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CONTENTS

GLOSSARY	3
PREFACE	5
EXECUTIVE SUMMARY	6
I. INTRODUCTION	9
II. ASSESSMENT OF GOVERNANCE AND CORRUPTION VULNERABILITIES	10
A. Overall Situation	10
B. Fiscal Governance	12
C. Rule of Law	21
D. Market Regulation and Business Climate	23
E. Anti-Money Laundering (AML) framework	24
F. Anti-Corruption Framework	28
III. KEY AREAS FOR REFORM	29
TABLES	
1. Fiscal and Public Financial Management Measures	29
2. Customs, Tax Policy, and Tax Administration	33
3. Rule of Law Measures	35
4. Regulatory Framework	37
5. AML/CFT	38
6. Anti-Corruption	40
ANNEXES	
I. Sources and Indicators	43
II. List of Fiscal Documents Prepared by the Government	48
III. List of Meetings Officials and Stakeholders	49
IV. Definitions of "Corruption" and "Governance"	50
V. Bibliography	52

GLOSSARY

AG	Attorney General
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
ANIF	National Agency of Financial Investigation
ASYCUDA	UNCTAD Automated System for Customs Data
BCP	Basel Core Principles for Effective Banking Supervision
BEAC	Bank of Central African States
BO	Beneficial Owner
BNI	Bearer Negotiable Instruments
CEMAC	Central African Economic and Monetary Community
COBAC	Central African Banking Commission
DGCP	General Direction of Public Accounting
EITI	Extractive Industries Transparency Initiative
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GABAC	Central African Anti-Money Laundering Task Force
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
MFEP	Ministry of Finance, Economy and Planning
MFI	Microfinance Institution
MLA	Mutual Legal Assistance
MMH	Ministry of Mines and Hydrocarbons
NPC	National Payments Commission
OHADA	Organization for the Harmonization of Business Law in Africa

PAO	Principal Authorizing Officer
PEP	Politically Exposed Person
PGE	Annual Budget Law
SEA	Secretariat of State for Audits
SG-COBAC	COBAC General Secretariat
SLA	Standard Level Services of Agreement
SOE	State-Owned Enterprises
TPI	Third-Party Indicators
TSA	Treasury Single Account

PREFACE

Background and Mission

Staff from the Fiscal Affairs (FAD), African (AFR) and Legal (LEG) Departments of the IMF conducted a diagnostic of governance and corruption in Malabo, Equatorial Guinea from June 11-15, 2018. (the “mission”).¹ The objectives of the mission were to discuss with the authorities: (i) governance and corruption issues in Equatorial Guinea; and (ii) to articulate measures to help improve governance and the fight against corruption.

The mission was a follow-up from a previous scoping mission which took place in December 2018. The mission’s tasks included conducting additional meetings with government officials, state-owned enterprises, private sector actors, civil society organizations (CSOs), international organizations, and diplomatic missions with a view to the drafting of a diagnostic report.

The mission was assisted by the officials and staff of the Ministry of Finance, Economy and Planning (MFEP) and all counterparts met who provided close cooperation and helpful background information. The mission would like to express its appreciation to the authorities for their cooperation and their support to facilitate the mission’s work.

During the mission, difficulties were encountered with regard to the availability of requested information and data despite the general cooperation of the authorities involved.

Methodology and Key Terms

Consistent with the Fund’s mandate, the Fund will engage on governance issues in the context of use of Fund resources, where governance and corruption have a significant effect on macroeconomic performance and are critical to meeting program objectives. The Diagnostic Report will follow the methodology set out in key IMF policy documents, notably the IMF new framework for enhanced engagement on governance.²

Process

The diagnostic report is intended to present the mission’s key findings and recommendations, in cooperation with the authorities. It will inform the preparation of a governance strategy to be adopted by the government in consultation with Fund staff.

¹ The mission was led by Mr. Chady El Khoury (LEG) and the team consisted of Mr. Ioana Luca (LEG), Mr. Mr. Ramón Hurtado Arcos (FAD), and Mr. Garth Peron Nicholls (AFR).

² <https://www.imf.org/en/News/Articles/2018/04/21/pr18142-imf-board-approves-new-framework-for-enhanced-engagement-on-governance>

EXECUTIVE SUMMARY

1. Strengthening governance and anti-corruption in Equatorial Guinea is a necessary precondition for the government policy to unlock inclusive and sustainable national growth. Governance weaknesses and corruption have significant negative effects on inclusive growth³ and on the state functions that are most relevant to economic activity.⁴

2. **There is ample scope to strengthen governance in public financial management (PFM) and address corruption vulnerabilities in Equatorial Guinea.** On the revenue side, in relation to natural resources (especially oil and gas), governance challenges can result in seepage of revenues before they reach the national budget. On the expenditure side, vulnerabilities still exist in: (i) all phases of the public investment process, namely planning, allocation, procurement and control, even though the process has recently been strengthened with the establishment of a Certification Committee, among other measures, and the authorities are working on the implementation of a system for monitoring and controlling expenditure; (ii) the financial oversight system, which lacks external control and has weaknesses in internal control, characterized by inadequate coordination and the absence of sufficient powers and resources for such audit agencies; (iii) the public procurement framework, for example in terms of the lack of due diligence on contractors and sanctioning systems, which present opportunities to by-pass formally established procurement processes altogether. Uncontrolled spending is an important factor⁵ in the significant increase in debt stock (from 7.9 percent GDP in 2010 to 43.3 percent in 2018). In the area of transparency and controls, PFM systems are in need of significant improvement.

3. **Governance in the domain of the rule of law faces significant challenges, notably regarding implementation, transparency and enforcement of laws.** The governance system is characterized by a pervasive implementation deficit, which expresses itself in a failure to enact implementing regulations and failure to empower institutions. In terms of transparency, the Government has an official website that provides access to up-to-date information and an official website for the publication of statistical data. Despite this, there are still shortfalls in public data.⁶ Furthermore, claims

³ IMF 2016. Also the World Development Report (World Bank 2017a) argues that Sustainable Development Goal (SDG) # 16 (peace, justice, and strong institutions) “holds important instrumental value because the attainment of the goal will aid in the attainment of all the other SDGs.

⁴ IMF Executive Board Approves New Framework for Enhanced Engagement on Governance; April 22, 2018. <http://www.imf.org/en/News/Articles/2018/04/21/pr18142-imf-board-approves-new-framework-for-enhanced-engagement-on-governance>

⁵ Part of the rise in the debt ratio is driven by the collapse in GDP since 2010.

⁶ <https://www.guineaecuatorialpress.com/estadistica.php> Economic data only covers the years 2006-2010.

enforcement remains a significant challenge, and market confidence in the legal enforcement system, especially in the courts, could be improved.

4. Governance challenges also affect market regulation and the business climate. A diversification of the economy requires strong and accountable institutions and the creation of a level playing field. The authorities established a one-stop shop for registering companies in January 2019 which could reduce the time needed to set up businesses. In the future, this measure can be further implemented by providing online services to companies. Diverse challenges to businesses include significant hurdles and costs to starting a business (although the time needed to set up a business through the one-stop shop has been significantly reduced), the lack of automation of public registers, and of the revenue and customs services– and the potential for abuse of these.

5. Some legal and institutional pillars of the anti-money laundering (AML) and anti-corruption systems were in place, but the overall effectiveness is weak. The AML/CFT CEMAC directive of October 2010 is being implemented in Equatorial Guinea. The United Nations Convention against Corruption (UNCAC) was also ratified in May 2018 and a related draft law is being developed. On February 5, 2004, the Law on Ethics and Dignity in the Exercise of the Public Function in Equatorial Guinea was approved, the articles of which stipulate the obligation of senior public officials to present a comprehensive sworn declaration of assets within thirty working days of the assumption of their positions. However, the asset declaration system has not been implemented since its adoption. Equatorial Guinea became party to the African Union Convention on Prevention and Combating Corruption October 2019. The overall effectiveness of the AML and anti-corruption systems is weak. Corruption and money laundering activities are not properly detected nor sanctioned. The anti-corruption prosecutor's office in charge of investigation and prosecution lacks the necessary powers and resources to undertake its functions. Confiscation of proceeds of corruption and money laundering does not appear to be a priority objective. Very few corruption cases were investigated but did not result in convictions and confiscations.

6. The authorities may wish to address these vulnerabilities with reforms in the areas outlined hereunder:

- Strengthen the PFM system by applying the standards set at the regional level and enhance transparency and accountability. The reform should ensure a budgetary control system with capacity to oversee execution of expenditures and revenues. Specifically, the system should allow to track annual and multiannual related infrastructure commitments. The authorities should strengthen public financial management by implementing the Budget Law and the Treasury Single Account, streamlining and regularizing revenue and expenditure, providing significant enhancement of transparency and accountability through empowerment of auditing agencies, regularizing financial administration (by operationalizing the Treasury Single Account), and enhancing the publication of reliable statistics. Further fiscal aspects

should be addressed by securing progress on the wage bill and reviewing the tax and customs administration.

- Strengthen the rule of law through an effective implementation of existing laws, and enhance public data access on laws, orders and judicial decisions, as well as on the administration and efficiency of the courts.
- Enhance the business climate by simplifying the procedures for starting a business, including through the full implementation of the one-stop shop decree and the computerization of the commercial and land registries, as well as the revenue and customs services.
- Bolster the AML/CFT framework, by addressing the upgrading the legal framework and enhancing its effective implementation.
- Strengthen anti-corruption efforts, including by adopting a comprehensive anti-corruption law in line with the international standards, implementing a system for asset declarations and a code of ethics for senior public officials, and strengthening the investigations, prosecutions, and convictions of perpetrators of corruption and confiscate their ill-gotten proceeds. This should be part of an overall policy objective to strengthen the role of institutions.

I. INTRODUCTION

7. **The authorities acknowledge the significant challenges in the area of strengthening governance and combatting corruption and the urgency for addressing them**⁷. The challenges are not new. While Equatorial Guinea has undertaken efforts to address them in the past decade, there is still scope for considerable improvement. Strengthening governance and anti-corruption in Equatorial Guinea is a necessary precondition for recovery from the current crisis and a return to sustainable economic growth in the mid-term. It also is necessary for diversifying the economy and for unlocking inclusive and sustainable national growth.

