CODIFYING THE RESOURCE CURSE: EQUATORIAL GUINEA'S OIL LAW

EG JUSTICE
Toward a Just Equatorial Guinea

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Summary

In 1993, Richard Auty coined the term "resource curse" to describe the failure of resource-rich states to translate their natural resource wealth into sustainable social and economic growth.[2] Around the same time, U.S. oil companies discovered significant oil reserves off the coast of Equatorial Guinea (EG), Africa. Instead of benefiting from the ever-increasing understanding of the nature and trappings of the resource curse, however, EG has become a classic case study of the negative impact vast oil wealth can have on the residents of oil-rich nations.

Equatorial Guinea's Gross Domestic Product is estimated at approximately $10.4 billion dollars;[3] yet, more than 75% of its approximately 500,000 citizens live on less than two dollars a day, with limited access to healthcare, education, or running water.[4] Western oil companies have eagerly invested in Equatorial Guinea, despite its record of endemic corruption and human rights violations, in part because of the lax regulatory regime and favorable financial arrangements made available by the government for oil exploration and production.

In November 2006 the EG government adopted the Decree Law No. 8/2006 of November 2006 (Oil Law) to govern its oil and gas industry, raising minimum royalties and granting the state an increased participation in contracts.[5]

The Oil Law, however, leaves significant loopholes for mismanagement and corruption, and provides little in the way of regulatory controls to ensure the industry is overseen transparently and that revenues accrue for the benefit of the Equatoguinean people. The government has manifested, once again, that it intends to keep oil revenues and the national balance sheet a "state secret," not to be shared with anyone outside the inner circle of the Equatoguinean government.[6]

This policy paper assesses Equatorial Guinea's 2006 Oil Law, how its provisions hinder intra-governmental and public oversight and accountability; and how, as a whole, it fails to promote the type of transparency espoused by the Extractive Industry Transparency Initiative.[7] It also offers succinct and constructive recommendations to the EG government to address the current deficiencies in the law. The authors do not intend to provide an analysis of the fiscal regime contained in the new law or model contract, although that is an important exercise that should be undertaken separately.

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Lost and Found: From Poverty to Petroleum

Since its independence in 1968, Equatorial Guinea has been ruled by two regimes responsible for endemic corruption and horrific human rights abuses. Between 1968 and 1979, President Francisco Macias Nguema held onto power by stifling public participation in political activity, arbitrarily detaining, torturing and executing dissenting voices, and forcing tens of thousand of citizens into exile. Then in 1979, Teodoro Obiang Nguema (President Obiang) killed his uncle and took over the government. He kept the repressive regime instituted by his uncle, suppressing dissent through intimidation, arbitrary detentions, torture and extrajudicial killings.

According to the U.S. Department of State reports, government authorization is required for private meetings of more than ten persons in EG. Human rights organizations cannot operate freely there. No international human rights group is resident within the country, and even international aid agencies operate under surveillance. President Obiang's son owns the country's only private radio and TV station.[8]

In the mid-1990s, amid rampant human rights violations and social injustice, U.S. oil companies discovered significant high-grade crude oil reserves off the coast of Equatorial Guinea. The country has since become sub-Saharan Africa's third largest oil producer, with 97% of its export earnings now come from oil.[9] The United States is the largest bilateral foreign investor in Equatorial Guinea, investing some $11 billion per year in this small country, overwhelmingly in the extractive industries sector.[10] Thanks to the revenues generated from oil exploration and production, today, Equatorial Guinea boasts one of the world's highest per capita GDPs—at $44,100.[11]

Paradoxically, the vast majority of its population suffers grinding poverty. More than 20% of children in Equatorial Guinea die before the age of six,[12] and the life expectancy of an Equatoguinean is just 50 years.[13] While Equatorial Guinea's GDP hovers 10 billion dollars,[14] more than 75% of its 500,000 citizens live on less than two dollars a day, without access to healthcare, education, or running water.[15] As the national economic figures increase, residents' access to social services, their participation in government, and protection of their rights have failed to improve proportionately.

Who Benefits from Oil Production in Equatorial Guinea?

