutionary tax" on timber, but insisted that the payments be made directly to him, either in cash or through checks to SONAGUI FORESTAL, a forestry company owned by Teodoro Nguema OBIANG. Second, in August 2005, Teodoro Nguema OBIANG filed an affidavit with the High Court of South Africa in a civil matter regarding whether funds held by Teodoro Nguema OBIANG belonged to the Equatorial Guinea government, a contention Teodoro Nguema OBIANG contested. In his affidavit, Teodoro Nguema OBIANG admitted that cabinet ministers in Equatorial Guinea form private companies which act in consortia with foreign companies when obtaining government contracts and, as a consequence, "a cabinet minister ends up with a sizeable part of the contract price in his bank account." Although Teodoro Nguema OBIANG has claimed that this practice was legal, the assertion also suggests that he may be receiving bribes or extortion payments in the form of a percentage of contract revenue. Moreover, given Equatorial Guinea's reputation in

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the international community, the enormous natural resource wealth of the country, and the dominance of the OBIANG MBASSOGO family over the government and economy in Equatorial Guinea, it is suspected that a large portion of Teodoro Nguema OBIANG's assets have originated from extortion, theft of public funds, or other corrupt conduct.

1. Transactions Involving the French Financial System

The U.S. investigation of the activities of Teodoro Nguema OBIANG and his associates have identified numerous suspicious transactions originating from or transiting the French financial system. These transactions include:

In April 2005, Teodoro Nguema OBIANG was the originator on at least five separate wire transfers, each in the amount of \$3,928,400, from Societe Generale de Banque en Guinee Equatoriale to Banque de France, account # 2000193528235, to a correspondent account at Wachovia Corporation Atlantic to account # 2000055333 at First American Trust FSB in the name of First American Title. As a result of these transactions, Teodoro Nguema OBIANG was able to transfer at least \$29,543,000 to the United States in a single month. Some of these funds are believed to have been used to purchase the mansion in Malibu, California.

In April 2005, Teodoro Nguema OBIANG was the originator on three wire transfers from Societe Generale de Banque en Guinee Equatoriale to Banque de France, accounts # 2000193528235 and 0000061000012, to a correspondent account at Wachovia Atlantic to account # 071601552059 at Bank of America in the name of McKee & Taft. These transactions

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L'Officier de Police Judiciaire



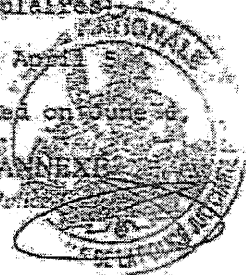
resulted in Teodoro Nguema OBIANG's successful transfer of \$10,300,000 to the United States.

From May 9, 2006 to June 19, 2006, six wire transfers were executed from Banque de France, account # 0960051000012, through a correspondent bank Wachovia Atlantic to account # 322998 at UBS Bank in New York in the name of Insured Aircraft Title Service Correspondent. Through these transactions, Teodoro Nguema OBIANG and his associates successfully transferred \$33,799,999.99 to the United States. Much of these funds were used to purchase a \$13.8 million luxury jet.

The suspected money laundering continued from November 2006 through June 2007 through the use of an intermediary. Specifically, Teodoro Nguema OBIANG's attorney in the United States, Michael Jay BERGER, received several wire transfers from Teodoro Nguema OBIANG. Current evidence suggests that these wires originated from account # 00142851001 86 for SONAGUI FORESTAL, an E.G. company owned exclusively by Teodoro Nguema OBIANG, at OCRI Bank in Equatorial Guinea. It appears that the funds would then pass through one of two French banks, and arrive in BERGER'S attorney/client trust account # 0720-119581 at Union Bank of California.

Specifically, two wire transfers passed through Fortis Banque France, 29-38 Quai De Dion Bouton, Putaux, France on November 24, 2006 and May 10, 2007, both for \$199,943. Additionally, two wire transfers passed through Natixis (Ex Natexis Banques Populaires) Charenton-Le-Pont, Paris, France. The first occurred on April 5, 2007, in the amount of \$199,906.21 and the second occurred on June 14,

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2007, in the amount of \$159,306.10.

The investigation also has obtained information that suggests that Teodoro Nguema OBIANG owns several real estate properties in Paris. In addition, in 2006, Teodoro Nguema OBIANG executed wire transfers from the United States to France for the purpose of purchasing a Bugatti automobile valued at over \$1 million for export to the United States.

#### THE OFFENSES

##### 18 U.S.C. § 1957- Money Laundering

(a) Whoever . . . knowingly engages or attempts to engage in a monetary transaction in originally derived property of a value greater than \$10,000 and is derived from specified unlawful activity, shall be punished [with] . . . imprisonment for not more than ten years . . .

##### 18 U.S.C. § 1956 - Money Laundering

(c) (7) [The term "specified unlawful activity" means --

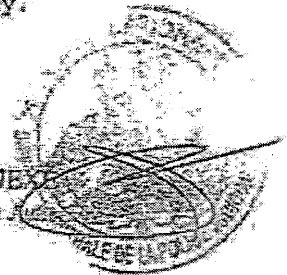
(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving --

(ii) . . . extortion . . .

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official . . .

(h) Any person who conspires to commit any offense defined in this section or section 1957 shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.

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Teodoro Nguema OBIANG and his associates violated 18 U.S.C. § 1957 if they wired more than \$10,000 to the United States that was derived from extortion, bribery or misappropriation, theft, or embezzlement of public funds. Teodoro Nguema OBIANG and his associates violated 18 U.S.C. § 1956(k) if they engaged in a conspiracy to violate 18 U.S.C. § 1957. Pursuant to 18 U.S.C. §§ 981 and 982, property involved in a money laundering transaction in violation of 18 U.S.C. §§ 1956 or 1957 or property that is traceable to proceeds of an offense constituting specified unlawful activity or a conspiracy to commit such an offense is subject to forfeiture to the United States. The investigation is continuing to determine whether evidence indicates the violation of other United States criminal laws.

SUBJECTS OF THE PROSECUTION / TARGETS OF THE INVESTIGATION  
TARGETS OF THE INVESTIGATION

Persons and Entities Involved

1. Teodoro Nguema OBIANG

Aliases:	Teodoro NGUEMA Teodoro OBIANG Theodoro OBIANG
Date of Birth:	June 26, 1969
Place of Birth:	Equatorial Guinea
Citizenship:	Equatorial Guinea
Race:	Black
Sex:	Male

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L'Officier de Police

Passport Number: (Equatorial Guinea) 14503D

(Diplomatic)

Social Security number: [REDACTED]

Addresses: 3620 Sweetwater Mesa Road  
Malibu, California

2. Michael Jay BERGER

Date of Birth: March 28, 1957

Place of Birth: Savannah, Georgia

Citizenship: United States

Race: White

Sex: Male

Height: 6 Feet

Weight: unknown

Eyes: Hazel

Hair: Brown

Passport Number: [REDACTED]

Social Security number: [REDACTED]

Addresses: 7566 Mulholland Drive  
Malibu, California

9454 Wilshire Blvd.  
Beverly Hills, California

BERGER is Teodoro Nguema OBIANG's personal attorney and serves as an intermediary for funds wired from Equatorial Guinea.

3. SOMAGUI FORESTAL

Also Known As: SOMAGUI

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Place of Incorporation: Bata, Equatorial Guinea

Address: Unknown

SENGUI FORSTAL is a forestry company beneficially owned by Teodoro Aguana OBIANG, from which large money transfers to the United States have originated.

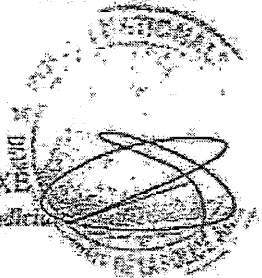
ASSISTANCE REQUESTED

1. The prosecutors request an urgent meeting in September concerning related French investigations with the Paris High Court Public Prosecutor and the Office Central Pour La Répression de la Grande Délinquance Financière (OCGRDF) for the purposes of sharing information. ICE officials made preliminary contact with both of these offices and tentatively agreed on a meeting on Tuesday September 18th, 2007, pending formal approval of this request by the Ministry of Justice. We understand that among the pertinent French investigators are Jean-Michel Aldebert, Vice Procureur de la République de Paris, and Chief Superintendent Christophe Perez-Baquey of the OCGRDF.

2. The prosecutors further request that during the meetings the French authorities provide access to the French investigative files so that information and evidence may be identified and provided to the U.S. authorities in furtherance of the U.S. investigation.

NEED FOR ASSISTANCE

The prosecutors suspect that most, if not all, of Teodoro Aguana OBIANG's assets are derived from extortion, bribery or the misappropriation of public funds. Based upon the wire transfer



information available to the U.S. investigation, if these transfers represent illegal activity in the United States, there is a strong possibility that related conduct may also have violated French criminal law. Accordingly, the prosecutors request the meeting in order to share information and evidence concerning the movement of funds, acquisition of assets, including real property, and the origin of funds involved in the investigations of the activities of Teodoro Nguema OBIANG MBASOGO. Coordination between U.S. and French authorities in September will benefit the ability of prosecutors in both countries to determine whether criminal charges should be instituted against Teodoro Nguema OBIANG and his associates for violations of the respective criminal laws that they enforce.

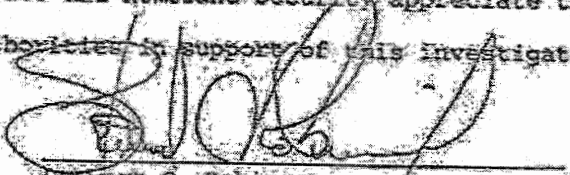
URGENCY OF THE REQUEST

In light of the tentative meeting scheduled for Tuesday, September 18th, 2007 at 09:30 a.m., the Departments of Justice and Homeland Security seek expedited treatment of this request.

CONCLUSION

The Departments of Justice and Homeland Security appreciate the assistance of the French authorities in support of this investigation.

September 4, 2007  
Date

  
Stewart C. Robinson  
Deputy Director  
Office of International Affairs  
Criminal Division

CERTIFICATE OF TRANSLATION


I, P. Winthrop Merriam, certify that I am competent to translate this document, and that the translation is true and accurate, to the best of my abilities.

English Title: Request for Assistance in the Investigation of Teodoro Nguema OBIANG and his associates. 4 September 2007.

French Title: Demande d'assistance dans l'enquête sur Teodoro Nguema OBIANG et ses associés. Le 4 septembre 2007.


I certify, under penalty of perjury, pursuant to 28 U.S.C. §1746, that the attached translation is true and correct.

Executed this 7<sup>th</sup> day  
of September 2007.

  
P. Winthrop Merriam  
Certified Translator for the French Language

ANTIQUARIAT LITERARY SERVICES, Inc.  
Member of the American Translators Association and the  
National Association of Judiciary Interpreters and  
Translators

VU ET ANNEXÉ  
L'Officier de Police Judiciaire





# U.S. Immigration and Customs Enforcement

Département de la sécurité intérieure des Etats-Unis (DHS)  
Service de l'immigration et des douanes (ICE)

Special Agent in Charge  
Miami, Florida

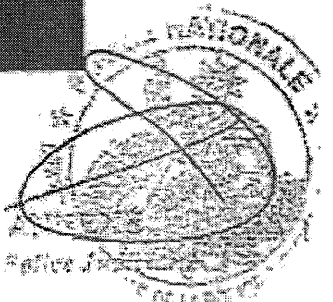
Bureau de l'ICE à Miami, Floride

Teodoro Nguema OBIANG, et al



U.S. Immigration  
and Customs  
Enforcement

Permanent Subcommittee on Investigations  
**EXHIBIT #42**



# Teodoro Nguema OBIANG, et al

## Overview / Sommaire

- Riggs Bank Case / L'Affaire de la banque Riggs (2004)
- Teodoro OBIANG
- Investigative Goals and Strategies / Objectifs et stratégies de l'enquête
- Summary and questions / Sommaire et questions



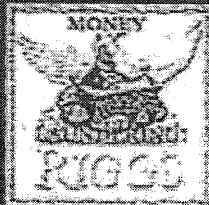
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## 2004 Riggs Bank Case / L'Affaire de la banque Riggs 2004

### Riggs Bank – Equatorial Guinea Funds – Summary

La banque Riggs – Les fonds de la Guinée Equatoriale – Sommaire



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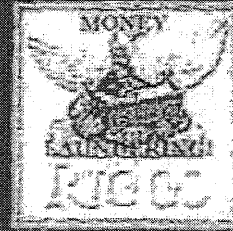
## 2004 Riggs Bank Case / L'Affaire de la banque Riggs 2004

- Riggs Bank pled guilty in 2005 and sentenced to pay \$18 million for violating the BSA involving transactions dealing with Chilean dictator Augusto Pinochet and the government of Equatorial Guinea.

En 2005 la banque Riggs a plaidé coupable et a été condamnée à payer \$18 millions pour avoir enfreint l'acte de secret bancaire (BSA) dans des transactions impliquant le dictateur Chilien Augusto Pinochet et le gouvernement de la Guinée Equatoriale.

- Riggs Bank VP and his wife were arrested in 2005 for embezzling funds from the Equatorial Guinea and other Riggs Bank accounts.

Le Vice-président de la banque Riggs et sa femme ont été arrêtés en 2005 pour détournement de fonds de la Guinée Equatoriale et d'autres comptes de la Banque Riggs.



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## 2004 Riggs Bank Case / L'Affaire de la banque Riggs 2004

### Riggs Bank – Equatorial Guinea Funds

#### La banque Riggs – Les fonds de la Guinée Equatoriale

- From 1995-2004, Riggs Bank of Washington D.C. administered more than 60 accounts and certificates of deposit for the government of Equatorial Guinea.

De 1995-2004, la banque Riggs de Washington, DC a géré plus de 60 comptes et certificats de dépôts pour le gouvernement de la Guinée Equatoriale.

- By 2003, the Equatorial Guinea accounts had become Riggs' largest relationship, with balances and outstanding loans totaling nearly \$700 million.

En 2003, les comptes de la Guinée Equatoriale étaient devenus les plus importants chez Riggs, avec des soldes et des prêts échus d'un montant total de presque \$700 millions.



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## 2004 Riggs Bank Case / L'Affaire de la banque Riggs 2004

### Riggs Bank – Equatorial Guinea Funds

#### La banque Riggs – Les fonds de la Guinée Equatoriale

Riggs Bank serviced the accounts with "little or no attention to the bank's anti-money laundering obligation" and "turned a blind eye to evidence that the bank was handling the proceeds of foreign corruption" according to a 2004 United States Senate Subcommittee Investigation into Money Laundering and Foreign Corruption.

La banque Riggs a géré les comptes en prêtant peu ou pas d'attention à ses obligations contre le blanchiment d'argent, ni aux preuves que la banque garda les revenus d'une corruption étrangère (d'après une enquête en 2004 d'un comité du Sénat américain contre le blanchiment d'argent et la corruption étrangère).



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## Equatorial Guinea / La Guinée Equatoriale

**Teodoro Nguema OBIANG**  
aka / alias  
"Teodorin"



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Handwritten scribble and stamp, possibly containing the word "ENVIÉ" and a date.

# Teodoro Nguema OBIANG

aka / alias "Teodorin"

## Biographical / Biographie



- Born June 26, 1959 / Né le 26 juin 1959
- Currently the Minister of Agriculture and Forestry of Equatorial Guinea, with an annual salary of \$60,000. Est. actuellement Ministre de l'Agriculture et des forêts de la Guinée Equatoriale, avec un salaire annuel de \$60,000
- Son of the Equatorial Guinean President Teodoro Obiang MBASOGO, and may succeed father as President. Est le fils du Président de la Guinée Equatoriale, Teodoro Obiang MBASOGO, et pourrait succéder à son père en tant que président.
- Assets in France, South Africa, and the United States / Biens en France, Afrique du Sud et les États-Unis
- Recreational drug user (3-4 day binges with friends)  
Utilisateur de drogues dures (fêtes de 3 ou 4 jours avec des amis)
- Travels frequently to the United States as an "A-1" diplomat, although he is seldom on official business. The U.S. State Department states that OBIANG is currently *not* accredited as a diplomat to either the United Nations or one of the foreign missions with representation in Washington D.C.  
Voyage fréquemment aux États-Unis en tant que diplomate "A-1", mais c'est rarement pour des raisons professionnelles. Le Département d'état américain dit qu'OBIANG n'est pas actuellement accrédité en tant que diplomate, ni aux Nations Unies, ni à une des missions étrangères avec des représentations à Washington D.C.



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# Teodoro Nguema OBIANG

aka / alias "Teodorin"

## Activities / Activités

- Suspected of using oil revenues from his country to pay for "lavish" lifestyle  
Est soupçonné d'utiliser ses bénéfices pétrolières pour se payer son style de vie somptueux
- Routinely travels to the United States with over \$1 million in cash, and fails to declare, in violation of CMIR . (Violation of 31 USC 5316)  
Voyage régulièrement aux Etats-Unis avec plus de \$1 million en liquide et ne les déclare pas, en infraction à la loi 31 USC 5316 (déclaration d'importation et d'exportation de devises)
- Target of multiple SARs for suspected money laundering from different financial institutions, including Bank of America and Wachovia  
Est l'objet de plusieurs rapports d'activités suspectes pour blanchiment d'argent supposé de différents établissements financiers, dont la Bank of America et Wachovia.
- As a result of his activities, both banks have closed all accounts associated with OBIANG and his associates / En conséquence de ses activités, les deux banques ont fermé tous les comptes associés à OBIANG et ses associés.
- Allegedly receives large wire transfers weekly through a "fictitious" corporate account at Union Bank in California / Il reçoit apparemment des grands transferts monétaires hebdomadaires via un compte d'une société fictif à Union Bank en Californie.



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TEODORIN  
OBIANG

# Teodoro Nguema OBIANG

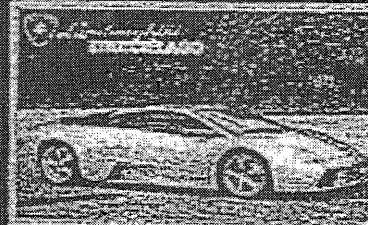
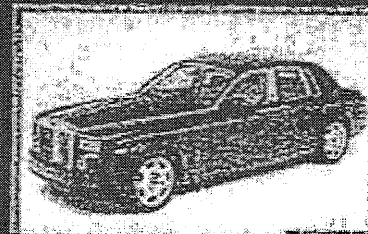
aka / alias "Teodorin"

## South Africa Troubles / Problèmes en Afrique du Sud

OBIANG owns several assets in Cape Town, South Africa, which include:

Oiang possède plusieurs biens à Cape Town, Afrique du Sud, dont:

1. Residence at 35 Klassens Road – estimated value \$3.6 million  
Une résidence au 35 Klassens Road, d'une valeur estimée de \$3.6 million
2. Residence at 76 Fourth Beach – estimated value \$3.2 million  
Une résidence au 76 Fourth Beach, dont la valeur est estimée à \$3.2 million
3. Two Bentley luxury vehicles – estimated value \$970,000  
Deux véhicules Bentley de luxe, dont la valeur est estimée à \$970,000
4. 2005 Lamborghini Murcielago – estimated value (valeur estimée à) \$440,000



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# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

## South Africa Troubles / Problèmes en Afrique du Sud



- Assets were seized as part of a commercial dispute which MASEVE INVESTMENTS is seeking payment for a \$7.8 million contract to build an airport on the island of Annobon, Equatorial Guinea.

Les biens ont été saisis dans le cadre d'une litige commerciale où MASEVE INVESTMENTS cherche le paiement d'un contrat de \$7.8 million pour construire un aéroport sur l'île d'Annobon en Guinée Equatoriale.

- MASEVE contends that OBIANG's assets amount to state property since he is unable to pay for the property on his government salary.

MASEVE dit que les biens d'OBIANG sont la propriété de l'Etat car il ne peut pas payer la propriété avec son salaire gouvernemental.

- Dispute is ongoing in the South African High Court, however in October 2005, OBIANG stated, in an affidavit, that companies in Equatorial Guinea, owned by ministers, often bid for government contracts with foreign groups and, if successful, receive "a percentage of the total contract the company gets", thus accounting for his personal wealth.

La litige continue dans la Haute Cour de l'Afrique du Sud, mais en octobre 2005, OBIANG a dit, dans un affidavit, que les sociétés en Guinée Equatoriale, possédées par des ministres, font souvent des offres pour des contrats gouvernementaux avec des groupes étrangers, et s'ils aboutissent, ils reçoivent un pourcentage du contrat total que la société obtient, ce qui explique sa fortune personnelle.



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# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

## Assets Owned by OBIANG in the United States: Les biens détenus par OBIANG aux Etats-Unis :



Residence at 3620 Sweetwater Mesa Road, Malibu, CA

Une résidence au 3620 Sweetwater Mesa Road, Malibu, California

• Listed price \$35,000,000

Valeur listée \$35,000,000

• Undergoing multi-million dollar renovation

Subit actuellement une rénovation de plusieurs millions de dollars

• Owner listed as SWEETWATER MANAGEMENT, INC.

Le propriétaire indiqué est SWEETWATER MANAGEMENT, INC.

• Forbes Magazine lists property sale as the sixth most expensive home sale in the United States in the year 2008

Selon la revue Forbes, cette vente de propriété a été la 6ème vente de domicile la plus chère aux Etats-Unis en 2008



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# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

Assets Owned by OBIANG in the United States:

Les biens détenus par OBIANG aux Etats-Unis :

Multiple luxury vehicles in storage at Petersen Automobile Museum in Los Angeles, California:

Plusieurs véhicules de luxe gardés au musée de l'automobile Petersen à Los Angeles, California.

- 2 Rolls Royce Phantoms (\$350,000 each / chacun)
- 2 Maybachs (\$350,000 each / chacun)
- 4 Ferraris (\$250,000 each / chacun)
- 1 Bentley Arnage (\$240,000 each / chacun)
- 1 Rolls Royce Park Ward



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# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

Assets Owned by OBIANG in the United States:

Les biens détenus par OBIANG aux Etats-Unis :

## Aircraft / Avion

- Gulfstream V (estimated value / valeur estimée \$35,000,000)

Currently undergoing renovation/customization. / Actuellement sous rénovation

## Watercraft / Bateaux

- 2 Speedboats of unknown value (1 for West Coast residence and 1 for East Coast residence)

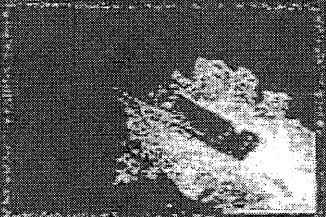
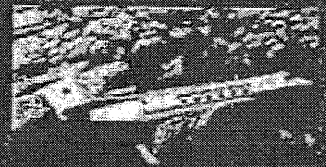
2 vedettes (valeur inconnue) (1 pour la résidence sur la côte ouest et une pour la résidence côte est)

- Information received from two independent sources that OBIANG is building a 200-foot custom luxury yacht, complete with shark tank.

Des renseignements de 2 sources indépendantes indiquent qu'OBIANG est en train de faire construire un yacht de luxe de 60m de long, avec un aquarium pour requins.



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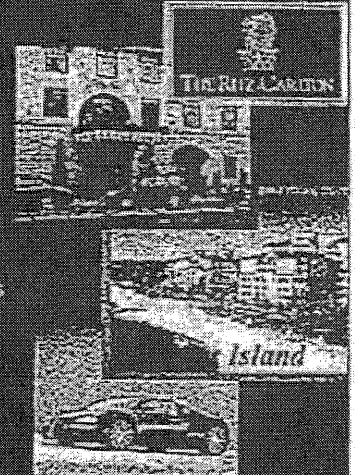
# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

Assets Owned by OBIANG in the United States:  
Les biens détenus par OBIANG aux Etats-Unis :

## Miscellaneous Information / Informations diverses :

- November 2006 attempted to purchase an apartment at Ritz Carlton in New York. Asking price was \$29 million. OBIANG offered \$20 million cash. Unknown if deal went through.  
En novembre 2006 il a essayé d'acheter un appartement au Ritz-Carlton à New York. Le prix demandé était \$29 million. OBIANG a proposé \$20 million en liquide. On ignore si l'affaire est conclue.
- Currently looking to purchase residential property in Miami, in exclusive community on Fisher Island.  
Il cherche actuellement à acheter une propriété résidentielle à Miami, dans une communauté exclusive sur l'île Fisher.
- Wire transferred \$1.5 million to France to purchase a Bugatti exotic automobile, which was to be delivered to Los Angeles at the end of December 2005.  
Transfert de \$1.5 million en France pour l'achat d'un automobile Bugatti exotique, censé être livré à Los Angeles fin décembre 2005.



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# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

## Wire Transfers of / Transferts de \$73 Million

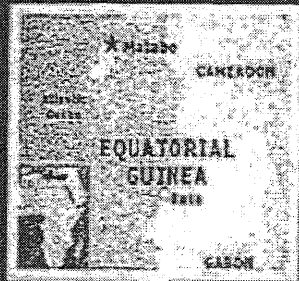
The following 14 wire transfers were sent, from Teodoro Nguema OBIANG, to three beneficiaries, between April 5<sup>th</sup>, 2005, and April 10<sup>th</sup>, 2006 (a period of approx. one year), through Wachovia correspondent bank Banque de France.

Les 14 transferts suivants ont été envoyés, de Teodoro Nguema OBIANG, à 3 bénéficiaires, entre le 5 avril 2005 et le 10 avril 2006 (environ un an), via la banque de correspondance de Wachovia, Banque de France.

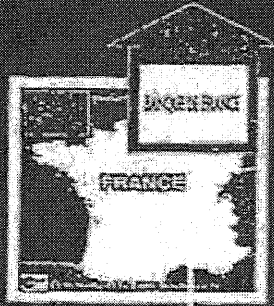


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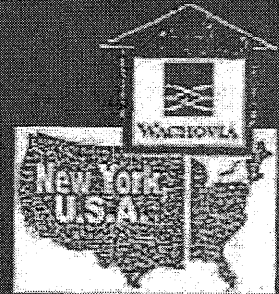
\$73 Million



Account No. /  
N° de compte  
2000193528235



\$73 Million



Correspondent Bank  
Account /  
Compte bancaire du  
Correspondant



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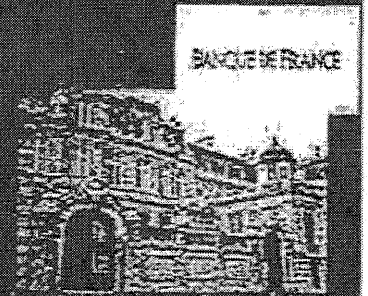
# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

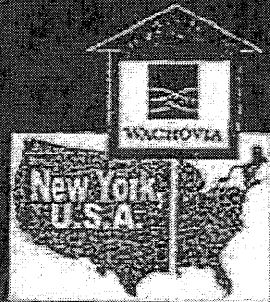
Wire Transfers of / Transferts de  
\$73 Million

- a) 5 totaling \$29,542,000 to FIRST AMERICAN TITLE COMPANY – FIRST AMERICAN TRUST, F.S.B.

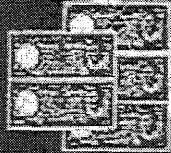
5 pour un total de \$29.542.000 au First American Title Company – First American Trust F.S.B.



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Correspondent  
Bank  
Account/  
Compte bancaire du  
correspondant



(5) Transactions  
Total: \$29,542,000

DATE

AMOUNT / MONTANT

- April 5, 2006 (5 avril 2006) \$5,908,400
- April 10, 2006 (10 avril 2006) \$5,908,400
- April 19, 2006 (19 avril 2006) \$5,908,400
- April 21, 2006 (21 avril 2006) \$5,908,400
- April 26, 2006 (26 avril 2006) \$5,908,400

TOTAL: \$29,542,000



Account No.  
N° de compte  
2000055533



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# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

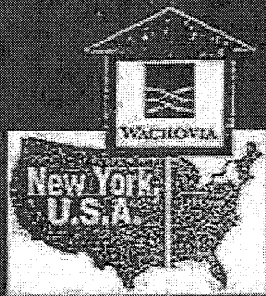
## Wire Transfers of / Transferts de \$73 Million

- b) 6 totaling \$33,799,999.99, to INSURED AIRCRAFT TITLE SERVICE, INC., ATTN SARAH PETERS PRIVATE BANKING, through intermediary banks United Bank of Switzerland in New York and London.

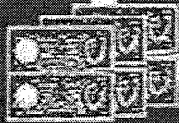
6 pour un total de \$33,799,999,99 au Insured Aircraft Title Service, Inc., ATTN SARAH PETERS PRIVATE BANKING, par les banques intermédiaires United Bank of Switzerland à New York et à Londres.



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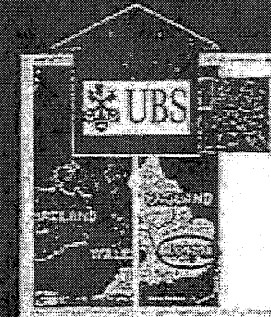
Correspondent Bank Account /  
Compte bancaire du correspondant



(6) Transactions  
Total: \$33,799,999.99



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Account No. /  
N° de compte  
322998



DATE

AMOUNT / MONTANT

- May 9, 2006 (9 mai 2006) \$2,575,000
- May 11, 2006 (11 mai 2006) \$5,150,000
- May 12, 2006 (12 mai 2006) \$2,575,000
- June 13, 2006 (13 juin 2006) \$7,833,333.33
- June 13, 2006 (13 juin 2006) \$7,833,333.33
- June 19, 2006 (19 juin 2006) \$7,833,333.33

TOTAL: \$33,799,999.99

Attention:  
Sarah Peters  
Private Banking

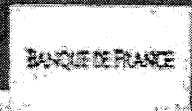
# Teodoro Nguema OBIANG

*aka / alias "Teodorin"*

## Wire Transfers of / Transferts de \$73 Million

c) 3 totaling \$10,300,000 to McAfee & TAFT escrow account.

3 pour un montant total de  
\$10.300.000, sur un compte bloqué  
McAfee & TAFT



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Correspondent Bank Account /  
Compte bancaire du correspondant



(3) Transactions  
Total: \$10,300,000



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DATE

- April 5, 2006 (5 avril 2006)
- April 10, 2006 (10 avril 2006)
- April 10, 2006 (10 avril 2006)

AMOUNT / MONTANT

\$2,575,000  
 \$2,575,000  
 \$5,150,000

TOTAL: \$10,300,000

Escrow Account / Compte bloqué

Account No.  
N° de compte  
071601552059

McAfee & Taft

# Teodoro Nguema OBIANG, et al

## Investigative Goals & Strategies Objectifs et stratégies de l'enquête



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### Investigative Goals Les objectifs de l'enquête

- Investigate and prosecute criminal violators (individual or corporate level) associated with high-level foreign corruption and related money laundering activities, in accordance with the President's 2006 National Strategy Against Kidnapping.  
Enquêter sur et poursuivre en justice les contrevenants criminels (au niveau individuel ou commercial) associés à la corruption étrangère de haut niveau et les activités de blanchiment d'argent associées, conformément à la stratégie nationale de 2006 du Président contre la Kidnapping.
- Identify, trace, freeze, and recover assets within the United States, directly acquired through Kidnapping by Teodoro OBIANG and/or his associates.  
Identifier, tracer, geler et récupérer les biens aux États-Unis, directement acquis par la Kidnapping par Teodoro OBIANG et/ou ses associés.
- Capture and dispose of recovered assets for the benefit of the citizens of Equatorial Guinea.  
Saisir et transférer les biens récupérés pour bénéficier les citoyens de la Guinée Equatoriale.
- Deny safe haven in the United States for Kidnappers, in accordance with Presidential Proclamation 7750.  
Refuser refuge aux États-Unis pour les Kidnappers, conformément à la Proclamation Présidentielle 7750.



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# Teodoro Nguema OBIANG, et al

Questions for French authorities / Questions pour les autorités françaises :

## BACKGROUND / CONTEXTE

- 1) Do you know where OBIANG stays when he is in France?  
Savez-vous où réside OBIANG lorsqu'il est en France?
- 2) Does he have assistants? Drivers?  
A-t-il des assistants? Des chauffeurs?

## NGOs / ONGs

- 1) What do you know about the NGOs that filed the complaint?  
Que savez-vous sur les ONGs qui ont porté plainte?
- 2) Do you have other information that would be helpful to the investigation?  
Avez-vous d'autres informations qui seraient utiles pour notre enquête?



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# Teodoro Nguema OBIANG, et al

Questions for French authorities / Questions pour les autorités françaises :

## ASSETS / BIENS

- 1) What assets have you identified in France belonging to OBIANG?  
Que's biens avez-vous identifié appartenant à OBIANG en France?
- 2) What tools are available to you for determining assets in France?  
Que's outils utilisez-vous pour identifier les biens en France?



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# Teodoro Nguema OBIANG, et al

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Questions for French authorities / Questions pour les autorités françaises :

## BANK ACCOUNTS / COMPTES BANCAIRES

What bank accounts have you identified in France belonging to OBIANG?

Quels comptes bancaires avez-vous identifiés qui appartiennent à OBIANG?

- Do you know about these 5 banks?

- Etes-vous au courant pour ces 5 banques?

- Could you help us understand these bank records? (I.e. where is the money? France? EG?)

- Pourriez-vous nous aider à comprendre ces rapports bancaires? (Ex. où sont les fonds actuellement? En France? En G-E?)

- What is your ability to reach through the French parent bank to get account records for OBIANG?

- Avez-vous la possibilité d'obtenir les rapports bancaires pour OBIANG en passant par la banque mère française?



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# Teodoro Nguema OBIANG, et al

Questions for French authorities / Questions pour les autorités françaises :

## BANK ACCOUNTS / COMPTES BANCAIRES

- What are French laws about banking and secrecy?
- Quelles sont les lois françaises concernant les opérations bancaires et le secret?
- Is there a way to obtain the bank records quietly so that the Obiangs (and no one in EG) knows?
- Existe-il un moyen d'obtenir les rapports bancaires discrètement pour que la famille OBIANG (et personne d'autre en Guinée Equatoriale) ne soit au courant?
- What is your advice about how we proceed?
- Quels conseils pourriez-vous nous donner pour notre enquête?



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# Teodoro Nguema OBIANG, et al

Questions for French authorities / Questions pour les autorités françaises :

## OIL/GAS/FORESTRY BUSINESSES / SOCIÉTÉS PÉTROLIÈRES ET SYLVICOLES

- Are any French companies doing any oil/gas/timber business with EG?
- Des sociétés françaises font-elles des affaires pétrolières/sylvicoles avec la Guinée Equatoriale?
- Are there any allegations of bribery/extortion?
- Est-ce qu'il y a des allégations de corruption/extorsion?

## RIGGS BANK / BANQUE RIGGS

- Are you familiar with the Riggs bank case?
- Connaissez-vous l'affaire de la banque Riggs?
- Does France have similar banking laws?
- La France a-t-elle des lois bancaires semblables?
- If the public funds of the EG are being handled by one or more French banks, is that of interest to French investigators?
- Si les fonds publics de la Guinée Equatoriale sont gérés par une ou plusieurs banques françaises, est-ce que cela intéresserait les enquêteurs français?



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# Teodoro Nguema OBIANG, et al

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Questions for French authorities / Questions pour les autorités françaises :

## LEADS / PISTES

- Are there any leads, potential witnesses, rumors, suspicions or intelligence that might help us?
- Avez-vous des pistes, témoins potentiels, rumeurs, soupçons, ou renseignements qui pourraient nous aider?

## FURTHER ASSISTANCE / AIDE ULTERIEURE

- What are the goals of the French prosecution and how can we help?
- Quels sont les objectifs des procureurs français et comment pouvons-nous vous aider?
- What is the best way for us to seek assistance?
- Quelle est la meilleure façon pour nous de demander votre aide?



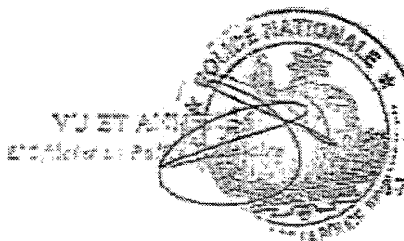
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and Customs  
Enforcement

THE END

RIN



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sums for deposit into CDs.<sup>158</sup> Each of the sons' CDs, in Account Nos. 81-585-919 and 81-585-927, had a value at the end of 2002 of about \$625,000.<sup>159</sup>

(8) **Teodoro Nguema Obiang Accounts.** While the E.G. President's eldest son, Teodoro Nguema Obiang, the E.G. Ministry of Forestry, did not have any personal accounts at Riggs, he was the beneficial owner of three accounts opened in the name of companies he controlled. Two of these accounts were opened in the name of his California entertainment company, TNO Entertainment LLC. The first, Account No. 76-889-555, was opened in 2000 and closed in 2001, and the funds were transferred to Account 76-923-450, which was opened in 2001 and remained open in early 2004.<sup>160</sup> From 2001 to 2003, the second account had balances that fluctuated between about \$17,000 and \$11.6 million.<sup>161</sup> The third account, Account No. 25-380-038, was opened in the name of Awake Ltd., a Bahamian offshore shell company that Riggs helped to establish. This money market account, opened in 2002, saw virtually no account activity.<sup>162</sup>

(9) **Teodoro Biyogo Nsue and Elena Mensa Accounts.** Four accounts and two CDs were opened in the name of Teodoro Biyogo Nsue, the E.G. Ambassador to the United States, or his wife, Elena Mensa, all with modest balances. A savings account, Account No. 25-595-370 was opened in the name of the Ambassador on behalf of his daughter, Candida Nsue, held minor balances, and showed little account activity. His wife also opened a savings account on behalf of their daughter, Account No. 25-460-310. For herself, Ms. Mensa opened a personal checking account, Account No. 25-356-070, and a money market

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<sup>158</sup> Riggs monthly account statements, Bates RNB 000862-915.

<sup>159</sup> 2002 Riggs account statements, Bates RNB 000923 and 926.

<sup>160</sup> See, e.g., Riggs statement of account (12/13/03 - 1/15/04), Bates RNB 002398.

<sup>161</sup> See Riggs account statements, Bates RNB 000489-543.

<sup>162</sup> The Subcommittee also identified two other sets of bank accounts associated with the President's son, opened at JPMorgan Chase and Citigroup. At JPMorgan Chase, four accounts and three CDs were opened in the name of the President's son, including a savings account and three checking accounts which together held about \$75,000 in 2003. All three CDs had matured in 2002, and at that time had an aggregate value of more than \$1.7 million. The saving and checking accounts closed in July 2002. At Citigroup, the Subcommittee identified four accounts that had been opened in the name of the son's company, TNO Entertainment. The earliest of these accounts was opened in 1997, and all four were closed in early 2000. They included a checking account, money market account, Citigold account, and securities investment account. These accounts were apparently dormant at times, but in mid 1999, received deposits in a relatively short period totaling about \$11.8 million. After noting suspicious account activity, Citigroup closed these accounts in 2000. Riggs Bank apparently identified at least one additional set of accounts held by the E.G. President's son at City National Bank of Beverly Hills, California. Riggs internal memorandum by the Security & Investigations Department (12/18/03), Bates OCC 0000528401.

the company. The account documentation indicates that the account has been dormant since its opening, and it is unclear the extent to which Awake Ltd. became an active corporation.<sup>176</sup>

Riggs was aware that the President and his sons also had a number of E.G. companies under their control. These E.G. companies included the following:

(1) **Abayak.** Abayak, S.A. was and perhaps still is the only construction company in Equatorial Guinea, an importer of construction-related goods, and a participant in real estate deals on behalf of the E.G. President and his wife as described later in this Report. According to a Riggs' analysis and other documentation, Abayak is controlled by the E.G. President who is also identified in Riggs KYC documentation as the company's president.<sup>177</sup> Abayak is a participant in several other entities involving foreign individuals or companies. For example, Abayak has a 15 percent interest in a subsidiary of ExxonMobil called Mobil Oil Equatorial Guinea, an E.G. oil distribution business.<sup>178</sup> It also maintains an interest in Nusiteles, described below.

(2) **Grupo Sofana and Somagui Forestal.** According to a Riggs analysis, Grupo Sofana is a forestry company with exclusive rights of exploiting and exporting timber in Equatorial Guinea, and the President's son is the "sole owner" of this company.<sup>179</sup> After oil, timber exports are a leading source of foreign exchange in Equatorial Guinea. According to Riggs, Somagui Forestal is another timber company which is controlled by the President's son and affiliated with Sofana.<sup>180</sup>

(3) **Sonavi.** Sociedad Nacional de Vigilancia (Sonavi) is a company that provides security services within Equatorial Guinea and is controlled by the President's brother who was also, for a time, E.G. Director of National Security. As explained later in this Report, some U.S. oil companies have been told that Sonavi has a monopoly on security services in the country.

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<sup>176</sup> See Riggs account statements for Awake Ltd. (6/11/02 - 12/31/03), Bates RNB 002068-87.

<sup>177</sup> See Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040; Riggs "KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts" for Otong (11/19/02), Bates RNB 000037; Subcommittee interview of Bruce McColm (6/10/04). See also complaint in Foley Hoag LLP v. Republic of Equatorial Guinea, Et al., (U.S. Dist. D.C. 2004), Bates RNB 003359-003367.

<sup>178</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04) at 3.

<sup>179</sup> See Riggs "Credit Approval Memorandum" (7/22/02), Bates RNB 010512, approving a \$3.75 million loan to Teodoro Nguema Obiang, the President's son.

<sup>180</sup> See, e.g., Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, "Equatorial Guinea" (1/20/04), Bates OCC 0000528712-23, at 716; email from Simon Kareri to the OCC (1/5/04), Bates OCC 0000516892 ("Grupo Sofana & Somagui belongs to Teodoro Nguema 100%.").



## CREDIT APPROVAL MEMORANDUM

DATE: 07/22/02

## A. BACKGROUND/RELATIONSHIP SUMMARY:

## 1. Borrower:

Mr. Teodoro Nguema Obiang  
 [REDACTED]  
 Los Angeles, CA.

Mr. Teodoro Nguema Obiang is the first son of the President of the Republic of Equatorial Guinea and is considered the heir to the presidency. While the borrower and his father are senior political figures as defined in the US Patriot Act, we have performed appropriate due diligence on the borrower's income producing businesses to comply with the Act. The borrower was educated in Switzerland and has lived in Europe for many years. Government filings on file indicate that the borrower began exporting hard timber in 1997 and derived over \$26.8 million dollars for the year 1999. Mr. Nguema is also the owner of a small commuter airline in Equatorial Guinea called GEASA. The flights service the country's mainland and the island of Bioko where the capital of Equatorial Guinea, Malabo is located. He is also owner and the Chairman of ASONGA, which is a radio and television company. According to an official letter signed by the accountant of Grupo Sofana in Bata, Equatorial Guinea, Mr. Nguema derives income in excess of \$10 million a year from his business ventures. Banking references for the companies from Societe Generale and CCEI bank have been requested in the past and are on file.

Mr. Nguema has an entertainment company in California (TNO Entertainment) which produces new recording artists. The company has not been generating income yet, however, there are some signed contracts with a few artists and a distribution contract with Time Warner. Since beginning to visit California often, the U.S. government granted Mr. Nguema a non expiring visa and he decided to use his windfall in 1999 from his business ventures to purchase a property in Bel Air for \$6.5 million. Simon Karezi recommended against the purchase due to higher maintenance requirements for a property with many acres in Bel Air, and Mr. Nguema decided to buy nevertheless. He apparently has realized the difficulties of maintaining a property while living overseas and thus decided to purchase an apartment.

Mr. Teodoro Nguema Obiang is the sole owner of a company called Grupo Sofana in Bata, Equatorial Guinea. Grupo Sofana is a forestry company, which has exclusive rights of exploiting and exporting timber in Equatorial Guinea. Forest covers 74% of the country. Forestry is the main source of foreign exchange after oil accounting for about 12.4% of total export earnings in 2000. Most of the production of Okoume (a high quality grade of timber) is exported mainly to Asia and only 3% is processed locally.

According to the financial statements of the Sofana Group shows a total production of 305,124.00 metric tons of timber was exported for total revenue of the 17 billions CFA (USD \$26.1 million) for the fiscal year 1999. For the year 2000 and 2001, the revenues were 16.2 billion CFA (USD \$24.92 million) and 19.7 billion CFA (USD \$30.3 million) respectively.

## 2. Banking Relationship:

The borrower, Mr. Teodoro Nguema Obiang has been a client of Riggs Bank since February 2000. The borrower became acquainted with Riggs Bank as a result of the banking relation between Riggs Bank and the Government of Equatorial Guinea of which his father is president. The President of Equatorial Guinea personally introduced the borrower, along with his entire family to Mr. Karezi. Presently the borrower maintains a money market account with a current balance of \$3.8 million. His year-to-date average balance

2 PUBLIC CREDIT FOR OCCASION 8/14/02

8/14/02

Page 4

RNB 010512

[REDACTED] = Redacted by the Permanent  
 Subcommittee on Investigations

## Dictator's son on city spending spree

[Malabo - Guinée Équatoriale] - 27/07/2005 (Karen Breytenbach)

**International playboy and son of the president of oil-rich yet underdeveloped Equatorial Guinea, where the majority of its 500 000 citizens live on a dollar a day, has been on a spending spree in Cape Town, splashing out millions on house renovations, cars, hotel accommodation and entertainment.**



Since the weekend, Teodorin Nguema Obiang, 34, called Teodorin in his home country, has already spent close to R10 million on three luxury cars and millions on other luxuries, according to impeccable sources who asked not to be named.

Teodorin is the minister of forestry, environment and housing in the government of his father, Teodoro Obiang Nguema, and owns a stake in a logging company, which reportedly has a multimillion rand turnover.

A graduate of Pepperdine University in Malibu, California, Teodorin is also the owner of the only government-approved private radio station in Equatorial Guinea, Radio Asonga, runs Television Asonga, which is owned by his father, and owns the hip hop record label TNO (for Teodorin Nguema Obiang) Records.

It is understood that while in Cape Town, Teodorin spent an estimated R7m on two Bentleys - one a black 2004 Bentley Arnage T, the other a cream 2005 Bentley Mulliner - at MG Rover Cape Town, as well as R3.2m on a white 2005 6-litre Lamborghini at Bloomsbury in Buitengracht Street.

The cars were parked outside the Mount Nelson Hotel on Monday, where staff said the vehicles were bought this weekend by a "an African prince".

All three cars had temporary CA number plates.

MG Rover management declined to provide exact prices, "because he (Teodorin) is a very important client". But according to Bentley SA, a 2005 model Bentley Arnage T would cost R4.3m.

Bloomsbury management declined to confirm whether Teodorin bought the sports car, "because we have to protect the privacy of our clients", but were prepared to reveal that a white 2005 6-litre Lamborghini had been sold two days earlier for R3.2 million.

Teodorin's architects are also reliably understood to be starting shortly with multimillion rand renovations to his properties - 35 Klaassens Road, Bishopscourt, which he bought in March last year for a reported R26m and 76 Fourth Beach, Clifton, bought for R23.5m - according to another source who wants to remain anonymous.

Yesterday morning, Teodorin left the Mount Nelson with a large entourage of security guards, personal assistants and a chauffeur, after spending R15 000 on French champagne at the hotel's Planet Bar on Friday night, according to a hotel staff member. The luxury suite where he stayed costs R8 030 per night. From there he drove to the airport, surrounded by bodyguards.

Asked for comment on his visit, an official of the Equatorial Guinea embassy in Pretoria said Teodorin's visit was in his private capacity.

"What do you want with him? His private business is not for you to put in the newspaper," she said, and hung up.

Mount Nelson management promised to extend an invitation to Teodorin for an interview with the Cape Times, while stressing that they needed to protect his

privacy.

Teodorin did not respond by the time of going to press.

The Cape Times tried to contact Equatorial Guinea's department of foreign affairs in Malabo, but Telkom's international operator said all phone connections with Equatorial Guinea have been "down for months".

According to earlier reports by our correspondents, Teodorin also has homes in Paris, London and Los Angeles, where he has fleets of Bentleys and Lamborghinis, and is often seen at glitzy parties in Rio de Janeiro, Los Angeles, London and Paris.

Equatorial Guinea, a former Spanish colony, for years relied almost exclusively on agriculture and logging for its income.

The country's fortunes changed with the discovery of oil in 1996 and the developed world looked past blatant human rights abuses in exchange for oil concessions. But organisations like Amnesty International decry the lack of upliftment as much of the country remains stuck in squalor.

The people of Equatorial Guinea have to survive on a dollar a day, yet the president has more than \$600 million frozen at Riggs Bank in Washington by federal authorities following an FBI investigation into "improprieties".

Teodorin is the designated successor to his ailing father, who has prostate cancer. This is to the chagrin of Teodorin's uncles and extended family who occupy key government positions, including his brother Gabriel, who negotiates the multibillion-rand oil deals.

Despite the country's democratic status, Teodorin has more than once asked his father to step down so he may take over.

Shortly after the uncovering of coup plot spearheaded by South African mercenary Nic du Toit in March last year, Teodorin sought the head of his uncle, Armengol, who had had business dealings with Du Toit. During the ensuing argument Teodorin is said to have fired off a shot to prove his point.

Teodorin has been called "the closest thing there is to an African oil sheikh".

Because of investment by large multinational oil companies, Equatorial Guinea had become Africa's fastest-growing economy, with a growth rate of 40% in 2003 and beating even China and South Korea, albeit from a low base, said Stellenbosch professor of African politics Willie Breytenbach.

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# TIMES ONLINE

From The Sunday Times

September 3, 2006

## Playboy waits for his African throne

[This story is subject to a legal complaint]

RW Johnson, Cape Town

A SPENDTHRIFT playboy is poised to take control of the tiny state of Equatorial Guinea, Africa's third-largest exporter of oil, amid fears that he may plunge it into civil war.

Teodorin Nguema Obiang, 35, eldest son of President Teodoro Obiang Nguema, has been groomed to succeed his father, who has prostate cancer and heart trouble and is reported to want to leave office "to fight against death". His weight is said to have shrunk to about seven stone.

Last month the ageing dictator sacked his 50-man cabinet but reinstated Teodorin as minister of forestry. While Teodorin is his father's favourite, other family members and the major oil companies are believed to favour Gabriel, his younger brother.

A South African legal battle last month cast a spotlight on Teodorin's wealth and extravagance. Although he has homes in Los Angeles, Buenos Aires and Paris, Teodorin descended on Cape Town two years ago and in the course of a weekend spent nearly £1.1m on two Bentleys — an Arnage T and a Mulliner — and a Lamborghini Murcielago as well as two luxury houses worth £3.7m.

Both houses have been renovated with such items as a £100,000 home theatre audio system, a £40,000 air conditioning system, a £3,500 fridge-freezer and a £1,000 ice maker.

George Ehlers, a South African builder who claims that he is owed nearly £5m for work carried out for the Equatoguinean government, is trying to seize the houses — an action vigorously contested by Teodorin and his father, who say they were bought privately.

The Bentleys — one of them customised with a cream interior and curtains for privacy — and the Lamborghini sit in their garages unused. This is par for the course for Teodorin, who once challenged French journalists to follow him while he raced around Paris in a Lamborghini, buying up to 30 designer suits in an afternoon.

Two-thirds of Equatoguinean oil flows to the United States, which makes the country's fate a key concern both to American oil companies and the State Department. But Teodorin, a graduate of Pepperdine University in Malibu, California, has been more in the news there for his on-off relationship with the Grammy-winning rap-singer Eve ("Eve of Destruction").

The couple met when Teodorin hired the 303ft yacht *Tatoosh* belonging to Paul Allen, the Microsoft billionaire, for a Christmas cruise with Eve and friends, apparently dispensing with the Russian beauties who normally surround him.

He spent nearly £400,000 on the yacht, a great deal more on Eve and was able to dangle his own TNO ("Teodorin Nguema Obiang") hip-hop recording label before her. Eve was apparently sufficiently impressed by Teodorin's largesse to brush off reports that he is known back home as the "minister for cutting down trees", devastating hardwood forests largely to the benefit of his logging company.

However, she was reportedly discomfited by claims that Teodorin's father was a cannibal. This led to headlines about Eve "dumping" him.

Teodorin owns Radio Asonga, the sole Equatoguinean private radio station, but the press freedom group Reporters Without Borders calls the country "a forbidden zone for free expression and an unchanging hell for journalists".

Outside the country Obiang, the president, is accused of having profited hugely from allowing large-scale dumping of toxic waste.

Diplomats and even ministers have been caught smuggling drugs: indeed, when one minister was arrested in Spain for drug trafficking in 1997 he wrote a confession in which he alleged that drugs had been distributed in Europe using diplomatic bags and even the president's luggage on state trips.

Obiang — chronically insecure since an abortive coup attempt in 2004 by Simon Mann, an old Etonian adventurer, which had embroiled Sir Mark Thatcher, the former prime minister's son — has called in the Israelis to train his guards. He is said to be concerned that Teodorin's ascent to power could lead to family feuds and open fighting among local factions.

The president has never equalled the bloodthirsty reputation of his uncle Francisco Macias Nguema, whom he overthrew. Macias had opponents executed, 150 at a time, to the sound of Mary Hopkin's *Those Were the Days* blaring through stadium loudspeakers.

Reports suggest that Obiang takes a huge proportion for himself of the £370m oil revenue while most of his 500,000 subjects subsist on less than 50p a day and torture and assassination are rife.

Sewage runs through the streets of the capital, Malabo, and there is no public transport and little running water or electricity. Obiang and his family live in luxury villas protected by high walls and guard towers.

According to *The Wonga Coup*, a recent book by Adam Roberts, Obiang arrested and reportedly tortured General Agustin Ndong, his half-brother, in 2003 because he was seen as a rival. Severo Moto, the opposition leader in exile whom Mann was planning to put in power, once told Spanish radio that Obiang had "devoured a police commissioner. I say devoured, as this commissioner was buried without his testicles and brain".

After the failed coup attempt Obiang's younger brother Armengol became the object of Teodorin's suspicion, leading to an altercation between the two men in which shots were said to have been exchanged. Following two mysterious "suicide attempts", Armengol left the country.

Teodorin is described even by his doting father as "somewhat impulsive"; by others as hot tempered, arrogant and power hungry.

He boasts openly that he will be president soon — causing Gabriel's side of the family to fear for their lives — and threatens to renegotiate oil contracts.

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Jeudi 5 Avril 2007

## DEVINETTES

### **GUINÉE EQUATORIALE: La Bugatti-Veyron de Teodorino Obiang**

**De quelle couleur est la Bugatti-Veyron (l'un des rares exemplaires en Europe de ce bijou à 1,5 million €) que vient de s'offrir Teodorino Obiang, fils du "chef" ? Pour les connaisseurs : elle est parfois garée devant l'Hôtel Crillon.**

De quelle couleur est la Bugatti-Veyron (l'un des rares exemplaires en Europe de ce bijou à 1,5 million €) que vient de s'offrir Teodorino Obiang, fils du "chef" ? Pour les connaisseurs : elle est parfois garée devant l'Hôtel Crillon.

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## The New York Times

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November 17, 2009

# Taint of Corruption Is No Barrier to U.S. Visa

By IAN URBINA

Several times a year, Teodoro Nguema Obiang arrives at the doorstep of the United States from his home in Equatorial Guinea, on his way to his \$35 million estate in Malibu, Calif., his fleet of luxury cars, his speedboats and private jet. And he is always let into the country.

The nation's doors are open to Mr. Obiang, the forest and agriculture minister of Equatorial Guinea and the son of its president, even though federal law enforcement officials believe that "most if not all" of his wealth comes from corruption related to the extensive oil and gas reserves discovered more than a decade and a half ago off the coast of his tiny West African country, according to internal Justice Department and Immigration and Customs Enforcement documents.

And they are open despite a federal law and a presidential proclamation that prohibit corrupt foreign officials and their families from receiving American visas. The measures require only credible evidence of corruption, not a conviction of it.

Susan Pittman, a spokeswoman for the Bureau of International Narcotics and Law Enforcement in the State Department, said she was prohibited from discussing specific visa decisions. But other former and current State Department officials said Equatorial Guinea's close ties to the American oil industry were the reason for the lax enforcement of the law. Production of the country's nearly 400,000 barrels of oil a day is dominated by American companies like ExxonMobil, Hess and Marathon.

"Of course it's because of oil," said John Bennett, the United States ambassador to Equatorial Guinea from 1991 to 1994, adding that Washington has turned a blind eye to the Obiangs' corruption and repression because of its dependence on the country for natural resources. He noted that officials of Zimbabwe are barred from the United States.

“Both countries are severely repressive,” said Mr. Bennett, who is now a senior foreign affairs officer for the State Department in Baghdad. “But if Zimbabwe had Equatorial Guinea’s oil, Zimbabwean officials wouldn’t still be blocked from the U.S.”

Shown the Justice Department documents that detail the accusations of corruption against Mr. Obiang, Senator Patrick J. Leahy, a Vermont Democrat who wrote the law restricting visas, expressed frustration and anger with the State Department, which is responsible for issuing visas.

