



November 21, 2019

IMF Executive Board
700 19th Street NW
Washington, DC 20431

Re: Consideration of an Extended Fund Facility for Equatorial Guinea

Dear International Monetary Fund Executive Board:

We are writing regarding the International Monetary Fund announcement on October 21, 2019 indicating that a staff level agreement has been reached with Equatorial Guinea for an Extended Fund Facility and that the Fund will vote on the proposed loan in December.¹ We are eight organizations, Equatorial Guinean and international, that have been monitoring and documenting the governance and human rights situation in Equatorial Guinea for many years. We are joined by all eight Extractive Industries Transparency Initiative (EITI) Civil Society Board Members. **We share strong reservations regarding the proposed loan and respectfully request the Executive Board delay any vote to allow for further consultation and risk assessment.**

In recent years, the IMF has identified corruption as a key threat to achieving its mission of economic stability. In April 2018, the executive board adopted a new framework for enhanced engagement on governance (the Framework).² The Framework, which is intended to remedy past gaps and inconsistencies in addressing corruption, requires the Fund to assess potential corruption and its macroeconomic implications for each member country and candidly integrate

¹ "IMF Reaches Staff-Level Agreement with Equatorial Guinea on Three-Year Financial Agreement under the Extended Fund Facility," International Monetary Fund press release, October 21, 2019, <https://www.imf.org/en/News/Articles/2019/10/21/pr19382-equatorial-guinea-imf-reaches-staff-level-agreement-on-3-year-financial-under-the-eff>.

² International Monetary Fund, "Review of 1997 Guidance Note on Governance – A Proposed Framework for Enhanced Fund Engagement," April 22, 2018, <https://www.imf.org/en/Publications/Policy-Papers/Issues/2018/04/20/pp030918-review-of-1997-guidance-note-on-governance>.

these assessments into Fund surveillance and conditions.³ **The upcoming vote on a loan to Equatorial Guinea is a crucial, public test of the Framework and the level of sophistication of the IMF’s approach to fighting corruption. For the reasons outlined below, we believe that such a vote is premature, and would be significantly risky for the Fund and Equatorial Guinea’s citizens at this time.**

Governance Context for the IMF Loan

The circumstances in Equatorial Guinea highlight both the profoundly corrosive impacts of corruption on the population’s social and economic rights and the opportunity the new Framework presents for establishing the IMF as fully committed to fighting corruption. The country’s vast oil wealth and small population place it among the highest per capita income in Africa, yet endemic mismanagement and grand corruption have left it unable to financially sustain a slump in oil prices and production.⁴ Corruption investigations in the United States, Spain, France, Switzerland, South Africa, and elsewhere have exposed how the president and his inner circle have siphoned off hundreds of millions of dollars in public funds, even as the government spent little on health, education, or water infrastructure to improve the lives of ordinary citizens.⁵

Now, the government is seeking a loan from the IMF and its donors to pay for government activities in part because it has mismanaged its own funds. The staff-level agreement is for a \$280 million loan, according to a November 7 IMF press briefing, which is significantly less than the \$700 million the government requested.⁶ In contrast, the government has defended the vice president (who is also the president’s son) in a Swiss money-laundering case involving two yachts, worth a combined \$250 million, used as pleasure boats by the vice president but apparently owned by the Equatorial Guinean government.⁷ It also has said it owns a Paris mansion, reportedly worth as much as \$180 million, that the vice president used as a private

³ Ibid. See also International Monetary Fund, “The Role of the Fund in Governance Issues – Review of the Guidance Note – Preliminary Considerations,” August 2, 2017, <https://www.imf.org/en/Publications/Policy-Papers/Issues/2017/08/01/pp080217-the-role-of-the-fund-in-governance-issues-review-of-the-guidance-note>.

⁴ See, for example, International Monetary Fund, African Department, “Republic of Equatorial Guinea: 2016 Article IV Consultation – Press Release; Staff Report; and Statement by the Director for the Republic of Equatorial Guinea,” November 16, 2016, <https://www.imf.org/en/Publications/CR/Issues/2016/12/31/Republic-of-Equatorial-Guinea-2016-Article-IV-Consultation-Press-Release-Staff-Report-and-44371>

⁵ See “Equatorial Guinea: Oil Wealth Squandered and Stolen,” Human Rights Watch news release, June 15, 2017, <https://www.hrw.org/news/2017/06/15/equatorial-guinea-oil-wealth-squandered-and-stolen>.