8. **The authorities have undertaken some efforts in this area.** The 2012 Constitution provides for the establishment of a Court of Accounts that would supervise the government's financial activity. Additionally, the aforementioned Law on Ethics and Dignity provides for the establishment of a commission that would receive and audit asset declarations of public officials. From a policy perspective, governance was also one of the pillars of the National Development Plan, Horizontes 2020. In May 2018, Equatorial Guinea ratified the United Nations Convention against Corruption (UNCAC), and parliament is currently deliberating a draft anti-corruption law meant to implement the UNCAC. The government also issued decrees to facilitate the business sector in Equatorial Guinea, by eliminating the local shareholder requirement for businesses in the non-oil sector and establishing the one-stop shop for registering businesses.

9. **These efforts notwithstanding, governance and anti-corruption vulnerabilities continue to be serious and persistent challenges in Equatorial Guinea.** Regulatory, institutional and implementational weaknesses remained unaddressed, including in relation to the management of revenue (notably in the oil and gas sector), of expenditure (notably in procurement), and in securing transparency and accountability in respect of these core functions (weaknesses in effective oversight).

10. **The remainder of this report is structured in the following manner.** The overall state of governance in Equatorial Guinea is presented broadly, then in greater detail across each of the key transmission channels. Those include PFM and other fiscal aspects, financial sector oversight, rule of law, market regulation and business climate, AML and the anti-corruption frameworks. The report also provides prioritized recommendations in key areas of reform.

⁷ <https://www.guineaecuatorialpress.com/noticia.php?id=11477>

II. ASSESSMENT OF GOVERNANCE AND CORRUPTION VULNERABILITIES

A. Overall Situation

11. **The Government recognizes that the challenges facing Equatorial Guinea in governance and anti-corruption are directly connected with the country's economic structure.** The core element of the current structure is a heavy reliance on the oil and gas sector to generate government revenue. This revenue has, over the last few years, been used for very large public expenditures, predominately for infrastructure development. While these expenditures have allowed building a strong infrastructure base that in the right governance and policy setting could support non-oil economic growth, they have often bypassed the public budgetary process. Rather, the design weaknesses in this current model create significant opportunities for rents to be extracted. On the revenue side, the authorities are pushing ahead with reforms to address the shortcomings associated with weak revenue and customs administration. These reforms are expected to improve overall government revenue performance, but particularly non-hydrocarbon revenues. On the expenditure side, the authorities are also working to rectify identified weaknesses in the control and monitoring mechanisms of public expenditure, especially capital expenditure. This would also include the adoption of mechanisms to safeguard public resources and provide more transparency in the management of public funds, particularly through audits and the presentation of financial accounts.

12. **These weaknesses contribute to Equatorial Guinea's lack of economic diversification, and progress in diversifying the economy of the country requires these weaknesses to be addressed.** In a broader sense, a combination of the overreliance on natural resource revenue and the absence of economic diversification both create heightened vulnerabilities and reduce the incentives to seriously address Equatorial Guinea's governance challenges. In particular, an overreliance on limited number of extractive industries does not call for the level of institutional effectiveness and dependability on the rule of law which are required for entrepreneurship to flourish more generally and to attract broad-based foreign investment. Governance reform is therefore helpful to attaining the authorities' goals for Equatorial Guinea's economic diversification, which is the vehicle by which sustained and inclusive growth will be delivered.

13. **Rule of Law weaknesses generate vulnerabilities in all sectors of the economy.** Some of these weaknesses are specific to each sector reviewed in this report. However, two cross-cutting rule of law weaknesses that affect all sectors are: (i) an implementation deficit (a failure to implement existing laws effectively) and a lack of even-handedness and fairness in the application of the law; (ii) a transparency deficit (a comprehensive absence of transparency and public data reporting). These weaknesses are further magnified by capacity constraints.

Implementation deficit

14. **The implementation deficit is one of the most notable impediments of effective governance in Equatorial Guinea, affecting all sectors of the economy.** This large gap between the laws as written and their enforcement gives rise to discretion and arbitrariness, which generates significant corruption vulnerabilities. The implementation deficit comes in various forms, such as the failure to enact necessary regulations to implement statutory law or to properly empower institutions. Examples include the persistent failure to implement the asset declaration system required under the 2004 Law of Ethics and Dignity in the Public Service; the failure to establish the Court of Accounts provided for in the 2012 Constitution, and the failure to transpose the CEMAC Code of Transparency and Good Governance in Public Financial Management⁸ into domestic legislation. There have been prolonged delays in the implementation of these measures and, in general, the effective implementation of anti-corruption legislation continues to show significant weaknesses.

15. **The implementation deficit undermines legal certainty, governance stability and public trust.** While the implementation of laws needs time, much as institutions need time to build up and develop their expertise, the implementation deficit referred to in this report goes far beyond this and requires strong and sustainable commitment to achieve concrete results. Such a deficit infects public perception of governance as a whole: it undermines government credibility and legitimacy and has a corrosive effect even on well-intended reforms and critical governance instruments. A new governance policy in Equatorial Guinea must have as its paramount goal to ensure the immediate and effective implementation and operationalization of key laws that have already been enacted, and evenhandedness and fairness in the application of the law. It is also paramount to empower and ensure that critical institutions of economic governance and anti-corruption are fully operational, and accountable and independent. A failure to do so will undermine any further reform which the Government may announce.

Transparency deficit

16. **Another characteristic of Equatorial Guinea's governance vulnerabilities is the need for enhanced transparency in the public sector.** The failure to implement OHADA-compliant accounting may suggest that there is a general lack of transparency of government accounts and reports, particularly on the recording and management of large oil windfalls. There is a lack of basic data, and where such data do exist, insufficient publication and dissemination. Government websites, where they exist, lack important

⁸ Directive nr. 06/11-UEAC-190-CM-22. The draft transposition texts have already been prepared and approved by CEMAC, with the exception of the Governance Directive. An awareness-raising seminar has been organized with AFRITAC, and others are planned for members of the Government and Members of Parliament before adoption.

content. For example, licenses, public contracts and concessions, audit reports, official and beneficial owners are not published.⁹

17. Improving the transparency deficit can strengthen policy making, foster efficiency and improve accountability. Without structured information it is impossible to effectuate fact- and evidence-based policy making, or effectuate needs-based resource allocation. This condition more broadly fosters arbitrariness in decision-making and gives rise to discretionary procedures and delays (and its corollary of preferential treatment). Details of the implementation of previous reform commitments - the Horizon 2020 Plan (Plan Horizonte 2020) - were recently presented to civil society, the private sector, and development partners at the Third National Economic Conference (hereinafter referred to as 3CEN); and the government is – going forward- working to enhance transparency and increase the availability and accessibility of information from all official departments and public entities, and improve accountability by strengthening institutional websites.

Capacity Constraints

18. Weak capacity is widespread across institutions and contribute to the governance vulnerabilities. Low capacity suggests the need for a strictly prioritized, steady, and progressive agenda reform of governance vulnerabilities affecting key state functions notably fiscal, rule of law, regulatory reform, and anti-corruption and anti-money laundering areas.

B. Fiscal Governance

19. There are considerable governance weaknesses across all fiscal transmission channels, impacting directly both revenue and expenditure, and exposing the system to significant inefficiencies and corruption vulnerabilities. On the revenue side, as regards natural resources (notably oil and gas), governance and corruption challenges can result in significant seepage of revenue. On expenditures, weaknesses in planning and allocating infrastructure project expenses within multiannual budgetary tools and annual budget; procurement procedures; the wide possibilities of by-passing formal budget execution procedures for infrastructure expenses, in addition to lack of fiscal reporting, inadequate oversight, lack of due diligence on contractors, and weak sanctioning systems, can result in significant losses and opportunities for rent seeking. The government, following the program monitored by bank staff, has become aware of the need to improve fiscal management, with the creation of a certification commission to improve supervision of investment spending as an example.

⁹ According to the authorities, GE-proyectos publishes the names of the companies that have been awarded government projects on their website.

20. **The CEMAC directives on the harmonized PFM, including the code of transparency and good governance have not been transposed by Equatorial Guinea.**¹⁰ The CEMAC authorities decided on a global approach consisting of preparing and adopting the six 2011 directives as a consistent and indivisible whole. However, the directives were transposed in some CEMAC countries on a case-by-case basis, resulting in numerous discrepancies and even contradictions between the principles adopted in the directives and the transposed texts, or between the texts on the legal framework and the transposed implementing regulations of the technical framework. This situation hinders implementation of the planned reforms, particularly those aimed at transparency and improvement of financial governance. In Equatorial Guinea, the current PFM system is especially weak. Consequently, transposition of the directives cannot truly begin until prior actions aimed at improving the system and capacity building in the field of budgetary and general accounting have been taken.¹¹ Additionally, the government is working with development partners to improve Equatorial Guinea's statistical capacity. The government has recently adopted some measures such as the creation of the general accounting directorate and the committee for the incorporation of CEMAC's directives.

Fiscal Transparency

21. **While the government is making efforts to increase transparency, further improvement can be made relating publication of main fiscal aggregates.** The 2015 Open Budget Survey, updated in December 2016, indicates that the government of Equatorial Guinea makes none of the eight key budget documents publicly available online in a timeframe consistent with international standards.¹² This reflects a net decrease over the findings of the Open Budget Survey 2015. Nonetheless, the government has launched a new webpage this year (<http://www.minhacienda.gob.gq/>) to upload fiscal information related to the annual budget. This new webpage includes information on annual budget laws, supplementary budget laws and budget liquidation laws for the years 2015, 2016, and 2017. The country-reporting model (annual, budgetary and on cash-basis information) does not provide enough information on annual and multiannual commitments, as well as on paid and pending-payment obligations. This is one of the main causes for the current situation of weak tracking of the investment plan

¹⁰ For more information, please refer to CEMAC 2016 IMF selected issues paper: http://www.imf.org/~media/websites/imf/imported-full-text-pdf/external/pubs/ft/scr/2016/_cr16290.ashx

¹¹ In the case of CEMAC regulations, several draft transposition texts have already been prepared and have been approved by CEMAC. An exception is the Governance Directive, which is in the process of analysis, as is the case in most countries of the CEMAC subregion. An awareness-raising seminar on the subject has been organized with AFRITAC-Centre, and others are planned for members of the government and parliamentarians before the directive in question is adopted.