“The fact that someone like Mr. Obiang continues to travel freely here suggests strongly that the State Department is not yet applying the law as vigorously as Congress intended,” Mr. Leahy said. The law was partly inspired by the accusations of corruption surrounding Mr. Obiang’s family and the Equatorial Guinean government, Mr. Leahy’s staff said.

“There are many instances of corrupt foreign officials plundering the natural resources of their countries for their own use while their people starve,” Mr. Leahy said. “The law states clearly that if you do that, you are no longer welcome in the United States.”

Daniel Whitman, who retired in September as the deputy director of the Office of Public Diplomacy and Public Affairs in the Bureau of African Affairs at the State Department, agreed that the law should be used more forcefully. “We just seem to lack the backbone to use this prohibition,” Mr. Whitman said. “In the rare cases it is used, no one at State was willing to talk about it.”

When asked how many times the laws have been used to bar corrupt foreign officials from entering the country, State Department officials declined to answer, citing privacy reasons, though Ms. Pittman said thousands of visas had been denied to corrupt officials using other legal means. A 2007 State Department report said the presidential proclamation, signed by President George W. Bush in 2004, had been used “dozens” of times.

A State Department official who handles corruption investigations said that while the measures were important tools, the department as a matter of policy did not want to reveal the number of times they had been used because it would show that the number was actually quite small. The official asked not to be identified because of departmental rules barring public comment.

The Justice Department memorandum, dated Sept. 4, 2007, and obtained by The New York Times, said the government believed Mr. Obiang’s assets were derived “from extortion, theft of public funds or other corrupt conduct.” From April 2005 to April 2006, the memorandum said, Mr. Obiang funneled at least \$73 million into the United States, using shell



corporations and offshore bank accounts to launder the money and ultimately buy his Malibu estate and a luxury jet.

The document identified several wire transfers by Mr. Obiang from 2005 and 2006, beginning with a bank in Equatorial Guinea, then going to the central Banque de France and landing in American accounts at Wachovia, Bank of America and UBS. In one six-week period in 2006, Mr. Obiang transferred \$33,799,799.99 to the United States, it said, which was used to buy a Gulfstream V jet.

Part of his wealth, the document said, comes from a “revolutionary tax” that Mr. Obiang placed on timber. Instead of sending the payments to the treasury of Equatorial Guinea, Mr. Obiang, who is considered likely to be a successor to his father, has “insisted that the payments be made directly to him,” it said.

In addition, the memorandum said, the Justice Department believes that Mr. Obiang “may be receiving bribes or extortion payments” from the oil companies as a percentage of their contracts.

Spokesmen for ExxonMobil and Marathon said the companies followed all relevant laws. A request for comment from Hess was not answered. The Justice Department declined to comment on the memo.

Another document, prepared by the Immigration and Customs Enforcement division of the Homeland Security Department, said Mr. Obiang “routinely travels to the United States with over \$1 million in cash” that he fails to declare, a crime punishable by up to five years in prison. Mr. Obiang regularly visits the country using a diplomatic passport, though he rarely does diplomatic business here, said the I.C.E. document. The document said the immigration agency’s goal was to deny a safe haven to Mr. Obiang and to “identify, trace, freeze and recover assets within the United States illicitly acquired through kleptocracy by Teodoro Obiang and his associates.”

The documents were originally obtained by Global Witness, a British human rights group that monitors corruption in natural resources industries, after they were released in response to a legal complaint filed in France against several African dictators, including Mr. Obiang’s father, President Teodoro Obiang Nguema Mbasogo of Equatorial Guinea. The Justice Department and I.C.E. would neither confirm nor deny the authenticity of the documents.

Through a spokesman at Qorvis Communications, a public relations firm working for the Equatorial Guinean Embassy in Washington, Teodoro Nguema Obiang declined to be interviewed. But his brother denied the charges of corruption.

“This is the problem when a country becomes very successful,” said Gabriel Mbega Obiang Lima, the vice minister of mines, energy and industry and another of the president’s sons. “Everyone assumes us guilty until proven innocent.”

The vice minister said his government had made great strides in dealing with corruption. He cited as an example his country’s participation in the Extractive Industries Transparency Initiative, an international coalition of governments, civil society groups and companies that sets global standards for transparency in oil, gas and mining.

But a 2009 internal document from the initiative says the organization is “particularly concerned about the pace of progress” in Equatorial Guinea. The country has failed to produce a required report regarding its revenue, even though it joined the organization more than three years ago, the report says.

In 2004, President Bush signed a proclamation barring entry to the United States for any foreign officials and their family members “whose misappropriation of public funds” has had serious adverse effects on American businesses or national security interests. Congress followed up in 2007 with a law containing even stronger language, barring entry to anyone “involved in corruption relating to the extraction of natural resources in their countries.”

Otto Reich, who served until 2004 as the United States’ special envoy to the Western Hemisphere, said there was resistance to applying these sorts of prohibitions even before the presidential proclamation was drafted.

“Senior State Department people especially from Africa kept saying that if something like this is used they wouldn’t have anyone to talk to in their home countries,” Mr. Reich said. “It’s politically simply something they do not want to take on.”

The Obiang family and Equatorial Guinea have been the focus of corruption accusations for years. In 2004, a Senate panel accused Riggs Bank in Washington of having “turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption” in accepting hundreds of millions of dollars in deposits from Equatorial Guinea.

Committee investigators found dozens of irregular payments, multiple individual signatories to accounts and even deposits of millions of dollars in shrink-wrapped currency. Riggs Bank

was fined more than \$25 million for its handling of the Equatorial Guinean and other accounts, and several of the bank's directors were criminally prosecuted.

But in more recent years millions of dollars of the country's money has found its way to other American banks, including the ones named in the Justice Department memo. Wachovia and Bank of America, according to the memo, filed suspicious activity reports to the authorities, and ultimately closed all accounts associated with Mr. Obiang and his associates, but not before tens of millions of dollars had already entered the United States.

"These banks appear to have facilitated a grand corruption, and it may even have been done legally," said Gavin Hayman, director of campaigns for Global Witness. "Those that filed suspicious activity reports may have been complying with their regulatory obligations under the law, but at the same time they went ahead and forwarded transfers of tens of millions of dollars about which they already had suspicions. Effectively, the regulations are allowing banks to earn money from corruption."

All three banks declined to answer questions about the transactions. Although Wachovia said Mr. Obiang was not a client, the Justice Department documents described how he used third parties to open accounts at some banks.

Since oil was discovered there in 1996, Equatorial Guinea has become the third-largest oil producer in sub-Saharan Africa, after Nigeria and Angola, with estimated revenues of \$4.8 billion in 2007. But although petroleum has made the ruling Obiang family and its associates vastly rich, the oil and gas wealth has not been spread beyond ruling elites.

In 2006, more than three-quarters of the population was living below the poverty line, according to a 2009 [International Monetary Fund report](#).

By some measures, conditions in the country are getting worse. Though the nation's gross domestic product grew more than tenfold from 1990 to 2007, [infant mortality](#) rose to 12 percent from 10 percent, according to a 2009 [Unicef report](#).

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enforcement. With respect to the E.G. accounts, however, Riggs accommodated a number of requests for large cash transactions with few questions asked.

The most dramatic example involves President Obiang's offshore shell corporation, Otong S.A., which was formed in 1999, and opened a money market account at Riggs in September 1999. Large cash deposits into that account began about seven months later.

On six occasions over a two-year period, from 2000 to 2002, Riggs accepted cash deposits of \$1 million or more for the Otong account. These cash deposits, which totaled \$11.5 million, took place as follows:

April 20, 2000	\$ 1.0 million cash deposit
March 8, 2001	\$ 1.0 million cash deposit
March 20, 2001	\$ 1.5 million cash deposit
Sept. 5, 2001	\$ 2.0 million cash deposit
Sept. 17, 2001	\$ 3.0 million cash deposit
April 12, 2002	<u>\$ 3.0 million cash deposit</u>
	\$11.5 million

When asked to describe how these large cash deposits were made and processed, one Riggs employee indicated that, on at least two occasions in which he was present, the cash was brought into the bank in suitcases transported by Mr. Kareri who said he had obtained the cash from senior E.G. officials such as the E.G. President or Ambassador.<sup>185</sup> The employee indicated that most of the cash was in unopened, plastic-wrapped bundles which did not have to be counted, while the remaining bills were counted using high-speed machines. Since \$1 million in hundred dollar bills weighs nearly 20 pounds, the currency brought into the bank would likely have weighed at least that much on each occasion. On the last two occasions involving \$3 million, the bank would've had to accept nearly 60 pounds in currency. The bank employee indicated that the large cash deposits he witnessed were not treated as unusual or requiring additional scrutiny.

Riggs did not decline to complete any of the requested transactions or identify or investigate any of them as suspicious activity. When later asked by the OCC about the source of these cash deposits, the E.G. account manager apparently told the OCC that the E.G. President had closed certain bank accounts in Europe and "maintain[ed] the funds in cash to avoid calls from would-be marketers looking for reinvestment opportunities."<sup>186</sup> An internal Riggs memorandum by the E.G. account manager in September 2001, offers an alternate explanation for the September 17 cash deposit, indicating that the E.G. President had sold "two properties in

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<sup>185</sup> Interview of Michael Parris (6/24/04).

<sup>186</sup> See, e.g., OCC examination materials (12/5/03), Bates OCC 0000517033-34 and (January 2004), Bates OCC 0000502623.

Spain in the amount of \$5 million” and sent the sale proceeds to Riggs.<sup>187</sup> A similar memorandum dated April 12, 2002, states: “We received proceeds from the sale of the properties in France in the amount of \$3 million.”<sup>188</sup>

For each of the cash deposits, Riggs completed the required Currency Transaction Report (CTR) for cash transactions exceeding \$10,000, and filed the report with the federal government. However, these reports incorrectly described Otong as an exporter of timber, rather than an offshore corporation controlled by the E.G. President. The inclusion of this inaccurate information in the CTRs on Otong is cited as one reason for the \$25 million civil fine later imposed on Riggs.<sup>189</sup>

Account documentation shows that the cash deposited into the Otong account was combined with other deposits and used to fund two CDs established in the name of Otong in 2000 and 2002. In December 2002, these CDs were valued at \$11.7 million and \$4.4 million.<sup>190</sup>

Large cash payments were also made to accounts opened in the name of the President’s wife, Constanca Nsue. On at least seven occasions over a two-year period, from 2000 to 2001, Riggs accepted cash payments ranging from \$20,000 to \$150,000, into Ms. Nsue’s personal

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<sup>187</sup> Riggs memorandum by Simon Kareri (9/17/01), Bates RNB 007070.

<sup>188</sup> Riggs memorandum by Simon Kareri (4/12/02), Bates RNB 007071. The cash deposits were not the only suspicious transactions involving the Otong account. For example, on 2/6/02, Riggs accepted for deposit a \$3 million check that was made out to Otong and dated 2/4/01, more than one year earlier. See copies of check, Riggs deposit ticket, and entry showing deposit, Bates RNB 007385-87 and 007396.

<sup>189</sup> See, e.g., In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (D).

<sup>190</sup> See December 2002 account statements, Bates RNB 000333 and 336.

Riggs arranged, for example, several lines of credit for the E.G. government. It agreed to finance letters of credit for the E.G. government for up to \$25 million;<sup>200</sup> extended overdraft credit to the E.G. Embassy of \$30,000; and issued a \$40 million loan to the E.G. government which was secured by a CD and repaid in full. In 2001, Riggs issued a \$13.7 million loan to the government-owned E.G. airline, Ecuato-Guineana de Aviacion, to buy an airplane for flights within the country.<sup>201</sup> This loan was guaranteed by the E.G. government. In 2003, Riggs issued a \$29.8 million loan to the E.G. government to purchase an airplane for the use of the E.G. President.<sup>202</sup> Riggs also provided for a period of time certain debt management services to the E.G. government, which included keeping a detailed record of the government's public and private debt and making directed payments.<sup>203</sup>

Riggs also addressed the credit needs of some senior E.G. officials. For example, in 1999, with Riggs' assistance, the E.G. President paid \$2.6 million for a Potomac, Maryland residence.<sup>204</sup> Also in 1999, the bank provided a loan for nearly \$750,000 at a favorable rate to enable the E.G. President's wife to buy a second, \$1.15 million residence in Potomac, Maryland. Riggs provided an interest rate available for purchasing a personal residence, even though the bank knew the house was being purchased as a rental and, in fact, established an account to receive the rental payments. This loan was repaid in full within the year.<sup>205</sup> In 2000, Riggs provided a mortgage to Pastor Micha Ondo Bile, E.G. Minister of Foreign Affairs and one-time E.G. Ambassador, to buy a residence in Virginia.<sup>206</sup> Riggs apparently is also listed as the contact on a \$349,000 residence purchased in 2000, by the E.G. President's brother, Armengol Ondo

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<sup>200</sup> At least one of these letters of credit appears to have been used to finance arms sales. See, e.g., documentation associated with Letter of Credit No. 1998-11014 for \$2.5 million, issued on behalf of the E.G. government to purchase weaponized armored vehicles and related munitions from Sabiex International S.A., (11/5/98), Bates RNB 0011940-53, 0011970-79 and 003418-39.

<sup>201</sup> See Riggs "Officers' Loan Committee Action" (11/26/02), Bates T 00003089-3101.

<sup>202</sup> See Riggs "Officers' Loan Committee Action" (9/29/03), Bates T 00003904-15.

<sup>203</sup> See, e.g., memorandum from Simon Kareri to Joseph Allbritton (undated), Bates ZZ 000138.

<sup>204</sup> See Maryland real property records, which list the "New Owner's Mailing Address" as "c/o Simon Kareri, Riggs Bank." See also "Oil Boom Enriches African Ruler" (1/20/03), Los Angeles Times.

<sup>205</sup> See Riggs Loan No. 100-63136 (12/7/99).

<sup>206</sup> See Riggs Loan No. 13220. See also Riggs analysis of E.G. accounts, "Equatorial Guinea," (12/8/03), Bates OCC 0000503177-83, at 82.

1305



TO: File  
FROM: Simon Kereni  
DATE: September 17, 2001  
RE: Deposits

We received proceeds from the sale of two properties in Spain in the amount of \$5 million. Due to the deteriorating relations with Spain, the president decided to purchase properties in the United States and establish relationships with doctors and hospitals to provide care for him and his family.

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RNB 007070

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1306



TO: File  
FROM: Simon Kareri  
DATE: April 12, 2002  
RE: Deposits

We received proceeds from the sale of the properties in France in the amount of \$3 million. The president has maintained multiple properties in France, Switzerland, Spain and now Washington. The president has two families that require separate properties.

RNB 007071



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Memorandum

March 24, 2003

TO: Joseph Cahill, Executive Vice President and General Counsel

FROM: Paul Gleason, Vice President, Director of Compliance

RE: Riggs' Relationship with Equatorial Guinea

The purposes of this memo are to recapitulate the due diligence Riggs has done concerning its relationship with Equatorial Guinea and to assess the risks associated with that relationship. We have also included copies of items we reviewed to help understand Riggs' management of this banking relationship.

#### I. SUMMARY

- A. Riggs' relationship with Equatorial Guinea is very large (approximately \$500 million) and consequently very important to Riggs' revenue and earnings.
- B. The customers in this relationship include the government of Equatorial Guinea, as well as its President, First Lady, their children, relatives, and other former and current government officials.
- C. The primary source of funds in this relationship is revenue from the development of oil and gas resources, the most valuable natural resources of the country. These funds come to Riggs accounts directly from the companies that have government contracts to produce oil and gas, as well as from contract payments or rents those companies pay to firms owned by the President and First Lady. In addition, for the individual accounts, funds come from government salaries or business interests.
- D. The primary uses of the government account funds have been to pay vendors that have contracts to provide in-country services to Equatorial Guinea; to operate the government's embassy in the U.S.; to finance household and educational expenses for the account owners; and to finance higher education at U.S. colleges and universities (e.g., Carnegie Mellon) for selected students from Equatorial Guinea.
- E. The key link in the relationship between Riggs and Equatorial Guinea is Simon Karei, who brought the relationship to Riggs and who is primarily responsible for developing it. The top officials of Equatorial Guinea have a very high level of trust and confidence in Mr. Karei and, therefore, in Riggs. The combination

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RNB 029267

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of this attitude from the customers and Mr. Karezi's efforts to meet customer needs, have made Mr. Karezi and Riggs an integral part of government operations.

- F. Because the importance of this relationship is clear to top management of the Bank, senior Bank managers hold regular meetings with Mr. Karezi and others to monitor developments in the Equatorial Guinea relationship.
- G. Since 1996, oil revenues for the country have been growing rapidly, and they are expected to continue to flow for decades. Previously, Equatorial Guinea had been a poor, under-developed country. This combination of circumstances is creating stresses that few countries know. A vast array of projects that had been unthinkable only a few years ago now are not only possible but demanded. As a result, planning and implementation challenges abound. Some of these challenges have slowed the pace of public investment of oil revenues. Consequently, some observers have charged that oil revenues are not sufficiently benefiting the people of Equatorial Guinea.
- H. The President of Equatorial Guinea has been criticized in the press, both in the U.S. and abroad, because of alleged corruption in the way government finances are managed and for how elections are conducted. Although there is concern about the validity of these charges among credible observers, the same observers readily point out that the current regime is better than its predecessor.

To the degree this criticism is justified – and it remains largely although not completely unsubstantiated – it causes some observers to think of this customer relationship as notorious. Further, if allegations of official corruption were substantiated, for example, it could necessitate the filing of a Suspicious Activity Report (SAR). For these reasons, this relationship increases the Bank's Reputation Risk.

- I. Although KYC profiles exist for the customers, all were completed on the same day – November 19, 2002. This suggests a late effort to comply with Bank policies and procedures. It should be noted, however, that ample documentation existed in Embassy Banking files for the accounts. Nevertheless, to the degree that Riggs has not fully adhered to the requirements of its AML EDD Program, there is increased Compliance Risk.

Having concluded that the accounts for and related to the government of Equatorial Guinea increase risk, the issue is how these risks can be controlled through management actions.

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**II. RECOMMENDATIONS****A. REPUTATION RISK**

1. **Maintain the professional distance between Riggs Bank and its customers. For example,**
  - o Discourage bank officer references to “we” when speaking of government actions or plans;
  - o Consider having an officer in addition to Mr. Kereni go to Equatorial Guinea for the next in-country visit; and
  - o Consider the possibility that Riggs will be a named sponsor of the conference Equatorial Guinea is planning for the Spring, in Washington, D.C. If the conference is perceived to be a Riggs event, it will solidify the public connection between the Bank and Equatorial Guinea, thereby aggravating the consequences of reputation damage that someday might be realized.
2. **Encourage representatives of the government of Equatorial Guinea to join organizations and so participate in events that encourage transparency in fiscal affairs. For example, opening or expanding dialogue with the World Bank, International Monetary Fund, U.S. AID, Overseas Private Investment Corporation, and similar organizations could lend credibility to the country’s efforts to distribute its wealth. Such encouragement should not involve direct suggestions or advice on groups with which to align, how to approach them, or how to conduct business with them.**
3. **Encourage the involvement of credible, neutral election observers from countries that have a history of open and fair elections. Such encouragement should not involve direct suggestions or advice on countries or organizations to invite, how to approach them, or how to conduct business with them. However, Riggs might be able to point officials to organizations it has reason to know about, in the U.S., which could be helpful. The Carter Center, in Atlanta, is an option.**
4. **Monitor all facets of this relationship to determine whether reputation risk is increasing because Riggs customers are linked publicly to problems in Equatorial Guinea. The monitoring effort should concentrate on reliable, U.S. sources of information that the OCC can be expected to find persuasive.**
5. **Update the OCC regularly concerning the Equatorial Guinea relationship. Such updates are a deliberate way to acknowledge the risks and recognize regulator concerns about the level of risk. The updates will allow Riggs to help the OCC understand the reasons why Riggs should maintain this relationship, and enable Riggs to learn about the OCC’s concerns as they emerge.**

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**B. COMPLIANCE RISK**

1. The AML Officer should begin attending all regular senior management meetings concerning the Equatorial Guinea relationship. This Officer's attendance should continue for the foreseeable future, but at least until there is consensus – among Senior Management, the AML Officer, and their understanding of regulator perceptions – that the account risk rating would be Moderate.
2. Consider requiring an explanation of all deposits and withdrawals from accounts for the government and PEPs that exceed \$10,000. If implemented, this recommendation would include non-cash transactions. The explanation could take the form of a contemporaneous note to the files – e.g., in a log created for each account or for the relationship – that would indicate the source of the funds being deposited or the destination (to the extent knowable) of the funds withdrawn. The notes or log would be maintained by Mr. Kazri and his staff, and it would serve several purposes, including (a) providing information about the transaction that would not be in letters or more formal documents but still known to the bank and (b) another source of auditable information about the accounts.
3. Institute a regular review of all government and PEP accounts, and require that the results of that review be reported to senior management at its regular meetings on Equatorial Guinea. This review would entail an annual update of the KYC form and enhanced due diligence for each account. As a result of this review, there should either be new substantiating documents or an explanation of why newer documents are not needed or not available. The AML Officer should lead these reviews.
4. Riggs' AML Officer should specifically monitor allegations of official corruption in Equatorial Guinea for the purpose of filing an SAR, if necessary. This monitoring effort could be conducted by Compliance staff. If developments warrant, the AML Officer should make a recommendation to senior management about whether to file or not. Such a recommendation should not involve any Riggs employees who are involved on a day-to-day basis with the accounts.

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**III. THIS REVIEW PROCESS**

Beginning in December 2002, at the request of Ray Lund, Executive Vice President/International Banking, and under the direction of the AML Officer, Risk Management began a review of the Bank's relationship with Equatorial Guinea. In addition to the AML Officer, the review team included representatives from Internal Audit and Security, as well as a consultant who is on retainer with the Compliance Department.

The review process consisted of two extensive interviews with Simon Kareri, the primary bank officer for this relationship, and review of documents and public material. Mr. Kareri is a Senior Vice President in the Embassy Banking group, and he is responsible for African and Caribbean countries. Mr. Kareri also identified and developed this relationship for Riggs. The second interview also included a member of Mr. Kareri's staff.

During these interviews, Mr. Kareri described how the relationship with Equatorial Guinea began, the facets of that relationship today, and his expectations for this relationship as a continuing opportunity for Riggs. The review team obtained copies of recently produced KYC profile forms for the customers in this relationship; a list of vendors Riggs had paid on instructions from the government; copies of account statements; and other background material. In addition, the review team obtained considerable public material on Equatorial Guinea, much of which came from a local organization called International Decision Strategies, Inc. (IDS).

In addition, a member of the review team contacted the U.S. State Department and spoke with Pamela Bellamy, the desk officer for Equatorial Guinea. The review team also interviewed a representative of Riggs Investment Advisors, Inc. (RIAI), with which the government has an investment account of approximately \$150 million. From this interview, the team obtained copies of the material RIAI (then RIMCO) had collected as part of its due diligence efforts when this account was opened.

Other meetings and conversations by various members of the review team also helped understand how the Bank manages this account. For example, within Embassy Banking, Mr. Kareri's staff, which is dedicated to serving African and Caribbean countries, has grown significantly as the Equatorial Guinea relationship has grown. Similarly, senior management holds regular meetings to ensure that it is knowledgeable about this increasingly important relationship.

Finally, the review team made its own search for public material available through the Internet. These sources vary widely in credibility and depth of information. The review team focused on sources believed to be reliable. The best sources for information on the economy, demographics, and government of Equatorial Guinea include U.S. government agencies such as the departments of State, Commerce, and Energy, as well as the Central Intelligence Agency. In addition, there are numerous articles available from news and other organizations concerning these issues. Specifically with regard to oil production, the organizations include Exxon Mobil and Marathon Oil, two of the companies that have contracts with the government to produce oil and liquefied petroleum gas. News organizations such as the New York Times, the Los Angeles Times, CNN, the BBC, and

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more obscure outlets have published articles about Equatorial Guinea. Many of these articles address in whole or in large part the economy and oil, but they also address the recent elections, government, and human rights issues in the country. Finally, international organizations such as Amnesty International, Doctors Without Borders, and others have websites that include information on Equatorial Guinea.

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## IV. THE RELATIONSHIP

## A. HISTORY

Riggs' relationship with Equatorial Guinea<sup>1</sup> started in 1995, shortly before large reserves of oil and natural gas were discovered there. At the time, the country was very poor, and it had very low visibility on the world stage.<sup>2</sup> The banking relationship began through the routine marketing activity of the Embassy Banking group. Equatorial Guinea is a country in central Africa, with an embassy in Washington, D.C. That embassy was a prospective customer for Riggs' Embassy Banking group, just as the embassy of any other country in the region would be.

The discovery of oil and natural gas changed the Equatorial Guinea relationship completely, although some aspects are continuing to change more quickly than others. The exploitation of natural resources is making Equatorial Guinea into a rich country very rapidly. Contracts have been established with companies from the U.S. and elsewhere to drill for, process, and deliver oil and natural gas. These contracts are producing substantial revenues for the government of Equatorial Guinea and for key government leaders and their families, who own property or businesses on which the foreign contractors depend.

On the other hand, the level of internal financial expertise and infrastructure needed to manage this wealth is changing less rapidly. Equatorial Guinea is attracting a lot of attention from banks throughout the world that want to provide banking services to the country and its officials. As energy-related revenues continue, this attention will likely intensify.

Another aspect of the situation that is not changing as rapidly as some would like is investment in civil infrastructure. As a poor country, health/medical, education, electricity, transportation, communications, and other common fundamental systems in a more developed country either did not exist or were deficient in Equatorial Guinea. Revenue from energy production needs to be invested wisely in these fundamental systems. Setting priorities in this area, obtaining outside assistance, organizing for, developing plans, and building these systems will remain key challenges in Equatorial Guinea for several years.

## B. RIGGS ACCOUNTS

- Government Accounts

<sup>1</sup> Equatorial Guinea consists of two separate landmasses. The mainland is located between the significantly larger countries of Cameroon and Gabon. Bioko Island, off the coast of Cameroon, contains the capital of Malabo. The population is approximately 500,000. Average annual income is \$1,170.

<sup>2</sup> Equatorial Guinea was a colony of Spain until 1968. According to the U.S. State Department, the country was relatively prosperous under Spanish control. It had a highly regarded cocoa industry, and immigrants came from surrounding countries to work there. Shortly after independence, Equatorial Guinea was ruled by Francisco Nguema, a Socialist with close political and economic ties to Cuba, North Korea, and countries with similar economic and political philosophies. During this period, the economy of the country deteriorated, the people became much poorer, there were allegations of widespread abuses of civil rights. In 1979, Francisco Nguema was overthrown by President Teodoro Obiang Nguema Mbasogo, the current president.

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The government has an account with Riggs Bank and an account with Riggs Investment Advisors, Inc.

- **Riggs Bank – #17164642**
  - A new KYC form was prepared on January 28, 2003 in order to make the account documentation for Equatorial Guinea consistent with the new forms for Embassy Banking. This KYC form is supported by –
    - A letter from the Government;
    - A letter from the Embassy stipulating authorized signatories; and
    - A signature card.
      - There are three signers on the account, which include the President, the Treasurer, and the Minister of Mining. The account requires two signatures – the President's and one other.
      - On July 13, 1998, a Credit Approval Memorandum (copy attached) was completed on for a line of credit for the Government of Equatorial Guinea. That Memorandum noted two factors mitigating risks –
        - "This facility is 100% cash secured via Euro Investment funds pledged to and held at Riggs. In order to cover interest payments, credit risks, this loan is set up with a 95% loan-to-value."
        - "Riggs has had a satisfactory relationship with Equatorial Guinea, with previous commitments performing as agreed, substantial deposits in place and good contacts with the principals, including the president of the country. Additionally, Riggs manages in the case management sense, Equatorial Guinea's oil revenue derived from its substantial contract with Mobil."
    - Embassy Banking determined the credit risk on account to be low.
- **Riggs Investment Advisors, Inc. (RIAI)**
  - A KYC form was completed in 1998 when this account was opened with RIMCO (now RIAI), and it shows that Riggs Bank referred the client.
  - A copy of the Credit Approval Memorandum dated 1998 was support for the KYC form.
- **Related Accounts**
  - There are ten (10) related accounts:
    - i. S.A. Otong – #76863013; #81450109: This is a Private Investment Corporation (PIC) for the president of the country; it is the only account in the President's name. The KYC profile for this customer was completed on November 19, 2002, along with the



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addendum, and it notes that the client is a Politically Exposed Person (PEP). The account was opened on June 16, 2000. This is a large account. During 2002, the account balance briefly exceeded \$11 million. The recommended risk rating for this customer is high.

ii. **Constancia Nsue -**

This customer is the first lady of the country. The KYC profile for the First Lady was completed on November 19, 2002. It indicates a risk rating of "high," and indicates that the account owner is a PEP. The account relationship began on August 1, 1997. This is a large relationship -- in excess of \$3 million. The stated purpose of the Household and Education Accounts.

ACCOUNT NUMBER	TYPE	APPROXIMATE RANGE OF BALANCE - 2002	2002 TRANSACTION ACTIVITY SUMMARY
#24383122	Interest Checking	\$46,000 - \$1.2 million	Up to 8 transactions in a month; some very large
#24895363	Checking	\$15,000 - \$400,000	8 to 15 transactions per month; numerous overdrafts
#25475010	Money Market	\$5,000 - \$16,000	One deposit per month; statements only cover September to December 2002
#76890433	Money Market	\$850 - \$250,000	Substantial deposits (i.e., \$90,000+) in January and April; almost all funds withdrawn in July and not replaced. Account is for Pastor Obiang, Minor.
#76890441	Money Market	\$850 - \$250,000	Substantial deposits (i.e., \$90,000+) in January and April; almost all funds withdrawn in July and not replaced. Account is for Justo Obiang, Minor.
#81253754	CD	\$1.7 - \$2.9 million	One deposit of \$1.1 million during 2002
#81585919	CD	\$362,000 - \$625,000	One deposit of \$253,000 during 2002
#81585927	CD	\$362,000 - \$625,000	One deposit of \$253,000 during 2002

- iii. **Teodoro Obiang - #76923450:** This customer is the son of the president and he is a minister of the Equatorial Guinea government. The KYC profile for this account was completed on November 19, 2002. It gives a risk rating of "high" and indicates that the account owner is a PEP. This account was opened on January 29, 2001. It is expected to be a large account -- i.e., between \$200,000 and \$2 million. In June and July 2002, the balance in the account increased from \$250,000 to almost \$4 million. Deposits in late June/early July 2002 amounted to \$3.6 million and withdrawals in late September/early October 2002 exceeded \$1.7 million.
- iv. **Amengol Nguema - #76889504; #81657484:** The KYC profile for this customer was completed on November 19, 2002. This

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- customer is the brother of the president of the country. He is the country's director of security and a PEP. The account was designated High Risk. The declared purpose of the account is Educational Expense, and it is expected to be more than \$50,000 but less than \$200,000. This account was opened on February 3, 2000.
- v. **Elena Mensa - #25356070; #25460310:** The KYC profile for this customer was completed on November 19, 2002. The customer is the wife of the ambassador, and a PEP. This is a Household Account, and it is expected to be less than \$50,000. This account was opened on May 8, 2002, and it was designated High Risk.
  - vi. **Baltasar Edjo - #76841236:** The KYC profile for this account was completed on November 19, 2002. The customer is a minister of the government and a PEP. The account was designated High Risk. This is a Household Account, and it is expected to be less than \$50,000.
  - vii. **Micha Bile - #24203160; #76787356:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former ambassador, who opened the account on September 13, 1995. This is a Household Account, and is expected to be more than \$50,000 but less than \$200,000. The customer is a PEP, and the relationship was designated High Risk.
  - viii. **Miguel Boriko - #76841201:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former government minister and a PEP. The account was designated High Risk. The account was opened on July 17, 1998. There has been virtually no activity in the account for the past year.
  - ix. **Melchor Edjo - #76827522; #81502490:** The KYC profile for this customer was completed on November 19, 2002. The customer is a government minister and a PEP. The relationship has been designated High Risk. It began on July 14, 1999. The purpose of the account is Educational Expense. However, the relationship is expected to exceed \$200,000. There was a deposit of approximately \$140,000 early in 4Q02 in the first account, but the rest of 2002 saw little activity in the account.
  - x. **Juan Olo Mba Nseng - #76912623:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former government minister and a PEP. The relationship has been designated High Risk. It began on September 28, 2000. This is a Household Account, and is expected to be less than \$50,000. In fact, the balance was less than \$20,000 throughout 2001, and there was relatively little activity in the account. The customer is a consultant to oil companies, and receives direct deposits from those clients.

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**C. Riggs' Relationship with Equatorial Guinea is Multi-faceted**

- **Financial Intermediary and Adviser for Government**
  - The energy companies that have contracts with the government of Equatorial Guinea wire payments directly to the country's accounts at Riggs.
  - As directed, Riggs sends funds to the account Equatorial Guinea maintains at the Central Bank of Africa (BEAC).
  - Riggs disburses funds from government accounts to firms retained by Equatorial Guinea to build bridges, roads, and other public infrastructure, as well as to provide various services in the country.
  - No payments from this account go to the President or other officials.
  - Riggs Investment Advisors, Inc. manages a portfolio of excess government assets valued at approximately \$150 million. These assets are in the form of money market instruments, highly liquid in the event they are needed for alternative uses.
  - Riggs Bank administers funds that are used to house and educate approximately 50 students from Equatorial Guinea who are studying at U.S. colleges and universities. Most of these students are concentrating their studies in fields related to the production of oil and natural gas.
- **Bank for the Embassy**
  - Operating funds and related customary services for the embassy.
- **Banker for Government Officials and Family Members**
  - Banker to key government officials. During the humble origins of this relationship, government officials developed a high level of trust in Riggs and in Simon Kareti, the Riggs banker who leads Riggs' efforts for this client. As a result of this trust, many officials have established their own accounts at Riggs. (These accounts are discussed in greater detail below.)
  - Banker to family members of government officials. Leaders of Equatorial Guinea and their families have benefited from the rapid increase in the country's wealth. Those benefits include fine homes and other property in Equatorial Guinea, as well as homes, automobiles, and other luxuries here in the Washington area. (These accounts were discussed in greater detail above.)

**V. FLOW OF FUNDS**

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**1. IN-FLOW****a. Sources of Government Funds**

- The primary sources of funds for the government accounts are several major energy companies that have contracts with the government. Although Riggs does not have copies of these contracts, they are well known in the international community, with media reports about them and their terms appearing over a period of several years. These companies include –

Atlas Petroleum	Ocean Energy
Chevron	Triton Energy
CMS Energy (Marathon Oil)	Vanco Energy
Exxon Mobil	

- Oil production for 2002, averaged more than 200,000 barrels per day, and production is expected to increase to an average of 300,000 barrels per day in 2003.
- The profit-sharing contract between the government and energy companies, which was negotiated in 1998, provides that Equatorial Guinea receives 20% of oil export revenue. According to the State Department, this is a relatively poor agreement by international standards.
- U.S. companies have invested \$5 billion in the country since the mid-90s.
- After discovery of oil in 1996, gross domestic product increased by 76% in 1997, and has been increasing at double-digit rates in subsequent years. In 2000, the government reported a growth rate of 16.9% in 2000 and 65% in 2001. The projection is for a growth rate in 2002 of 33% and in 2003 of 12%.
- Although energy is the primary source of funds, revenue is also obtained from lumber and cocoa export.

**b. Sources of Funds for Related Accounts**

- **President's Account:** The source of funds for the President's account is reportedly due to the sale of his homes in Spain and France. In addition, the President owns a construction company and several hotels and shopping centers in Equatorial Guinea. The construction company has a key position in all construction efforts in the country. Finally, the President has business interests related to oil and gas production. He owns land and receives rent payments from energy companies, and he has a 25% interest in the major oil and gas plant, originally financed by OPIC.

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- **First Lady's Account:** The source of funds for the First Lady's account is business interests in the country. For example, the First Lady has substantial land holdings and receives rent payments from several energy companies that rent her land for energy production and related facilities.
- **Other Related Accounts:** The primary sources of funds for these accounts is salary and wages of the account owners.

**c. Quality of Substantiation and Documentation**

- There are many sources of information on oil production in Equatorial Guinea. Developments in the country are followed and reported on concerning the economy, budget, and political affairs.
- Sources of this information include the U.S. government (e.g., State Department, Central Intelligence Agency, Department of Commerce, and Department of Energy); news agencies (e.g., New York Times, CNN, BBC, Sunday Times/Johannesburg); international organizations (e.g., International Monetary Fund); and private companies (e.g., Exxon Mobil and Marathon Oil). In addition, the Equatorial Guinea Ministry of Mines and Energy has a website that provides information ([www.equatorialoil.com](http://www.equatorialoil.com)).
- Riggs has amassed substantial amounts of information on the sources of oil revenue to Equatorial Guinea.
- Riggs has established lines of communication with Exxon Mobil, Marathon and the other energy-producing firms through which either side can address issues related to the regular flow of funds.
- Funds are delivered to Riggs by wire transfer, and all normal protocols are observed.
- Little information is available to substantiate the source of funds for the related accounts.

**B. Out-Flow**

**1. Destination of Government Funds**

- Deposits in the government's account at the Central Bank of Africa (BEAC).
- Payments to vendors having contracts with Equatorial Guinea.
- Operating uses for the embassy in Washington, D.C.
- Distributions to students from Equatorial Guinea who are studying in the U.S.

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2. Destination of Funds from Related Accounts

- Much of the expenditure of these funds appears to be for purchases of homes, furnishings, cars, and other incidental items.
- Some of the expenditure is for educational expenses.

3. Quality of Substantiation and Documentation

- Riggs maintains a database of the vendors that have contracts with Equatorial Guinea and to which it disburses government funds. These vendors are providing services to the government. A copy of one list of vendors is available. None of the vendors appear on the OFAC lists.
- There appears to be relatively little documentation to substantiate the destination of funds from the other accounts.

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## VI. RISK ASSESSMENT

## 1. REPUTATION RISK

- Reputation risk is the risk to earnings or capital arising from negative public opinion.
- Negative public opinion could arise for several reasons. Some of the allegations that have been made over the last two or three years are listed in the table on the next page, along with contextual information for these reasons.

Although government officials appear to have benefited from their power-positions before the discovery of vast natural resources, revenues from oil and gas production have multiplied the size and scope of opportunities available to them. This is cause for concern. If they occur over time, gross disparities in the distribution of energy revenues will eventually cement a poor reputation for the country's leaders. On the other hand, there is a widely held view that the Obiang government is better than its predecessor's. In this sense, the level of concern about the Equatorial Guinea relationship is logically somewhat lower. The real issue, however, is the risk to Riggs. That risk depends on what is happening today in Equatorial Guinea and how it is perceived in the U.S. and other markets where Riggs operates.

In the final analysis, the Equatorial Guinea relationship increases reputation risk for Riggs. That risk will abate if the government proceeds with mitigating steps. Such steps include –

1. Increasing transparency in government finances;
2. Promoting of government plans for economic development throughout the country;
3. Distributing, in the near-term, substantial sums funds to existing development projects; and
4. Implementing electoral reforms that encourage free and open elections, as well as political opposition.

Sources of Reputation Risk

ISSUE	ACCUSATION	SYMPTOMS
Fraudulent Election	No secret ballot; discouraging opponents	President wins 95%+ of the votes
Corrupt Government	Oil revenues are being diverted to benefit them	Oil revenues are kept off-shore and

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Officials		perceived to be secret
Human Rights Abuses	Political opponents are arrested. They and other prisoners are imprisoned and reportedly tortured.	Doctors without Borders reportedly leaves the country because of concerns
Neglect of Populace	Millions in oil revenue are not benefiting people who live in the country	Palaces and plush government buildings are being constructed
Notoriety of Certain Customers	International private banking services shield bad people of world; if the accusations prove correct, Equatorial Guinea officials might fit this category	Current risk-raising customers: Aldrich Ames; Pinochet, Sissoko; and others?

## 2. COMPLIANCE RISK

- Compliance risk is the risk to earnings or capital arising from violations or nonconformance with laws, rules, regulations, prescribed practices, or ethical standards.
- The primary source of compliance risk is possible failure to adhere to Riggs' AML EDD Policies.
- Although the risk of money laundering appears to be very low, if the issues that create Reputation Risk have merit, they would necessitate the filing of a suspicious activities report (SAR).

There has been no accusation that officials related to Equatorial Guinea are involved in money laundering. The sources of funds are clear, and the destinations of funds being expended do not suggest that funds are going to terrorists, to organizations that support terrorists, or to any other criminal enterprise.

However, Riggs' AML EDD Program applies to all customers, and it requires diligent effort in using prescribed KYC forms and monitoring activity. Further, there are accusations that government funds are being diverted from projects that would benefit the people of Equatorial Guinea generally to uses that enrich only certain officials. Suspected corruption on the part of public officials is cause for filing a SAR.

As a result of this review, it is clear that enhanced diligence is required in reviewing this relationship. For example,

- KYC forms and supporting material for existing accounts need to be current and complete at all times;



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- Riggs should maintain an objective posture with regard to the accounts;
- Riggs should be alert to the potential for official corruption and monitor developments in Equatorial Guinea so that it can file a timely SAR, if that becomes appropriate at some future date.

same name, Account No. 68-002-6036. Both the special account and the investment account had, at times, funds equal to or exceeding \$1 million.<sup>153</sup>

(6) **Otong Accounts.** While E.G. President Obiang did not have any personal accounts at Riggs, he was the beneficial owner of one account and two CDs opened in the name of a Bahamian offshore shell corporation, called Otong S.A., which was under his control and had been established on his behalf with the assistance of Riggs. Account No. 76-863-013 was a money market account, which was opened in September 1999, and had fluctuating balances. The first CD was opened in June 2000, as Account No. 81-450-109; the second was opened in June 2002, as Account No. 81-723-162. In December 2002, the first CD had a value exceeding \$11.7 million, while the second CD had a value exceeding \$4.4 million.<sup>154</sup>

(7) **Constancia Mangué Nsue Accounts.** Five accounts and three CDs were opened in the name of the President's wife, Constancia Mangué Nsue. The earliest was opened in 1997, and the latest in 2002. Account No. 24-383-122 was a personal checking account that received several large cash deposits, as well as a few payments from ExxonMobil oil company totaling about \$385,000. From 1998 until 2003, the account balance fluctuated widely between about \$3,000 and \$2.7 million.<sup>155</sup> Over time, about \$2.8 million was withdrawn from this account and transferred to a CD in Ms. Nsue's name, Account No. 81-253-754.<sup>156</sup> Account No. 24-895-363 was a joint checking account with her brother, Teodoro Biyogo Nsue, the E.G. Ambassador to the United States. From 2000 until 2003, this account balance fluctuated widely between \$0 to about \$670,000, and included some large cash payments and wire transfers.<sup>157</sup> Account No. 25-475-010 was a money market account established in 2002 to receive rental payments of about \$5,000 per month on a Maryland property owned by Ms. Nsue. Two money market accounts and two CDs were opened in the name of Ms. Nsue on behalf of her teenage twin sons, Justo and Pastor Obiang. The money market accounts, Account Nos. 76-890-441 and 76-890-433, each had fluctuating balances of between about \$600 and \$270,000, and each periodically sent large

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<sup>153</sup> See, e.g., Riggs account statement for the investment account, (June 2002) Bates RNB 013878 (account balance exceeds \$1 million).

<sup>154</sup> See December 2002 account statements, Bates RNB 000333 and 336; Riggs statement of account (4/2/02), Bates RNB 007385-87.

<sup>155</sup> See, e.g., Riggs monthly account statements, RNB 000723-92.

<sup>156</sup> At the end of 2002, this CD had a value of about \$2.9 million. Riggs 2002 account statement, Bates RNB 000920.

<sup>157</sup> See, e.g., Riggs monthly account statements, RNB 000793-843.

Equatorial Guinea under scrutiny however; it is believed that the government's increasing capacity to buy diplomatic influence has caused several African countries to insist on softening the criticism."<sup>166</sup>

This pragmatic description of corruption and human rights abuses in Equatorial Guinea demonstrates that Riggs was fully aware of the corruption risks associated with the E.G. accounts. Despite this knowledge, Riggs failed to designate the E.G. accounts as high risk until October 2003, and failed to exercise enhanced scrutiny of the account activity, even for transactions involving large cash deposits or international wire transfers.

Of the 60 accounts and CDs opened for E.G. clients at Riggs, the evidence indicates that at least half functioned as private banking accounts for senior E.G. officials or their family members. In the case of the E.G. President, the Subcommittee found that, as part of its services, Riggs helped the E.G. President and his sons establish at least two offshore shell corporations and open bank accounts in their names.

In September 1999, Riggs helped the E.G. President establish Otong, S.A., an offshore corporation incorporated in the Bahamas.<sup>167</sup> In September 1999, Riggs opened its first account for Otong, Account No. 76-863-013. The Riggs account opening documentation for Otong states that the beneficial owner of Otong is "Teodoro Mbasogo" and gives his confidential address as "The Presidential Palace, Malabo, Equatorial Guinea."<sup>168</sup> The client profile states: "The President of Equatorial Guinea has been in office for twenty years. He has extensive farming [assets] and is a major partner of the telecommunication (phone system modernization) project in the country with France Telecom." It cites "[c]ocoa farming and businesses" as the client's original source of wealth, verified by "Incountry visits." Under "Additional Comments," it states: "We have known him [the E.G. President] for five years and [he] has been quite consistent with us. The President desires to have a personal relationship with us in order to facilitate his personal and family needs while in the U.S. These needs include health and management of his residence here in the U.S." The client profile does not contain required signatures from bank personnel approving the opening of the account.

Additional account opening documentation was completed for Otong when it opened two CD accounts in June 2000, Account Nos. 81-450-109 and 81-723-162.<sup>169</sup> The 2000 account

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<sup>166</sup> Riggs "Officers' Loan Committee Action" (11/26/02), Bates T 00003089-3101, at 3092-93.

<sup>167</sup> See Certificate of Incorporation (9/20/99), Bates RNB 007303-04; emails between Riggs and the Bahamas company incorporating Otong (9/20/99), Bates RNB 007287-90 and RNB 007305. Otong is authorized to issue both registered and bearer shares. See Memorandum of Association and Articles of Association of Otong S.A. (9/20/99), Bates RNB 007250-74.

<sup>168</sup> "Riggs & Co Know Your Customer Client Profile" (9/20/99), Bates RNB 007112-16.

<sup>169</sup> "Riggs & Co. Trust Services Account Approval & Opening Memo" (5/30/00), including "Riggs & Co. Know Your Customer Client Profile" (5/30/00), Bates RNB 007089-98.

opening documentation states that the beneficial owner of Otong is “T.Ngui,” but then repeats verbatim the language describing the E.G. President in the 1999 client profile.<sup>170</sup> Like the 1999 documentation, the 2000 documentation does not contain required signatures from bank personnel approving the opening of the accounts.

An updated client profile for the Otong accounts was completed in 2002.<sup>171</sup> This profile rated Otong a “high” risk account, stated the owner was a high profile government official, and identified the owner as the E.G. President. An attachment listed all three Otong accounts, while another provided a brief overview of the many E.G. businesses owned by the E.G. President.<sup>172</sup> The profile was signed by a Riggs employee who reported to the E.G. account manager.

As discussed later in this Report, the E.G. President made more than \$11.5 million in cash deposits to the Otong accounts from 2000 to 2002. While Riggs filed the required Currency Transaction Reports (CTR) on each occasion, the OCC later determined that the CTRs had repeatedly mischaracterized Otong, describing it as a timber export company rather than the E.G. President’s offshore corporation.<sup>173</sup>

In January 2001, Riggs helped establish Awake Ltd., another offshore corporation in the Bahamas.<sup>174</sup> The beneficial owners of this company are Teodoro Nguema Obiang and Pastor Obiang, both sons of the President. Riggs Bank opened an account for Awake Ltd. in June 2002.<sup>175</sup> The account opening documentation lists Teodoro Nguema Obiang as the president of

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<sup>170</sup> When asked about this discrepancy, the E.G. account manager apparently indicated T. Ngui and President Obiang were the same person, but provided no explanation for the changed name and no supporting documentation explaining the name switch. The website for the Government of Equatorial Guinea, however, indicates that the name of President Obiang’s mother was Mbasogo Ngui. See <http://www.ceiba-guinea-ecuatorial.org/guineeanagl/indexbienvl.htm>. Whether “Ngu” is, thus, part of President Obiang’s name and why the President’s full name was not placed on the account opening documentation are issues that remain in question.

<sup>171</sup> Riggs “KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts,” (11/19/02), Bates RNB 000036-40.

<sup>172</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>173</sup> See, e.g., *In re Riggs Bank, N.A.*, “Assessment of Civil Money Penalty,” prepared by the Financial Crimes Enforcement Network (Case No. 2004-01), at Section III(D).

<sup>174</sup> See Certificate of Incorporation and related paperwork for Awake Ltd. (1/3/01), Bates OCC 0000513849-54. The evidence shows that Trident Corporate Services (Bahamas) Ltd., which has a long-standing working relationship with Riggs Bank, helped incorporate this company. Trident also sent notices about the company’s annual licensing fees to Awake Ltd. at the Riggs Bank address in Washington, to the attention of Simon Kareri. See Trident and Riggs documentation, Bates RNB 010157-58 and 010443-44.

<sup>175</sup> See Riggs account opening documentation for Awake Ltd. (6/11/02), Bates RNB 002064-65.

(4) **Nusiteles.** Nusiteles, G.E. was established in 2000, as an E.G. telecommunications company intended to establish telephone and computer services within Equatorial Guinea. It is jointly owned by a number of parties, including the E.G. President through Abayak, the E.G. Minister of Foreign Affairs, the E.G. Director of National Security, the E.G. Minister of Justice and Religion, and International Decision Strategies, a Virginia corporation controlled by R. Bruce McColm.<sup>181</sup>

(5) **GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a state-owned E.G. company that was established in 1996, and may be partially privately held by E.G. officials. In response to Subcommittee questions, Marathon has informed the Subcommittee that, in January 2003, it was told by a GEOGAM representative that GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President.<sup>182</sup> GEOGAM is a 20 percent owner of a liquid petroleum gas facility on Bioko Island, and a 10 percent owner of a methanol plant that is also located on Bioko Island.

In November 2001, the Riggs account manager for the E.G. accounts wrote a memorandum to the file which stated in part:

“During my last trip to Equatorial Guinea, I was able to tour most of the businesses controlled by the President and his family. Due to the significant growth in the country, the businesses have grown exponentially from the sleepy businesses that I used to know to very active interests that are generating significant revenues.”<sup>183</sup>

The memorandum went on to observe that Abayak, “has become a significant earner of income for the President.” It states: “By far the most lucrative earner for the President is the new gas plant in Malabo of which he controls 25%.”<sup>184</sup> It also notes the President’s ownership of “the only two supermarkets in the country” and the largest hotels. This memorandum demonstrates that Riggs had a sophisticated understanding of the President’s personal stake in much of the economic activity within his country.

**Cash Deposits.** A key element of an effective anti-money laundering program involves proper handling of large cash transactions, including monitoring these transactions, refraining from cash transactions that appear suspicious, and reporting suspicious activity to law

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<sup>181</sup> For more information on Nusiteles, see below in this Section of the Report.

<sup>182</sup> Letter from Marathon Oil Corp. to the Subcommittee (7/13/04), attachment at 1.

<sup>183</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>184</sup> See also Riggs “KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts” for Otong (11/19/02), Bates RNB 000037.

enforcement. With respect to the E.G. accounts, however, Riggs accommodated a number of requests for large cash transactions with few questions asked.

The most dramatic example involves President Obiang's offshore shell corporation, Otong S.A., which was formed in 1999, and opened a money market account at Riggs in September 1999. Large cash deposits into that account began about seven months later.

On six occasions over a two-year period, from 2000 to 2002, Riggs accepted cash deposits of \$1 million or more for the Otong account. These cash deposits, which totaled \$11.5 million, took place as follows:

April 20, 2000	\$ 1.0 million cash deposit
March 8, 2001	\$ 1.0 million cash deposit
March 20, 2001	\$ 1.5 million cash deposit
Sept. 5, 2001	\$ 2.0 million cash deposit
Sept. 17, 2001	\$ 3.0 million cash deposit
April 12, 2002	<u>\$ 3.0 million cash deposit</u>
	\$11.5 million

When asked to describe how these large cash deposits were made and processed, one Riggs employee indicated that, on at least two occasions in which he was present, the cash was brought into the bank in suitcases transported by Mr. Kareri who said he had obtained the cash from senior E.G. officials such as the E.G. President or Ambassador.<sup>185</sup> The employee indicated that most of the cash was in unopened, plastic-wrapped bundles which did not have to be counted, while the remaining bills were counted using high-speed machines. Since \$1 million in hundred dollar bills weighs nearly 20 pounds, the currency brought into the bank would likely have weighed at least that much on each occasion. On the last two occasions involving \$3 million, the bank would've had to accept nearly 60 pounds in currency. The bank employee indicated that the large cash deposits he witnessed were not treated as unusual or requiring additional scrutiny.

Riggs did not decline to complete any of the requested transactions or identify or investigate any of them as suspicious activity. When later asked by the OCC about the source of these cash deposits, the E.G. account manager apparently told the OCC that the E.G. President had closed certain bank accounts in Europe and "maintain[ed] the funds in cash to avoid calls from would-be marketers looking for reinvestment opportunities."<sup>186</sup> An internal Riggs memorandum by the E.G. account manager in September 2001, offers an alternate explanation for the September 17 cash deposit, indicating that the E.G. President had sold "two properties in

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<sup>185</sup> Interview of Michael Parris (6/24/04).

<sup>186</sup> See, e.g., OCC examination materials (12/5/03), Bates OCC 0000517033-34 and (January 2004), Bates OCC 0000502623.

Spain in the amount of \$5 million” and sent the sale proceeds to Riggs.<sup>187</sup> A similar memorandum dated April 12, 2002, states: “We received proceeds from the sale of the properties in France in the amount of \$3 million.”<sup>188</sup>

For each of the cash deposits, Riggs completed the required Currency Transaction Report (CTR) for cash transactions exceeding \$10,000, and filed the report with the federal government. However, these reports incorrectly described Otong as an exporter of timber, rather than an offshore corporation controlled by the E.G. President. The inclusion of this inaccurate information in the CTRs on Otong is cited as one reason for the \$25 million civil fine later imposed on Riggs.<sup>189</sup>

Account documentation shows that the cash deposited into the Otong account was combined with other deposits and used to fund two CDs established in the name of Otong in 2000 and 2002. In December 2002, these CDs were valued at \$11.7 million and \$4.4 million.<sup>190</sup>

Large cash payments were also made to accounts opened in the name of the President’s wife, Constanca Nsue. On at least seven occasions over a two-year period, from 2000 to 2001, Riggs accepted cash payments ranging from \$20,000 to \$150,000, into Ms. Nsue’s personal

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<sup>187</sup> Riggs memorandum by Simon Kareri (9/17/01), Bates RNB 007070.

<sup>188</sup> Riggs memorandum by Simon Kareri (4/12/02), Bates RNB 007071. The cash deposits were not the only suspicious transactions involving the Otong account. For example, on 2/6/02, Riggs accepted for deposit a \$3 million check that was made out to Otong and dated 2/4/01, more than one year earlier. See copies of check, Riggs deposit ticket, and entry showing deposit, Bates RNB 007385-87 and 007396.

<sup>189</sup> See, e.g., In re Riggs Bank, N.A. (Case No. 2004-01), prepared by the Financial Crimes Enforcement Network (5/13/04), at section (D).