In 2004 the U.S. Senate Permanent Subcommittee on Investigations launched an investigation into Washington D.C.-based Riggs Bank's relationship with the government of Equatorial Guinea. Its final report found that Riggs "turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption" in its management of over 60 accounts controlled by various parts of the government of Equatorial Guinea and individual members of President Obiang's family.[16] This included direct deposits by oil companies into accounts that could be emptied with the signatures of only the President and one of his sons, receipt of suitcases containing millions of dollars in cash for deposit in the President Obiang's family's personal accounts, and millions of dollars in wire transfers to untraceable offshore bank accounts.[17]

The Riggs Report could have been a catalyst for positive change in Equatorial Guinea. Instead, the EG government dismissed and denied the findings in the report, accusing the authors of "a biased tendency to give credit to claims which damage the image of our Head of State."[18] Additionally, EG's one-party-controlled National Parliament, non-independent judiciary, and weak civil society did little to deter the ongoing graft by the regime.

The Obiang family has not been discreet with its wealth. In 2004 President Obiang purchased his sixth personal plane for $55 million.[19] His eldest son, Teodoro Nguema, owns a fleet of sports cars in Paris,[20] a $35 million estate in California,[21] and two holiday houses in Cape Town (worth approximately $8 million).[22] In 2006 the Cape Town houses were the subject of a South African High Court property seizure case against the EG government. In his affidavit to the High Court of South Africa, Teodoro Nguema made the extraordinary admission that:

> Cabinet Ministers and public servants in Equatorial Guinea are by law allowed to owe [sic] companies that, in consortium with a foreign company, can bid for government contracts… it means that a cabinet minister ends up with a sizable part of the contract price in his bank account.[23]

Oil Companies Cashing In

Western oil companies have been eager to invest in Equatorial Guinea, despite its poor human rights record and endemic corruption, in part because of the extremely favorable financial arrangements made available by the government for oil exploration and production. In 1999 the International Monetary Fund reported that oil companies operating in Equatorial Guinea received "by far the most generous tax and profit-sharing provisions in the region."[24] At that time the state received only 15 to 30 percent of the revenue from its oil fields, while the norm in sub-Saharan Africa at the time was 45 to 90 percent.[25] While some progress has been made in this area since 1999, the World Bank reported in 2002 that certain re-negotiated contracts were "still too favorable to producers".[26] Further progress was made in 2004 when the Equatoguinean government increased its local participation to 35% in foreign investments.[27] Then, in 2006, the EG government announced its plan to introduce a law to regulate its oil and gas industry under the rationale that the high oil prices were still disproportionately benefiting foreign oil companies.[28]

Legal Avenues for Corruption

Fundamentally, the Oil Law grants exclusive and unfettered control over the oil and gas sector to the Ministry of Mines, Industry and Energy.[29] This includes power over the "formulation, regulation and monitoring of Petroleum Operation policies, as well as the administration, planning, implementation, supervision, inspection, auditing and enforcement of all Petroleum Operations and all activities relating thereto."[30] The Ministry "is [also] responsible for negotiating, signing and executing all Contracts entered into between the State and Contractors" and has the power to amend the terms of any contract,[31] suspend operations, and even revoke contracts without compensation, nearly at will.[32] The Ministry also has the power to waive or amend many other provisions of the law with respect to particular contracts whenever it deems appropriate, without limitation,[33] and not subject to parliamentary oversight.

Increased government control over the details of oil production is generally desirable, particularly in cases where it enhances national sovereignty. However, the potential benefits of increased government control must be assessed in light of the actual bodies and/or individuals charged with wielding such power. In other words, the likely benefits of increased control are tempered where the ministry or government in question is known for its corrupt, nepotistic, and exploitive practices, as is the case in EG. For example, in September of 2007, the EG government issued a Presidential Decree obligating all multinational oil and gas companies operating in the country to procure operation insurance from GEPETROL, the state oil company. This seemingly positive control measure calls for caution because GEPETROL's budget and end-of-year reports have not been thus far subject to review by the National Parliament.[34] The same is true of the budget of the budgets of SONAGAS (*Sociedad Nacional de Gas de Guinea Ecuatorial*), the state gas company.