¹² <https://www.internationalbudget.org/publications/guide-to-transparency-in-government-budget-reports-why-are-budget-reports-important-and-what-should-they-include/>

and the accumulation of large payment arrears, whose exact level is not known with precision.

22. **The absence of fiscal data cloaks existing gaps on public financial management and hampers a deeper analysis of governance vulnerabilities.** As a result, data reconciliation from divergent sources of information becomes cumbersome. The government planned to address this situation making the General Direction of Public Accounting (DGCP)¹³ operational in the first semester of 2018 but has not been implemented. This information is not aggregated and is not up to international standards. The absence of this DGCP also prevents the preparation of government financial statements and state general accounts through which the public-sector entities should be held accountable.

23. **The government does not publish reports on natural resource management.** The government prepares estimates of the volume and value of major natural resource assets under different price and extraction scenarios; as well as estimates of the volume and value of the previous year's sales and fiscal revenue from natural resources and forwards them to the General Direction of Budget to help in preparing the PGE estimates. The INEGE, entity in charge of government national statistics, prepares some statistic data relating oil-revenues which are then published on an annual basis. However, the oil and gas contracts are not published and not accessible by the public.

Revenue Efficiency

Petroleum Revenue

24. **The corporate governance structures and risk management, internal control, and anti-corruption programs required by the Ministry of Mines and Hydrocarbons (MMH), GEPetrol and Sonagas need to be strengthened.** The MMH does not play the role of oversight over the state-owned companies (SOEs) GEPetrol and Sonagas. The two SOEs also do not seem to have proper governance structure, adequate accounting, or risk management, internal controls and anti-corruption programs. However, the consulting firm PWC is carrying out an audit of these companies.

25. **Vulnerabilities related to revenue from oil and gas might be considerable but are difficult to quantify.** The Staff-Monitored Program includes measures to enhance the transparency of the oil sector. The authorities have recently hired an internationally reputable firm to (i) audit the accounts of the state-owned oil and gas companies, and (ii) conduct a detailed reconciliation of Equatorial Guinea's gross hydrocarbon output with

¹³ The DGCP at the MFEP is according to CEMAC directives who has competences to perform the reporting function and provides information on budget execution and accounting.

hydrocarbon revenues received by the budget in 2017. The audits are expected to be completed by early June 2020.

26. **Equatorial Guinea’s potential membership of the EITI would be a critical opportunity to enhance transparency in the oil sector.** The government has expressed its intention to become a member of the EITI. As such, it would have to ensure an enabling environment for civil society participation, in accordance with EITI Requirement 1.3. Equatorial Guinea’s participation in the EITI and the publication of upstream oil contracts both in the official gazette and on the local EITI chapter’s website would provide important transparency on Equatorial Guinea’s oil sector. Downstream oil operations by GEPetrol, including the sale of the state’s share of oil, however would not be afforded the same level of transparency. Equatorial Guinea would have to publish reports by internationally recognized independent auditors as to the actual state’s oil share as a step towards improving transparency of oil accounts and reconciling state oil receipts with revenues from production levels.

Tax Administration

27. **The authorities are moving ahead with reforms to tax administration and customs that are broadly in line with previous Fund TA recommendations.** Among the reforms being implemented at tax administration are strengthening of the large tax payer unit and with the new requirement that companies must file their corporate tax in Malabo. They have also reduced from six steps to three that tax payers must take to pay their tax obligations. In line with the 2015 VAT Decree (which updates and expands the economic, financial, and economic reactivation measures for the sustainability of public finances in Brazil for the period 2016-2020), the DG has excluded income and VAT taxes from the exemptions enjoyed by companies. Computerization plans to link up to the DG on customs is also moving ahead. The authorities are also working on a series of new sanctions for non-compliance with the tax laws. In the area of Customs, a key focus is the adoption of the ASYCUDA IT system with the help of UNCTAD. The first phase of the project is to be implemented in Malabo in the fall of 2019, and thereafter in Luba and Bata. The authorities are confident that this new IT platform, in addition to providing much needed trade statistics, would also help to control potential fraud. They also plan to join the World Customs Organization (WCO).

28. **Governance vulnerabilities related to revenue from oil and gas are considerable.** Much of the revenues from the hydrocarbon sector are earned as non-tax revenues – royalties, which are strongly linked to international oil and gas prices. Tax revenues from the hydrocarbon sector consist primarily of personal income tax (PIT) and corporate income tax (CIT). The mission found deep-seated governance weaknesses in revenue generation (oil and gas industry) related to the lack of transparency in the valuation and disclosure of natural resources revenues (oil and gas), financial reports and statements, the government accounting systems and banking arrangements. The authorities have recently launched a series of initiatives to improve corporate governance.

These include: a public enterprise restructuring committee; adoption of the SYSCOHADA accounting system, and adoption of OHADA regulation.

29. **Despite recent reform efforts, tax administration remains weak with limited audit capacity and enforcement results in significant revenue loss.**¹⁴ A significant distance persists between its abilities and best practices. Thus, non-hydrocarbon revenue is very low by international standards. Tax administration institutions to support policy design and implementation (major reforms are needed to strengthen audit capacity; collection enforcement; and human resources) are required on an urgent basis. The culture of compliance is weak. Although a new website was launched by the MFEP in May 2018, most publications related to MFEP, customs and domestic tax administration functions and relevant data are still to be uploaded or made available to the public. Recently, the authorities hosted the 3rd national development conference, and within this context launched a public debate with the private sector, and civil society on Equatorial Guinea's fiscal agenda for 2020-22.

30. **Although the process for payment of taxes was recently streamlined (six phases were brought down to three), it continues to be generally cumbersome** Even though the tax DG refers to the existence of a one-stop shop for the payment of taxes, in reality the contributor must make the tax payment to the treasury's account at the commercial bank, then go to the treasury after about two days in order to obtain a confirmation of payment and then provide said confirmation of payment to the tax administration. Recently, the government appears to have stepped up its efforts to outline concrete plans to improve tax administration. To this end they have recently signed an agreement with the African Development Bank (AfDB) to provide a program of technical assistance to help improve public finance management by increasing the effectiveness of revenue mobilization and ensuring greater efficiency in public expenditure management.

31. **Although some reforms are being implemented, there are still various vulnerabilities at the tax administration and customs that might increase the opportunity of rent seeking.** The tax collection and collection enforcement functions are weak within the current structure of the administration. Also, the tax administration has not conducted a comprehensive study on tax expenditure and do not publish the list of beneficiaries and their benefits. Despite recent reform efforts, ad hoc concessions continue to be an important source of revenue loss. Collection of duties and taxes at customs is poor owing to poor recording of trade data and generous exemptions. According to the customs administration ad hoc concessions constitute largest component of total concessions. Moreover, the authorities' recent passage of a tax amnesty law in 2017 is likely to entrench the culture of non-compliance with tax obligations, as it sends the wrong incentives for tax payers. It is therefore important to

¹⁴ Measures to increase revenue with equity and efficiency volume II-Tax Administration, IMF TA report, November 2017.

amend this law in line with IMF staff recommendations and government plans. Finally, there is full reliance on a paper-based system and there is no computer system at the tax administration. In relation to the customs, the ASYCUDA computer system, after some delays is not planned for implementation in the fall of 2019 in Malabo port. Furthermore, there are no statistical, risk assessment, and valuation modules at the customs. There is dearth of trained personnel at customs in the culture and procedures of a modern professional customs officers. For the customs administration in Equatorial Guinea to move into the realm of best practices, modernization of the IT platform would have to be accompanied by structured training to raise skills and change the culture.

Spending Efficiency

32. **Fiscal planning instruments contain criteria on how to select investment projects to be included in the annual budget Annex of investment projects, and therefore to be paid during the year.** Despite of these existing criteria, their application lack rigor and the relationship between planning instruments and budgetary allocation is not understood as an interrelated mechanism allowing a proper governance of PFM through the control and monitoring of the main fiscal aggregates. The clearest example of this lack of coordination and respect for the budget management tools has been an uncontrolled growth on the number and amount of the investment projects portfolio. Coupled with the fall in fiscal revenue due to the drop in oil prices and production after 2014, shortcomings in estimating the necessary level of resources needed for payments and resulting in arrears. The merger of the ministry of Finance and the ministry of Economy and Planning to form a new single ministry is a step in the right direction to improve coordination on budget preparation and allocation.

33. **The MFEP prepares and approves a multi-annual fiscal scenario to frame the process of annual budget preparation¹⁵ and set up a fiscal path for the medium term.** However, this scenario is just considered as a "mere internal document", allowing changes in expenditure ceilings during the budget preparation, without any justification or explanation of the changes. This circumstance, together with numerous upward deviations on the execution of investment expenses in recent years, and payments done for investment projects off-the-budget-annex, has resulted in an increasing budget deviation from estimates to execution¹⁶. The budgets are prepared in accordance with the provisions of Law 9/2003, dated November 13, regulating Equatorial Guinea's public finances, and in accordance with the guidelines that are promulgated every year through ministerial orders. These orders set ceilings and establish 3 stages in the preparation of government budgets. A first stage consists of the preparation of fiscal guidelines by the

¹⁵ The 2017 PGE does not contain any reference to the multi-year budgetary scenarios.

¹⁶ The total, current, and capital expenditure ceilings previously fixed by the MFEP are frequently surpassed during budget negotiations. In the budget negotiations between MFEP, line ministries, public agencies and companies, the expenditure ceiling is increased without requiring either a decrease in other budget line or a higher collection of revenues.

MFEP, in accordance with macroeconomic goals, which are approved by the Interministerial Council; a second stage consists of holding budgetary conferences to decide the budgets of the institutions within the expenditure ceilings set by the higher bodies; and a final stage consists of execution, once the budget has been approved by parliament. On January 18, 2018, a circular was issued mandating that all spending authorization would need to be approved by the Ministry of Finance, Economy and Planning to reinforce the provisions of Decree 134/2015 of November 2, and to contribute to a better control and oversight of both current and investment expenditures.