<sup>190</sup> See December 2002 account statements, Bates RNB 000333 and 336.

checking account, Account No. 24-383-122.<sup>191</sup> These cash deposits, which totaled nearly \$500,000 in the aggregate, took place as follows:

Jan. 24, 2000	\$150,000.00 cash deposit
Feb. 1, 2000	\$ 20,000.00 cash deposit
Sept. 5, 2000	\$ 25,000.00 cash deposit
Sept. 13, 2000	\$ 50,000.00 cash deposit
March 8, 2001	\$ 50,875.00 cash deposit
March 8, 2001	\$100,000.00 cash deposit
Sept. 17, 2001	<u>\$100,000.00 cash deposit</u>
	\$495,875.00

On another ten occasions from 2000 to 2002, Riggs accepted cash payments ranging from \$20,000 to \$300,000, into a joint checking account, Account No. 24-895-363, that Ms. Nsue held with her brother, Teodoro Biyogo Nsue, the E.G. Ambassador to the United States. Four of these cash payments (on Jan. 24, 2000, Feb. 1, 2000, Sept. 5, 2000, and Sept. 17, 2001) took place on the same days as the cash payments to Ms. Nsue's personal checking account. The cash deposits to the joint account, which exceeded \$900,000 in the aggregate, took place as follows:

Jan. 24, 2000	\$ 50,000.00 cash deposit
Feb. 1, 2000	\$ 70,000.00 cash deposit
Feb. 4, 2000	\$ 20,000.00 cash deposit
Sept. 5, 2000	\$300,000.00 cash deposit
March 16, 2001	\$200,000.00 cash deposit
March 20, 2001	\$ 80,000.00 cash deposit
Sept. 17, 2001	\$ 20,000.00 cash deposit
Feb. 8, 2002	\$100,000.00 cash deposit
Sept. 5, 2002	\$ 20,000.00 cash deposit
Dec. 23, 2002	<u>\$ 74,209.00 cash deposit</u>
	\$934,209.00

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<sup>191</sup> This account also had numerous foreign currency transactions which allegedly involved checks written in Euros being converted into U.S. dollars by the bank before depositing the dollars into Ms. Nsue's account. Some of these transactions were marked at the time by bank personnel as "cash deposits." When asked by the OCC for copies of the Euro checks, the bank apparently failed in some cases to produce any copies. These transactions were as follows:

Sept. 20, 1999	\$114,134.71	Oct. 1, 2001	\$ 223,836.99
Nov. 19, 1999	\$201,382.86	Nov. 15, 2001	\$ 64,068.46
March 30, 2000	\$425,235.12	Jan. 15, 2002	\$ 413,337.15
July 11, 2000	\$494,811.32	April 6, 2002	\$ 58,421.24
Jan. 16, 2001	\$156,491.39	April 12, 2002	\$ 231,618.22
March 8, 2001	\$104,417.33	Aug. 26, 2002	\$ 168,066.49
May 8, 2001	\$274,762.41	Nov. 13, 2002	<u>\$ 139,435.95</u>
July 25, 2001	\$ 56,632.56	Total:	\$3,126,652.20



Altogether, Riggs allowed Ms. Nsue to deposit over \$1.4 million in cash into her accounts with few or no questions asked. When combined with the \$11.5 million in cash deposits to the Otong account, Riggs enabled the E.G. President and his wife to make cash deposits of nearly \$13 million over a three-year period into their Riggs accounts.

For each of the cash deposits, Riggs filed a currency transaction report. However, at the time of the transactions, the bank failed to file a single suspicious activity report despite the size of the transfers, the fact that the President's wife was depositing hundreds of thousands of dollars in cash into her personal account and the account shared with her brother, or the fact that the E.G. President was depositing millions of dollars in cash into his offshore shell corporation account.

**Million-Dollar Wire Transfers.** Regular reviews of wire transfer activity to identify suspicious transactions, especially for high risk accounts, is another important element of an effective anti-money laundering program. Riggs, however, did not conduct routine or special reviews of wire transfer activity, even for its high risk accounts. Until recently, the bank conducted no routine or special monitoring of wire transfer activity involving any of the E.G. accounts, despite frequent and sizeable transfers of funds across international lines.

In August 2003, Riggs hired an experienced investigator to conduct an in-depth review of the E.G. accounts and, among other duties, respond to requests for information. Over the next few months, this investigator identified numerous suspicious wire transactions involving the E.G. oil account. These transactions included, for example, wire transfers totaling nearly \$35 million from the E.G. oil account to two companies that were unknown to the bank and had bank accounts in jurisdictions with bank secrecy laws; three wire transfers totaling more than \$1 million that were sent to Jadini Holdings, an offshore shell corporation owned by the wife of the E.G. account manager at Riggs; and three transfers totaling nearly \$500,000 that were sent to the personal bank accounts of a senior E.G. official.

**Kalunga Wire Transfers.** Over three and one-half years, from June 2000 to December 2003, sixteen wire transfers were sent from the E.G. oil account to Kulunga Company SA, an E.G. corporation, totaling over \$26.5 million. These wire transfers included:

June 7, 2000	\$ 1,332,044.00 wire transfer
Aug. 10, 2000	\$ 1,110,000.00 wire transfer
Sept. 5, 2000	\$ 292,200.00 wire transfer
Oct. 16, 2000	\$ 1,362,500.00 wire transfer
Jan. 30, 2001	\$ 2,698,800.00 wire transfer
April 10, 2001	\$ 1,349,400.00 wire transfer
May 9, 2001	\$ 1,349,400.00 wire transfer
May 7, 2002	\$ 798,000.00 wire transfer
June 26, 2002	\$ 167,000.00 wire transfer

Senator  
Carl  
Levin

members, and watched the assets grow from \$100 million to \$700 million, making Equatorial Guinea the bank's largest single customer.

Riggs offered the E.G. officials the same sorts of services that it offered General Pinochet. For example, Riggs helped the E.G. President set up an offshore shell corporation in the Bahamas, called Otong. Riggs then opened three accounts in the name of that offshore shell corporation. Over the next 3 years, from 2000 to 2002, Riggs allowed the E.G. President to make repeated cash deposits—and I emphasize cash deposits—into the Otong account of \$1 million, \$2 million, and even \$3 million at a time. At least one of these deposits was personally brought into the Riggs Bank by the Riggs account manager who handled the E.G. accounts. He carried the funds in a suitcase of plastic-wrapped dollar bills weighing 60 pounds or more. If that kind of cash deposit does not make a bank sit up and ask questions, I am not so sure anything will.

And there is more. Additional hundreds of thousands of dollars in cash were repeatedly deposited into accounts opened for the E.G. President's wife and for her brother, the E.G. Ambassador to the United States. There were substantial withdrawals as well, for expensive homes, cars, and credit card bills.

International wire transfers moved millions of dollars in and out of E.G. accounts and across international lines. They included wires that, over 2 years, took \$35 million out of an account holding oil revenues for the people of Equatorial Guinea, and sent the funds to two unknown offshore companies called Kalunga and Apexside. Riggs states in its prepared testimony today that these overseas companies "appear to be controlled by members of the government of Equatorial Guinea."

Riggs learned about the suspicious nature of those companies when, in August 2003, it started analyzing the wire transfer activity in the E.G. oil account and asking questions. That was 6 months after Riggs received a subpoena from this Subcommittee requesting information about the E.G. accounts at the bank. If Riggs had started asking the same questions 3 years earlier, when the wire transfers first started, Riggs would not have ended up facilitating \$35 million in suspicious wire transfers.

There were other suspicious transactions as well. Nearly \$500,000 in wire transfers went from the E.G. Government's oil account to the personal account of an E.G. official. Another \$1 million was wired out of the oil account bound for another bank in an account belonging to the Jadini Holdings, Ltd., an offshore corporation that is under the control of the wife of the Riggs' employee who manages the E.G. accounts.

At the same time all this activity was going on, Federal bank regulators were repeatedly expressing concerns about deficiencies in Riggs' anti-money laundering controls, but doing very little to compel the bank's compliance with the law. OCC examiners pointed out that the bank failed to identify its high risk accounts or monitor for suspicious activity. They warned the bank repeatedly that the background checks on clients were either not being done or had inadequate information. They stated repeatedly that the bank's anti-money laundering training was weak, and the internal

Joint testimony  
of Riggs

Executive

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For example, Exhibit 1b<sup>1</sup> shows cash deposits into the offshore private investment account of the President of Equatorial Guinea. This account was named Otong. Between April 2000 and April 2002, \$11 million in cash was deposited into the account. On two occasions there were \$3 million deposits in cash estimated to weigh 60 pounds as it was delivered to you. Yet Riggs did not ask the required questions about the source of such large cash deposits until a year and a half later, late in 2003.

Then you look at Exhibits 1c and 1d,<sup>2</sup> and they show large amounts of funds that were transferred from the E.G. oil account to offshore corporations, whose identities, the bank has acknowledged to us, were unknown to the bank, the ownership of these corporations unknown. Transfers from Equatorial Guinea's oil account at Riggs to Kalunga and to Apexside. Between July 2000 and 2001, \$8 million was transferred from the oil account of this country to a company called Apexside, that is Exhibit 1d. Between June 2000 and December 2003, \$26 million was transferred from the oil account of the country to a company called Kalunga. Riggs has acknowledged to us that it made no inquiries about these transactions when they were made. It was required to do so under anti-money laundering regulations.

Mr. Hebert, when Riggs finally questioned President Obiang and his ministers about the Kalunga and Apexside accounts in early 2004, what happened?

Mr. HEBERT. The president refused to give us—he indicated that these transactions were authorized by the government for payment of goods and services in connection with the development of the country. When we inquired about the specific vendors, they indicated they would not respond to our questions, and we advised them without that response, without the understanding of that information being shared with the bank, that we were going to ask them to close their account immediately.

Senator LEVIN. Why did you not ask those questions when the transfers were made, instead of waiting until the end of 2004, after the subpoena and publicity?

Mr. HEBERT. Well, our systems and our entire information technology process had been under development from shortly after I arrived at the bank. There was no question in my mind that the information technology system in the bank was hampering the ability to provide the compliance necessary for the client base that the bank had. Second, it was very difficult to run a modern bank, so we undertook an extensive project. We spent some \$60 million, and 20 months later enacted and converted to a new system over Labor Day of 2003. During that time we also had developed an entirely new platform of compliance policies and procedures, as well as brought—hired one of the big accounting firms to come in and help us conduct internal audit activities.

It wasn't long after I came to the bank that I realized—excuse me—in 2003, that we realized that our compliance in internal auditing areas were lacking in their ability to provide information for senior management to—and for the compliance area to monitor and

<sup>1</sup> See Exhibit 1b which appears in the Appendix on page 213.

<sup>2</sup> See Exhibit 1c and 1d which appear in the Appendix on pages 214 and 215.

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Memorandum

March 24, 2003

TO: Joseph Cahill, Executive Vice President and General Counsel

FROM: Paul Gleason, Vice President, Director of Compliance

RE: Riggs' Relationship with Equatorial Guinea

The purposes of this memo are to recapitulate the due diligence Riggs has done concerning its relationship with Equatorial Guinea and to assess the risks associated with that relationship. We have also included copies of items we reviewed to help understand Riggs' management of this banking relationship.

#### I. SUMMARY

- A. Riggs' relationship with Equatorial Guinea is very large (approximately \$500 million) and consequently very important to Riggs' revenue and earnings.
- B. The customers in this relationship include the government of Equatorial Guinea, as well as its President, First Lady, their children, relatives, and other former and current government officials.
- C. The primary source of funds in this relationship is revenue from the development of oil and gas resources, the most valuable natural resources of the country. These funds come to Riggs accounts directly from the companies that have government contracts to produce oil and gas, as well as from contract payments or rents those companies pay to firms owned by the President and First Lady. In addition, for the individual accounts, funds come from government salaries or business interests.
- D. The primary uses of the government account funds have been to pay vendors that have contracts to provide in-country services to Equatorial Guinea; to operate the government's embassy in the U.S.; to finance household and educational expenses for the account owners; and to finance higher education at U.S. colleges and universities (e.g., Carnegie Mellon) for selected students from Equatorial Guinea.
- E. The key link in the relationship between Riggs and Equatorial Guinea is Simon Karei, who brought the relationship to Riggs and who is primarily responsible for developing it. The top officials of Equatorial Guinea have a very high level of trust and confidence in Mr. Karei and, therefore, in Riggs. The combination

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EXHIBIT #51j

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of this attitude from the customers and Mr. Kareti's efforts to meet customer needs, have made Mr. Kareti and Riggs an integral part of government operations.

- F. Because the importance of this relationship is clear to top management of the Bank, senior Bank managers hold regular meetings with Mr. Kareti and others to monitor developments in the Equatorial Guinea relationship.
- G. Since 1996, oil revenues for the country have been growing rapidly, and they are expected to continue to flow for decades. Previously, Equatorial Guinea had been a poor, under-developed country. This combination of circumstances is creating stresses that few countries know. A vast array of projects that had been unthinkable only a few years ago now are not only possible but demanded. As a result, planning and implementation challenges abound. Some of these challenges have slowed the pace of public investment of oil revenues. Consequently, some observers have charged that oil revenues are not sufficiently benefitting the people of Equatorial Guinea.
- H. The President of Equatorial Guinea has been criticized in the press, both in the U.S. and abroad, because of alleged corruption in the way government finances are managed and for how elections are conducted. Although there is concern about the validity of these charges among credible observers, the same observers readily point out that the current regime is better than its predecessor.

To the degree this criticism is justified – and it remains largely although not completely unsubstantiated – it causes some observers to think of this customer relationship as notorious. Further, if allegations of official corruption were substantiated, for example, it could necessitate the filing of a Suspicious Activity Report (SAR). For these reasons, this relationship increases the Bank's Reputation Risk.

- I. Although KYC profiles exist for the customers, all were completed on the same day – November 19, 2002. This suggests a late effort to comply with Bank policies and procedures. It should be noted, however, that ample documentation existed in Embassy Banking files for the accounts. Nevertheless, to the degree that Riggs has not fully adhered to the requirements of its AML EDD Program, there is increased Compliance Risk.

Having concluded that the accounts for and related to the government of Equatorial Guinea increase risk, the issue is how these risks can be controlled through management actions.

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## II. RECOMMENDATIONS

## A. REPUTATION RISK

1. Maintain the professional distance between Riggs Bank and its customer. For example,
  - o Discourage bank officer references to “we” when speaking of government actions or plans;
  - o Consider having an officer in addition to Mr. Karei go to Equatorial Guinea for the next in-country visit; and
  - o Consider the possibility that Riggs will be a named sponsor of the conference Equatorial Guinea is planning for the Spring, in Washington, D.C. If the conference is perceived to be a Riggs event, it will solidify the public connection between the Bank and Equatorial Guinea, thereby aggravating the consequences of reputation damage that someday might be realized.
2. Encourage representatives of the government of Equatorial Guinea to join organizations and to participate in events that encourage transparency in fiscal affairs. For example, opening or expanding dialogue with the World Bank, International Monetary Fund, U.S. AID, Overseas Private Investment Corporation, and similar organizations could lend credibility to the country’s efforts to distribute its wealth. Such encouragement should not involve direct suggestions or advice on groups with which to align, how to approach them, or how to conduct business with them.
3. Encourage the involvement of credible, neutral election observers from countries that have a history of open and fair elections. Such encouragement should not involve direct suggestions or advice on countries or organizations to invite, how to approach them, or how to conduct business with them. However, Riggs might be able to point officials to organizations it has reason to know about, in the U.S., which could be helpful. The Carter Center, in Atlanta, is an option.
4. Monitor all facets of this relationship to determine whether reputation risk is increasing because Riggs customers are linked publicly to problems in Equatorial Guinea. The monitoring effort should concentrate on reliable, U.S. sources of information that the OCC can be expected to find persuasive.
5. Update the OCC regularly concerning the Equatorial Guinea relationship. Such updates are a deliberate way to acknowledge the risks and recognize regulator concerns about the level of risk. The updates will allow Riggs to help the OCC understand the reasons why Riggs should maintain this relationship, and enable Riggs to learn about the OCC’s concerns as they emerge.

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**B. COMPLIANCE RISK**

1. The AML Officer should begin attending all regular senior management meetings concerning the Equatorial Guinea relationship. This Officer's attendance should continue for the foreseeable future, but at least until there is consensus – among Senior Management, the AML Officer, and their understanding of regulator perceptions – that the account risk rating would be Moderate.
2. Consider requiring an explanation of all deposits and withdrawals from accounts for the government and PEPs that exceed \$10,000. If implemented, this recommendation would include non-cash transactions. The explanation could take the form of a contemporaneous note to the files – e.g., in a log created for each account or for the relationship – that would indicate the source of the funds being deposited or the destination (to the extent knowable) of the funds withdrawn. The notes or log would be maintained by Mr. Kazzi and his staff, and it would serve several purposes, including (a) providing information about the transaction that would not be in letters or more formal documents but still known to the banker and (b) another source of auditable information about the accounts.
3. Institute a regular review of all government and PEP accounts, and require that the results of that review be reported to senior management at its regular meetings on Equatorial Guinea. This review would entail an annual update of the KYC form and enhanced due diligence for each account. As a result of this review, there should either be new substantiating documents or an explanation of why newer documents are not needed or not available. The AML Officer should lead these reviews.
4. Riggs' AML Officer should specifically monitor allegations of official corruption in Equatorial Guinea for the purpose of filing an SAR, if necessary. This monitoring effort could be conducted by Compliance staff. If developments warrant, the AML Officer should make a recommendation to senior management about whether to file or not. Such a recommendation should not involve any Riggs employees who are involved on a day-to-day basis with the accounts.

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**III. THIS REVIEW PROCESS**

Beginning in December 2002, at the request of Ray Lund, Executive Vice President/International Banking, and under the direction of the AML Officer, Risk Management began a review of the Bank's relationship with Equatorial Guinea. In addition to the AML Officer, the review team included representatives from Internal Audit and Security, as well as a consultant who is on retainer with the Compliance Department.

The review process consisted of two extensive interviews with Simon Karezi, the primary bank officer for this relationship, and review of documents and public material. Mr. Karezi is a Senior Vice President in the Embassy Banking group, and he is responsible for African and Caribbean countries. Mr. Karezi also identified and developed this relationship for Riggs. The second interview also included a member of Mr. Karezi's staff.

During these interviews, Mr. Karezi described how the relationship with Equatorial Guinea began, the facets of that relationship today, and his expectations for this relationship as a continuing opportunity for Riggs. The review team obtained copies of recently produced KYC profile forms for the customers in this relationship; a list of vendors Riggs had paid on instructions from the government; copies of account statements; and other background material. In addition, the review team obtained considerable public material on Equatorial Guinea, much of which came from a local organization called International Decision Strategies, Inc. (IDS).

In addition, a member of the review team contacted the U.S. State Department and spoke with Pamela Bellamy, the desk officer for Equatorial Guinea. The review team also interviewed a representative of Riggs Investment Advisors, Inc. (RIAI), with which the government has an investment account of approximately \$150 million. From this interview, the team obtained copies of the material RIAI (then RIMCO) had collected as part of its due diligence efforts when this account was opened.

Other meetings and conversations by various members of the review team also helped understand how the Bank manages this account. For example, within Embassy Banking, Mr. Karezi's staff, which is dedicated to serving African and Caribbean countries, has grown significantly as the Equatorial Guinea relationship has grown. Similarly, senior management holds regular meetings to ensure that it is knowledgeable about this increasingly important relationship.

Finally, the review team made its own search for public material available through the Internet. These sources vary widely in credibility and depth of information. The review team focused on sources believed to be reliable. The best sources for information on the economy, demographics, and government of Equatorial Guinea include U.S. government agencies such as the departments of State, Commerce, and Energy, as well as the Central Intelligence Agency. In addition, there are numerous articles available from news and other organizations concerning these issues. Specifically with regard to oil production, the organizations include Exxon Mobil and Marathon Oil, two of the companies that have contracts with the government to produce oil and liquefied petroleum gas. News organizations such as the New York Times, the Los Angeles Times, CNN, the BBC, and



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more obscure outlets have published articles about Equatorial Guinea. Many of these articles address in whole or in large part the economy and oil, but they also address the recent elections, government, and human rights issues in the country. Finally, international organizations such as Amnesty International, Doctors Without Borders, and others have websites that include information on Equatorial Guinea.

**DRAFT – 7/12/2004****Confidential: Attorney-Client Privilege****IV. THE RELATIONSHIP****A. HISTORY**

Riggs' relationship with Equatorial Guinea<sup>1</sup> started in 1995, shortly before large reserves of oil and natural gas were discovered there. At the time, the country was very poor, and it had very low visibility on the world stage.<sup>2</sup> The banking relationship began through the routine marketing activity of the Embassy Banking group. Equatorial Guinea is a country in central Africa, with an embassy in Washington, D.C. That embassy was a prospective customer for Riggs' Embassy Banking group, just as the embassy of any other country in the region would be.

The discovery of oil and natural gas changed the Equatorial Guinea relationship completely, although some aspects are continuing to change more quickly than others. The exploitation of natural resources is making Equatorial Guinea into a rich country very rapidly. Contracts have been established with companies from the U.S. and elsewhere to drill for, process, and deliver oil and natural gas. These contracts are producing substantial revenues for the government of Equatorial Guinea and for key government leaders and their families, who own property or businesses on which the foreign contractors depend.

On the other hand, the level of internal financial expertise and infrastructure needed to manage this wealth is changing less rapidly. Equatorial Guinea is attracting a lot of attention from banks throughout the world that want to provide banking services to the country and its officials. As energy-related revenues continue, this attention will likely intensify.

Another aspect of the situation that is not changing as rapidly as some would like is investment in civil infrastructure. As a poor country, health/medical, education, electricity, transportation, communications, and other common fundamental systems in a more developed country either did not exist or were deficient in Equatorial Guinea. Revenue from energy production needs to be invested wisely in these fundamental systems. Setting priorities in this area, obtaining outside assistance, organizing for, developing plans, and building these systems will remain key challenges in Equatorial Guinea for several years.

**B. RIGGS ACCOUNTS**

- **Government Accounts**

<sup>1</sup> Equatorial Guinea consists of two separate landmasses. The mainland is located between the significantly larger countries of Cameroon and Gabon. Bioko Island, off the coast of Cameroon, contains the capital of Malabo. The population is approximately 500,000. Average annual income is \$1,170.

<sup>2</sup> Equatorial Guinea was a colony of Spain until 1968. According to the U.S. State Department, the country was relatively prosperous under Spanish control. It had a highly regarded cocoa industry, and immigrants came from surrounding countries to work there. Shortly after independence, Equatorial Guinea was ruled by Francisco Nguema, a Socialist with close political and economic ties to Cuba, North Korea, and countries with similar economic and political philosophies. During this period, the economy of the country deteriorated, the people became much poorer, there were allegations of widespread abuses of civil rights. In 1979, Francisco Nguema was overthrown by President Teodoro Obiang Nguema Mbasogo, the current president.

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The government has an account with Riggs Bank and an account with Riggs Investment Advisors, Inc.

- **Riggs Bank – #17164642**
  - A new KYC form was prepared on January 28, 2003 in order to make the account documentation for Equatorial Guinea consistent with the new forms for Embassy Banking. This KYC form is supported by –
    - A letter from the Government;
    - A letter from the Embassy stipulating authorized signatories; and
    - A signature card.
      - There are three signers on the account, which include the President, the Treasurer, and the Minister of Mining. The account requires two signatures – the President's and one other.
      - On July 13, 1998, a Credit Approval Memorandum (copy attached) was completed on for a line of credit for the Government of Equatorial Guinea. That Memorandum noted two factors mitigating risks –
        - "This facility is 100% cash secured via Euro Investment funds pledged to and held at Riggs. In order to cover interest payments, credit risks, this loan is set up with a 95% loan-to-value."
        - "Riggs has had a satisfactory relationship with Equatorial Guinea, with previous commitments performing as agreed, substantial deposits in place and good contacts with the principals, including the president of the country. Additionally, Riggs manages in the case management sense, Equatorial Guinea's oil revenue derived from its substantial contract with Mobil."
    - Embassy Banking determined the credit risk on account to be low.
- **Riggs Investment Advisors, Inc. (RIAI)**
  - A KYC form was completed in 1998 when this account was opened with RIMCO (now RIAI), and it shows that Riggs Bank referred the client.
  - A copy of the Credit Approval Memorandum dated 1998 was support for the KYC form.
- **Related Accounts**
  - There are ten (10) related accounts:
    - i. S.A. Oteog – #76863013; #81450109: This is a Private Investment Corporation (PIC) for the president of the country; it is the only account in the President's name. The KYC profile for this customer was completed on November 19, 2002, along with the

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addendum, and it notes that the client is a Politically Exposed Person (PEP). The account was opened on June 16, 2000. This is a large account. During 2002, the account balance briefly exceeded \$11 million. The recommended risk rating for this customer is high.

ii. **Constancia Nsue -**

This customer is the first lady of the country. The KYC profile for the First Lady was completed on November 19, 2002. It indicates a risk rating of "high" and indicates that the account owner is a PEP. The account relationship began on August 1, 1997. This is a large relationship -- in excess of \$3 million. The stated purpose of the Household and Education Accounts.

ACCOUNT NUMBER	TYPE	APPROXIMATE RANGE OF BALANCE - 2002	2002 TRANSACTION ACTIVITY SUMMARY
#24383122	Interest Checking	\$46,000 - \$1.2million	Up to 8 transactions in a month; some very large
#24895363	Checking	\$15,000 - \$400,000	8 to 15 transactions per month; numerous overdrafts
#25475010	Money Market	\$5,000 - \$16,000	One deposit per month; statements only cover September to December 2002
#76890433	Money Market	\$850 - \$250,000	Substantial deposits (i.e., \$90,000+) in January and April; almost all funds withdrawn in July and not replaced. Account is for Pastor Obiang, Minor.
#76890441	Money Market	\$850 - \$250,000	Substantial deposits (i.e., \$90,000+) in January and April; almost all funds withdrawn in July and not replaced. Account is for Justo Obiang, Minor.
#81253754	CD	\$1.7 - \$2.9 million	One deposit of \$1.1 million during 2002
#81585919	CD	\$362,000 - \$625,000	One deposit of \$253,000 during 2002
#81585927	CD	\$362,000 - \$625,000	One deposit of \$253,000 during 2002

iii. **Teodoro Obiang - #76923450:** This customer is the son of the president and he is a minister of the Equatorial Guinea government. The KYC profile for this account was completed on November 19, 2002. It gives a risk rating of "high" and indicates that the account owner is a PEP. This account was opened on January 29, 2001. It is expected to be a large account - i.e., between \$200,000 and \$2 million. In June and July 2002, the balance in the account increased from \$250,000 to almost \$4 million. Deposits in late June/early July 2002 amounted to \$3.6 million and withdrawals in late September/early October 2002 exceeded \$1.7 million.

iv. **Armengol Nguema - #76889504; #81657484:** The KYC profile for this customer was completed on November 19, 2002. This

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- customer is the brother of the president of the country. He is the country's director of security and a PEP. The account was designated High Risk. The declared purpose of the account is Educational Expense, and it is expected to be more than \$50,000 but less than \$200,000. This account was opened on February 3, 2000.
- v. **Elena Mensa - #25356070; #25460310:** The KYC profile for this customer was completed on November 19, 2002. The customer is the wife of the ambassador, and a PEP. This is a Household Account, and it is expected to be less than \$50,000. This account was opened on May 8, 2002, and it was designated High Risk.
  - vi. **Baltasar Edjo - #76841236:** The KYC profile for this account was completed on November 19, 2002. The customer is a minister of the government and a PEP. The account was designated High Risk. This is a Household Account, and it is expected to be less than \$50,000.
  - vii. **Micha Bile - #24203160; #76787356:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former ambassador, who opened the account on September 13, 1995. This is a Household Account, and is expected to be more than \$50,000 but less than \$200,000. The customer is a PEP, and the relationship was designated High Risk.
  - viii. **Miguel Boriko - #76841201:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former government minister and a PEP. The account was designated High Risk. The account was opened on July 17, 1998. There has been virtually no activity in the account for the past year.
  - ix. **Melchor Edjo - #76827522; #81502490:** The KYC profile for this customer was completed on November 19, 2002. The customer is a government minister and a PEP. The relationship has been designated High Risk. It began on July 14, 1999. The purpose of the account is Educational Expense. However, the relationship is expected to exceed \$200,000. There was a deposit of approximately \$140,000 early in 4Q02 in the first account, but the rest of 2002 saw little activity in the account.
  - x. **Juan Olo Mba Nseng - #76912623:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former government minister and a PEP. The relationship has been designated High Risk. It began on September 28, 2000. This is a Household Account, and is expected to be less than \$50,000. In fact, the balance was less than \$20,000 throughout 2001, and there was relatively little activity in the account. The customer is a consultant to oil companies, and receives direct deposits from those clients.

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**C. Riggs' Relationship with Equatorial Guinea is Multi-faceted**

- **Financial Intermediary and Adviser for Government**
  - The energy companies that have contracts with the government of Equatorial Guinea wire payments directly to the country's accounts at Riggs.
  - As directed, Riggs sends funds to the account Equatorial Guinea maintains at the Central Bank of Africa (BEAC).
  - Riggs disburses funds from government accounts to firms retained by Equatorial Guinea to build bridges, roads, and other public infrastructure, as well as to provide various services in the country.
  - No payments from this account go to the President or other officials.
  - Riggs Investment Advisors, Inc. manages a portfolio of excess government assets valued at approximately \$150 million. These assets are in the form of money market instruments, highly liquid in the event they are needed for alternative uses.
  - Riggs Bank administers funds that are used to house and educate approximately 50 students from Equatorial Guinea who are studying at U.S. colleges and universities. Most of these students are concentrating their studies in fields related to the production of oil and natural gas.
- **Bank for the Embassy**
  - Operating funds and related customary services for the embassy.
- **Banker for Government Officials and Family Members**
  - Banker to key government officials. During the humble origins of this relationship, government officials developed a high level of trust in Riggs and in Simon Kareté, the Riggs banker who leads Riggs' efforts for this client. As a result of this trust, many officials have established their own accounts at Riggs. (These accounts are discussed in greater detail below.)
  - Banker to family members of government officials. Leaders of Equatorial Guinea and their families have benefited from the rapid increase in the country's wealth. Those benefits include fine homes and other property in Equatorial Guinea, as well as homes, automobiles, and other luxuries here in the Washington area. (These accounts were discussed in greater detail above.)

**V. FLOW OF FUNDS**

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- The primary sources of funds for the government accounts are several major energy companies that have contracts with the government. Although Riggs does not have copies of these contracts, they are well known in the international community, with media reports about them and their terms appearing over a period of several years. These companies include –

Atlas Petroleum	Ocean Energy
Chevron	Triton Energy
CMS Energy (Marathon Oil)	Vanco Energy
Exxon Mobil	

- Oil production for 2002, averaged more than 200,000 barrels per day, and production is expected to increase to an average of 300,000 barrels per day in 2003.
- The profit-sharing contract between the government and energy companies, which was negotiated in 1998, provides that Equatorial Guinea receives 20% of oil export revenue. According to the State Department, this is a relatively poor agreement by international standards.
- U.S. companies have invested \$5 billion in the country since the mid-90s.
- After discovery of oil in 1996, gross domestic product increased by 76% in 1997, and has been increasing at double-digit rates in subsequent years. In 2000, the government reported a growth rate of 16.9% in 2000 and 65% in 2001. The projection is for a growth rate in 2002 of 33% and in 2003 of 12%.
- Although energy is the primary source of funds, revenue is also obtained from lumber and cocoa export.

**b. Sources of Funds for Related Accounts**

- **President's Account:** The source of funds for the President's account is reportedly due to the sale of his homes in Spain and France. In addition, the President owns a construction company and several hotels and shopping centers in Equatorial Guinea. The construction company has a key position in all construction efforts in the country. Finally, the President has business interests related to oil and gas production. He owns land and receives rent payments from energy companies, and he has a 25% interest in the major oil and gas plant, originally financed by OPIC.

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- **First Lady's Account:** The source of funds for the First Lady's account is business interests in the country. For example, the First Lady has substantial land holdings and receives rent payments from several energy companies that rent her land for energy production and related facilities.
- **Other Related Accounts:** The primary sources of funds for these accounts is salary and wages of the account owners.

**c. Quality of Substantiation and Documentation**

- There are many sources of information on oil production in Equatorial Guinea. Developments in the country are followed and reported on concerning the economy, budget, and political affairs.
- Sources of this information include the U.S. government (e.g., State Department, Central Intelligence Agency, Department of Commerce, and Department of Energy); new agencies (e.g., New York Times, CNN, BBC, Sunday Times/Johannesburg); international organizations (e.g., International Monetary Fund); and private companies (e.g., Exxon Mobil and Marathon Oil). In addition, the Equatorial Guinea Ministry of Mines and Energy has a website that provides information ([www.equatorialoil.com](http://www.equatorialoil.com)).
- Riggs has amassed substantial amounts of information on the sources of oil revenue to Equatorial Guinea.
- Riggs has established lines of communication with Exxon Mobil, Marathon and the other energy-producing firms through which either side can address issues related to the regular flow of funds.
- Funds are delivered to Riggs by wire transfer, and all normal protocols are observed.
- Little information is available to substantiate the source of funds for the related accounts.

**B. Out-Flow**

**1. Destination of Government Funds**

- Deposits in the government's account at the Central Bank of Africa (BEAC).
- Payments to vendors having contracts with Equatorial Guinea.
- Operating uses for the embassy in Washington, D.C.
- Distributions to students from Equatorial Guinea who are studying in the U.S.



**DRAFT - 7/12/2004**

Confidential: Attorney-Client Privilege

**2. Destination of Funds from Related Accounts**

- Much of the expenditure of these funds appears to be for purchases of homes, furnishings, cars, and other incidental items.
- Some of the expenditure is for educational expenses.

**3. Quality of Substantiation and Documentation**

- Riggs maintains a database of the vendors that have contracts with Equatorial Guinea and to which it disburses government funds. These vendors are providing services to the government. A copy of one list of vendors is available. None of the vendors appear on the OFAC lists.
- There appears to be relatively little documentation to substantiate the destination of funds from the other accounts.

DRAFT – 7/12/2004

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## VI. RISK ASSESSMENT

## 1. REPUTATION RISK

- Reputation risk is the risk to earnings or capital arising from negative public opinion.
- Negative public opinion could arise for several reasons. Some of the allegations that have been made over the last two or three years are listed in the table on the next page, along with contextual information for these reasons.

Although government officials appear to have benefited from their power-positions before the discovery of vast natural resources, revenues from oil and gas production have multiplied the size and scope of opportunities available to them. This is cause for concern. If they occur over time, gross disparities in the distribution of energy revenues will eventually cement a poor reputation for the country's leaders. On the other hand, there is a widely held view that the Obiang government is better than its predecessor's. In this sense, the level of concern about the Equatorial Guinea relationship is logically somewhat lower. The real issue, however, is the risk to Riggs. That risk depends on what is happening today in Equatorial Guinea and how it is perceived in the U.S. and other markets where Riggs operates.

In the final analysis, the Equatorial Guinea relationship increases reputation risk for Riggs. That risk will abate if the government proceeds with mitigating steps. Such steps include –

1. Increasing transparency in government finances;
2. Promoting of government plans for economic development throughout the country;
3. Distributing, in the near-term, substantial sums funds to existing development projects; and
4. Implementing electoral reforms that encourage free and open elections, as well as political opposition.

Sources of Reputation Risk

ISSUE	ACCUSATION	SYMPTOMS
Fraudulent Election	No secret ballot; discouraging opponents	President wins 95%+ of the votes
Corrupt Government	Oil revenues are being diverted to benefit them	Oil revenues are kept off-shore and

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Officials		perceived to be secret
Human Rights Abuses	Political opponents are arrested. They and other prisoners are imprisoned and reportedly tortured.	Doctors without Borders reportedly leaves the country because of concerns
Neglect of Populace	Millions in oil revenue are not benefiting people who live in the country	Palaces and plush government buildings are being constructed
Notoriety of Certain Customers	International private banking services shield bad people of world; if the accusations prove correct, Equatorial Guinea officials might fit this category	Current risk-raising customers: Aldrich Ames; Pinochet; Sissoko; and others?

## 2. COMPLIANCE RISK

- Compliance risk is the risk to earnings or capital arising from violations or nonconformance with laws, rules, regulations, prescribed practices, or ethical standards.
- The primary source of compliance risk is possible failure to adhere to Riggs' AML BDD Policies.
- Although the risk of money laundering appears to be very low, if the issues that create Reputation Risk have merit, they could necessitate the filing of a suspicious activities report (SAR).

There has been no accusation that officials related to Equatorial Guinea are involved in money laundering. The sources of funds are clear, and the destinations of funds being expended do not suggest that funds are going to terrorists, to organizations that support terrorists, or to any other criminal enterprise.

However, Riggs' AML BDD Program applies to all customers, and it requires diligent effort in using prescribed KYC forms and monitoring activity. Further, there are accusations that government funds are being diverted from projects that would benefit the people of Equatorial Guinea generally to uses that enrich only certain officials. Suspected corruption on the part of public officials is cause for filing a SAR.

As a result of this review, it is clear that enhanced diligence is required in reviewing this relationship. For example,

- KYC forms and supporting material for existing accounts need to be current and complete at all times;

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- Riggs should maintain an objective posture with regard to the accounts;
- Riggs should be alert to the potential for official corruption and monitor developments in Equatorial Guinea so that it can file a timely SAR, if that becomes appropriate at some future date.

## Cash Deposits into Otong Account Controlled by EG President

<b>DATE</b>	<b>AMOUNT</b>
April 20, 2000	\$1,000,000.00
March 8, 2001	\$1,000,000.00
March 20, 2001	\$1,500,000.00
<u>Sept. 5, 2001</u>	\$2,000,000.00
Sept. 17, 2001	\$3,000,000.00
April 12, 2002	\$3,000,000.00
<b>TOTAL:</b>	<b>\$11,500,000.00</b>

Prepared by the Permanent Subcommittee on Investigations, Minority Staff, July 2004



## ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

NEW: X

KYC Input: \_\_\_\_\_

## SECTION 1: OFFICE OF FOREIGN ASSETS CONTROL

Date of OFAC list Checked: 06/17/99Verified by whom: A.R.B.  
Initials

If the customer/business appears on this list (exact match), do not proceed with account opening.

## SECTION 2: CLIENT DATA

NAME/TITLE: Teodoro Mbasogo  
DATE ACCOUNT OPENED: 9/20/99 Account No. 76863013

	NAME (PERSON/PIC)	RELATIONSHIP	PASSPORT	COUNTRY	DOB/PICDA E
1.	Otong SA	Owner		Equatorial Guinea	9/20/99
2.					
3.					
4.					
5.					

(POA)

CONFIDENTIAL ADDRESS:  
The Presidential Palace  
Malabo, Equatorial Guinea

MAILING ADDRESS:  
c/o Embassy Banking  
Africa & Caribbean Region  
Mail Code G-4001

HOLD MAIL (N) (Y/N)

SPECIAL INSTRUCTIONS:  
E-mail/tel/FAX/other:

	RELATED ACCOUNTS	PHONE Nos.	FAX Nos.
1			
2			
3			

INITIAL DEPOSIT  
AMOUNT: \$ 10,000.00

SOURCE OF FUNDS: Cash

SOURCE USED TO VERIFY (i.e. will, sales receipt,

Approval Date: April 17, 1998  
Revision Date: April 6, 1998

C:\data\WORD\Otong.doc

1 of 5

Permanent Subcommittee on Investigations

EXHIBIT #16a

RNB 007112



## ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

(contract, financial stmts., etc.)

AMOUNT OF TOTAL RELATIONSHIP \$ 10,000.00

## SECTION 3: CLIENT BACKGROUND AND INFORMATION

NAME OF PERSON REFERRING CLIENT: None  
 RELATIONSHIP OF PERSON REFERRING CLIENT: \_\_\_\_\_  
 ORIGINAL SOURCE OF WEALTH: Cocoa farming and businesses  
 SOURCE USED TO VERIFY: In country visits  
 CURRENT SOURCE OF INCOME: Presidential income  
 ESTIMATED ANNUAL INCOME: \_\_\_\_\_  
 REASON FOR BANKING WITH RIGGS: Experience with Riggs and account officer  
 (i.e., services offered, international services, embassy banking services, etc.)

BACKGROUND/OCCUPATION OF PERSON(S) OR CORPORATION (Attach additional sheets, as necessary)  
 (FOR BUSINESSES: Detail nature of business, location of business, list of suppliers/vendors, major clients, countries in which business operates, import/export business, legal status of company, and other information deemed pertinent)  
 (FOR INDIVIDUALS: Description with background)

The President of Equatorial Guinea has been in office for twenty years. He has extensive farming assets and is a major partner of the telecommunication (phone system modernization) project in the country with France Telecom.

BENEFICIAL OWNER(S) OF ACCOUNT(S)? \_\_\_\_\_  
 FOR BUSINESS ACCOUNTS, attach financial statements, marketing brochures, annual reports, etc.

## SECTION 4: INVESTMENT SUITABILITY

RISK PROFILE:  CONSERVATIVE (CDS/Bonds)  MODERATE (Stocks/Bonds)  AGGRESSIVE (Stocks & Emerging Markets Paper)

ALSO BANKS WITH: Banks in Equatorial Guinea  
 Accounts with Investment/Brokerage Firms: None  
 Approximate Total Personal NETWORTH: US\$ Unknown

INVESTMENTS NOT WITH RIGGS:  CDS\$  Stocks\$  Bonds\$  Other\$  
 BRIEF DESCRIPTION OF INVESTMENTS: Unknown

RNB 007113



ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

RIGGS INVESTMENTS:

CDS	(INITIAL)	\$ _____	(EXPECTED)	\$ _____
BONDS	(INITIAL)	\$ _____	(EXPECTED)	\$ _____
STOCKS	(INITIAL)	\$ _____	(EXPECTED)	\$ _____
RIMCO	(INITIAL)	\$ _____	(EXPECTED)	\$ _____
MM FUNDS	(INITIAL)	\$ _____	(EXPECTED)	\$ _____
OTHER	(INITIAL)	\$ 10,000.00	(EXPECTED)	\$ _____

CLIENT'S INVESTMENT OBJECTIVES: \_\_\_\_\_

SECTION 5: PRODUCT NEEDS

<b>DEPOSITS</b>	<b>INVESTMENTS</b>	<b>CREDIT</b>	<b>TRUST</b>
<input type="checkbox"/> Checking	<input type="checkbox"/> Discretionary	<input type="checkbox"/> Loan	<input type="checkbox"/> Int'l Trust
<input checked="" type="checkbox"/> Money Market	<input type="checkbox"/> Non-Discretionary	<input type="checkbox"/> Overdraft	<input type="checkbox"/> PIC
<input type="checkbox"/> Time Deposits	<input type="checkbox"/> Mutual Funds	<input type="checkbox"/> L/C Credit	<input type="checkbox"/> Trading Co.
<input type="checkbox"/> FX Deposits	<input type="checkbox"/> RIMCO	<input type="checkbox"/> Credit Cards	<input type="checkbox"/> Personal Trust

SECTION 6: EXPECTED ACTIVITIES/VOLUMES AND PRODUCT USAGE

- A. Checking Account (# Checks Drawn/mo)  
 Checking Account: LARGEST amount PER CHECK to be drawn: \_\_\_\_\_  
 Wire Transfers: HIGHEST amount Expected per Wire Transfer: \_\_\_\_\_  
 Wire Transfers: Number of Wire Transfers Anticipated/one mo. Period  
 Incoming/Outgoing/Both \_\_\_\_\_
- B. Expected Average Balances in Operating Account: \$ 50,000.00 \_\_\_\_\_  
 Method for Effecting Deposits into Account:  Check  
 Wire Transfer  
 Both
- AMOUNT OF CASH expected to be deposited into account: Unknown \_\_\_\_\_  
 NUMBER OF Deposits expected in one month period: Infrequent \_\_\_\_\_  
 ANTICIPATED Volume of CASH Sales (Businesses only): \_\_\_\_\_
- C. Expected Amount of LOANS/LETTERS OF CREDIT/OVERDRAFTS: None  
 PURPOSE of the CREDIT: \_\_\_\_\_  
 SOURCE of Collateral: \_\_\_\_\_
- D. Is the expected/described activity deemed reasonable based on the type of  
 Account, customer resources, and/or nature of business in which the client  
 is involved? Refer to Section IIC of the policy discussing "typical" customer.  
 Yes  No

RNB 007114





## ATTACHMENT C

RIGGS & CO  
 KNOW YOUR CUSTOMER  
 CLIENT PROFILE

## SECTION 7: REFERENCES

- A. If a client is already an existing PB/IPBD/TRUST/RIMCO customer, check here and skip the remainder of Section 7.
- B. If referred by an EXISTING PB/IPBD/TRUST/RIMCO CLIENT: \_\_\_\_\_  
 Client/Account No. \_\_\_\_\_  
 Document verbal recommendations from existing client in Call Report.  
 COMMENTS: \_\_\_\_\_
- C. If referred by a RIGGS BANK OFFICE(R): \_\_\_\_\_  
 Location/Officer \_\_\_\_\_  
 Attach copy of Letter of Recommendation from RIGGS referral officer(s) signed by an authorized representative of Riggs or an internal memorandum.
- D. Direct solicitation by Account Officer  
 (For Business Accounts and/or Large Accounts [as defined by business unit])  
 FIRST Bank Reference:

SECOND Bank Reference:

Document all corroboration of references and information provided.

- E. High Profile/Visibility, Publicity Elected/Appointed Clients  
 Attach a brief background memorandum of recommendation signed by the Senior Vice President/Manager of International Banking, the Division Manager of Domestic Private Banking, the Executive Director of Trust, or the Executive Director of RIMCO, as applicable.

## ANY ADDITIONAL COMMENTS:

By law of Equatorial Guinea, their President is the final authority of the country. Any institutional relationship we might have with the Government is duly authorized by him. We have known him for five years and has been quite consistent with us. The President desires to have a personal relationship with us in order to facilitate his personal and family needs while in the U.S. These needs include health and management of his residence here in the U.S.



ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

KYC STATUS:

ALL CLIENTS	YES/NO	LARGE ACCOUNTS/BUSINESSES	YES/NO
(All "No's" must be explained)			
Passports Verified:	Yes _____	Credit Bureau Report	_____
Address Verified:	Yes _____	Financial Statements	_____
Telephone Verified:	Yes _____	Annual Report	_____
Name of Referral on file:	_____	List of Suppliers/Vendors	_____
Original Source of Wealth Verified:	Yes _____	Corporate Resolution(s)	_____
Current Activity Within Normal Range:	Yes _____	Marketing Materials	_____
Two forms of photo ID	No _____		

PERSONAL INVESTMENT CORPS	YES/NO	RIMCO	YES/NO
Account Data Form	_____	W-2/W-9	_____
Certificate of Ownership	_____	Governing Instrument	_____
W-8	Yes _____	10K/10Q	_____
Two Signature Cards	Yes _____	Statement of Portfolio Assets	_____
Riggs Corporate Resolution Form	Yes _____	Corporate Resolutions	_____
Riggs Resolution for Bank Accounts	Yes _____	Customer Statement - Source of Wealth	_____
Articles of Incorporation	Yes _____		
By-laws for Commonwealth Companies	_____		
Copy of Passport	_____		

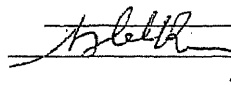
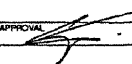
DATE OF NEXT REVIEW

Waiver approval of any of the above must be initialed, dated and supported.

SECTION 8: NEW ACCOUNT APPROVAL

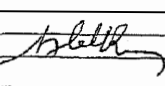
Documentation Checklist complete

RECOMMENDED BY:	REVIEWED BY:	APPROVED BY:
<u>Simon Kareri / 10/20/99</u>		
Account Officer/Date.	Supervising Officer/Date	Managing Director/Date

Riggs Bank N.A.							
TYPE 245	BR 88	ACCOUNT NUMBER 76863013	ID NUMBER NONE	FCC 851942	RC 511	INT	EFFECTIVE DATE 09/20/99
BUSINESS/COMPANY NAME OTONG S.A.		COMMENTS					
YOU THE ACCOUNTHOLDER(S) AGREE TO THE TERMS AND CONDITIONS AS STATED ON THE REVERSE OF THIS CARD							
AUTHORIZED SIGNATURE				PRINT NAME/TITLE			
				T. NGUI - PRESIDENT/SECRETARY			
MAILING ADDRESS C/O EMBASSY BANKING DIVISION AFRICA & CARIBBEAN REGION MAIL CODE G-4001 WASHINGTON, DC 20036				BUSINESS ADDRESS CODE: 5-25 NEM42 IDENTIFICATION CODE: 5-25 NEM42 IDENTIFICATION			
SIC CODE				VERIFICATION CODE			
TYPE OF BUSINESS GENERAL INVESTMENTS				APPROVAL 			

Permanent Subcommittee on Investigations  
EXHIBIT #16b

RNB 005676

TYPE 245	BR 88	ACCOUNT NUMBER 76863013	Riggs Bank N.A. MEMBER NONE	SEC 851942	PC 511	EXPIRES 09/20/99
REG-TELECOMMUNITY BANK		LEGAL TITLE OTONG S.A.				
YOU, THE ACCOUNT-OWNER, AGREE TO THE TERMS AND CONDITIONS AS STATED ON THE REVERSE OF THIS CARD						
AUTHORIZED SIGNATURE			PRINT NAME/TITLE			
			T. NGUY PRESIDENT/SECRETARY			
MAILING ADDRESS			BUSINESS ADDRESS			
C/O EMBASSY BANKING DIVISION			C/O EMBASSY BANKING DIVISION			
AFRICA & CARIBBEAN REGION			C/O EMBASSY BANKING DIVISION			
MAIL CODE G-4001			IDENTIFICATION CODE:			
WASHINGTON, DC 20036			G-259842			
TELEPHONE			TELEPHONE			
FAX			FAX			
TYPE OF SERVICE			VERIFICATION CODE			
GENERAL INVESTMENTS			APPROVAL			

RNB 005676



RIGGS & CO. TRUST SERVICES ACCOUNT APPROVAL & OPENING MEMO

- NEW ACCOUNT
- ADDITION TO EXISTING ACCOUNT

Date: 5/30/2000  
 Prepared by: SIMON KAZRI

CLIENT INFORMATION

Account Title: OTONG SA  
 Account Number: \_\_\_\_\_  
 Revocable  Irrevocable   
 Address: c/o EMBASSY BANKING  
ATT: SIMON KAZRI  
1528 CONN. AVE. N.W.  
WASHINGTON DC  
20036  
 Tax I.D.s: (Grantors, Beneficiaries, Principals) None  
 For EB: Employer EIN \_\_\_\_\_ Plan ID \_\_\_\_\_  
 Certification: W9  or W8   
 Attached  or To be obtained   
 Reason for opening/ additions \_\_\_\_\_  
 KYC Form Attached:

ACCOUNT TYPE

- Personal Custody
- Personal ISA
- Personal DMA
- Personal Trust
- Estate
- Estate Custody
- Estate ISA
- Control/Subsidiary
- J. Bush & Co. Personal
- J. Bush & Co. Instit.
- MEPT
- Escrow
- Paying Agent
- Institutional Custody
- Institutional ISA
- Institutional DMA
- Institutional Trust
- RIMCO Instit.
- RIMCO Personal
- Defined Benefit
- Custody
- Investment Mgmt
- Trustee
- Defined Contribution
- Custody
- Investment Mgmt
- Trustee
- IRA Rollover
- IRA Custody
- IRA ISA
- IRA DMA
- EB/Insurance Trust
- EB Other
- Control/subsidiary

Names and general description of principal parties:

ASSETS AND FEES

Market Value at Opening/ Addition \$ 500,000 Expected Market Value/ Additions \$ 2,000,000  
 Recurring Fees \_\_\_\_\_ Non-recurring Fees \_\_\_\_\_

Describe any deviation from regular fee schedule:

New Assets to Trust Department?  From Existing Trust Dept. Account?   
 If yes: Account Name & Number \_\_\_\_\_  
 Source/Assets \_\_\_\_\_ Increased/Decreased revenue to be generated by change: \_\_\_\_\_  
 Fee of this account \_\_\_\_\_  
 Fee of prior account \_\_\_\_\_  
 Difference \_\_\_\_\_

RNB 007089

Permanent Subcommittee on Investigations  
**EXHIBIT #16c**

Governing instrument is (check one)

- Attached
- Not attached, because it is a pre-printed Riggs form
- Not attached, because it is a new account created under the terms of an existing agreement on Riggs books
- Not attached, because this is an addition to an existing account.  
(AC# \_\_\_\_\_)

If Riggs has investment responsibility, general type of management is:

- Stocks
- Bonds
- Cash Management
- Balanced
- RIMCO Monument Funds
- Other  J. Busa

Any other information of significance which might make this an unusual account:

SOURCE OF BUSINESS

Direct Source:  
(Be specific: seminar, advertisement, call-in, etc.)

REFERRAL  
 Riggs Employee and/or  External Referrer  
 Referrer's Name(s) SIMON KAREP  
 Department of Branch EMBASSY BANKING Company \_\_\_\_\_

Salesperson who opened account: SIMON KAREP

Administrative officer/ Portfolio Manager: \_\_\_\_\_

- This memo reports a new account/ addition for which Adm. Officer/Portfolio manager is deserving of a reward for an "assist". Copies of presentation materials prepared by such officer are attached.
- This memo reports an addition which was/was not the result of a face to face meeting.
- Copies of all writings documenting a bona fide sales effort, including calendar entries, memos, correspondence, etc. attached.

Signature of Salesperson who opened account: \_\_\_\_\_  
 Signature of Officer describing reward payment: \_\_\_\_\_  
 Division manager approval of referral reward payment: \_\_\_\_\_  
 (Only required when referrer is administrative officer or portfolio manager)

APPROVAL

The undersigned have reviewed the governing instrument's value and nature of assets, the responsibilities of the bank, the identity and nature of significant parties, and the fees to be charged, and determined that the account is a potentially sound and profitable relationship which is acceptable to the Trust Department.

Approval required from two of the following:

- A. Behar
- H. Dudley
- R. Hall
- L. Harris
- D. McClung
- M. Richwine
- W. Ross

Approved: \_\_\_\_\_  
 Approved: \_\_\_\_\_

- For RIMCO accts: P. Tasho, R. Marstia
- For MEPT accts: P. Mayberry, R. Edwards, J. Beckhorn

- For RPS Accts: S. Murphy (800 17th), B. Moffett (Riverside)

- Original to Operations Unit Copies to: Mr. Dudley, Mr. Richwine, Mr. Thompson (PEC), Mr. Riegelhaupt, Legal File
- Mr. Peddicord (Income Tax Unit), Mr. Tasho (RIMCO accts. only), Mr. Harris (RPS accts.), Investment Officer \_\_\_\_\_ (Indicate officer's name)

Revised 10/99

CLIENT SIGNATURE



Name & Current Mailing Address  
OTONS SA  
70 EMERSON BANKING  
1528 CONN. AVE NW  
NATIONALEN DC 20036

TAXPAYER IDENTIFICATION NUMBER (TIN)  
 Social Security Number  
 OR  
 Employer Identification Number

Account Number(s)  
 Please check appropriate box:  
 (For Form W-9 only)  
 Individual/Sole proprietor  
 Corporation  
 Partnership  
 Other

Note: If joint names, list first and circle the individual/entity whose TIN you provide us. Only the joint owner whose TIN is provided should sign the certification.

Substitute Form W-9 Taxpayer Identification Number Certification

By signing below, you certify under penalties of perjury that:

- (1) The taxpayer identification number (TIN) shown on this form is your correct TIN; and
- (2) You are not subject to backup withholding because: (a) you are exempt from backup withholding, or (b) you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified you that you are no longer subject to backup withholding. (You must cross out item (2) if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.)

If you qualify as an exempt payee under the criteria listed on the reverse, check here

Signature of Individual or Authorized Signer \_\_\_\_\_ Date \_\_\_\_\_

Note: Complete Form W-8 or W-9. Do Not Complete Both.

Substitute Form W-8BEN Certification Of Foreign Status Of Beneficial Owner For United States Tax Withholding

Type Of Beneficial Owner (check appropriate box):  
 Individual  Corporation  Partnership  Trust  Estate  
 Foreign Government  Int'l Organization  Disregarded Entity  Foreign Central Bank of Issue  Foreign Tax-Exempt Organization

Country of incorporation or organization \_\_\_\_\_ U.S. taxpayer identification number (TIN), if required  
 SSN or ITIN  EIN

Certification — ALL Joint Owners MUST Complete the Requested Information and Sign Below

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or am authorized to sign for the beneficial owner) of all income to which this form relates.
- The beneficial owner is a foreign person.
- The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States.
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions, and
- I am not a former citizen or long-term resident of the United States subject to section 877 (relating to certain acts of expatriation) or, if I am subject to section 877, I am nevertheless entitled to treaty benefits with respect to the amounts received.

T. NGUI Print Name of Beneficial Owner  
AVENUE DE LA INDEPENDENCIA Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rfd. Do not use a P.O. Box.)  
MALABO City or town, state or province, postal code  
ECUADORIAL GUINEA Country

Print Name of Joint Owner \_\_\_\_\_  
 Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rfd. Do not use a P.O. Box.) \_\_\_\_\_  
 City or town, state or province, postal code \_\_\_\_\_  
 Country \_\_\_\_\_

U.S. TIN (if any) 1114 5136 12000 U.S. TIN (if any) \_\_\_\_\_  
 Signature \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

RNB 007091



## ATTACHMENT C

 RIGGS & CO  
 KNOW YOUR CUSTOMER  
 CLIENT PROFILE
NEW: X KYC Input: \_\_\_\_\_

## SECTION 1: OFFICE OF FOREIGN ASSETS CONTROL

Date of OFAC list Checked: 02/22/2000  
SPKVerified by whom:  
(Initials)

If the customer/business appears on this list (exact match), do not proceed with account opening.