Additionally, the Oil Law gives the Ministry the authority to "resolve all questions related to the interpretation of this Law and the Petroleum Regulations" without prejudice to the jurisdiction of the courts.[35] This provision effectively concentrates the power of interpretation in the hands of just one government ministry—one controlled particularly tightly by the presidency.[36]

The law provides other easy avenues for abuse. For example, it requires companies to make additional payments beyond the cost of oil operations directly to the Ministry, in an amount and manner to be determined by the Ministry.[37] Such funds are ostensibly to be spent toward the training of Ministry personnel, a clear avenue for abuse where funds can easily be diverted to pay for trips abroad or scholarship funds for the friends and relatives of the rich and powerful, a practice used before in EG.[38] The operators often report these types of financial contributions as Petroleum Operations Cost, and thereby ultimately deducted from profits from the early sales of petroleum, at no ultimate cost to the operator.[39] Incidentally, this also means that at least part of the cost is directly financed by the government through foregone tax revenue.[40]

Other costs which are recoverable in EG as Petroleum Operations Costs include the construction of a "prestigious building" for the contractor's offices[41] and the rental or purchase of land required to carry out operations.[42] The recovery of such expenses as petroleum operations costs is not unusual in the industry. However, given that individuals in the inner circle of government hold a monopoly on the construction industry, and given the countless reports from the U.S. Department of State, Amnesty International and domestic journalists about government-sponsored misappropriations of vast tracts of private land and dwellings, cost recovery arrangements should be examined more rigorously.[43] The Riggs Report found that oil companies had paid and were continuing to pay millions of dollars in rent to the President, other government officials and their families.[44] Consequently, the cost recovery regime effectively supports the business interests of certain government officials and provides incentive for the ruling elite to misappropriate land and monopolize business industries—all at no cost to the operator.

Companies are required to make other direct payments to the government as well. Section 93 of the new law requires operators to both carry out projects "which promote the realization of public benefit activities of the broadest possible impact on the public welfare" and pay a certain amount of money to the Ministry, the exact amount to be determined by the Ministry itself. Operators are expected to both carry out public interest projects and pay the government to do the very same thing. This payment, provided for "public welfare," unlike the amount provided for "training," is not considered to be a production cost, and thus comes out of the operator's profits.

Thus, while the oil law improves the government's earnings and control over the oil sector, it codifies significant loopholes for mismanagement and corruption, lacks public disclosure provisions, and provides little in the way of regulatory controls to ensure the industry is accountable to the people. How the laws came into being is an evident example of the EG government's lack accountability to its citizens. Contrary to established administrative law procedures allowing for a period for public comment and/or public hearing(s), and contrary also to international best practice of obtaining free, prior, and informed consent from the public, the Oil Law was never publicly available for consultation or comment by the Equatoguinean people prior to enactment.[45]

Governance and Human Rights Failures

In addition to the avenues of corruption left open by the new law, it contains some notable failures in broader areas of governance and human rights.[46] The oil law threatens the land rights of Equatoguineans, most notably through a provision permitting contractors to request that the government forcibly occupy or expropriate on their behalf land belonging to private citizens. Such seizures, according to the oil law, need only conform to the "Forcible Expropriations Law applicable at the moment of the expropriation or occupation."[47] While condemnation or expropriation laws are permitted in many legal regimes, such state powers are, as a rule, predicated on the state showing that the taking conforms to a public interest or use, and dully compensating the expropriated property owner. These two essential requirements for permissible expropriations are rarely met or even attempted in Equatorial Guinea.

In addition, the oil law does not build in any judicial or legislative oversight. There are no clauses mandating independent audits, publication of documents and data, or promotion and facilitation of public debate. Examples of such clauses are contained in São Tomé and Príncipe's 2004 oil law.[48] For example:

- Article 16 of São Tomé and Príncipe's law requires public debate on spending of oil revenues in open sessions involving civil society at the beginning of each legislative session of the National Assembly;

- Article 17 requires that there shall be disclosure of and public access to information related to payments, management, use and investment of oil revenues, and Article 20 declares void all confidentiality clauses that attempt to prevent access to this information; and

- Article 14 requires that two annual audits of the oil accounts be carried out: one by the Auditor General and the other by an internationally recognized international auditing firm.

With this superior model of a modern oil law right at its doorstep, EG has no legitimate excuse for failing to deliver on these important issues.

