



**ANNUAL WILLEM C. VIS
INTERNATIONAL COMMERCIAL
ARBITRATION MOOT**

THE PROBLEM

Thirtieth Annual Willem C. Vis
International Commercial Arbitration Moot

Vienna, Austria
2022/2023

Oral Hearings
31 March – 6 April 2023

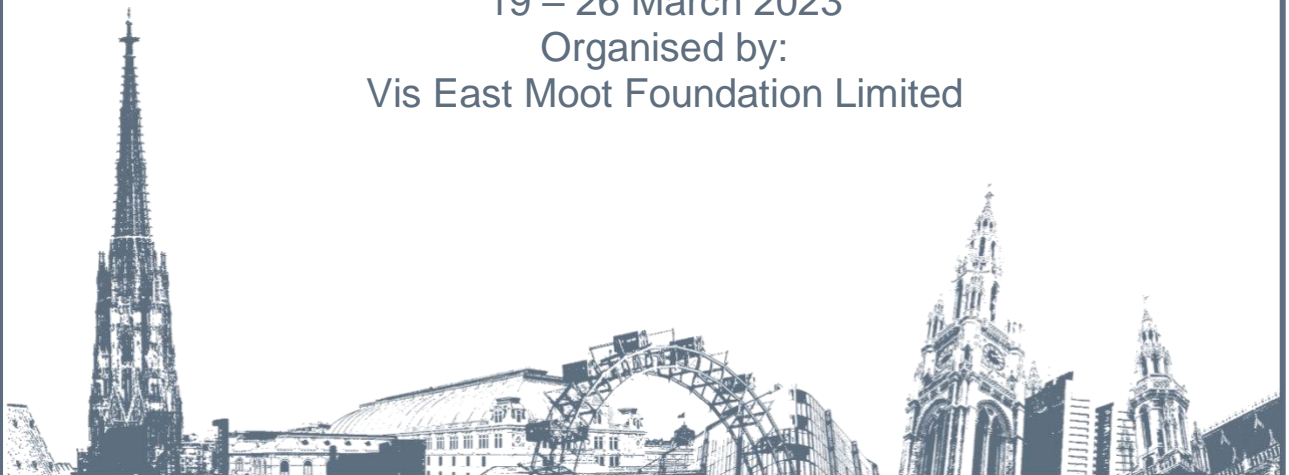
Organised by:
Association for the Organisation and Promotion of the
Willem C. Vis International Commercial Arbitration Moot

and

Twentieth Annual Willem C. Vis (East)
International Commercial Arbitration Moot
Hong Kong

Oral Arguments
19 – 26 March 2023

Organised by:
Vis East Moot Foundation Limited



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By email and courier
International Bureau of the Permanent Court of Arbitration
The Hague

15 July 2022

Dear Colleagues,

On behalf of Drone Eye plc, 1899 Peace Avenue, Capital City, Mediterraneo, I herewith submit the attached Notice of Arbitration pursuant to Art. 3 of the PCA Arbitration Rules.

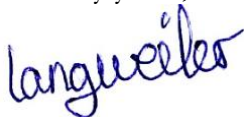
A copy of the Notice has been sent to Equatoriana Geoscience Ltd, 1907 Calvo Rd, Oceanside, Equatoriana, which shall be the Respondent in these arbitral proceedings.

I kindly ask you to take the necessary steps for the constitution of the Arbitral Tribunal in case Equatoriana Geoscience does not comply with its appointment obligations. Claimant appoints Ms. Bertha von Suttner, Avenida F. Passy, Capital City, Mediterraneo as its arbitrator.

A copy of her CV and her declaration of independence are attached.

Proof of my authorization and of service upon Respondent is enclosed. We understand that the PCA does not charge any case registration fee.

Sincerely yours,



Joseph Langweiler

Attachments:

Notice of Arbitration with Exhibits

CV (*not reproduced*) and Statement of Impartiality and Independence of Ms. von Suttner

Power of Attorney (*not reproduced*)

Proof of service upon Respondent (*not reproduced*)

Joseph Langweiler
Advocate at the Court
75 Court Street
Capital City
Mediterraneo
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14 July 2022

Notice of Arbitration
(pursuant to Article 3 of the PCA Arbitration Rules)

in the Arbitral Proceedings

Drone Eye plc v. Equatoriana Geoscience Ltd

Drone Eye plc
1899 Peace Avenue
Capital City
Mediterraneo

- CLAIMANT -

Represented by Joseph Langweiler

Equatoriana Geoscience Ltd
1907 Calvo Rd
Oceanside
Equatoriana

- RESPONDENT -

STATEMENT OF FACTS

1. Claimant, *Drone Eye plc*, is a medium-sized producer of Unmanned Aerial Systems (“UAS”) based in Mediterraneo. Its systems, which are in everyday language usually referred to as “drones”, are primarily used for geo-science exploration. Claimant has an annual output of around 5 drones per year.
2. Respondent, *Equatoriana Geoscience Ltd*, is a private company entirely owned by the Ministry of Natural Resources and Development of Equatoriana (“MND”). It was set up in 2016 when the socialist government announced its “Northern Part Development Program” (“NP Development Program”).
3. The northern part of Equatoriana, a stronghold of the Socialist Party, is by far the least developed part of the country. It is to a large extent a thickly forested mountain region which is sparsely populated and lacks a well-developed infrastructure. At the same time there are expectations that the region is rich in all types of minerals and other natural resources. Respondent’s objective was to organize the exploration and possible development of the



expected natural resources in that region as well as improving the infrastructure. In particular, it was supposed to negotiate and conclude the necessary contracts with private parties.

4. In March 2020, Respondent opened a tender process in connection with the NP Development Program, originally for the delivery of 4 drones primarily for earth surveillance and exploration purposes ([Exhibit C 1](#)).
5. Claimant submitted a successful bid and was selected as one of the two bidders with which Respondent entered into further negotiations. These negotiations were tough but successful and created additional opportunities for both Parties involved. Due to the insolvency of another customer which had led to the cancellation of a partly paid order, Claimant was not only able to deliver the first 3 drones quickly but also at very favourable conditions. The very favourable price, in combination with identified potential additional fields of use, resulted in an increased volume of the transaction. In the end, the Parties entered into a Purchase and Supply Agreement (“Agreement”) for 6 of Claimant’s Kestrel Eye 2010 drones ([Exhibit C 2](#)).
6. The Agreement was signed at a formal ceremony on 1 December 2020 by Claimant’s CEO, Mr. William Cremer, Respondent’s CEO, Ms. Wilhelmina Queen, and Equatoriana’s then Minister of Natural Resources and Development, Mr. Rodrigo Barbosa ([Exhibit C 3](#)).
7. The Agreement provided for the delivery of 6 Kestrel Eye 2010 drones in 2022 for an overall price of EUR 44 million.
8. At the time of contracting Claimant had approximately 3 largely finished Kestrel Eye 2010 drones in stock. In addition to some minor works on the engine of the drones, they only had to be fitted with the necessary surveillance equipment for Respondent’s needs, which Claimant started to order immediately to be able to deliver the first drones from January 2022 onwards.
9. At the time of the tender and the contract conclusion, the Kestrel Eye 2010 was Claimant’s top model available on the market. It is more than six meters long and can carry a load of up to 245 kg. Its helicopter-like design allows maximum flexibility when it operates in remote territory. The communication link is via radio which limits operations to line-of-sight flights, which is entirely sufficient for the purposes of Respondent ([Exhibit C 4](#)).
10. In February 2021, Claimant presented its newest UAS, the Hawk Eye 2020, at the air show in Mediterraneo. It is based on a different technology and is considerably larger than the Kestrel Eye 2010. That allows on the one hand for a wider reach and greater payload than the Kestrel Eye 2010, on the other hand, however, requires a small airfield to start and land the drone. The Hawk Eye 2020 has been the outcome of three years of development and extensive testing, following the acquisition of Drone-Aircraft in 2017, an insolvent UAV manufacturer which had been active in that type of aircraft-like technology.
11. On 3 July 2021, The Citizen, Equatoriana’s leading investigative journal, owned by the leader of the Liberal Party, started to publish a series of headline articles about a massive corruption scheme surrounding the NP Development Program and several high-profile members of the ruling Socialist Party ([Exhibit C 5](#)). As a consequence of the public outcry, the socialist Prime Minister had to resign and call for early elections on 3 December 2021, which resulted in a new government formed by a coalition of several parties, including the Liberal Party.
12. One of the first steps of the new government was to declare a moratorium on all contracts concluded within the NP Development Program or somehow associated with it. By email of

27 December 2021, Respondent informed Claimant that the Agreement with them would be put on hold until further notice (**Exhibit C 6**).

13. In several calls and meetings with representatives of Respondent and the MND, Claimant tried to find a solution to the problem (**Exhibit C 3**). It was clear that the new government was no longer interested in obtaining the drones due to a shift in the political agenda and the suspension of the NP Development Program. While Claimant was willing to find an acceptable solution for all sides involved, Respondent maintained from the beginning that the Agreement was void as it had been obtained by corruption and due to Claimant's alleged misrepresentation of the features of the drones.
14. In addition, during these negotiations Respondent also denied any obligation to have disputes arising in connection with the Agreement resolved by arbitration. For that, it relied on a provision in the Constitution of Equatoriana according to which the State and State-owned entities could only submit to arbitration with the approval of Parliament. As it turned out, when the Minister of Natural Resources and Development signed the Agreement no such approval existed. (**Exhibit C 7**).
15. By registered letter of 30 May 2022, Respondent finally declared the Agreement avoided and the negotiations terminated (**Exhibit C 8**).

LEGAL EVALUATION

16. The Arbitral Tribunal has jurisdiction to hear this case under the PCA Arbitration Rules. The Purchase and Supply Agreement contains in its amended version of Art. 20 as agreed by the Parties the following arbitration clause:

“Any dispute, controversy or claim arising out of or in relation to this agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by arbitration.

