

## **Forum Arab Asset Recovery. September 2013, London.**

To understand the reasons that led our Association to bring before the Spanish Court a criminal complaint for money laundering, I will briefly describe the links between corruption and poverty in Equatorial Guinea, as well as the background to this complaint, I mean, the investigation of the U.S. Senate in 2004

Equatorial Guinea is among the major oil producing countries in Sub-Saharan Africa, with the consequent economic growth. But despite the income generated from the exploitation of this resource, over half the population lives in extreme poverty and without access to drinking water, a high percentage of children suffer from malnutrition, and public spending on education and health are very low. In contrast, President Theodore Obiang is one of the heads of state with the greatest personal wealth in the world.

This situation occurs because in Equatorial Guinea President Theodore Obiang and members of his government control the most beneficial natural resources of the country. As an example, the President has important holdings, including majority stakes in construction, oil, natural gas and communication companies. His eldest son, Theodore Nguema Obiang, controls the exploration and exports of wood, and the President's brother controls the services for security in the country. Particularly in the exploration of oil and gas, foreign American companies and their subsidiaries have participated from the beginning as partners of President Obiang and the companies he controls.

There is therefore a clear conflict between the personal business interests of the members of the governing elite and the public interest.

Alongside this hoarding of natural resources by members of the Government, there is also the fact that the fees oil and gas corporations pay the state of Equatorial Guinea for the exploration of these resources are extremely low (between the 13-20%), which represents a substantial difference from the 45-90% that is paid by the same sector in countries with similar conditions as Equatorial Guinea. As the members of government are shareholders in these corporations, they are the main beneficiaries of the low fees that the government established with foreign oil contracts in production sharing.

Moreover, there is no external control of the actions from government, which further contributes to the appropriation of natural resources by the rulers, with consequent damage to the citizens and the violation of their human rights.

Between 1995 and 2004 the Government of Equatorial Guinea opened over 50 accounts at Riggs Bank in Washington, D.C. These were not only institutional accounts, but also personal accounts for government officials and their families. By 2003 they were the main clients of the bank, with a turnover amounting to an estimated USD 700 million.

The Permanent Subcommittee on Investigations of the U.S. Senate investigated these accounts and issued a report on 15 July 2004. It found that Riggs Bank had opened accounts in name of the President of Equatorial Guinea, his wife and other relatives, who had deposited over USD 13 million in cash, with little questions asked. Also, this bank had helped the President and his eldest son to create shell companies, including an entertainment one that came to have a balance of more than USD 12 million. In short, it revealed information that left questioning the legality of the origin of the funds deposited into the bank.

Regarding the institutional accounts held at Riggs Bank, attention should be given to the account belonging to the Treasury of Equatorial Guinea, where the U.S. oil companies made payments for the exploration of crude in the country. But in this and in other accounts of the State of Equatorial Guinea, the oil companies also deposited funds for services that held no relation to oil industry, such as awarding scholarships to students from Equatorial Guinea to study in the United States, or payment of expenses of diplomatic property. The companies also made payments to personal accounts of members of the government.

The U.S. Senate also discovered that from this account belonging to the Treasury of Equatorial Guinea, Riggs Bank had authorised wire transfers in the excess of USD 35 million to accounts of two companies in Spain and in Luxembourg. Relying on bank secrecy provisions of the laws of these two countries, the financial institutions receiving those funds refused to provide information regarding the beneficial ownership of those companies receiving the funds. The Subcommittee on Investigations of the U.S. Senate expressed it had reason to believe that at least one of these two companies could be wholly or partially owned by the President of Equatorial Guinea.

The U.S. Senate concluded that Riggs Bank turned a blind eye to indications that the President and other senior officials of the Government of Equatorial Guinea were managing funds obtained through corrupt practices abroad, allowing suspicious transactions to be carried out without informing the competent authorities. Riggs Bank could not explain its actions and finally closed the accounts of Equatorial Guinea in 2004.

In relation to funds transferred from the accounts belonging to Equatorial Guinea at Riggs Bank to Spain, the account in Madrid received a total of USD 26.5 million between June 2000 and December 2003. Although, as discussed, neither the bank receiving the funds nor President Obiang provided information on the company receiving the funds, it was soon discovered that it was a company with headquarters in Panama, which had been incorporated in 1998 and whose purpose was the provision of shipping services. One of the representatives of this company had a longstanding relationship with the government of Equatorial Guinea, as he had been a diplomat in this country.

The Money Laundering Prevention Service of the Bank of Spain investigated these transactions of Riggs Bank to Madrid in 2003, and concluded that a fraction of the funds had been transferred to the provision of shipping services. This, however, is in contrast with the large amount of funds transferred that held no relation to the purpose of that shipping company. In other cases it was not even determined the reason for the transaction. The Panamanian company also did not develop any kind of commercial activity in Spain, limiting itself in receiving in its account in Spain the public funds of Equatorial Guinea and transferring them to a plurality of companies dispersed in numerous countries. Moreover, the Panamanian company transferred some of the public funds in favour of high-ranking government officials of Equatorial Guinea.

Therefore, the receipt of Equatorial Guinean public funds in Spain and its transfer abroad was aimed at diverting funds through a shell company. As said, the U.S. Senate considered this company to be either owned by the President of Equatorial Guinea or to be under his control.

Moreover, due to the fact that the facts discovered by the U.S. Senate could have resulted in a crime of money laundering in Spain, the Spanish Special Prosecutor's Office for the Repression of Economic Crimes Related to Corruption opened an investigation in our country in October 2004.