34. **On investment expenditures, weaknesses in procurement, is potentially resulting in significant losses.** In addition to weaknesses relating to the public investment cycle aforementioned (planning, allocation), the procurement phase also lacks transparency and control. The tender notice or documents do not include the grounds for exclusion of bidders, the criteria for evaluating bids, the methods to assess the bids, or the main terms and conditions of the contract. Several additional deficiencies were identified in the World Bank 2017 report on benchmarking public procurement.¹⁷ In particular there is an inadequate oversight, lack of due diligence in relation to contractors and sanctioning systems, as well as the open opportunities for by-passing formal procurement processes altogether.

35. **The MFEP's ability to verify that payment orders sent to the National Payment Commission (NPC) correspond to projects included in the budget present vulnerabilities.** Although infrastructure payment orders are decided by the NPC comprised of representatives of the units involved within the capital spending chain, the lack of a previous verification implies that the execution of investment project may go over the initial budget forecasts and lead to a larger accumulation of arrears given the current lack of liquidity. Payments approval of infrastructure expenditures are analyzed and prioritized in advance by the NPC according to various criteria.¹⁸ Despite the application of these criteria, final payments to creditors highlight major vulnerabilities, opening up the possibility of discretionary and non-transparent actions that have a negative impact on the efficiency of public spending. A recent coordination mechanism between MFEP and GE-Proyectos is being implemented to ensure the alignment of budget commitments with cash availabilities.

36. **The government is developing a reliable and comprehensive database for investment projects with technical assistance from the World Bank.** The current features of the database, properly used, might help improve spending efficiency, reprogramming underway projects and reduce rent seeking opportunities, but the absence of tracking of the future commitments reduces its usefulness. Additionally, this database

¹⁷ <http://bpp.worldbank.org/en/reports>

¹⁸ These criteria are such as the degree of executed work, the age of the certification, the importance of the project, the amount of the invoice and contractor.

cannot assure data consistency as it is not used and shared by all ministries and entities involved in the infrastructure expenditure procedure.

PFM Control System

37. **The control framework is very weak, and both internal and external control present vulnerabilities to a different extent.** There is no external control of the state accounts. The 2012 Constitution establishes the Court of Accounts, which now needs to be made operational. It would be key to ensuring external control of public accounts, supervising the government's financial activity, and reinforcing the legislature's power to hold the government accountable.¹⁹

38. **The public finance internal control is very fragmented, lacks uniform rules and does not cover key aspects of public financial management.** The procedures to execute budget revenues and expenditures very fragmented. This fragmentation also applies to the budgetary control system. The control is different depending on the type of expenditure, budget execution procedure, control procedure (ex-ante or ex-post), and even units subject to control. Additionally, absence of reporting and low qualification of the control personnel hamper the efficacy of the control system.

39. **The legal framework in most of the cases allocates internal control functions to different units, but in practice the implementation is cumbersome and might lead to duplicated actions.** Sometimes the control is exercised in duplicate, as in the case of the General Direction of Taxes and the Secretariat of State for Audits (SEA) where both units might collect oil tax revenues. Other controls are exercised by bodies that have management functions violating the principle of separation of management and supervising functions, such as in the case of the Treasury regarding the payroll. Additionally, a comprehensive report compiling the main findings raised from internal control units is not prepared. The government has made efforts in this area and adopted a decree which stated that all expenditures need to be reviewed and cleared by general comptroller of the MFEP before their approval. Until the entry into force of this measure, most recurrent expenditure on was not subject to ex-ante control by the MFEP. This lack of ex-ante control can lead to: approving expenses without meeting the relevant legal requirements; allocating executed expenses regardless of the budgetary economic classification; and executing duplicated payments.

40. **The government has implemented some coordination measures to track and monitor capital expenditures mainly related to infrastructures project.** There is a Certifications Committee whose task is, among others, to control investment expenditure and reschedule it to bring it in line with current fiscal requirements and macroeconomic forecasts. This Committee brings together the main actors: the Ministry of Finance, Economy and Planning, the Ministry of Public Works, Housing and Urbanism, the Ministry

¹⁹ Parliamentary oversight of the budget appears ineffectual.

of Mines and Hydrocarbons, GE-Proyectos and the General State Treasury, and establishes as a prerequisite for any payment certification by this Committee. However, there is no ex-ante control by the MFEP over payable accounts arising from investment projects already executed but not paid yet. The monitoring system does not distinguish between the arrears already generated by executed infrastructure contracts and still pending payment, and the multi-year commitments derived from infrastructure contracts not yet initiated.

41. **GE-Proyectos, the autonomous entity in charge of the control of the execution of the investment projects, have implemented some measures to improve correlation between physical execution (certified work for payment) and financial forecast (payments) of infrastructure projects.** This entity hired audit firms to supervise this correlation for only some large investment projects. This verification remains very weak for the rest of projects. Given the importance of investments in infrastructure—amounting to 60 percent of the total expenditures (in the past reached up to 80-90 percent)—this vulnerability notably increased the execution of investment expenditures above the forecast payments resulting in an accumulation of arrears.

42. **The physical verification of the executed works on some large infrastructure is not carried out by an independent control unit different from the project managing unit.** This verification is carried out by companies contracted by the public entity in charge of executing the infrastructure portfolio of the government (GE-Proyectos), resting the entire verification process in them, without participation from GE-Proyectos due to the high number of verifications to be carried out and the lack of trained personnel in the entity. The absence of this verification prior to the payment of work certifications may allow for duplicate payments or payments to projects not yet being executed. Recently, a procedure has been initiated in which, following the report of the supervising company, a GE-Proyectos subcommittee is in charge of the physical pre-payment verification. In addition, the company auditing the arrears is required to carry out this task, as stated in the terms of reference (ToR) of the contract.

43. **Despite recent improvements, fiscal governance vulnerabilities continue to be related to certain treasury management inefficiencies.** While the treasury is currently implementing some measures aimed at strengthening the monitoring over the payments and to have certainty on the daily cash position, the lack of a Treasury Single Account (TSA), the small size of the banking market, the high amount of treasury balances, and the absence of homogeneous and transparent banking standard level services of agreement (SLAs) generate management inefficiencies which can lead to governance concerns. The country does not have a TSA.²⁰ The treasury bank accounts are not operated through a sweeping or cash pooling system that would allow a joint management comparable to a

²⁰ The Treasury maintains open bank accounts in the five commercial banks present in Equatorial Guinea, in the Bank of Central African States (BEAC) and abroad.

TSA. The payment procedure is totally centralized²¹ and differs based on the expenditure category. In addition, a special payment procedure allows the President of the Republic to execute payments without previous awareness of the Minister of Finance. The Treasury does not have SLAs with the banks. These issues can give rise to discretionary transfers of the treasury balances among commercial bank accounts.

44. **Additionally, there is no audit plan aimed at verifying procurement practices of State-Owned Enterprises (SOEs) and government entities.** The SEA only focuses on SOEs (and not government entities), and looks at operational budgets only, and with a limited staff which does not include a professional auditor apart from the General Director.²² However, with the recent adoption of the decree establishing the Steering Committee for the Restructuring of the Autonomous Agencies and Public Enterprises mentioned above, the Government has taken steps to improve the governance and economic and financial management of these entities, as well as their supervision and control in order to ensure transparency and accountability.

C. Rule of Law

45. **The Equatorial Guinea business sector does not appear to trust the justice system, and this negatively impacts both domestic and foreign investment, as well as the authorities' objective of economic diversification.** For the proposed governance reform to be implemented, it is required that trust in the judiciary be established. The following factors can be identified.

- **The independence of the judiciary is perceived to be weak.** There is a widespread perception in the market that the judiciary is not independent. According to this perception, the executive controls the judiciary and uses it to protect its interests. Steps should be explored to enhance the independence of the judiciary, such as professional exams for judges, clear term limits, termination only with cause which has been duly published and disseminated to the public, and public access to data bases of judicial decisions and laws (see para. below). A draft law on reforming the judiciary

²¹The general procedure for paying expenses, begins with an expenses relation prepared, either by the Treasury for current or the National Payment Committee for capital expenses, that it is submitted for authorization to the principal or secondary authorizing officer. The principal authorizing officer (PAO) is the President of the Republic and only some payments below certain amount can be authorized by the Prime Minister (secondary authorizing officer)

²² The SEA has used the reports sent to the government and the audited entities to raise its concern about the nonfulfillment of the regulations, and the consequences that this may have. The SEA runs a wide-ranging training program, to keep its technical staff up to date and thus enable them to provide their services effectively and efficiently; and it plans to extend the coverage of its activities by intervening in the construction and/or services areas as a way to ensure standards are fulfilled and ensure transparent management of public funds.

branch that we understand is currently before parliament would provide an opportunity for such reform.²³

- **The judiciary needs to modernize and become more service oriented towards societal and market needs.** This covers many issues, including the need to strengthen specialization to enhance expertise and efficiency, and the need to tackle the issue of delays in rendering decisions. The World Bank's Doing Business Report highlights that insolvency cases have failed to be effectively processed in Equatorial Guinea courts²⁴. To avoid a negative impact on credit markets, it will be necessary to investigate the underlying reasons related to the weaknesses of the judiciary, to enhance technical expertise, and/or publish the cases if any have emerged.
- **Judicial accountability is weak.** The authority and effectiveness of the judiciary (as well as the prosecutor's office) is negatively impacted by the absence of data. This includes general performance data – the chronic delays in rendering court decisions may be the outcome of the fact that there are staffing or capacity issues. The lack of accountability is also reflected in the absence of published judicial decisions,²⁵ and the limited access to laws. Laws are not easily accessible, as they are not free and cannot be accessed online, from an official source. There is neither publication of decisions nor a data base where they can be accessed, even by members of the judiciary. The publication of decisions, especially by superior courts, would enhance guidance to the lower courts and underpins market certainty. It is a performance standard for judges. There is no realistic measure of legal certainty and predictability without such published decisions and easier access to laws, which creates problems for financial markets and investment decisions.