## SECTION 2: CLIENT DATA

NAME/TITLE: Otong S.A.  
DATE ACCOUNT OPENED: 5/30/2000 Account No. \_\_\_\_\_

	NAME (PERSON/PIC)	RELATIONSHIP	PASSPORT	COUNTRY	DOB/PIC DATE
1.	Otong SA	Owner		Equatorial Guinea	9/20/99
2.					
3.					
4.					
5.	(FOA)				

 CONFIDENTIAL ADDRESS: \_\_\_\_\_ MAILING ADDRESS: c/o Embassy Banking HOLD MAIL (Y/N) (Y/N)  
Africa & Caribbean Region  
Mail Code PC-2D
SPECIAL INSTRUCTIONS:  
E-mail/tel/FAX/other:

	RELATED ACCOUNTS	PHONE Nos.	FAX Nos.
1.			
2.			
3.			

## INITIAL DEPOSIT

AMOUNT: \$ 500,000.00  
Approval Date: April 17, 1998  
Revision Date: April 6, 1998SOURCE OF FUNDS: RIGGS BANK account #76863013  
C:\data\WORD\Oeng2.doc 1 of 5

RNB 007092





## ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

SOURCE USED TO VERIFY (i.e. will, sales receipt,  
contract, financial statements, etc.)

AMOUNT OF TOTAL RELATIONSHIP \$ 500,000.00

## SECTION 3: CLIENT BACKGROUND AND INFORMATION

NAME OF PERSON REFERRING CLIENT: None  
 RELATIONSHIP OF PERSON REFERRING CLIENT: \_\_\_\_\_  
 ORIGINAL SOURCE OF WEALTH: Cocoa farming and construct on businesses  
 SOURCE USED TO VERIFY: In country visits  
 CURRENT SOURCE OF INCOME: Construction, pharmaceuticals and farming  
 ESTIMATED ANNUAL INCOME: \_\_\_\_\_  
 REASON FOR BANKING WITH RIGGS: Experience with Riggs and account officer  
 (i.e., services offered, international services, embassy banking services, etc.)

BACKGROUND/OCCUPATION OF PERSON(S) OR CORPORATION (Attach additional sheets, as necessary)  
 ( OR BUSINESSES: Detail nature of business, location of business, list of suppliers/vendors, major clients,  
 countries in which business operates, import/export business, legal status of company, and other information  
 deemed pertinent)  
 ( OR INDIVIDUALS: Description with background)

The President of Equatorial Guinea has been in office for twenty years. He has extensive farming assets and is a  
 major partner of the telecommunication (phone system modernization) project in the country with France Telecom.

BENEFICIAL OWNER(S) OF ACCOUNT(S)? \_\_\_\_\_  
 OR BUSINESS ACCOUNTS, attach financial statements, marketing brochures, annual reports, etc.

## SECTION 4: INVESTMENT SUITABILITY

RISK PROFILE:  CONSERVATIVE  MODERATE  AGGRESSIVE  
 (CDS/Bonds) (Stocks/Bonds) (Stocks & Emerging  
 Markets Paper)

ALSO BANKS WITH: Banks in Equatorial Guinea  
 Accounts with Investment/Brokerage Firms: None  
 Approximate Total Personal NETWORTH: US\$ Unknown

INVESTMENTS NOT WITH RIGGS:  CDS\$ \_\_\_\_\_  Stocks\$ \_\_\_\_\_  Bonds\$ \_\_\_\_\_  Other\$ \_\_\_\_\_  
 BRIEF DESCRIPTION OF INVESTMENTS: Unknown

RNB 007093



## ATTACHMENT C

 RIGGS & CO  
 KNOW YOUR CUSTOMER  
 CLIENT PROFILE

RIGGS INVESTMENTS:			
CDS	(INITIAL)	\$ _____	(EXPECTED) \$ _____
BONDS	(INITIAL)	\$ _____	(EXPECTED) \$ _____
STOCKS	(INITIAL)	\$ _____	(EXPECTED) \$ _____
RIMCO	(INITIAL)	\$ _____	(EXPECTED) \$ _____
MM FUNDS	(INITIAL)	\$ 500,000.00	(EXPECTED) \$ _____
OTHER	(INITIAL)	\$ 500,000.00	(EXPECTED) \$ _____

CLIENT'S INVESTMENT OBJECTIVES: \_\_\_\_\_

## SECTION 5: PRODUCT NEEDS

DEPOSITS	INVESTMENTS	CREDIT	TRUST
<input type="checkbox"/> Checking	<input type="checkbox"/> Discretionary	<input type="checkbox"/> Loan	<input type="checkbox"/> Int'l Trust
<input type="checkbox"/> Money Market	<input type="checkbox"/> Non-Discretionary	<input type="checkbox"/> Overdraft	<input type="checkbox"/> PIC
<input type="checkbox"/> Time Deposits	<input type="checkbox"/> Mutual Funds	<input type="checkbox"/> L/C Credit	<input type="checkbox"/> Trading Co.
<input type="checkbox"/> FX Deposits	<input type="checkbox"/> RIMCO	<input type="checkbox"/> Credit Cards	<input checked="" type="checkbox"/> Personal Trust

## SECTION 6: EXPECTED ACTIVITIES/VOLUMES AND PRODUCT USAGE

A. Checking Account (# Checks Drawn/mo)  
 Checking Account: LARGEST amount PER CHECK to be drawn:  
 Wire Transfers: HIGHEST amount Expected per Wire Transfer:  
 Wire Transfers: Number of Wire Transfers Anticipated/one mo. Period  
 Incoming/Outgoing/Both

B. Expected Average Balances in Operating Account: \$ 100,000.00  
 Method for Effecting Deposits into Account:  Check  
 Wire Transfer  
 Both

AMOUNT OF CASH expected to be deposited into account: Unknown \_\_\_\_\_  
 NUMBER OF Deposits expected in one month period: Infrequent \_\_\_\_\_  
 ANTICIPATED Volume of CASH Sales (Businesses only):

C. Expected Amount of LOANS/LETTERS OF CREDIT/OVERDRAFTS: None  
 PURPOSE of the CREDIT:  
 SOURCE of Collateral:

D. Is the expected/described activity deemed reasonable based on the type of  
 Account, customer resources, and/or nature of business in which the client  
 is involved? Refer to Section IIC of the policy discussing "typical" customer.  
 Yes  No

RNB 007094



## ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

## SECTION 7: REFERENCES

- A. If a client is already an existing PB/IPBD/TRUST/RIMCO customer, check here and skip the remainder of Section 7.
- B. If referred by an EXISTING PB/IPBD/TRUST/RIMCO CLIENT... \_\_\_\_\_ Client/Account No.  
Document verbal recommendations from existing client in Call Report.  
COMMENTS: \_\_\_\_\_
- C. If referred by a RIGGS BANK OFFICE(R):..... Simon P. Kareri  
Location/Officer Embassy Banking Division  
Attach copy of Letter of Recommendation from RIGGS referral office(s) signed by an authorized representative of Riggs or an internal memorandum.
- D. Direct solicitation by Account Officer  
(For Business Accounts and/or Large Accounts [as defined by business unit])  
FIRST Bank Reference: \_\_\_\_\_

SECO D Bank Reference:

Document all corroboration of references and information provided.

- E. High Profile/Visibility, Publicity Elected/Appointed Clients  
Attach a brief background memorandum of recommendation signed by the Senior Vice President/Manager of International Banking, the Division Manager of Domestic Private Banking, the Executive Director of Trust, or the Executive Director of RIMCO, as applicable.

## ANY ADDITIONAL COMMENTS:

By law of Equatorial Guinea, their President is the final authority of the country. Any institutional relationship we might have with the Government is duly authorized by him. We have known him for five years and has been quite consistent with us. The President desires to have a personal relationship with us in order to facilitate his personal and family needs while in the U.S. These needs include health and management of his residence here in the U.S.

RNB 007095

Approval Date: April 17, 1998  
Revision Date: April 6, 1998

C:\data\WORD\Clong2.doc

4 of 5



ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

KYC STATUS:

ALL CLIENTS	YES/NO	LARGE ACCOUNTS/BUSINESSES	YES/NO
(All "No's" must be explained)			
Passports Verified:	Yes _____	Credit Bureau Report	_____
Address Verified:	Yes _____	Financial Statements	_____
Telephone Verified:	Yes _____	Annual Report	_____
Name of Referral on file:	_____	List of Suppliers/Vendors	_____
Original Source of Wealth Verified:	Yes _____	Corporate Resolution(s)	_____
Current Activity Within Normal Range:	Yes _____	Marketing Materials	_____
Two forms of photo ID	No _____		

PERSONAL INVESTMENT CORPS	YES/NO	RIMCO	YES/NO
Account Data Form	_____	W-8/W-9	_____
Certificate of Ownership	_____	Governing Instrument	_____
W-8	Yes _____	10K/10Q	_____
Two Signature Cards	Yes _____	Statement of Portfolio Assets	_____
Riggs Corporate Resolution Form	Yes _____	Corporate Resolutions	_____
Riggs Resolution for Bank Accounts	Yes _____	Customer Statement - Source of Wealth	_____
Articles of Incorporation	Yes _____		
By-laws for Commonwealth Companies	_____		
Copy of Passport	_____		

DATE OF NEXT REVIEW:

Waiver approval of any of the above must be initialed, dated and supported.

SECTION 8: NEW ACCOUNT APPROVAL

Documentation Checklist complete

RECOMMENDED BY:	REVIEWED BY:	APPROVED BY:
<u>Simon Kareri / 05/30/2000</u>	_____	_____
Account Officer/Date	Supervising Officer/Date	Managing Director/Date

RNB 007096

		Name & Current Mailing Address OTONC SPA % EMERGENCY BANKING 1528 CONN. AVE N.W. WASHINGTON DC 20036 DISTRICT OF COLUMBIA		TAXPAYER IDENTIFICATION NUMBER (TIN) Social Security Number OR Employer Identification Number	Account Number(s) Please check appropriate box (For Form W-9 only) <input type="checkbox"/> Individual/Sole proprietor <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other
Note: If joint names, list first and check the individual/entity whose TIN you provide. Only the joint owner whose TIN is provided should sign the certification.					
Substitute Form W-9 Taxpayer Identification Number Certification By signing below, you certify under penalties of perjury that: (1) The taxpayer identification number (TIN) shown on this form is your correct TIN; and (2) You are not subject to backup withholding because: (a) you are exempt from backup withholding, or (b) you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified you that you are no longer subject to backup withholding. (You must cross out item (2) if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.) If you qualify as an exempt payee under the criteria listed on the reverse, check here <input type="checkbox"/>					
Note: Complete Form W-8 or W-9. Do Not Complete Both.					
Substitute Form W-8-BEN Certification Of Foreign Status Of Beneficial Owner For United States Tax Withholding					
Type Of Beneficial Owner (check appropriate box): <input type="checkbox"/> Individual <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust <input type="checkbox"/> Estate <input type="checkbox"/> Foreign Government <input type="checkbox"/> Int'l Organization <input type="checkbox"/> Disregarded Entity <input type="checkbox"/> Foreign Central Bank of Issue <input type="checkbox"/> Foreign Tax-Exempt Organization					
Country of incorporation or organization				U.S. taxpayer identification number (TIN), if required <input type="checkbox"/> SSN or TIN <input type="checkbox"/> EIN	
Certification - All Joint Owners MUST Complete the Requested Information and Sign Below Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct and complete. I further certify under penalties of perjury that: • I am the beneficial owner (or am authorized to sign for the beneficial owner) of all income to which this form relates. • The beneficial owner is a foreign person. • The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States. • For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions, and • I am not a former citizen of long-term resident of the United States subject to section 877 (relating to certain acts of expatriation) or if I am subject to section 877, I am nevertheless entitled to treaty benefits with respect to the amounts received.					
First Name of Beneficial Owner AVENUE DE LA INDEPENDENCIA MALABO City or town, state or province, postal code ECUATORIAL GUINEA Country		First Name of Joint Owner City or town, state or province, postal code Country		First Name of Joint Owner City or town, state or province, postal code Country	
U.S. TIN (if any) Signature: [Signature] Date: 5/30/2007		U.S. TIN (if any) Signature: [Signature] Date:		U.S. TIN (if any) Signature: [Signature] Date:	
RNB 007097					

**Instructions for Substitute Form W-9**

**Purpose of Form.** — Riggs is required to obtain your correct taxpayer identification number (TIN) to report income paid to you.

**Complete W-9 section on front to furnish your correct TIN and:** (1) to certify that the TIN you are furnishing is correct, (2) to certify that you are not subject to backup withholding, or (3) to claim exemption from backup withholding if you are an exempt payee. Furnishing your correct TIN and making the appropriate certifications will prevent certain payments from being subject to backup withholding.

**How to Obtain a TIN.** — If you do not have a TIN, you should apply for one immediately. To apply for the number, obtain Form SS-3, Application for a Social Security Card (for individuals), or Form SS-4, Application for Employer Identification Number (for businesses and all other entities), at your local office of the Social Security Administration or the Internal Revenue Service. Complete and file an appropriate form according to its instructions.

To complete this form if you do not have a TIN, write "Applied For" in the space for the TIN, and sign and date the Substitute Form W-9 on the front.

As soon as you receive your TIN, complete another form W-9. Include your new TIN, sign and date the form, and give it to Riggs.

**What is Backup Withholding?** — Payments of interest are required to be withheld and pay to IRS 31% of interest payments under certain conditions. This is called "backup withholding."

If you give Riggs your correct TIN, make the appropriate certifications, and report all your specific interest and dividends on your tax return, your payments will not be subject to backup withholding.

**Payees Exempt From Backup Withholding.** — The following payees are exempt from backup withholding and information reporting on interest:

- (1) A corporation.
- (2) An organization exempt from tax under section 501(a), or an individual retirement plan (IRA), or a covered account under 401(a)(9).
- (3) The United States or any of its agencies or instrumentalities.
- (4) A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.
- (5) A foreign government or any of its political subdivisions, agencies or instrumentalities.
- (6) An international organization or any of its agencies or instrumentalities.

- (7) A foreign central bank of issue.
  - (8) A dealer in securities or commodities required to register in the U.S. or a possession of the U.S.
  - (9) A real estate investment trust.
  - (10) An entity registered at all times during the tax year under the Investment Company Act of 1940.
  - (11) A common trust fund operated by a bank under section 594(a).
  - (12) A financial institution.
  - (13) A middleman known in the investment community as a nominee or listed in the most recent publication of the American Society of Corporate Secretaries, Inc. Nominee List.
  - (14) A trust exempt from tax under section 664 or described in section 4947 of the Internal Revenue Code.
- If you are exempt from backup withholding, you should complete this form to avoid possible erroneous backup withholding. Enter your correct TIN, check the correct box, and sign and date the form. If you are a nonresident alien or foreign entity not subject to backup withholding, complete the Form W-8BEN section, "Certification of Foreign Status of Beneficial Owner for United States Tax Withholding," on front.

**Specific Instructions.**  
At the Top. — Fill in account name, mailing address, TIN, and account number(s). Check the appropriate box indicating account type.

**Name.** — Individuals. If you are an individual, generally provide the name shown on your social security card. If you have changed your last name, you should contact your local branch or RiggsDirect for instructions on how to change the name on your account. Any name changes should also be reported to the Social Security Administration.

**Sole proprietor.** — If you are a sole proprietor, you must furnish your individual name and either your SSN or EIN. You may also enter your business name or "doing business as" name on the business name line. Enter your name as shown on your social security card and business name as it was used to apply for your EIN on Form SS-4.

**Privacy Act Notice.** — Section 6109 requires you to furnish your correct taxpayer identification number (TIN) to persons who must file information returns with IRS. IRS uses the numbers for identification purposes and to help verify the accuracy of your tax returns. You must provide your TIN whether or not you are required to file a tax return. Payees must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payor. Certain penalties may also apply.

**Type of beneficial owner.** Check the one box that applies. By checking a box, you are representing that you qualify for this classification under U.S. tax principles. For entities, do not check the box that describes your status under the law of the treaty country or the situs of your single source. If you are a sole proprietor, check the "Individual" box.

**Country of incorporation or organization.** Enter the country of incorporation if you are a corporation. If you are another type of entity, enter the country under whose laws you are created, organized, or governed. Individuals enter "N/A" for not applicable.

**U.S. taxpayer identification number (TIN), if required.** A U.S. TIN is a social security number (SSN), employer identification number (EIN), or IRS individual taxpayer identification number (ITIN). Check the appropriate box for the type of TIN you are providing.

**Permanent (non-U.S.) address.** Provide your permanent residence address. Your permanent residence address is the address in the country where you claim to be a resident for purposes of that country's income tax.

Account Name and Number	Give Us
For this type of account:	Give the name and SOCIAL SECURITY number of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual named on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Transfer to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>3</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>4</sup>
5. Sole proprietorship	The owner <sup>5</sup>
For this type of account:	Give the name and EMPLOYER IDENTIFICATION number of:
6. Sole proprietorship	The owner <sup>6</sup>
7. A valid trust, estate, or pension trust	Legal entity (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title) <sup>7</sup>
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered securities	The broker or nominee

<sup>1</sup> List first and circle the name of the person whose number you furnish.  
<sup>2</sup> Circle the minor's name and furnish the minor's social security number.  
<sup>3</sup> Show the individual's name. You may also enter your business name. You may use either your SSN or EIN.  
<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust.  
**Notes:** If there is more than one name on the account and no name is circled on the front, the TIN will be considered to be that of the first name listed on the account.

If you are not an individual and you do not have a tax residence in any country, the permanent residence address is where you maintain your principal office.

Signature and date. Form W-8BEN must be signed and dated by the beneficial owner of the income, or, if the beneficial owner is not an individual, by an authorized representative or officer of the beneficial owner. The beneficial owner is the person who is the owner of the income for tax purposes and who beneficially owns the income. Thus a person receiving income as a nominee, custodian, or agent for another person is not the beneficial owner of the income. NOTE: If you own the income or account jointly with one or more other persons, the income or account will be treated as owned by a foreign person only if Forms W-8BEN are provided by all of the owners. If a Form W-8BEN is not received from any of the joint owners, any payments must be treated as made to a U.S. person.

**Instructions for Substitute Form W-8BEN**

**Purpose of Form.** Complete Form W-8BEN to inform Riggs that you are a foreign person not subject to certain U.S. information return reporting or backup withholding rules. Failure to provide a Form W-8BEN when requested may lead to withholding at a 31% rate of certain payments made to you.

**Who May File.** You may file Form W-8BEN if you can substantiate that you are a nonresident alien individual or a foreign corporation, partnership, estate or trust. A nonresident alien individual is any individual who is not a citizen or resident of the United States. An alien individual meeting either the "green card test" or the "substantial presence" test for the calendar year is a resident alien. See Pub. 519, U.S. Tax Guide for Aliens, for more information on resident and nonresident alien status.

**Specific Instructions.**  
At the top, fill in account name(s), current mailing address and account number(s).



**KYC PROFILE - Enhanced Due Diligence**  
**EMBASSY BANKING - Individual Accounts**

NEW:  UPDATE:  Date: 11/19/02

If there is a material change in the customer's account activity, the BSA/AML Enhanced Due Diligence Summary must be updated.

Recommended Initial Risk Rating:  Low  Moderate  High  
 (Per Riggs Bank's Customer Risk Assessment List)

**SECTION 1: CLIENT INFORMATION**

<p>NAME(S)/TITLE(S)                  S. Otong S.A.                  CITIZENSHIP                  Equatorial Guinea                  ACCOUNT NUMBER                  See attached                  DATE OPENED                  6/16/2000</p>	<p>TYPE OF ACCOUNT</p> <table border="0"> <tr> <td><input type="checkbox"/> Certificate of Deposit</td> <td><input type="checkbox"/> Consumer Loan</td> </tr> <tr> <td><input type="checkbox"/> Checking Accounts</td> <td><input type="checkbox"/> Overdraft</td> </tr> <tr> <td><input type="checkbox"/> Convenience Plus</td> <td><input type="checkbox"/> Savings Accounts</td> </tr> <tr> <td><input type="checkbox"/> NOW</td> <td><input type="checkbox"/> Statement Savings</td> </tr> <tr> <td><input type="checkbox"/> Preferred Banking Plan</td> <td><input type="checkbox"/> Money Market Deposit Account</td> </tr> <tr> <td><input type="checkbox"/> Personal Interest Checking</td> <td><input checked="" type="checkbox"/> Other - see attached</td> </tr> <tr> <td><input type="checkbox"/> Personal Checking</td> <td></td> </tr> <tr> <td><input type="checkbox"/> Credit Card</td> <td></td> </tr> </table>	<input type="checkbox"/> Certificate of Deposit	<input type="checkbox"/> Consumer Loan	<input type="checkbox"/> Checking Accounts	<input type="checkbox"/> Overdraft	<input type="checkbox"/> Convenience Plus	<input type="checkbox"/> Savings Accounts	<input type="checkbox"/> NOW	<input type="checkbox"/> Statement Savings	<input type="checkbox"/> Preferred Banking Plan	<input type="checkbox"/> Money Market Deposit Account	<input type="checkbox"/> Personal Interest Checking	<input checked="" type="checkbox"/> Other - see attached	<input type="checkbox"/> Personal Checking		<input type="checkbox"/> Credit Card	
<input type="checkbox"/> Certificate of Deposit	<input type="checkbox"/> Consumer Loan																
<input type="checkbox"/> Checking Accounts	<input type="checkbox"/> Overdraft																
<input type="checkbox"/> Convenience Plus	<input type="checkbox"/> Savings Accounts																
<input type="checkbox"/> NOW	<input type="checkbox"/> Statement Savings																
<input type="checkbox"/> Preferred Banking Plan	<input type="checkbox"/> Money Market Deposit Account																
<input type="checkbox"/> Personal Interest Checking	<input checked="" type="checkbox"/> Other - see attached																
<input type="checkbox"/> Personal Checking																	
<input type="checkbox"/> Credit Card																	

<p>LOCAL (USA) ADDRESS:                  64001 Mall Code</p>	<p>TELEPHONE NUMBERS:                  Office (USA): (0)-                  Office (Home Country):                  Home (Home Country):                  Fax:                  e-mail:</p>	<p>SPECIAL INSTRUCTIONS:  <input type="checkbox"/> Hold Mail  <input type="checkbox"/> Other:</p>
--	--	---

Provide a list of the other accounts the customer has with Riggs Bank or its affiliates. This list must cover all account types and contain the account number(s) or a Riggs Bank/affiliate contact, including the contact's telephone number. As indicated below, this list is attached or in the bank's vault.

Listed  Attached  Other Location? - Explain:

See attached			
Account Name	Account Number	Account Name	Account Number

**SECTION 2: OFAC/FIN/CEN/HIGH PROFILE ACCOUNTS**

High Profile Government Officials should be rated as high risk for account monitoring purposes.  
 Individual on OFAC List?  Yes  No  
 Individual a High Profile Government Official?  Yes  No  
 OFAC List Date: 11/19/02

Office of Foreign Assets Control (OFAC) List Check (www.ofac.sca.gov)  
 NOTE: If the customer/business appears on this list (exact match), do not proceed with account opening unless license is in effect. Otherwise, contact the Compliance Department at ext. 5024.  
 Checked By: Shiam Bensalah

OFAC License Number: \_\_\_\_\_ Date of License: \_\_\_\_\_  
 Financial Crimes Enforcement Network (FinCEN) List Check Country on FinCEN List?  Yes  No

(See the Anti-Money Laundering Resource Center on the Compliance Intranet site at [http://0.250.2.51/ovr\\_scm/aml/money\\_laundering/index.html](http://0.250.2.51/ovr_scm/aml/money_laundering/index.html)).  
 If the account party is from a country on the FinCEN List of Non-Cooperative Countries and has more than ten incoming or outgoing wires per month, the more detailed standard client profile EDD summary must be completed or appropriate EDD documentation attached.

Permanent Subcommittee on Investigations  
**EXHIBIT #16d**

RNB 000036

**SECTION 3: RELATIONSHIP WITH RIGGS**

Referred/Introduced by: Not applicable

Initial Deposit Amount in this Account: N/A

Expected Riggs Relationship:  < \$50,000  \$50,000-\$200,000  > \$200,000

Source of Initial Funds: (check all that apply)  
 Salary/Wages  Sale of Real Estate  Gift  
 Prior Riggs Account  Sale of Business  Other  
 Inheritance  Sale of Personal Property  
 Sale of Securities

Sources of Current Income:  Salary/Wages  Rent  
 Investments  Other \_\_\_\_\_

Original Source of Wealth \_\_\_\_\_

Estimated Annual Income: (All Sources)  < \$50,000  \$50,000-100,000  > \$100,000

Employer: Equatorial Guinea

Current Position: PRESIDENT

Other Comments: PRESIDENT OF RENAISSANCE - THE LARGEST COMPANY IN EQUATORIAL GUINEA. COMPANY IS THE COURSE OF SPREADING USE OF BANKING AS RESULT IN MANY BANKS.

Reasons for Banking with Riggs: Embassy relationship.

Automatic Deposits?  No  Yes If yes, source?  Social Security

Source: Not applicable


Purpose for the Account(s): (check all that apply)  
 Household Account  Educational Expense  
 Retirement Account  Other \_\_\_\_\_

**ATTACHMENTS CHECKLIST**

All blanks in the checklist must be explained. Please use this space or attach a separate sheet with the explanation.

ALL INDIVIDUAL ACCOUNTS		Date	Initials		Date	Initials
a) Copy of Photo Identification		11/19	SB	e) Two Signature Cards	11/19	SB
b) Copy of Passports (Non-US residents)		11/19	SB	f) W-8 (BEN) (MAY) (EXP)	11/19	SB
c) Address Checked:		11/19	SB	g) Embassy Banking Letter (Optional)		
d) Telephone Checked:		11/19	SB			

**SECTION 4: NEW ACCOUNT APPROVAL**

OPENED BY: Name: <u>SILAM BENSALAH</u> Date: <u>11/19/02</u>	REVIEWED & APPROVED BY:  Officer: <u>MICHAEL PARRIS</u> Date: <u>11/19/02</u> <input type="checkbox"/> Documentation Checklist is Complete
--	--

Future Reviews or Updates (when appropriate): \_\_\_\_\_

Reviewed: \_\_\_\_\_ Reviewed: \_\_\_\_\_ Reviewed: \_\_\_\_\_ Reviewed: \_\_\_\_\_  
 Initials Date Initials Date Initials Date Initials Date

RNB 000037





Embassy Banking Division  NEW  UP-DATE  
 Enhanced KYC/EDD Addendum Date: 11/19/02

If there is a material change in the customer's account activity, this enhanced KYC/EDD Form must be updated.

Addendum required to be completed if: (please check all that apply)

<input checked="" type="checkbox"/> High Profile/Visibility Person	<input type="checkbox"/> Exception profile for Assist/Check	<input checked="" type="checkbox"/> Aggregate balances over \$200,000
<input type="checkbox"/> SAR recommended to be filed	<input type="checkbox"/> High Risk Business	<input type="checkbox"/> from a FinCEN/OFAC Country with over 9 wire transfers/month
<input type="checkbox"/> Other (Please explain)		

If the customer/business is a high profile/visibility or publicly elected/appointed individual, the file must contain (1) representative copies of published information on the client, (2) a brief memo from the officer summarizing the information known about the client and risks raised, and (3) evidence of concurrence by the IBG Manager with the memo.

Name of Client: S. Otong

Explain reason for completing "Enhanced KYC/EDD": Politically Exposed Person (PEP)

ARE THERE OTHER NAMES ON ANY AFFILIATED ACCOUNTS?  No  Yes If "yes," attach a list of those names.

GENERAL INFORMATION (Document all efforts to corroborate references and information provided.)

- Riggs Person Referring Client: NA  
(Provide a Brief Description of the Referral or Attach Referral Letter)
- External Referral Source: Embassy recommendation
- Relationship with Client: Government official

CORROBORATION: Document all efforts to corroborate references and information provided to supplement enhanced KYC/EDD form:

- 1.) Original source of wealth: \_\_\_\_\_
- 2.) Current sources of income: \_\_\_\_\_
- 3.) Other information: \_\_\_\_\_

ACCOUNT RELATIONSHIP:

- Expected average DDA/MMA balances:  under \$200M  \$200M-2MM  over 2MM
- Expected CD's/Investments:  under \$200M  \$200M-2MM  over 2MM
- Total Riggs Relationship:  under \$200M  \$200M-2MM  over 2MM
- Estimated Net Worth:  under \$200M  \$200M-2MM  over 2MM

EXPECTED TRANSACTION TYPES AND NUMBER

The purpose of these questions is to enable Riggs to "understand the normal and expected transactions of the customer," as recommended by the FRB and the OCC. If the customer does not provide the information for this understanding, the account officer must make a reasonable estimate of the actual activity for that account. (Note: for accounts that exclusively involve J. Bank & Co., RIG, RIMCO, and certain types of trust accounts, this section does not apply.)

Expected number of incoming transactions:	Wires ≤ 20	Checks/cash ≤ 100	Total ≤ 120	RNB 000038
Expected amount of incoming transactions:	Wires ≤ 100,000	Checks/cash ≤ 100,000	Total ≤ 100,000	
Expected number of outgoing transactions:	Wires ≤ 20	Checks/cash ≤ 20	Total ≤ 120	
Expected amount of outgoing transactions:	Wires ≤ 100,000	Checks/cash ≤ 100,000	Total ≤ 100,000	

Wires To/From High Risk Countries (per OFAC, FinCEN, etc.)  Yes  No If yes, which countries? \_\_\_\_\_  
 High amount expected per wire transfer: \_\_\_\_\_

LOANS/LETTERS OF CREDIT/ OVERDRAFTS: \_\_\_\_\_ PURPOSES OF THE CREDIT: \_\_\_\_\_  
 SOURCES OF COLLATERAL: \_\_\_\_\_

Is the expected/described activity deemed reasonable based on the type of account, customer resources, and/or other nature of business in which the client is involved?  Yes  No  
 If no, then the customer should be contacted for explanation of the exceptional activity (and explanation should be documented) or the account should be closed.

Prepared by: Siham Bensalah Reviewed by: Michael Parris

Greet Name OTONG S A Comp SS 99999999  
 Address C/O EMBASSY BANKING DATE ADDR CHNG 062602  
 Address AFRICA & CARIBBEAN REGION DATE LAST MAINT 062602  
 Address MAIL CODE G 4001 CHNGD BY USER B013985  
 Address COM: Y RP: N AM: HB: EB: WB:  
 Address RIGGS & CO: KEY: OTONS..A.000  
 City WASHINGTON ST DC << SP Mail Flag ZIP 20036  
 Home Phone # Unlisted Work Phone # TRK BLK  
 First Service TDS 0999 Last Service TDS 0602 Date of Death Officer #  
 Correspondent Bank Government Prospect Officer Stk Exchg  
 Name Ext SIC D&B SALES  
 Contact Indust  
 ACCOUNT NUMBER REL M T BR PT ACCOUNT NUMBER REL M T BR PT  
 1 TDS76863013 BUS X X 088 MM 2 TDS81450109 BUS X X 088 CD  
 3 TDS81723162 BUS X X 088 CD

CUSTOMER DISPLAY - PRESS ENTER FOR START SCREEN - \*\*\* PF1 FOR HELP \*\*\*



Riggs Bank N.A.  
Embassy Banking Division  
1528 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 833-4518

12 abril de 2002

Excelentísimo señor  
Obiang Nguema Mbasogo

Excelentísimo señor Presidente:

Tengo el agrado de informar que los saldos de las cuentas del Otong S.A. con el Banco Riggs desde el fin del 11 de abril del 2002 son los siguientes:

Nombre de Cuenta	Número de Cuenta	Tipo	Saldos
Otong S.A.	76863013	Money Market Account	\$ 104,032.14
Otong S.A.	81450109	Certificate of Deposit	\$ 11,606,297.23
<b>Total:</b>			<b>\$ 11,710,329.37</b>

Como siempre, es un placer poder servirle. Cualquier pregunta que usted tuviese, por favor comuníquese conmigo.

Atentamente,

Sr. Simón P. Käreni  
Vicepresidente Principal  
Grupo de Banca Internacional

RNB 007385



Name & Current Mailing Address  
OTONG SA  
Individual Name(s)  
70 EMBASSY BANKING  
Business Name (Use proprietor and partnership names only)  
1528 CONN. AVE N.W.  
Address  
NATIONGTON DC 20036  
City, State Zip Code

TAXPAYER IDENTIFICATION NUMBER (TIN)  
 Social Security Number  
 OR  
 Employer Identification Number

Account Number(s)  
 Please check appropriate box:  
 (For Form W-9 only)  
 Individual/Sole proprietor  
 Corporation  
 Partnership  
 Other

Note: If joint names, list first and circle the individual/entity whose TIN you provide us. Only the joint owner whose TIN is provided should sign the certification.

Substitute Form W-9 Taxpayer Identification Number Certification

By signing below, you certify under penalties of perjury that:

- (1) The taxpayer identification number (TIN) shown on this form is your correct TIN; and
- (2) You are not subject to backup withholding because: (a) you are exempt from backup withholding, or (b) you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified you that you are no longer subject to backup withholding. (You must crossout item (2) if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.)

If you qualify as an exempt payee under the criteria listed on the reverse, check here

Signature of Individual or Authorized Signer \_\_\_\_\_ Date \_\_\_\_\_

Note: Complete Form W-8 or W-9. Do Not Complete Both.

Substitute Form W-8BEN Certification Of Foreign Status Of Beneficial Owner For United States Tax Withholding

Type Of Beneficial Owner (check appropriate box):  
 Individual  Corporation  Partnership  Trust  Estate  
 Foreign Government  Int'l Organization  Disregarded Entity  Foreign Central Bank of Issue  Foreign Tax-Exempt Organization

Country of incorporation or organization \_\_\_\_\_ U.S. taxpayer identification number (TIN), if required  
 SSN or ITIN  EIN

Certification — ALL Joint Owners MUST Complete the Requested Information and Sign Below

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct and complete. I further certify under penalties of perjury that:

- I am the beneficial owner (or am authorized to sign for the beneficial owner) of all income to which this form relates,
- The beneficial owner is a foreign person,
- The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States,
- For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions, and
- I am not a former citizen or long-term resident of the United States subject to section 877 (relating to certain acts of expatriation) or, if I am subject to section 877, I am nevertheless entitled to treaty benefits with respect to the amounts received.

T. NGUI Print Name of Beneficial Owner  
AVENUE DE LA INDEPENDENCIA Print Name of Joint Owner  
MALABO Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rte). Do not use a P.O. Box. EDUATORIAL QUINER Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rte). Do not use a P.O. Box.  
 City or town, state or province, postal code \_\_\_\_\_ City or town, state or province, postal code \_\_\_\_\_  
 Country \_\_\_\_\_ Country \_\_\_\_\_ Country \_\_\_\_\_

U.S. TIN (if any) \_\_\_\_\_ U.S. TIN (if any) \_\_\_\_\_ U.S. TIN (if any) \_\_\_\_\_  
 Signature \_\_\_\_\_ Date May 5/2012 Signature \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

RNB 007091



ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

NEW: X KYC Input: \_\_\_\_\_

SECTION 1: OFFICE OF FOREIGN ASSETS CONTROL

Date of OFAC list Checked: 02/22/2000 Verified by whom: \_\_\_\_\_  
SPK (Initials)

If the customer/business appears on this list (exactmatch), do not proceed with account opening.

SECTION 2: CLIENT DATA

NAME/TITLE: Otong S.A. Account No. \_\_\_\_\_  
DATE ACCOUNT OPENED: 5/30/2000

	NAME (PERSON/PIC)	RELATIONSHIP	PASSPORT	COUNTRY	DOB/PIC DATE
1.	Otong SA	Owner		Equatorial Guinea	9/20/99
2.					
3.					
4.					
5.					

CONFIDENTIAL ADDRESS: \_\_\_\_\_ MAILING ADDRESS: Embassy Banking HOLD MAIL (N) (Y/N) \_\_\_\_\_  
Africa & Caribbean Region  
Mail Code PC-2D

SPECIAL INSTRUCTIONS:  
E-mail/tel/FAX/other: \_\_\_\_\_

	RELATED ACCOUNTS	PHONE Nos.	FAX Nos.
1			
2			
3			

INITIAL DEPOSIT AMOUNT: \$ 500,000.00 SOURCE OF FUNDS: RIGGS BANK account #76863013  
Approval Date: April 17, 1998 C:\data\WORD\Otong2.doc 1 of 5  
Revision Date: April 6, 1998



## ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

SOURCE USED TO VERIFY (i.e. will, sales receipt,  
contract, financial struts, etc.)

AMOUNT OF TOTAL RELATIONSHIP \$ 500,000.00

## SECTION 3: CLIENT BACKGROUND AND INFORMATION

NAME OF PERSON REFERRING CLIENT: None  
 RELATIONSHIP OF PERSON REFERRING CLIENT:  
 ORIGINAL SOURCE OF WEALTH: Cocoa farming and construction businesses  
 SOURCE USED TO VERIFY: In country visits  
 CURRENT SOURCE OF INCOME: Construction, pharmaceuticals and farming  
 ESTIMATED ANNUAL INCOME:  
 REASON FOR BANKING WITH RIGGS: Experience with Riggs and account officer.  
 (i.e., services offered, international services, embassy banking services, etc.)

BACKGROUND/OCCUPATION OF PERSON(S) OR CORPORATION (Attach additional sheets, as necessary)  
 (FOR BUSINESSES: Detail nature of business, location of business, list of suppliers/vendors, major clients,  
 countries in which business operates, import/export business, legal status of company, and other information  
 deemed pertinent)  
 (FOR INDIVIDUALS: Description with background)

The President of Equatorial Guinea has been in office for twenty years. He has extensive farming assets and is a  
 major partner of the telecommunication (phone system modernization) project in the country with France Telecom.

BENEFICIAL OWNER(S) OF ACCOUNT(S)?  
 FOR BUSINESS ACCOUNTS, attach financial statements, marketing brochures, annual reports, etc.

## SECTION 4: INVESTMENT SUITABILITY

RISK PROFILE:  CONSERVATIVE  MODERATE  AGGRESSIVE  
 (CDS/Bonds) (Stocks/Bonds) (Stocks & Emerging  
 Markets Paper)

ALSO BANKS WITH: Banks in Equatorial Guinea  
 Accounts with Investment/Brokerage Firms: None  
 Approximate Total Personal NETWORTH: US\$ Unknown  
 INVESTMENTS NOT WITH RIGGS:  CDS\$  Stocks\$  Bonds\$  Other\$  
 BRIEF DESCRIPTION OF INVESTMENTS: Unknown

RNB 007093



ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

RIGGS INVESTMENTS:

CDS	(INITIAL)	\$		(EXPECTED)	\$
BONDS	(INITIAL)	\$		(EXPECTED)	\$
STOCKS	(INITIAL)	\$		(EXPECTED)	\$
RIMCO	(INITIAL)	\$		(EXPECTED)	\$
MM FUNDS	(INITIAL)	\$	500,000.00	(EXPECTED)	\$
OTHER	(INITIAL)	\$	500,000.00	(EXPECTED)	\$

CLIENT'S INVESTMENT OBJECTIVES: \_\_\_\_\_

SECTION 5: PRODUCT NEEDS

DEPOSITS	INVESTMENTS	CREDIT	TRUST
<input type="checkbox"/> Checking	<input type="checkbox"/> Discretionary	<input type="checkbox"/> Loan	<input type="checkbox"/> Int'l Trust
<input type="checkbox"/> Money Market	<input type="checkbox"/> Non-Discretionary	<input type="checkbox"/> Overdraft	<input type="checkbox"/> PIC
<input type="checkbox"/> Time Deposits	<input type="checkbox"/> Mutual Funds	<input type="checkbox"/> L/C Credit	<input type="checkbox"/> Trading Co.
<input type="checkbox"/> FX Deposits	<input type="checkbox"/> RIMCO	<input type="checkbox"/> Credit Cards	<input type="checkbox"/> Personal Trust

SECTION 6: EXPECTED ACTIVITIES/VOLUMES AND PRODUCT USAGE

- A. Checking Account (# Checks Drawn/mo)  
 Checking Account: LARGEST amount PER CHECK to be drawn:  
 Wire Transfers: HIGHEST amount Expected per Wire Transfer:  
 Wire Transfers: Number of Wire Transfers Anticipated/one mo. Period  
 Incoming/Outgoing/Both
- B. Expected Average Balances in Operating Account: \$ 100,000.00  
 Method for Effecting Deposits into Account:  Check  
 Wire Transfer  
 Both
- AMOUNT OF CASH expected to be deposited into account: Unknown  
 NUMBER OF Deposits expected in one month period: Infrequent  
 ANTICIPATED Volume of CASH Sales (Businesses only):
- C. Expected Amount of LOANS/LETTERS OF CREDIT/OVERDRAFTS: None  
 PURPOSE of the CREDIT:  
 SOURCE of Collateral:
- D. Is the expected/described activity deemed reasonable based on the type of  
 Account, customer resources, and/or nature of business in which the client  
 is involved? Refer to Section IIC of the policy discussing "typical" customer.  
 Yes  No

RNB 007094



## ATTACHMENT C

RIGGS & CO  
NOW YOUR CUSTOMER  
CLIENT PROFILE

## SECTION 7: REFERENCES

- A. If a client is already an existing PB/IPBD/TRUST/RIMCO customer, check here and skip the remainder of Section 7.
- B. If referred by an EXISTING PB/IPBD/TRUST/RIMCO CLIENT, .....  
 Client/Account No. \_\_\_\_\_  
 Document verbal recommendations from existing client in Call Report.  
 COMMENTS: .....
- C. If referred by a RIGGS BANK OFFICE(R): .....Simon P. Kareri.....  
 Location/Officer Embassy Banking Division  
 Attach copy of Letter of Recommendation from RIGGS referral officer(s) signed by an authorized representative of Riggs or an internal memorandum.
- D. Direct solicitation by Account Officer  
 (For Business Accounts and/or Large Accounts [as defined by business unit])  
 FIRST Bank Reference:

SECOND Bank Reference:

Document all corroboration of references and information provided.

- E. High Profile/Visibility, Publicity Elected/Appointed Clients  
 Attach a brief background memorandum of recommendation signed by the Senior Vice President/Manager of International Banking, the Division Manager of Domestic Private Banking, the Executive Director of Trust, or the Executive Director of RIMCO, as applicable.

## ANY ADDITIONAL COMMENTS:

By law of Equatorial Guinea, their President is the final authority of the country. Any institutional relationship we might have with the Government is duly authorized by him. We have known him for five years and has been quite consistent with us. The President desires to have a personal relationship with us in order to facilitate his personal and family needs while in the U.S. These needs include health and management of his residence here in the U.S.

RNB 007095

Approval Date: April 17, 1998  
 Revision Date: April 6, 1998

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4 of 5





ATTACHMENT C

RIGGS & CO  
KNOW YOUR CUSTOMER  
CLIENT PROFILE

KYC STATUS:

ALL CLIENTS	YES/NO	LARGE ACCOUNTS/BUSINESSES	YES/NO
-------------	--------	---------------------------	--------

(All "No's" must be explained)

Passports Verified:	Yes _____	Credit Bureau Report	_____
Address Verified:	Yes _____	Financial Statements	_____
Telephone Verified:	Yes _____	Annual Report	_____
Name of Referral on file:	_____	List of Suppliers/Vendors	_____
Original Source of Wealth Verified:	Yes _____	Corporate Resolution(s)	_____
Current Activity Within Normal Range:	Yes _____	Marketing Materials	_____
Two forms of photo ID	No _____		

PERSONAL INVESTMENT CORPS	YES/NO	RIMCO	YES/NO
---------------------------	--------	-------	--------

Account Data Form	_____	W-8/W-9	_____
Certificate of Ownership	_____	Governing Instrument	_____
W-8	Yes _____	10K/10Q	_____
Two Signature Cards	Yes _____	Statement of Portfolio Assets	_____
Riggs Corporate Resolution Form	Yes _____	Corporate Resolutions	_____
Riggs Resolution for Bank Accounts	Yes _____	Customer Statement - Source of Wealth	_____
Articles of Incorporation	Yes _____		
By-laws for Commonwealth Companies	_____		
Copy of Passport	_____		

DATE OF NEXT REVIEW

Waiver approval of any of the above must be initialed, dated and supported.

SECTION 8: NEW ACCOUNT APPROVAL

Documentation Checklist complete

RECOMMENDED BY:	REVIEWED BY:	APPROVED BY:
<u>Simon Kareri / 05/30/2000</u>	_____	_____
Account Officer/Date	Supervising Officer/Date	Managing Director/Date

RNB 007096



Name & Current Mailing Address  
 OTONG SA  
 90 EMBASSY BANKING  
 1528 CONN AVE NW  
 WASHINGTON DC 20036  
 City, State

TAXPAYER IDENTIFICATION NUMBER (TIN)  
 Social Security Number  
 OR  
 Employer Identification Number

Account Number(s)  
 Please check appropriate box:  
 (For Form W-9 only)  
 Individual/Sole proprietor  
 Corporation  
 Partnership  
 Other

Note: If joint names, list first and circle the individual/entity whose TIN you provide us. Only the joint owner whose TIN is provided should sign the certification.

Substitute Form W-9 Taxpayer Identification Number Certification

By signing below, you certify under penalties of perjury that:  
 (1) The taxpayer identification number (TIN) shown on this form is your correct TIN; and  
 (2) You are not subject to backup withholding because: (a) you are exempt from backup withholding, or (b) you have not been notified by the Internal Revenue Service (IRS) that you are subject to backup withholding as a result of a failure to report all interest and dividends, or (c) the IRS has notified you that you are no longer subject to backup withholding. (You must cross out item (2) if you have been notified by the IRS that you are currently subject to backup withholding because of underreporting interest or dividends on your tax return.)  
 If you qualify as an exempt payee under the criteria listed on the reverse, check here

Signature of Individual or Authorized Signer \_\_\_\_\_ Date \_\_\_\_\_  
 Note: Complete Form W-8 or W-9. Do Not Complete Both.

Substitute Form W-8BEN Certification of Foreign Status of Beneficial Owner For United States Tax Withholding

Type Of Beneficial Owner (check appropriate box):  
 Individual  Corporation  Partnership  Trust  Estate  
 Foreign Government  Int'l Organization  Disregarded Entity  Foreign Central Bank of Issue  Foreign Tax-Exempt Organization  
 Country of incorporation or organization \_\_\_\_\_ U.S. taxpayer identification number (TIN), if required:  
 SSN or ITIN  EIN

Certification — ALL Joint Owners MUST Complete the Requested Information and Sign Below

Under penalties of perjury, I declare that I have examined the information on this form and to the best of my knowledge and belief it is true, correct and complete. I further certify under penalties of perjury that:  
 • I am the beneficial owner (or am authorized to sign for the beneficial owner) of all income to which this form relates.  
 • The beneficial owner is a foreign person.  
 • The income to which this form relates is not effectively connected with the conduct of a trade or business in the United States.  
 • For broker transactions or barter exchanges, the beneficial owner is an exempt foreign person as defined in the instructions, and  
 • I am not a former citizen or long-term resident of the United States subject to section 877 (relating to certain acts of expatriation) or, if I am subject to section 877, I am nevertheless entitled to treaty benefits with respect to the amounts received.

Print Name of Beneficial Owner <b>J. NGUI</b>	Print Name of Joint Owner	Print Name of Joint Owner
Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rch). Do not use a P.O. Box. <b>AVENUE DE LA INDEPENDENCIA</b>	Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rch). Do not use a P.O. Box.	Permanent (Non-U.S.) Address (street, apt. or suite no. or rural rch). Do not use a P.O. Box.
City or town, state or province, postal code <b>MAZABO</b>	City or town, state or province, postal code	City or town, state or province, postal code
Country <b>EQUATORIAL GUINEA</b>	Country	Country

U.S. TIN (if any) **7-104-5301** U.S. TIN (if any) \_\_\_\_\_ U.S. TIN (if any) **RNB 007097**  
 Signature \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_



RiggsBank N.A.  
Embassy Banking Division  
1528 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 833-4518

12 abril de 2002

Excelentísimo señor  
Obiang Nguema Mbasogo

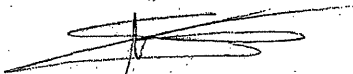
Excelentísimo señor Presidente:

Tengo el agrado de informar que los saldos de las cuentas del Otong S.A. con el Banco Riggs desde el fin del 11 de abril del 2002 son los siguientes:

Nombre de Cliente	Número de Cuenta	Cupo	Saldo
Otong S.A.	76863013	Money Market Account	\$ 104,032.14
Otong S.A.	81450109	Certificate of Deposit	\$ 11,606,297.23
<b>Total:</b>			<b>\$ 11,710,329.37</b>

Como siempre, es un placer poder servirle. Cualquier pregunta que usted tuviese, por favor comuníquese conmigo.

Atentamente,

  
Sr. Simón P. Kareri  
Vicepresidente Principal  
Grupo de Banca Internacional

RNB 007385

4/12/2002

Saldos de cuentas de Otong S.A.

Con fecha 4/12/2002

Activo	Total
<b>Cuentas bancarias y de efectivo</b>	
Ahorros	104,032.14
Inversiones	11,606,297.23
Total Cuentas bancarias y de efectivo	11,710,329.37
Activo total	11,710,329.37
Patrimonio neto	11,710,329.37

RNB 007386

1309

4/12/2002

Operaciones en cuentas de Otong S.A.  
Todas las cuentas

desde 1/1/2001 hasta 12/31/2002

Núm.	Fecha	Beneficiario	Categoría	Importe
<b>Ahorros</b>				
	1/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	32.35
	2/16/2001	Trident Trust	Bancos : Otong	(550.00)
	2/28/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	24.57
	3/8/2001	Depósito	Efectivo	1,000,000.00
	3/20/2001	Depósito	Efectivo	1,500,000.00
	3/21/2001	Transferencia a Inversiones	Transferencia a : Inversiones	(2,500,000.00)
	3/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	1,121.46
	4/30/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	24.19
	5/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	21.02
	6/30/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	18.76
	7/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	18.16
	8/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	17.82
	9/5/2001	Depósito	Efectivo	2,000,000.00
	9/17/2001	Depósito	Efectivo	3,000,000.00
	9/30/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	4,081.41
	10/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	6,394.52
	11/30/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	5,576.51
	12/31/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	5,341.48
	1/15/2002	Gastos de casa	Casa	(50,000.00)
	1/30/2002	Trident Trust	Bancos : Otong	(775.00)
	1/31/2002	Intereses Bancarios	Int Ing : Intereses Bancarios	5,317.98
	2/6/2002	Depósito	El cheque	3,000,000.00
	2/28/2002	Intereses Bancarios	Int Ing : Intereses Bancarios	7,046.37
	3/22/2002	Transferencia a Inversiones	Transferencia a : Inversiones	(7,900,000.00)
	3/31/2002	Intereses Bancarios	Int Ing : Intereses Bancarios	5,779.09
		<b>Total Ahorros</b>		<b>89,490.69</b>
<b>Inversiones</b>				
	3/15/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	14,664.46
	3/21/2001	Transferencia a Inversiones	Transferencia de : Ahorros	2,500,000.00
	6/15/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	40,198.86
	9/15/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	40,654.81
	12/15/2001	Intereses Bancarios	Int Ing : Intereses Bancarios	40,669.02
	3/15/2002	Intereses Bancarios	Int Ing : Intereses Bancarios	40,673.37
	3/22/2002	Transferencia a Inversiones	Transferencia de : Ahorros	7,900,000.00
		<b>Total Inversiones</b>		<b>10,576,860.52</b>
		<b>Total general</b>		<b>10,666,351.21</b>

RNB 007387

1310

Equatoguineans suffer malnutrition, between 1997 and 2002, Obiang spent just over 1 percent of his budget on health, by far the lowest of the nine African countries the IMF surveyed. According to a 2002 State Department report, there is ‘little evidence that the country’s oil wealth is being devoted to the public good.’”<sup>140</sup>

Despite its poor record on human rights, civil liberty, and democracy, Equatorial Guinea has experienced rapid economic growth during the last five years due to development of its oil resources. Since 1997, U.S. oil companies, including Amerada Hess, ChevronTexaco, ExxonMobil, and Marathon have made substantial investments in oil fields off the E.G. coast as well as in E.G. methanol and liquified natural gas plants. Equatorial Guinea has also become an important source of oil for the United States.<sup>141</sup>

Diplomatic relations between Equatorial Guinea and the United States have varied over the years. In 1995, the United States closed its embassy in Equatorial Guinea. Eight years later, in 2003, the United States agreed to re-establish this Embassy, reportedly at the urging of U.S. oil companies doing business in Equatorial Guinea. President Obiang professes to be a strong supporter of the United States and frequently travels to this country. His wife and children own real estate in Maryland, California, New York, and elsewhere.

**Equatorial Guinea Relationship.** The evidence shows that Equatorial Guinea has had a eight-year relationship with Riggs Bank and is associated with more than 60 accounts and CDs at the bank.

Equatorial Guinea opened its first accounts at Riggs Bank in 1995. The evidence indicates that over the following eight years, a single Riggs account manager in the Embassy Banking Division, Simon Kareri, was primarily responsible for the E.G. accounts. Mr. Kareri also handled other Embassy accounts in Africa and the Caribbean. He reported to the head of the International Banking Group, Raymond Lund.

**Multiple Accounts.** Riggs opened numerous accounts for the E.G. government, its officials, and their family members. After a targeted examination of these accounts by the OCC in 2003 and 2004, it is the Subcommittee’s understanding that all have been recently closed. These accounts can be generally categorized as follows.

(1) **E.G. Oil Account.** One of the earliest and largest of the E.G. accounts, Account No. 17-164-642, was opened in January 1996, as a standard business checking account in the

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<sup>140</sup> “Rigged,” The New Republic (6/21/04). See also, e.g., “Petroleum: The Curious Bonds of Oil Diplomacy,” Africa News (11/6/02), and Parade Magazine (2/22/04), which has twice named President Obiang as one of the “ten worst dictators” in the world.

<sup>141</sup> See, e.g., “Promoting Transparency in the African Oil Sector,” report prepared by the Center for Strategic and International Studies Task Force on Rising U.S. Energy Stakes in Africa (March 2004). See also, e.g., “Petroleum: The Curious Bonds of Oil Diplomacy,” Africa News (11/6/02).

name of the “Republica de Guinea Ecuatorial-Tesoreria General.” Virtually all of the deposits into this account were payments from oil companies doing business in Equatorial Guinea, primarily ExxonMobil Corporation. Most of the funds were transferred out of this account to the Central Bank of Africa and used to pay E.G. bills. Some funds were transferred directly from the oil account to pay for various E.G. projects. This account often held tens of millions of dollars at a time. The account signatories were E.G. President Obiang; his son, Gabriel M Obiang Lima, E.G. Minister of Mines; and his nephew, Melchor Esono Edjo, E.G. Secretary of State for Treasury and Budget. Two signatures, one of which had to be from the President, were required to withdraw funds from this account.<sup>142</sup>

(2) **E.G. Investment Accounts.** The second largest E.G. account, Account No. 76-952-200, was a standard money market account linked to two Riggs investment accounts, Account Nos. 68-002-6010 and 68-002-6028.<sup>143</sup> Opened in December 2001, these accounts had combined funds in 2003, of more than \$300 million and at times as much as \$500 million. The money market account had the same three signatories as the E.G. oil account, but any one signature was sufficient to withdraw funds.<sup>144</sup> The two linked investment accounts had only one required signatory, the E.G. President.<sup>145</sup>

(3) **Other E.G. Government Accounts.** Several other Riggs accounts and CDs were also opened in the name of the Republic of Equatorial Guinea. They included a CD for \$40 million, Account No. 81-710-0433, issued in May 2002;<sup>146</sup> a CD for \$1 million, Account No. 81-763-3375, issued in November 2002;<sup>147</sup> and a CD for \$5 million, Account No. 81-217-905, issued in June 1996 and closed in March 1998.<sup>148</sup> Account No. 25-711-327, a checking account, was opened in September 2003, in the name of the EG government, with loan proceeds intended to be used to purchase an airplane for the use of the E.G. President; at the end of 2003, its balance exceeded \$9 million.<sup>149</sup> An account related to the E.G.

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<sup>142</sup> See, e.g., Riggs Miscellaneous Change Memo (2/15/2003), listing signatories for E.G. Oil Account, Bates RNB 000005.

<sup>143</sup> See, e.g., Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, “Equatorial Guinea” (1/20/04), Bates OCC 0000528712-23, at 714.

<sup>144</sup> Riggs document listing signatories for E.G. Investment Account (12/7/01), Bates RNB 000007.

<sup>145</sup> OCC Supervisory Target Letter 2004-X, Bates OCC 0000502621-29, at 26.

<sup>146</sup> Riggs Negotiable CD (5/3/02), Bates RNB 000023.

<sup>147</sup> Riggs Certificate of Deposit Receipt (11/7/02), Bates RNB 000025.