⁶ “Press Briefing by Gerry Rice, Director, IMF Communications Department,” IMF press briefing transcript, November 7, 2019, <https://www.imf.org/en/News/Articles/2019/11/07/tr110719-transcript-of-imf-press-briefing>.

⁷ Yinka Adegoke, “Dutch authorities have seized a \$120 million luxury yacht from this African president’s son” *Quartz Africa*, December 11, 2016, <https://qz.com/africa/860194/equatorial-guineas-teodorin-obiang-has-had-his-luxury-yacht-seized-in-the-netherlands/>; “76m Ebony Shine Seized By Dutch Authorities,” *Yacht Harbour*, December 8, 2016, <https://yachtharbour.com/news/76m-ebony-shine-seized-by-dutch-authorities-1319>.

residence until the French government seized it as a part of a corruption case that ended in his *in absentia* conviction in 2017.⁸ These three assets alone amount to more than the amount negotiated under the Extended Fund Facility.

We recognize that the IMF mission to Equatorial Guinea understands the weight of its responsibility. We deeply appreciate its close engagement with many of our organizations throughout this process. We also recognize that the IMF's involvement with the government may lead to more transparency and pressure to improve governance in the country. Toward that end, the IMF has included several important governance-related measures in a Staff Managed Program (SMP) prior to beginning negotiations for an Extended Fund Facility.⁹

As part of the SMP, Equatorial Guinea ratified the United Nations Convention Against Corruption and hired an independent firm to audit its state oil company, GEPetrol. However, it has been unable to complete the SMP requirement to apply to join the Extractive Industries Transparency Initiative (EITI), a global standard that requires transparency around natural resource governance and unfettered civic space to allow public oversight.¹⁰ We understand that submitting an application to EITI is now a loan pre-condition. We outline significant and well-evidenced concerns on this requirement below.

We recognize that certain steps by the IMF create opportunities for key reforms in a country led by the world's longest serving president. But the government's continued hostility to meaningful reform throughout the period of the SMP raise serious questions about the government's willingness to implement key reforms. Without addressing deep-rooted corruption and related impunity, the IMF risks subsidizing Equatorial Guinea's mismanagement by elites, saddling the public with more debt, and contributing to investors' false confidence that the government has reformed its climate of corruption.

⁸ Martin de Bourmont, Accused of Looting Millions, Son of African Leader Stalls Trial," *New York Times*, January 4, 2017, (accessed November 18, 2019) <https://www.nytimes.com/2017/01/04/world/africa/teodoro-nguema-obiang-mangu-e-guinea-looting-trial.html>; Equatorial Guinea v. France: Immunities and Criminal Proceedings, International Court of Justice, Summary 2018/3, June 6, 2018, <https://www.ici-cij.org/files/case-related/163/163-20180606-SUM-01-00-EN.pdf>; "Equatorial Guinea: President's Son Convicted of Laundering Millions," Human Rights Watch news release, October 29, 2017, <https://www.hrw.org/news/2017/10/29/equatorial-guinea-presidents-son-convicted-laundering-millions>.

⁹ Letter from Lucas Abaga Nchama, Equatoguinean Minister of Finance, Economy, and Planning to Christine Lagarde, Managing Director, International Monetary Fund, May 11, 2018, <https://www.imf.org/external/np/loi/2018/gnq/o51118.pdf>.

¹⁰ "Extractive Industries Transparency Initiative: Who We Are," accessed November 18, 2019, <https://eiti.org/who-we-are>.

Equatorial Guinea’s Attacks on Good Governance Advocates

1. Risks to EITI Candidacy

The requirement under the SMP that Equatorial Guinea apply to join EITI rightly identifies two of the most critical reforms for addressing corruption in the country: bringing transparency to the management of the oil sector, including the revenues it generates for the government, and enabling public engagement, debate and oversight on the sector without fear of retaliation. However, the formulation in the SMP that Equatorial Guinea must “submit a membership application” sets the bar far too low since a weak application could be rejected by the EITI Board.¹¹

The EITI has rejected the country in the past. In 2010, Equatorial Guinea sought to become a full member of the EITI but the validation of its status was rejected due to its repression of civil society, and failure to do anything of substance to meet the then-EITI Standard.¹² Since that time, the EITI Board has significantly enhanced the EITI Standard to meet the evolving practice of its member countries. Among key additional new criteria, the Standard now includes a Civil Society Protocol: this requirement recognizes the need for civil society to be able to play its key role of holding both government and companies to account, without fear of retribution. Specifically, the EITI Standard requires countries to ensure civil society representatives – explicitly defined as broader than only citizens with a formal role in the EITI process – are able to speak freely on transparency and natural resource governance issues. Civil society representatives must be able to engage in the EITI process and analyze and publicly discuss the information that comes from it without “restraint, coercion, or reprisal.”