46. **The enforcement of contracts represents a further rule of law weakness.**

According to data collected in the "Doing Business" report, Equatorial Guinea ranks 105th out of 190 economies in terms of ease of enforcing contracts. Recent investment disputes have centered on non-payment to investors or contractors by the government, or state-owned enterprises. This, along with the downturn in the economy, has led to many

²³ The Office of the Attorney General of the Republic and the Supreme Court of Justice have been carrying out campaigns to raise awareness among the population, and among judges, magistrates, and prosecutors, on respect for the principle of legality, the enforcement of judicial decisions and the motivation thereof. The aim is to have a modern judiciary that responds to present-day needs, to train judges and prosecutors among other actors, and to reform of the current Organic Law of the Judiciary and the Organic Law of the Superior Council of the Judiciary.

²⁴ Equatorial Guinea – Doing Business Report 2020, World Bank.

²⁵ At the start of each judicial year, on January 15, both the President of the Supreme Court of Justice and the Attorney General of the Republic must prepare a detailed report on all the activity carried out in the Republic of Equatorial Guinea. This report is not available to the public. However, as part of the recent restructuring of the Judiciary, an Information Technology, Archives, and Documentation Directorate has been legally established in the Superior Council of the Judiciary, with a specific mission to solve the problem of the publication of rulings and other important legal texts.

foreign-led operations to either pull out of the country completely, or downsize substantially.²⁶

47. **Despite being an OHADA member country and therefore having recourse to insolvency and debt recovery proceedings covered by the OHADA uniform codes, the country has no legal practice or expertise to resolve insolvent companies or recover debt.** The country now ranks 168th out of 190 countries in insolvency resolution processes according to the World Bank's "Doing Business 2020" report, reflecting fragility in debt recovery by creditors through formal judicial proceedings.²⁷

D. Market Regulation and Business Climate

48. **Despite some reforms intended to streamline business registration, the business environment remains difficult in Equatorial Guinea.** Acting through the National Center for the Computerization of Public Administration in Equatorial Guinea (*Centro Nacional para la Informatización de la Administración Pública de Guinea Ecuatorial*—CNIAPGE), the government has developed an application that centralizes all Ministry of Justice registries, which will be computerized in phase II of the project. However, currently, access to public information on market regulation and business climate in Equatorial Guinea is very limited. The "commercial²⁸ and property" registry is manual, as are the filing systems of the customs and tax administrations. Currently, there are two "commercial and property" registries: one on the island of Bioko and one on the continent. They do not communicate, meaning that a company by the same name could be registered on the continent and on the island as two separate companies. There is also no registration of beneficial ownership of a company, thereby impeding the application of laws against conflicts of interest of public servants.

49. **In January 2019, a one-stop shop for registering businesses was established.**²⁹ The one-stop-shop has a physical office in Malabo where new businesses appear to be able to complete their registration procedures considerably faster than in the past, although it is not yet fully online.^{30 31} The law establishing the one-stop-shop has not yet been fully implemented and it would appear that this is due to a lack of computerization

²⁶ <https://www.state.gov/e/eb/rls/othr/ics/2017/af/269729.htm>

²⁷ Equatorial Guinea – Doing Business Report 2020, World Bank.

²⁸ The DG of the Ministry of Justice mentioned that OHADA is providing technical assistance to computerize Equatorial Guinea's corporate registry. <http://www.ohada.org/index.php/fr/actualite/dernieres-nouvelles/2237-deploiement-du-rccm-informatise-apres-le-mali-et-le-burkina-faso-la-guinee-bissau-recoit-la-solution-logicielle-et-des-equipements-informatiques>

²⁹ Ventanilla Unica Empresarial, Decreto Num. 67/2.017 of September 12.

³⁰ Although the one-stop-shop is not yet fully online, it seems to be working well, with new firms getting their paperwork done within 7 days.

³¹ This improvement appears not to have been reflected in the World Bank's Doing Business Report 2020.

and capacity constraints (there are only two notaries public in the country, one for the island and one for the mainland). Public officials consistently pointed to computerization as a priority for making the public administration more efficient. Nevertheless, the capacity to design, operate and maintain such computer systems appears weak, even with outside expertise.

E. Anti-Money Laundering (AML) framework

50. Money laundering risk is perceived as significant in Equatorial Guinea.

Proceeds of corruption generated by senior public officials are sometimes laundered domestically without detection, and abroad as revealed by several cases reflected by prosecutorial actions of foreign countries. The AML/CFT framework has significant deficiencies and is not leading to prevention and deterrence of the laundering of proceeds of crimes.

51. In 2016, GABAC assessed the AML/CFT framework against the 2003 FATF standard, and the published results of March 2016 were very poor. The assessment focused on the legislative and institutional framework with some information about implementation, but it did not discuss the effectiveness of the framework. Out of 49 Recommendations, 21 were rated non-compliant, 21 partially compliant, 6 largely compliant, 0 compliant, and one not applicable. The report was published on the GABAC website.³² A follow-up report was presented in April 2017, but progress has been slow since the adoption of the assessment. Failure to strengthen the AML/CFT framework could ultimately result in listing Equatorial Guinea as a jurisdiction with significant AML/CFT deficiencies.

52. Overall, policy and national coordination to develop and properly implement AML/CFT measures could be improved further. The National Coordination Committee is a good step in that direction, but additional steps are needed to develop the AML/CFT policy and ensure its proper implementation at the national level. The following sections will focus on AML measures that are have also been typically found to be I effective in the fight against proceeds of corruption, notably financial sector compliance and oversight, entity transparency, institutional and criminal justice measures, and international cooperation.

³² <http://spgabac.org/rapports-devaluation-mutuelle/>

Integrity of the financial sector³³

53. **The AML/CFT supervision of banks and other financial institutions by a supranational body - the Commission Bancaire de l’Afrique Centrale (COBAC) - is inadequate and compliance is weak.** Requirements related to politically exposed persons (PEPs) and beneficial owners are not properly covered in the CEMAC legal framework and are not being implemented. The CEMAC regulation will have to be adapted to bring these requirements fully in line with international standards. It should extend the obligations to domestic, foreign PEPs including senior officials of international organizations, and their beneficial owners. It should also clarify whether the PEP is from the CEMAC region or outside. The CEMAC and COBAC regulations do not properly define beneficial ownership nor do they subscribe comprehensive requirements to identify and verify them. Finally, the requirements to report suspicious transactions are not fully in line with the standards and are not properly implemented. Banks filed a limited number of reports, and other institutions never submitted suspicious transaction reports (STRs).

54. **COBAC’s AML/CFT supervision of financial institutions is limited to a small number of requirements and is not effective. Designated businesses and professions (e.g., lawyers, accountants, and real estate agents) are not properly regulated nor supervised.** Supervision is not conducted based on risks of institutions, geographic locations, products, and clients (e.g., PEPs and Beneficial Owner). Furthermore, fit and proper tests of financial institutions are not conducted during the licensing and change of ownership process. Effective and dissuasive sanctions to improve compliance were not imposed for violations of obligations by financial institutions. The foreign exchange house, brokerage companies, insurance, and remittance companies are neither subject to nor supervised for AML/CFT requirements. Designated non-financial businesses and professions are not regulated nor supervised.

Transparency and availability of beneficial ownership information of legal persons

55. **The lack of availability of information on the ultimate beneficiaries of legal entities constitutes a vulnerability to corruption.** OHADA issued a uniform act for commercial law (AUDCG) and an act for commercial laws (AUSCGIE) which include some requirements to improve the transparency of legal persons. The OHADA texts are currently being translated into Spanish and, as a result, those laws are not fully implemented in Equatorial Guinea. There is a requirement in the commercial law for those involved in registering a company to provide and update the basic information about the legal ownership and control structure of the companies to the commercial register. In

³³ Supervision of the financial sector is a regional issue for the CEMAC region. Equatorial Guinea is outreaching to the COBAC to request enhanced AML/CFT supervision to improve the compliance to AML/CFT requirements.

practice, the basic information is only available manually, not easily searchable, and is not accurate. The government is implementing the public administration computerization project that could allow the digitization and easy access of the basic information. Beneficial ownership information is not available and cannot be timely accessed in case of misuse.

Institutional and Criminal Justice Measures

56. **The ANIF became operational in 2015 but lacks capacity to properly analyze and refer financial intelligence cases for investigation and prosecution.** Analysis and access to information is still conducted manually. The GABAC report highlighted its lack of independence, its weak cooperation with other competent agencies, limited cases disseminated to the judiciary, and limited resource capacity in relation to staff, budget and tools. Around 30 suspicious transactions reports were received from banks in 2016, and 2 were disseminated to the prosecution. The ANIF is preparing its application to become a member of the Egmont Group of Financial Intelligence Units in order to enhance its capacity to exchange information with foreign counterparts on the international level. In December 2018, the ANIF welcomed experts from the Cameroon ANIF, appointed by the Egmont Group, on a pre-assessment mission, since they are sponsoring the Equatorial Guinea ANIF in its accession process, which is proceeding normally.

57. **Although the CEMAC Regulation criminalized ML in 2003, in practice, money laundering cases including those related to proceeds of corruption continue to highlight shortcomings in the legal system.** Consequently, they are not properly investigated and prosecuted in practice; therefore, violators are not convicted. This is mainly due to the lack of capacity, widespread corruption, and weak institutional and internal controls of the competent authorities. The prosecutors and judges have little mastery of the CEMAC regulations, which are not available in Spanish³⁴. The regulation was not widely disseminated to prosecutors and judges, and no specialized awareness raising, and training was provided to support its implementation. The ANIF conducted an outreach to law enforcement agents and agents to clarify the requirements of the AML/CFT law.

58. **There are no cases of assets confiscated for ML in Equatorial Guinea.** National laws do not provide for the mandatory confiscation of laundered assets and instruments used when a court issues a sentence. Confiscation is currently limited to cases of fraud. Furthermore, there is no mechanism in place to manage the seized and confiscated assets. In practice, prosecutors do not pursue the illegal money related to financial crimes in

³⁴ CEMAC developed the regulations in French.

order to seize and confiscate them. They also lack the capacity and tools to detect and pursue proceeds of crimes.