<sup>148</sup> Riggs annual statements on Account No. 81-217-905 (1996-1998), Bates RNB 001303-05.

<sup>149</sup> See Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, “Equatorial Guinea” (1/20/04), Bates OCC 0000528712-23, at 714.

Altogether, Riggs allowed Ms. Nsue to deposit over \$1.4 million in cash into her accounts with few or no questions asked. When combined with the \$11.5 million in cash deposits to the Otong account, Riggs enabled the E.G. President and his wife to make cash deposits of nearly \$13 million over a three-year period into their Riggs accounts.

For each of the cash deposits, Riggs filed a currency transaction report. However, at the time of the transactions, the bank failed to file a single suspicious activity report despite the size of the transfers, the fact that the President's wife was depositing hundreds of thousands of dollars in cash into her personal account and the account shared with her brother, or the fact that the E.G. President was depositing millions of dollars in cash into his offshore shell corporation account.

**Million-Dollar Wire Transfers.** Regular reviews of wire transfer activity to identify suspicious transactions, especially for high risk accounts, is another important element of an effective anti-money laundering program. Riggs, however, did not conduct routine or special reviews of wire transfer activity, even for its high risk accounts. Until recently, the bank conducted no routine or special monitoring of wire transfer activity involving any of the E.G. accounts, despite frequent and sizeable transfers of funds across international lines.

In August 2003, Riggs hired an experienced investigator to conduct an in-depth review of the E.G. accounts and, among other duties, respond to requests for information. Over the next few months, this investigator identified numerous suspicious wire transactions involving the E.G. oil account. These transactions included, for example, wire transfers totaling nearly \$35 million from the E.G. oil account to two companies that were unknown to the bank and had bank accounts in jurisdictions with bank secrecy laws; three wire transfers totaling more than \$1 million that were sent to Jadini Holdings, an offshore shell corporation owned by the wife of the E.G. account manager at Riggs; and three transfers totaling nearly \$500,000 that were sent to the personal bank accounts of a senior E.G. official.

**Kalunga Wire Transfers.** Over three and one-half years, from June 2000 to December 2003, sixteen wire transfers were sent from the E.G. oil account to Kulunga Company SA, an E.G. corporation, totaling over \$26.5 million. These wire transfers included:

June 7, 2000	\$ 1,332,044.00 wire transfer
Aug. 10, 2000	\$ 1,110,000.00 wire transfer
Sept. 5, 2000	\$ 292,200.00 wire transfer
Oct. 16, 2000	\$ 1,362,500.00 wire transfer
Jan. 30, 2001	\$ 2,698,800.00 wire transfer
April 10, 2001	\$ 1,349,400.00 wire transfer
May 9, 2001	\$ 1,349,400.00 wire transfer
May 7, 2002	\$ 798,000.00 wire transfer
June 26, 2002	\$ 167,000.00 wire transfer



Oct. 31, 2002	\$ 336,934.57 wire transfer
April 7, 2003	\$ 7,425,000.00 wire transfer
July 24, 2003	\$ 770,567.00 wire transfer
Sept. 3, 2003	\$ 335,137.00 wire transfer
Nov. 21, 2003	\$ 4,800,000.00 wire transfer
Dec. 11, 2003	\$ 1,637,000.00 wire transfer
Dec. 11, 2003	<u>\$ 720,000.00 wire transfer</u>
	\$26,483,982.57

All of these wire transfers were sent from Riggs to a Kalunga Company account at Banco Santander in Madrid, Spain.

**Apexside Wire Transfers.** Ten wire transfers were sent from the E.G. oil account to Apexside Trading Ltd. over a two-year period, from July 2000 to November 2001, totaling \$8.1 million. About \$2 million of these transfers occurred over a single, 5-week period in the summer of 2001. These wire transfers included:

July 10, 2000	\$ 697,400.00 wire transfer
Aug. 28, 2000	\$ 1,096,800.00 wire transfer
Oct, 16, 2000	\$ 1,561,587.30 wire transfer
Jan. 10, 2001	\$ 538,953.00 wire transfer
April 10, 2001	\$ 2,127,385.00 wire transfer
May 30, 2001	\$ 45,580.00 wire transfer
July 18, 2001	\$ 246,707.05 wire transfer
July 25, 2001	\$ 167,304.76 wire transfer
Aug. 2, 2001	\$ 1,233,835.00 wire transfer
Aug. 22, 2001	<u>\$ 389,939.83 wire transfer</u>
	\$ 8,105,491.94

Nine of these wire transfers were sent from Riggs to an Apexside account at Credit Commercial de France in Luxembourg; one was sent to an Apexside account at HSBC in Luxembourg.

**Jadini Wire Transfers.** Three wire transfers were sent over an eight-month period from the E.G. oil account to Jadini Holdings, Ltd. at a bank account in Virginia:

July 5, 2001	\$ 700,000.00 wire transfer
July 5, 2001	\$ 329,926.00 wire transfer
March 20, 2002	<u>\$ 66,751.78 wire transfer</u>
	\$1,096,677.78 <sup>192</sup>

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<sup>192</sup> For additional information about these three wire transfers to Jadini Holdings, see below.

**Edjo Wire Transfers.** Three other wire transfers went from the E.G. oil account to personal accounts controlled by the E.G. Secretary of State for Treasury and Budget, Melchor Esono Edjo. These transfers included:

March 13, 1998	\$ 122,000.00 wire transfer
May 27, 1998	\$ 122,000.00 wire transfer
June 12, 2002	\$ 255,000.00 wire transfer
	<hr/>
	\$ 499,000.00 <sup>193</sup>

Riggs failed to flag any of these transactions as suspicious at the time they occurred, and apparently asked few questions about these or any other wire transfers until the Subcommittee began investigating the E.G. accounts in March 2003, and the OCC began its E.G. examination in October 2003. The Riggs investigator hired in August 2003 quickly identified a number of suspicious transactions involving several E.G. accounts, including a \$140,000 check that had been written by the President's son for the benefit of the E.G. account manager at Riggs.<sup>194</sup> This check led him to the discovery of Jadini Holdings, Ltd., the offshore shell corporation controlled by the account manager's wife,<sup>195</sup> and the three wire transfers sending more than \$1 million from the E.G. oil account to Jadini Holdings.

The investigator also raised questions about the Kalunga and Apexside wire transfers, among others.<sup>196</sup> On February 10, 2004, in an attempt to gather additional information, Riggs sent letters to several banks sponsoring accounts to which questionable wire transfers had been sent from the E.G. oil account. These letters requested information about the accounts under Section 314(b) of the Patriot Act, which allows financial institutions to share client and transaction information to guard against money laundering and terrorist financing. The Riggs letter to Banco Santander, for example, requested information about the identity of the owners or authorized signatories for accounts belonging to Kalunga.<sup>197</sup> A Riggs letter to HSBC Bank USA

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<sup>193</sup> See, e.g., Riggs internal memorandum by Security & Investigations Department (12/18/03), Bates OCC 0000528401-02.

<sup>194</sup> The check was made payable to "Bolly Ba," a friend of the E.G. account manager and his wife. See copy of check (11/28/03), Bates RNB 002234-35. The account manager answered some questions about the check, but then abruptly left the United States and went to Equatorial Guinea in January 2004. During his absence, the bank initially suspended and then fired him in January 2004.

<sup>195</sup> See Certificate of Incorporation in the British Virgin Islands and related paperwork (5/9/01), Bates SUNT 00709-40; SunTrust account opening documentation (7/01), Bates SUNT 00701-08.

<sup>196</sup> The four sets of wire transfers highlighted in this Section of the Report are representative of many other instances of questionable activity in the E.G. accounts. For example, E.G. account records also raise questions about wire transfers sending substantial funds to a company called West Africa Navigator Ltd.; to specific E.G. officials; for luxury cars; and for projects called Proyecto Annobon, Proyecto de El Salvador, and "Asistencia Tecnica y consultoria."

<sup>197</sup> Letter from Riggs Bank to Banco Santander (2/10/04).

requested information on the identity of the owners or authorized signatories for the account belonging to Apexside and another company.<sup>198</sup>

The New York office of Banco Santander responded with information that the Kalunga account had been opened by its parent bank in Madrid, Spain, but that its parent bank could not disclose the account's beneficial owners due to Spanish statutes barring disclosure of bank information, even in a case of suspected money laundering. In discussions with the Subcommittee, Banco Santander indicated that its parent bank had interpreted Spanish law to mean that it was barred from disclosing this account information not only to any third party, but also to its own subsidiary banks located outside of Spain.

HSCB USA provided a similar response. It confirmed that the Apexside account had been opened by an HSCB bank in Luxembourg and that HSBC USA had forwarded the funds to a U.S. correspondent account for its Luxembourg affiliate, but declined to disclose the identity of the persons behind Apexside due to Luxembourg bank secrecy laws. HSBC USA said that the funds for the second company had been sent to an HSBC bank in Cyprus which also has bank secrecy laws. HSBC USA claimed that Luxembourg and Cyprus laws barred disclosure of client information to both third parties and HSBC's own affiliates outside of the country.

The position taken by Banco Santander and HSBC USA means, in essence, that banks in the United States attempting to do due diligence on large wire transfers to protect against money laundering are unable to find out from their own foreign affiliates key account information. This bar on disclosure across international lines, even within the same financial institution, presents a significant obstacle to U.S. anti-money laundering efforts.<sup>199</sup>

When Banco Santander and HSBC declined to provide the requested information about Kalunga and Apexside, Riggs asked for the same information from the E.G. President and other E.G. officials in a personal meeting on February 23, 2003, in Washington, D.C. The E.G. officials declined to provide any further information about the companies or their owners, except that the wire transfers to these companies had been properly authorized by the account signatories.

**Lines of Credit.** Riggs also provided E.G. clients with a variety of credit arrangements, addressing governmental and Embassy concerns as well as individual officials' needs.

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<sup>198</sup> Letter from Riggs Bank to HSBC Bank USA (2/10/04).

<sup>199</sup> This Subcommittee first highlighted this problem in the 1999 Subcommittee Private Banking Hearings. See Minority Staff report at 877-78.

Riggs arranged, for example, several lines of credit for the E.G. government. It agreed to finance letters of credit for the E.G. government for up to \$25 million;<sup>200</sup> extended overdraft credit to the E.G. Embassy of \$30,000; and issued a \$40 million loan to the E.G. government which was secured by a CD and repaid in full. In 2001, Riggs issued a \$13.7 million loan to the government-owned E.G. airline, Ecuato-Guineana de Aviacion, to buy an airplane for flights within the country.<sup>201</sup> This loan was guaranteed by the E.G. government. In 2003, Riggs issued a \$29.8 million loan to the E.G. government to purchase an airplane for the use of the E.G. President.<sup>202</sup> Riggs also provided for a period of time certain debt management services to the E.G. government, which included keeping a detailed record of the government's public and private debt and making directed payments.<sup>203</sup>

Riggs also addressed the credit needs of some senior E.G. officials. For example, in 1999, with Riggs' assistance, the E.G. President paid \$2.6 million for a Potomac, Maryland residence.<sup>204</sup> Also in 1999, the bank provided a loan for nearly \$750,000 at a favorable rate to enable the E.G. President's wife to buy a second, \$1.15 million residence in Potomac, Maryland. Riggs provided an interest rate available for purchasing a personal residence, even though the bank knew the house was being purchased as a rental and, in fact, established an account to receive the rental payments. This loan was repaid in full within the year.<sup>205</sup> In 2000, Riggs provided a mortgage to Pastor Micha Ondo Bile, E.G. Minister of Foreign Affairs and one-time E.G. Ambassador, to buy a residence in Virginia.<sup>206</sup> Riggs apparently is also listed as the contact on a \$349,000 residence purchased in 2000, by the E.G. President's brother, Armengol Ondo

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<sup>200</sup> At least one of these letters of credit appears to have been used to finance arms sales. See, e.g., documentation associated with Letter of Credit No. 1998-11014 for \$2.5 million, issued on behalf of the E.G. government to purchase weaponized armored vehicles and related munitions from Sabiex International S.A., (11/5/98), Bates RNB 0011940-53, 0011970-79 and 003418-39.

<sup>201</sup> See Riggs "Officers' Loan Committee Action" (11/26/02), Bates T 00003089-3101.

<sup>202</sup> See Riggs "Officers' Loan Committee Action" (9/29/03), Bates T 00003904-15.

<sup>203</sup> See, e.g., memorandum from Simon Kareri to Joseph Allbritton (undated), Bates ZZ 000138.

<sup>204</sup> See Maryland real property records, which list the "New Owner's Mailing Address" as "c/o Simon Kareri, Riggs Bank." See also "Oil Boom Enriches African Ruler" (1/20/03), Los Angeles Times.

<sup>205</sup> See Riggs Loan No. 100-63136 (12/7/99).

<sup>206</sup> See Riggs Loan No. 13220. See also Riggs analysis of E.G. accounts, "Equatorial Guinea," (12/8/03), Bates OCC 0000503177-83, at 82.

Nguema.<sup>207</sup> In 2002, Riggs issued a \$3.75 million loan to the President's son, Teodoro Nguema Obiang, to help him buy a \$7.5 million penthouse apartment in California.<sup>208</sup>

Riggs also provided the President's wife and son, among other E.G. clients, with debit and credit cards. In March 2001, for example, at the request of the E.G. account manager, Riggs increased the daily limit on Ms. Obiang's debit card to \$10,000 per day.<sup>209</sup> Riggs also provided a reference letter to assist the President's son, Teodoro Nguema Obiang, gain entry into an American Express Preferred International Client Program.<sup>210</sup> In addition, Riggs provided E.G. clients with extensive foreign currency exchange services.

**Student Accounts.** Riggs also managed two accounts used to provide educational funding for E.G. students. Riggs records indicate that, from 2001 until 2003, more than 100 E.G. students received funding to study abroad, often in the United States, many of whom appeared to be children or relatives of wealthy or powerful E.G. officials.<sup>211</sup>

During the 1990s, Equatorial Guinea obtained commitments from several major oil companies, as part of their oil production agreements, to provide annual funding for E.G. students wishing to obtain advanced training or a university education. ChevronTexaco, CMS, ExxonMobil, Marathon, Triton, and Vanco all provided this funding, with annual payments totaling as much as \$275,000 per oil company. In earlier years, the oil companies paid students' tuition bills and living expenses directly. In 2001, however, Riggs opened the first E.G. student account and agreed to provide administrative support for the students funded out of it, all of whom were studying in the United States.<sup>212</sup> Several of the oil companies then halted direct

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<sup>207</sup> See Virginia real property records. See also "Oil Boom Enriches African Ruler" (1/20/03), Los Angeles Times.

<sup>208</sup> See Riggs loan documentation (7/22/02), Bates RNB 010508-18. Riggs also provided a reference letter to help him purchase a residence in New York. See, e.g., letter from Riggs to the Olympic Tower Condominium Board (3/16/00), Bates RNB 010465-67.

<sup>209</sup> Riggs memorandum from Simon Kareri to Ray Lund (3/9/01), Bates RNB 028505.

<sup>210</sup> See, e.g., letter from Riggs Bank to American Express TRS Co. (4/27/01), Bates RNB 009735.

<sup>211</sup> See, e.g., memorandum from Simon Kareri to Ray Lund (undated but likely in late 2002), Bates ZZ-000147 ("[W]e have increased the students that we manage for them from 26 to 117.").

<sup>212</sup> Apparently a contractor, Exploration Consulting Ltd. provides similar services for E.G. students studying in the United Kingdom. See letter from the law firm of Garvey Schubert Barer to the Subcommittee (6/18/04), conveying responses of Marathon, at 16.

Senator Carl  
Levin

6

members, and watched the assets grow from \$100 million to \$700 million, making Equatorial Guinea the bank's largest single customer.

Riggs offered the E.G. officials the same sorts of services that it offered General Pinochet. For example, Riggs helped the E.G. President set up an offshore shell corporation in the Bahamas, called Otong. Riggs then opened three accounts in the name of that offshore shell corporation. Over the next 3 years, from 2000 to 2002, Riggs allowed the E.G. President to make repeated cash deposits—and I emphasize cash deposits—into the Otong account of \$1 million, \$2 million, and even \$3 million at a time. At least one of these deposits was personally brought into the Riggs Bank by the Riggs account manager who handled the E.G. accounts. He carried the funds in a suitcase of plastic-wrapped dollar bills weighing 60 pounds or more. If that kind of cash deposit does not make a bank sit up and ask questions, I am not so sure anything will.

And there is more. Additional hundreds of thousands of dollars in cash were repeatedly deposited into accounts opened for the E.G. President's wife and for her brother, the E.G. Ambassador to the United States. There were substantial withdrawals as well, for expensive homes, cars, and credit card bills.

International wire transfers moved millions of dollars in and out of E.G. accounts and across international lines. They included wires that, over 2 years, took \$35 million out of an account holding oil revenues for the people of Equatorial Guinea, and sent the funds to two unknown offshore companies called Kalunga and Apexside. Riggs states in its prepared testimony today that these overseas companies "appear to be controlled by members of the government of Equatorial Guinea."

Riggs learned about the suspicious nature of those companies when, in August 2003, it started analyzing the wire transfer activity in the E.G. oil account and asking questions. That was 6 months after Riggs received a subpoena from this Subcommittee requesting information about the E.G. accounts at the bank. If Riggs had started asking the same questions 3 years earlier, when the wire transfers first started, Riggs would not have ended up facilitating \$35 million in suspicious wire transfers.

There were other suspicious transactions as well. Nearly \$500,000 in wire transfers went from the E.G. Government's oil account to the personal account of an E.G. official. Another \$1 million was wired out of the oil account bound for another bank in an account belonging to the Jadini Holdings, Ltd., an offshore corporation that is under the control of the wife of the Riggs' employee who manages the E.G. accounts.

At the same time all this activity was going on, Federal bank regulators were repeatedly expressing concerns about deficiencies in Riggs' anti-money laundering controls, but doing very little to compel the bank's compliance with the law. OCC examiners pointed out that the bank failed to identify its high risk accounts or monitor for suspicious activity. They warned the bank repeatedly that the background checks on clients were either not being done or had inadequate information. They stated repeatedly that the bank's anti-money laundering training was weak, and the internal

Joint Testimony  
of Riggs  
Executive

For example, Exhibit 1b<sup>1</sup> shows cash deposits into the offshore private investment account of the President of Equatorial Guinea. This account was named Otong. Between April 2000 and April 2002, \$11 million in cash was deposited into the account. On two occasions there were \$3 million deposits in cash estimated to weigh 60 pounds as it was delivered to you. Yet Riggs did not ask the required questions about the source of such large cash deposits until a year and a half later, late in 2003.

Then you look at Exhibits 1c and 1d,<sup>2</sup> and they show large amounts of funds that were transferred from the E.G. oil account to offshore corporations, whose identities, the bank has acknowledged to us, were unknown to the bank, the ownership of these corporations unknown. Transfers from Equatorial Guinea's oil account at Riggs to Kalunga and to Apexside. Between July 2000 and 2001, \$8 million was transferred from the oil account of this country to a company called Apexside, that is Exhibit 1d. Between June 2000 and December 2003, \$26 million was transferred from the oil account of the country to a company called Kalunga. Riggs has acknowledged to us that it made no inquiries about these transactions when they were made. It was required to do so under anti-money laundering regulations.

Mr. Hebert, when Riggs finally questioned President Obiang and his ministers about the Kalunga and Apexside accounts in early 2004, what happened?

Mr. HEBERT. The president refused to give us—he indicated that these transactions were authorized by the government for payment of goods and services in connection with the development of the country. When we inquired about the specific vendors, they indicated they would not respond to our questions, and we advised them without that response, without the understanding of that information being shared with the bank, that we were going to ask them to close their account immediately.

Senator LEVIN. Why did you not ask those questions when the transfers were made, instead of waiting until the end of 2004, after the subpoena and publicity?

Mr. HEBERT. Well, our systems and our entire information technology process had been under development from shortly after I arrived at the bank. There was no question in my mind that the information technology system in the bank was hampering the ability to provide the compliance necessary for the client base that the bank had. Second, it was very difficult to run a modern bank, so we undertook an extensive project. We spent some \$60 million, and 20 months later enacted and converted to a new system over Labor Day of 2003. During that time we also had developed an entirely new platform of compliance policies and procedures, as well as brought—hired one of the big accounting firms to come in and help us conduct internal audit activities.

It wasn't long after I came to the bank that I realized—excuse me—in 2003, that we realized that our compliance in internal auditing areas were lacking in their ability to provide information for senior management to—and for the compliance area to monitor and

<sup>1</sup> See Exhibit 1b which appears in the Appendix on page 213.

<sup>2</sup> See Exhibit 1c and 1d which appear in the Appendix on pages 214 and 215.

**Hunter, David**

**To:** Miller, Lester; Boss, Joseph; Decker, Sharon; Pasley, Bob  
**Subject:** RE: Equatorial Guinea Update meeting  
**Sensitivity:** Private

Bob,  
 Joe Boss and I are arranging a meeting with David Caruso and BJ Moravek to get all the information about the three wire transfer transactions on Thursday 2/25/04. Also, there were three vendors who provided services to the EG government that collectively billed the government (through Simon Karer) in the amount of \$307 thousand in July 2001 when the first wire for \$329M was originated. The individual bills for each vendor was broken down by:  
 Pro-forma Housing \$  
 Soil Control, Inc \$  
 BIC \$  
 The total for the 3 \$307M

Simon, then submitted requests to the EG government for payments of these services for for \$329M in the name of Jadini Holdings. During that time he also requested another \$700M transaction, believed by management that he took advantage of an opportunity to do this and submitted the wire request to be signed by his unsuspecting assistant. The \$700M document submitted to the bank requesting the transfer was not found as it was one of the reported documents missing that the AUSA spoke about. The net total for of these two transactions is \$722M (1,029M - 307M). The \$66M transaction occurred in 2002 and was a similar overbilling scheme where he received the entire \$66M based on Karer's

David M. Hunter  
 National Bank Examiner

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~~Original Message~~  
**From:** Miller, Lester  
**Sent:** Wednesday, February 25, 2004 12:44 PM  
**To:** Hunter, David; Boss, Joseph  
**Subject:** FW: Equatorial Guinea Update meeting  
**Sensitivity:** Private

Dave/Joe, Can you help with the specifics? Thanks, Les

Les Miller  
 OCC

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 Permanent Subcommittee  
 on Investigations

2/26/2004

Permanent Subcommittee on Investigations  
**EXHIBIT #24**

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 Permanent Subcommittee  
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—Original Message—

From: Pasley, Bob  
 Sent: Wednesday, February 25, 2004 9:49 AM  
 To: Miller, Lester  
 Cc: Amundson, Carolyn; Merritt, Kristin; Khalil, Elizabeth  
 Subject: RE: Equatorial Guinea Update meeting  
 Sensitivity: Private

Les,

Thanks. Could you provide me with more information about the 329m, the 66m and the 700m payments? Also, I am confused by the sentence that reads "The services to the 3 vendors were legitimate; however, the total payments owed to them did not exceed \$307 thousand where as Simon over billed the EG government to the tune of \$789 thousand." I don't know what these numbers represent and they don't seem to add up. Last, what criticism would there be against Lund for the 38m payment or for any of the other payments?

Thanks.

Bob

—Original Message—

From: Miller, Lester  
 Sent: Wednesday, February 25, 2004 8:08 AM  
 To: Kelly, Jennifer; Sejnoha, Robert; Pasley, Bob; Stupano, Dan  
 Cc: Hunter, David; Amundson, Carolyn  
 Subject: FW: Equatorial Guinea Update meeting  
 Sensitivity: Private

We met with senior management (CEO Hebert, COO Roane, and EVP Caruso) in the AM yesterday and stressed the seriousness of the EG relationship deficiencies and noncompliance with the Consent Order.

We let them know the BSA violations would be referred to FinCEN. We stressed that accountability needs to be enforced from the Board level, to senior management, to dept. management, to the line. Embassy Banking is a concern as significant problems have been noted there in the last 3 exams.

CEO Hebert stated the bank met the EG on late Monday. See below for details. Bottom line: Riggs will exit the EG relationship as the EG officials were less than forthcoming on details of certain transactions. EG is apparently satisfied to be made whole on the Simon Karer. The \$7.4MM in invoices from Simon's PIC Jadini Holdings were not presented to the EG government. Management feels they have the risk in this relationship controlled. He also said accountability would be enforced in Embassy banking. He said they are still pursuing the gold standard for BSA compliance and are fully committed. He asked if these facts would change any of our decisions. I said the information would be considered, but the current findings stand subject to final sign-off.

CEO Hebert said he would like for his management team to meet with OCC senior management. In addition, they have hired Promontory Financial Group (Gene Ludwig) to assist in BSA

2/26/2004

— = Redacted by the Permanent Subcommittee on Investigations

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compliance. CEO Hebert stated Mr. Ludwig would like to talk to OCC senior management and me, soon.

Lee Miller  
OCC

[Redacted]

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~~Original Message~~

From: Hunter, David  
Sent: Tuesday, February 24, 2004 9:20 PM  
To: Miller, Lester; Decker, Sharon  
Cc: Boss, Joseph  
Subject: Equatorial Guinea Update meeting  
Sensitivity: Private

This afternoon Joe Boss and I met with David Caruso and B.J. Moravек to update the OCC on management's actions with Equatorial Guinea (EG). David started out by informing us that as of 10:00 AM this morning Relationship Manager Peter Fowler notified EG's Secretary of the Treasury Melchor Edjo that Riggs Bank will be closing all EG accounts in the relationship. Peter gave oral notice that all accounts will be closed by 3/3/04, with closing letters being prepared (in both English and Spanish) to be sent out tonight. David stated this date was given but appears to be aggressive. David stated, that at that time Riggs placed holds on the government accounts to offset the outstanding loans the bank currently has with EG (approximately \$40 million).

[Redacted]

The closing was as a result of yesterday's meeting between bank representatives and the visiting EG delegation. At approximately 2:00 PM yesterday, Tim Coughlin, David Caruso, B.J. Moravек, Peter Fowler, and Sophie Tar from Riggs Bank visited the EG delegation at the Four Seasons in Washington, DC. The EG Delegation comprised of EG President Teodoro Oblan Nguema Mbasogo, IMF Executive Director - Monet (spelling), Secretary of Mines Gabriel Mbagla Oblang (President's Oblang's son), Secretary of Treasury Melchor Edjo, and Ambassador Teodoro Blyogo Nsue. The primary goal of the meeting was ensure had limited its liability with the relationship as a result of the [Redacted] by Simon Kareri. Their focus was to fully understand the transactions dealing with Apexside, Kalunga, and Jadini Holdings, the last being the PIC owned by Simon Kareri. During these discussions Riggs personnel were told by the President that the transactions with Apexside and Kalunga were authorized by the government and were for payment of services. Because the President had no desire to discuss transactions the Riggs management team and a working group of the EG delegation (Gabriel Oblang, Edjo, Monet, and Nsue) returned to the bank to discuss further transactions. At the bank the EG group told Riggs that they never heard of Jadini Holdings and they authorized 2 payments to Simon Kareri for \$329 thousand and \$66 thousand, for small payments to three U.S vendors providing services in EG. The 3 vendors were: Pro-forma Housing, Souj (Sole??) Control, Inc., and Business Investments Consolidated (BIC). The EG group verified that \$700 thousand wire was

2/26/2004

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never authorized by them. When asked why they were not paid directly by EG, the group replied that these payments were too small and gave them to Simon to handle. The services to the 3 vendor's were legitimate; however the total payments owed to them did not exceed \$307 thousand where as Simon over billed the EG government to the tune of \$789 thousand. It was further learned that \$7.4 million in invoices found in Kareri's desk after his termination was never presented to the EG government.

The banker's again asked EG what the transactions were for to Apexside and Kalunga. The reply was once again vague only saying that they were authorized by the government to pay for services. Because the bank was unable to obtain any other information from the EG group, the Riggs personnel reported back to the bank's Risk Committee who immediately decided to terminate the EG relationship. [REDACTED]

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We also discussed the \$38 thousand payment to Simon Kareri for the reimbursement of expenses from the last time the EG Delegation visited the U.S. While the EG Government approved the expenses, Simon just debited the money from the Oil account after receiving EG approval. The bank doesn't allow the payment of expenses like this. Fearing that his accounts would be reviewed by management, Kareri told Ray Lund who then ordered an investigation. Kareri knew that the transaction was against policy and he was admonished for doing it.

David M. Hunter  
National Bank Examiner  
[REDACTED]  
[REDACTED]

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**Transfers to and from Equatorial Guinea's  
Oil Account at Riggs Bank  
Involving Kalunga Company S.A.**

DATE	DEBITS	CREDITS
June 7, 2000	\$1,332,044.00	
June 21, 2000		\$47,058.00
Aug. 10, 2000	\$1,110,000.00	
Sept. 5, 2000	\$292,200.00	
Oct. 16, 2000	\$1,362,500.00	
Jan. 30, 2001	\$2,698,800.00	
April 10, 2001	\$1,349,400.00	
May 9, 2001	\$1,349,400.00	
May 7, 2002	\$798,000.00	
June 26, 2002	\$167,000.00	
Oct. 31, 2002	\$336,934.57	
April 7, 2003	\$7,425,000.00	
July 24, 2003	\$770,567.00	
Sept. 3, 2003	\$335,137.00	
Nov. 21, 2003	\$4,800,000.00	
Dec. 11, 2003	\$1,637,000.00	
Dec. 11, 2003	\$720,000.00	
<b>TOTAL:</b>	<b>\$26,483,982.57</b>	<b>\$47,058.00</b>

Prepared by the Permanent Subcommittee on Investigations, Minority Staff, July 2004

Permanent Subcommittee on Investigations EXHIBIT #1c
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**Transfers from Equatorial Guinea's  
Oil Account at Riggs Bank  
To Apexside Trading, Ltd.**

<b>DATE</b>	<b>AMOUNT</b>
July 10, 2000	\$697,400.00
Aug. 28, 2000	\$1,096,800.00
Oct. 16, 2000	\$1,561,587.30
Jan 10, 2001	\$538,953.00
April 10, 2001	\$2,127,385.00
May 30, 2001	\$45,580.00
July 18, 2001	\$246,707.05
July 25, 2001	\$1,233,835.00
July 25, 2001	\$167,304.76
Aug. 22, 2001	\$389,939.83
<b>TOTAL:</b>	<b>\$8,105,491.94</b>

Prepared by the Permanent Subcommittee on Investigations, Minority Staff, July 2004

Permanent Subcommittee on Investigations  
**EXHIBIT #1d**

as part of a larger trip to visit Riggs clients in South America and conduct bank business.<sup>90</sup> During this trip, the senior Riggs officials met with Mr. Pinochet. It is difficult to believe that Riggs top officials would have been unaware of Mr. Pinochet's recent detention and legal proceedings when they met with him so soon after he had left England and returned to Chile.

In April 2000, Chilean lawyers filed suit in Chile to remove Mr. Pinochet's immunity to prosecution due to his status as a Senator.<sup>91</sup> In May 2000, as litigation continued in the Chilean courts, Riggs closed the final Pinochet account in London and transferred the remaining funds to a newly-opened Ashburton account at Riggs Bank in the United States.<sup>92</sup> The evidence indicates that senior Riggs officials were informed of and agreed to the transfer of Pinochet funds to the United States.<sup>93</sup> Again, Riggs failed to file any suspicious activity report with any office of law enforcement.

Courts continued to consider legal action against Mr. Pinochet. In August 2000, a Chilean appellate court upheld a lower court decision eliminating his immunity from prosecution, and on December 1, 2000, a Chilean judge indicted Mr. Pinochet for human rights violations.<sup>94</sup>

On December 10, 2000, a British newspaper reported that Mr. Pinochet had over \$1 million in a bank account at Riggs in the United States.<sup>95</sup> In late December or early January 2001, Riggs altered the official names on the personal account controlled by Mr. Pinochet in the United States, changing the names from "Augusto Pinochet Ugarte & Lucia Hiriart de Pinochet" to

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<sup>90</sup> Riggs personnel disagree as to which Riggs officials went on this trip and other trips to Chile. For example, Riggs employees interviewed by the Subcommittee disagree on whether then Riggs Bank Chairman Joseph Allbritton made this particular trip to Chile.

<sup>91</sup> See, e.g., "Pinochet Hearings Continue," BBC News (4/28/00).

<sup>92</sup> At some point in 2000, Riggs apparently considered transferring management of the Pinochet trusts from its bank and trust company in the Bahamas, which was then closing, to a newly established Riggs bank and trust company in Jersey. When approached by Riggs, however, the Jersey Financial Services Authority apparently indicated that the trusts could not be transferred unless the source of wealth and funds in the Pinochet accounts were verified as having derived from wholly legitimate sources. Rather than undertake that exercise, Riggs officials decided to retain the Bahamas office of Deloitte & Touche as the trust manager for the Pinochet trusts. Subcommittee interviews of Joseph Cahill (6/25/04), Timothy Coughlin (7/6/04), and Ray Lund (7/7/04). See also OCC examination materials (6/24/02), Bates OCC 0000045622, and (4/4/02), Bates OCC 0000026623.

<sup>93</sup> Interview of Ray Lund (7/7/04). See also, e.g., Riggs debit receipt for \$1,619,500 (3/26/99) signed by Riggs officer Sean Terry, Bates RNB 030053; Riggs memorandum from Sean Terry to Stan Dore (6/21/902), Bates RNB 029064-65.

<sup>94</sup> For a copy of the indictment, see <http://docs.tercera.cl/casos/pinochet/documentos/proceso.html> (as of 6/28/04). For a copy of the court decision, see <http://www.derechos.org/nizkor/chile/juicio/desafuero2.html> (as of 6/27/04). See also "Ordered to Trial for Kidnapping," Los Angeles Times (12/2/00).

<sup>95</sup> "Revealed: Pinochet drug smuggling link," The Observer (12/10/00).

the country's citizens.<sup>134</sup> In 1979, Macias was overthrown and executed by his nephew, Colonel Teodoro Obiang Nguema Mbasago.

Mr. Obiang declared himself President in his uncle's place. Twenty-five years later, he still holds that position. While a new E.G. constitution was enacted in 1982, and single-party rule was officially ended in 1991, free and fair elections have not followed.<sup>135</sup> In the most recent election in December 2002, in which President Obiang claimed victory with 97% of the vote, the U.S. State Department described the proceedings as "marred by extensive fraud and intimidation."<sup>136</sup> President Obiang is also depicted as dominating the E.G. government. In the words of the U.S. State Department, he "names and dismisses cabinet members and judges, ratifies treaties, leads the armed forces, and ... appoints the governors."<sup>137</sup> A review of top E.G. officials over the past few years shows that many are members of the President's extended family.

The State Department has also been highly critical of the country's human rights abuses, use of torture, and culture of corruption.<sup>138</sup> The IMF has also issued reports critical of the country's lack of transparency and accountability on fiscal matters.<sup>139</sup> Corruption allegations are also commonplace in articles about Equatorial Guinea. For example, one recent U.S. publication wrote: "In 1998, according to the IMF, [the E.G.] government received \$130 million in oil revenue, and Obiang simply pocketed \$96 million of it. Although three of every four

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<sup>134</sup> Id.

<sup>135</sup> Id.

<sup>136</sup> Id.

<sup>137</sup> Id. See also "Equatorial Guinea At The Crossroads," prepared by a delegation from the International Bar Association (October 2003), at 7 (Equatorial Guinea has "little respect for the rule of law), "no viable opposition or political pluralism," "critical lack of free speech, press, association, and no significant development of civil society," experienced "interference by the Executive in the operations of the judiciary," and poorly drafted laws which were "inconsistent with its constitution, outdated, or ad hoc.").

<sup>138</sup> See, e.g., "Background Note: Equatorial Guinea," (U.S. Department of State) at [www.state.gov/r/pa/ei/bgn/7221.htm](http://www.state.gov/r/pa/ei/bgn/7221.htm) (as of 6/10/04); State Department's 2003 Country Report on Human Right Practices in Equatorial Guinea ("The security forces committed numerous abuses, including torture, beating, and other physical abuse of prisoners and suspects"; they "generally committed abuses with impunity"; and they "used arbitrary arrest, detention, and incommunicado detention."); State Department's 2002 Country Report on Human Right Practices in Equatorial Guinea ("Poor fiscal management and a lack of transparency in public accounting of national finances have undermined the country's economic potential. There is little evidence that the country's oil wealth is being devoted to the public good."). See also U.N. Commission on Human Rights, "Report on the human rights situation in the Republic of Equatorial Guinea" (1/24/02, 58<sup>th</sup> Session) at 13 (In Equatorial Guinea, "arbitrary detentions, inhuman treatment and torture ... continue as if they were perfectly normal.").

<sup>139</sup> See, e.g., "IMF concludes 2001 Article IV Consultation with Equatorial Guinea," (Public Information Notice No. 01/106, 10/11/01); IMF Report on Equatorial Guinea entitled, "Staff Report for the 2003 Article IV Consultation" (10/28/03).

Equatoguineans suffer malnutrition, between 1997 and 2002, Obiang spent just over 1 percent of his budget on health, by far the lowest of the nine African countries the IMF surveyed. According to a 2002 State Department report, there is ‘little evidence that the country's oil wealth is being devoted to the public good.’<sup>140</sup>

Despite its poor record on human rights, civil liberty, and democracy, Equatorial Guinea has experienced rapid economic growth during the last five years due to development of its oil resources. Since 1997, U.S. oil companies, including Amerada Hess, ChevronTexaco, ExxonMobil, and Marathon have made substantial investments in oil fields off the E.G. coast as well as in E.G. methanol and liquified natural gas plants. Equatorial Guinea has also become an important source of oil for the United States.<sup>141</sup>

Diplomatic relations between Equatorial Guinea and the United States have varied over the years. In 1995, the United States closed its embassy in Equatorial Guinea. Eight years later, in 2003, the United States agreed to re-establish this Embassy, reportedly at the urging of U.S. oil companies doing business in Equatorial Guinea. President Obiang professes to be a strong supporter of the United States and frequently travels to this country. His wife and children own real estate in Maryland, California, New York, and elsewhere.

**Equatorial Guinea Relationship.** The evidence shows that Equatorial Guinea has had a eight-year relationship with Riggs Bank and is associated with more than 60 accounts and CDs at the bank.

Equatorial Guinea opened its first accounts at Riggs Bank in 1995. The evidence indicates that over the following eight years, a single Riggs account manager in the Embassy Banking Division, Simon Kareri, was primarily responsible for the E.G. accounts. Mr. Kareri also handled other Embassy accounts in Africa and the Caribbean. He reported to the head of the International Banking Group, Raymond Lund.

**Multiple Accounts.** Riggs opened numerous accounts for the E.G. government, its officials, and their family members. After a targeted examination of these accounts by the OCC in 2003 and 2004, it is the Subcommittee’s understanding that all have been recently closed. These accounts can be generally categorized as follows.

(1) **E.G. Oil Account.** One of the earliest and largest of the E.G. accounts, Account No. 17-164-642, was opened in January 1996, as a standard business checking account in the

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<sup>140</sup> “Rigged,” *The New Republic* (6/21/04). See also, e.g., “Petroleum: The Curious Bonds of Oil Diplomacy,” *Africa News* (11/6/02), and *Parade Magazine* (2/22/04), which has twice named President Obiang as one of the “ten worst dictators” in the world.

<sup>141</sup> See, e.g., “Promoting Transparency in the African Oil Sector,” report prepared by the Center for Strategic and International Studies Task Force on Rising U.S. Energy Stakes in Africa (March 2004). See also, e.g., “Petroleum: The Curious Bonds of Oil Diplomacy,” *Africa News* (11/6/02).



name of the “Republica de Guinea Ecuatorial-Tesoreria General.” Virtually all of the deposits into this account were payments from oil companies doing business in Equatorial Guinea, primarily ExxonMobil Corporation. Most of the funds were transferred out of this account to the Central Bank of Africa and used to pay E.G. bills. Some funds were transferred directly from the oil account to pay for various E.G. projects. This account often held tens of millions of dollars at a time. The account signatories were E.G. President Obiang; his son, Gabriel M Obiang Lima, E.G. Minister of Mines; and his nephew, Melchor Esono Edjo, E.G. Secretary of State for Treasury and Budget. Two signatures, one of which had to be from the President, were required to withdraw funds from this account.<sup>142</sup>

(2) **E.G. Investment Accounts.** The second largest E.G. account, Account No. 76-952-200, was a standard money market account linked to two Riggs investment accounts, Account Nos. 68-002-6010 and 68-002-6028.<sup>143</sup> Opened in December 2001, these accounts had combined funds in 2003, of more than \$300 million and at times as much as \$500 million. The money market account had the same three signatories as the E.G. oil account, but any one signature was sufficient to withdraw funds.<sup>144</sup> The two linked investment accounts had only one required signatory, the E.G. President.<sup>145</sup>

(3) **Other E.G. Government Accounts.** Several other Riggs accounts and CDs were also opened in the name of the Republic of Equatorial Guinea. They included a CD for \$40 million, Account No. 81-710-0433, issued in May 2002;<sup>146</sup> a CD for \$1 million, Account No. 81-763-3375, issued in November 2002;<sup>147</sup> and a CD for \$5 million, Account No. 81-217-905, issued in June 1996 and closed in March 1998.<sup>148</sup> Account No. 25-711-327, a checking account, was opened in September 2003, in the name of the EG government, with loan proceeds intended to be used to purchase an airplane for the use of the E.G. President; at the end of 2003, its balance exceeded \$9 million.<sup>149</sup> An account related to the E.G.

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<sup>142</sup> See, e.g., Riggs Miscellaneous Change Memo (2/15/2003), listing signatories for E.G. Oil Account, Bates RNB 000005.

<sup>143</sup> See, e.g., Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, “Equatorial Guinea” (1/20/04), Bates OCC 0000528712-23, at 714.

<sup>144</sup> Riggs document listing signatories for E.G. Investment Account (12/7/01), Bates RNB 000007.

<sup>145</sup> OCC Supervisory Target Letter 2004-X, Bates OCC 0000502621-29, at 26.

<sup>146</sup> Riggs Negotiable CD (5/3/02), Bates RNB 000023.

<sup>147</sup> Riggs Certificate of Deposit Receipt (11/7/02), Bates RNB 000025.

<sup>148</sup> Riggs annual statements on Account No. 81-217-905 (1996-1998), Bates RNB 001303-05.

<sup>149</sup> See Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, “Equatorial Guinea” (1/20/04), Bates OCC 0000528712-23, at 714.

shipping registry, Account No.17-201-044, was opened in 1996, and went inactive in 2001. A checking account, Account No.17-231-999, which was apparently used to pay E.G. debts, was closed in 1999.

**(4) E.G. Embassy Accounts.** Eight accounts were opened at Riggs in the name of the “Embassy of Equatorial Guinea.” The earliest of these accounts was opened in 1996, and the latest in 2002. Most of these accounts appear to have been used to pay Embassy bills, including utilities, telephone expenses, payrolls, and at least one land purchase of a \$600,000 “chancery site.” One account appears to have been set up, but rarely used, to make currency investments in the Euro. Due to limited documentation, the Subcommittee could not determine the purpose of several others, some of which may have contained the proceeds of Riggs loans to the Embassy. The Subcommittee was not given signatory documentation for these accounts, but the signatory may have been Teodoro Biyogo Nsue, E.G. Ambassador to the United States.<sup>150</sup>

**(5) E.G. Student Accounts.** Two accounts were opened in the name of the E.G. government and used to pay the expenses of E.G. students studying in the United States. The first account, Account No. 17-328-504, was opened in the name of “Republica de Guinea Ecuatorial-Cuenta Estudiantes MME.” It was a corporate wholesale checking account opened in March 2001. The account signatories were Cristobal Manana Ela, E.G. Minister of Mines & Energy; and a son of the E.G. President, Gabriel Nguema Lima, E.G. Secretary of State Mines & Energy.<sup>151</sup> This account had fluctuating balances that often exceeded \$300,000. The second, Account No. 25-380-310, was opened in the name of “Republica de Guinea Ecuatorial-Fondo Especial para Becas.” It was a business money market account opened in May 2002, and the only signatory was the Riggs E.G. account manager, Simon Kareri.<sup>152</sup> This account was linked to a Riggs investment account of the

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<sup>150</sup> In the course of analyzing various transactions in the Riggs accounts, the Subcommittee identified four accounts at another bank, JPMorgan Chase, opened in the name of the “Permanent Mission of Equatorial Guinea.” Three were business checking accounts, and one was a business money market account. The earliest was opened in 2000, and the latest in 2003. One account had limited activity, but substantial funds, opening with \$5 million and experiencing ten major withdrawals – one nearly \$2 million – in less than a year. A second had regular, relatively modest account activity, with frequent deposits of \$5,400 from two oil companies doing business in Equatorial Guinea, CMS and Marathon, and a one-time deposit of \$5 million that passed through the account in 24 hours. The third account had significant account activity and account balances that fluctuated from about \$60 to about \$135,000, and appeared to reflect a variety of Embassy expenses. The fourth account had limited account activity and minor balances. Of these accounts, one was closed in 2000, two were closed in July 2004, and the fourth was in the process of being closed by JPMorgan Chase.

<sup>151</sup> Riggs account opening documentation (3/29/01), Bates RNB 000009.

<sup>152</sup> Riggs account opening documentation (5/12/02), Bates RNB 000014. But see Riggs memorandum to the file from Mr. Kareri (8/13/02) and new signature card changing signatory to the E.G. Secretary of State for Treasury, Bates RNB 013621-23.



MISCELLANEOUS  
CHANGE MEMO

Riggs Bank N.A.

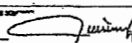

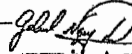
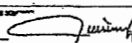

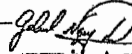
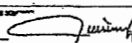

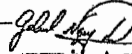
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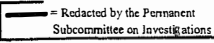
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REMARKS: TWO SIGNATURES ARE REQUIRED - PRESIDENT'S SIGNATURE MUST BE THE PRIMARY SIGNATURE TOGETHER WITH ONE OF THE SIGNATURES INCLUSIVE.

USE FORM #FM-4124 FOR CHANGE OF ADDRESS. AUTHORIZATION:  748 9127 (Rev. 4/90)

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	SR. MELCHOR ESCOB EDJO	TREASURER												
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Permanent Subcommittee on Investigations  
EXHIBIT #58 - FN 142

RNB 000005

Vanco also made four payments to accounts for the Ministry of Mines and Energy for the training of E.G. students. Two payments totaling about \$158,000 were made between 2000 and 2001 to Lloyds Bank London, and two payments exceeding \$190,000 were made between 2002 and 2003 into an E.G. student account at Riggs Bank.<sup>380</sup>

Altogether, the Subcommittee was able to document payments in excess of \$4 million made by oil companies to support more than 100 E.G. students studying abroad, most of whom were the children or relatives of wealthy or powerful E.G. officials.

### C. Joint Business Ventures

In a few instances, some oil companies have also entered into business ventures with companies owned or controlled by high ranking E.G. officials or their family members.

**Mobile Oil Guinea Ecuatorial (MOGE).** In 1998, for example, ExxonMobil entered into a business venture with Abayak S.A., the construction and real estate company controlled by the E.G. President, to form Mobile Oil Guinea Ecuatorial ("MOGE"), an oil distribution business in Equatorial Guinea that supplies Mobile Equatorial Guinea Inc. ("MEGI").<sup>381</sup> According to ExxonMobil, Mobil International Petroleum Corporation owns 85 percent of MOGE and Abayak owns 15 percent.<sup>382</sup> Dividends declared by MOGE in 2001, 2002, and 2003, resulted in dividend payments to Abayak of approximately \$10,500 each year.<sup>383</sup>

**GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a special purpose, state-owned corporation that was established in 1996, and may be partially privately held by E.G. officials.<sup>384</sup> Marathon has entered into two business ventures with GEOGAM. The first is Atlantic Methanol Production LLC (AMPCO), a company which owns and operates a methanol plant in Equatorial Guinea. Marathon and one other oil company each own 45% of AMPCO, while 10% is owned by GEOGAM. Between 2002 and May 2004, AMPCO paid dividends to GEOGAM totaling over \$4 million.<sup>385</sup>

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<sup>380</sup> Letter from Vanco Energy Company to the Subcommittee (06/08/2004), attachment 3. For Riggs payments see also Riggs listing of account activity from January-July 2003, Bates RNB 006602-09, at 605; and letter from Riggs Bank to President Obiang (2/8/02), Bates RNB 006703.

<sup>381</sup> Letter from ExxonMobil Corp. to the Subcommittee (06/17/04), attachment 1, at 3.

<sup>382</sup> Id.

<sup>383</sup> Id., at 3-4.

<sup>384</sup> See, e.g. letter from Marathon Oil Co. to the Subcommittee (7/13/04), attachment at 1 (according to a GEOGAM representative, GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President).

<sup>385</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment at 16.

**RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD  
SUBMITTED TO  
EXXON-MOBIL**

**1 At the hearing, you stated that you did not know the details regarding the initial formation of Mobil Oil Guinea Ecuatorial ("MOGE"). Please provide the Subcommittee with the details of the formation of MOGE, including:**

- a) Who first raised the idea of Abayak becoming a partner in MOGE (for example, was it a representative of ExxonMobil, a representative of Equatorial Guinea, a representative of Abayak, a representative of President Obiang, or someone else)?**

With respect to all aspects of Question 1, as of this time, we have not been able to determine the specific circumstances surrounding the minority investment in MOGE by Abayak Societe ("Abayak"). MOGE was formed prior to the merger between Mobil Corporation and Exxon Corporation. All of the Cameroon and Equatorial Guinea affiliate management that was involved in MOGE's formation has since left ExxonMobil. As a result, the answers we are providing represent our knowledge and belief at this time, subject to addition or correction based on further information we may obtain. At this time, we do not know how or by whom the matter of Abayak's minority investment in MOGE was first raised.

- i) What is the name of that person and what position did he or she hold when the idea was raised?**

As indicated above, at this time we do not know the name or position of anyone who may have raised the matter of Abayak's minority investment in MOGE.

- b) Who represented Abayak in communications with ExxonMobil regarding the formation of the partnership and who currently represents Abayak?**

As of this time, we cannot confirm who first represented Abayak in connection with its minority investment in MOGE. To the best of our knowledge and belief, Doña Constanca Mangué Nsue, the First Lady, was the formal representative of Abayak in the incorporation procedures for MOGE. Abayak had an employee or administrator named Damien (Last Name Unknown), but we do not know what role, if any, he played in connection with Abayak's minority investment in MOGE. Mr. Juan Pablo Romero represented Abayak at the meetings of the MOGE board of directors held in 1999 (for the 1998 year), 2000 (for the 1999 year), 2001 (for the 2000 year), and 2002 (for the 2001 year). Mr. Otogo Rosendo represented Abayak at the 2003 board of directors meeting for the 2002 year, and he continues to be the point of contact between MOGE and Abayak.

- c) Who represented ExxonMobil in communications with Abayak regarding the formation of the partnership and who currently represents ExxonMobil?**

We have been unable to determine with certainty who first represented Mobil in connection with the formation of MOGE or Abayak's minority investment in MOGE. To the best of our

knowledge and belief, Mr. Christian Le Heron, who at the time was the General Manager - Central Africa Cluster, was the formal representative of Mobil in the incorporation procedures for MOGE.

The current ExxonMobil General Manager for the Cameroon Cluster is Mr. Robert Theberge, located in Douala, Cameroon, who is assisted by Mr. Jules C. Lengue in Malabo. Their responsibilities include the day-to-day operations of MOGE.

**d) What particular financial assets or technical expertise or other contribution did Abayak provide to the MOGE venture that could not have been contributed by another entity?**

***Response Designated as Confidential***

Abayak made a financial contribution of 750,000 CFA in 1998 for its 15% equity share in MOGE, and a second contribution of 750,000 CFA in 1999, which was made to retain its equity percentage when a change in local law and accounting requirements necessitated an increase in the capitalization of the company. Both payments were made by check drawn on an account at the Societe Generale des Banques de la Guinee Equatorial in Malabo. The total payment of 1.5M CFA was equal to approximately US\$2,300, using the exchange rates at the time of the two payments.

**e) Why did ExxonMobil decide to accept Abayak as a partner of MOGE and who was the highest ranking ExxonMobil official to approve the decision?**

As noted above, as of this time, we have not been able to determine the specific circumstances surrounding Abayak's minority investment in MOGE.

To the best of our knowledge and belief, Kerry Wark, who at the time was President of Mobil Africa, located in Paris, approved the formation of MOGE, as discussed in the response to Question 1(f) below. Mr. Wark retired in 2002 as ExxonMobil's Fuels Marketing Regional Director, Africa/Middle East and returned to Australia.

**f) Please provide a copy of any ExxonMobil document approving the decision to accept Abayak as a partner of MOGE.**

As of this time, we have not located any documents approving the decision to accept Abayak as a minority shareholder in MOGE. We are providing as Attachment 1 a memorandum dated December 23, 1997, from Christian LeHeron to Kerry Wark, seeking approval to establish a fuels marketing presence in Equatorial Guinea with Abayak as a minority shareholder (we have been unable to ascertain whose handwritten notes appear on this document) and as Attachment 2 a January 19, 1998, e-mail from J.J. McDonald, Fuels Manager-Africa, to A.P. Blouin, enclosing prior e-mails that indicate approval of a proposal to establish such a presence.

**g) Please provide a copy of all materials related to the formation, ownership, and control of Abayak.**

As of this time, we have not located any documents related to Abayak's formation, ownership, and control. To the best of our knowledge and belief, Doña Constanca Mangué Nsue, the First Lady, owns some interest in Abayak. We attach three documents that indicate that Doña Constanca Mangué Nsue represented Abayak in the incorporation procedures for MOGE, as follows: 1) "PODER PARA LA PARTICIPACION A LA JUNTA CONSTITUYENTE DEL 21 DE NOVIEMBRE 1997", dated February 4, 1998, as Attachment 3; 2) "BOLETIN DE SUSCRIPCION", dated February 4, 1998, as Attachment 4; and "CERTIFICADO CONCISO", dated February 17, 1998, (with translation) as Attachment 5.

**2 Please provide a copy of all analyses that address whether ExxonMobil's partnership with Abayak in MOGE complies with the Foreign Corrupt Practices Act and all ExxonMobil policies related to the FCPA, in light of the fact that the President of EG (or his wife) controls Abayak. If no such analyses exist, please describe the basis for ExxonMobil's determining that its partnership with Abayak in MOGE complied with the FCPA and all of ExxonMobil's policies related to the FCPA.**

As of this time, we have not located such an analysis. We believe that the minority investment in Abayak complied with the FCPA and Mobil policies because, to the best of our knowledge and belief, the transaction was fully transparent and was not conducted with any corrupt intent, nor was it made to obtain or retain business or for any other improper purpose. Further, as previously noted, the investment itself was consistent with the overall capitalization of MOGE, was subject to additional cash calls, and involved risk of loss. The investment itself was a fully transparent transaction that was properly recorded on the books of Mobil and subsequently ExxonMobil.

**3 [REDACTED] what is the estimated value of Abayak's share of MOGE?**

*Response Designated as Confidential*

[REDACTED] The book value of Abayak's 15% share of MOGE would have been \$645,000 using this same exchange rate. ExxonMobil cannot accurately determine the market value of Abayak's shares. There is no currently established market value for MOGE as a company, since its shares are not traded on any exchange, and it has never been valued by ExxonMobil in relation to any potential sale. A market valuation of Abayak's share, should it ever take place, would be affected by a number of factors, including minority status, lack of control, and the potential earnings capability of MOGE.

**4. Has there ever been any suggestion or implication made to ExxonMobil that its ability to do business in EG was conditioned on allowing the President of EG (or a company controlled by him or a member of his immediate family) to become a partner in any of ExxonMobil's operations in EG, or was conditioned upon providing business to**

**making purchases from EG government officials, their family members or companies controlled by the officials or their family members?**

We are not aware of any such suggestion or implication with regard to ExxonMobil's ability to do business in Equatorial Guinea.

**5 Please describe the actions taken by ExxonMobil**

- a) to participate in the Extractive Industries Transparency Initiative (EITI), including concrete steps to implement the EITI in any jurisdiction;**
- b) to participate in the G-8 anti-corruption and transparency initiative, including concrete steps taken to help implement this initiative in any jurisdiction; and**
- c) to bring greater transparency to its own business dealings with foreign governments, their political leaders, and family members.**

Please see correspondence dated August 2, 2004 from Andrew P. Swiger to Senators Coleman and Levin that lists numerous specific actions taken by ExxonMobil and its affiliates to support the EITI and G-8 transparency initiatives. These actions include participation in country-specific implementation efforts that would result in greater transparency for ExxonMobil and the industry as a whole.