In order for the transparency that EITI achieves to be meaningful, citizens must be able to access and debate the information and hold officials accountable for misuse of public funds. This has been the EITI’s intent and theory of change since its founding. EITI recognizes that the central accountability function played by civil society organizations is “key to ensure that the transparency created by the EITI leads to greater accountability.”¹³ However, the persistent climate

¹¹ The May 2018 Letter of Intent notes that after submitting an application, Equatorial Guinea is expected to “work towards continued compliance with standards, with a view to increasing transparency in the oil and gas sector.” While this emphasis on continued progress after submitting an application is important, the structural benchmark itself should reflect sufficient progress to ensure government reforms, specifically regarding civil space, make it a viable candidate for EITI.

¹² Letter from Dr. Peter Eigen, Chair, Extractive Industries Transparency Initiative, to H.E. Teodoro Obiang, President, Republic of Equatorial Guinea, April 29, 2010, https://eiti.org/sites/default/files/documents/2010_04_29_letter_he_president_obiang_equatorial_guinea.pdf.

¹³ Extractive Industries Transparency Initiative, “EITI Protocol: Participation of Civil Society,” January 1, 2015, <https://eiti.org/document/eiti-protocol-participation-of-civil-society>.

of repression, harassment and overt physical abuse of good governance advocates in Equatorial Guinea leads to self-censorship by civil society, due to very reasonable fears of reprisal.

These circumstances have prevailed throughout the period of the SMP, and continued attacks indicate the absence of high-level political will necessary to meaningfully reform the country's deeply rooted culture of corruption and repression. This situation – which the government has failed to remedy despite multitudes of formal and informal entreaties by citizens and civil society organizations – explicitly contravenes the intent and letter of EITI Standard. Please note that a **failure to meet the requirements of section 1.3 of the Standard – the “Civil Society Protocol” – will be sufficient for the EITI Board to deny Equatorial Guinea the ability to make an application to join EITI and become a candidate country.** It is our view, that under the current context, the Board will be unlikely to accept Equatorial Guinea's application.

Given Equatorial Guinea's past failure to meet the EITI's less rigorous standards in 2010, it is difficult to see how the country will now successfully join the initiative, especially given on-going severe repression of civic space. Unless the conditionality is changed so that Equatorial Guinea demonstrates real reform by becoming a candidate country, where the EITI Board accepts the application and formally begins the validation process, the government may take only the minimum steps to submit an application without making the reforms necessary for its candidacy to be formally accepted by the Board.

2. Material Evidence and Recent Trends: Attacks on Anti-Corruption and Governance Advocates

a) Targeting the Center for Development Studies and Initiatives (CEID)

As evidence, the Fund should review the government's relentless targeting of the Center for Development Studies and Initiatives (CEID), the country's leading independent group promoting human rights and good governance, and Alfredo Okenve, CEID's vice president. As a highly esteemed partner of the global Publish What You Pay coalition, CEID (and its treatment by government) has international visibility. The government's extreme behavior towards this organization and its leadership is indicative of its intolerance for the public scrutiny that is required of an EITI member country.

CEID represented civil society in the EITI steering committee until 2017, but it was forced to withdraw from that role after authorities held Okenve and the organization's president, Enrique Asumu, without charge for two weeks.¹⁴ The arbitrary arrest was preceded by years of harassment

¹⁴ “Equatorial Guinea: Free Human Rights Defenders,” Human Rights Watch news release, April 21, 2017, <https://www.hrw.org/news/2017/04/21/equatorial-guinea-free-human-rights-defenders>.

intended to shut down the organization's work. In May 2010, while Equatorial Guinea's EITI candidacy was being considered, the government removed Alfredo Okenve from two posts at Equatorial Guinea's National University after he agreed to participate in a panel on Equatorial Guinea's transparency record at an event in Washington, DC meant to urge the US government to take action.¹⁵ In March 2016, authorities ordered CEID to suspend its activities after participants in a youth conference it organized made comments critical of the government.¹⁶

The government's harassment of Okenve and CEID has only gotten worse in the two years that it has been engaging with the IMF under the SMP and preparing to apply to EITI. In October 2018, five months after the IMF and Equatorial Guinea reached an agreement for the SMP, four armed men forced Okenve from his car by gunpoint and took him to a remote area where they severely beat and then abandoned him.¹⁷ The car the men drove suggested they were security officials.