59. **Finally, there is no system in place to detect transportation of cash and bearer negotiable instruments (BNIs) that might be related to money laundering, underlying crimes (e.g., corruption), or terrorism financing.** This is a measure that might prove effective in Equatorial Guinea since the economy heavily relies on cash. Although there are some CEMAC requirements to control the import and export of foreign currencies, the customs service in Equatorial Guinea does not perform any checks related to the transportation of cash and BNIs. The ANIF developed a declaration form that is yet to be put in place by the customs service.

International cooperation

60. **Although there are some rules in place for judicial and other forms of international cooperation, these are not in line with international standards.** The CEMAC regulation on international cooperation and the criminal procedure code (Articles 183 and followings) include some provisions related to mutual legal assistance, extradition, and the exchange of information. Those rules are not fully in line with international standards since they do not include clear deadlines for dealing with requests, do not provide prosecutors with explicit powers to process these requests, require dual incrimination of money laundering offense, and do not provide provisions for the confiscation and recovery of assets. In relation to extradition, they do not require the prosecution of nationals in case an extradition request is declined.

61. **Channels of international cooperation do not deliver appropriate information, financial intelligence and evidence to facilitate actions against criminals and their assets.** In practice, the Attorney General is in charge of requesting and receiving international cooperation information from foreign counterparts. There is no dedicated unit with specialized staff to process these requests. No statistics were provided on the number of mutual legal assistance (MLA) and extradition requests ongoing and outgoing. However, the Attorney General's do not seem to be proactive in pursuing information, financial intelligence and evidence about criminals and their assets. Prosecutors lack the capacity and resources to deal with those requests. Law enforcement agencies and the ANIF do not often send requests to their counterparts. The authorities were not able to share the number of requests received.

F. Anti-Corruption Framework

62. **Governance is weak and the risk of corruption is perceived as widespread in Equatorial Guinea.** The country continues to maintain a low ranking in corruption and governance indexes.³⁵

63. **Reducing corruption and mismanagement of public funds remains a major challenge for the country.** The legal and institutional frameworks to fight corruption is not in line with international standards. Overall, implementation is still weak and efforts to tackle corruption and its proceeds has not led to concrete results.

64. **Although some anti-corruption measures were introduced in 2012, the legislative and regulatory framework is not fully in line with international standards.** Since 2012, corruption has been considered a constitutional offence under article 15.2 of the Constitution. The UNCAC has recently been ratified and a draft anti-corruption law is being discussed by the Parliament. The African Union Convention on Preventing and Combating Corruption was ratified in October 2019 and will be transposed into domestic laws. While the criminal code provides severe criminal penalties for official corruption, the relevant agencies (e.g., anti-corruption prosecutor) did not implement the law effectively and officials engage in corrupt practices with impunity.

65. **Despite the laws in force in Equatorial Guinea, the implementation and coordination of anti-corruption policies in a prioritized and comprehensive manner remains a challenge.** An effectively implemented policy adapted to Equatorial Guinea's risks and context– in line with the UNCAC - could promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, transparency and accountability.

66. **The institutional framework is not fully operational and remains weak.** Some anti-corruption and control agencies were enacted in laws but not operationalized (e.g., Court of Accounts, Commission on Ethics). Other agencies were recently put in place (e.g., anti-corruption prosecutor, ombudsman) but do not have yet a good track record in implementation. The independence and capacity of the recently established agencies is still very weak.

67. **There is also a lack of effective enforcement of the anti-corruption regime and a general culture of impunity especially amongst senior public officials.** The number of cases under investigation, prosecution, and conviction is very limited. There were no substantial cases of confiscation against ill-gotten money generated from corruption, despite several well-documented incidents.

³⁵ African Development Bank Group, [Republic of Equatorial Guinea Country Strategy Paper 2013-2017](#), June 2013.

68. **Compliance with the obligation of public officials to declare their assets is still low.** Despite a decree that set-up the requirement to disclose assets, it has not been actively implemented. The duty to declare assets was incorporated in the reformed 2012 Constitution, along with the requirement to monitor the assets of senior public officials following the departure from the public function. The government has recently reiterated the need for revision and fulfillment of said regulation within the framework of the institutional agenda adopted in 3CEN, for the period 2019-2022.

69. **There is no proper code of conduct for public officials.** However, Law No. 2/2014 of July 28 on Civil Servants of the State stipulates duties, incompatibilities, accumulations and prohibitions for civil servants, to which must be added the provisions of the aforementioned Law on Ethics and Dignity. On the other hand, there are specific Codes of Conduct for the different autonomous bodies and public business entities. The Commission on Ethics - established to develop and put in place measures and systems to facilitate reporting by public officials of acts of corruption when such acts come to their attention in the performance of their functions – is not operational yet. Declarations of assets should extend to activities outside the country, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to public officials' functions.

III. KEY AREAS FOR REFORM

Fiscal Governance

70. Strengthen public financial management by applying the standards set at the regional level and enhance transparency and accountability. The reform should ensure a budgetary control system with capacity to oversee execution of expenditures and revenues. Specifically, the system should allow to track annual and multiannual related infrastructure commitments. Further measures include strengthening the role of the revenue administration and the customs.

Table 1. Fiscal and Public Financial Management Measures				
Measure		Main characteristics	Objective	Priority
Undertake a Fiscal Safeguard Assessment with FAD support		A Safeguard Assessment report is produced by FAD and transmitted to the authorities.	Enhance fiscal transparency	High

Develop and implement a system to track expenditure.		The system should be fully implemented to ensure the transparency and efficiency in expenditure among all concerned agencies.	Enhance expenditure efficiency and transparency	High
Adopt a medium-term fiscal framework to strengthen budget preparation and coordination on public investment		A medium-term fiscal policy perspective should be also developed, with targets consistent with the program. Establishing a multiannual framework for budgeting to ensure that new commitments are undertaken only if fiscal space is available after taking account of forward year commitments under the existing infrastructure projects.	Enhance budget preparation	Medium
Redefine the architecture of the internal audit system and establish a mechanism to coordinate internal and external control and audit institutions		A new architecture of the internal audit system is proposed as well as the coordinating mechanisms between the internal and external control. The external audit is made operational.	Enhance internal and external controls	High
Improve monitoring of domestic arrears and set up an arrears clearance plan		An independent audit should be conducted to validate the overall amount of real arrears, including the type and features of the financial instruments to be used to clear accumulated arrears. Staff should offer to assist the government	Improve monitoring of arrears	High

		with drafting the Terms of References of this audit. Setting-up an arrears clearance plan will also help with their monitoring.		
Implement the conditions for the adoption of the treasury single account (TSA)		Migrate gradually all government accounts from commercial banks to the TSA.	Improve cash control and management	High
Rationalize the procedures for the enforcement and control of expenditure mainly on multiannual commitments		Aligning with some of the best international practices, such as the implementation of a centralized system of controls for spending approvals where the Finance Ministry has full control of all spending decisions; the reduction of the number of "direct-payments" ordered by the Principal paymaster (the President) bypassing the Ministry of Finance; and the implementation of a comprehensive commitment control system	Enhance budget execution procedures	High
Improve government accounting		Set up the Public Accounting unit	Enhance fiscal reporting	High
Strengthen the public procurement process		Align procedures with best international practices, such as the inclusion in tender notice for documents the grounds for exclusion, the bid evaluation	Improve public investment management	High

		criteria, the assessment of bidders, and the main terms and conditions of the contract		
Transposition of PFM CEMAC directives into domestic laws		The six CEMAC directives are: 1) the code of transparency and good governance, 2) the budget law, 3) the general public accounting regulations, 4) the government budget classification, 5) the government chart of accounts, and 6) the government flow-of-funds table.	Enhance and align fiscal regulations to regional fiscal framework	Medium
Set up a government website with sufficient details about the ministries, agencies and state-owned enterprises (SOEs), and related financial data.		Establish a government website, properly organized and structured, with public access ensured.	Enhance fiscal transparency	High
Publish the internal and external debts, assets, natural resources, and financial obligations ³⁶		Publish on the website fiscal data in a timely and detailed manner, starting with quarterly budget outturns and budget annual liquidation.	Enhance fiscal transparency	High
Publish the audit and reconciliation		Publish on the Government website the international-audit-firm	Enhance fiscal transparency	High

³⁶ Starting 2018.

reports conducted on arrears and for the oil and gas companies oil reconciliation ³⁷		oil and arrears reconciliation reports		
Publish the capital spending undertaken by project		Publish on the government website a table with all capital spending projects. This includes projects coordinated and/or undertaken by GE-Proyectos as well as other projects monitored by other entities.	Enhance fiscal transparency	Medium
Publish all SOE annual accounts		Publish on the government website a list of all the SOE annual accounts	Enhance fiscal transparency	Medium
Publish SOE's audits		Publish on the government website all audits of SOEs.	Enhance fiscal transparency	Medium

Table 2. Customs, Tax Policy, and Tax Administration			
Measure	Main characteristics	Objective	Priority
Rollout the ASYCUDA platform according the current timeline	Paired with a secure process for information gathering or declaration combined with a method for direct payments to the treasury.	Enhance the capacity and governance of the customs	High
Submit a membership application to the World	Adhere to the World Customs Organization customs rules and introduce the latest international proposals for the customs organization.	Enhance the capacity and governance of the customs	High

³⁷ Starting from the 2017 external audit.