If the dispute, controversy or claim concerns an amount less than EUR 1,000,000, then it shall be submitted to arbitration under the UNCITRAL Expedited Arbitration Rules 2021. By contrast, if the dispute, controversy or claim concerns an amount equal to or larger than EUR 1,000,000, or where the amount concerned is unquantifiable, it shall be settled in accordance with the PCA Arbitration Rules 2012.

- (a) The number of arbitrators shall be one (UNCITRAL Expedited Arbitration Rules 2021) or three (PCA Arbitration Rules 2012), as the case may be;
- (b) The place of arbitration shall be Vindobona, Danubia;
- (c) The language to be used in the arbitral proceedings shall be English; and
- (d) The agreement is governed by the law of Equatoriana.

The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall apply to any arbitration between the Parties.” (Emphasis added)

Originally, as can be seen in Exhibit C 2, Art. 20 had been a copy of the then Model Clause of the PCA. In the context of the discussions about Claimant's new “aircraft”, the Hawk Eye 2020, the sections referring to the UNCITRAL Expedited Arbitration Rules 2021 and the Rules on Transparency, which are in a different font, were added on 27 May 2021 upon the insistence of Respondent (**Exhibit C 9**). Claimant was surprised by that request but had no problems with it. Claimant can only speculate that the request had to do with the increasing public debate in Equatoriana about the submission of state contracts to arbitration. There had always been

pressure from anti-globalisation NGOs against the use of arbitration by the State and its SOEs. In October 2020, the leader of the right-wing populist party had then criticized arbitration as a “non-transparent, non-accountable, slow and expensive means of dispute resolution wasting taxpayers’ money” in the parliamentary debate in connection with the approval of the arbitration clause in another contract concluded within the framework of the NP Development Program. In Spring 2021, he had picked up that topic again and had asked for a broader parliamentary debate which finally took place in early June 2021. The central line of defence of the government at the time was that it had always addressed that criticism in the arbitration clauses its ministers or SOEs had concluded and that they had inserted rules which provided for transparency and cost-efficient proceedings.

17. Contrary to Respondent’s allegations during the negotiations with Claimant, the arbitration clause is also valid notwithstanding the fact that there has been no explicit approval by the Parliament for the submission to arbitration. The Agreement, including the arbitration clause, has been signed by the Minister of Natural Resources and Development. Its validity has then been ratified by Respondent when it requested its amendment in May 2021.
18. Thus, Respondent, as a government entity, cannot rely on any restrictions which exist for the submission to arbitration by the State or State entities under the law of Equatoriana. Allowing States or State entities to frustrate arbitration agreements freely entered into by invoking internal restrictions under their own law would be contrary to good faith and the general principles of international arbitration recognized for example in Art. II(1) of the European Convention on International Commercial Arbitration of 21 April 1961 or Art. 177(2) of the Swiss Arbitration Law among many other national and international laws and instruments.
19. The Parties have entered into a valid Agreement under which Respondent is obliged – pursuant to Art. 53 CISG – to take delivery of the 6 drones ordered and to pay for them. Respondent’s refusal to do so is a fundamental breach of contract entitling Claimant to damages.
20. The Agreement is governed by the CISG. Both Parties to the Agreement have their places of business in Contracting States and have further chosen the law of Equatoriana of which the CISG is a part. Thus, irrespective of the fact that Respondent is a SOE, the choice of law clause in favor of the law of Equatoriana, cannot be interpreted as an exclusion of the CISG in the sense of Art. 6 CIS.
21. Contrary to what Respondent will probably argue, the sale of the 6 Kestrel Eye 2010 drones is also not excluded from the CISG’s scope of application under Art. 2 CISG. The Kestrel Eye 2010 does not qualify as an aircraft in the sense of Art. 2(e) CISG. Neither was there any need to register the drones in Equatoriana nor were they intended to carry humans or cargo which are necessary elements for the classification as an aircraft in the sense of Art. 2(e) CISG.
22. The Agreement is valid. It was neither obtained by corruption nor has Claimant engaged in any misrepresentation, as alleged by Respondent in its letter of 30 May 2022 (**Exhibit C 8**). The facts presented by Respondent in that letter do not qualify as a misrepresentation. They relate to the specification of the drones agreed between the Parties and thus do not qualify as a misrepresentation. At best, Respondent could raise questions as to the conformity of the drones in the sense of Art. 35 CISG. In any event, such claims of non-conformity would be forfeited anyways as they should have been raised much earlier by Respondent. As Respondent did not do so, there is no room now to rely on the non-harmonized law of Equatoriana, in particular, Art. 3.2.5 (Fraud) of its International Commercial Contract Code, which is identical to the UNIDROIT Principles of International Commercial Contracts.

23. At present, Claimant cannot quantify the amount of damages resulting from this breach. It is still seeking another buyer for the 3 drones produced and customized for Respondent so far. It is also not yet clear whether the materials already bought for the other 3 drones, as well as the production time reserved, may be used for other projects. Consequently, Respondent only asks for declaratory relief but reserves the right to replace that request by a request for payment once the damages can be quantified.
24. Because the claims cannot be quantified yet, and the arbitration provisionally concerns the entirety of the value of the Agreement, the arbitration shall proceed under the PCA Arbitration Rules 2012. Claimant therefore requests the International Bureau of the PCA to register this arbitration and perform its duties under Article 1(3) PCA Rules to ensure that the proceedings move forward in an orderly fashion.
25. Claimant wishes to reiterate that it is open to discussing any agreement with Respondent that would help to mitigate Claimant's damages.

REQUEST

26. In light of the above, Claimant asks the Arbitral Tribunal for the following orders:
 - 1) To declare that the Arbitral Tribunal has jurisdiction to hear the case;
 - 2) To declare that there is a valid Purchase and Supply Agreement between the Parties;
 - 3) To declare that Respondent has breached that Agreement by refusing to take delivery of the drones and paying for them;
 - 4) To declare that Claimant is entitled to damages for this breach of contract in an amount to be quantified in due course;
 - 5) To award Claimant the costs of these proceedings including legal fees and expenditures;
and
 - 6) To award interest on full amount awarded to Claimant.



Joseph Langweiler



CALL FOR TENDER

In the context of Equatoriana's Northern Part Development Program, Equatoriana Geoscience is planning to contract for the goods and services described below.

We are inviting interested Parties to submit their offers in line with the conditions set out in greater details below until 30 April 2020. Offers must be submitted by using the templates provided for this tender which can be downloaded for the website of Equatoriana Geoscience at: www.equatoriana-geoscience.eq/procurement.

Only offers which have been submitted electronically until the deadline and in accordance with the detailed conditions described in this Call for Tender as well as with Equatoriana's Law No. 23978 (Public Tender Act) will be considered. Further negotiations will be conducted with the two bidders which have submitted the most attractive bids taking into account the criteria set out in Annex A to this Call for Tender.

Product: Four state-of-the-art unmanned aircraft systems ("UAS" "aircrafts") for the collection of geological and geophysical data necessary for the exploration and subsequent exploitation of the expected natural resources, in particular minerals, in the northern provinces of Equatoriana, including comprehensive maintenance services for two years. The aircrafts must comply with minimum requirement as to the payload weight (180 kg) and volume (0,8 m³), operating altitude (5000 m) and endurance (10 hours), communication links (radio) and dispatch reliability as described in further detail in Annex B.

Exclusions: Companies which within the last five years have been convicted for corrupt practices are excluded from participating in this tender process. Furthermore, by submitting a bid each bidder warrants that

- it has not made any unauthorized payments or promised other benefits to anyone involved in this tender process or has engaged in any practice which is not in accordance with the United Nations Convention against Corruption;
- it has not engaged in any anti-competitive practice with any other bidder or potential bidder in relation to this Call for Tender.

Violations of these warranties entitle Equatoriana Geoscience to terminate the contract and claim damages in accordance with the applicable Equatorianian law.

Ocean City, 20 March 2022

PURCHASE AND SUPPLY AGREEMENT

Whereas the Government of Equatoriana in 2016 initiated the Northern Part Development Program to develop its northern provinces;

Whereas in connection with the Program the Government of Equatoriana has founded Equatoriana Geoscience to develop and implement a strategy to explore and exploit the natural resources located in the northern provinces;

Whereas Equatoriana Geoscience has initiated a tender process for the acquisition of state-of-the-art aircrafts in the form of Unmanned Aerial Systems (UAS) to collect the relevant geological and geophysical data for the proper exploitation of such natural resources;

Whereas Drone Eye was the successful participant in the tender;

Whereas in the process of the negotiations the scope of the agreement to be awarded was changed to reflect new developments and a possible additional use of the aircrafts;

Whereas these changes are reflected by a higher number of the latest UAS and a longer period for Drone Eye's obligation to supply spare parts and provide maintenance services for the aircrafts; and

Whereas the required approval of the agreement by the Minister of Natural Resources and Development is evidenced by his signature;

the following agreement is concluded:

Article 1: PARTIES

Seller: **Drone Eye plc**, 1899 Peace Avenue, Capital City, Mediterraneo ("**SELLER**").

and

Buyer: **Equatoriana Geoscience Ltd**, 1907 Calvo Rd, Oceanside, Equatoriana ("**BUYER**").

Collectively referred to as "**the Parties**".

