



**AN AFRICAN SAGA UNFOLDS.** Artist's impressions of (L-R) Mark Thatcher, President Obiang of Equatorial Guinea and his lawyer, Henry Page of Penningtons

# Losing the plot

The threatened coup in Equatorial Guinea was scuppered. Now a major international legal ruckus is unfolding. At its heart is Henry Page of City law firm Penningtons, advising the president of an oil-rich African state accused of torture. *Legal Business* investigates a sinister controversy

ANTHONY NOTARAS

**THE PLOT THAT SURROUNDS THE attempted African coup d'etat has all the makings of a grisly, hugely unpleasant spectacle. Torture is being alleged. People are suffering. By any standards, it's an almighty mess. A 52-year-old partner from Penningtons, a respected City-based English law firm, is in the eye of the storm.**

The legal fall-out from the attempt to overthrow the president of Equatorial Guinea has turned into a bitter affair. It raises issues as to how UK lawyers should deal with instructions when faced with such complex clients and allegations, and how much weight can be attached in the English courts to evidence gathered in circumstances where human rights abuses are alleged.

'You have to take abroad the standards and duties you have here,' says Jonathan Wheeler, head of litigation in Irwin Mitchell's London office. An expert in international fraud and asset tracing, Wheeler is no stranger to the machinations of less salubrious clients. 'We are still governed by our duties to the English >

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> court, and you have to explain that to your client,' he notes.

Penningtons partner Henry Page, by accepting instructions from Equatorial Guinea's president, has certainly put himself and the firm in the international spotlight as attention zooms in on some of his client's controversial actions. Serious questions have been raised by reputable international bodies concerning the actions of Page's client and the delivery of just treatment to a number of alleged coup-plotters incarcerated in Equatorial Guinea and Zimbabwe. Both the International Bar Association (IBA) and Amnesty International have become involved, as the report extracts (right, and p50) demonstrate. The UK courts, through which the African president is seeking redress from his alleged overthrowers, will have to look extremely closely at the quality of the evidence.

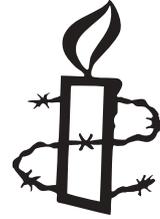
## Origins

The story of the purported coup in Equatorial Guinea is well known, and is propagating fast. The national press unsurprisingly cannot resist a tale that involves a spoiled coup, mercenaries, secret services and the UK government. Like a well-thumbed airport novel, the story boasts a cast of colourful characters that guarantee it will run for some time: Mark Thatcher, Simon Mann, Ely Calil, Greg Wales – and, even more tenuously, Peter Mandelson and one JH Archer – have all been linked by the media to the plot, to varying degrees.

Henry Page has brought a claim on behalf of his client, Equatorial Guinea, embodied by its President Teodoro Obiang Nguema Mbasogo, who came to power after deposing and executing his uncle in 1979. Issued in the Queen's Bench Division of the High Court in 30 June 2004, the claim accuses a number of men of attempting to overthrow the president through a well-financed coup plot, and seeks redress and damages. The respondents, a gaudy collection of individuals with multifarious African interests, are identified in the 'Characters' box on the opposite page.

The high-profile nature of this UK claim is coloured by the controversial nature of Page's client, Equatorial Guinea. Criticisms have been levelled at the quality of some of the evidence. Allegations of false testimonies and statements obtained by Equatorial Guinea under duress and torture have been made as Page's client pursues the case in

*International organisations have taken a close interest in the judiciary, lawyers and legal proceedings emanating from Equatorial Guinea. Here are some of Amnesty International's observations from 26 November 2004.*



## EQUATORIAL GUINEA: TRIAL OF ALLEGED COUP PLOTTERS FLAWED

'Eleven foreign nationals and nine Equatorial Guineans were sentenced to lengthy prison terms and hefty fines in Equatorial Guinea after a grossly unfair trial ending on 26 November 2004. They were convicted of (an attempt to commit) crimes against the Head of the State and against the government. The Equatorial Guineans were tried in absentia. The lawyers of the foreign defendants have lodged an appeal to the Supreme Court against the convictions.

Neither the verdict nor the sentences were translated, and the defendants left court with no knowledge of their fate.

An Amnesty International delegation observed the trial from its commencement on 23 August 2004, and, in view of serious procedural flaws and the admission of confessions allegedly extracted under torture, deemed it to be unfair.