In March 2019, police prevented Alfredo Okenve from boarding a plane and seized his passport and phone.¹⁸ Okenve was supposed to receive a Franco-German human rights award at the French embassy that day, but tried to leave the country after learning that the police were looking to arrest him. Police returned him to his home and stationed a guard outside to prevent him from leaving for several days.

Only three months later, the Minister of Mines, Gabriel Lima, used the EITI Global Conference to publicly express his country's desire to join the initiative and meet with several representatives of international civil society organizations. Lima reassured them that Equatorial Guinea was committed to the necessary reforms and promised greater respect for civil society. Yet, the next month, authorities ordered CEID's dissolution.¹⁹ Requests by those international civil representatives to the Minister and his staff for an explanation and an update on the situation were received but ultimately left unanswered. CEID has appealed that order, but has yet to receive a government response.

¹⁵ Equatorial Guinea: DC Meeting Set as Corruption Details Emerge," Human Rights Watch news release, June 15, 2012, <https://www.hrw.org/news/2012/06/15/equatorial-guinea-dc-meeting-set-corruption-details-emerge>.

¹⁶ Human Rights Watch et. al, "Joint Statement Urging a Halt of Pre-Election Civil Society Crackdown in Equatorial Guinea," March 30, 2016, <https://www.hrw.org/news/2016/03/30/joint-statement-urging-halt-pre-election-civil-society-crackdown-equatorial-guinea>.

¹⁷ "Equatorial Guinea: Prominent Activist Severely Beaten," Human Rights Watch news release, October 31, 2018, <https://www.hrw.org/news/2018/10/31/equatorial-guinea-prominent-activist-severely-beaten>.

¹⁸ "Alfredo Okenve Arrested Once Again," CEIDGE press release, March 15, 2019, <http://www.ceidge.org/index.php/quienes-somos-3/68-alfredo-okenve-arrested-once-again>.

¹⁹ "Equatorial Guinea: Dissolution of an NGO Shows Escalating Crackdown on Civil Society," Amnesty International press release, July 9, 2019, <https://www.amnesty.org/en/latest/news/2019/07/equatorial-guinea-dissolution-of-an-ngo-shows-escalating-crackdown-on-civil-society/>.

On September 3, 2019, a group of United Nations Special Rapporteurs expressed their concerns regarding allegations of harassment, ill-treatment, arbitrary detention and reprisals against Alfredo Okenve in retaliation for his human rights activities. They also highlighted a broader climate of repression against human rights defenders and the worrying use of force by the police to crack down on dissent as well as legal restrictions on civil society.²⁰

b) Targeting notable citizens and civic organizations

Authorities have harassed and arrested artists, teachers, and others who have criticized the government. Joaquín Elo Ayeto, a member of a political opposition party and founder of the youth organization Somos+, remains in preventive detention since February 25.²¹ He told his lawyer that during the interrogation, police phoned someone who recounted hearing him making remarks critical of government spending, which appears to be the basis of his detention. He also showed his lawyers marks on his body from police torture. Joaquín Elo Ayeto has been arrested and detained several times. On 29 November 2016, two military officers brutally beat him after he had posted an online article about an officer refusing to pay a road toll.²²

c) Continuing impunity of government officials

At the same time that those advocating for good governance face constant harassment, the government continues to shield officials who have amassed enormous personal fortunes from siphoning public funds. Notably, these are the same funds which the government now seeks to replenish with help from the Fund. Indeed, the government has repeatedly taken the position that its laws do not bar senior officials from engaging in conflicts of interest.²³

d) Ongoing breaches of the rule of law: Lack of judicial independence and grave due process violations

²⁰ Letter from UN Special Rapporteurs to the Government of Equatorial Guinea, September 3, 2019, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=24805>.

²¹ “Equatorial Guinea: UN Review Should Highlight Abuses,” Human Rights Watch news release, April 9, 2019, <https://www.hrw.org/news/2019/04/09/equatorial-guinea-un-review-should-highlight-abuses>.

²² “Opposition Leader Detained and Beaten,” Amnesty International press release, December 15, 2016, <https://www.egjustice.org/post/opposition-leader-detained-and-beaten>.