Article 2: SELLER'S OBLIGATIONS

The SELLER undertakes

- a. to supply to the BUYER 6 of its newest model of Kestrel Eye 2010 UAS, out of which 4 are equipped with state-of-the-art geological surveillance feature further specified in Annex A to this Agreement;
- b. to agree with BUYER upon the equipment of the further 2 drones and the prices thereof;
- c. to deliver the first 3 fully equipped latest Kestrel Eye 2010 UAS until 15 January 2022;
- d. to deliver one additional latest Kestrel Eye 2010 UAS at each of the following dates:

- i. 31 December 2022 (fully equipped),
 - ii. 1 July 2023 (equipment to be agreed and separately priced),
 - iii. 31 December 2023 or later, if requested by the buyer (equipment to be agreed and separately priced);
- e. to provide the basic maintenance services specified in Annex B for each UAS for a flat fee for four years following the delivery of the respective UAS;
- f. to provide additional and comprehensive maintenance services and all spare parts needed for a proper operation of the UAS at the prices specified in Annex C for four years following the delivery of the respective state-of-the-art UAS;
- g. to comply with the confidentiality obligations set out in Annex D;
- h. to comply with the obligations arising from the anti-corruption legislation listed in Annex E.

Article 3: BUYER'S OBLIGATIONS

1. The BUYER undertakes
 - a. to pay the SELLER EUR 8,000,000 EUR for each of the 4 equipped UAS and EUR 6,000,000 for the remaining 2 UAS plus the amount agreed for their equipment;
 - b. to pay the SELLER for its basic maintenance services an annual flat fee of EUR 480,000 per aircraft;
 - c. to pay the SELLER for all other additional and comprehensive maintenance services and spare parts supplied the prices set out in Annex C.
 - d. [...]
- [...]

Article 4: PURCHASE PRICE

1. The purchase price for each of the 4 drones with equipment is EUR 8,000,000.
 2. The BUYER will make an advance payment of EUR 10,000,000, two weeks after the signing of the Agreement.
 3. Upon the delivery of each of the fully equipped drones another EUR 5,000,000 has to be paid while the remaining amount will be taken from the advance payment until it is depleted.
 4. The remainder for each drone will be paid after the passing of the acceptance test of the drone.
- [...]

Article 16: ACCEPTANCE TEST

[...]

Article 17: LIQUIDATED DAMAGES and LIMITATION OF LIABILITIES

1. Any delay in delivery will entitle BUYER to liquidated damages of EUR 80,000 per day up to an amount of 10 % of the purchase price.
2. [...]

Article 18: TERMINATION FOR CAUSE



1. BUYER is entitled to avoid the agreement in case SELLER commits a fundamental breach of contract.
2. For the avoidance of doubt the following breaches shall be considered to be fundamental;
 - a. Inappropriate payments to any employee of BUYER;
 - b. Delay in delivery of more than 200 days; or
 - c. Other breaches which deprive BUYER of what it is entitled to expect under the Agreement.

Article 20: DISPUTE RESOLUTION and APPLICABLE LAW

Any dispute, controversy or claim arising out of or in relation to this agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the PCA Arbitration Rules 2012.

- (a) The number of arbitrators shall be three.
- (b) The place of arbitration shall be Vindobona, Danubia.
- (c) The language to be used in the arbitral proceedings shall be English.
- (d) The agreement is governed by the law of Equatoriana.

Article 21: MISCELLANEOUS

This document contains the entire agreement between the Parties.

Concluded by the Parties' duly authorized representatives named below:

Date: 1 December 2020

SELLER



Willfam Cremer

BUYER



Wilhelmina Queen

Approved:



Rodrigo Barbosa
(Minister of Natural Resources and Development)

Witness Statement of William R. Cremer

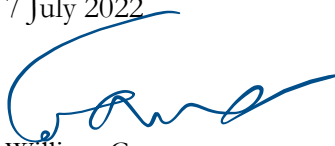
Born: 25 August 1969

1. I have a degree in engineering and, since October 2017, I am the CEO of Drone Eye.
2. For Drone Eye the largest part of the negotiations with Equatoriana Geoscience had been done by our COO at the time Mr. J.C. Bluntschli. Though Mr. Bluntschli kept me informed about the negotiations, my own direct involvement in them was limited to the last day when I had to replace Mr. Bluntschli who had been arrested for private tax evasion the day before.
3. The only issues which still had to be discussed at the time were some minor issues concerning the post contracting service elements of the contract. In addition, in light of the shocking developments with Mr. Bluntschli, I insisted on the inclusion of a merger clause into the Agreement. For me it was important that we were not dependent on information from Mr. Bluntschli to establish our commitments under the transaction, but rather that they could all be deduced from the contractual document.
4. The agreement was signed as planned in an official signing ceremony on 1 December 2020 in the presence of the Minister of Natural Resources and Development, Mr. Rodrigo Barbosa, who had to approve and ratify it. Thereafter, we immediately started to work on the delivery of the first three drones. I was told by Mr. Field that there had been discussions with Equatoriana Geoscience after the presentation of our new Hawk Eye 2020 but the issue was apparently solved in May 2021.
5. After we were informed about the moratorium by the email of 27 December 2021, I immediately contacted Ms. Wilhelmina Queen, my counterpart at Equatoriana Geoscience, to get additional information and to discuss the future of the transaction. She told me that the new government had stopped the Northern Part Development Program and the performance of all contracts concluded in the context of that program. These contracts were scrutinized for signs of corruption and other options to terminate or at least renegotiate them to make them more favorable to Equatoriana.
6. Ms. Queen told me that our Agreement had been negotiated primarily by Mr. David Field, Equatoriana Geoscience's COO at the time. According to the press reports, he had been one of the key figures in the bribery scandal. He had been arrested and criminal investigations against him had been opened. Thus, in Ms. Queen's view it was very likely that our Agreement was also affected by corruption and was thus void.
7. In our second phone call on 3 February 2022, I told her that, as a consequence of the email of 27 December 2021 and her explanations in the first call on 29 December 2020, we had reviewed all payments made from our accounts to accounts in Equatoriana from the date of the invitation to tender until two months after contract conclusion and had found no suspicious payments. I also indicated that we might be open to renegotiate the contract to take into account the new needs of Equatoriana Geoscience by, for example, reducing the numbers of drones or mounting

different equipment. We agreed on an in-person meeting within the next months and that until then we would stop the work owed under the Agreement. Given the existing stocks of drones we would have been able to meet the agreed delivery times even if we were only to restart the work on the remaining drones in late summer 2022.

8. The meeting took place on 28 May 2022. It was very short. Ms. Queen was not really interested in any amicable solution but instead accused us of not only bribing government officials, but also of misrepresentation in relation to the UAVs sold. In her view, Mr. Bluntschli had deceived Respondent's COO about the quality of the drones which were – contrary to Mr. Bluntschli's assurances – allegedly not our newest model and state-of-the-art.
9. I tried to clarify that at the time of contract conclusion our more advanced Hawk Eye 2020 drone was not yet on the market and would have been considerably more expensive. Taking into account the standard price of both models and the special circumstances which allowed us to make such a favourable offer for the Kestrel Eye 2010, the Hawk Eye 2020 would have been more than 100 % more expensive.
10. Notwithstanding my efforts to explain that background, two days later we received registered mail in which the Agreement was terminated for an alleged misrepresentation. We immediately rejected that allegation and asked Respondent to make the required advance payments for the first three drones and confirm delivery dates for the remainder.
11. We were very surprised about those allegations. It is well known that Equatoriana is according to the Corruption Index of Transparency International amongst the 20 % most corrupt countries. We have implemented clear ethical rules within our company which prohibit the grant of any benefit to governmental employees. We have not found any indication that Mr. Bluntschli has breached them. Unfortunately, Mr. Bluntschli – while he may admit in private that he did not pay – is not willing to testify that in person without a remuneration which we have rejected.

7 July 2022



William Cremer



KESTREL EYE 2010 Unmanned Air Vehicle

GENERAL PRODUCT INFORMATION

Drone Eye plc | 1899 Peace Avenue, Capital City, Mediterraneo

DESCRIPTION

The Drone Eye Kestrel Eye 2010 Unmanned Air Vehicle (UAV) combines a main and tail rotor design with a modular carbon-fibre fuselage. It is remotely controlled via radio with an integrated GPS navigation system. Its state-of-the-art design enables it for flexible operations.

GENERAL TECHNICAL DATA

Dimensions and weight

Overall length:	6,300 mm
Height:	2,350 mm
Main Rotor Diameter:	7,550 mm
Tail Rotor Diameter:	50 mm
Capacity (payload):	245 kg
Maximum Takeoff Weight:	1,100 kg
Ground Clearance:	35 mm

Location of the Payload Bays

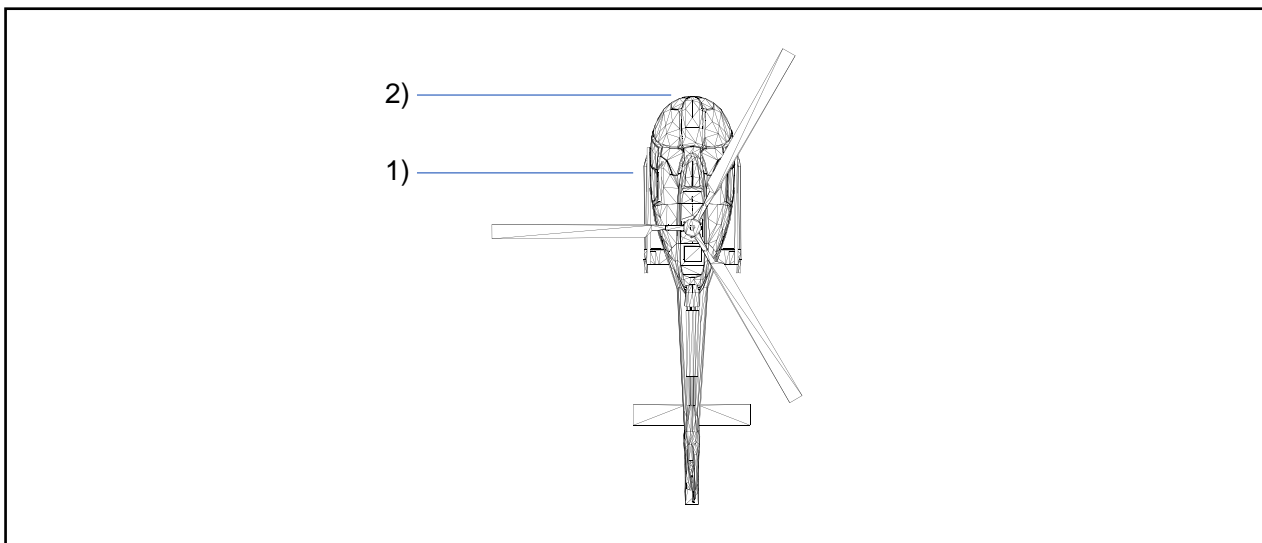
- 1) One Central Payload Bay in the middle of the fuselage
- 2) One Front Payload Bay in the front of the nose fuselage (*optional*)