The model contract's confidentiality clause (clause 20.4), while living up to industry standards, falls short of best practice in the area. In particular, in the absence of new government regulations to the contrary, this clause precludes compliance with EITI implementation criteria that refer to public participation in the management of natural resources and which require "[r]egular publication of all material oil, gas and mining payments by companies to governments and all material revenues received by governments from oil, gas and mining companies *to a wide audience in a publicly accessible, comprehensive and comprehensible manner*."[49] Given Equatorial Guinea's stated intention to join the EITI, the new law could have reflected EITI standards in this area.[50]

After years of controversy surrounding oil, gas and mining projects, communities around the world have come forward to demand their right to determine whether—and under what conditions—such projects can go forward. The right to free, prior, informed consent helps ensure that human dignity is respected and that civil society participates meaningfully in decisions about extractive industry projects. This right should include the following:

- Community access to complete project information and independent analysis of probable impacts
- Adequate time for community decision making; companies must adjust their schedules accordingly
- Community decision-making free of coercion or manipulation by project proponents
- Community opportunity to reject a project or to accept it with appropriate conditions
- Opportunity for community representatives to receive training to strengthen the community's decision-making process

—Oxfam America[51]

Other provisions of the law fail to provide the level of detail required to make them useful as accountability mechanisms. For example, the model contract requires the operator to "provide acceptable working conditions and access to medical attention and nursing care for all of its local and international personnel and those of its subcontractors while undertaking Petroleum Operations," but fails to provide a standard or additional regulations by which to measure whether health and safety conditions are acceptable or not.[52]

Additionally, the law imposes requirements on potential operators to have "suitable technical and financial capability" and "proven experience" in the industry,[53] but fails to spell out what criteria will be used to make this judgment, rendering such a requirement all but meaningless in light of the unfettered discretion in contracting and law-making powers afforded to the Ministry of Mines. Finally, despite requiring the creation of a "competitive international tender system" for the awarding of rights,[54] in fact the law allows the Ministry to award either contracts through this system "or by means of direct negotiation,"[55] thereby rendering the public tender requirement largely meaningless.

On The Bright Side

We would be remiss if we did not also point out that the oil law was a much-needed addition to EG's regulation of its energy industry. Fundamentally, the Oil Law raises minimum royalties from approximately 10% to 13%, and grants the state the right to a 20% share in all production sharing contracts.[56] These figures bring Equatorial Guinea closer to other sub-Saharan African oil producers in terms of their take from oil production.[57] Also, the law subjects block operators to "all legislation in force."[58] This has the effect of prohibiting wide-ranging stabilization clauses in contracts, and thus avoiding a serious pitfall sometimes encountered by developing countries negotiating with powerful international corporations.[59] Also positive are provisions requiring government approval of changes in operators and over all joint operating agreements between operators, which should help ensure that all operators meet the country's operating and experience requirements.[60]

The Oil Law requires operators to "take all precautions necessary to protect the environment, in order to preserve the same, namely in respect of health, water, soil, and subsoil, air, the preservation of biodiversity, flora and fauna, ecosystems, landscape, atmosphere and cultural, archeological and artistic heritage."[61] Oil and gas companies must submit plans to the Ministry of Mines as required by the environmental laws of Equatorial Guinea, including impact assessments and plans for environmental rehabilitation, and must indemnify the state for any environmental damage.[62]

The law calls on the operators to produce comprehensive and detailed reports. Also, the law grants the Ministry of Mines access to all data and information used by operating companies, as well as unlimited access to their facilities.[63] Industry information and access to their facilities could enhance the government's oversight capability to ensure compliance with health, safety, labor, and environmental regulations. However, these positive aspects of the law are undermined by the prevailing lack of intra-governmental and public accountability, and by strict confidentiality clauses. Given the unavailability of industry data to civil society and the public, and given the National Parliament's lack of monitoring authority, and the weak enforcement powers of a judiciary branch that lacks independence, it is difficult to ascertain the benefits afforded to the people through this oil law.

> Transnational corporations and other business enterprises shall respect the rights of local communities affected by their activities and the rights of indigenous peoples and communities consistent with international human rights standards.... They shall also respect the principle of free, prior and informed consent of the indigenous peoples and communities to be affected by their development projects.
>
> —UN Sub-Commission on the Promotion and Protection of Human Rights[64]

Conclusions and Recommendations

In sum, while the new law may lead to better financial arrangements for Equatorial Guinea vis-à-vis its international investors, its terms all but guarantee that any additional profits that result will flow to the pockets of those in power, and not for the benefit of the Equatoguinean people. The law lists potentially positive features, such as improved government control over the sector, requirements for increased contractor spending and participation within Equatorial Guinea and more comprehensive reporting requirements. However, these benefits are largely nullified by contractual confidentiality and the weakness of institutions such as the judiciary and civil society that could have made use of them. The government should revise the law to improve transparency and oversight and include checks and balances. The law should provide for consistent public disclosure of key oil and gas sector information and it ought to codify standards—in particular international standards—to gauge the performance of oil companies in the labor, health, environmental, and other sectors. Also, the law should ensure meaningful participation by civil society in decisions about extractive industry projects, by codifying provisions that ensure the respect of communities' right to free, prior, informed consent. Unless these deficiencies are remedied in a meaningful way, the sincerity of Equatorial Guinea's stated commitment to transparency and accountability remains in question.