Nineteen people, including five Equatorial Guineans, six Armenians and eight South Africans, were charged with crimes against the Head of State; crimes against the government; crimes against the peace and independence of Equatorial Guinea; possession and storage of arms and ammunition; treason; possession of explosives; and terrorism, for which the prosecution had demanded the death penalty for South African Nick du Toit and prison sentences ranging from 26 to 86 years for his co-defendants.

No evidence was presented in court to sustain the charges against the accused, other than their statements, which the defendants said had been extracted under torture. However, defendants' protestations to this effect were ignored by the bench. No court can ignore allegations as serious as these. They are sufficient grounds for a trial to be suspended and an investigation to be instituted.

At the request of the prosecution, the trial was adjourned indefinitely at the end of August, ostensibly in the light of emerging evidence deemed vital to the case. However, when the trial resumed in November, no new evidence was presented in court. Instead, new names were added to the list of accused, including that of Severo Moto, a political opponent exiled in Madrid, eight members of his 'government in exile' who were tried in absentia, and several British and South African businessmen...'

*It is these businessmen who face proceedings in the English High Court brought by Equatorial Guinea and its UK legal adviser, Penningtons.*

the UK; Page strongly refutes the allegations.

One of Page's legal opponents, Kerman & Co's Anthony Kerman, Simon Mann's lawyer in the UK, is forthright on the matter, questioning Page's acting for a client

'whose regime has become a byword for tyranny, torture and corruption'. Mann is in jail in Zimbabwe, having been found guilty of attempting to purchase firearms.

Page incurred criticism from Judge Deon Van Zyl in South Africa, when Equatorial Guinea was attempting – ultimately unsuccessfully – to question Mark Thatcher.

## THE CHARACTERS IN THE ALLEGED PLOT, AS NAMED IN THE UK CLAIM

The claim in question is being made on behalf of Page's client, the Republic of Equatorial Guinea (represented by the Attorney General), and Mr Teodoro Obiang Nguema Mbasogo, who has been president of Equatorial Guinea since 1979, when he deposed and executed his uncle, Francisco Nguema. The defendants of the claim have all been linked with the alleged coup, and include:

**Simon Francis Mann**, represented by Anthony Kerman of Kerman & Co  
**Greg Wales**, represented by Sarah Webb of Russell Jones & Walker  
**Ely Calil**, represented by Imran Khan of Imran Khan & Partners  
**Severo Moto**, whose lawyer is unknown  
**Systems Design Ltd** (a company incorporated in the Bahamas)  
**Logo Ltd** (a company incorporated in the British Virgin Islands)

Logo Ltd and Systems Design Ltd both give their place of business as Guernsey. They are owned by Simon Mann, the old Etonian, part-time actor and ex-SAS officer, who is set to spend the next seven years of his life in Zimbabwe's Chikurubi maximum security prison for attempting to purchase firearms, and attempting to purchase dangerous firearms without an end-user certificate. Greg Wales is a business consultant with a long track record in African affairs, who has known Simon Mann for over 20 years. Ely Calil is a UK-based Lebanese businessman with strong interests in the oil and gas sector. Severo Moto is a political opponent of President Obiang, and was allegedly to become president had the coup succeeded.

*Legal Business* has seen the television footage of the South African judge, who says of an affidavit by Henry Page presented at an early stage in the proceedings: 'A person who calls himself a solicitor of the Supreme Court of England and Wales, and *avocat* of the Paris Bar, has given us a document that is shocking in the extreme.' He adds: 'If this is the nature of the legal advice the Equatorial Guineans are getting, I would suggest very strongly that they get themselves another legal adviser.'

Penningtons and Page do not respond to these words, but the firm states that: 'The full judgment of the South African judge, Mr Van Zyl, contains no criticism of the conduct of Mr Page, or of the evidence presented by Equatorial Guinea and their lawyers.'

### The English battle

The precise ambit of the claim in the English courts has yet to be determined. *Legal Business* learns that the claim – yet to be served on all the defendants – will focus on describing a well-financed coup attempt by 70 ex-military personnel, which was foiled at

the last minute. Page will suggest that the defendants caused his client reasonable apprehension of the infliction of a battery on him by them.

Furthermore, Page is likely to claim that his client was and is

in fear of his life, and suffered and continues to suffer severe emotional distress.

Equatorial Guinea's president is set to seek damages for that suffering and distress, and for the costs of investigating the conspiracy; the expense incurred in increasing the level of security; and for the cost of the detention and trial of the alleged conspirators detained in Equatorial Guinea.