Engine and fuel

Type:	Turboshaft
Power:	286 KW / 389 HP
Fuel type:	JP-4
Weight (dry):	58 kg

Performance

Endurance (max.):	13 hours
Service ceiling:	6000 m
Speed (max.):	250 km/h
Dispatch reliability:	89 %
Maintenance interval:	100 hours
Communication link:	Radio



Serving Few Instead of Serving the Country: The Northern Part Development Program

In case you enjoy low-budget adventure travel in an often untouched environment, the North of Equatoria is the place to go. For nearly all others, in particular the people living in the northern provinces, it is the place to leave. The unemployment rate, the rate of school dropouts and the criminal rate are at least one third higher than in the rest of the country. The rate of children mortality is twice as high and the general life expectancy is seven years lower. Nearly every larger family can report experiences with alcohol or drug abuse and only one child out of a hundred will get a university degree.

The northern provinces of Equatoria are without doubt by far the poorest part of the country. Sparsely populated and consisting largely of thickly forested mountains with very few larger cities, their GDP per capita is less than a third of that of the wealthiest region around the capital.

These differences within a single country should be unacceptable and without any decisive action by the Government they are even likely to grow. Thus, there should be no doubts that major investments into the infrastructure of the northern provinces is needed.

These investments were to be provided in the context of the Northern Part Development Program set up by the socialist government in 2017 with great publicity. Four years on, it seems that the critics of the Program were right: it is obviously one further program which serves its initiators much more than it serves the country. Considerable amounts of money have been spent with no or very little benefits for the people living in the northern provinces but major gains for few persons closely associated with the ruling party.

It is interesting to take a closer look at the two most important and closely connected factors for the failure of the Program: first, the three state entities which were set up to manage and implement the Program and, second, the companies which have profited the most from it.

All three state entities have one common feature. Their board of management is headed by a well-known and respected person without any connection to the ruling Socialist Party.

However, doubts arise whether those CEOs are primarily fig leaves. None of them had any previous experience in business coming either from universities or other government related entities. The remainder of the management board, by contrast, is composed of persons closely associated with the Socialist Party and often with doubtful reputations. A close connection to the Socialist Party is also a common feature of most of the companies which have been awarded contracts under the Program. The three largest contracts concluded so far have been awarded to companies which are at least in part owned by family members or close friends of the local socialist aristocracy which often seems to be the only qualification of those companies. The prime example is the contract for the construction of the motorway connecting the region's capital with the second largest city, New Hague. It was awarded to Vendue, a company with little to no experience in managing a project of such size, but with excellent political connections. It is partly owned by the brother-in-law of Fyodora Martens, the region's socialist governor. But also, those contracts which have been awarded to foreign companies with no obvious connection to the ruling party are not beyond suspicion. They have often been negotiated on the side of the state party by persons which in the past have been the subject of corruption allegations which were, however, never proven. The best-known example is Mr. David Field, COO of Equatoria Geoscience. Starting as a bus driver he has first climbed the ranks of the Socialist Party before finally becoming the COO of Equatoria Geoscience. There had constantly been rumors that the considerable wealth accumulated by some of his relatives and friends was in fact held by them for him. But until now "Teflon David", as he is widely called, has been able to survive any of the scandals and the halfheartedly conducted investigations without any effects on his career. It seems that these times are over!

Following the leaked Panama Papers, The Citizen and its related research network have been able to trace back some of the accounts to Mr. David Field. On two of those accounts considerable payments were received shortly before major and controversial contracts have been awarded by Equatoria Geoscience. One of those payments can be attributed to a person affiliated with the Equatorian Company which was awarded the contract. There is more to come! And it will stick!

From: Wilhelmina Queen <w.queen@equatoriana-geoscience.eq>
Sent: 27 December 2021, 8:25 am
To: William Cremer <william.cremer@drone-eye.me>
Cc: MoNRaD <minister@monrad.eq>
Re: Contract Moratorium

Dear Mr. Cremer,

I herewith inform you that following the discovery of a major corruption scheme involving the award of public work contracts under the Northern Part Development Program, the Minister of Natural Resources and Development has declared a moratorium on the performance of all contracts awarded in the context of the Program.

That moratorium also relates to your contract concluded with Equatoriana Geoscience. We herewith request you to immediately stop performance of the contract until further notice and to cooperate with us in the investigation of the corruption scheme.

Please be warned that no further payments under the contract will be made or authorized, and that Equatoriana Geoscience reserves the right to require repayment of all payments made in case the conclusion of the contract or its performance has been tainted by undue payments to one of its employees, or anyone else involved on the buyer's side in the conclusion or performance of the contract.

Yours sincerely,
Wilhelmina Queen

CEO / Equatoriana Geoscience Ltd.

1907 Calvo Rd / Oceanside / Equatoriana / Email: w.queen@equatoriana-geoscience.eq

Witness Statement of Horacia Porter

1. Born: 7 August 1979
2. I have a degree in law and have worked since October 2009 in the legal department of Drone Eye. Due to the nature of our products, their production, sale and use is highly regulated. As our drones are in many features comparable to aircrafts, as they use the same airspace, and their operation poses threats to third parties, they are generally subject to the rules of the Aviation Safety regulations in the different jurisdictions. At the same time, many of our customers are state entities or the military which use the drones for surveillance or communication purposes.
3. As a consequence, whenever we are entering into negotiations with a potential customer, the legal department routinely checks the relevant Aviation Safety rules for potential registration, safety and/or operation requirements. If the potential customer is a state, its military or a state-owned entity, it is additionally examined whether there are any special requirements for contracting as well as possible immunities from suits.
4. In spring 2020, following the invitation to participate in the tender, I have done such an examination for a potential sale of our Kestrel Eye 2010 drone to Equatoriana Geoscience.
5. While I am not an expert in Equatorianian law, my understanding was that the drones sold under the Sale and Purchase Agreement (“Agreement”) did not have to be registered since they were sold to and operated by a state-owned company.
6. At the same time, my understanding was that the Agreement, as a contract for public infrastructure, required an approval by the Minister in charge, which was in this case the Minister for Natural Resources and Development. In addition, an approval by Parliament is required if such contracts contain an arbitration clause.
7. I informed our main negotiator, Mr. Bluntschli about the requirements, and reviewed and approved the contractual documents. I know that the Agreement had been up for discussion and approval in the Parliament on 27 November 2020. Unfortunately, I contracted Covid in early November 2020 and was out of work for 5 weeks so that I could not participate in the official signature event, as it had been planned.
8. Thus, on 6 December 2020, when I received our original of the Agreement from Mr. Bluntschli and saw that it had not only been signed by Ms. Queen but also by the Minister, I was convinced that the Parliament had approved the Agreement including the submission to arbitration.
9. Later I learned from Mr. Bluntschli, that the parliamentary debate on 27 November 2020 had been called off on short notice and the Minister had signed the Agreement apparently without a previous approval by the Parliament. The public signing of the Agreement took place in the context of the visit of an official delegation from Mediterraneo and Mr. Bluntschli told me that he saw no problem in that, since the Minister had assured him that the parliamentary approval was just a formality and would be forthcoming after the Christmas break.
10. For Mr. Bluntschli the signature and the assurance by the Minister were sufficient. I only heard about that episode in the context of the request for amendment of the arbitration clause. Given that this request for an amendment of the arbitration clause was for me a clear confirmation of its validity, I did not check whether in the meantime the Parliament had explicitly consented to the submission to arbitration.
11. Only when it became clear after Respondent’s letter of 30 May 2022 that we had to resort to arbitration, I started searching for the express consent by the Parliament of Equatoriana and realized that apparently it never formally declared its consent to the submission to arbitration contained in Article 20 of the Agreement.
12. The members of the Parliament, at least those from the Socialist Party, must have been aware of the existence of the arbitration clause. On 2 December 2020, several journals,

including The Citizen, reported on the signing of the Agreement on the previous day. As the parliamentary debate about the Agreement had been called off shortly before they should have known that the Agreement contained an arbitration clause and should have objected already at that time to the submission to arbitration. As they did not, Respondent can in my view not rely on the lack of a formal consent.