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Notes

1 Marti Flacks wrote this paper while she was a President Management Fellow in the Asylum Program at the U.S. Department of Homeland Security. The views expressed in this paper are entirely her own and not those of the DHS. Tutu Alicante is the Executive Director of EG Justice. The authors thank Rachel Ball and Angela C. Stuesse for their contributions in editing this paper. We also appreciate the generous comments Maria Koulouris and Ken Hurwitz offered on earlier versions of this paper.
2 Auty, Richard M. *Sustaining Development in Mineral Economies: The Resource Curse Thesis*. (1993).
3 U.S. State Department, Background Note: Equatorial Guinea (April 2008). Available at <www.state.gov/r/pa/ei/bgn/7221.htm>.
4 Associated Press, "Oil boom, shifting global politics give Africa its best chance in decades," *International Herald Tribune* (June 29, 2007).
5 See copies of Hydrocarbon Law (Decree Law No. 8/2006 of November 2006) and the Model Contract at <www.equatorialoil.com/2006-round/legal_fiscal.html>.
6 CBS News, 60 Minutes, Kuwait of Africa? (June 16, 2007). Available at <www.cbsnews.com/stories/2003/11/14/60minutes/main583700.shtml >.
7 The Extractive Industries Transparency Initiative (EITI) calls for transparency in the oil, gas, and mining industries to combat corruption and lift the "resource curse." See the EITI principles, available at <www.eitransparency.org/eiti/principles>.
8 U.S. State Department, Country Reports on Human Rights, Equatorial Guinea (2008). Available at <www.state.gov/g/drl/rls/hrrpt/2007/100479.htm>.
9 U.S. State Department, Background Note: Equatorial Guinea at n. 3.
10 Ibid.
11 CIA World Factbook: Equatorial Guinea, (May 1, 2008). Available at <www.cia.gov/library/publications/the-world-factbook/geos/ek.html>.
12 United Nations Development Program, Human Development Report 2007.
13 Ibid.
14 U.S. State Department, Background Note: Equatorial Guinea at n. 3.
15 Associated Press, "Oil boom, shifting global politics give Africa its best chance in decades," *International Herald Tribune*, (June 29, 2007).
16 United States Senate Committee on Government Affairs Permanent Subcommittee on Investigations, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank*, (July 15, 2005), ("Riggs Report") at page 3.

17 See Ibid.

18 See *Reacción del Pueblo y Gobierno de Guinea Ecuatorial al Informe del Subcomité Permanente de Investigación del Senado de los Estados Unidos de América sobre el Riggs Bank.* Available in Spanish at <www.ceiba-guinea-ecuatorial.org/guineees/template2.htm>.

19 Riggs Report at pages 41and 57, n. 16.

20 The fleet of cars includes a £1.5 million pound Bugatti-Veyron, the world's most expensive automobile. See "*La Bugatti-Veyron de Teodorino Obiang*," *La Lettre du Continent*, no. 515 (April 5, 2007). Available at <www.africaintelligence.fr/LC-/archives/default_archives.asp?num=515&year=2007>.

21 Diana L. Jungaeus, "Malibu Bad Neighbor," *L.A. Weekly* (January 17, 2007). Available at <www.laweekly.com/news/news/malibu-bad-neighbor/15436/?page=1>.

22 See Affidavit of Teodoro Nguema Obiang, 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). Available at <www.laweekly.com/images/stories/07/09/Obiangaffidavit.pdf>.

23 Ibid.

24 International Monetary Fund Staff country report No. 99/113. Equatorial Guinea: Recent Economic Developments (October 1999) at page 20.

25 Ibid.

26 World Bank (1 July 2002) Operations Evaluation Department: Equatorial Guinea: Second Petroleum Technical Assistance Project (Credit 2408-EG).

27 United States Department of Energy (2007) Equatorial Guinea Country Analysis Brief. Available at <www.eia.doe.gov/emeu/cabs/Equatorial_Guinea/Full.html>.