**6 Equatorial Guinea has stated publicly that it is willing to participate in the Extractive Industries Transparency Initiative (EITI). Please describe any plans or specific discussions undertaken between ExxonMobil and the Government of Equatorial Guinea related to implementing the EITI. If none, please indicate whether ExxonMobil is willing to initiate a dialogue with Equatorial Guinea regarding implementing EITI and, if so, whether ExxonMobil will report to the Subcommittee in 60 days regarding the prospects for the EITI in that country.**

ExxonMobil is supportive of transparency initiatives that apply universally to all businesses seeking to operate in a country, protect truly proprietary commercial information and respect the sanctity of contracts and local laws. ExxonMobil's support for transparency is part of its commitment to uphold honest and ethical behavior wherever its affiliates operate. As such, we have a vested interest in the progress of these countries in implementing such initiatives.

In our ongoing communications with the Government of Equatorial Guinea, both ExxonMobil and its in-country affiliate, Mobil Equatorial Guinea Inc. (MEGI), have communicated the importance of demonstrating meaningful and timely progress on its publicly stated intent to implement transparency initiatives. On numerous occasions, MEGI and ExxonMobil managers have had discussions with the President of Equatorial Guinea and/or the Ministry of Mines and Energy on the global transparency developments. We have encouraged the Government of Equatorial Guinea to work with other governments on approaches to greater transparency, including the establishment of an advisory committee, the membership of which would be comprised of representatives from government, civil society and companies doing business in Equatorial Guinea. MEGI has offered to serve as an industry representative on such a



Government-led advisory committee. We attach three documents that ExxonMobil has provided the Government of Equatorial Guinea related to the transparency initiatives, as follows: 1) "Fighting Corruption/Improving Transparency", a Press Release Issued by the U.S. White House on the G8 Initiative, as Attachment 6; 2) "Compact to Promote Transparency and Combat Corruption: A New Partnership Between the G8 and Nigeria", as Attachment 7; and 3) the March 2004 EITI Newsletter issued by the U.K. Department for International Development, as Attachment 8. In addition, we have encouraged the Government of Equatorial Guinea to contact Ben Mellor with the U.K. Department for International Development for assistance in implementing EITI and to discuss with R. Niels Marquardt, the new U.S. Ambassador to Equatorial Guinea and Cameroon, how the Government of Equatorial Guinea might best proceed with implementation of the G-8 initiative.

09/06 '04 17:45 FAX OF 4 120000

CENTRAL AFRICA CLUSTER

30 DEC. 1997

December 23rd, 1997

Mobil Africa

K. WARK

Attention : A. KEMULA

cc JSM  
PNH  
MAH

act ATK

Equatorial Guinea Marketing Entry

Dear André,

Please find attached our market assessment for a M & R entry in Equatorial Guinea. Mobil has already been granted the right to access the Government owned depots and to market products in the country.

We would much appreciate your review and concurrence in getting approval from Mobil Africa Management, to officially create a new affiliate in Guinea.

Sincerely Yours.

  
C.J. LE HERON

CONFIDENTIAL  
Attachment 1

Redacted  
by  
Permanent Subcommittee  
on Investigations

---

LEGAL REQUIREMENTS & ADVANTAGES

Capital Structure

Moof has to be in partnership with local Guinea.

Abiyak, a local company will be our partner, with 15% share.

*Give more details about this partnership*

Redacted  
by  
Permanent Subcommittee  
on Investigations

841

**Redacted  
by  
Permanent Subcommittee  
on Investigations**

\*\*\* Forwarding note from KRWARK --HDSLVHI 19/01/98 22:45 \*\*\*  
To: JJHCOONA--NECCVMD JJ McDONALD CJLEHERO--HDSLVHI CJ LE HERON

FROM : K.R. Wark  
Subject: Equatorial Guinea  
I concur with proceeding as you jointly suggest.

Regards, Kerry Wark  
Mobil Africa, Paris

**Redacted  
by  
Permanent Subcommittee  
on Investigations**

**CONFIDENTIAL**  
Attachment 2

**PODER PARA LA PARTICIPACIÓN A  
LA JUNTA CONSTITUYENTE DEL  
21 DE NOVIEMBRE 1997**

El que suscribe, sociedad Abayak, Malabo, Guinea Ecuatorial, activo como miembro fundador de la sociedad Mobil Oil Guinea Ecuatorial (MOGE), concede un poder, pero con el alcance y amplitud suficientes requeridos por la legislación vigente en favor de:

.....  
CASTAÑEDA NABUC.....

con objeto de ser mi representante a la Junta Constituyente de la sociedad

**Mobil Oil Guinea Ecuatorial**  
Sociedad Anónima con un Capital de 5.000.000 F CFA  
Domicilio Social: Malabo  
República de Guinea Ecuatorial

que se convoque el 21 de noviembre 1997 a las 10 horas en el Hotel Ureca en Malabo con el siguiente orden del día:

- aprobación de la gestión realizada hasta entonces por los promotores;
- aprobación de los estatutos sociales;
- nombramiento de las personas encargadas de la administración de la sociedad ;
- nombramiento de un censor de cuentas,
- poderes.

y le autoriza a ejercer los siguientes poderes

- (a) participar a la reunión, al voto de las resoluciones, ejecutar, realizar, reconocer, perfeccionar y firmar todas las escrituras, acuerdos, instrumentos y actas en nombre de la Sociedad que sean necesarias
- (b) llevar a la práctica las actas y firmar los documentos públicos y/o privados relacionados con los antes citados poderes.

Dado en Malabo el 4 de Noviembre 1997

Firma Martín Nubi Bueno para poder

Firma precedida con la mención manuscrita «Bueno para poder»

**CONFIDENTIAL**  
**Attachment 3**

POWER OF ATTORNEY TO PARTICIPATE IN THE Founding MEETING OF  
NOVEMBER 21<sup>ST</sup> 1997

The undersigned, Abayak Company, Malabo, Equatorial Guinea, as a founding member of the Mobil Oil Guinea Ecuatorial Company (MOGE), grants a power of attorney with the capacities and extent sufficient as required by the legislation in force in favor of:

Constancia Mangué

To represent me in the foundational meeting of the Company

Mobil Oil Guinea Ecuatorial  
Sociedad Anonima (Stock Corporation) with a capital of 5,000,000 FCFA  
Corporate domicile: Malabo  
Republic of Equatorial Guinea

To be convened on November 21, 1997 at 10:00 AM in the Ureca Hotel in Malabo with the following agenda:

- To approve the actions carried out to the present by the corporate promoter;
- To approve the corporate by-laws;
- To appoint the individuals in charge of the administration of the company;
- To appoint a corporate comptroller;
- To grant powers of attorney.

And to grant the following powers:

- (a) To participate in the meeting, to vote in the resolutions, to execute, conduct, recognize, finalize and sign all deeds, documents, agreements, instruments and acts on behalf of the Company as needed;
- (b) To execute and put into practice the acts and sign the public and/or private documents related to the above cited powers.

Done in Malabo on February 4<sup>th</sup>, 1998

Signature:.....Valid for power of attorney

Signature preceded with the handwritten statement: Valid for power of attorney

Attachment 3

Permanent Subcommittee on Investigations  
 NOTE: Translation of preceding page provided by the  
 Congressional Research Service (CRS) at the  
 Subcommittee's request.

BOLETÍN DE SUSCRIPCIÓN

El que suscribe.

Sociedad Abayak, Malabo, Guinea Ecuatorial.

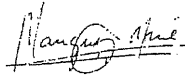
después de leer los estatutos de la sociedad

Mobil Oil Guinea Ecuatorial  
Sociedad Anónima con un Capital de 5.000.000 F CFA  
Domicilio Social: Malabo  
República de Guinea Ecuatorial

declaro por el presente boletín que:

- suscribe a 75 acciones de diez mil (10 000) Francos CFA de nominadas, de la dicha sociedad.
- y paga, la suma 750.000 Francos CFA, para el desembolsado de la totalidad del capital suscrito.

Dado en MALABO el 4 de <sup>PER</sup> ~~enero~~ Diciembre 1998



**CONFIDENTIAL**  
Attachment 4

Subscription Bulletin

The undersigned,

Sociedad Abayak, Malabo, Equatorial Guinea

After reading the corporate bylaws:

Mobil Oil Guinea Ecuatorial  
Sociedad Anonima (Stock Corporation) with a Capital of 5,000,000 F CFA  
Corporate Domicile: Malabo  
Republic of Equatorial Guinea

Declares through this bulletin that:

- He subscribes to 75 shares of ten thousand (10,000) CFA Francs of nominative shares of such corporation.
- And pays 750,000 CFA Francs for the full disbursement of the whole subscribed capital.

Done in Malabo on February 4<sup>th</sup>, 1998

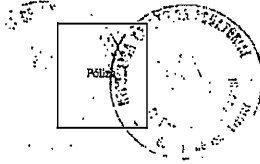
signature

Permanent Subcommittee on Investigations  
NOTE: Translation of preceding page provided by the  
Congressional Research Service (CRS) at the  
Subcommittee's request.





REPUBLICA DE GUINEA ECUATORIAL  
Ministerio de Justicia y Culto  
Dirección Gen. de Registros y Notariado  
Registro de la Propiedad y Mercantil  
de Malabo Región Insular.



CERTIFICADO CONCISO

Dr. SOTERO SI ONDO NTUTUMU, ABOGADO,  
*Registrador de la Propiedad y Mercantil de la Región Insular.*

**CERTIFICO:** QUE, al folio 259 del libro 54º de Sociedades de esta Sección de Bioko, aparece inscrita la Sociedad Mercantil denominada " MOBIL OIL GUINEA ECUATORIAL, S.A.", constituida en la Notaría de esta Región Insular el día 16 de febrero del año actual, ante el Notario Accidental de la misma Don Federico Eia Ovono, con el número 91 de su protocolo, el cual documento tuvo entrada en este Registro Mercantil a las 10,55 horas de hoy, asiento número 10 folio 443 del libro 5º Diario.- Pagado el impuesto.- Malabo, a diecisiete días del mes de febrero de mil novecientos--noventa y ocho.-----  
Y PARA QUE CONSTE Y SURTA SUS EFECTOS DONDE CONVENGA A PETICION DE LA PARTE INTERESADA, EXPIDO EL PRESENTE CERTIFICADO CONCISO QUE FIRMO, SELLO Y RUBRICO EN LA CIUDAD DE MALABO, A DIECISIETE DIAS DEL MES DE FEBRERO DE MIL NOVECIENTOS NOVENTA Y OCHO.-----

EL REGISTRADOR MERCANTIL.-



**CONFIDENTIAL**  
Attachment 5



REPÚBLICA DE GUINEA-BISSAU ECUATORIAL

MINISTERIO DE JUSTICIA Y CULTO

Núm. - 91 -

COPIA AUTORIZADA

DE

CONSTITUCION DE SOCIEDAD MERCANTIL, -

OTORGADA POR

"MOBIL OIL GUINEA ECUATORIAL, S.A." (MOGE).-

A FAVOR DE

LA MISMA

AUTORIZADA POR

FREDERICO ELA OCHOA.-

NOTARIO CON RESIDENCIA EN MALABO

REGION INSULAR

En ... DIECISIETE ... de ... FEBRERO ... de 1998 ...

CONFIDENTIAL

Attachment 5



10155  
Febrero 5  
443  
Febrero 1997  
1410  
A

NÚMERO NOVENA Y CERO. -----

--- En la ciudad de Malabo, a dieciséis días del mes de Febrero de mil novecientos noventa y ocho. -----

--- Ante mí, FEDERICO DELA CUALMO, Abogado, Notario accidental de la Región Continental con vecindad y residencia en Malabo. =



10/55  
Febrero  
443  
Febrero  
1997

NÚMERO NOVENTA Y OCHO. -----

--- En la ciudad de Malabo, a dieciséis días del mes de Febrero de mil novecientos noventa y ocho. -----

--- Ante mí, FERRISS HIA OWLINO, Abogado, Notario accidental de la Región Continental con vecindad y residencia en Malabo.-----

----- C O M I A R D O E N -----

DON CHRISTIAN JACQUES LE HERON, mayor de edad, casado, Director de Empresas, con residencia en Douala-Cameroun, y provisto de su Pasaporte Número 954379587. -----

DOÑA GONCALVES MANSUE HEUS, de nacionalidad Guineense,-----

mayor de edad, casada, Industrial, con domicilio en Malabo, y-----

de su P.I.D. Número -----



Doy de conocer a los señores comparecientes. -----

a) El señor Christian Jacques Le Heron, en su propio nombre y derecho, y en representación de la Sociedad Mercantil "MOBIL INTERNACIONAL", 150 East 42nd Street, New York United States Of America. Está legitimado para este otorgamiento, en-----

virtud de poderes de la Junta Constituyente, de fecha 21 de Noviembre de 1.997, suscrito por la sociedad de referencia, cuya copia tengo a la vista y considero suficiente para los fines-----

del presente otorgamiento; y b) La señora Mansue Heus, en nombre y representación de la Sociedad M&M, con domicilio en Malabo. Está legitimado para este acto, mediante Boletín suscrito por dicha Compañía, de fecha 4 de Febrero de 1.998, cuya copia asimismo tengo a la vista y considero suficiente para los-----

fines del presente otorgamiento. - - - - -

--- Les juzgo con la capacidad legal necesaria para formalizar la presente escritura de CONSTITUCION DE SOCIEDAD MERCANTIL, y

E I F O R M E N - - - - -

I.- Que los señores comparecientes, tienen decidido unirse en Sociedad, constituyendo una Compañia Mercantil Anónima, de nacionalidad Ecuatoguineana, que bajo la denominación de "MOBIL OIL GUINEA EQUATORIAL, S.A." en abreviatura (MOGE), se regirá por las disposiciones de la Ley de 17 de Julio de 1.951, al Código de Comercio y demás disposiciones vigentes; y más particularmente por los Estatutos, que firmados por los comparecientes, se entregan para su protocolización en unión de esta matriz y su transcripción en las copias que de la presente escritura se



II.- Que mediante Certificación del Registro General de Sociedades, que se acompañará a la primera copia, se acreditará que no existe otra Sociedad Anónima o Limitada, cuya denominación sea idéntica a la proyectada o cuya entera semejanza induzca a confusión. - - - - -

III.- Que llevando a efecto su acuerdo, - - - - -

C O N C L U S I O N - - - - -

PRIMERO.- Que Sociedad "MOBIL INTERNACIONAL", La Sociedad "ADA YAH" y Don Christian Jacques Le Heron, dejan constituida por fundación simultánea que llevan a cabo en esta acto, la Sociedad Mercantil denominada "MOBIL OIL GUINEA EQUATORIAL, S.A." (MOGE), con la duración, domicilio, objeto y régimen que se determinan en los precitados Estatutos, cuyo cuerpo completo ratifican y aprueban y a cuya preceptiva desde ahora se someten.

SEGUNDO.- (Emisión, Suscripción y Desembolso de Acciones.-) La Sociedad emite y pone en circulación al tipo de la par las CU

NIETAS acciones, números 1 al 500, ambos inclusive, de Diez Mil (10.000,-) Francos Cfa. de valor nominal cada una, en que se -- representa y divide el capital social fundacional de CINCO MIL MILLONES (5.000.000,-) de Francos Cfa., que queda distribuida con forme al cuadro de suscripción y desembolso siguiente: - - - -

- Mobil International, suscribe para sí, CUARENTA Y CINCO CUATRO Acciones, números 1 al 424, ambos inclusive por su valor nominal de (10.000,-) F. Cfa. cada una, equivalentes en CINCO MILLONES DOSCIENTOS CUARENTA Y CINCO MIL (4.240.000,-) de Francos Cfa.
- Abayal, suscribe para sí, SESENTA Y CINCO Acciones, números 425 al 499, ambos inclusive por su valor nominal de (10.000,-) F. Cfa. cada una, equivalentes en SESENTA Y CINCO MIL (750.000,-) Francos Cfa. - - - - -

- Don Christian Jacques Le Heron, suscribe para sí, una Acción, número 500, ambos inclusive por su valor nominal de (10.000,-) Francos Cfa. o una equivalente en (10.000,-) Francos Cfa. - - - -

Según los comparecientes, que las acciones por cada una de ellas suscritas, han quedado desembolsado e ingresado -- en efectivo metálico en la Caja Social. - - - - -



RESOLUCIÓN. (Nombramiento de Cargos Sociales).- Los socios fundadores, constituidos en este acto en Junta General de Accionistas de la Compañía, acuerdan por unanimidad nombrar por un período de cinco (5) años los siguientes Cargos: - - - - -

- PRESIDENTE Y DIRECTOR-GENERAL, Don Christian Jacques Le Heron
- DIRECTOR-GENERAL ADJUNTO, Don Charles Kranji. - - - - -
- CONSEJEROS, Doña Constanza Mangue Haue, Don Francois René Riou y Don Henry Warr. - - - - -

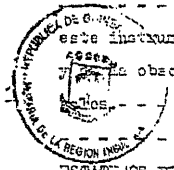
--- Se nombra Censor de Cuenta a Gabinete BERTS Y YOUNG GAMBROU por un período de tres (3) años. - - - - -

--- Don comparecientes, aceptan el cargo y promete desempeñarlo bien

y fielmente, manifestando no hallarse en causa alguna de incompatibilidad legal, en especial las señaladas en la Ley de - = 25/1.983, en fecha 26 de Diciembre. - - - - -

--- Hago a los señores comparecientes, las reservas y advertencias legales, entre ellas las de caracter fiscal y la prohibición de ocupar cargos en la compañía a las personas declaradas incompatibles por la legislación vigente, en especial las señaladas por la Ley de 25/1.983, de fecha 26 de Diciembre, lo permito la lectura de esta escritura por su elección, después de advertido de la opción del Artículo 19 del Reglamento Notarial; hacen constar su consentimiento y la firman conmigo, el Notario, que - - - - -

A U E O R I Z O - - - - -



este instrumento público y doy fé de su autenticidad de fondo y forma observada en la forma de todas las prescripciones legales. - - - - -

DOCUMENTOS UNIDOS: - - - - -

ESTADOS DE LA SOCIEDAD MERCANTIL "MOBIL OIL GUINEA ECUATORIAL, S.A. (MOGE). - - - - -

[emblem]  
REPUBLIC OF EQUATORIAL GUINEA  
*Ministry of Justice and Religion*  
*General Department of Registration and Notary Offices*  
*Register of Property and Commerce*  
*of Malabo Region Insular*

CONCISE CERTIFICATE

*Dr. SOTERO SI ONDO NTUTUMU, ATTORNEY,*  
*Registrar of Property and Commerce of the Insular Region.*

**I CERTIFY:** THAT, on page 259 book 54 of Companies of this Section of Bioko, there is recorded the Commercial Company named "MOBIL OIL GUINEA ECUATORIAL, S.A.," incorporated at the Notary Office of this Insular Region on February 16 of this year before Acting Notary Federico Ela Owono under number 91 of his protocol, which document was entered in this Commercial Register at 10:55 AM today, entry number 10 folio 443 logbook 5. The tax was paid. Malabo, February seventeen, nineteen hundred ninety-eight.

FOR THE RECORD AND FOR THE APPROPRIATE EFFECTS, AT THE PETITION OF THE INTERESTED PARTY, I ISSUE THIS CONCISE CERTIFICATE AND I SIGN, SEAL, AND INITIAL IT IN THE CITY OF MALABO ON FEBRUARY SEVENTEEN, NINETEEN HUNDRED NINETY-EIGHT.

COMMERCIAL REGISTRAR

[seal and signature]

**CONFIDENTIAL**  
**Attachment 5**



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[emblem]  
REPUBLIC OF EQUATORIAL GUINEA  
MINISTRY OF JUSTICE AND RELIGION

No. 91

AUTHORIZED COPY  
OF  
THE INCORPORATION OF A COMMERCIAL COMPANY  
ISSUED BY  
"MOBIL OIL GUINEA ECUATORIAL, S.A." (MOGE)  
IN FAVOR OF  
ITSELF  
AUTHORIZED BY  
FEDERICO ELA OWONO.  
NOTARY RESIDING IN MALABO  
INSULAR REGION  
Date FEBRUARY SIXTEEN, 1998

**CONFIDENTIAL**  
**Attachment 5**

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[stamp, appears on next 4 pages]

REPUBLIC OF EQUATORIAL GUINEA

[illegible] OF THE INSULAR REGION OF MALABO

[handwritten note, appears on next page as well] 17 10<sup>55</sup> February

10 443 5<sup>h</sup>

February 17, 1997

NUMBER NINETY-ONE

In the city of Malabo, on the sixteenth day of February, nineteen hundred ninety-eight.

Before me, FEDERICO ELA OWONO, Attorney, Acting Notary of the Continental  
Region, domiciled and residing in Malabo.

**CONFIDENTIAL**  
**Attachment 5**

NUMBER NINETY-ONE

In the city of Malabo, on the sixteenth day of February, nineteen hundred ninety-eight  
Before me, FEDERICO ELA OWONO, Attorney, Acting Notary of the Continental  
Region, domiciled and residing in Malabo.

THERE APPEAR

MR. CHRISTIAN JACQUES LE HERON, of legal age, married, Corporate Director, residing in  
Douala-Cameroon, bearer of Passport Number 95AE79587.

MRS. CONSTANCIA MAUGUE NSUE, nationality Equatorial Guinean, of legal age, married,  
an Industrialist, domiciled in Malabo, [illegible] Number

I certify that I know the deponents.

INTERVENORS a) Mr. Christian Jacques Le Heron, on his own behalf and account, and  
representing the Commercial Company "MOBIL INTERNACIONAL," 150 East 42<sup>nd</sup> Street,  
New York, United States of America. He is authorized for this instrument under the powers of  
attorney granted to him by the Incorporating Board, dated November 21, 1997, signed by the  
company in reference, the copy of which I have seen and I consider sufficient for the purposes of  
this instrument; and b) Mrs. Mauge Nsue, in behalf and representation of the Company  
ABAYAN, domiciled in Malabo. She is authorized for this instrument by Bulletin signed by said  
Company on February 4, 1998, the copy of which I have seen and consider sufficient for the

CONFIDENTIAL  
Attachment 5

purposes of this instrument.

I consider that they have the necessary legal capacity to execute this instrument of INCORPORATION OF COMMERCIAL COMPANY, and

THEY STATE

I.- That the deponents have decided to come together in a Company, creating a Commercial Joint-Stock Company, of Equatorial Guinean nationality, under the name "MOBIL OIL GUINEA ECUATORIAL, S.A.," initials (MOGE), to be governed by the provisions of the Law of July 17, 1951, the Commercial Code and other current provisions; and more particularly by the Bylaws, which after being signed by the deponents they deliver to me for registration together with this original and its transcription in the copies of this instrument to be issued.

II.- By Certification from the General Register of Companies, enclosed with the first copy, it will be proven that there is no other Joint-Stock Company or Limited Company whose name is identical to that planned, or whose extreme similarity may lead to confusion.

III.- That implementing their agreement,

THEY EXECUTE

ONE.- The Company "MOBIL INTERNACIONAL," the Company "ABAYAN" and Mr. Christian Jacques Le Heron incorporate, by simultaneous foundation carried out in this act, the Commercial Company named "MOBIL OIL GUINEA ECUATORIAL, S.A." (MOGE), with the term, domicile, object, and status determined in said Bylaws, whose complete text they confirm and approve and to the provisions of which they submit as of now.

TWO.- (Issue, Subscription, and Payment of Shares.-) The Company issues and places in circulation, at par,

FIVE HUNDRED shares, numbers 1 to 500, both inclusive, with a par value of Ten Thousand (10,000) CFA each, representing the founding capital of FIVE MILLION (5,000,000) CFA, which is distributed according to the following subscription and payment table:-----

- Mobil Internacional subscribes for itself FOUR HUNDRED TWENTY-FOUR shares, numbers 1 to 424, both inclusive, at their par value of (10,000) CFA each, equivalent to FOUR MILLION TWO HUNDRED FORTY THOUSAND (4,240,000) CFA

- Abayak, subscribes for itself, SEVENTY-FIVE shares, numbers 425 to 499, both inclusive, at their par value of (10,000) CFA each, equivalent to SEVEN HUNDRED FIFTY THOUSAND (750,000) CFA.-----

- Mr. Christian Jacques Le Heron subscribes for himself one share, number 500, both inclusive (sic), at the par value of (10,000) CFA, equivalent to (10,000) CFA.---

The deponents declare that the shares subscribed by each of them were paid up and settled in cash with the corporate treasury.

**TITRE.** - (Appointment in Corporate Positions).- The founding shareholders constituted in this act in General Shareholders' Meeting of the Company, unanimously agree to fill for a term of five (5) years the following positions:-----

- CHAIRMAN AND GENERAL DIRECTOR, Mr. Christian Jacques Le Heron;

- ASSISTANT GENERAL DIRECTOR, Mr. Charles Ndanji.

- DIRECTORS, Mrs. Constanca Nangue Nsue, Mr. François Réne Riou, and Kerry Warh.

---They appoint as Auditor the firm ERNST Y YOUNG CAMEROUN for a term of three (3) years.

---The persons appointed accept the position and promise to carry it out correctly

and loyally, declaring that they do not fall under any cause of legal incompatibility, specifically those indicated in Law 25/1.983 dated December 26.-----

---I indicate to the deponents the legal reservations and warnings, including those of a tax nature and the prohibition of filling a position in the company for persons declared incompatible by [illegible], especially those indicated in Law 25/1.983, of December 26. I let them read this instrument at their choice, after warning them of the option under Article 193 of the Notary Regulation; they approve it and they sign it with me, the Notary, who-----

-----CERTIFIES-----

this public instrument and attests its authenticity of substance [illegible] all registrations [illegible]

-----DOCUMENTS ENCLOSED:-----

BYLAWS OF THE COMMERCIAL COMPANY "MOBIL OIL GUINEA EQUATORIAL, S.A. (MOGE).

(4) **Nusiteles.** Nusiteles, G.E. was established in 2000, as an E.G. telecommunications company intended to establish telephone and computer services within Equatorial Guinea. It is jointly owned by a number of parties, including the E.G. President through Abayak, the E.G. Minister of Foreign Affairs, the E.G. Director of National Security, the E.G. Minister of Justice and Religion, and International Decision Strategies, a Virginia corporation controlled by R. Bruce McColm.<sup>181</sup>

(5) **GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a state-owned E.G. company that was established in 1996, and may be partially privately held by E.G. officials. In response to Subcommittee questions, Marathon has informed the Subcommittee that, in January 2003, it was told by a GEOGAM representative that GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President.<sup>182</sup> GEOGAM is a 20 percent owner of a liquid petroleum gas facility on Bioko Island, and a 10 percent owner of a methanol plant that is also located on Bioko Island.

In November 2001, the Riggs account manager for the E.G. accounts wrote a memorandum to the file which stated in part:

“During my last trip to Equatorial Guinea, I was able to tour most of the businesses controlled by the President and his family. Due to the significant growth in the country, the businesses have grown exponentially from the sleepy businesses that I used to know to very active interests that are generating significant revenues.”<sup>183</sup>

The memorandum went on to observe that Abayak, “has become a significant earner of income for the President.” It states: “By far the most lucrative earner for the President is the new gas plant in Malabo of which he controls 25%.”<sup>184</sup> It also notes the President’s ownership of “the only two supermarkets in the country” and the largest hotels. This memorandum demonstrates that Riggs had a sophisticated understanding of the President’s personal stake in much of the economic activity within his country.

**Cash Deposits.** A key element of an effective anti-money laundering program involves proper handling of large cash transactions, including monitoring these transactions, refraining from cash transactions that appear suspicious, and reporting suspicious activity to law

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<sup>181</sup> For more information on Nusiteles, see below in this Section of the Report.

<sup>182</sup> Letter from Marathon Oil Corp. to the Subcommittee (7/13/04), attachment at 1.

<sup>183</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>184</sup> See also Riggs “KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts” for Otong (11/19/02), Bates RNB 000037.

Vanco also made four payments to accounts for the Ministry of Mines and Energy for the training of E.G. students. Two payments totaling about \$158,000 were made between 2000 and 2001 to Lloyds Bank London, and two payments exceeding \$190,000 were made between 2002 and 2003 into an E.G. student account at Riggs Bank.<sup>380</sup>

Altogether, the Subcommittee was able to document payments in excess of \$4 million made by oil companies to support more than 100 E.G. students studying abroad, most of whom were the children or relatives of wealthy or powerful E.G. officials.

### C. Joint Business Ventures

In a few instances, some oil companies have also entered into business ventures with companies owned or controlled by high ranking E.G. officials or their family members.

**Mobile Oil Guinea Ecuatorial (MOGE).** In 1998, for example, ExxonMobil entered into a business venture with Abayak S.A., the construction and real estate company controlled by the E.G. President, to form Mobile Oil Guinea Ecuatorial ("MOGE"), an oil distribution business in Equatorial Guinea that supplies Mobile Equatorial Guinea Inc. ("MEGI").<sup>381</sup> According to ExxonMobil, Mobil International Petroleum Corporation owns 85 percent of MOGE and Abayak owns 15 percent.<sup>382</sup> Dividends declared by MOGE in 2001, 2002, and 2003, resulted in dividend payments to Abayak of approximately \$10,500 each year.<sup>383</sup>

**GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a special purpose, state-owned corporation that was established in 1996, and may be partially privately held by E.G. officials.<sup>384</sup> Marathon has entered into two business ventures with GEOGAM. The first is Atlantic Methanol Production LLC (AMPCO), a company which owns and operates a methanol plant in Equatorial Guinea. Marathon and one other oil company each own 45% of AMPCO, while 10% is owned by GEOGAM. Between 2002 and May 2004, AMPCO paid dividends to GEOGAM totaling over \$4 million.<sup>385</sup>

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<sup>380</sup> Letter from Vanco Energy Company to the Subcommittee (06/08/2004), attachment 3. For Riggs payments see also Riggs listing of account activity from January-July 2003, Bates RNB 006602-09, at 605; and letter from Riggs Bank to President Obiang (2/8/02), Bates RNB 006703.

<sup>381</sup> Letter from ExxonMobil Corp. to the Subcommittee (06/17/04), attachment 1, at 3.

<sup>382</sup> Id.

<sup>383</sup> Id., at 3-4.

<sup>384</sup> See, e.g. letter from Marathon Oil Co. to the Subcommittee (7/13/04), attachment at 1 (according to a GEOGAM representative, GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President).

<sup>385</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment at 16.



Marathon's second business venture with GEOGAM is Alba Plant, LLC, a company that owns a liquid petroleum gas facility in Equatorial Guinea. Marathon owns 52.17% of Alba Plant LLC, while GEOGAM owns 20%.<sup>386</sup> In 2002, Alba Plant paid dividends to GEOGAM totaling more than \$87,000.<sup>387</sup>

**GEPetrol.** GEPetrol is a special purpose, state-owned corporation that may also be partially privately held, possibly by E.G. government officials. Marathon has told the Subcommittee that it believes GEPetrol is owed 100% by the government,<sup>388</sup> but some evidence obtained by the Subcommittee suggests that GEPetrol could have one or more E.G. officials as part owners.

Marathon has entered into three business ventures with GEPetrol. The first is a company called LNG Holdings Limited, which is developing the LNG project. Marathon owns 75 percent of LNG Holdings, while GEPetrol owns 25 percent.<sup>389</sup> GEPetrol also has an interest in the Alba Block Production Sharing Contract, which includes the producing Alba Field, as well as an interest in an area known as Block D.<sup>390</sup>

Another joint venture potentially involving GEPetrol is found on what is known as Block N, located on the Corisco Bay shelf. Devon Energy Company's wholly-owned subsidiary owns 31 percent of the participating interest in Block N. The E.G. Ministry of Mines and Energy holds another 15 percent of Block N, but the Production Sharing Contract provides that this interest can be assigned to GEPetrol.<sup>391</sup>

#### **D. Transparency Initiatives**

Earlier this year, the Center for Strategic and International Studies issued a report describing the increasing importance to the United States of oil-producing countries in Africa.<sup>392</sup> This report also called for major U.S. and international efforts to increase transparency efforts in these countries to reduce corruption. The report explained:

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<sup>386</sup> Letter from Marathon Oil Co. to the Subcommittee (4/16/04), attachment at 13.

<sup>387</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment at 13.

<sup>388</sup> *Id.*, at 18.

<sup>389</sup> *Id.*, at 19.

<sup>390</sup> *Id.*, at 18.

<sup>391</sup> Letter from Devon Energy Corp. to the Subcommittee (4/26/04), at 2.

<sup>392</sup> "Promoting Transparency in the African Oil Sector," report prepared by the Center for Strategic and International Studies Task Force on Rising U.S. Energy Stakes in Africa (March 2004).

RESPONSES TO SUPPLEMENTAL QUESTIONS FOR THE RECORD  
SUBMITTED TO  
MARATHON OIL COMPANY

1. Since Marathon first learned that Abayak (a company controlled by the President of EG or his wife) may have a substantial interest in GEOGAM, what has Marathon done to determine whether Abayak does, in fact, have an interest in GEOGAM and, if so, the exact amount of that interest?

As we stated in our prior responses, all information available to Marathon when it acquired CMS' Equatoguinean interests in January 2002 indicated that GEOGAM was a wholly owned State entity. As we recall, it was not until the summer of 2002 that we first became aware that GEOGAM might be partially, privately owed. As we stated in our July 13, 2004, responses, in January of 2003 a GEOGAM representative told Marathon that GEOGAM was 75% owned by Abayak and 25% by the Government.

- a. When does Marathon expect to obtain an answer to these questions? When Marathon receives an answer to these questions, please provide the information to the Subcommittee.

Marathon met with Equatoguinean Government officials on July 19, July 30, August 3, August 5, August 9, and August 13, 2004, to discuss, inter alia and in general, transparency and government-financed social development programs. The status of GEOGAM's ownership was specifically discussed at four of these meetings. Based on what we were told at those meetings, it now appears that Abayak has at least a 75% interest in GEOGAM, and that interest has been held by Abayak since GEOGAM's inception. We believe the Government representatives with whom we met understand that the GEOGAM Alba Plant LLC (the LPG (liquid petroleum gas) plant) and AMPCO (the methanol plant) interests should be held by the State or by an entity that is wholly-owned by the State. At Marathon's urging, the Government is in the process of reviewing this matter and determining what actions need to be taken. We will continue to pursue this matter with the Equatoguinean Government and will keep this Subcommittee updated.

- b. Why has Marathon decided to continue to remain in partnership with GEOGAM in the liquefied petroleum gas plant and the methanol facility in light of the fact that Abayak may have a substantial interest in GEOGAM?

Marathon is not in a partnership with GEOGAM. The LPG plant is owned by Alba Plant LLC. Two companies own the shares of Alba Plant LLC; Alba Associates LLC owns 80% of the shares of Alba Plant LLC and GEOGAM owns the remaining 20% of the shares. Marathon, in turn, owns 65.2125% of the shares in Alba Associates LLC. The methanol plant is owned by Atlantic Methanol Production Company LLC (AMPCO). AMPCO also has two shareholders, Atlantic Methanol Associates LLC, which owns 90% of the AMPCO shares, and GEOGAM, which owns the remaining 10% of the AMPCO shares. Marathon in turn owns 50% of the shares of Atlantic Methanol Associates LLC. In summary, with respect

to both the LPG plant and the methanol plant, Marathon owns shares in a company that owns shares in a company in which GEOGAM also owns shares.

As we stated in our earlier responses, there was nothing in the materials we reviewed, including the underlying contracts, or in our discussions with CMS prior to our acquisition of CMS' Equatoguinean interests, that indicated that GEOGAM was not 100% state owned. To the contrary, all indications were otherwise. Indeed, the 1998 agreement between the Government and AMPCO under which the State authorized the construction of the methanol plant specifically states that GEOGAM is a wholly-owned entity of the State. At the time we completed our acquisition of CMS's interests, we believed that GEOGAM was a wholly-owned entity of the State.

It was well after we acquired CMS' interests in Equatorial Guinea that we first received an indication that GEOGAM may have a private owner. As Marathon learned that GEOGAM may have a private owner, Marathon has operated as if the indication that GEOGAM had a private owner was true and as if that private owner was a government official. We have endeavored to make sure that all of Marathon's, Alba Plant LLC's and AMPCO's dealings with GEOGAM are at arm's length. The dealings of Marathon, Alba Plant LLC and AMPCO with GEOGAM have been based on the terms of existing, commercial arrangements. Moreover, all dealings of Marathon, Alba Plant LLC and AMPCO with GEOGAM have been fully and accurately recorded on the books of these companies.

Please see our response to 1.a. with regard to the actions we are currently pursuing with the Equatoguinean Government to address this issue.

- c. Who was the highest ranking Marathon official to approve the decision to continue to remain in partnership with GEOGAM?

See the response to 1.b., above. No affirmative decision was made to continue the arrangement.

- d. Please provide a copy of any Marathon document approving the decision to remain in partnership with GEOGAM.

See the responses to 1.b. and 1.c, above.

- e. Please provide a copy of all materials related to the formation, ownership, and control of GEOGAM.

We do not have an ownership interest in GEOGAM and therefore do not have these documents.

2. Please provide a copy of all analyses that address whether the Marathon's partnership with GEOGAM in the liquefied petroleum gas plant and the methanol facility complies with the

Foreign Corrupt Practices Act and all Marathon policies related to the FCPA, in light of the fact that Abayak (a company controlled by the President of EG or his wife) may have a substantial interest in GEOGAM. If no such analyses exist, please describe the basis for Marathon's determining that its partnership with GEOGAM in the liquefied petroleum gas plant and the methanol facility complied with the FCPA and all of Marathon's policies related to the FCPA.

See our response to 1.b. with respect to the characterization of a "partnership" with GEOGAM. As Marathon learned that GEOGAM might have a private owner, the situation was reviewed with regard to FCPA compliance with legal counsel. There are, however, no written analyses relating to this situation.

Even though it is now apparent that a government official owns an interest in GEOGAM, that government official did not receive the interest from Marathon. Therefore, that interest could not have been given, and was not given, by Marathon as a quid pro quo for any action by a government official, including any action related to the acquisition or retention of business. No government official ever suggested to Marathon that Marathon's acquisition of or continued participation in any business opportunity in Equatorial Guinea, or any other advantage in Equatorial Guinea, was conditioned on a government official's ownership of an interest in any part of Marathon's operations. Likewise, Marathon has never offered participation in any of its operations to a government official.

As Marathon learned that GEOGAM might have a private owner, Marathon has endeavored to make sure that all of the dealings of Marathon, Alba Plant LLC and AMPCO with GEOGAM were at arm's length. As a shareholder in Alba Plant LLC and AMPCO, GEOGAM only receives what it is entitled to under the governing documents. Moreover, as previously indicated, all dealings of Marathon, Alba Plant LLC and AMPCO with GEOGAM have been fully and accurately recorded on the books of these companies.

With regard to Marathon's Anti-Corruption Compliance Guidelines, this situation-- inheriting an already existing arrangement-- is not directly addressed. Consistent with our guidelines, however, and as noted above, as Marathon learned that GEOGAM might have a private owner, we carefully conducted our business at arms length as if such private owner was a government official.

3.

**Redacted  
by  
Permanent Subcommittee  
on Investigations**

Redacted by Permanent Subcommittee  
on Investigations

4. What is the estimated value of GEOGAM's share of the liquefied petroleum gas plant and the methanol facility?

Under the governing documents for both Alba Plant LLC and AMPCO, the interests currently owned by GEOGAM were carried by Alba Plant Associates LLC and Atlantic Methanol Associates LLC for certain construction costs. The carried amounts, plus interest, are recovered out of 75% of the dividends otherwise payable to GEOGAM. Based on the amount of the carry, the interest rate under the formation documents, and our projections of operating and capital costs, inflation, throughput and commodity prices, we estimate that the interest currently owned by GEOGAM in the LPG plant has a net present value of \$ 75 million to \$ 95 million and the interest currently owned by GEOGAM in the AMPCO Plant has a net present value of \$ 15 million to \$ 20 million. It is important to note that these estimates of net present value are based on projections of future dividends. GEOGAM will only realize this value in the future if it remains an owner of these plants. Again, we would caution that actual values may vary significantly from these estimates. Actual values are highly dependent upon variables that are hard to predict, such as, operating and maintenance costs, plant reliability, availability of supplies to the plant, inflation, and commodity prices. Commodity prices in particular are highly volatile with annual swings commonly on the order of 25-40%.

As noted above, the carried amounts, plus interest, are recovered out of 75% of the dividends otherwise payable to GEOGAM. In addition, GEOGAM has traditionally paid for LPG supplies it receives from Alba Plant LLC out of the remaining dividends paid or to be paid to GEOGAM. The commercial arrangements for this were and are as follows. GEOGAM operates a small LPG retail distribution business on Bioko Island, for which it obtains LPG supplies from Alba Plant LLC. No written contract was in place for these sales when Marathon acquired CMS' interests in Equatorial Guinea. However, since the construction of the LPG plant in 1997, GEOGAM has purchased LPG supplies from Alba Plant LLC. Alba Plant LLC charges GEOGAM the same price Alba Plant LLC receives for export volumes, which are the only other sales from the plant. GEOGAM has paid for the product (at the export price mentioned above) through deductions from Alba Plant dividends. With the Phase 2B LPG plant expansion, dividends have not been declared since June 2002. As a result, Alba Plant LLC currently has a receivable from GEOGAM of \$452,176.10. We project that the Phase 2B expansion will be completed in 2005, that dividends will be declared in 2005, and that the account receivable will be liquidated by the end of 2005. Marathon has been attempting to put in place a written contract since shortly after it acquired CMS' interest in 2002, but as yet no written contract has been signed. Part of the difficulty in finalizing a written contract has been Marathon's insistence that the price be not less than the export price. To our knowledge, GEOGAM is the only supplier of LPG to the residents of Bioko Island, making termination of this

**arrangement impractical.**

5. Has there ever been any suggestion or implication made to Marathon (or its predecessor – CMS) that its ability to do business in EG was conditioned on allowing the president of EG (or a company controlled by him or a member of his immediate family) to become a partner in any of Marathon's operations in EG, or was conditioned upon providing business to or making purchases from EG government officials, their family members or companies controlled by the officials or their family members?

**With regard to Marathon, absolutely not. With regard to CMS, we are not aware of anything which would indicate that such is the case. As noted in Mr. Wegman's letter dated August 6, 2004, to this Subcommittee, Marathon did not acquire CMS, but rather only acquired CMS's interests in Equatorial Guinea.**

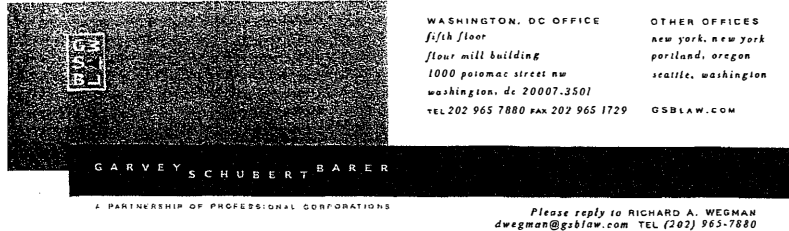
6. Please describe the actions taken by Marathon:
- a. To participate in the Extractive Industries Transparency Initiative (EITI), including concrete steps taken to implement the EITI in any jurisdiction;
- **Marathon has endorsed the EITI. On April 21, 2004, Marathon's President and Chief Executive Officer notified the UK's Department for International Development (DFID) of Marathon's support for the Extractive Industries Transparency Initiative (EITI). A written statement in support of the EITI was attached. Marathon's support was recognized in the EITI Newsletter Issue No. 2, date June 2004. A copy of the DFID EITI Newsletter is attached.**
  - **In May, 2004, Marathon publicly announced its support of the EITI in an interview on the BBC "Focus on Africa" program. The interview was part of a program titled "Equatorial Guinea – Transparency for the Oil Industry." The program aired twice on May 25 in the U.K.**
  - **Marathon has met with the United Kingdom's Department for International Development EITI team on numerous occasions to obtain advice on how to implement the EITI as well as advice on how to best engage specific governments – recognizing this is a government led initiative.**
  - **In August, 2004, Marathon was invited by the U.K. EITI team to participate in the planning activities for the March 2005 EITI Conference which will be held in London.**
  - **Marathon's President and Chief Executive Officer wrote a letter in May, 2004 to President Obiang of Equatorial Guinea applauding the Equatoguincan government's endorsement of the EITI and other transparency based initiatives. Marathon attached a copy of its position paper filed with the U.K. government, and offered assistance to help Equatorial Guinea move forward on achieving transparency.**

- **Marathon's Washington office continues to suggest that the U.S. State Department promote transparency in its meetings with President Obiang, and provide technical assistance to Equatorial Guinea on transparency efforts.**
  - **Marathon attended the June 17, 2003, Lancaster House Multi- Stakeholder Conference on the EITI.**
  - **Marathon's Washington office worked very closely with the U.S. State Department in 2003 on the drafting of the final EITI position, which was ultimately adopted by the U.K. Government.**
- b. To participate in the G8 Anti-Corruption and Transparency Initiative, including concrete steps taken to help implement this initiative in any jurisdiction; and
- **Marathon worked through the American Petroleum Institute in expressing support of the G8 initiative announcement at the G8 Sea Island Summit.**
- c. To bring greater transparency to its own business dealings with foreign governments, their political leaders, and family members.
- **Marathon notified the Equatoguinean government of its endorsement of the EITI, and encouraged the Equatoguinean government to move forward on implementing transparency, and offered assistance on this effort.**
  - **Marathon has led an Equatorial Guinea Capacity Building initiative with U.S. oil companies, aimed at providing a framework for the Equatoguinean government making substantive investments in its social and economic infrastructure. The first meeting was held in April 2004; a second meeting is being held in October. Marathon views this effort as an important step forward toward furthering the transparency of Equatorial Guinea's revenue stream.**
  - **Marathon has discussed the need for transparency with Equatoguinean governmental officials, including Pastor Micha Ondo Bile, the External Affairs Minister, and Gabriel Nguema Lima, the Vice Minister of Mines, Industries and Energy.**
  - **In August 2004, Marathon senior executives met with an Equatoguinean Minister in Malabo, Equatorial Guinea, to encourage movement on transparency, and also to encourage the government to take specific action towards the needs of the country.**

- **Marathon has facilitated discussions between U.S. government officials and Equatoguinean government officials to discuss transparency and other reform initiatives, including:**
    - An April 29, 2004, discussion between U.S. government and industry personnel with External Affairs Minister Pastor Micha Ondo Bile.
    - A June 18, 2004, discussion between U.S. government personnel and President Obiang Nguema Mbsago, and Vice Minister Gabriel Nguema Lima.
    - An August 5, 2004, discussion held between U.S. government and External Affairs Minister Pastor Micha Ondo Bile.
  - **Since 2002, Marathon has assisted U.S. government officials and representatives of multilateral finance institutions on visits to Equatorial Guinea. This has included facilitating roundtable discussions with industry representatives to discuss transparency and capacity building initiatives, and to push for more technical assistance for Equatorial Guinea.**
    - In August 2003, assisted a State Department & Export - Import Bank visit
    - In August 2003, cooperated fully with a CBS "60 Minutes" news crew in Equatorial Guinea
    - In August 2003, assisted a visit by Alex Vines, head of Human Rights Watch
    - In February 2004, assisted a visit by officials from the Department of Energy
    - Summer 2004, assisted a visit by Business for Social Responsibility, which has a contract from the U.S. State Department to do a social needs assessment of Equatorial Guinea, which could be used as a roadmap for infrastructure development.
7. Equatorial Guinea has stated publicly that it is willing to participate in the Extractive Industries Transparency Initiative (EITI). Please describe any plans or specific discussions undertaken between Marathon and the government of Equatorial Guinea related to implementing the EITI. If none, please indicate whether Marathon is willing to initiate a dialogue with Equatorial Guinea regarding implementing EITI and, if so, whether Marathon will report to the Subcommittee in 60 days regarding the prospects for EITI in that country.
- **In addition to the actions and discussions described previously, Marathon has initiated dialogue with the government of Equatorial Guinea on the issue of transparency. In April, Marathon expressed its encouragement in writing to President Obiang for the government's declarations of support for the EITI. Marathon also offered assistance in identifying means for implementing the EITI.**



- **Marathon has discussed the need for transparency with Equatoguinean governmental officials, including Pastor Micha Ondo Bile, the External Affairs Minister, Gabriel Nguema Lima, the Vice Minister of Mines, Industries and Energy, and other Equatoguinean officials.**
- **Capacity building workshops led by Marathon have been held with other oil companies active in Equatorial Guinea. The first workshop was held in April 2004 and the second workshop is scheduled for October 2004. The workshops focus on the capacity needs of Equatorial Guinea; identifying means of support; and finding a path forward on Equatorial Guinea's stated commitment to the EITI.**
- **Marathon plans to work further with the U.S. and U.K. governments on transparency issues. The U.K. Government is urging interested countries to request assistance from sponsors of the process. Marathon has requested technical assistance from the U.S. government for Equatorial Guinea.**
- **Marathon has been in contact with the International Monetary Fund on promoting transparency in Equatorial Guinea.**
- **Marathon has discussed capacity assistance for Equatorial Guinea with the U.S. Agency for International Development.**
- **Marathon has worked with the United Nations Development Program (UNDP) on capacity building initiatives.**
- **In May 2004, Marathon met with several Non-Governmental Organizations (NGOs) to discuss its operations in Equatorial Guinea, and ways to work together to promote a civil society. The meeting was held under Chatham House Rules. The government of Equatorial Guinea was informed that this meeting took place.**
- **On July 17, 2004, Marathon's senior executives met privately with the new US Ambassador to Cameroon and Equatorial Guinea, Ambassador R. Niels Marquardt. The Ambassador was urged to provide US technical assistance to Equatorial Guinea on transparency, along with capacity building initiatives.**



September 21, 2004

Mr. Robert L. Roach  
 Chief Investigator and Counsel  
 Senate Permanent Subcommittee on Investigations  
 Russell Senate Office Building, Room 199  
 United States Senate  
 Washington, D.C. 20510

Dear Bob:

In Marathon Oil Company's responses to the Follow Up Questions that we provided to you on July 13, 2004, and in the Company's responses to the Supplemental Questions for the Record that we provided to you on August 19, 2004, Marathon stated the Company had been told by a GEOGAM representative that GEOGAM was 75% owned by Abayak and 25% owned by the Government (please see the July 13, 2004 response to Question 1 and the August 19, 2004 response to Question 1). Marathon has just recently been informed by EG Government officials that this information is incorrect.

As you recall from our recent meeting in your office, I advised you that two officials from Marathon's office in Houston planned to meet in the near future with MMIE Minister Ntugunsa and with other officials of the Equatoguinean Government in Malabo. Those meetings are now underway, and in the course of the meetings Marathon has been advised by EG Government officials that GEOGAM is in fact 25% owned by Abayak and 75% owned by the Government, not the other way around. Furthermore, Marathon has been advised by EG Government officials that this ownership arrangement has been in place since GEOGAM was originally organized in October, 1997, and that no changes in the ownership structure of GEOGAM have occurred since that time.

I am enclosing a copy of GEOGAM's organizational papers, dated October 21, 1997 (original version, in Spanish), that EG Government officials made available to Marathon during the recent meetings in Malabo. Article Second of the Articles of Incorporation (*Escritura de Constitucion*) states that 25% of the stock has been subscribed and paid for by Abayak, S.A., and that 75% of the stock has been subscribed and paid for by the EG Ministry of Mines and Energy.

An approximate English language paraphrase of the relevant sections of Article Second is as follows:

Permanent Subcommittee on Investigations  
**EXHIBIT #55b**

Mr. Robert L. Roach  
September 21, 2004  
Page 2



(a) Abayak, S.A. subscribes for 25% of the capital stock, numbers 1 through 25 inclusive, having a total cumulative par value of 1,250,000 Central African Francs, and

(b) The Ministry of Mines and Energy subscribes for 75% of the capital stock, numbers 26 through 100 inclusive, having a total cumulative par value of 3,750,000 Central African Francs.

The parties who have thus subscribed to the capital stock have shown that they have paid for such stock in full in cash prior to the issuance of these Articles of Incorporation.

I hope this information is helpful to you. We would appreciate your correcting the hearing record to reflect the fact that these documents confirm that the EG Government owns 75% of GEOGAM. As we discussed, I will provide you with an update on Marathon's continuing conversations with EG officials concerning the ownership of GEOGAM. In the meantime, however, if you have any questions, please don't hesitate to call.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dick'.

Richard A. Wegman  
Counsel for Marathon Oil Company

RAW:cl  
Enclosure



REPÚBLICA DE GUINEA ECUATORIAL  
MINISTERIO DE JUSTICIA Y CULTO



Núm. 599.-

COPIA AUTORIZADA

DE  
SCRIPCIÓN DE CONSTITUCIÓN DE UNA SOCIEDAD MERCANTIL.-

OTORGADA POR

"GEOGAM LED".-

A FAVOR DE

LOS MISMOS.-

AUTORIZADA POR

DON PEDRO INSUE ELA EYANG

NOTARIO CON RESIDENCIA EN MALABO  
REGION DEL BAK

Malabo, a 21. --- OCTUBRE, --- 1.997.-



**NUMERO OCHOCIENTOS NOVENTA Y NUEVE.**-----

En la Ciudad de Malabo, a veintuno de Octubre de 1.997.-----

Ante mí, **PEDRO NSUE ELA EYANG**, Abogado, Notario de la Región Insular, con vecindad y residencia en esta Capital.---

----- **COMPARECEN:** -----

**DON JUAN OLO MBA NSENG**, guineano, mayor de edad, con domicilio en esta Capital.-----

**DOÑA CONSTANCIA MANGUE DE OBIANG**, guineana, mayor de edad, casada, con domicilio en esta Capital.-----

Doy fe de conocer a los comparecientes.-----

**INTERVIENEN:** a) Don Juan OLO MBA NSENG, en su calidad de Ministro de Minas y Energía, cargo que por notoriedad me consta, ejerce en la actualidad y se halla investido de facultades para el presente otorgamiento, b) Doña Constanca MANGUE DE OBIANG, lo hace en nombre y representación de la Sociedad Mercantil denominada ABAYAK, S.A., con amplias facultades para el presente otorgamiento.-----

Les juzgo, según intervienen, con la capacidad legal necesaria para formalizar la presente escritura de CONSTITUCION DE SOCIEDAD MERCANTIL, y.-----

----- **EXPONEN:** -----

I.- Que tienen decididos unirse en Compañía, constituyendo una Sociedad Mercantil de Responsabilidad Limitada, de nacionalidad ecuatoguineana, que bajo la denominación de **GUINEA ECUATORIAL OIL AND GAS MARKETING, LTD.**, en anagrama "GEOGAM LTD." se registrá por las



disposiciones de la Ley de 17 de Julio de 1953, el código de Comercio y demás Legislación Vigente y más particularmente por los Estatutos, que firmados por los comparecientes me entregan para su protocolización en unión de ésta matriz, y su transcripción en las copias de la presente escritura se expidan, extendidos en 7 folios de papel común.-----

II.- Mediante certificación del Registro de Sociedades que se acompañará a la primera copia, se acreditará que no existe otra Sociedad Anónima o Limitada cuya denominación sea idéntica a la proyectada o cuya extrema semejanza induzca a confusión.-----

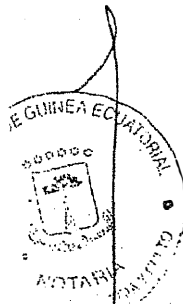
III.- Que llevando a afecto su acuerdo,-----

**OTORGAN:**

**PRIMERO.- (Constitución).**- Los señores comparecientes según concurren, dejan constituida por fundación simultánea que llevan a cabo en este acto, la Sociedad Mercantil denominada, **GUINEA ECUATORIAL OIL AND GAS MARKETING, LTD.**, en anagrama "**GEOGAM LTD.**" con la duración, domicilio, objeto y régimen que se determinan en los precitados **ESTATUTOS SOCIALES**, cuyo cuerpo completo ratifican y aprueban y a cuya preceptiva desde ahora se someten.-----

**SEGUNDO.- (Emisión, Suscripción y Desembolso de Participaciones).**- La Sociedad emite y pone en circulación 100 participaciones sociales, números 1 al 100 ambos inclusive, de CINCUENTA MIL (50.000) Fcfa., de valor nominal cada una, en que se representá y divide el Capital Social y fundacional de CINCO MILLONES (5.000.000) DE FRANCOS CFA., que quedan distribuidos conforme al cuadro de suscripción y desembolso siguiente.-----

- a) **LA SOCIEDAD ABAYAK, S.A.**, suscribe para sí 25% participaciones sociales, números 1 al 25 ambos inclusive representativas de UN MILLON DOSCIENTOS CINCUENTA MIL (1.250.000) FCFA.-----
- b) **Mº DE MINAS Y ENERGIA.** suscribe para sí 75% participaciones sociales, números 26 al 100 ambos



inclusive representativas de TRES MILLONES  
SETECIENTOS CINCUENTA MIL (3.750.000) FCFA.---

Manifiestan los comparecientes que las participaciones  
suscritas han quedado desembolsadas en su totalidad e  
ingresado su importe en efectivo metálico antes de este acto en  
la Caja Social.-----

TERCERO.- (Nombramiento de Cargos Sociales).- Los  
Socios Fundadores, constituidos en Junta General de socios,  
acuerdan por unanimidad nombrar cargos a la sociedad con las  
facultades que les confieren los estatutos sociales, que está  
integrados por los señores que a continuación se expresan y  
que estarán en su seno los siguientes cargos:-----



Presidente: Don Juan OLO MBA NSEG.-----

Director-Secretario: Don Miguel ABIA BITEO.-----

Asesor Técnico: Don Cristóbal MAÑANA ELA.-----

Asesor Económico: Don Marcelino OWONO EDU.-----

Asesor Jurídico: Don Antonio NZAMBI NLONGA.-----

Los nombrados, cuyas circunstancias personales y  
reglamentarias constan en la comparecencia, aceptan los  
cargos y prometen desempeñarlos bien y fielmente  
manifestando no hallarse en causa alguna de incompatibilidad  
legal, en especial las señaladas en la Ley 25/1983, de fecha 28  
de Diciembre.-----

TERCERO.- Se solicita la inscripción de la presente escritura  
en el Registro Mercantil correspondiente.-----

Hago a los señores comparecientes, las reservas y advertencias  
legales, entre ellas las de carácter fiscal y la prohibición de  
ocupar cargos en la Sociedad a las personas declaradas  
incompatibles por la Legislación Vigente y en especial las  
señaladas por la Ley 25/1983, de fecha 26 de Diciembre: les

permite la lectura de esta escritura por su elección, después de advertido de la opción del Artículo 193 del Reglamento Notarial, hacen constar su consentimiento, y la firman conmigo, el Notario que,-----

**AUTORIZO:**

Este instrumento público y doy fe de su autenticidad de fondo y de la observancia en la forma de todas las prescripciones legales, dejándolo extendido en 4 folios de papel común.- Están las firmas de los comparecientes.- Signado.- P. Nsue Ela Eyang.- Rubricado:- Está el sello de la Notaria.-----

**DOCUMENTO UNIDO:**

**ESTATUTOS:**

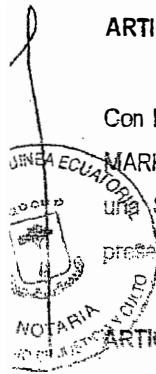




**ESTATUTOS DE LA SOCIEDAD MERCANTIL**  
**DENOMINADA "GUINEA ECUATORIAL OIL AND GAS**  
**MARKETING, LTD, EN ANAGRAMA**  
**"GEOGAM LTD"**

**ARTICULO PRIMERO-DENOMINACION.....**

Con la denominación de GUINEA ECUATORIAL OIL AND GAS  
MARKETING, LTD., en anagrama "GEOGAM, LTD" se constituye  
una Sociedad de Responsabilidad Limitada con arreglo a los  
presentes Estatutos, y a lo dispuesto en las normas de OHADA.—



**ARTICULO SEGUNDO.- OBJETO SOCIAL.....**

La Sociedad tiene por objeto: Actividades petroleras DOWN  
STREAM, actividades petroleras UP STREAM, manejo y  
procedimiento de productos y derivados del petróleo, exportación,  
venta, pudiendo extenderse a otras actividades que tengan  
relación directa o indirectamente con el objeto social.....