13. That is even more so as Respondent subsequently – even if not expressly at least implicitly – confirmed the arbitration agreement. Since March 2021 we had been in discussions with Mr. Field about the possible effects of the presentation of the Hawk Eye 2020 on our contractual relationship. Originally, Mr. Field had accused us of cheating Respondent by not disclosing that the Hawk Eye 2020 would be on the market soon but instead selling “old for new” by proposing Kestrel Eye 2010, the first version of which had been produced from 2010 onwards. He had even threatened to terminate the entire contract for misrepresentation. We were confident that he could not do so, as there had never been any behavior from our side which could have been interpreted as a misrepresentation. All our statements had been correct and there had been no obligation for us under the CISG to disclose any business secrets to Respondent when negotiating the contract. Thus, internally we always considered these discussions as a thinly-veiled effort to improve the terms of the Agreement by reducing the price or getting additional services.
14. Irrespective of that, we were happy when Respondent, in a meeting scheduled to discuss the issue of misrepresentation in May 2021, suddenly asked for changes to the arbitration clause to which we could easily agree. In particular in our contracts with state parties, we regularly include references to UNCITRAL’s Transparency Rules. As far as I remember, it had been Respondent who had originally been opposed to that. We assumed that Mr. Field made this request to help his political friends for the upcoming parliamentary debate in June 2020.
15. Since the third quarter of 2020 there had been an increasingly negative perception of arbitration in Equatoriana. In Spring 2021 the leader of the right-wing populist party made that widespread anti-arbitration sentiment part of his campaign against the alleged loss of sovereignty of Equatoriana “submitting to decisions of foreign private persons without any democratic legitimization”. He managed to put that up for a parliamentary debate which was to take place in early June 2021. In that debate the main line of argument of the government then was that their ministers had authorized only contracts with arbitration clauses providing for transparency explicitly referring to the clause in our Agreement as an example.
16. After that concession from our side in relation to the arbitration agreement, the discussion about the alleged misrepresentation with Mr. Field and his assistant ended until it suddenly resurfaced in May 2022.
17. There is an odd decision by the Equatorianan Supreme Court in a purely domestic setting which had always been invoked by Respondent in the misrepresentation discussion. On a broad reading it could be interpreted as imposing extremely far-reaching disclosure obligations upon a private party contracting with a SOE and allowing for a termination for misrepresentation even a year after it had been discovered. It had always been our position that this decision is completely irrelevant for our Agreement which is governed by the CISG which excludes any additional remedies under national laws for matters governed by it, such as the conformity of the goods.
18. The first draft of the Agreement had been provided by Respondent. I personally changed the wording of the termination clause. It had originally foreseen much broader rights for termination for Respondent. I changed that to a wording which is based on the relevant provision of the CISG.

Mediterraneo, 8 July 2022


Horacia Porter



PER REGISTERED COURIER

William R Cremer

Chief Executive Officer
Drone Eye plc

1899 Peace Avenue
Capital City
Mediterraneo

william.cremer@drone-eye.me

Ms Wilhelmina Queen

Chief Executive Officer
Equatoriana Geoscience

1907 Calvo Rd
Oceanside
Equatoriana

w.queen@equatoriana-
geoscience.eq

30 May 2022

Termination of Negotiations

Dear Mr Cremer,

I herewith inform you that Equatoriana Geoscience no longer considers itself bound by the Purchase and Supply Agreement concluded on 1 December 2020 and herewith terminates all negotiations concerning its performance.

First, there is a considerable likelihood that the Agreement as such was procured by corruption and was thus void from the beginning. The main negotiator of the Agreement has been charged with corruption in relation to several other contracts concluded by him. While there is no proof yet as to the payment of any bribes in relation to this contract, it appears likely that in the course of ongoing investigations such proof will emerge. The tender documents as well as the Purchase and Supply Agreement explicitly prohibited any form of undue benefits.

Secondly, Drone Eye engaged in serious misrepresentation of the quality of the Kestrel Eye 2010 drone. The Kestrel Eye 2010 by no means represents "state-of-the-art" technology, as required by the tender documents and assured by Mr. Bluntschli who had described it as Drone Eye's "latest model" or "top model". The Kestrel Eye 2010 was developed originally already in 2010 and then sold from 2012 onwards with some minor subsequent amendments and updates.

Drone Eye already started several years ago to develop a new generation of drones which can carry much higher loads and have a longer range. At the time of contracting, the Hawk Eye 2020 was undergoing final test flights and was presented to the market shortly thereafter.

In light of this misrepresentation, Equatoriana Geoscience avoids the Purchase and Supply Agreement with immediate effects pursuant to Article 3.2.5 of the International Commercial Contract Code of Equatoriana as interpreted by the Equatorianian Supreme Court.

Equatoriana Geoscience reserves the right to claim for all damages resulting from the termination of the Purchase and Supply Agreement and the bribery and misrepresentation underlying its conclusion.

Yours sincerely,



Wilhelmina Queen

CEO / Equatoriana Geoscience Ltd.

From: Wilhelmina Queen <w.queen@equatoriana-geoscience.eq>
Sent: 27 May 2021, 16:12
To: William Cremer <william.cremer@drone-eye.me>
Cc: MoNRaD <minister@monrad.eq>; David Field <d.field@equatoriana-geoscience.eq>
Re: Purchase and Supply Agreement-- -- Approved amendments
Attachments: Amendment.pdf

Dear Mr. Cremer,

I herewith return a duly executed copy of the amendments to Art. 20 of the Purchase and Supply Agreement discussed with my colleague Mr. Field in your recent meeting with him. We and the colleagues from the Ministry of Natural Resources and Development highly appreciate your cooperation and we are certain that we will also solve the remaining outstanding issues. That article shall henceforth provide in its pertinent parts as follows:

“If the dispute, controversy or claim concerns an amount less than EUR 1,000,000, then it shall be submitted to arbitration under the UNCITRAL Expedited Arbitration Rules 2021. By contrast, if the dispute, controversy or claim concerns an amount equal to or larger than EUR 1,000,000, or where the amount concerned is unquantifiable, it shall be settled in accordance with the PCA Arbitration Rules 2012.

(a) The number of arbitrators shall be one (UNCITRAL Expedited Arbitration Rules 2021) or three (PCA Arbitration Rules 2012), as the case may be;

...

The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall also apply to any arbitration between the Parties.” (Changes highlighted).

Thank you again for accommodating our requests in this regard.

Yours sincerely,
Wilhelmina Queen

CEO / Equatoriana Geoscience Ltd.

1907 Calvo Rd / Oceanside / Equatoriana / Email: w.queen@equatoriana-geoscience.eq

Ms. Bertha von Suttner
Avenida F. Passy
Capital City
Mediterraneo

12 July 2022

**Statement of Impartiality and Independence
in the Arbitral Proceedings**

Drone Eye plc v. Equatoriana Geoscience Ltd

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.



Bertha von Suttner



Mr. Joseph Langweiler
75 Court Street
Capital City
Mediterraneo

BY E-MAIL:
LANGWEILER@LAWYER.ME

Ms Wilhelmina Queen
Chief Executive Officer
Equatoriana Geoscience
1907 Calvo Rd
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Equatoriana

BY E-MAIL:
W.QUEEN@EQUATORIANA-GEOSCIENCE.EQ

AG 401800
DIRECT DIAL: +31 70 302 4167
E-MAIL: APAX@PCA-CPA.ORG

15 July 2022

RE: PCA CASE NO. 2022-76
DRONE EYE PLC V. EQUATORIANA GEOSCIENCE LTD

Dear Madame, dear Sir,

The Permanent Court of Arbitration (the "PCA") acknowledges receipt of the letter of 15 July 2022 from Drone Eye plc (the "Claimant"), enclosing a Notice of Arbitration commencing an arbitration against Equatoriana Geoscience Ltd (the "Respondent", and together with the Claimant, the "Parties") under the PCA Arbitration Rules 2012 (the "PCA Rules") pursuant to Article 20 of the Purchase and Supply Agreement concluded between the Parties on 1 December 2020 and amended on 27 May 2021 (the "Agreement"), which provides as follows:

Any dispute, controversy or claim arising out of or in relation to this agreement, or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by arbitration.

If the dispute, controversy or claim concerns an amount less than EUR 1,000,000, then it shall be submitted to arbitration under the UNCITRAL Expedited Arbitration Rules 2021. By contrast, if the dispute, controversy or claim concerns an amount equal to or larger than EUR 1,000,000, or where the amount concerned is unquantifiable, it shall be settled in accordance with the PCA Arbitration Rules 2012.

- (a) The number of arbitrators shall be one (UNCITRAL Expedited Arbitration Rules 2021) or three (PCA Arbitration Rules 2012), as the case may be;
- (b) The place of arbitration shall be Vindobona, Danubia;
- (c) The language to be used in the arbitral proceedings shall be English; and
- (d) The agreement is governed by the law of Equatoriana.

The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration shall apply to any arbitration between the Parties.

The matter has been registered as "PCA Case No. 2022-76". The Parties are kindly requested to use this reference in all correspondence on this matter going forward. In addition, I have been designated as your principal point of contact on behalf of the PCA, as well as to serve as Secretary to the Tribunal in accordance with Article 1(3) of the PCA Rules.

In accordance with Article 4(1) of the PCA Rules, the Respondent is invited to submit its Response to the Notice of Arbitration by **Monday, 15 August 2022**.

Please do not hesitate to contact me at the details set forth above should you have any questions concerning this letter.

Yours sincerely,



Aisha Pax
Legal Counsel

cc: Ms. Bertha von Suttner (*by e-mail: bvsuttner@kinsky.com*)

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

By email and courier

Ms. Aisha Pax
International Bureau of the Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
Netherlands

15 August 2022

Reference: PCA Case No. 2022-7-6 - Drone Eye plc v. Equatoriana Geoscience Ltd

Dear Ms. Pax,

I have been appointed by Equatoriana Geoscience Ltd to represent their interests in the above referenced arbitration proceedings. A power of attorney is attached.

Equatoriana Geoscience Ltd appoints Professor María Luisa Drago, Grotius Street, Oceanside, Equatoriana, as its arbitrator and encloses her curriculum vitae and declaration of impartiality and independence. That appointment is made in accordance with Art. 23(2), 2nd sentence, of the PCA Rules and should not be understood as an acceptance of the Arbitral Tribunal's jurisdiction to deal with the merits of the dispute. Equatoriana Geoscience Ltd contests the existence of a valid arbitration agreement and thus any jurisdiction of the Arbitral Tribunal to deal with the substance of the claim.

Please find attached the Response to the Notice of Arbitration of Equatoriana Geoscience Ltd with Exhibits, which has also been sent directly to Claimant.