28 The Economist Intelligence Unit (October 2006). Country Report: Equatorial Guinea.

29 The oil law itself does not specify the department responsible, rather granting this power to the "government department that is or may be responsible for Petroleum Operations in Equatorial Guinea." The attached Model PSC, however, specifies that this is to be the Ministry of Mines, Industry and Energy. Model PSC § 1.138.

30 The Hydrocarbons Law, Ch. III Art. 9, at n. 5.

31 Ibid.

32 The Ministry may suspend operations or take "any other action it deems necessary or appropriate," without limitation, to prevent injury to persons, damage to property, harm to the environment, or for "reasons of national interest" (undefined). It may also terminate contracts in the event of "material noncompliance" (again, undefined) by the contractor with the provisions of the law. Ch. XXII, Art. 99. Consider a scenario whereby a contractor refuses to pay the amount in "public welfare" money arbitrarily demanded by the Ministry, and can, as a result, have its contract unilaterally terminated. See the Hydrocarbons Law at n. 5.

33 For example, though the law states that contract areas shall be limited to 2650 square kilometers, "[n]otwithstanding [that requirement], the Ministry has the right to increase or decrease any Contract Area to be awarded to a Contractor." (Ch. IV, Art. 19). Similarly, though the law spells out an initial exploration period of four to five years, with up to two one-year extensions, it also allows the Ministry to "if it deems appropriate, amend the duration of the aforementioned periods in the Contract." Ch.VI, Art. 26. Other examples including the ability to waive provisions permitting on the State or a National Company to construct and operate pipelines (Ch. IX, Art. 45) and the authority to permit flaring of natural gas (which is otherwise prohibited) at its sole discretion (Ch. XVI, Art. 76). See Hydrocarbons Law at n. 5.

34 See: Campos Serrano, Alicia & Miko Abogo, Placido, *Labour and Trade Union Freedom in Equatorial Guinea*, at pages 56-57. Available at <www.ccoo.es/pdfs/EquatGuineaEnglish(Final).pdf>. The authors suggest that there are reasons to suspect that high-ranking government officials control large shares in these state companies. The EG Parliament can hardly be considered a non-partisan or independent body as 98% of its members belong to the President's political party, the Equatorial Guinea Democratic Party (PDGE).

35 Hydrocarbons Law, Ch. XXVII, Art. 118 at n. 5.

36 The President's son, Gabriel Mbenga Obiang Lima, is Vice-Minister of Mines Industry and Energy, and this department is one of several key ministries reported to be dominated by the regime's loyalists. Afrol News, *21 of 50 Equatoguinean ministers related to President,* November 19, 2007, Available at <www.afrol.com/articles/10570>. According to the 2008 US State Department Report, "[a]ll branches of government are dominated by President Teodoro Obiang Nguema Mbasogo and his clan from the majority Fang ethnic group." Available at <www.state.gov/g/drl/rls/hrrpt/2007/100479.htm>.

37 "To that end [of contributing to the training of Ministry personnel], the Contractor shall annually provide the Ministry with a sum in United States Dollars during the Exploration and Production periods. This amount shall be determined by the Ministry in accordance with its prudent judgment…" Hydrocarbons Law, Ch. XX, Art. 92, at n. 5.

38 The Riggs Report concluded that "altogether, the Subcommittee was able to document payments in excess of $4 million made by oil companies to support more than 100 EG students studying abroad, most of whom were the children of relatives of powerful EG officials." Riggs Report. Note 15, p.104.

39 Under the terms of a typical Production Sharing Agreement, the operator of a block is entitled to recoup its costs in developing the oil field before profits are divided between the operator and the host government as spelled out in the contract. Thus payments

that are classified as production costs, although paid by the operator at the request of the government, come at no cost to the operator because they are ultimately deducted from profit sharing revenues owed to the government. Hydrocarbons Law Ch. XX, Art. 92, at n. 5.

40 International Monetary Fund (April 2005) Report on the Observance of Standards and Codes—Fiscal Transparency Module No.05/144 at page 21.

41 Clause 6.22 of the Model Contract, n. 5. See also, U.S Department of State 2008 Report. Available at <www.state.gov/g/drl/rls/hrrpt/2007/100479.htm>.