Exemplary damages will also most likely be sought, as well as an injunction restraining the defendants from planning an overthrow in the future. This is clearly not your everyday civil case.

Few lawyers would claim to have experience in matters involving such an array of issues, characters and jurisdictions. Educated at Prince Charles' *alma mater*, Gordonstoun, Henry Page is best known for his maritime dispute work. Previously a partner at Withers' Paris office, Page joined Penningtons in 1994 and is now the firm's sole partner in the French capital. It was his Gallic connections that led to his eventual instruction on 26 March 2004, when he was recommended to Equatorial Guinea by the French lawyer, sole practitioner Maître Rasseck Bourgi – a long-time adviser to the West African state.

Since then, Page has been in the driving seat in a legal chain of events that has rolled through the courts of South Africa, Lebanon, Guernsey, and now London.

### Body of evidence

Simon Mann and his Zimbabwean lawyer Jonathan Tawonana Sumkange are appealing his conviction in Zimbabwe. Kerman says he has yet to be served with a claim form by >

'The British government has admitted publicly that there was a coup plot of which it was aware, and comments by other parties including Mr Mann and his lawyers must be evaluated against this background.'

From a statement by Penningtons

# Equatorial Guinea and Penningtons

## TIMELINE: FROM COUP TO COURT

### 7 March 2004

Simon Mann and 70 alleged mercenaries are arrested in Harare airport in Zimbabwe, while refuelling their Boeing 727. They are allegedly stopping off to pick up arms while on the way to Equatorial Guinea to overthrow President Obiang.

### 8 March 2004

South African citizen Nick du Toit is arrested alongside 14 foreign nationals in the Equatorial Guinean capital of Malabo. Along with four locals who were also arrested, they are claimed to form an advance party for the supposed coup. They are jailed in Malabo's notorious Black Beach prison.

### 30 June 2004

Henry Page and Penningtons issue a damages claim in the Queen's Bench Division of the High Court, on behalf of Equatorial Guinea, against a group of alleged coup backers in the UK, including Simon Mann, Ely Calil, Greg Wales and Severo Moto.

### 21 July 2004

Simon Mann is sentenced to seven years in prison in Zimbabwe for attempting to purchase firearms in contravention of the Firearms Act, and for attempting to possess dangerous firearms without an end-user certificate.

> Equatorial Guinea and Page for their civil claim in England. But already a vicious war of words is taking place. Mann's defence will include serious and severe claims over how his testimony was secured when incarcerated

in Zimbabwe. Accusations of the most serious nature are directed against Page's client, ranging from the way in which evidence has been collected, to attacks of a more personal nature. Penningtons notes that: 'The

comments of [Anthony] Kerman are unfounded and misleading.'

Penningtons' managing partner, Lesley Lintott, declined to be interviewed on record, but adds in a statement: 'It is not insignificant that [Kerman's] allegations were raised some eight months after the events in question, and were first presented some 30 minutes before the court hearing in Guernsey. It is a matter of public record that the Guernsey court made the disclosure orders sought by our clients at that hearing (now subject to appeal). No understanding was sought from Penningtons and no criticism was made of Page.'

Henry Page also took statements from Servaas Nicolaas (Nick) du Toit, the South African citizen who was arrested in Equatorial Guinea's capital, Malabo, on 8 March 2004, and accused of leading an advance party of mercenaries for the intended coup.

Du Toit was arrested alongside 14 other foreign nationals, including Gerhardt Merz, a German who died in Malabo's notorious Black Beach prison nine days after his arrest. According to Amnesty International: 'The authorities claimed that he died of cerebral malaria, but two of the defendants insisted in court that he had died in front of them as a result of torture.' On 26 November

*The International Bar Association also expressed its concern over the Equatorial Guinea trials, having sent an observer to follow them in detail. Though the language is less colourful than that of Amnesty, the conclusions are similarly strong.*



### EXTRACTS FROM THE TRIAL OBSERVATION IN EQUATORIAL GUINEA

'An observer for the International Bar Association attended the proceedings in Malabo, Equatorial Guinea, to observe the trial of the 19 alleged mercenaries accused of plotting a coup d'état of the government of President Teodoro Obiang Nguema Mbasogo. The trial commenced on 23 August 2004.