Kind regards,



Julia Clara Fasttrack

Attachments:

Response to the Notice of Arbitration with Exhibits
Curriculum Vitae and Declaration of Impartiality and Independence of Prof. Drago (*not reproduced*)
Power of Attorney (*not reproduced*)

cc. Joseph Langweiler

JULIA CLARA FASTTRACK

Advocate at the Court
14 Capital Boulevard
Oceanside
Equatoriana
Tel. (0) 214 77 32 Telefax (0) 214 77 33
fasttrack@host.eq

Response to the Notice of Arbitration

in the Arbitral Proceedings

Drone Eye plc v. Equatoriana Geoscience Ltd

PCA Case No. 2022-76

15 August 2022

Introduction

1. In its Notice of Arbitration Claimant has tried to present itself as an innocent foreign victim of internal politics and problems of Equatoriana. The reality is entirely different. Claimant tries to benefit from an unduly favorable contract, obtained most likely by corruption in the context of one of the largest corruption scandals in the history of Equatoriana. Said scandal is presently being investigated and prosecuted by the competent authorities in Equatoriana. These authorities should also deal with the present dispute given that they are in a much better position than the Arbitral Tribunal to investigate the underlying corrupt practices.
2. In addition, complying with an order by the arbitral tribunal to fulfil a contract obtained by bribery Equatoriana Geosciences would be in breach of Art. 15 of Equatoriana's Anti-Corruption Act, according to which it is "prohibited to either directly or indirectly perform a contract for the conclusion of which undue benefits were granted or promised".

Facts

3. Respondent is one of the three state owned companies set up by the former Government of Equatoriana in connection with its Northern Part Development Program (NP Development Program) in 2016. Respondent's main purpose, according to its statute is "to ensure that the geological, geophysical and other scientific data necessary for the development of the area covered by the Northern Part Development Program is generated and available".
4. It was clear from the beginning that Equatoriana Geoscience would not be able to generate and provide all data itself but would have to rely to a considerable extent on outside contractors,



either from within Equatoriana or from other countries. In particular, at the time of its establishment it lacked the necessary technical equipment to generate the data.

5. The expected revenues from the exploitation of the presumed natural resources played a crucial role in Equatoriana's strategy to develop its northern provinces. The infrastructure to be built was to be largely financed and maintained by those revenues. The geological and biological conditions of the northern provinces of Equatoriana makes the collection of the necessary data for locating and evaluating the most promising areas for future activities very challenging. The provinces are to a large extent an uninhabited thickly forested mountain area, with strong winds and rough and quickly changing weather. At the same time, the forests contain a highly specified and unique wildlife which is very sensitive to any disruption. Thus any disturbance had to be maintained at a minimum level.
6. In light of those conditions, the only feasible and reasonable way to obtain the necessary data for the discovery and exploitation of the natural resources was by aerial surveillance. Thus, Respondent's board decided to open a tender process and invite bids for the delivery and maintenance of a fleet of 4 state-of-the-art Unmanned Aircraft Systems (UAS).
7. The tender documents ([Exhibit C 1](#)) asked for explicit undertakings in relation to the exclusion of any form of bribery and corruption. These are also reflected in the Purchase and Supply Agreement ([Exhibit C 2](#)). At the same time, both documents made clear that, given the difficult environment in which the UAS were to operate, they had to be state-of-the-art and based on the newest technology.
8. Claimant was one of the two bidders with which Respondent entered into further negotiations. The negotiations were primarily conducted by Mr. David Field, Respondent's COO at the time, with the support of his assistant Ms. Leonida Bourgeois. She was present at nearly all meetings between September and October 2021 and had the impression that the negotiations with the other bidder, Aerial Systems plc, had a higher chance of success.
9. The crucial meeting of 3 November 2021 at Claimant's premises was, however, only attended by Mr. Field. Ms. Bourgeois was very surprised to learn in the aftermath of the meeting that Claimant had made an entirely new offer for 6 UAS including their service and maintenance which Mr. Field intended to accept ([Exhibit R 1](#)).
10. The price for the UAS themselves was 20 % lower than the last price offered. By contrast, the price for the service and maintenance element of the agreement, which was extended from two to four years, was on a closer look much higher. Works which had previously been included in the basic services part for a lump sum were now separately priced. As several of such services were most likely to be needed, the actual remuneration for the service part of the agreement was significantly increased and was in Ms. Bourgeois' view largely overpriced ([Exhibit R 1](#)).
11. In addition, such substantial changes to the scope of the contract to be awarded in the tender process are, while not being prohibited, very unusual. It had happened before only in relation to one further contract also negotiated by Mr. Field. This other contract is one of the two contracts underlying the bribery charges brought against Mr. Field ([Exhibit R 2](#)).
12. The Agreement was signed on 1 December 2020 by the CEOs of both companies and Mr. Rodrigo Barbosa, the Minister of Natural Resources and Development, whose signature was required by law. The latter, however, was acting ultra vires as far as the arbitration clause

was concerned as there was no consent by the Parliament for a submission to arbitration under this Agreement.

13. Parliament was supposed to discuss the government's proposal to submit disputes arising from the Agreement to arbitration on 27 November 2020. On the day of the debate, the proposal was withdrawn. It seems likely that the Minister was afraid to have his proposal rejected. At the time more than twenty MPs from the Socialist Party were absent due to COVID infections which they had contracted at the party's annual conference the week before. Three weeks before in the context of another contract the submission to arbitration was only approved by a small majority after the leader of one of the smaller opposition parties had castigated arbitration as a dispute resolution mechanism in the parliamentary debate about the very controversial airport project in Equatoriana's capital.
14. Starting on 3 July 2021, *The Citizen*, Equatoriana's leading investigative journal, published a series of articles based on its examination of the Panama Papers disclosing serious corruption problems with the NP Development Program. The various articles and the ensuing public outcry led to early elections which for the first time in 20 years resulted in a government not led by the Socialist Party, but by a coalition of Conservatives and Liberals, who themselves had lost power 20 years before amidst a comparable corruption scandal.
15. The new government immediately issued a moratorium for all contracts concluded under the NP Development Program and in early January 2022 appointed the well-known criminal lawyer, Ms. Fonseca, as special public prosecutor, to investigate the endemic corruption surrounding the NP Development Program. In that context, she naturally also looked into the numerous corruption allegations affecting Respondent's former COO Mr. Field.
16. To no one's surprise the investigations quickly resulted in the first charges brought against Mr. Field, by Ms. Fonseca, the public prosecutor specially appointed to investigate the corruption in the context of the ND Development Program. As Ms. Fonseca announced at a press conference on 21 May 2022, these charges concerned the payments made to Mr. Field's offshore accounts in connection with two other contracts, which had been mentioned by *The Citizen* in its article of 3 July 2021. At the same time, Ms. Fonseca left no doubt that she would also investigate all other contracts concluded by Mr. Field for signs of corruption. Furthermore, she promised that these investigations would be terminated by the end of 2023 and charges would then be brought, long before any of the potential crimes would be time-barred (**Exhibit R 2**).
17. Irrespective of these serious bribery allegations, it had already become clear that Claimant had significantly misrepresented the quality of the drones. At the time of contracting, Claimant was aware that within a few months its new model, the Hawk Eye 2020, would be launched, which could carry a much greater payload, would have a much broader range and would enjoy a more versatile scope of application (**Exhibit R 3**). Thus, Claimant was aware that the Kestrel Eye 2010 was obviously neither state-of-the-art nor its newest model, as required under the Agreement. Instead of disclosing that fact as would have been required according to the jurisprudence of the Equatorianian Supreme Court, Mr. Bluntschli even reinforced the impression that the Kestrel Eye was Claimant's newest model (**Exhibit R 4**) in its email of 29 November 2020.
18. In a comparable case, albeit in a domestic setting, the Equatorianian Supreme Court has held in 2010 that an experienced private party contracting with a newly formed government entity is under far-reaching disclosure obligations covering all information potentially relevant for the

government entity. That disclosure obligation also extends to planned improvements to the product. An intentional violation of these disclosure obligation constitutes a misrepresentation entitling the governmental party to avoid the contract pursuant to the equivalent of Art. 3.2.5 of the International Commercial Contract Act (ICCA). In that case, governed by the Contract Act, the government entity had made the declaration of avoidance after more than a year of unsuccessful negotiations with the private party about the consequences of such non-disclosure.

19. In light of this clear jurisprudence of the Supreme Court of Equatoriana, Respondent, by letter of 30 May 2022, avoided the Agreement and terminated all negotiations concerning its performance. As a consequence, Claimant initiated the present arbitration proceedings, misjudging the legal situation.

Legal Considerations

Jurisdiction

20. The Arbitral Tribunal lacks jurisdiction as there is no valid arbitration agreement. It is most likely that the conclusion of the Agreement was tainted by corruption resulting in its invalidity. Furthermore, the Agreement has been terminated by Respondent for misrepresentation. That also affects the arbitration clause contained in the Agreement. The Agreement and thus also the arbitration clause contained therein, would not have been concluded but for the bribes paid and the misrepresentation by Claimant.
21. The invalidity of the arbitration clause furthermore results from the fact that Parliament had not authorized the conclusion of the arbitration agreement. While Equatoriana is a Contracting Party of the PCA and its State-owned entities regularly submit disputes to PCA arbitration, under Equatorianian law so-called “administrative contracts” are subject to a special legal regime as to dispute resolution, distinct from normal commercial contracts. According to the Constitution of Equatoriana, the State and State-Owned Entities can only submit to foreign seated arbitration or litigation in “administrative contracts” if there has been authorization by Parliament. It provides in the pertinent part that “in contracts relating to public works or other contracts concluded for administrative purposes the State of Equatoriana or its entities may submit to arbitration only with consent of the respective minister. If the other party is a foreign entity or the arbitration is seated in a different state Parliament has to consent to this submission.”
22. For the present Purchase and Supply Agreement such authorization was, however, not given. As both the witness statement of Horacia Porter ([Exhibit C 7](#)) and Mr. Bluntschli’s email of 29 November 2020 ([Exhibit R 4](#)) show, Claimant was aware of the missing authorization. Therefore, Claimant cannot invoke any good faith argument, as Mr. Barbosa was obviously acting without authority.
23. In the unlikely event that the Arbitral Tribunal should determine that the arbitration agreement is valid, it should stay the proceedings until the ongoing investigation against Mr. Field is concluded. The public prosecutor has already brought corruption charges against Mr. Field in relation to two contracts concluded by him in his capacity as COO of Equatoriana Geoscience and is also investigating all other contracts concluded by him. Unlike the Arbitral Tribunal, the public prosecutor has broad investigative powers which extend also to third parties. To avoid rendering an incorrect decision in a field with serious public policy implications the Tribunal

should wait until the investigations are concluded and Mr. Field is found guilty, as we expect. Otherwise, there is a risk that in complying with an award Respondent is acting in breach of the Anti-Corruption Act. The public prosecutor made clear that his investigations into the matter will be completed by the end of 2023 at the latest and charges will be brought by then (Exhibit R 2).