Customs Organizations	These customs rules and procedures would help to entrench the reforms efforts and modernization at the customs.		
Amend Tax Amnesty Law	Repeal provisions of the 2017 tax amnesty law that prescribes forgiveness of outstanding tax obligations. Instead, add provisions for the use of payment plans that preserves the principal debt amount, but incorporates penalties and interest on the outstanding tax liability.	Improve tax policy	High
Enforce existing penalties for non-compliance with tax rules	Strengthen enforcement of existing tax rules.	Improve tax compliance	High
Reduce ad hoc tax exemptions and publish the list of all exemptions granted during the fiscal year	Eliminate all ad hoc exemptions by fully implementing the provisions of Decree 134 of 2015. In addition, to increased transparency in this area, publish in a budget annex each year an estimate of the value of all exemptions granted during the previous years.	Improve tax compliance and fiscal transparency	High
Enhance domestic coordination between state audit and the General Direction (DG) for taxes	Improve coordination between the Secretary of State for Auditing and the DG for Taxes especially in relation to measuring the compliance of hydrocarbon companies with domestic tax laws.	Improve tax compliance	Medium
Foster tax paying culture	Develop a systematic program for fostering a tax paying culture in Equatorial Guinea. This program should comprise the following components: <ul style="list-style-type: none"> • A public communication strategy; 	Improve tax compliance	High

	<ul style="list-style-type: none"> • Simplification of the tax system and ease of paying taxes; and • Enforcement of sanctions for non-compliance with tax obligations. 		
Improve the governance of the DGIC	Strengthen the institutional structure and management of the DGIC. This should include creating stability in the management. The institutional structure should also be reviewed. Additionally, give specific attention also to human resource management and development.	Improve the capacity of tax administration	High

Rule of Law

71. Strengthen the **rule of law** through an effective implementation of existing laws, and enhance public data access on laws, orders and judicial decisions, as well as on the administration and efficiency of the courts.

Table 3. Rule of Law Measures			
Measure	Measure	Measure	Measure
Set up a website for each court	Set up a website for each court	Set up a website for each court	Set up a website for each court
Publication and dissemination of court decisions	Publication and dissemination of court decisions	Publication and dissemination of court decisions	Publication and dissemination of court decisions
Publication and dissemination of laws, orders, decrees	Publication and dissemination of laws, orders, decrees	Publication and dissemination of laws, orders, decrees	Publication and dissemination of laws, orders, decrees

Publish staffing numbers on each court's website	Publish staffing numbers on each court's website	Publish staffing numbers on each court's website	Publish staffing numbers on each court's website
Publication of performance data of the judiciary	Publication of performance data of the judiciary	Publication of performance data of the judiciary	Publication of performance data of the judiciary
Publish on the government website all data required to be published by the CEMAC Code of Transparency	Publish on the government website all data required to be published by the CEMAC Code of Transparency	Publish on the government website all data required to be published by the CEMAC Code of Transparency	Publish on the government website all data required to be published by the CEMAC Code of Transparency
Publish the audit of the accounts of the state-owned oil and gas companies	Publish the audit of the accounts of the state-owned oil and gas companies	Publish the audit of the accounts of the state-owned oil and gas companies	Publish the audit of the accounts of the state-owned oil and gas companies
Publish on the government website statistics on the production and export of extractive industries for each oil concession	Publish on the government website statistics on the production and export of extractive industries for each oil concession	Publish on the government website statistics on the production and export of extractive industries for each oil concession	Publish on the government website statistics on the production and export of extractive industries for each oil concession
Publish a register of all SOEs	Publish a register of all SOEs	Publish a register of all SOEs	Publish a register of all SOEs
Publish all SOE annual accounts	Publish on the government website a list of all the SOE	Increase transparency	High

	annual accounts for the past 3 years, and yearly going forward	and accountability in government administration	
Publish SOE audits	Publish on the government website all audits of SOEs undertaken by the State Auditor for the past 3 years, and yearly going forward. ³⁸	Increase transparency and accountability	High

Regulatory Framework

72. Enhance the **regulatory framework and the business climate** by simplifying the procedures for starting a business, including through the full implementation of the one-stop shop decree and the computerization of the commercial and land registries, as well as the tax (see above) and customs services.

Table 4. Regulatory Framework			
Measure	Main characteristics	Objective	Priority
Fully implement the one-stop-shop directive	Provide one-stop shop services through the website (filing documents, making payments, accessing the commercial registry - s see below)	Minimize steps to register a company, enhance transparency and, minimize interface between market participants and government agents	High
Automatize the customs services.	Provide services through the website (filing documents, making payments)	Minimize steps to make payments, enhance transparency and minimize interface between market participants and government agents	High

³⁸ This is one four-column table for each year with information on: which SOE were audited and which were not; which SOE got a discharge and which did not; which SOE obstructed auditing (by refusing access to premises, books).

Automatize the land registry	Provide services through the website (filing documents, making payments)	Minimize steps to make payments, enhance transparency and minimize interface between market participants and government agents	Medium
Automatize the commercial registry	Provide access to individuals to an automated system when registering and updating company information. Provide online access to the public to non-confidential information.	Ensure that beneficial ownership is collected and updated accurately and made publicly available	High

AML/CFT

73. Enhance the AML/CFT framework, by upgrading the legal framework and enhancing its effective implementation.

Table 5. AML/CFT			
Measure	Main characteristics	Objective	Priority
ANIF to apply for Egmont membership	ANIF becomes member of Egmont to enhance the international exchange of information	International cooperation and exchange of information delivers intelligence and facilitates action against criminals and their assets	High
Enhance the use of financial intelligence related to corruption for financial investigations	ANIF to enhance its capacity to receive, collect and analyze and disseminate	Improve the detection and action against corruption and related money laundering cases	High

	financial intelligence related to corruption.		
Improve compliance by banks and other financial institutions in implementing measures related to PEPs and beneficial owners	The ANIF will develop guidance to assist financial institutions in identifying domestic PEPs and beneficial owners of clients (both physical and legal persons)	Strengthen the implementation of the AML framework to prevent the misuse of the financial sector to launder the proceeds of corruption.	Medium
Enhance the cooperation between the ANIF and COBAC	The ANIF will develop and implement proper arrangements to facilitate cooperation and exchange of information between the ANIF and COBAC to improve the quality of inspections.	Enhance the COBAC inspections of financial inspections based on ANIF feedback on compliance	Medium
Publication of annual reports by the ANIF	ANIF will publish an annual report on its activities, budget and resources, and main achievements. The report will include typology studies on main laundering of proceeds of corruption schemes.	Enhance the transparency of ANIF	Medium

Anti-Corruption

74. Strengthen anti-corruption efforts, including by adopting a comprehensive anti-corruption law in line with the international standards, implementing a system for asset declarations and a code of ethics for senior public officials, and strengthening the investigations, prosecutions, and convictions of perpetrators of corruption and confiscating their ill-gotten proceeds.

Table 6. Anti-Corruption

Measure	Main characteristics	Objective	Priority
Adopt an anti-corruption law in line with international standards	In line with international obligations under the UNCAC, the law will criminalize corruption offences, enhance preventive measures including those related to asset declarations of senior public officials, conflict of interest, and access to public information, and strengthen the investigative and prosecutorial capacity and powers, enhance the role of courts specialized in anti-corruption, and bolster channels of international cooperation.	Bring the domestic anti-corruption framework in line with international best practices	High
Effectively implement the anti-corruption law by sequencing priority areas	Improve the capacity (e.g., budget, personnel, training) of the anti-corruption prosecutor's office to allow it to act efficiently and without undue influence against perpetrators of corruption offenses and their illegal proceeds.	Enforce against corrupt offenses domestically and on the international level	Medium

	<p>Improve the capacity of criminal courts to allow them to act against corruption offenses.</p> <p>Provide the anti-corruption prosecutor’s office with the capacity to seek and provide legal assistance for international cooperation in an appropriate and timely manner to pursue corruption and related money laundering cases which have transnational elements.</p>		
<p>Set up and implement a comprehensive asset declaration regime for senior public officials, their family members and associates, and a requirement to publish their asset declaration.</p>	<p>In line with international best practices, all high-level officials are required to file their assets and income declarations. Assets and income should those held in Equatorial Guinea and abroad, legally and beneficially owned. Declarations should be reviewed. Sanctions should be imposed against those who do not file their declarations. Commitment to make any further</p>	<p>Improve the detection of corruption and prevent conflict of interests by high-public officials</p>	<p>High</p>

	<p>revisions to the disclosure system as needed to ensure that it is effective, in agreement with IMF staff. For that purpose, the current decree on asset declarations will be amended in line with international best practices, and the implementation of the system is sequenced in the coming two to three years to ensure its full implementation.</p>		
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ANNEX I. SOURCES AND INDICATORS

Fiscal Governance

Public Procurement in Equatorial Guinea- Source: World Bank Benchmarking Public Procurement 2017: <http://bpp.worldbank.org/en/reports>

		Equatorial Guinea	
		Sub-Saharan Africa	GNI Per Capita (USD) \$13,340
PLC			
Question	Answers	Score	
Needs assessment, call for tender, and bid preparation score			
Consultation between procuring entity and private sector for needs assessment	No	29	
Internal market analysis guidelines during market research phase	No		
Open tendering as the default method of procurement	Yes		
Procurement portal(s) dedicated to public procurement	No		
Materials publicly accessible online	--		
Elements included in the tender notice and/or tender documents			
Technical and financial qualifications that bidders must meet	Yes		
Grounds for exclusion of bidders	No		
Amount of bid security, if any	Yes		
Form(s) of bid security, if any	Yes		
Criteria against which bids will be evaluated	No		
Method used to assess bids	No		
Main terms and conditions of the contract	No		
Payment schedule under the procurement contract	No		
Accessibility of tender documents for free	No		
Possibility for bidders to ask questions to procuring entity	Yes		
Timeframe for procuring entity to address bidder's questions	No		
Answers provided by procuring entity made available to all interested bidders	Yes		
Bid submission score			
Bidders required to register on a government registry of suppliers	No	73	

Foreign firms eligible to submit bids	Yes	
Minimum time period for bid submission	Yes	
Methods for bid submission	No electronic means available	
Form of bid instrument to guarantee bidder's offer	Bid security	
Amount of bid security instrument	Maximum percentage	
Forms of bid security	Cash deposit	
Choice for bidders on form of bid security instruments	Yes	
Timeframe for return of bid security instrument	Yes	
Bid opening, evaluation and award score		
Bid opening session takes place immediately (precise time of bid submission deadline)	No	29
Electronic opening of bids	Never	
If never, entities allowed to attend the opening session	Bidders of their representatives	
If always/sometimes, minutes of the opening session	N/A	
Evaluation criteria	Price and other qualitative elements	
Unsuccessful bidders individually notified of tender results	No	
Unsuccessful bidders can obtain feedback on reasons for not winning	Yes	
If no, debriefing organized for unsuccessful bidders	N/A	
Model contracts with standard clauses used when awarding a contract	No	
Content and management of procurement contract score		
Winning bidder can sign the procurement contract through an online platform	No	68
Once the procurement contract is awarded and before it is signed:		
Price renegotiated	No	
Timeframe for delivery renegotiated	No	
Financial aspects renegotiated	No	
Specific procedures to follow for contract variations (once contract is signed)	Yes	
Purchasing entity has the obligation to:		
Inform the other bidders of the post-award contract variations	No	
Publish post-award variations	No	
Purchasing entity can unilaterally modify contract during implementation phase	No	
Specific completion of works	Yes	
Specific procedures for the termination of the contract established in:	Legal framework	