In our view, access to counsel and the opportunity to adequately prepare one's defence is a fundamental tenet of the provision of a fair trial. The irregularities described are in breach of the prescribed standards and are procedural breaches which go to the root of the issue as to whether the trial is fair or not.

The lack of investigation into allegations of torture is the most troubling feature of this trial. In considering the weight of the evidence against the accused, particularly when reliance is being placed on confessions, there must be certainty that the circumstances of the taking of the statements were free from coercion, torture or ill-treatment. In addition, the issue of whether the accused were tortured goes to the root of whether or not a trial against them is fair or not.

In the IBA's view, having regard to international, regional and even the standards laid down in the national laws of Equatorial Guinea, there were sufficient irregularities within the trial that ought to have been taken into account by the tribunal to say that the trial fell short of international fair trial standards...'

### 25 August 2004

Mark Thatcher is arrested in South Africa and charged with organising 'finance and logistics' for the alleged coup, and for violating the country's anti-mercenary law.

### 26 November 2004

Nick du Toit is sentenced to 34 years imprisonment in Equatorial Guinea for crimes against the head of state and the government. Severo Moto is sentenced, in absentia, to a total of 63 years. Four more South Africans are sentenced to 17 years, and five Armenians are sentenced to between 14 and 24 years.

### 13 January 2005

Mark Thatcher is fined £265,000 and receives a four-year suspended sentence after plea-bargaining with the South African court. Thatcher admits that he paid £150,000 for a helicopter, despite misgivings about its use, suspecting that it might be used for mercenary activities.

It is also reported that Simon Mann might have his sentence reduced to four years, with the possibility that he might be out by March, if the Zimbabwean government provides amnesty in the run-up to the national elections.

Educated at Eton and Sandhurst, Simon Mann is a former SAS officer, and one of the founders of Executive Outcomes, which provided armed protection for businesses in conflict zones. Mann now faces seven years in jail in Zimbabwe for attempting to purchase dangerous firearms without an end-user certificate. He is alleged to be one of the masterminds behind the purported coup in Equatorial Guinea.



2004, du Toit was sentenced to serve 34 years' imprisonment for his alleged role; Severo Moto was sentenced to 63 years in absentia.

Four more South Africans and five Armenians were also sentenced to between 14 and 24 years in prison. The trial was condemned by independent observers from the IBA and Amnesty International. Amnesty states: 'The organisation is deeply concerned that, from the time of their arrest in March 2004, the fundamental rights of the accused were routinely violated. In the particular case of Nick du Toit, the alleged leader of the "mercenaries" in the Equatorial Guinean capital of Malabo, the authorities regularly exposed him to the international media and to interrogation by foreign lawyers and security officers.'

### International concern

Speaking to *Legal Business*, Mark Ellis, the IBA's chief executive, comments on a number of issues, particularly that of torture, which are being raised. 'This is really disturbing,' he says. 'Our view is that international standards would require that

if there are allegations of torture in the pre-trial stage, it is incumbent on the court to investigate those allegations immediately. Couple that with the issue that the evidence presented at the trial was obtained by statements made by the defendants. The evidence did not

even include original documents, which are required under any minimal standards of a fair trial. There really was an insufficient amount for one to conclude that it was fair. It was primarily based on circumstantial evidence and the depositions of the accused.'

One of Equatorial Guinea's lawyers says: 'You should go out there and have a look at the country. Frankly, I think the

reports are in the majority exaggerated and unjustified. The president of Equatorial Guinea is a respectable individual and I believe he is doing what he can to assist the country. As regards any criticisms of the trial, it is easy for foreign observers to say "this isn't how it is done in New York". They did their best to make it a fair and accessible trial.'

Du Toit was interviewed personally by Page during his incarceration in Malabo, and his evidence may be used by Page in the UK proceedings. Amnesty International was particularly concerned that, prior to his trial, du Toit's 'rights to remain silent, and to the presumption of innocence until proven guilty, were severely curtailed' by his being exposed to interview by foreign lawyers.

However, Page denies that Mr du Toit's human rights were breached. Penningtons states: 'At no time has Mr Page acted for, or on behalf of, the prosecuting authorities in Equatorial Guinea. The statements taken from Mr du Toit by Mr Page were intended to be (and have been used) to pursue civil claims in England and Guernsey against the European-based architects of the

'If this is the nature of the legal advice the Equatorial Guineans are getting, I would suggest very strongly that they get another legal adviser.'