24. The new government has also set up a special chamber in the criminal court to deal with all corruption charges relating to the NP Development Program and promised that the average duration of first instance proceedings in this chamber should not be longer than 6-7 months so that a decision can be expected in July 2024 at the latest.
25. Should the Arbitral Tribunal not see fit to stay the arbitration, Respondent requests, in the alternative, that the proceedings at least be bifurcated so that the Tribunal, for now, may solely decide on those issues which do not depend on the result of the criminal investigations.

Merits

26. In addition, the Claimant's claims lack any merit. The contract is governed in its entirety by the Equatorianian ICCA. The Purchase and Supply Agreement for the Kestrel Eye 2010 drones is a sales transaction for an aircraft in the sense of Art. 2(e) CISG falling outside of the CISG's sphere of application. Under Equatorianian law, the drones have to be registered as air vehicles (Exhibit R 5), which justifies considering them as "aircrafts" in the sense of Art. 2(e) CISG.
27. According to Art. 3.2.5 ICCA, Respondent was entitled to avoid the Purchase and Supply Agreement and did so in its letter of 30 May 2022 (Exhibit C 8). Claimant's description of the drones as its "newest model" and "state-of-the-art" is a serious misrepresentation in the sense of Art. 3.2.5 ICCA.
28. It is noteworthy that, pursuant to the idea underlying Art. 4 CISG, Art. 3.2.5 ICCA is applicable, even if the Agreement is in principle governed by the CISG.

Requests for Relief

29. In light of the above, Respondent requests the Arbitral Tribunal to make the following orders:
 - to decline jurisdiction to hear the case;
 - subsidiarily, to stay the arbitral proceedings until the investigations against Mr. Field concerning the taking of bribes in connection with the conclusion of the Agreement are concluded or, alternatively, to bifurcate the proceedings into two phases;
 - subsidiarily, to reject all claims;
 - to award Respondent the costs of these arbitration proceedings including legal costs, with interest.



Julia Clara Fasttrack

Witness Statement of Leonida Bourgeois

1. I was born on 1 December 1986.
2. After my degree in economics and previous work experience as a project manager for a mining company, I started working for Equatoriana Geoscience in 2016, as assistant to the COO. In that function, I had been involved in the discussion leading up to the tender documents as well as subsequent negotiations for the Purchase and Supply Agreement.
3. After reviewing the bids received under the tender, we started to negotiate with two bidders, Drone Eye, the Claimant, and Air Systems plc, a company from Equatoriana. At the outset, Air Systems had a slightly better offer, in particular concerning the price for the drones.
4. Due to a Covid-19-infection, I could not participate in the negotiation round during the first week of November 2021 at Claimant's premises, and Mr. Field went on his own. This round of negotiation was to start on Wednesday and was supposed to finish the following Tuesday with a weekend break in between, which we were supposed to spend at Mr. Buntschli's beachhouse.
5. When I returned to the office, I was surprised to hear that we had ceased negotiations with Air Systems plc and were close to concluding an agreement with Drone Eye, which had a much larger scope than originally foreseen in the tender documents. Instead of 4 drones, we were now buying 6 drones at a price 20 % lower than Claimant's last offer.
6. At the same time, the maintenance and service part had changed considerably. The period for which maintenance was offered was extended from two years to four years and the scope of services and spare parts covered by the basic flat fee was considerably reduced. Even some of the standard maintenance obligations now had to be bought separately by Equatoriana Geoscience. On a closer look, it appeared that the maintenance part of the contract which had a value of EUR 11,520,000 was completely overpriced. Usually, from my experience an exhaustive maintenance contracts, amounts to 3 to 5 percent of the purchase price of a UAS.
7. During the negotiations, we also mentioned that under the law of Equatoriana a registration requirement existed for UAV's of that size if they were operated by private parties. While no such requirement existed in the present case where the aircrafts were to be operated by an SOE, it would be crucial to have clearly visible product numbers on the tail of the aircraft. Drone Eye was surprised to hear that, as there is apparently no registration requirement for such drones in Mediterraneo and the other four countries into which the Kestrel Eye 2010 had been exported so far.

Oceanside, 12 August 2022



Leonida Bourgeois

Justice finally delivered!?

Or is it more a personal matter?

On 3 July 2021, we published in this space our first of several articles disclosing the endemic corruption associated with the Northern Part Development Program. Less than a year later, the world looks different, in particular for the former COO of Equatoriana Geoscience, David Field. Yesterday, Ms. Fonseca, Equatoriana's public prosecutor appointed specifically to lead the investigation into the corruption scandal surrounding the Socialist Party, brought charges against Mr. Field, allegedly one of the main beneficiaries of the system. Allegations of corruption have paved his way from a poor bus driver to one of the most powerful and rich persons in the northern provinces. On the basis of data and information contained in the Panama Papers, a team of investigative journalists managed to attribute at least two offshore accounts to Mr. Field, each of which contained more than three million EUR. That is a lot of money, even for someone like Mr. Field who had an annual income of EUR 300,000 working for a state-owned company in a country where the average annual income of a government employee is less than EUR 25,000.

According to Ms. Fonseca, the prosecution is now able to prove what The Citizen could only assume in its article of 3 July 2021: two payments of EUR 850,000 and EUR 1,150,000 were directly associated with the award of contracts by Equatoriana Geosciences to two companies owned by Mr. Field's cousin. In both cases, the awarding of the contract had already raised suspicion at the time. Both companies were obviously not able to provide the agreed services and have in the meantime filed for insolvency.

Ms. Fonseca further announced that her team would also investigate other contracts concluded by Mr. Field on behalf of Equatoriana Geoscience also with foreign companies. In that context she specifically mentioned an agreement with Drone Eye from Mediterraneo for the purchase and delivery of six UAS.

In its edition of 2 December 2020, The Citizen had reported in detail about the signature of that Agreement and the oddities surrounding its conclusion. It was one of the first major contracts concluded under the NP Development Program which had been awarded to a foreign company.

According to a spokesman of Mr. Rodrigo Barbosa, the Minister of Natural Resources and Development at the time, the drones were originally to be used exclusively for providing high resolution pictures of the remote areas of the Northern Part, necessary to discover and evaluate the existence of rare minerals and other natural resources. That purpose was, however, allegedly enlarged subsequently given the very favorable offer by Drone Eye and the load which the Kestrel Eye 2010 drone could carry. As the Minister said in his speech at the time: "A drone which normally carries cameras or other surveillance equipment in its cargo compartment should also be able to transport urgently needed spare parts or medicine to remote areas of the Northern Part of Equatoriana." And Ms. Queen, the CEO of Equatoriana Geoscience had told the audience at the time that in light of this logic and the excellent price offered by Drone Eye for its present top model Kestrel Eye 2010 Equatoriana Geoscience decided to increase the number of drones to be ordered by two.

However, already at that time that logic seemed everything but compelling as The Citizen had pointed out in its article of 2 December 2020. As stated by an anonymous source "it is very odd that within a tender process one suddenly changes the scope of the contract to be awarded to such an extent. The purpose of a tender is to acquire comparable offers and allowing a change of the conditions is odd." The source further pointed out that drones which are merely used for transporting goods are much cheaper than those which are used to carry high precision equipment for geological and other scientific studies.

Thus, it seems entirely justified that Ms. Fonseca and her team are looking into that agreement as well. And it is clearly laudable that she promised "to have that investigation finalized by the end of 2023 at the latest". Information disclosed by Mr. Field's lawyers yesterday raise doubts as to the real reasons for such a focus on the Drone Eye agreement. It turned out that the CEO of the other bidder for that contract had been Ms. Fonseca's brother-in-law. Furthermore, her son's fiancé is the former personal assistant of Mr. Field. Upon his arrest she was promoted to become the head of internal investigation at Equatoriana Geoscience. And from there she moved to...? The office of the new public prosecutor, her future mother-in-law!

Honi soit qui mal y pense.



HAWK EYE 2020 Unmanned Air Vehicle

GENERAL PRODUCT INFORMATION

Drone Eye plc | 1899 Peace Avenue, Capital City, Mediterraneo

DESCRIPTION

The Drone Eye Hawk Eye 2020 Unmanned Air Vehicle (UAV) has one rotor powered by a state-of-the-art turboprop engine. Its fuselage is made of carbon-fibre. It is remotely controlled by satellite link (beyond line of sight) with an integrated GPS navigation system. It is designed for all-weather missions with high-definition cameras in high altitudes. It is equipped with a de-icing system and automatic take-off and landing systems.