El domicilio social se fija en Malabo República de Guinea  
Ecuatorial, Calle Avda. la Independencia, quedando facultado en

Consejo de Administración para establecer sus propias oficinas, sucursales, agencias, reparaciones, delegaciones o dependencias cualquier clase y en cualquier lugar de Guineo Fronteral o del extranjero.-----

**ARTICULO TERCERO.- PLAZO DE DURACIÓN.**-----

La duración será de 99 años, pudiendo disolverse en cualquier momento si se acuerda válidamente y dará comienzo a sus operaciones el día de su constitución. Los ejercicios sociales coincidirán con el año natural.-----



**ARTICULO CUARTO.- CAPITAL SOCIAL.**-----

El Capital Social se fija de CINCO MILLONES (5.000.000) DE FRANCOOS CFA. suscrito y desembolsado por los socios en el acto de la constitución, representados en (100) participaciones de (50.000) FRANCOOS CFA. de valor inicial cada una.-----

**ARTICULO QUINTO.- TRANSMISIÓN DE LAS PARTICIONES.**---

Las participaciones representativas del Capital Social podrán ser transmitidas por cualquiera de los medios admitidos en derecho, cuando la transmisión se realice a favor de cualquier otro socio de la Sociedad.-----

Para transmitir las participaciones a favor de personas extrañas a los restantes socios, será requisito previo el ofrecimiento de las mismas a la Junta General por el precio límite que éste señale al efecto, cada anualidad, a la vista del último balance. La Junta deberá contestar aceptando o rechazando la oferta en el plazo máximo de treinta días siguientes a su presentación, y el silencio equivaldrá a rechazo. Las participaciones adquiridas por la Junta serán repartidas por éste entre los socios que lo deseen, en proporción a sus participaciones respectivas.-----

**ARTICULO SEXTO.- AUMENTO O REDUCCIONES DE CAPITAL SOCIAL.-----**

El Capital Social podrá aumentarse o reducirse a propuesta de la Junta General y siempre en los términos que establece la Ley. En el caso de acordarse su aumento, éste se llevará a cabo verificando una emisión de nuevas participaciones representativas de la cantidad que se haya fijado, reconociéndole a los que sean socios de preferencia para la suscripción de dichas participaciones.-----

**ARTICULO SEPTIMO.- ORGANOS DE LA SOCIEDAD.-----**

La Sociedad será regida, administrada y representada por la Junta General de Socios y por un Director Gerente.-----

**ARTICULO OCTAVO.- JUNTA GENERAL DE SOCIOS.-----**

La Junta General de Socios podrá ser ordinarias o extraordinarias se celebrarán todos los años dentro de la segunda quincena del mes de julio; y las extraordinarias habrán de convocarse cuando lo acuerde la Junta por si o a petición escrita de un número de socios que según la Ley puedan hacerlo.-----

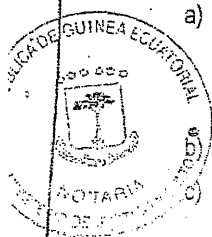
**ARTICULO NOVENO.- ATRIBUTOS.-----**

Son atribuciones de la Junta General Ordinaria:-----

- a) Proceder a la renovación de la Junta y cubrir definitivamente las vacantes que en el mismo ocurran.-----
- b) Examinar y aprobar el balance anual de la Sociedad.--  
Deliberar y resolver sobre todas las proposiciones que le sean sometidas.-----
- d) Deliberar y resolver sobre cualquier proposición que suscriban tres o más socios.-----

Son atribuciones de la Junta General Extraordinaria:-----

- a) El traslado del domicilio social a otra ciudad y la creación de agencias o sucursales.-----
- b) El aumento o reducción del Capital Social.-----



- c) La disolución de la compañía y su función con otras sociedades.....
- d) La modificación de los Estatutos.....
- e) Y todos los demás asuntos de importancia que afecten a la Sociedad y acuerde someter a Ella el Consejo de Administración.....

**ARTICULO DECIMO.- CONVOCATORIAS.....**

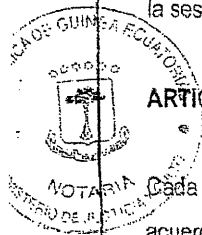
Las convocatorias para las Juntas Generales serán acordadas en la sesión precedente a las siguientes.....

**ARTICULO UNDECIMO.- ACUERDOS.....**

Cada participación da derecho a un voto, tomándose todos los acuerdos por mayoría. Todos los socios tendrán voz y voto, pero deberán acreditar las participaciones que poseen mediante resguardo de su depósito en la Caja de la Sociedad o en cualquier establecimiento de crédito.....

**ARTICULO DUODECIMO TERCERO.- ACTAS Y OBLIGACIONES.....**

Los acuerdos de las Juntas Generales se harán constar en acta; que firmarán el Presidente y el Secretario nombrados, siendo



dichos acuerdos ejecutivos y obligaciones para todos los socios, sin necesidad de que recaiga aprobación del acta en junta posterior.-----

**ARTICULO DECIMO TERCERO.- DIRECTORES-GERENTES.----**

La Dirección y Administración activa de la Sociedad serán confiadas a un Director-Gerente y un Director Técnico nombrados por la Junta General de Socios, que podrán también destituir libremente, en el caso de que, a su juicio, dieran lugar a ello.-----



**ARTICULO DECIMO CUARTO.- DISOLUCIÓN Y LIQUIDACIÓN.-**

En todo caso en que proceda la disolución de la Sociedad, la Junta General regiará la forma de liquidación, nombrando uno o más liquidadores, a los que se les conferirán los oportunos poderes.-----

**ARTICULO DECIMO QUINTO.- RECURSO PREVIO.-----**

Todo cuanto no estuviere previsto en los presentes Estatutos deberá ser resuelto de conformidad con los preceptos de las leyes de la OMAA.-----

Nada hay en lo omitido que restrinja, limita o condicione lo transcrito. De todo lo cual, yo el Notario doy fe de todo lo consignado en este instrumento público, dejándolo extendido en 11 folios de papel común.- Están las firmas de los comparecientes.- Signado P. Nsue Eia Eyang.- Rubricado.- Está el sello de la Notaría.....

**CONCUERDA FIELMENTE** con su original a que me remito y para la Sociedad Mercantil, expido la presente copia en 11 folios de papel común y la signo, firmo y rubrico en el lugar y fecha de su otorgamiento.- DOY FE



*[Handwritten signature]*

(4) **Nusiteles.** Nusiteles, G.E. was established in 2000, as an E.G. telecommunications company intended to establish telephone and computer services within Equatorial Guinea. It is jointly owned by a number of parties, including the E.G. President through Abayak, the E.G. Minister of Foreign Affairs, the E.G. Director of National Security, the E.G. Minister of Justice and Religion, and International Decision Strategies, a Virginia corporation controlled by R. Bruce McColm.<sup>181</sup>

(5) **GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a state-owned E.G. company that was established in 1996, and may be partially privately held by E.G. officials. In response to Subcommittee questions, Marathon has informed the Subcommittee that, in January 2003, it was told by a GEOGAM representative that GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President.<sup>182</sup> GEOGAM is a 20 percent owner of a liquid petroleum gas facility on Bioko Island, and a 10 percent owner of a methanol plant that is also located on Bioko Island.

In November 2001, the Riggs account manager for the E.G. accounts wrote a memorandum to the file which stated in part:

“During my last trip to Equatorial Guinea, I was able to tour most of the businesses controlled by the President and his family. Due to the significant growth in the country, the businesses have grown exponentially from the sleepy businesses that I used to know to very active interests that are generating significant revenues.”<sup>183</sup>

The memorandum went on to observe that Abayak, “has become a significant earner of income for the President.” It states: “By far the most lucrative earner for the President is the new gas plant in Malabo of which he controls 25%.”<sup>184</sup> It also notes the President’s ownership of “the only two supermarkets in the country” and the largest hotels. This memorandum demonstrates that Riggs had a sophisticated understanding of the President’s personal stake in much of the economic activity within his country.

**Cash Deposits.** A key element of an effective anti-money laundering program involves proper handling of large cash transactions, including monitoring these transactions, refraining from cash transactions that appear suspicious, and reporting suspicious activity to law

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<sup>181</sup> For more information on Nusiteles, see below in this Section of the Report.

<sup>182</sup> Letter from Marathon Oil Corp. to the Subcommittee (7/13/04), attachment at 1.

<sup>183</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>184</sup> See also Riggs “KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts” for Otong (11/19/02), Bates RNB 000037.



the account manager's offshore corporation, Jadini Holdings, was playing a central role in these procurement matters, sending payments to one of the vendors and issuing invoices to the attention of the E.G. President. Riggs management has told the Subcommittee that it had been unaware of Mr. Kareri's corporation and had not approved its involvement in any of the bank's dealings with Equatorial Guinea.

**Services Related to Nusiteles.** Nusiteles, G.E. is a telecommunications company incorporated in Equatorial Guinea and owned by a number of E.G. high government officials.<sup>228</sup> The stated purpose of Nusiteles is to develop, implement, install and maintain a broadband telecommunications system for Equatorial Guinea.<sup>229</sup> In December 2000, Mr. Kareri and the E.G. Minister of Justice and Religion, Dr. Ruben Maye Nsue Mangué,<sup>230</sup> entered into a contract that established Riggs Bank as the principal financing advisor and placement agent for Nusiteles. The contract also named Taylor-DeJongh, Inc. as a cooperating advisor. Under the contract, Riggs was to provide "advisory and placement services related to structuring, solicitation, and negotiation of political risk insurance and commercial risk guarantees from ... Export Credit Agencies ..., and debt financing from bilateral and multilateral institutions."<sup>231</sup> Riggs' compensation included a \$30,000 non-refundable monthly retainer and two percent of the nominal value of the financing obtained.<sup>232</sup>

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<sup>228</sup> The shareholders of Nusiteles include: Dr. Ruben Maye Nsue Mangué, the President of Nusiteles and E.G. Minister of Justice and Religion; Pastor Micha Ondo Bile, E.G. Minister of Foreign Affairs; Armengol Ondo Nguema, E.G. Director of National Security; Socio Abayak, S.A., an E.G. corporation controlled by President Obiang; and International Decision Strategies, a Virginia corporation controlled by R. Bruce McColm. See the complaint in Foley Hoag LLP v. Republic of Equatorial Guinea, Et al., (U.S. Dist. D.C.), Bates RNB 003359-003367. Mr. McColm is the Vice President of Nusiteles and also the President of the Institute for Democratic Strategies, an organization which monitored the most recent municipal, parliamentary, and presidential elections in Equatorial Guinea. See Riggs document, "W-9 Certification" (12/21/01), Bates RNB 003447; and "Summary of the Findings on the December Presidential Elections in Equatorial Guinea" (12/20/02), Bates RNB 003671-003678. The mailing address of Nusiteles is also the mailing address of the Institute for Democratic Strategies, "W-9 Certification" (12/21/01), Bates RNB 003447. The Institute for Democratic Studies received \$525,000 in four transfers drawn on an E.G. oil account between March 2000 and October 2002. See Riggs documents, Bates RNB 000172, 001697, 001840, and 001886.

<sup>229</sup> Riggs document, "Proposal for the Role of Financial Advisor and Placement Agent for Nusiteles, GE" (9/22/00), Bates RNB 003462-003482.

<sup>230</sup> At the time of the execution of the contract Dr. Mangué served as the Minister of Justice and Religion for Equatorial Guinea; he has since been removed from that position. See "New Government Appointed in Equatorial Guinea," World Markets Analysis (6/18/04).

<sup>231</sup> "Proposal for the Role of Financial Advisor and Placement Agent for Nusiteles, GE" at 1, Bates RNB 003463.

<sup>232</sup> Id. at 3, Bates RNB 003468.

The Riggs general counsel told the Subcommittee that, under Riggs' policy, he should have had supervisory authority over this contract, but had never seen or approved it.<sup>233</sup> R. Bruce McColm, Vice President of Nusiteles, told the Subcommittee that the E.G. officials responsible for the initial funding of the Nusiteles contract never provided any funds to Riggs, and consequently Riggs has not provided any services under the contract to date.<sup>234</sup>

#### **Role of Bank Board and Officers Concerning Equatorial Guinea Accounts.**

Information reviewed by the Subcommittee indicates that Riggs Board members and senior bank officers were well aware of the E.G. accounts. Within five years of its opening in 1995, the E.G. relationship became the largest single relationship in Riggs Bank. The E.G. account manager sent top Riggs officials, including the Chairman of the Board, the President, and the International Banking Group head, periodic memoranda about developments related to the E.G. accounts.<sup>235</sup> Senior Riggs officials also met on several occasions with top E.G. officials, including the E.G. President. In 2001, several senior Riggs Board members and bank officers formed a high level committee which met quarterly each year to provide special attention to the E.G. relationship.

On May 17, 2001, for example, the top officials of Riggs Bank wrote to President Obiang thanking him "for the opportunity you granted to us in hosting a luncheon in your honor here at Riggs Bank."<sup>236</sup> The letter states that Riggs has "formed a committee of the most senior officers of Riggs Bank that will meet regularly to discuss our relationship with Equatorial Guinea and how best we can serve you. This committee, which includes the undersigned, has held its first meeting and requests that you provide us with any projects that you would like us to review on your behalf and make suggestions." The letter signatories were the Riggs Chairman of the Board, Riggs Bank President, and Riggs National Corporation President, as well as the E.G. account manager.

About a month later, the E.G. account manager sent the Chairman, President, and six other senior Riggs officials a memorandum describing a week-long business trip to Equatorial Guinea,

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<sup>233</sup> Subcommittee Interview with Joseph Cahill (6/25/04).

<sup>234</sup> Subcommittee interview with R. Bruce McColm (6/10/04).

<sup>235</sup> See, e.g., memoranda by Simon Kareri sent to top Riggs officials concerning: "Equatorial Guinea" (undated but likely 4/17/97), Bates ZZ-000160-62; "Equatorial Guinea" (undated but likely 10/12/00), Bates ZZ-000138; "Lunch with the President of Equatorial Guinea" (undated but likely 2/28/01), Bates ZZ 000143; "Equatorial Guinea Contacts" (undated but likely 5/18/01), Bates ZZ 000146; "Equatorial Guinea trip briefing," (undated but likely June 2001), Bates ZZ 000118-20; "Equatorial Guinea Update" (undated but likely 3/1/02), Bates ZZ 000158; "Equatorial Guinea Update" (undated but likely 6/26/02), Bates ZZ 000123-24; "Bush meetings with African Presidents" (undated but likely 6/28/02), Bates ZZ 000159; "Posting of International Operations Assistant II" (undated but likely 9/17/02), Bates ZZ 000147; "Equatorial Guinea article" (12/12/02), Bates ZZ 000163; "Equatorial Guinea" (6/23/03), Bates ZZ 000148; "Equatorial Guinea" (undated but likely 6/23/03), Bates ZZ 000149; and "Equatorial Guinea" (7/9/03), Bates ZZ 000165.

<sup>236</sup> Letter from Riggs Bank to President Obiang (5/17/01), Bates RNB 003828.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

\*\*\*\*\*

FOLEY HOAG LLP  
1747 Pennsylvania Avenue, NW  
Suite 1200  
Washington, D.C. 20006

Plaintiff,

v.

REPUBLIC OF EQUATORIAL GUINEA  
Attn. Pastor Micha Ondo Bile  
Ministry of Foreign Affairs  
Malabo, Equatorial Guinea

NUSITELES, S.A.  
C/o Ruben Maye, President  
C/Nigeria s/n  
Post Office Box Number 459  
Malabo, Bioko Norte, Equatorial Guinea

RUBEN MAYE NSUE MANGUE  
President, Nusiteles, S.A.  
Minister of Justice and Religious Affairs  
C/o Ministry of Justice and Religious Affairs  
Malabo, Equatorial Guinea

PASTOR MICHA ONDO BILE  
Minister of Foreign Affairs  
C/o Ministry of Foreign Affairs  
Malabo, Equatorial Guinea

ARMENGOL ONDO NGUEMA  
C/o Office of the Presidency  
Malabo, Equatorial Guinea

SOCIO ABAYAK, S.A.  
C/o Teodoro Obiang Nguema Mbasongo  
Office of the Presidency  
Malabo, Equatorial Guinea

CIVIL ACTION  
NO.

Permanent Subcommittee on Investigations  
EXHIBIT #58 - FN 177

RNB 003359

INTERNATIONAL DECISION STRATEGIES, INC. \*  
 911 Duke Street \*  
 Alexandria, Virginia 22314 \*  
 Defendants. \*  
 \*\*\*\*\* \*

COMPLAINT

**Nature of This Action**

1. This is an action for breach of contract based on Defendants' failure to pay agreed compensation to Plaintiff law firm Foley Hoag LLP for professional legal services provided to Defendants.

Parties

2. Plaintiff Foley Hoag LLP is a law partnership organized in the State of Massachusetts, with an office located in the District of Columbia.

3. Defendant Republic of Equatorial Guinea ("Equatorial Guinea") is a sovereign nation located in western Africa and is a shareholder of Defendant Nusiteles, S.A.

4. Defendant Nusiteles, S.A. ("Nusiteles") is a corporation organized under the laws of, and with its principal place of business in, Equatorial Guinea.

5. Defendant Ruben Maye Nsue Mangue ("Maye") is a citizen of Equatorial Guinea, and is the Minister of Justice and Religious Affairs of Equatorial Guinea. In his personal capacity, Defendant Maye is also President of Defendant Nusiteles and a Nusiteles shareholder.

6. Defendant Pastor Micha Ondo Bile ("Bile") is a citizen of Equatorial Guinea, and is the Minister of Foreign Affairs of Equatorial Guinea. In his personal capacity, Defendant Bile is an officer and shareholder of Defendant Nusiteles.

7. Amengol Ondo Nguerna ("Ondo") is a citizen of Equatorial Guinea, and is an officer and shareholder of Defendant Nusiteles.

8. Socio Abayak, S.A. is a corporation organized under the laws of, and with its principal place of business in, Equatorial Guinea, and is a shareholder of Defendant Nusiteles. The President of Equatorial Guinea Teodoro Obiang Nguema ("Obiang") is the major shareholder of Defendant Socio Abayak, S.A.

9. International Decision Strategies, Inc. ("IDS"), a Virginia corporation, with its principal place of business in Alexandria, Virginia, is a shareholder of Defendant Nusiteles.

Jurisdiction and Venue

10. Jurisdiction of this Court over Defendant Equatorial Guinea and its officials, including Defendants Maye and Bile, is founded on 28 U.S.C. § 1330. Pursuant to this statute, federal district courts have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state. 28 U.S.C. § 1330(a). Furthermore, personal jurisdiction over a foreign state exists as to every claim for relief over which the district courts have jurisdiction under subsection (a) of § 1330 where service of process has been made under 28 U.S.C. § 1608. 28 U.S.C. § 1330(b).

11. A foreign state is not immune from the jurisdiction of courts of the United States or of the States in any case in which the action is based upon a commercial activity carried on in the United States by the foreign state; and this Complaint is based on commercial activities carried on in the United States by all Defendants, including Defendants Equatorial Guinea, Maye and Bile. 28 U.S.C. § 1605(a)(2).

12. Venue is proper for Defendants Equatorial Guinea, Maye and Bile under 28 U.S.C. § 1391(f)(4). Pursuant to this statute, a civil action may be brought in the United States District Court for the District of Columbia if the action is brought against a foreign state.

13. Jurisdiction and venue for all other Defendants are founded on 28 U.S.C. §§ 1332(a)(2) and 1391(b)&(d).

Factual Allegations

14. Between January and March 2001, the shareholders of Defendants Nusiteles, S.A., a private corporation formed by senior officials within the Government of Equatorial Guinea and others close to President Teodoro Obiang Nguema ("Obiang"), including Defendants Maye, Bile and Ondo, made plans to develop and operate telecommunication systems in Equatorial Guinea. After exploring various options, and with the advice of Defendant IDS, which was acting as a consultant, the shareholders of Defendant Nusiteles, S.A. decided to acquire from TCS, Inc., an American company based in Annapolis, Maryland, the equipment and services necessary to establish a new telecommunications system in Equatorial Guinea.

15. At the request of the shareholders of Defendant Nusiteles, S.A., Defendant Equatorial Guinea formally issued a government license to Nusiteles, as required by the laws of Equatorial Guinea, so that it could operate the new telecommunications system.

16. Acquisition of the equipment and services to operate the system, which were ultimately priced at more than \$60 million, required lengthy and complex negotiations with TCS, Inc., as well as the drafting of comprehensive contracts and related documents totaling hundreds of pages. Recognizing that they needed experienced U.S. legal counsel to assist them in these negotiations, and in the drafting of the contracts and related documents, Defendants delegated to Defendant Maye (the Minister of Justice of Defendant Equatorial Guinea and President of Nusiteles, S.A.) the responsibility for retaining the services of U.S. legal counsel.

17. In April 2001, Defendant Maye, accompanied by R. Bruce McColm, President of Defendant IDS, met with Paul S. Reichler, a member of Plaintiff law firm at Plaintiff's offices in Washington, D.C. In this meeting, Defendant Maye, acting on behalf of all named Defendants, retained Plaintiff law firm to represent them in negotiations with TCS, Inc., and in drafting all

agreements, contracts and other documents related to Defendants' purchase of telecommunications equipment and services for Defendant Nusiteles, S.A.

18. In this meeting, Defendant Maye expressly promised Plaintiff law firm that Defendant Equatorial Guinea would guarantee that Defendant Nusiteles or its shareholders would pay for all of Plaintiff's legal services, at Plaintiff's normal hourly billing rates, and would reimburse Plaintiff's out-of-pocket expenses, on a timely basis. Based on Defendant Maye's assurances, Plaintiff agreed to perform the legal services requested. Plaintiff expressly relied on Defendant Maye's assurance that Defendant Equatorial Guinea would assure payment of Plaintiff's fees, because Plaintiff was aware that Equatorial Guinea is a wealthy, oil-producing state with a per capita income that is among the highest in Africa, and Plaintiff had no knowledge of the financial condition, or capacity to pay, of Defendant Nusiteles or any of the other Defendants.

19. Defendant Maye instructed Plaintiff to send all of its invoices for legal services and expenses to Defendant IDS, which would review the invoices and forward them to Defendant Maye for timely payment.

20. From April to July 2001, relying on Defendant Maye's promises, Plaintiff performed the legal services requested by him. Specifically, Plaintiff's attorneys, accompanied by Mr. McColm of Defendant IDS, and maintaining regular telephone contact with Defendant Maye, successfully negotiated an agreement with TCS, Inc., approved by Defendant Maye on behalf of all Defendants, for the purchase of a telecommunications equipment and services for Defendant Nusiteles, S.A. In addition, Plaintiff's attorneys drafted all contracts and related documents attendant to this transaction.

21. Plaintiff's fees for legal services in performing this work totaled \$114,793.13. Plaintiff also incurred out-of-pocket expenses in the amount of \$2,588.28. Thus, Plaintiff's invoices for fees and expenses totaled \$117,381.41.

22. Pursuant to Defendant Maye's instructions, Plaintiff submitted four invoices (one each for April, May, June and July 2001) to Defendant IDS. Defendant IDS reviewed and approved each of Plaintiff's invoices, and sent them to Defendant Maye for payment. Defendant Maye advised Mr. McColm of Defendant IDS that the invoices were proper in all respects, that Defendants were fully satisfied with Plaintiff's services, and that Plaintiff's invoices would be paid in full. Defendant Maye made the same statements to Mr. Reichler, a member of Plaintiff law firm, on several occasions. Indeed, Defendant Maye repeatedly assured Plaintiff, through Mr. Reichler, that Defendant Equatorial Guinea would honor the oral retainer agreement Defendant Maye made with Plaintiff in April 2001, and pay for Plaintiff's legal services and expenses on behalf of all Defendants. This promise was expressly reiterated during a meeting in Alexandria, Virginia attended by Defendant Maye, Mr. McColm of Defendant IDS, and Mr. Reichler and Jonas Monast, attorneys with Plaintiff law firm, on September 27, 2002.

23. The shareholders of Defendant Nusiteles, S.A., including all named Defendants other than Nusiteles, S.A., deliberately withheld funds from Defendant Nusiteles, S.A. in order to render the corporation unable to pay the fees that they had been advised by Defendant Maye that Defendant Nusiteles, S.A. was obligated to pay Plaintiff.

24. Plaintiff has repeatedly requested of Defendants that they pay Plaintiff the \$117,381.41 that they agreed to pay. Nevertheless, Defendants have paid nothing to Plaintiff, and they remain indebted to Plaintiff for the full amount of its invoices for legal services and expenses -- \$117,381.41 -- plus interest since July 2001.



1290

COUNT I

(As to All Defendants)

25. Plaintiff incorporates paragraphs 1 through 23 as if fully set forth herein.

26. Plaintiff provided legal services to Defendants in exchange for Defendants' promise to pay Plaintiff for such services based on Plaintiff's normal hourly billing rate plus expenses.

27. Defendants continue to enjoy the benefits of the services performed on their behalves by Plaintiff.

28. Defendants, through Defendant Maye, have repeatedly assured Plaintiff that Plaintiff would be paid in full for the services rendered.

29. Plaintiff on multiple occasions demanded payment from Defendants.

30. Defendants have consistently refused to honor their binding financial commitment to Plaintiff.

31. As a direct result of Defendants' failure to compensate Plaintiff for the legal services rendered, Plaintiff lost the use of the funds to which it was entitled under the terms of the agreement.

32. Defendants are jointly and severally liable for the full value of the legal services performed by Plaintiff on their behalves, which amounts to US \$117,381.41.

COUNT II

(As to Defendant Republic of Equatorial Guinea)

33. Plaintiff incorporates paragraphs 1 through 23 as if fully set forth herein.

34. Defendant Maye, Minister of Justice and Religious Affairs for Defendant the Republic of Equatorial Guinea and President of Defendant Nusiteles, represented to Plaintiff that Defendant the Republic of Equatorial Guinea, a shareholder of Defendant Nusiteles, would

guarantee payment of any fees or expenses owed to Plaintiff in connection with Plaintiff's services performed on behalf of Defendants.

35. Defendants have not paid Plaintiff for the legal services performed on their behalves.

36. Plaintiff on multiple occasions demanded payment from Defendant the Republic of Equatorial Guinea.

37. Defendant the Republic of Equatorial Guinea, through its Minister of Justice and Religious Affairs, has repeatedly assured Plaintiff that it would honor its commitment to guarantee payment of the monies owed to Plaintiff in exchange for the legal services rendered and expenses incurred.

38. Defendant the Republic of Equatorial Guinea has consistently failed to honor its binding financial commitment to Plaintiff.

39. As a direct result of Defendant the Republic of Equatorial Guinea's failure to pay the debt owed to Plaintiff for the legal services performed and expenses incurred on behalf of Defendants, Plaintiff lost the use of the funds to which it was entitled under the terms of the agreement and guarantee.

40. Defendant the Republic of Equatorial Guinea is jointly and severally liable for the full value of the legal services performed by Plaintiff, which amounts to US \$117,381.41.

COUNT III

(As to All Defendants except Defendant Nusiteles, S.A.)

41. Plaintiff incorporates paragraphs 1 through 23 as if fully set forth herein.

42. Defendant Maye, acting on behalf of all Defendants, induced Plaintiff to perform legal services by promising that Plaintiff would be compensated at Plaintiff's normal hourly billing rates plus expenses.

44. Defendants deliberately withheld funds from Defendant Nusiteles, S.A. in order to render the corporation unable to pay Plaintiff for the legal services provided on behalf of Defendant Nusiteles, S.A.

45. As a direct result of the failure of Defendants to compensate Plaintiff for the legal services rendered, Plaintiff lost the use of the funds to which it was entitled under the terms of the agreement.

46. Defendants therefore are jointly and severally liable to Plaintiff for the full value of the legal services performed and expenses incurred, which amount to US \$117,381.41.

Relief Requested

WHEREFORE, Plaintiff prays for judgment against the Defendants and requests that the Court award Plaintiff the following:

- (1) The sum of \$117,381.41 as compensatory damages, plus interest;
- (2) Any and all costs and expenses related to this action, including reasonable attorneys' fees; and
- (3) Any other and further relief as the Court deems proper.

Respectfully submitted,

DATE: October \_\_, 2003.

\_\_\_\_\_  
Lawrence H. Martin  
FOLEY HOAG LLP  
1747 Pennsylvania Ave., NW  
Suite 1200  
Washington, DC 20006  
(202) 223-1200

the company. The account documentation indicates that the account has been dormant since its opening, and it is unclear the extent to which Awake Ltd. became an active corporation.<sup>176</sup>

Riggs was aware that the President and his sons also had a number of E.G. companies under their control. These E.G. companies included the following:

(1) **Abayak.** Abayak, S.A. was and perhaps still is the only construction company in Equatorial Guinea, an importer of construction-related goods, and a participant in real estate deals on behalf of the E.G. President and his wife as described later in this Report. According to a Riggs' analysis and other documentation, Abayak is controlled by the E.G. President who is also identified in Riggs KYC documentation as the company's president.<sup>177</sup> Abayak is a participant in several other entities involving foreign individuals or companies. For example, Abayak has a 15 percent interest in a subsidiary of ExxonMobil called Mobil Oil Equatorial Guinea, an E.G. oil distribution business.<sup>178</sup> It also maintains an interest in Nusiteles, described below.

(2) **Grupo Sofana and Somagui Forestal.** According to a Riggs analysis, Grupo Sofana is a forestry company with exclusive rights of exploiting and exporting timber in Equatorial Guinea, and the President's son is the "sole owner" of this company.<sup>179</sup> After oil, timber exports are a leading source of foreign exchange in Equatorial Guinea. According to Riggs, Somagui Forestal is another timber company which is controlled by the President's son and affiliated with Sofana.<sup>180</sup>

(3) **Sonavi.** Sociedad Nacional de Vigilancia (Sonavi) is a company that provides security services within Equatorial Guinea and is controlled by the President's brother who was also, for a time, E.G. Director of National Security. As explained later in this Report, some U.S. oil companies have been told that Sonavi has a monopoly on security services in the country.

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<sup>176</sup> See Riggs account statements for Awake Ltd. (6/11/02 - 12/31/03), Bates RNB 002068-87.

<sup>177</sup> See Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040; Riggs "KYC Profile – Enhanced Due Diligence: Embassy Banking – Individual Accounts" for Otong (11/19/02), Bates RNB 000037; Subcommittee interview of Bruce McColm (6/10/04). See also complaint in Foley Hoag LLP v. Republic of Equatorial Guinea, Et al., (U.S. Dist. D.C. 2004), Bates RNB 003359-003367.

<sup>178</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04) at 3.

<sup>179</sup> See Riggs "Credit Approval Memorandum" (7/22/02), Bates RNB 010512, approving a \$3.75 million loan to Teodoro Nguema Obiang, the President's son.

<sup>180</sup> See, e.g., Riggs analysis of E.G. accounts, Riggs memorandum from the Security & Investigations Department to Raymond Lund, "Equatorial Guinea" (1/20/04), Bates OCC 0000528712-23, at 716; email from Simon Kareri to the OCC (1/5/04), Bates OCC 0000516892 ("Grupo Sofana & Somagui belongs to Teodoro Nguema 100%.").

between May 1997 and March 2004.<sup>335</sup> In addition, some of the oil companies have, on occasion, entered into business ventures with E.G. officials, their family members, or entities they control.

## **B. Oil Company Payments**

The Subcommittee's review of E.G. account documents and related materials indicates that three of the oil companies have, on occasion, made large payments to individual E.G. officials, their family members, or entities controlled by them. These payments were for leases, land purchases, services, employment of E.G. nationals, and Embassy operations. All six oil companies made payments for educational expenses for E.G. students. A brief description of these payments follows.

### **(1) Payments for Leases and Land Purchases**

A memorandum to the file written by the Riggs E.G. account manager on the President's business holdings states that land leases from certain oil companies were generating significant revenues for the E.G. President, since the large-acreage compounds used by the companies were located on farm land leased from him.<sup>336</sup>

ExxonMobil's E.G. subsidiary, Mobil Equatorial Guinea Inc. ("MEGI"), leases buildings and land in what MEGI refers to as the "Abayak Compound," which is an area of approximately 50 acres for offices and employee living facilities.<sup>337</sup> From March 19, 1996 until June 22, 2001, MEGI leased the Abayak Compound using two leases – a buildings lease and a land lease – each of which was obtained directly from the E.G. President's wife.<sup>338</sup> On June 22, 2001, the leases were amended to change the lessor to Abayak S.A., an E.G. company controlled by the E.G. President.<sup>339</sup> According to ExxonMobil, the E.G. President's wife is actively involved in the management and administration of the property.<sup>340</sup> MEGI delivers rental checks to the Lessor's

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<sup>335</sup> Letter from Amerada Hess Corporation to the Subcommittee (5/03/2004), attachment 2.1(a).

<sup>336</sup> Riggs memorandum to the file by Simon Kareri (11/28/01), Bates RNB 000040.

<sup>337</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 1.

<sup>338</sup> *Id.* The "buildings lease" is for the original buildings in the Abayak Compound. The initial rent under this lease was \$130,000 per year and increased to \$175,500 in 2001, with an escalation provision of no more than 15% every three years by mutual agreement of the parties. The "land lease" covers land that was undeveloped forest when first leased. The initial annual rent was \$7,000 per year, which was increased to \$10,000 per year when a 2001 amendment added approximately 5 acres of adjacent land.

<sup>339</sup> *Id.*

<sup>340</sup> Letter from ExxonMobil Corp. to the Subcommittee (4/20/04), attachment 1, at 5.

representative, as instructed, some of which were deposited into a Riggs account held in the name of the President's wife.<sup>341</sup>

In addition, between 2001 and 2003, pursuant to a lease agreement for the rental of a house for an ExxonMobil area manager, another ExxonMobil subsidiary, Mobil Oil Guinea Ecuatorial (MOGE), paid \$45,020 to Francisco Pascual Obama Asue, the E.G. Minister of Agriculture. Between 2000 and May 2004, MOGE also paid \$236,160 to ATSIGE, a labor contractor owned by the E.G. Interior Minister.<sup>342</sup>

In addition, the Amerada Hess Corporation (Hess) has paid E.G. officials and their relatives nearly \$1 million for building leases.<sup>343</sup> Of the 28 leases Hess identified for rentals in Malabo, Equatorial Guinea, 18 were leased from persons connected to the government or the Obiang family.<sup>344</sup> With the exception of four houses and one office, Hess indicated that it planned to cancel all of these leases by April 30 of this year. One of these leases was negotiated and executed in 2000 by Triton (which was acquired by Hess in late 2001) and involved leasing property from a fourteen-year-old relative of the President, who was represented by his mother. Under this lease, Hess and Triton have paid \$445,800 to the relative and his mother.<sup>345</sup>

Triton also purchased a tract of land near Bata Airport from military officer General Antonio Obana Ndong for approximately \$300,000 for use as a heliport.<sup>346</sup>

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<sup>341</sup> Riggs account records show, for example, that ExxonMobil made a rental payment to the President's wife for about \$111,000 on 6/11/98, Bates RNB 000975-000976; and another for about \$161,000 on 5/16/00, letter from ExxonMobil Corp. to the Subcommittee (6/2/04), attachment 1, at 2. See also a 4/12/99 payment by ExxonMobil of about \$93,000 to the E.G. President's wife, Riggs account records, Bates RNB 028695, which also was a Abayak Compound rental payment.

<sup>342</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04), attachment 1, at 2.

<sup>343</sup> Letter from Amerada Hess Corp. to the Subcommittee (4/23/04), at attachment 4.1, Bates AHC 00030; letter from Amerada Hess Corp. to the Subcommittee (6/02/04) at attachment to paragraph 4, Bates AHC 00104.

<sup>344</sup> Id.

<sup>345</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 3 and at attachment to paragraph 4, Bates AHC 00104. In an interview with Subcommittee staff, a Hess representative explained that in 2003, Hess was served with a court order instructing it to stop paying the President's relative and make rental payments to another Equatorial Guinea citizen whom the court declared had documented that he was the legitimate property owner. Hess complied, and approximately two months later a Minister of the E.G. government asked Hess why it had stopped making payments on the lease and informed Hess that the youth was his Godson. When Hess informed the Minister of the court order, the Minister called the judge who had issued the court order. According to Hess, while on the telephone with the Minister, the judge rescinded the court order, and Hess started paying the relative for the lease again.

<sup>346</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 1.

\_\_\_\_ Marathon has paid or agreed to pay the E.G. President over \$2 million for the purchase of land. In January 2004, to expand its Alba Field operations and liquid petroleum gas plant, Marathon negotiated with Abayak S.A. for the purchase of 50 hectares of land located in Punta Europa, Equatorial Guinea.<sup>347</sup> Marathon delivered to Abayak a check for more than \$611,000 made out to D. Teodoro Obiang Nguema.<sup>348</sup> In January 2004, Marathon also negotiated with Abayak, as the agent for D. Teodoro Obiang Nguema, for the purchase of an additional 208 hectares of Punta Europa land to be used for a proposed liquified natural gas plant.<sup>349</sup> As of June 18, 2004, this purchase was still pending, but the agreed upon purchase price was about \$1.4 million.<sup>350</sup>

## (2) Payments for Services

**Security Services.** Two of the oil companies doing business in Equatorial Guinea, Hess and ExxonMobil, told the Subcommittee that they buy their security services through Sociedad Nacional de Vigilancia (Sonavi), a company owned by the President's brother, Armengol Ondo Nguema. These companies told the Subcommittee staff that Sonavi has a monopoly on security services in E.G., and Hess told the Subcommittee that Soanvi's rates were not negotiable as they are driven by E.G. law.<sup>351</sup> Between January 2000 and May 2004, Hess paid a total of about \$300,500 to Sonavi.<sup>352</sup> Hess planned to end its contract with Sonavi, but told the Subcommittee that there was a possibility that it would be ordered to continue employing government-nominated companies like Sonavi for security services, and prevented from using exclusively its own security guards.<sup>353</sup>

From August 1997 to October 2000, ExxonMobil, the other oil company that uses Sonavi, had one of its subsidiaries pay Sonavi \$683,900 for security services in Equatorial Guinea.<sup>354</sup> In addition, between 2000 and 2003, a different ExxonMobil entity paid approximately \$26,400 to Sonavi for security.<sup>355</sup> ExxonMobil told the Subcommittee that it had determined that its

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<sup>347</sup> Letter from Marathon Oil Co. to the Subcommittee (4/16/04), at 3.

<sup>348</sup> Id.

<sup>349</sup> Id. See also letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment 1, at 2.

<sup>350</sup> Id.

<sup>351</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 2.

<sup>352</sup> Id.

<sup>353</sup> Id.

<sup>354</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 2.

<sup>355</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04), attachment 1, at 4.



TO: File

FROM: Simon Kareri

DATE: November 28, 2001

RE: President's business holdings

During my last trip to Equatorial Guinea, I was able to tour most of the businesses controlled by the President and his family. Due to the significant growth in the country, the businesses have grown exponentially from the sleepy businesses that I used to know to very active interests that are generating significant revenues. Some of my observations were:

1. **Abayak** - For many years Abayak was and still is the only Construction Company and importer of constructions related goods. In the past due to lack of construction, Abayak was a medium operation with two offices in Bata and Malabo. Today, due to the extensive construction in the country Abayak offices have sprung in every area where the oil companies are constructing. Abayak is the sole importer of every construction material ranging from cement, electrical goods to nails. This enterprise has become a significant earner of income for the President.
2. **Hotels and Super Markets** - These holdings include Hotel Bantu, Hotel Candy, Hotel Abayak and Hotel PanAfrica. Restaurants include Club Nautical and Pizza Place and Ambassador's restaurant. When I began going to Equatorial Guinea, these hotels barely had guests. Today, there are no vacancies in any hotel in Malabo and the rates have quadrupled. The President also owns the only two supermarkets in the country and they have quite grown due to the influx of foreigners in the country.
3. **Land Leases** - Exxon Mobil, Triton continue to expand the construction for their expatriate personnel in the compounds. These large acreage compounds are leased from the President since they are within his farm.
4. **Oil and Gas** - By far the most lucrative earner for the President is the new gas plant in Malabo of which he controls 25%. This plant, financed by OPIC to the tune of \$200 million is the second largest plant in the world.

RNB 000040





## Memorandum

To: Bob Roane  
 From: Ray Lind  
 Date: January 17, 2003  
 Re: Equatorial Guinea

- The following individuals from Equatorial Guinea Bank with Riggs and are related to the President.
  - President Obiang of Equatorial Guinea (Account is held in an offshore company called SA Otrug at Trident Trust Company - not Riggs - the money is here)
  - Armengol Obiang Nguema, President's Brother, Head of Security
  - Constanca Mangué Nsue, Wife of the President of Equatorial Guinea
  - Teodoro G. Obiang, Cabinet Minister
  - Juan Mba Nseng, Former Cabinet Minister
  - Melchor Edjo, Treasurer
  - Miguel Bieko, Former Cabinet Minister
  - Micha Bile, Former Ambassador to the U.S.
  - Belzuar Edjo, Minister
  - Elena Mensa, Wife of Ambassador to U.S.
- Money in the Official Account comes directly from the Major U.S and European oil companies (Exxon Mobil, Triton, Atlas Petroleum, Chevron etc.)
- There are three signers on the account, which include the President, the Treasurer and the Minister of Mining. The account requires two signatures, the President's and one other.
- Payments from the account go directly back to the government and to pay construction related companies for their activities in EG. No payments go the President.
- Money in the President's account came from the sale of his homes in Spain and France. They also came from his construction company in EG. For many the President had the only construction / supply company in EG. It was a sleepy (small) company for years. Most construction related services in EG are purchased from his company. The President also owns several hotels and super markets in EG. He also owns land and receives rent payments from the oil companies for the use of the land. Finally, he has a 25% interest in an oil and gas plant in EG. The plant was financed by OPIC.

Permanent Subcommittee on Investigations  
 EXHIBIT #19

Redacted by the  
 Permanent Subcommittee  
 on Investigations

- Money from his wife's account comes directly from rent from the oil companies. His wife owns the 50 acre farm that houses the Mobil complex.
- We did have a \$700k mortgage on his wife's home in Potomac Maryland, but it has been paid. We have not financed any other homes.
- The President does have a home in Potomac. The bills come to Riggs.
- We have a bill payment service for the brother's home in Arlington -the tax bill is sent to us, we debit the account and pay it. His four children live there - they are going to school in Virginia.
- The Sissoko event took place sometime between 1996 and 1997.

DRAFT - 7/12/2004

Confidential: Attorney-Client Privilege



Memorandum

March 24, 2003

TO: Joseph Cahill, Executive Vice President and General Counsel

FROM: Paul Glenn, Vice President, Director of Compliance

RE: Riggs' Relationship with Equatorial Guinea

The purposes of this memo are to recapitulate the due diligence Riggs has done concerning its relationship with Equatorial Guinea and to assess the risks associated with that relationship. We have also included copies of items we reviewed to help understand Riggs' management of this banking relationship.

#### I. SUMMARY

- A. Riggs' relationship with Equatorial Guinea is very large (approximately \$500 million) and consequently very important to Riggs' revenue and earnings.
- B. The customers in this relationship include the government of Equatorial Guinea, as well as its President, First Lady, their children, relatives, and other former and current government officials.
- C. The primary source of funds in this relationship is revenue from the development of oil and gas resources, the most valuable natural resources of the country. These funds come to Riggs accounts directly from the companies that have government contracts to produce oil and gas, as well as from contract payments or rents those companies pay to firms owned by the President and First Lady. In addition, for the individual accounts, funds come from government salaries or business interests.
- D. The primary uses of the government account funds have been to pay vendors that have contracts to provide in-country services to Equatorial Guinea; to operate the government's embassy in the U.S.; to finance household and educational expenses for the account owners; and to finance higher education at U.S. colleges and universities (e.g., Carnegie Mellon) for selected students from Equatorial Guinea.
- E. The key link in the relationship between Riggs and Equatorial Guinea is Simon Karezi, who brought the relationship to Riggs and who is primarily responsible for developing it. The top officials of Equatorial Guinea have a very high level of trust and confidence in Mr. Karezi and, therefore, in Riggs. The combination

Permanent Subcommittee on Investigations  
EXHIBIT #51j

RNB 029267

**DRAFT – 7/12/2004****Confidential: Attorney-Client Privilege**

of this attitude from the customers and Mr. Kateri's efforts to meet customer needs, have made Mr. Kateri and Riggs an integral part of government operations.

- F. Because the importance of this relationship is clear to top management of the Bank, senior Bank managers hold regular meetings with Mr. Kateri and others to monitor developments in the Equatorial Guinea relationship.
- G. Since 1996, oil revenues for the country have been growing rapidly, and they are expected to continue to flow for decades. Previously, Equatorial Guinea had been a poor, under-developed country. This combination of circumstances is creating stresses that few countries know. A vast array of projects that had been unthinkable only a few years ago now are not only possible but demanded. As a result, planning and implementation challenges abound. Some of these challenges have slowed the pace of public investment of oil revenues. Consequently, some observers have charged that oil revenues are not sufficiently benefiting the people of Equatorial Guinea.
- H. The President of Equatorial Guinea has been criticized in the press, both in the U.S. and abroad, because of alleged corruption in the way government finances are managed and for how elections are conducted. Although there is concern about the validity of these charges among credible observers, the same observers readily point out that the current regime is better than its predecessor.
- To the degree this criticism is justified – and it remains largely although not completely unsubstantiated – it causes some observers to think of this customer relationship as notorious. Further, if allegations of official corruption were substantiated, for example, it could necessitate the filing of a Suspicious Activity Report (SAR). For these reasons, this relationship increases the Bank's Reputation Risk.
- I. Although KYC profiles exist for the customers, all were completed on the same day – November 19, 2002. This suggests a late effort to comply with Bank policies and procedures. It should be noted, however, that ample documentation existed in Embassy Banking files for the accounts. Nevertheless, to the degree that Riggs has not fully adhered to the requirements of its AML EDD Program, there is increased Compliance Risk.

Having concluded that the accounts for and related to the government of Equatorial Guinea increase risk, the issue is how these risks can be controlled through management actions.

*DRAFT – 7/12/2004*

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## II. RECOMMENDATIONS

## A. REPUTATION RISK

1. **Maintain the professional distance between Riggs Bank and its customer:** For example,
  - o Discourage bank officer references to “we” when speaking of government actions or plans;
  - o Consider having an officer in addition to Mr. Kareni go to Equatorial Guinea for the next in-country visit; and
  - o Consider the possibility that Riggs will be a named sponsor of the conference Equatorial Guinea is planning for the Spring, in Washington, D.C. If the conference is perceived to be a Riggs event, it will solidify the public connection between the Bank and Equatorial Guinea, thereby aggravating the consequences of reputation damage that someday might be realized.
2. **Encourage representatives of the government of Equatorial Guinea to join organizations and to participate in events that encourage transparency in fiscal affairs.** For example, opening or expanding dialogue with the World Bank, International Monetary Fund, U.S. AID, Overseas Private Investment Corporation, and similar organizations could lend credibility to the country’s efforts to distribute its wealth. Such encouragement should not involve direct suggestions or advice on groups with which to align, how to approach them, or how to conduct business with them.
3. **Encourage the involvement of credible, neutral election observers from countries that have a history of open and fair elections.** Such encouragement should not involve direct suggestions or advice on countries or organizations to invite, how to approach them, or how to conduct business with them. However, Riggs might be able to point officials to organizations it has reason to know about, in the U.S., which could be helpful. The Carter Center, in Atlanta, is an option.
4. **Monitor all facets of this relationship to determine whether reputation risk is increasing because Riggs customers are linked publicly to problems in Equatorial Guinea.** The monitoring effort should concentrate on reliable, U.S. sources of information that the OCC can be expected to find persuasive.
5. **Update the OCC regularly concerning the Equatorial Guinea relationship.** Such updates are a deliberate way to acknowledge the risks and recognize regulator concerns about the level of risk. The updates will allow Riggs to help the OCC understand the reasons why Riggs should maintain this relationship, and enable Riggs to learn about the OCC’s concerns as they emerge.

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**B. COMPLIANCE RISK**

1. The AML Officer should begin attending all regular senior management meetings concerning the Equatorial Guinea relationship. This Officer's attendance should continue for the foreseeable future, but at least until there is consensus - among Senior Management, the AML Officer, and their understanding of regulator perceptions - that the account risk rating would be Moderate.
2. Consider requiring an explanation of all deposits and withdrawals from accounts for the government and PEPs that exceed \$10,000. If implemented, this recommendation would include non-cash transactions. The explanation could take the form of a contemporaneous note to the files - e.g., in a log created for each account or for the relationship - that would indicate the source of the funds being deposited or the destination (to the extent knowable) of the funds withdrawn. The notes or log would be maintained by Mr. Karzi and his staff, and it would serve several purposes, including (a) providing information about the transaction that would not be in letters or more formal documents but still known to the banker and (b) another source of auditable information about the accounts.
3. Institute a regular review of all government and PEP accounts, and require that the results of that review be reported to senior management at its regular meetings on Equatorial Guinea. This review would entail an annual update of the KYC form and enhanced due diligence for each account. As a result of this review, there should either be new substantiating documents or an explanation of why newer documents are not needed or not available. The AML Officer should lead these reviews.
4. Riggs' AML Officer should specifically monitor allegations of official corruption in Equatorial Guinea for the purpose of filing an SAR, if necessary. This monitoring effort could be conducted by Compliance staff. If developments warrant, the AML Officer should make a recommendation to senior management about whether to file or not. Such a recommendation should not involve any Riggs employees who are involved on a day-to-day basis with the accounts.

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**III THIS REVIEW PROCESS**

Beginning in December 2002, at the request of Ray Lund, Executive Vice President/International Banking, and under the direction of the AML Officer, Risk Management began a review of the Bank's relationship with Equatorial Guinea. In addition to the AML Officer, the review team included representatives from Internal Audit and Security, as well as a consultant who is on retainer with the Compliance Department.

The review process consisted of two extensive interviews with Simon Karezi, the primary bank officer for this relationship, and review of documents and public material. Mr. Karezi is a Senior Vice President in the Embassy Banking group, and he is responsible for African and Caribbean countries. Mr. Karezi also identified and developed this relationship for Riggs. The second interview also included a member of Mr. Karezi's staff.

During these interviews, Mr. Karezi described how the relationship with Equatorial Guinea began, the facets of that relationship today, and his expectations for this relationship as a continuing opportunity for Riggs. The review team obtained copies of recently produced KYC profile forms for the customers in this relationship; a list of vendors Riggs had paid on instructions from the government; copies of account statements; and other background material. In addition, the review team obtained considerable public material on Equatorial Guinea, much of which came from a local organization called International Decision Strategies, Inc. (IDS).

In addition, a member of the review team contacted the U.S. State Department and spoke with Pamela Bellamy, the desk officer for Equatorial Guinea. The review team also interviewed a representative of Riggs Investment Advisors, Inc. (RIAI), with which the government has an investment account of approximately \$150 million. From this interview, the team obtained copies of the material RIAI (then RIMCO) had collected as part of its due diligence efforts when this account was opened.

Other meetings and conversations by various members of the review team also helped understand how the Bank manages this account. For example, within Embassy Banking, Mr. Karezi's staff, which is dedicated to serving African and Caribbean countries, has grown significantly as the Equatorial Guinea relationship has grown. Similarly, senior management holds regular meetings to ensure that it is knowledgeable about this increasingly important relationship.

Finally, the review team made its own search for public material available through the Internet. These sources vary widely in credibility and depth of information. The review team focused on sources believed to be reliable. The best sources for information on the economy, demographics, and government of Equatorial Guinea include U.S. government agencies such as the departments of State, Commerce, and Energy, as well as the Central Intelligence Agency. In addition, there are numerous articles available from news and other organizations concerning these issues. Specifically with regard to oil production, the organizations include Exxon Mobil and Marathon Oil, two of the companies that have contracts with the government to produce oil and liquefied petroleum gas. News organizations such as the New York Times, the Los Angeles Times, CNN, the BBC, and

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more obscure outlets have published articles about Equatorial Guinea. Many of these articles address in whole or in large part the economy and oil, but they also address the recent elections, government, and human rights issues in the country. Finally, international organizations such as Amnesty International, Doctors Without Borders, and others have websites that include information on Equatorial Guinea.



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**IV. THE RELATIONSHIP****A. HISTORY**

Riggs' relationship with Equatorial Guinea<sup>1</sup> started in 1995, shortly before large reserves of oil and natural gas were discovered there. At the time, the country was very poor, and it had very low visibility on the world stage.<sup>2</sup> The banking relationship began through the routine marketing activity of the Embassy Banking group. Equatorial Guinea is a country in central Africa, with an embassy in Washington, D.C. That embassy was a prospective customer for Riggs' Embassy Banking group, just as the embassy of any other country in the region would be.

The discovery of oil and natural gas changed the Equatorial Guinea relationship completely, although some aspects are continuing to change more quickly than others. The exploitation of natural resources is making Equatorial Guinea into a rich country very rapidly. Contracts have been established with companies from the U.S. and elsewhere to drill for, process, and deliver oil and natural gas. These contracts are producing substantial revenues for the government of Equatorial Guinea and for key government leaders and their families, who own property or businesses on which the foreign contractors depend.

On the other hand, the level of internal financial expertise and infrastructure needed to manage this wealth is changing less rapidly. Equatorial Guinea is attracting a lot of attention from banks throughout the world that want to provide banking services to the country and its officials. As energy-related revenues continue, this attention will likely intensify.