Judge Deon Van Zyl, South Africa

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> conspiracy. The statements were never intended to be deployed against Mr du Toit in his prosecution in Equatorial Guinea (and were not so used).'

Du Toit made a statement for the Equatorial Guinea case that he was not giving his evidence under duress or pressure. Ellis of the IBA is unfazed by this disclaimer. 'It doesn't surprise me that someone signs that type of statement,' he says. 'Based on the mission that we took to Equatorial Guinea in October 2003, when we assessed the general condition of the legal system, I am confident in saying that we didn't overreact at all.'

Whether evidence obtained in Africa holds water in the English courts remains to be seen. Irwin Mitchell's Wheeler observes: 'If it appears that the evidence has been obtained in a way it should not have been, the judge will look dimly on it. It is a potential difficulty in acting for a government with a regime where there is a suspicion of human rights abuses or where they are known to occur. You need to explain to the client how evidence would look to an English court, and it won't look good if one of the witnesses claims that he didn't have access to legal advice and that he was tortured. If such claims are accepted, it is unlikely that the evidence will be admissible or have any weight attached to it.'

## Dirty money

Despite the controversy surrounding much of the evidence being used in the claim, the fact that Penningtons – a respected City firm with other offices in the South East

## PENNINGTONS EXPLAINS ITS POSITION

Henry Page decided not to go on the record with comments about the case, and his firm did not provide a photograph of him. His firm's managing partner, Lesley Lintott, declined to be interviewed, choosing instead to release a statement to *Legal Business*:

'There are ongoing civil proceedings in Guernsey and London involving our clients. There are also criminal investigations in different jurisdictions including the UK. In these circumstances, it is clearly not appropriate to enter into any detailed discussion on the merits of the different arguments which the other parties have communicated to you. It is relevant, however, that the British government has admitted publicly in parliamentary responses that there was a coup plot of which it was aware, and comments by other parties including Mr Mann and his lawyers must be evaluated against this background.'

No doubt the various arguments will be evaluated in due course by the competent court or jurisdiction, and given the pending proceedings, we do not intend to make further comment at this time.'

and Paris – took the Equatorial Guinea case has also raised eyebrows in the legal community. 'Penningtons is of the very reputable old-style school,' says one partner at another City firm. 'I am surprised it is involved in this.'

Penningtons has a turnover of £23.5m and is ranked 76th in the most recent *Legal Business 100*. This case could be mammoth, and a tremendous professional challenge. The attractions are manifold, but the allegations made against the state of Equatorial Guinea are hard to ignore.

Stringent money laundering laws mean that law firms must

do their due diligence on clients, even if they are governments – and report to the National Criminal Intelligence Service if they suspect their clients are engaged in money laundering activities.

There is no suggestion that Penningtons has lacked any scrutiny in assessing its client. Indeed, it is no secret that international authorities are watching Equatorial Guinea and its financial dealings ever more closely. A recent report on money laundering and foreign corruption released on 15 July 2004, by the US Senate's Permanent Subcommittee on Investigations, was heavily critical of Riggs Bank for taking money from the government of Equatorial Guinea without doing its due diligence.

On six occasions between 2000 and 2002, it was reported that cash deposits were made to the bank account of President Obiang's offshore shell corporation, Otong SA, totalling \$11.5m. On at least two occasions, according to the Senatorial report, the cash was brought to the bank in suitcases.

## Devil's advocate

Ultimately, of course, every client or nation deserves legal representation. 'When it comes to rogue states,' says Rodman Bundy, a leading international lawyer and partner at Eversheds' Paris office, 'my view is that if in the matter on which we have been approached there is a good legal case to be made, we accept those instructions.' With this in mind, Equatorial Guinea had every right for legal representation and Henry Page and Penningtons had as good a right as any to provide it. Page's opponent Anthony Kerman accepts this, though he still remains highly critical. 'My principal criticism here is not of Page's questionable choice of clients – but of the way he has chosen to go about representing Obiang's interests,' he says.

Ultimately, justice, as it is perceived in the UK courts, must be upheld. The reports by the defendants, the IBA and Amnesty International offer serious cause for concern.

Who is and isn't to blame, and whose evidence is to be believed, will in the end be decided in the High Court of Justice. There, both defendants and claimants can at least enter those doors with the knowledge that they will get a fair hearing. **LB**

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'As regards any criticisms of the trial, it is easy for foreign observers to say "this isn't how it is done in New York".'

A lawyer for Equatorial Guinea