Performance guarantee score		
Supplier required to provide performance guarantee deposit	Yes	70
Amount of performance guarantee is percentage of the contract value	Yes	
Choice of suppliers on form of the performance guarantee	Yes	
Forms of performance guarantee	--	
Timeframe for purchasing entity to return performance guarantee	Yes	
Circumstances where purchasing entity can collect performance guarantee	Yes	
Separate entity to oversee decision to withhold the performance guarantee	No	
Payment of suppliers score		
Supplier can request a payment online through an online platform	No	22
Legal timeframe for the purchasing entity to process payment	No timeframe	
Time to process payment starts from supplier's submission of invoice	N/A	
Time for supplier to actually receive payment (calendar days)	More than 181	
Interests and/or penalties payable in case of payment delays*	Yes	
Interests and/or penalties automatically paid without a supplier's request	No	
COMPLAINTS		
Question	Answers	
Structure of the complaints mechanism		
Legal framework on complaints mechanism	Yes	
Description of complaints mechanism	Procuring entity and court	
Choice of the authority before which filing complaint	No	
First-tier review		
During pre-award stage, only actual bidders have standing to complaint	Yes	
Process to complain same for actual and prospective bidders	N/A	
Complaining party has to prove damage in order to file a complaint	No	
Cost to file a complaint before the first-tier review body (USD)*	4	
Notification to procuring entity if complaint filed before a court or an independent review body	N/A	
If yes, timeframe (calendar days)	N/A	
Filing of complaint leads to suspension	No	

If the procurement process is suspended, bidders are notified	N/A
Complaint reviewed by same people whose action is challenged (at procuring entity)	Yes
Mandatory training programs on complaints resolution for agents reviewing complaints	No
Procuring entity required to provide first-tier review body with	N/A
Time for first-tier review body to render a decision (calendar days)	105
Legal time limit for first-tier review body to render decision	Yes
Remedies legally granted by the first-tier review body:	Overturn
First-tier review body decision are published	No
Second-tier review	
Legal framework stipulates conditions to appeal first-tier review body's decisions	Yes
Time limit to appeal (calendar days)	60
Cost to appeal the decision before the second-tier review body (USD)*	6
Filing of complaint leads to suspension	No
Time for the second-tier review body to render a decision (calendar days)	No data
Legal time limit for second-tier review body to render decision	No
Remedies legally granted by the second-tier review body	-
Second-tier review body decisions are published	Procuring entity's bulletin board
Post-award complaints	
Process to complain same than pre-award complaints	Yes
Standstill period after contract award to allow filing of complaints	N
Standstill time period (calendar days)	N/A
Standstill period mandated in the legal framework	N/A
Standstill period set out in the notice of intention to award	N/A

GABAC AML/CFT Assessment Report- Selected Results

Recommendation/Topic	Rating
Recommendation 5- Beneficial Owner and Customer due diligence	Non-Compliant
Recommendation 6 related to Politically Exposed Persons	Non-Compliant
Recommendation 13- Reporting of Suspicious Transactions	Partially-Compliant
Recommendations 17- Sanctions against financial institutions for lack of compliance	Partially-Compliant
Recommendation 26- Financial Intelligence Unit	Partially- Compliant
Recommendation 27 – Law Enforcement Agencies	Partially- Compliant
Recommendation 29- Supervision	Largely- Compliant
Recommendation 33- Legal Persons	Partially- Compliant
Recommendations 35 to 40 on International Cooperation	Partially-Compliant
Special Recommendation IX on Transportation of Cash	Non-Compliant

ANNEX II. LIST OF FISCAL DOCUMENTS PREPARED BY THE GOVERNMENT

Document	Published/Frequency	Institutional coverage	Other aspects related to coverage
Ley of PGE	Yes/Annual	Central government plus SOE's (100 %). No information on public-private enterprises	Recurrent expenditures are classified by economic categories and ministries. Capital expenditures are classified by project without allocating to the ministries. There is no overall budget for each ministry including capital and recurrent expenditures
Scenario pluriannual	No. For internal use. only/Annual	Same coverage as the PGE.	The report is discussed in the Committee of Analysis of the Economic Situation. (comprised by the line-ministries and BEAC)
Budget liquidation	No. For internal use. only /Annual	Same coverage as the PGE.	It is not included information on every line-ministry nor detail on the investment projects execution.
Budget outturns	No. For internal use. only /Trimestral	Central administration	It is not included the EEAA
Debt report	No. For internal use. only /Annual	Public sector	Commercial debt is not included
Receipts and payments report	No. For internal use. only /Trimestral	Same coverage as the PGE.	It is not included the EEAA

ANNEX III. LIST OF MEETINGS OFFICIALS AND STAKEHOLDERS

State Treasury: Treasury Secretary

Ministry of Finance: Budget division

Ministry of Finance: Customs

Ministry of Finance: Tax administration

Ministry of Finance: National Development Plan

Ministry of Finance: SOE division

Ministry of Finance: Public Debt division

Ministry of Finance: General Comptroller

Ministry of Finance: Legal affairs Ministry of Mines and Hydrocarbons

President's office: Official Gazette

President's office: State secretary for audits

Ministry of Justice: Judiciary, commercial and land registries, notary public

Ministry of Justice: Anti-Corruption Prosecutor

Ministry of Agriculture and Forestry

Parliament: Ombudsman's office

ANIF

SONAGAS

GEPETROL

GE-Proyectos

INEGE (statistics)

Constructora Besix

UNDP

Civil society- lawyer

CCEI Bank

Société Générale

US Embassy

French Embassy

ANNEX IV. DEFINITIONS OF “CORRUPTION” AND “GOVERNANCE”

In 2017 the IMF published the policy paper entitled “The Role of the Fund in Governance Issues—Review of the Guidance Note—Preliminary Considerations”³⁹ This paper gives the definition of some key terms, drawing from the work done by other agencies, such as the World Bank, the United Nations Development Programme, and the Organisation for Economic Co-operation and Development. The definitions are repeated here, as they are relevant for this Diagnostic Report.

- “Governance” refers to the institutions, mechanisms, and practices through which governmental power is exercised in a country, including for the management of public resources and regulation of the economy. This includes processes at the country level, including institution-level structural arrangements. It is an inherently neutral term, describing the framework for exercising authority, not characterizing its results.
- “Good governance” is a more normative concept, which recognizes that the quality of governance can impact its effectiveness and efficiency in achieving desired outcomes.
- Regarding “corruption,” a definition that has been generally accepted is “the abuse of public office for private gain.” This definition has been adopted by a variety of organizations, including the World Bank, and is consistent with the provisions of the United Nations Convention Against Corruption (UNCAC).⁴⁰ The definition focuses on abuse by public actors, meaning that fraudulent acts perpetrated exclusively by private citizens are not covered.⁴¹ It is recognized, of course, that corruption is often facilitated—and sometimes initiated—by private actors (for example, the offering of a bribe) and, therefore, that any meaningful anti-corruption strategy needs to address behavior within the private sector. It should be emphasized that an act can be corrupt even if it does not result in direct financial gain; an official also engages in a corrupt act if, as a result of

³⁹ Available at <https://www.imf.org/~media/Files/Publications/PP/2017/pp080217-the-role-of-the-fund-in-governance-issues-review-of-the-guidance-note.ashx>. This paper laid the analytical foundation for the IMF’s current guidance on involvement in governance issues, which was published in April 2018 (<https://www.imf.org/~media/Files/Publications/PP/2018/pp030918govpaper.ashx>).

⁴⁰Article 19 of UNCAC on Abuse of Functions states: “Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.” UN General Assembly, 2003.

⁴¹ For example, tax evasion and illicit cross-border flows engaged in solely by private actors are generally outside the scope of this definition except to the extent they relate to the proceeds of corruption.

political interference, he or she abuses public office. Moreover, although corruption is often associated with the misapplication of the law, it can also pervert the law-making process itself, i.e., where the decisions of legislators are motivated exclusively by private interests, often as result of the influence of powerful business networks (“state capture”). Finally, the Fund has concluded that systemic corruption has a particularly pernicious effect on economic performance.⁴²

The foregoing discussion illustrates that governance and good governance are broader concepts than corruption. It is possible for a country to have poor governance even in the absence of significant corruption, for example, because of ineffective, inefficient, or inequitable policies and institutions. The presence of corruption, however, generally indicates shortcomings in good governance. Accordingly, it should be acknowledged that any effective strategy for addressing corruption problems must be more comprehensive than simply anti-corruption measures to have a lasting impact; durable solutions will encompass governance improvements more broadly, including with regard to transparency, accountability, appropriately balanced regulation, and effective institutions. In sum, promoting good governance is the most durable way of addressing systemic corruption.

⁴² The May 2016 IMF Staff Discussion Note “Corruption: Costs and Mitigating Strategies” (SDN/16/05) defines “systemic corruption” as circumstances where “corruption is no longer a deviation from the norm, but is manifested in a pattern of behavior so pervasive and ingrained that it becomes the norm.” “Systemic corruption” has also been defined as corruption that “is both pervasive and organized, affecting different levels of government, and practiced by bureaucrats and politicians alike in nearly all government departments” Alam, M. Shahid, 1989, “Anatomy of Corruption: An Approach to the Political Economy of Underdevelopment,” *The American Journal of Economics and Sociology*, Vol. 48, Iss. 4, pp. 441-456.

Annex V. Bibliography

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