The Money Laundering Prevention Service of the Bank of Spain continued to investigate the activity of the company in Spain that received the funds from Riggs Bank and found that, as of 2005, their agents had formed new companies in Panama, for which bank accounts were also opened in Spain. Reproducing similar operations of its predecessor, these companies also received funds from accounts in France belonging to Equatorial Guinea, which had been used for the acquisition of property in Spain.

The Open Society Justice Initiative (a society that promotes justice for society), following on an investigation into corruption in the extraction of oil and gas in Equatorial Guinea, was keen to take legal action in countries such as Spain or Luxembourg, countries which monies stemming from corruption in Equatorial Guinea could have been laundered.

In October 2008, with the support of this organisation, the Human Rights Association of Spain (*Asociación Pro Derechos Humanos de España* or APDHE) filed before a Spanish court a criminal complaint for an alleged money laundering offence. The popular action is foreseen in Article 125 of the Spanish Constitution, and provides legal standing to any citizen or legal person – normally associations, NGOs and other public or private institutions. While in Spain the Popular Action can intervene in criminal proceedings without the indictment of the Prosecutor, the support of this public body is fundamental to advance in investigations because of the staff specialised in economic crime investigations, and because the investigating magistrate is more receptive if the proceedings requested through the Popular Action have the support of the Prosecutor.

With respect to jurisdiction, according to the United Nations Convention against Corruption and the European Convention on Laundering, Search, Seizure and Confiscation of the Products of Money, our domestic legislation establishes the jurisdiction of its courts to investigate money laundering offences committed in Spain, although the predicate offense to money may have been perpetrated abroad.

What was sought in this criminal complaint was that the mentioned funds received from Riggs Bank would have been channelled through a special purpose vehicle and that those funds would have been used to acquire property in different Spanish provinces. The criminal action was directed against senior government officials of Equatorial Guinea, excluding the President as he enjoys immunity.

Regarding the predicate offence to money laundering, it was understood that its origin was the misappropriation of funds in Equatorial Guinea, on practices such as requiring payments from the oil companies by the rulers, in order for the former to explore crude, or bribes from multinational to members of government, for the same purpose.

But what transcended the criminal proceedings itself was the continuous and systematic violation of the economic and social rights of the Equatorial Guinean people, a direct consequence of corruption prevailing in the country.

The Spanish Court accepted the criminal complaint of our Association, and made a comprehensive analysis of the bank account belonging to the company which had

received the funds, since the account had been opened in Spain in 1998. The companies that had been later opened by the persons behind the company were also analysed, and they had been receiving funds in Spain without developing economic activities in our country. Moreover, it was detected that the representatives of the company which had received the funds had acquired substantial properties in Spain. In parallel, senior government officials of Equatorial Guinea are under investigation for laundered monies into the Spanish territory.

The properties that are being discovered during the criminal investigation can be frozen when the Court gets more evidence of the involvement of the suspects in the acts of money laundering.

It is known that one of the challenges to advance criminal proceedings pertaining to money laundering is to verify the predicate offence. Even though the Spanish law does not require a prior conviction for the predicate offence, it is necessary to demonstrate its existence through circumstantial evidence.

Therefore, in addition to proposing measures so as to determine the facts which constitute money laundering, our Association has been providing the Special Prosecutor with relevant information about the predicate offence to the money laundering in Spain. The co-ordination between investigators from other countries – in whose courts there are also proceedings related to money laundering from corruption in Equatorial Guinea – has been key, specifically with the popular complainant in France and the Department of Justice in the United States. With the same purpose of contributing to the progress of the criminal proceedings, we have been maintaining contacts with potential witnesses on the corruption practices in Equatorial Guinea.

APDHE has extensive experience as a popular complainant in cases of serious crimes against humanity, such as genocide or torture. However, economic crime investigation requires knowledge of very specific subjects, such as company and business law, or accounting.

To consolidate the legal knowledge that are required by the investigation of such crimes, the lawyers of APDHE research the legal regulation on corruption and money laundering, as well as Spanish jurisprudence in such cases. This analysis allows us to acquire an overview on key aspects of organised economic crime, such as proof of the predicate offence to money laundering, or restitution of the misappropriated funds to the public administration.

Another aspect we study in cases of corruption and money laundering in Spain, is the forfeiture of illicit assets.

The Spanish Criminal Code provides the forfeiture of instruments of crime, the effects of crime, but also the forfeiture of the proceeds (earnings) of crime (art. 127 CP).

At the end of 2010, the Spanish Criminal Code suffered an important amendment, because it allows to confiscate, in case of criminal organizations, not only the assets coming from crime, but also those assets that have not been able to prove that come from the specific crime. In order to confiscate these assets, the value of assets has to be disproportionate to the legal incomes of persons convicted for the particular offenses.

In Spain there is an Asset Recovery Office, which depends on the National Police. But this office has limited resources specifically involved in the location of assets. This office has a list of assets seized by the police.

Also at the end of 2010, the Procedure Criminal Law was amended, including a new provision, which provides for the creation of a new Asset Recovery Office. At the request of the Prosecutor, the Judge may order to this Office the location of illicit assets. As the other office, this one also depends of the Police. But more than two years after this amendment, the Government has not yet provided specific regulation of the rules and powers of the new Office. It is supposed that the creation of this new office will solve the problem of the assets that are seized at the actual office, without giving them a specific destination.

In cases of drug trafficking and related crimes, the seized assets are taken to a Seized Assets Fund, created in 1995, that depends on the National Plan on Drugs. The earnings from the sale of illicit assets is applied to the prevention, investigation and prosecution of crimes related to drug trafficking, and for drug prevention programs

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