Another aspect of the situation that is not changing as rapidly as some would like is investment in civil infrastructure. As a poor country, health/medical, education, electricity, transportation, communications, and other common fundamental systems in a more developed country either did not exist or were deficient in Equatorial Guinea. Revenue from energy production needs to be invested wisely in these fundamental systems. Setting priorities in this area, obtaining outside assistance, organizing for, developing plans, and building these systems will remain key challenges in Equatorial Guinea for several years.

**B. RIGGS ACCOUNTS**

- Government Accounts

<sup>1</sup> Equatorial Guinea consists of two separate landmasses. The mainland is located between the significantly larger countries of Cameroon and Gabon. Bioko Island, off the coast of Cameroon, contains the capital of Malabo. The population is approximately 500,000. Average annual income is \$1,170.

<sup>2</sup> Equatorial Guinea was a colony of Spain until 1968. According to the U.S. State Department, the country was relatively prosperous under Spanish control. It had a highly regarded cocoa industry, and immigrants came from surrounding countries to work there. Shortly after independence, Equatorial Guinea was ruled by Francisco Nguema, a Socialist with close political and economic ties to Cuba, North Korea, and countries with similar economic and political philosophies. During this period, the economy of the country deteriorated, the people became much poorer, there were allegations of widespread abuses of civil rights. In 1979, Francisco Nguema was overthrown by President Teodoro Obiang Nguema Mbasogo, the current president.

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The government has an account with Riggs Bank and an account with Riggs Investment Advisors, Inc.

- **Riggs Bank – #17164642**
  - A new KYC form was prepared on January 28, 2003 in order to make the account documentation for Equatorial Guinea consistent with the new forms for Embassy Banking. This KYC form is supported by–
    - A letter from the Government;
    - A letter from the Embassy stipulating authorized signatories; and
    - A signature card
      - There are three signers on the account, which include the President, the Treasurer, and the Minister of Mining. The account requires two signatures – the President's and one other.
      - On July 13, 1998, a Credit Approval Memorandum (copy attached) was completed on for a line of credit for the Government of Equatorial Guinea. That Memorandum noted two factors mitigating risks –
        - "This facility is 100% cash secured via Euro Investment funds pledged to and held at Riggs. In order to cover interest payments, credit risks, this loan is set up with a 95% loan-to-value."
        - "Riggs has had a satisfactory relationship with Equatorial Guinea, with previous commitments performing as agreed, substantial deposits in place and good contacts with the principals, including the president of the country. Additionally, Riggs manages in the case management sense, Equatorial Guinea's oil revenue derived from its substantial contract with Mobil."
      - Embassy Banking determined the credit risk on account to be low.
- **Riggs Investment Advisors, Inc. (RIAI)**
  - A KYC form was completed in 1998 when this account was opened with RIMCO (now RIAI), and it shows that Riggs Bank referred the client.
  - A copy of the Credit Approval Memorandum dated 1998 was support for the KYC form.
- **Related Accounts**
  - There are ten (10) related accounts:
    - i. S.A. Otong – #76863013; #81450109: This is a Private Investment Corporation (PIC) for the president of the country; it is the only account in the President's name. The KYC profile for this customer was completed on November 19, 2002, along with the

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addendum, and it notes that the client is a Politically Exposed Person (PEP). The account was opened on June 16, 2000. This is a large account. During 2002, the account balance briefly exceeded \$11 million. The recommended risk rating for this customer is high.

**i. Constancia Nsue -**

This customer is the first lady of the country. The KYC profile for the First Lady was completed on November 19, 2002. It indicates a risk rating of "high" and indicates that the account owner is a PEP. The account relationship began on August 1, 1997. This is a large relationship -- in excess of \$3 million. The stated purpose of the Household and Education Accounts.

ACCOUNT NUMBER	TYPE	APPROXIMATE RANGE OF BALANCE - 2002	2002 TRANSACTION ACTIVITY SUMMARY
#24383122	Interest	\$46,000 - \$1.2 million	Up to 8 transactions in a month; some very large
#24895363	Checking	\$15,000 - \$400,000	8 to 15 transactions per month; numerous overdrafts
#25475010	Money Market	\$5,000 - \$16,000	One deposit per month; statements only cover September to December 2002
#76890433	Money Market	\$850 - \$250,000	Substantial deposits (i.e., \$90,000+) in January and April; almost all funds withdrawn in July and not replaced. Account is for Pastor Obiang Minor.
#76890441	Money Market	\$850 - \$250,000	Substantial deposits (i.e., \$90,000+) in January and April; almost all funds withdrawn in July and not replaced. Account is for Justo Obiang Minor.
#81253754	CD	\$1.7 - \$2.9 million	One deposit of \$1.1 million during 2002
#81585919	CD	\$362,000 - \$625,000	One deposit of \$253,000 during 2002
#81585927	CD	\$362,000 - \$625,000	One deposit of \$253,000 during 2002

**iii. Teodoro Obiang - #76923450:** This customer is the son of the president and he is a minister of the Equatorial Guinea government. The KYC profile for this account was completed on November 19, 2002. It gives a risk rating of "high" and indicates that the account owner is a PEP. This account was opened on January 29, 2001. It is expected to be a large account - i.e., between \$200,000 and \$2 million. In June and July 2002, the balance in the account increased from \$250,000 to almost \$4 million. Deposits in late June/early July 2002 amounted to \$3.6 million and withdrawals in late September/early October 2002 exceeded \$1.7 million.

**iv. Armengol Nguema - #76889504; #81657484:** The KYC profile for this customer was completed on November 19, 2002. This

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customer is the brother of the president of the country. He is the country's director of security and a PEP. The account was designated High Risk. The declared purpose of the account is Educational Expense, and it is expected to be more than \$50,000 but less than \$200,000. This account was opened on February 3, 2000.

- v. **Elena Mensa - #25356070; #25460310:** The KYC profile for this customer was completed on November 19, 2002. The customer is the wife of the ambassador, and a PEP. This is a Household Account, and it is expected to be less than \$50,000. This account was opened on May 8, 2002, and it was designated High Risk.
- vi. **Baltasar Edjo - #76841236:** The KYC profile for this account was completed on November 19, 2002. The customer is a minister of the government and a PEP. The account was designated High Risk. This is a Household Account, and it is expected to be less than \$50,000.
- vii. **Micha Bile - #24203160; #76787356:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former ambassador, who opened the account on September 13, 1995. This is a Household Account, and is expected to be more than \$50,000 but less than \$200,000. The customer is a PEP, and the relationship was designated High Risk.
- viii. **Miguel Boriko - #76841201:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former government minister and a PEP. The account was designated High Risk. The account was opened on July 17, 1998. There has been virtually no activity in the account for the past year.
- ix. **Melchor Edjo - #76827522; #81502490:** The KYC profile for this customer was completed on November 19, 2002. The customer is a government minister and a PEP. The relationship has been designated High Risk. It began on July 14, 1999. The purpose of the account is Educational Expense. However, the relationship is expected to exceed \$200,000. There was a deposit of approximately \$140,000 early in 4Q02 in the first account, but the rest of 2002 saw little activity in the account.
- x. **Juan Olo Mba Nseng - #76912623:** The KYC profile for this customer was completed on November 19, 2002. The customer is a former government minister and a PEP. The relationship has been designated High Risk. It began on September 28, 2000. This is a Household Account, and is expected to be less than \$50,000. In fact, the balance was less than \$20,000 throughout 2001, and there was relatively little activity in the account. The customer is a consultant to oil companies, and receives direct deposits from those clients.

**C. Riggs' Relationship with Equatorial Guinea is Multi-faceted**

- **Financial Intermediary and Adviser for Government**
  - The energy companies that have contracts with the government of Equatorial Guinea wire payments directly to the country's accounts at Riggs.
  - As directed, Riggs sends funds to the account Equatorial Guinea maintains at the Central Bank of Africa (BEAC).
  - Riggs disburses funds from government accounts to firms retained by Equatorial Guinea to build bridges, roads, and other public infrastructure, as well as to provide various services in the country.
  - No payments from this account go to the President or other officials.
  - Riggs Investment Advisors, Inc. manages a portfolio of excess government assets valued at approximately \$150 million. These assets are in the form of money market instruments, highly liquid in the event they are needed for alternative uses.
  - Riggs Bank administers funds that are used to house and educate approximately 50 students from Equatorial Guinea who are studying at U.S. colleges and universities. Most of these students are concentrating their studies in fields related to the production of oil and natural gas.
- **Bank for the Embassy**
  - Operating funds and related customary services for the embassy.
- **Banker for Government Officials and Family Members**
  - Banker to key government officials. During the humble origins of this relationship, government officials developed a high level of trust in Riggs and in Simon Karetz, the Riggs banker who leads Riggs' efforts for this client. As a result of this trust, many officials have established their own accounts at Riggs. (These accounts are discussed in greater detail below.)
  - Banker to family members of government officials. Leaders of Equatorial Guinea and their families have benefited from the rapid increase in the country's wealth. Those benefits include fine homes and other property in Equatorial Guinea, as well as homes, automobiles, and other luxuries here in the Washington area. (These accounts were discussed in greater detail above.)

**V. FLOW OF FUNDS**

## 1. IN-FLOW

## a. Sources of Government Funds

- The primary sources of funds for the government accounts are several major energy companies that have contracts with the government. Although Riggs does not have copies of these contracts, they are well known in the international community, with media reports about them and their terms appearing over a period of several years. These companies include –

Atlas Petroleum	Ocean Energy
Chevron	Triton Energy
CMS Energy (Marathon Oil)	Vanco Energy
Exxon Mobil	

- Oil production for 2002, averaged more than 200,000 barrels per day, and production is expected to increase to an average of 300,000 barrels per day in 2003.
- The profit-sharing contract between the government and energy companies, which was negotiated in 1998, provides that Equatorial Guinea receives 20% of oil export revenue. According to the State Department, this is a relatively poor agreement by international standards.
- U.S. companies have invested \$5 billion in the country since the mid-90s.
- After discovery of oil in 1996, gross domestic product increased by 76% in 1997, and has been increasing at double-digit rates in subsequent years. In 2000, the government reported a growth rate of 16.9% in 2000 and 65% in 2001. The projection is for a growth rate in 2002 of 33% and in 2003 of 12%.
- Although energy is the primary source of funds, revenue is also obtained from lumber and cocoa export.

## b. Sources of Funds for Related Accounts

- **President's Account** The source of funds for the President's account is reportedly due to the sale of his homes in Spain and France. In addition, the President owns a construction company and several hotels and shopping centers in Equatorial Guinea. The construction company has a key position in all construction efforts in the country. Finally, the President has business interests related to oil and gas production. He owns land and receives rent payments from energy companies, and he has a 25% interest in the major oil and gas plant, originally financed by OPIC.

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- **First Lady's Account:** The source of funds for the First Lady's account is business interests in the country. For example, the First Lady has substantial land holdings and receives rent payments from several energy companies that rent her land for energy production and related facilities.
- **Other Related Accounts:** The primary sources of funds for these accounts is salary and wages of the account owners.

c. **Quality of Substantiation and Documentation**

- There are many sources of information on oil production in Equatorial Guinea. Developments in the country are followed and reported on concerning the economy, budget, and political affairs.
- Sources of this information include the U.S. government (e.g., State Department, Central Intelligence Agency, Department of Commerce, and Department of Energy); news agencies (e.g., New York Times, CNN, BBC, Sunday Times/Johannesburg); international organizations (e.g., International Monetary Fund); and private companies (e.g., Exxon Mobil and Marathon Oil). In addition, the Equatorial Guinea Ministry of Mines and Energy has a website that provides information ([www.equatorialoil.com](http://www.equatorialoil.com)).
- Riggs has amassed substantial amounts of information on the sources of oil revenue to Equatorial Guinea.
- Riggs has established lines of communication with Exxon Mobil, Marathon and the other energy-producing firms through which either side can address issues related to the regular flow of funds.
- Funds are delivered to Riggs by wire transfer, and all normal protocols are observed.
- Little information is available to substantiate the source of funds for the related accounts.

B. **OUT-FLOW**

1. **Destination of Government Funds**

- Deposits in the government's account at the Central Bank of Africa (BEAC).
- Payments to vendors having contracts with Equatorial Guinea.
- Operating uses for the embassy in Washington, D.C.
- Distributions to students from Equatorial Guinea who are studying in the U.S.

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**2. Destination of Funds from Related Accounts**

- Much of the expenditure of these funds appears to be for purchases of homes, furnishings, cars, and other incidental items.
- Some of the expenditure is for educational expenses.

**3. Quality of Substantiation and Documentation**

- Riggs maintains a database of the vendors that have contracts with Equatorial Guinea and to which it disburses government funds. These vendors are providing services to the government. A copy of one list of vendors is available. None of the vendors appear on the OFAC lists.
- There appears to be relatively little documentation to substantiate the destination of funds from the other accounts.



VI. RISK ASSESSMENT

1. REPUTATION RISK

- Reputation risk is the risk to earnings or capital arising from negative public opinion.
- Negative public opinion could arise for several reasons. Some of the allegations that have been made over the last two or three years are listed in the table on the next page, along with contextual information for these reasons.

Although government officials appear to have benefited from their power-positions before the discovery of vast natural resources, revenues from oil and gas production have multiplied the size and scope of opportunities available to them. This is cause for concern. If they occur over time, gross disparities in the distribution of energy revenues will eventually cement a poor reputation for the country's leaders. On the other hand, there is a widely held view that the Obiang government is better than its predecessor's. In this sense, the level of concern about the Equatorial Guinea relationship is logically somewhat lower. The real issue, however, is the risk to Riggs. That risk depends on what is happening today in Equatorial Guinea and how it is perceived in the U.S. and other markets where Riggs operates.

In the final analysis, the Equatorial Guinea relationship increases reputation risk for Riggs. That risk will abate if the government proceeds with mitigating steps. Such steps include –

1. Increasing transparency in government finances;
2. Promoting of government plans for economic development throughout the country;
3. Distributing, in the near-term, substantial sums funds to existing development projects; and
4. Implementing electoral reforms that encourage free and open elections, as well as political opposition.

Sources of Reputation Risk

ISSUE	ACCUSATION	SYMPTOMS
Fraudulent Election	No secret ballot; discouraging opponents	President wins 95%+ of the votes
Corrupt Government	Oil revenues are being diverted to benefit them	Oil revenues are kept off-shore and

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Officials		perceived to be secret
Human Rights Abuses	Political opponents are arrested. They and other prisoners are imprisoned and reportedly tortured.	Doctors without Borders reportedly leaves the country because of concerns
Neglect of Populace	Millions in oil revenue are not benefiting people who live in the country	Palaces and plush government buildings are being constructed
Notoriety of Certain Customers	International private banking services shield bad people of world; if the accusations prove correct, Equatorial Guinea officials might fit this category	Current risk-raising customers: Aldrich Ames; Pincus; Sissoko; and others?

## 2. COMPLIANCE RISK

- Compliance risk is the risk to earnings or capital arising from violations or nonconformance with laws, rules, regulations, prescribed practices, or ethical standards.
- The primary source of compliance risk is possible failure to adhere to Riggs' AML EDD Policies.
- Although the risk of money laundering appears to be very low, if the issues that create Reputation Risk have merit, they could necessitate the filing of a suspicious activities report (SAR).

There has been no accusation that officials related to Equatorial Guinea are involved in money laundering. The sources of funds are clear, and the destinations of funds being expended do not suggest that funds are going to terrorists, to organizations that support terrorists, or to any other criminal enterprise.

However, Riggs' AML EDD Program applies to all customers, and it requires diligent effort in using prescribed KYC forms and monitoring activity. Further, there are accusations that government funds are being diverted from projects that would benefit the people of Equatorial Guinea generally to uses that enrich only certain officials. Suspected corruption on the part of public officials is cause for filing a SAR.

As a result of this review, it is clear that enhanced diligence is required in reviewing this relationship. For example,

- KYC forms and supporting material for existing accounts need to be current and complete at all times;

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- Riggs should maintain an objective posture with regard to the accounts;
- Riggs should be alert to the potential for official corruption and monitor developments in Equatorial Guinea so that it can file a timely SAR, if that becomes appropriate at some future date.

\_\_\_\_\_ Marathon has paid or agreed to pay the E.G. President over \$2 million for the purchase of land. In January 2004, to expand its Alba Field operations and liquid petroleum gas plant, Marathon negotiated with Abayak S.A. for the purchase of 50 hectares of land located in Punta Europa, Equatorial Guinea.<sup>347</sup> Marathon delivered to Abayak a check for more than \$611,000 made out to D. Teodoro Obiang Nguema.<sup>348</sup> In January 2004, Marathon also negotiated with Abayak, as the agent for D. Teodoro Obiang Nguema, for the purchase of an additional 208 hectares of Punta Europa land to be used for a proposed liquified natural gas plant.<sup>349</sup> As of June 18, 2004, this purchase was still pending, but the agreed upon purchase price was about \$1.4 million.<sup>350</sup>

## (2) Payments for Services

**Security Services.** Two of the oil companies doing business in Equatorial Guinea, Hess and ExxonMobil, told the Subcommittee that they buy their security services through Sociedad Nacional de Vigilancia (Sonavi), a company owned by the President's brother, Armengol Ondo Nguema. These companies told the Subcommittee staff that Sonavi has a monopoly on security services in E.G., and Hess told the Subcommittee that Soanvi's rates were not negotiable as they are driven by E.G. law.<sup>351</sup> Between January 2000 and May 2004, Hess paid a total of about \$300,500 to Sonavi.<sup>352</sup> Hess planned to end its contract with Sonavi, but told the Subcommittee that there was a possibility that it would be ordered to continue employing government-nominated companies like Sonavi for security services, and prevented from using exclusively its own security guards.<sup>353</sup>

From August 1997 to October 2000, ExxonMobil, the other oil company that uses Sonavi, had one of its subsidiaries pay Sonavi \$683,900 for security services in Equatorial Guinea.<sup>354</sup> In addition, between 2000 and 2003, a different ExxonMobil entity paid approximately \$26,400 to Sonavi for security.<sup>355</sup> ExxonMobil told the Subcommittee that it had determined that its

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<sup>347</sup> Letter from Marathon Oil Co. to the Subcommittee (4/16/04), at 3.

<sup>348</sup> Id.

<sup>349</sup> Id. See also letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment 1, at 2.

<sup>350</sup> Id.

<sup>351</sup> Letter from Amerada Hess Corp. to the Subcommittee (6/02/04), at 2.

<sup>352</sup> Id.

<sup>353</sup> Id.

<sup>354</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 2.

<sup>355</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/17/04), attachment 1, at 4.

relationship with Sonavi was at arm's length and that payments made had been consistent with market rates.<sup>356</sup>

Four other oil companies told the Subcommittee that they are allowed to get their security services from other sources.

**Employing E.G. Nationals.** Marathon told the Subcommittee that, after acquiring CMS Energy's E.G. oil interests in 2002, Marathon continued CMS's practice of obtaining laborers through APEGESA, an entity Marathon believes is partially owned by Juan Olo, the former E.G. energy minister and current President of the Board of Directors of GEOGAM. Marathon reimburses APEGESA for the compensation it pays to workers, and also pays a fee of approximately 20% of the salaries of the workers. Since 2002, Marathon has paid APEGESA about \$7.5 million.<sup>357</sup>

Between 2002 and May 2004, Marathon also used the services of a company called Multi-Services Systems (MSS) to employ local nationals. E.G. officials are believed to hold an interest in and serve as officers of MSS. Marathon's payments to MSS cover the compensation paid to the workers, and a fee of approximately 20% of the salaries of the workers. The total amount paid to MSS during this period was about \$6.9 million.<sup>358</sup>

### **(3) Payments to Support E.G. Mission and Embassy**

In some instances, E.G. officials have directed some oil payments be paid to support E.G. embassies. At the request of the E.G. Minister of Mines and Energy, for example, Marathon has directed \$5,400 per month via wire transfer to a Chase Manhattan Bank account for the Permanent Mission of Equatorial Guinea in support of the E.G. Permanent Mission to the United Nations in New York.<sup>359</sup> According to the company, these payments have been deducted from the E.G. government's royalties.

Under another production sharing contract, Marathon is also required to pay \$7,000 a month to assist the E.G. government in maintaining an embassy in Washington D.C. At the

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<sup>356</sup> Letter from ExxonMobil Corp. to the Subcommittee (6/02/04), attachment 1, at 2.

<sup>357</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), at 3.

<sup>358</sup> Id., at 5.

<sup>359</sup> Id., at 6-7.

Nguema.<sup>207</sup> In 2002, Riggs issued a \$3.75 million loan to the President's son, Teodoro Nguema Obiang, to help him buy a \$7.5 million penthouse apartment in California.<sup>208</sup>

Riggs also provided the President's wife and son, among other E.G. clients, with debit and credit cards. In March 2001, for example, at the request of the E.G. account manager, Riggs increased the daily limit on Ms. Obiang's debit card to \$10,000 per day.<sup>209</sup> Riggs also provided a reference letter to assist the President's son, Teodoro Nguema Obiang, gain entry into an American Express Preferred International Client Program.<sup>210</sup> In addition, Riggs provided E.G. clients with extensive foreign currency exchange services.

**Student Accounts.** Riggs also managed two accounts used to provide educational funding for E.G. students. Riggs records indicate that, from 2001 until 2003, more than 100 E.G. students received funding to study abroad, often in the United States, many of whom appeared to be children or relatives of wealthy or powerful E.G. officials.<sup>211</sup>

During the 1990s, Equatorial Guinea obtained commitments from several major oil companies, as part of their oil production agreements, to provide annual funding for E.G. students wishing to obtain advanced training or a university education. ChevronTexaco, CMS, ExxonMobil, Marathon, Triton, and Vanco all provided this funding, with annual payments totaling as much as \$275,000 per oil company. In earlier years, the oil companies paid students' tuition bills and living expenses directly. In 2001, however, Riggs opened the first E.G. student account and agreed to provide administrative support for the students funded out of it, all of whom were studying in the United States.<sup>212</sup> Several of the oil companies then halted direct

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<sup>207</sup> See Virginia real property records. See also "Oil Boom Enriches African Ruler" (1/20/03), Los Angeles Times.

<sup>208</sup> See Riggs loan documentation (7/22/02), Bates RNB 010508-18. Riggs also provided a reference letter to help him purchase a residence in New York. See, e.g., letter from Riggs to the Olympic Tower Condominium Board (3/16/00), Bates RNB 010465-67.

<sup>209</sup> Riggs memorandum from Simon Kareri to Ray Lund (3/9/01), Bates RNB 028505.

<sup>210</sup> See, e.g., letter from Riggs Bank to American Express TRS Co. (4/27/01), Bates RNB 009735.

<sup>211</sup> See, e.g., memorandum from Simon Kareri to Ray Lund (undated but likely in late 2002), Bates ZZ-000147 ("[W]e have increased the students that we manage for them from 26 to 117.").

<sup>212</sup> Apparently a contractor, Exploration Consulting Ltd. provides similar services for E.G. students studying in the United Kingdom. See letter from the law firm of Garvey Schubert Barer to the Subcommittee (6/18/04), conveying responses of Marathon, at 16.

funding of E.G. students, instead making deposits to the E.G. student account and relying on Riggs Bank to pay the students' bills.<sup>213</sup>

Riggs opened the first E.G. student account in March 2001, in the name of "Republica de Guinea Ecuatorial-Cuenta Estudiantes MME." The account signatories were Cristobal Manana Ela, E.G. Minister of Mines & Energy; and the President's son, Gabriel Nguema Lima, E.G. Secretary of State Mines & Energy. Documentation indicates that this account saw deposits of about \$300,000 per year and numerous disbursements to cover students' travel, tuition, and living expenses.<sup>214</sup>

Documentation shows that, from the beginning, the E.G. account manager expended considerable energy tracking the students' educational activities and paying their bills. For example, a letter sent by the E.G. account manager to the Minister of Mines thanking him for opening the account states: "We have started the process of contacting the students and will provide more details to you soon."<sup>215</sup> Six months later, in September 2001, a letter reporting on the status of the "program" recites numerous difficulties, including "students who were giving us incorrect banking information including some who were giving us information of their friends"; "determin[ing] whether all the students are in school"; dealing with students "receiving refunds from the schools;" and resolving "immigration visa issues."<sup>216</sup> A February 2002 letter reports that only five of the E.G. students were maintaining the required "B" grade average and recommends reducing the monthly stipends for poorly performing students.<sup>217</sup> A list of disbursements for just the first seven months of 2003, is six pages long with reduced-size type.<sup>218</sup>

One of the oil companies, Marathon, told the Subcommittee that, in 2003, in the course of its normal due diligence efforts, its personnel asked Riggs about its management of the student program and how the funds were used. Marathon reported to the Subcommittee that Riggs informed them that it paid tuition bills directly to students' universities, rental incomes directly to landlords, health insurance premiums directly to the health insurer, and monthly stipends and travel costs directly to the students. Marathon also reported that, "[a]ttendance and grades were

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<sup>213</sup> See, e.g., communications between CMS Energy and Simon Kareri regarding four students (8/21/01 and 8/23/01), Bates RNB 006340-43 and 46-56. A few of the oil companies continued to fund directly the expenses of a few E.G. students studying in the United States.

<sup>214</sup> See, e.g., Riggs account statement (3/4/03-3/21/03), Bates RNB 000010-11; Riggs listing of account disbursements from January-July 2003, Bates RNB 006602-09.

<sup>215</sup> Letter from Simon Kareri to Cristobal Manana Ela (3/29/01), Bates RNB 006383.

<sup>216</sup> Letter from Simon Kareri to Cristobal Manana Ela (9/19/01), Bates RNB 006820-21.

<sup>217</sup> Letter from Simon Kareri to Gabriel Nguema Lima (2/19/02), Bates RNB 006698-702.

<sup>218</sup> Riggs listing of account disbursements from January-July 2003, Bates RNB 006602-09.

monitored by Riggs, with the information being sent directly by the schools,” and that “Riggs assisted the [E.G.] Ministry in the selection of schools.”<sup>219</sup>

In May 2002, Riggs opened a second E.G. student account in the name of “Republica de Guinea Ecuatorial-Fondo Especial Para Becas.” The only signatory for this money market account was the Riggs E.G. account manager, Simon Kareri.<sup>220</sup> Riggs Bank has indicated that senior officials had been unaware that a Riggs employee was the signatory on a client account and that this arrangement was contrary to its practice. However, a June 2002 memorandum prepared by the E.G. account manager providing an “Equatorial Guinea Update” to the bank’s Chairman of the Board, President, and other top officials, states in part: “I have been appointed as the head of a commission for higher education and a decree was issued that I should be the sole signatory of the permanent fund to manage the Scholarships to be granted for Universities. ... We are in the process of admitting 50 students this year as the first phase of the program begins.”<sup>221</sup>

The money market account was also linked to a Riggs investment account of the same name, Account No. 68-002-6036. Riggs produced account documentation for both accounts which shows that, on June 25, 2002, \$1 million was transferred from the money market account to the investment account.<sup>222</sup> That \$1 million was then returned to the money market account on November 5, 2002, presumably for disbursement on student expenses. The Subcommittee has been told that the funds in these accounts were paid to only one school, the Institute Pacem In Terris of La Roche University in Pittsburgh, Pennsylvania, which had enrolled more than 50 E.G. students.

**Other Services.** In addition to the student accounts, the E.G. account manager at Riggs provided other questionable services to the E.G. government, related to procurement matters and financial advice.

For example, the E.G. account manager appears to have provided certain procurement services related to a project to build a 100 kilometer roadway in Bata, Equatorial Guinea. In a

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<sup>219</sup> Letter from the law firm of Garvey Schubert Barer to the Subcommittee (6/18/04), conveying responses of Marathon to Subcommittee questions, at 17.

<sup>220</sup> Riggs account opening documentation for second E.G. student account, Account No. 25-380-310 (5/12/02), Bates RNB 000014.

<sup>221</sup> Internal Riggs memorandum from Simon Kareri to Robert Allbritton and Lawrence Hebert, with copies to five other Riggs officials, including Tim Coughlin and Ray Lund, “Equatorial Guinea Update” (undated, but likely 6/28/02), Bates ZZ 000123-24. But see Riggs memorandum to the file from Mr. Kareri (8/13/02) and new signature card changing the account signatory to the E.G. Secretary of State for Treasury, Bates RNB 013621-23.

<sup>222</sup> See Riggs account statements for the investment account, (June 2002) Bates RNB 013878 and (October 2002), Bates RNB 013837. See also, e.g., OCC examination materials, Bates OCC 0000510316 (on 6/19/02, Account No. 25-380-310 had a credit of \$1.25 million).



request of the Minister of Mines and Minerals, Marathon also pays \$3,500 a month for the Embassy personnel's medical insurance and \$2,700 for social security payments.<sup>360</sup>

Marathon also told the Subcommittee that under one of its production contracts it is required to purchase services, materials and equipment for the government's use as reasonably requested by the government. The company is authorized to deduct the cost of such purchases from amounts payable to the E.G. government.<sup>361</sup>

#### **(4) Payments for E.G. Students**

Evidence obtained by the Subcommittee indicates that all six of the oil companies also made significant payments for expenses incurred by E.G. students seeking to obtain advanced training or a university education outside of Equatorial Guinea. Many and perhaps all of these students were the children or relatives of E.G. officials, but the evidence is unclear regarding the extent to which each of the oil companies was aware of the students' status. Making these payments is apparently a required condition in some oil production sharing agreements.<sup>362</sup>

The evidence indicates that some of the oil companies directly paid students' tuition bills and living expenses. In March 2001, however, Riggs Bank opened the first of two accounts intended to be used for E.G. student expenses<sup>363</sup> and agreed to provide administrative support for the students who were studying in the United States and were funded out of a Riggs account. A U.K. company, Exploration Consulting Ltd. ("ECL"), apparently provided similar services for E.G. students studying in the United Kingdom.<sup>364</sup> Some of the oil companies then halted direct funding of E.G. students, instead making deposits to one or more E.G. student accounts administered by Riggs or ECL, and relied on these third parties to pay the students' bills.<sup>365</sup>

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<sup>360</sup> Id. Payments are made by wire transfer to Riggs Bank for the account of the Embassy of the Republic of Equatorial Guinea, Account No. 76772007. Marathon was advised in May 2004 by the E.G. Ambassador, Teodoro Biyogo Nsue, that the Riggs Bank account had been closed and future payments to the E.G. Embassy were to be made to an account at The Congressional Bank, Potomac, MD.

<sup>361</sup> Id.

<sup>362</sup> See, e.g., letter from Marathon Oil Co. to the Subcommittee (4/16/04), attachment at 3 ("Marathon is required under both the Alba Production Sharing Contract and the Block D Production Sharing Contract to contribute, at the Ministry of Mines and Mineral's request, to a fund maintained by the Ministry for the training of citizens of the Republic of Equatorial Guinea.").

<sup>363</sup> For a description of these two Riggs accounts, see Section V(C) of this Report. The first account was opened in the name of "Republica de Guinea Ecuatorial-Cuenta Estudiantes MME," and the second, opened in May 2002, was in the name of "Republica de Guinea Ecuatorial-Fondo Especial Para Becas."

<sup>364</sup> See letter from Marathon Oil Co. to the Subcommittee (6/18/04), at 16.

<sup>365</sup> See, e.g., communications between CMS and Simon Kareri regarding four students (8/21/01 and 8/23/01), Bates RNB 006340-43 and 46-56.

According to ChevronTexaco, it provided \$150,000 each year between 2001 and 2004 for E.G. student training expenses to various E.G. Ministry of Mines and Energy accounts. The 2001 and 2002 payments were made to an account at Societe Generale in Equatorial Guinea. The 2003 payments were made by wire transfers of \$90,000 to Riggs in Washington, D.C. and \$60,000 to Lloyds in the United Kingdom. The 2004 payment was made to an account at Lloyds.<sup>366</sup>

Devon indicated to the Subcommittee that in June 2003, pursuant to the educational training obligations contained in two of its Production Sharing Contracts, it made a payment of approximately \$150,000. In January 2004 it made a similar payment of \$200,000. The payments were made by check to either the Ministry of Mines and Energy or the Treasury of the Republic of E.G. as required by the contract.<sup>367</sup>

ExxonMobil did not provide the Subcommittee with any information indicating it had made payments in support of E.G. students. A Riggs document states, however, that ExxonMobil, along with Marathon, directly funded 28 to 35 E.G. students in 2003.<sup>368</sup> The document does not provide a dollar amount.

Between 2001 and 2003, Hess made payments totaling at least \$1.9 million in support of E.G. students studying in the United States or Canada. Hess (via its predecessor Triton) made these payments through a Triton subsidiary, Triton Equatorial Guinea, Inc.<sup>369</sup> Triton also directly funded two E.G. students at the University of South Carolina paying more than \$50,000 per student.<sup>370</sup> In addition, on or about March 6, 2001, as a favor, Triton Equatorial Guinea, Inc. transferred over \$250,000 to a Riggs account established to provide funding for the education of

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<sup>366</sup> Letter from ChevronTexaco to the Subcommittee (7/8/04), attachment at 2. For 2003 Riggs payment, see also Riggs listing of account activity from January-July 2003, Bates RNB 006602-09, at 606.

<sup>367</sup> Letter from Devon Energy Corp. to the Subcommittee (4/26/04), at 3.

<sup>368</sup> See email from Riggs to the OCC (12/4/03), Bates OCC 0000510314, listing students "funded directly by the Exxon and Marathon Oil Companies."

<sup>369</sup> See letter from Amerada Hess Corp. to the Subcommittee (5/3/04), attachment 2.1(b) entitled, "Houston/Dallas Payments to the EG Government During the Period May 2, 1997 to December 31, 2003," Bates AHC 00086. See also, e.g., letter from Riggs Bank to President Obiang (2/8/02), Bates RNB 006703.

<sup>370</sup> See "Follow Up Questions for Hess," (7/13/04), containing responses from Amerada Hess to questions from the Subcommittee, at 1.

the children of Armengol Ondo Nguema, the E.G. President's brother, using funds he supplied.<sup>371</sup> These payments exceed \$2 million altogether.

Marathon is obligated under its Production Sharing Contracts to pay almost \$300,000 a year for E.G. student training. For its 2002 obligations, Marathon made a payment of \$150,000 to the E.G. student account at Riggs, and a payment of \$70,000 to a similar account at Lloyds Bank in London.<sup>372</sup> Marathon indicated to the Subcommittee that it anticipates making an additional \$590,000 in similar payments for its 2003 and 2004 obligations.<sup>373</sup> CMS and Riggs records dated before Marathon's acquisition of CMS's interests in 2002 indicate that in August 2001 CMS paid \$275,000 into one of the E.G. student accounts at Riggs Bank.<sup>374</sup>

Marathon also provided direct support to students.<sup>375</sup> Records indicate that CMS (which later sold its E.G. interests to Marathon) directly funded four E.G. students between 1996 and 2001.<sup>376</sup> After Marathon purchased CMS' oil interests in Equatorial Guinea in 2002, Marathon funded two students who had previously been supported by CMS.<sup>377</sup> Marathon told the Subcommittee that "it came to the attention of Marathon that the two students might be related to President Obiang. Although this was never verified with certainty, Marathon informed the [E.G.] Minister on August 27, 2003, that Marathon would discontinue this practice. ... The last payment Marathon made in support of these students was in November of 2003."<sup>378</sup> In fiscal year 2003 alone, the funding Marathon provided for these two students exceeded \$14,000.<sup>379</sup>

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<sup>371</sup> See letter from Amerada Hess to the Subcommittee (6/2/04), attaching copies and English translations of a letter from Andy Mormon, Temporary General Manager, Triton Equatorial Guinea, to Armengol Ondo Nguema (3/5/01), "Reference: \$250,000 Transfer for your children who are studying in the United States and Canada," and a letter from E.G. Minister Baltasar Engonga Edjo to Andy Morman (3/6/01), "Reference: USD \$250,000 transfer in favor of Armengol Ondo Nguema, relating to the funding of his children's school expenses," Bates AHC 00095-97 and 00101-03.

<sup>372</sup> Letter from Marathon Oil Co. to the Subcommittee (04/16/04), attachment at 4.

<sup>373</sup> Letter from Marathon Oil Co. to the Subcommittee (06/18/04), at 7.

<sup>374</sup> *Id.*, Bates RNB 006340-43, at 41.

<sup>375</sup> See email from Riggs to the OCC (12/4/03), Bates OCC 0000510314, listing 28-35 students "funded directly by the Exxon and Marathon Oil Companies."

<sup>376</sup> See communications between CMS and Riggs Bank regarding four students (8/21/01 and 8/23/01), Bates RNB 006341-43, at 41, and 006346-56, at 53-55.

<sup>377</sup> These students attended the Berlitz Language Center in Houston to learn English and then the Houston Community College. See letter from the Marathon Oil Co. to the Subcommittee (6/18/04), at 17.

<sup>378</sup> *Id.* at 18.

<sup>379</sup> See letter from Max Birley, Vice President of Marathon E.G. Production Limited, to Cristobal Manana Ela, E.G. Minister of Mines and Energy, (10/16/03), Bates RNB 006261-006263.

Vanco also made four payments to accounts for the Ministry of Mines and Energy for the training of E.G. students. Two payments totaling about \$158,000 were made between 2000 and 2001 to Lloyds Bank London, and two payments exceeding \$190,000 were made between 2002 and 2003 into an E.G. student account at Riggs Bank.<sup>380</sup>

Altogether, the Subcommittee was able to document payments in excess of \$4 million made by oil companies to support more than 100 E.G. students studying abroad, most of whom were the children or relatives of wealthy or powerful E.G. officials.

### C. Joint Business Ventures

In a few instances, some oil companies have also entered into business ventures with companies owned or controlled by high ranking E.G. officials or their family members.

**Mobile Oil Guinea Ecuatorial (MOGE).** In 1998, for example, ExxonMobil entered into a business venture with Abayak S.A., the construction and real estate company controlled by the E.G. President, to form Mobile Oil Guinea Ecuatorial ("MOGE"), an oil distribution business in Equatorial Guinea that supplies Mobile Equatorial Guinea Inc. ("MEGI").<sup>381</sup> According to ExxonMobil, Mobil International Petroleum Corporation owns 85 percent of MOGE and Abayak owns 15 percent.<sup>382</sup> Dividends declared by MOGE in 2001, 2002, and 2003, resulted in dividend payments to Abayak of approximately \$10,500 each year.<sup>383</sup>

**GEOGAM.** Guinea Equatorial Oil & Gas Marketing Ltd. (GEOGAM) is a special purpose, state-owned corporation that was established in 1996, and may be partially privately held by E.G. officials.<sup>384</sup> Marathon has entered into two business ventures with GEOGAM. The first is Atlantic Methanol Production LLC (AMPCO), a company which owns and operates a methanol plant in Equatorial Guinea. Marathon and one other oil company each own 45% of AMPCO, while 10% is owned by GEOGAM. Between 2002 and May 2004, AMPCO paid dividends to GEOGAM totaling over \$4 million.<sup>385</sup>

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<sup>380</sup> Letter from Vanco Energy Company to the Subcommittee (06/08/2004), attachment 3. For Riggs payments see also Riggs listing of account activity from January-July 2003, Bates RNB 006602-09, at 605; and letter from Riggs Bank to President Obiang (2/8/02), Bates RNB 006703.

<sup>381</sup> Letter from ExxonMobil Corp. to the Subcommittee (06/17/04), attachment 1, at 3.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*, at 3-4.

<sup>384</sup> See, e.g. letter from Marathon Oil Co. to the Subcommittee (7/13/04), attachment at 1 (according to a GEOGAM representative, GEOGAM is 25 percent owned by the E.G. government and 75 percent owned by Abayak, the company controlled by the E.G. President).

<sup>385</sup> Letter from Marathon Oil Co. to the Subcommittee (6/18/04), attachment at 16.

Steven Guidry  
Marathon

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Mr. MARCHETTI. I am familiar with the lease.

Senator LEVIN. It was a Triton lease?

Mr. MARCHETTI. That was a Triton lease and predates our acquisition of the company. What we do know from looking at the records is that particular piece of real estate's title was held in the name of the president's son, and he was represented by his mother in the negotiations. But that's the extent of our knowledge of it, Senator.

Senator LEVIN. Were you there when a court ordered the stopping of those payments? Was it Hess that was there at that time, or was that Triton?

Mr. MARCHETTI. I'm not sure which company was there when it happened. Apparently there was a dispute over ultimate ownership of the property and which was eventually resolved.

Senator LEVIN. One of the issues which has come up is how much of the student payments which are made by the oil companies, payments for tuition, room, board, stipends, travel expenses to the United States and so forth have gone to the family of the officials of Equatorial Guinea, children of both the high-ranking officials and of their relatives.

Mr. Guidry, at least a few of the students that you have been funding are related to the president, that Marathon's been funding? Is that accurate?

Mr. GUIDRY. That still remains an uncertainty. Based on our investigation of that issue during 2003, we concluded that, through our investigation, that there was enough evidence suggesting they might be, that we terminated that support.

Senator LEVIN. Were you able to get a straight answer on the question of whether the students were related to the president or not?

Mr. GUIDRY. No, we were not.

Senator LEVIN. Mr. Marchetti, relative to Hess payments for support of students studying in the United States or Canada, do you know how many of those students were related to high-ranking E.G. officials?

Mr. MARCHETTI. No, Senator, I don't. The payments that we make to support the education of Equatoguinean citizens are done pursuant to our production sharing contract obligations, and we, effectively, pay those and don't really have anything to do with where that money is spent and who it's spent on.

Senator LEVIN. Have you inquired as to how much of payments you are making go to students who are the relatives of the high-ranking officials?

Mr. MARCHETTI. To my knowledge, Senator, I don't know.

Senator LEVIN. Well, that is not my question. I know you do not know, but have you made an inquiry about that?

Mr. MARCHETTI. I don't know if we've made inquiries, is what I'm saying.

Senator LEVIN. Oh, I see. OK.

I think this is a very troubling issue. You have all indicated, I think, all of you, that you support greater transparency. When it comes to Equatorial Guinea, there sure is not much, to put it mildly. I mean, our own State Department has made it clear that we do not have transparency in that country. So you are now in a situ-

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SIMON P. KARERI  
SENIOR VICE PRESIDENT  
INTERNATIONAL BANKING GROUP  
RIGGS BANK N.A.  
1913 Massachusetts Avenue, N.W.  
Washington, D.C. 20036 -  
Tel: 202-835-5380  
Fax: 202-835-5321

**FAX**

atención: Hon. Gabriel M. Obiang Lima

fax #: Redacted by the  
Permanent Subcommittee  
on Investigations

de: Sr. Simon P. Kareri

fecha: February 19, 2002

subjeto: Fall 2001 student performance

paginas: 4, incluyendo portada

NOTAS:

RNB 006699

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February 19, 2002

Riggs Bank N.A.  
Embassy Banking Division  
1528 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 835-4518

Hon. Gabriel Nguema Lima  
Secretary of State for Mines and Hydrocarbons  
República de Guinea Ecuatorial  
Malabo  
Guinea Ecuatorial

Re: Fall 2001 Student's Performance

Dear Hon. Gabriel:

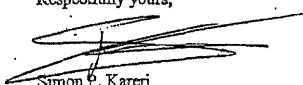
I am writing to brief you on the performance of the students during the last semester. First, I would like to begin by mentioning that some of the students were not cooperative in providing their grades to us, behavior that I find appalling but nevertheless possibly influenced by their performance.

According to the criteria that we set for the students, maintenance of a "B" average, only five (5) of the students reached that in the past semester (see highlighted grades over 3.0). However, only two students, have a cumulative or overall grade commensurate with the program requirement. Some American schools in general graduate students with a GPA of 2.0 and above but the stringent schools do not graduate anyone without a GPA of 2.5 or better. Therefore it's discomfoting to see that four (4) students cannot graduate under the most liberal criteria and six (5) students cannot graduate under the strict criteria. Another concern that I have is the quality of classes the students are taking. Some of the students are taking meaningless classes.

Honorable Gabriel, maintaining a "B" average is not difficult for any student that knows the value of education, but talking to my students, I get the feeling that some of them have no understanding of the value of the education that you and the Government is providing to them. I believe that we should reduce the stipends of the students who have not attained a GPA of 3.0 to \$750.00. This will wake them up but knowing how difficult that might be to you, I suggest you think about it, maybe talk to the President and make a decision. If we do not institute a merit system in the program, the students will in the long run be graduating with degrees that will never benefit them or the country.

Thank you for the opportunity to assist you and the Government of Equatorial Guinea.

Respectfully yours,

  
Simon P. Kareri  
Senior Vice President  
International Banking Group

RNB 006700

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Hon. Gabriel Nguema Luna  
Secretary of State for Mines and Hydrocarbons  
Page 2 of 2

cc. Mr. Jose Luisa Alfaro Musa

RNB 006701





TO: Ray Lund  
FROM: Simon Kareri  
RE: Permanent Subcommittee on Investigations  
NOTE: Undated by likely 9/17/02  
DATE: Posting of International Operations Assistant II

In our committee discussions last year regarding Equatorial Guinea, Larry Hebert and Robert Allbritton approved two new positions to support the growth in my area especially the relationship with Equatorial Guinea. We decided to hire one individual at the beginning of this year and the other at the latter part of the year or whenever our business warranted the addition.

As you are aware, we have continued to grow our business at a very fast pace. Our liabilities are over \$132 million above our 2002 budget and our net income through June 2002 is 57% of Embassy Banking's. The relationship with Equatorial Guinea has grown from \$265 million in September 30, 2001 to over \$467 million as of August 31, 2002 (see attached). The servicing requirements of the relationship have also increased significantly as we have increased the students that we manage for them from 26 to 117. In addition, the servicing of the relationship is more time consuming because most of the revenue streams come via Letters of Credit which require; examination, communications with the country and oil companies, transmittal of documents to and from the country and other banks.

This position is budgeted for 2003 and should not impact the budget this year significantly since we are hiring close to the end of the year.

Thank you for your assistance.

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Permanent Subcommittee on Investigations  
EXHIBIT #58 – FN 211

ZZ-000147



*Oil and Gas*

# Memorandum

**Date:** August 23, 2001

**To:** Mr. Simon P. Kareri, Senior Vice President

**Phone:**

**Fax: (202) 835-8518**

**From:** Steven R. Fly

**Fax: (713) 651-0622**

**Phone: (713) 230-7352**

**cc:**

**Re:** Training Committee for EG Students

This is page 1 of 4 Pages including cover.

Permanent Subcommittee on Investigations

EXHIBIT #58 - FN 213

RNB 006340



An International Energy Company

1021 Main Street, Suite 2800  
Houston, Texas 77002-6606Main: 713 651 1700  
Fax: 713 651 0611

August 23, 2001

Riggs Bank N.A.  
Embassy Bank Division  
Mr. Simon P. Kareri, Senior Vice President  
1528 Connecticut Avenue NW  
Washington, DC 20015

Via Fax: 202-835-8518

Re: Student Financial Administration  
Equatorial Guinea

Dear Mr. Kareri:

In accordance with the letter dated August 20, 2001 from the Minister of Mines and Energy we sent you earlier, CMS will be transferring the administration of four students to Riggs Bank. These students are:

<p>Redacted by the Permanent Subcommittee on Investigations</p>
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The information you requested by fax on August 21, 2001 concerning the student's schools, landlords, addresses, etc. is provided in the table attached to this letter. We have included the landlords phone numbers, addresses and rentals for each student. Please note that the next rentals are due September 1, 2001 and we would look to the Bank to make this payment.

We plan to have a meeting with the students this Friday or next Monday to advise them of the transfer. It is my understanding that you will be sending each student a letter explaining your procedures for handling reimbursements, stipends and other administrative matters. At our meeting with the students, we will give them the phone number 202-835-5381 to call should they have any questions.

As instructed by the Minister in his letter of August 20<sup>th</sup>, we will be transferring \$275,000.00 into the following account:

Account Name:	"Republica de Guinea Ecuatorial - Cuenta Estudiantes MME"
Account Number:	17328504
Account Type:	Checking

RNB 006341

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Aug-23-01 10:26am From: CMS Oil and Gas Company - Legal + T-254 P.003/004 F-620

Riggs Bank N.A.  
August 22, 2001  
Page 2

In this regard, we respectfully request that you provide us with the information required to effectuate a wire transfer into the above account. We plan to make the transfer by the close of business on Tuesday, August 28, 2001.

If you need additional information, I can be reached at (713) 230-7352.

I look forward to hearing from you.

Best regards,



Steven R. Fly  
Manager - Land and International Contracts

SRF/kr

cc: Minister of Mines and Energy

Block D, E, G	School / Costs	Housing / Rental	Student Address / Phone
[Redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[Redacted]	[Redacted]
[Redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[Redacted]	[Redacted]
[Redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[Redacted]	[Redacted]
[Redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[Redacted]	[Redacted]

[Redacted] = Redacted by the Permanent Subcommittee on Investigations



Oil and Gas

An International Energy Company

1021 Main Street, Suite 2800  
Houston, Texas 77002-6606

Main: 713 651 1700  
Fax: 713 651 0511

August 21, 2001

Riggs Bank N.A.  
Embassy Bank Division  
Mr. Simon P. Kareri, Senior Vice President  
1528 Connecticut Avenue NW  
Washington, DC 20015

Re: Student Financial Administration

Dear Simon:

I neglected to give you're my contact information. I can be reached at the following numbers:

Phone:	Redacted by
Fax:	Permanent Subcommittee
E-Mail:	on Investigations

I trust you received my earlier fax of the letter dated August 20, 2001 from Mr. Mianana. Please forward the information we discussed at your earliest convenience.

Best regards,

  
Steven R. Fly  
Manager - Land and International Contracts

SRF/kr

1446



Fax Cover Sheet

Embassy Banking Division  
1528 Connecticut Avenue, NW  
Washington, DC 20036  
Tel (202) 835-8662 Fax (202) 835-8518

Date: 08/21/01  
To: Mr. Steve Fly  
Fax Number: Redacted by  
Permanent Subcommittee  
on Investigations  
From: Tiyanjana Mbaya  
International Banking Officer  
Pages: 4, (including cover)  
Comments:

Per your discussion with Simon Kerei, please find attached copies of the letters that we send to the students under the Government of Equatorial Guinea Academic Scholarship.

In order for Riggs Bank to incorporate the students that are under training in accordance with the terms of the Alba Block and Block D PSC, please send us all their personal details. The details should include:

Full Name

Address

Telephone number(s)

E-mail address (if available)

Landlords/ Rental payments

Additionally, if you have the details regarding the universities where the students are studying, we ask that you kindly provide us with that information.

We look forward to hearing from you soon. If you have any questions, please do not hesitate to contact us.

This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, the employee or the agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

RNB 006348

1447

August 21, 2001

«FirstName» «LastName»  
«Address1» «Address2»  
«City» «State» «PostalCode»  
«Country»

Dear Student,

Riggs Bank NA has been assigned by the government of Equatorial Guinea to handle all your payments related to your academic scholarship. Therefore we will require certain information to be submitted to the bank by each student in order to ensure that all payments are made in a timely manner. Please find below the necessary information we are requesting:

- **Stipend:** In order to receive your monthly allowance of \$1,000, please submit your personal banking account information which will include
  - Full name (the way it appears on your bank account)
  - Full personal address
  - Beneficiary account no
  - Beneficiary Bank
  - Bank's Address & Telephone #
  - Bank's routing no (ABA#)

*(You may fax a voided check to us to ensure that we have all the information).*
- **Rental Information:** All students must submit to Riggs Bank a copy of their lease for residential rentals and also include information regarding where funds should be sent by providing the banking information for Landlord. Again, please ensure that all the information submitted is up-to-date. If you should change addresses, be sure to send your change of address and the new Lease and landlord's bank information.
- **Tuition and Fees:** You will be responsible for your registration. However, advise your prospective universities to submit all billings for registered courses directly to Riggs Bank at:
  - Riggs Bank N.A.
  - Attn. Simon P. Kareri, Senior Vice President
  - International Banking Group
  - 1913 Massachusetts Avenue, NW
  - Washington DC 20036
  - Fax (202) 835-5321

RNB 006349



- **Grades:** In order to continue on this scholarship, every student will be required to maintain a 3.0 GPA or B-grade average. If you drop below the required grade, your scholarship will be suspended. We request that you sign the attached letter and submit to your registrar's office.

Please note that all purchases for textbooks will only be on a reimbursement basis. All students must submit their receipts to Riggs via fax for reimbursement.

Finally, please provide us with your e-mail address. You may contact the bank via e-mail at [Tiyanjana\\_Mbaya@riggsbank.com](mailto:Tiyanjana_Mbaya@riggsbank.com).

We look forward to assisting you with your studies by ensuring all your financial matters are managed in an exemplary manner. We hope that you will inform us on any changes regarding your personal banking, universities, change of address and landlords. We wish you the best in your studies and looking forward to hearing from you soon. Please do not hesitate to contact us directly at (202) 835-5381 with any questions or financial emergencies you may have so that we can advise the government accordingly.

Sincerely,

Simon P. Kareri  
Senior Vice President  
International Banking Group

RNB 006350

1449

June 27, 2001

Dear REGISTRAR:

RE: «FirstName» «LastName»

The student referenced above is on a government scholarship from the Government of Equatorial Guinea. In order to continue receiving the scholarship funds, the government will require your office to submit a copy of the student's grades at the end of each semester to the following address:

Riggs Bank N.A.  
Attn: Simon P. Kareri  
1913 Massachusetts Avenue, NW  
Washington DC 20036

We thank you for your co-operations. If you should have any questions please do not hesitate to contact me directly at (202) 835-5381.

Sincerely,

Simon P. Kareri  
Senior Vice President  
International Banking Group

Approved for Release:

\_\_\_\_\_  
*Signature*  
«FirstName» «LastName»  
*Name of Student*

RNB 006351

Apr-23-01 10:28am From:CS 011 Mr. [redacted] Company - Level  
 1-214 P. 007/001 F-420  
 = Redacted by the Permanent Subcommittee on Investigations

Block D, EG	School / Costs	Housing / Rental	Student Address / Phone
[redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[redacted]	[redacted]
[redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[redacted]	[redacted]
[redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities "	[redacted]	[redacted]
[redacted]	Tuition; books; housing; medical (reimburse) plus \$950 per month for other expenses, including food, utilities	[redacted]	[redacted]

RNB 006343



Riggs Bank N.A.  
Embassy Banking Division  
1528 Connecticut Avenue, NW  
Washington, DC 20036  
(202) 835-4518

September 19, 2001

Hon. Cristobal Manana Ela  
Minister  
Ministry of Energy and Hydrocarbons  
Republic of Equatorial Guinea  
Malabo  
Equatorial Guinea

Re: Equatorial Guinea Students Program

Dear Hon. Minister:

I am writing to brief you on the status of the students under the program we initiated at the bank. I am sorry we were unable to meet here in Washington but nevertheless, this brief should suffice.

First, all the students have been provided with their monthly stipend allowance of \$1,000.00 without delay since we initiated the program. We had considerable problems with some students who were giving us incorrect banking information including some who were giving us information of their friends. We have sorted out all the banking matters and have automated the payment systems to provide them with their allotments on time. My initial impression of the general conditions of the students is not good. A good number of the students are not serious with their academics, an issue we expect to deal with severely at the end of this semester. However, some of the students are outstanding and have been a pleasure for my staff to assist. Its hard to determine whether all the students are in school at the moment but based on the tuition's and or books paid for the fall semester, the following students should be attending classes:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.

**Redacted**  
by  
**Permanent Subcommittee**  
**on Investigations**

Permanent Subcommittee on Investigations  
EXHIBIT #58 - FN 216

RNB 006820

Hon. Cristobal Manana Ela  
Minister of Energy and Hydrocarbons  
Page 2 of 2

15. Redacted By  
16. Permanent Subcommittee on  
17. Investigations  
18.

We cannot ascertain whether the following students are in school since we have not received their invoices for the schools:

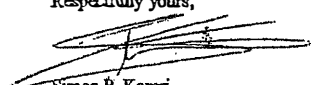
1. Redacted  
2. by  
3. Permanent Subcommittee  
4. on Investigations  
5.  
6.  
7.  
8.

We will be in a better position to know what really is happening at the end of this semester when we expect to receive the grades of all the students. Failure to receive their grades should result in reduction of their stipends in order to ensure compliance. We have had various concerns regarding some students that we are addressing. The issues range from students not going to school and receiving refunds from the schools, immigration visa issues etc.

We have addressed such issues with the schools to insure that if a student fails to go to school, they should not be refunded any funds by the school. We would appreciate if you could refer all students that complain to anyone in Malabo back to us. When they realize that Malabo is not receptive to their petty issue, they should refocus back to their academics otherwise we will continue to have problems. The students should not have any issue(s) to complain about now since they are funded on time. If they have any emergency they know whom to call at the bank. We are enclosing a full accounting report of the payments made to and on behalf of the students.

Thank you for the opportunity to assist you and the Government of Equatorial Guinea.

Respectfully yours,

  
Simon P. Kareri  
Senior Vice President

cc. Hon. Gabriel Mbega Obiang Lima  
Mr. Jose Luisa Alfaro Musa

RNB 006821