42 Clause 6.18.2 of the Model Contract at n. 5.

43 Campos Serrano & Mico Abogo at n. 34; See also, U.S Department of State 2008 Report and Amnesty International document, Equatorial Guinea: Further Information on Fear of Forced Evictions/Fear of Use of Excessive Force. Available at <www.state.gov/g/drl/rls/hrrpt/2007/100479.htm> and <www.amnesty.org/en/library/asset/AFR24/017/2006/en/orisHvwQpkYJ>.

44 Riggs Report at n. 16; page 101.

45 The World Bank encourages that oil laws be subject to a thorough process of public consultation with "adequate time for discussion by all stakeholders (e.g., government, civil society, development partners, etc);" *see World Bank's Comments/Observations on the Draft Laws for the re-organization of Timor-Leste's Petroleum Sector* (June 5, 2007). Available at <www.laohamutuk.org/Oil/PetRegime/Restruc/WBonRestrucLaws5Jun07.pdf>.

46 Equatorial Guinea has ratified the following human rights treaties: (1) the International Covenant on Economic, social, and Cultural Rights, (2) the International Covenant on Civil and Political Rights, (3) the Optional Protocol to the International Covenant on Civil and Political Rights, (4) the International Convention on the Elimination of All Forms or Racial Discrimination, (5) the Convention on the Elimination of All Forms of Discrimination Against Women, (6) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (7) the Convention on the Rights of the Child, (8) the Optional Protocol on the Convention of the Rights of the Child, on the sale of children, child prostitution and child pornography, (9) the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. See list of International Treaties ratified by Equatorial Guinea at <www.unhchr.ch/pdf/report.pdf>.

47 Hydrocarbons Law Ch.VI, Art. 29, at n. 5.

48 São Tomé and Príncipe Oil Revenue Law, Law No. 8/2004. Available at <www.earthinstitute.columbia.edu/cgsd/STP/documents/oilrevenuemanagementlawgazetted_000.pdf>.

49 Emphasis added. Extractive Industries Transparency Initiative, "The EITI Criteria." Available at <http://72.167.14.225/eiti/criteria>.

50 Equatorial Guinean Government statement to the Extractive Industries Transparency Initiative, London (June 17, 2003). Available at <www.dfid.gov.uk/pubs/files/eitidraftreportguinea.pdf>. Equatorial Guinea's progress in its bid to gain candidate status can be tracked on EITI's website at <www.eitransparency.org/>.

51 Oxfam America, *Oxfam America's Oil, Gas, and Mining Program* brochure (2007). Available at <www.oxfamamerica.org>.

52 While in other legal regimes, courts and government agencies develop jurisprudence aimed at defining and interpreting applicable standards of care, this has not been the case in EG. Instead, decisions are reached on a case-by-case basis and often at the discretion of government officials, instead of a member of the judiciary or legislative bodies. For more information on the lack of independence of the judiciary in Equatorial Guinea, see the U.S. State Department Country Report (2008) at n. 8.

53 Hydrocarbons Law, Ch. IV, Art. 14, at n. 5.

54 Hydrocarbons Law, Ch. IV, Art. 13, at n. 5.

55 Hydrocarbons Law, Ch. IV Art. 15, at n. 5.

56 Angel Gonzalez, Equatorial Guinea President Clears Higher Oil Royalties, Dow Jones Newswires (November 28, 2006). Available at <www.rigzone.com/news/article.asp?a_id=38542>.

57 This article is not intended to provide an analysis of the fiscal regime contained in the new law or model contract, although that is an important exercise that should be undertaken separately. Rather, the focus here is on issues of government accountability and revenue transparency in the oil and gas sectors.

58 Hydrocarbons Law Ch.VIII, Art. 38, at n. 5.

59 Blanket stabilization clauses exempt operating companies from legislation that goes into effect in the country after the entry into force of the contract. It can have the effect of exempting operators from improvements in health, safety, labor, and environmental laws applicable in the country, and seriously undermines the government's ability to legislate effectively on behalf of its people. More limited stabilization clauses – more common than blanket clauses – exempt operators only from changes to tax and financial regimes. See, e.g. the revised Mittal contract in Liberia.

60 Hydrocarbons Law, Ch. VIII Art. 39, at n. 5.

61 Hydrocarbons Law, Ch. XIV, Art. 65, at n. 5.

62 Hydrocarbons Law, Ch. XIV, Art. 67, at n. 5.

63 Hydrocarbons Law, Ch.III Art. 10, at n. 5.

64 Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. Available at <http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.12.Rev.2.En>.