²³ See, e.g. Office of the Government Spokesperson, “The Government of Equatorial Guinea Regarding the Information Featured in the International Press about the Report, ‘Keeping Foreign Corruption Out of the United States: Four Case Histories’,” February 15, 2015. See also Claimant Motion to Dismiss Complaint for Forfeiture *In Rem*, p. 29, *US v. One Gulfstream G-V Jet Aircraft* (January 23, 2012, Case 1:11-cv-01874-ABJ) and Affidavit, *Maseve Investments 7 v. Equatorial Guinea and Teodoro Nguema Obiang* (High Court of South Africa, No. 1407/2006, paras 11.2 and 11.2.1).

Amongst other breaches of the rule of law, the lack of judicial independence and due process is an impediment to civil society's ability to publicly engage on resource-related issues without fear of retaliation and holding corrupt officials accountable. Based on a report documenting abuses and political interference endemic in Equatorial Guinea's courts, in June 2019, the American Bar Association (ABA) called for immediate action by the government of Equatorial Guinea. ABA had observed a mass trial held earlier this year that ended in the conviction of 112 defendants.²⁴ Juan Mendez, the former United Nations Special Rapporteur on Torture, prepared a report for the ABA based on observers' notes that described grave due process violations before and during the trial. This included the prosecution offering little or no evidence to support its case against most defendants; or in some cases, presenting confessions that defendants testified in court were obtained under torture. The court, which included two judges appointed mid-trial by President Obiang, placed severe restrictions on the defense, including prohibiting them from presenting evidence of torture and curtailing lawyers' access to clients.

Based on the report findings, the American Bar Association Center for Human Rights (CHR) *"...call[ed] upon the Equatoguinean authorities to drop charges against and immediately release the many defendants whose connection to the alleged coup was never proven. With respect to the other defendants, CHR urges the Equatoguinean authorities to review the sentences imposed and either institute proceedings that respect the due process of law or release defendants unconditionally."*

The abuses observed by the ABA and documented by the former UN Special Rapporteur during this trial are illustrative of torture, due process violations, and political interference that our organizations have documented in countless cases in Equatorial Guinea over the past several years.

Recommendations

For the reasons outlined above, **we respectfully request that the Executive Board delay the loan vote.** We believe that such a vote is premature and would be significantly risky for the Fund and Equatorial Guinea's citizens at this time. Such a vote requires additional consultation with key actors, including civil society, EITI Board members, and judicial reform analysts, to comprehensively assess risk and to strengthen the IMF's approach to addressing corruption in Equatorial Guinea.

²⁴ American Bar Association, "Preliminary Report on Mass Trial in Equatorial Guinea," June 20, 2019, https://www.americanbar.org/groups/human_rights/reports/mass-trial-eg/; American Bar Association, "Monitoring of Mass Trial in Equatorial Guinea," September 2019, https://www.americanbar.org/groups/human_rights/reports/fair-trial-report-equatorial-guinea-mass-trial/.

Should the IMF move ahead with the loan at a later date, we request, at a minimum, the following conditionalities:

1. Equatorial Guinea must be accepted as a Candidate Country by the EITI Board: In order to achieve a viable EITI candidacy, the government must, at a minimum, fully reinstate CEID and its ability to lawfully operate, end its attacks on Alfredo Okenve and others, and release Elo Ayeto. The Government of Equatorial Guinea should publicly announce that it fully supports the full participation of independent civil society organizations, and the wider public, including independent media, to engage in issues of human rights and good governance, without retaliation, through the EITI and other mechanisms.
2. Equatorial Guinea must adopt a law that expressly prohibits conflicts of interest and other forms of corruption, including by senior officials, and establish an anti-corruption body that operates independently of the executive branch empowered to investigate corruption, including at the highest levels.
3. Transparency of contracts and the public procurement process, including names of companies awarded government contracts, subcontractors, and all beneficial owners.
4. Declaration of all officials' assets and those of their close family members made available to the public.
5. The completion and publication of the audit by the independent firm of GEPetrol.
6. IMF surveillance must make systematic use of the categories outlined in the fourth pillar of the Fiscal Transparency Code on natural resource management for performance assessment and management.

We thank you in advance for your consideration, and we would welcome the opportunity to discuss this further with you.

Please do not hesitate to contact us at somayan@hrw.org if you have any questions or to arrange a meeting.

Respectfully,

Amnesty International
Center for Development Studies and Initiatives in Equatorial Guinea (CEIDGE)
EG Justice
Global Witness
Human Rights Watch

Natural Resource Governance Institute

Oxfam

Publish What You Pay

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