GENERAL TECHNICAL DATA

Dimensions and weight

Overall length:	15800 mm
Wingspan:	28450 mm
Height:	1840 mm
Ground Clearance:	50 mm
Capacity (payload):	2,200kg
Maximum Takeoff Weight:	6,250 kg
Rotor Diameter:	1805 mm
Wing loading:	110 kg/m ²

Performance

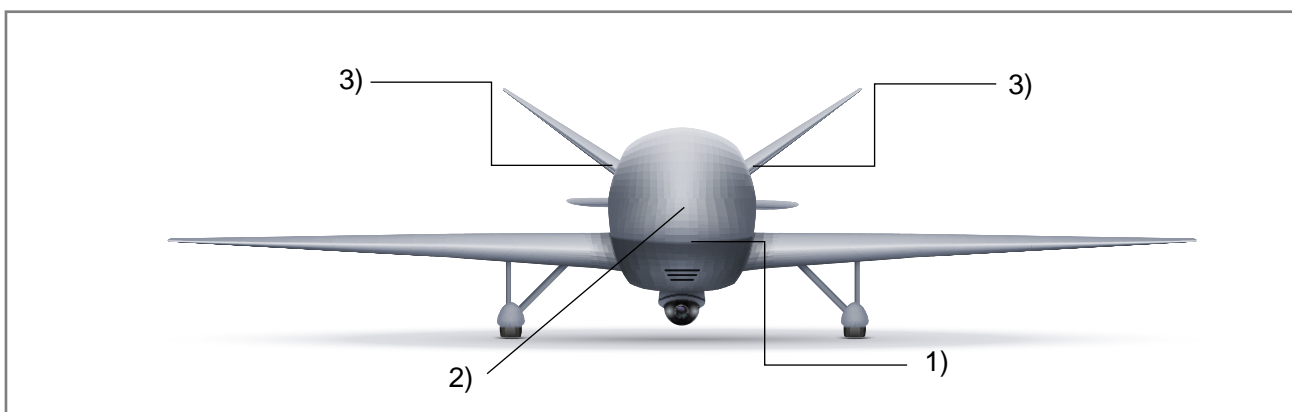
Endurance (max.):	37 hours
Range:	8,500 km
Service ceiling:	14,800 m
Speed (max.):	460 km/h
Rate of climb:	3.8 m/s
Dispatch reliability:	95 %
Maintenance interval:	200 hours
Communication link:	Satellite (SATCOM)

Engine and fuel

Type:	Turboprob
Power:	990 KW / 1,346 HP
Dry Weight:	132 kg
Fuel type:	Avgas 100LL

Location of the Payload Bays

- 1) One Central Payload Bay in the middle of the fuselage
- 2) One Front Payload Bay in the front of the nose fuselage
- 3) Two Side Payload Bays on the two sides of the fuselage





From: J. C. Bluntschli <j.bluntschli@drone-eye.me>
Sent: 29 November 2020, 23:01
To: David Field <d.field@equatoriana-geoscience.eq>
Re: Signing Process

Dear David,

We are glad to hear that the Minister does not consider the cancellation of the Parliamentary Debate and decision to be an obstacle to his approval of the agreement and that the signing procedure can proceed as planned. From our side Mr. Cremer will participate in the official signature procedure.

It is, however, impossible for us to lower the price any further or to provide additional goodies. The prices of EUR 8,000,000 per equipped and EUR 6,000,000 per unequipped UAV, is more than competitive! As you know from our negotiations, the price became only possible due to two factors. First, our ability to reuse three nearly finished UAV which had already been largely paid for and which we could acquire at a very good price from the insolvency administrator of the insolvent customer. Second, your willingness to extend the service period and to structure that service element of the contract differently. Normally, the best price for our latest model of the Kestrel Eye 2010 family is the EUR 10,000,000 contained in our bid.

The version of the Kestrel Eye 2010 purchased under the Agreement constitutes our present top model for your purposes. Its advanced technology guarantees its suitability for state-of-the-art data collection and aerial surveillance – also under the difficult weather conditions which exist in the northern provinces of Equatoriana with strong winds and heavy rain.

This naturally also makes the Kestrel Eye 2010 suitable for other purposes in particular to bring high value and sensitive other loads to the remote areas of the northern provinces.

I hope the above gives the Minister sufficient information and arguments for his speech. Should the Minister need any further information for subsequent discussions in Parliament please let me know and we will provide them.

We are looking forward to a fruitful cooperation over the next few years.

Best,

JCB

J.C. Bluntschli
Chief Operating Officer (COO)
Drone Eye plc
1899 Peace Avenue | Capital City | Mediterraneo

Aviation Safety Act

Article 1: Definitions

(a) aircraft: any vehicle with or without an engine, heavier or lighter than air that is used or intended to be used for moving persons or objects in the air without any mechanical connection to the ground. Unmanned Aerial Vehicles are treated accordingly as aircrafts if their overall length exceeds 90 cm or if their payload is higher than 50 kg.

[...]

Article 10: Registration

Any aircraft owned or operated by a private entity in the territory of Equatoriana shall be registered at the aircraft registry. Transfer of ownership in such aircraft is only perfected upon registration.



Mr. Joseph Langweiler
75 Court Street
Capital City
Mediterraneo

Ms. Julia Clara Fasttrack
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Equatoriana

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16 August 2022

RE: PCA CASE NO. 2022-76
DRONE EYE PLC V. EQUATORIANA GEOSCIENCE LTD

Dear Madame, dear Sir,

The PCA acknowledges receipt of the letter of 15 August 2022 from the Respondent, enclosing its Response to the Notice of Arbitration.

Following the Respondent's appointment of Prof. María Luisa Drago as arbitrator, pursuant to Article 9(1) of the PCA Rules, the co-arbitrators have until **Wednesday, 14 September 2022** to choose the presiding arbitrator of the arbitral tribunal. If no appointment has been made by that date, any Party may request the Secretary-General of the PCA to proceed with the appointment of the presiding arbitrator pursuant to Article 9(3) of the PCA Rules.

Please do not hesitate to contact me at the details set forth above should you have any questions concerning this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Aisha Pax'.

Aisha Pax
Legal Counsel

cc: Ms. Bertha von Suttner (*by e-mail: bvsuttner@kinsky.com*)
Prof. María Luisa Drago (*by e-mail: mldrago@uvindobona.edu*)



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12 September 2022

RE: PCA CASE NO. 2022-76
DRONE EYE PLC V. EQUATORIANA GEOSCIENCE LTD

Dear Madame, dear Sir,

I write under the instructions of the Tribunal in the above-referenced matter.

Further to the PCA's letter of 16 August 2022, the co-arbitrators have appointed Dr. Michael Carel Asser as presiding arbitrator. Please find enclosed his curriculum vitae and Statement of Impartiality and Independence. His contact details are as follows:

Dr. Michael Carel Asser
Rahlgasse 5
1011 Vindobona
Danubia

The Tribunal is thankful to the Parties for the trust placed in it to resolve the present dispute, and hopes to move these proceedings forward as expeditiously and efficiently as possible, in accordance with Article 17(1) of the PCA Rules. The Tribunal has directed the Tribunal Secretary to contact each Party with a view to finding a mutually agreeable date and time to conduct a first procedural meeting by videoconference, at which the Tribunal and Parties may discuss the next steps in the proceedings.

Please do not hesitate to contact me at the details set forth above should you have any questions concerning this letter.

Yours sincerely,

Aisha Pax
Legal Counsel

Encl.: Dr. Asser's Curriculum Vitae (*not reproduced*)
Dr. Asser's Statement of Impartiality and Independence

cc: Ms. Bertha von Suttner (*by e-mail: bvsuttner@kinsky.com*)
Prof. María Luisa Drago (*by e-mail: mlDrago@uvindobona.edu*)
Dr. Michael Carel Asser (*by e-mail: principal@asserlaw.co.da*)



PCA CASE NO. 2022-76:

DRONE EYE PLC

v.

EQUATORIANA GEOSCIENCE LTD

ARBITRATOR'S DECLARATION OF ACCEPTANCE AND STATEMENT OF IMPARTIALITY AND INDEPENDENCE FOR CASES UNDER THE PCA ARBITRATION RULES

(Please check the relevant box or boxes)

I, the undersigned,

Last Name: Dr Asser First Name: Michael Carel

NON-ACCEPTANCE

- hereby declare that **I decline** to serve as arbitrator in the above-referenced case. (If you wish to state the reasons for checking this box, please do so and submit on a separate sheet.)

ACCEPTANCE

- hereby declare that **I accept** to serve as arbitrator under the PCA Rules in the instant case. In so declaring, I confirm that I have familiarized myself with the requirements of the PCA Rules and am able and available to serve as an arbitrator in accordance with all of the requirements of those Rules.


IMPARTIALITY AND INDEPENDENCE

(If you accept to serve as arbitrator, please also check one of the two following boxes. The choice of which box to check will be determined after you have taken into account, inter alia, whether there exists any past or present relationship, direct or indirect, with any of the parties or their counsel, whether financial, professional or of another kind and whether the nature of any such relationship is such that disclosure is called for pursuant to the criteria set out below. Any doubt should be resolved in favor of disclosure.)

- I am impartial and independent** of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, that need be disclosed because they are likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

OR

- I am impartial and independent** of each of the parties and intend to remain so. **However**, in consideration of my disclosure obligation under the PCA Rules, I attach a statement of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. I confirm that these circumstances do not affect my independence and impartiality. I shall promptly notify the parties and other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration. (Use separate sheet for disclosure.)

Date: 10 September 2022 Signature: 

Joseph Langweiler

Advocate at the Court
75 Court Street
Capital City
Mediterraneo
Tel (o) 146 9845; Telefax (o) 146 9850
langweiler@lawyer.me

By email and courier

International Bureau of the Permanent Court of Arbitration
Peace Palace
Carnegieplein 2
2517 KJ The Hague
Netherlands

13 September 2022

Dear Members of the Tribunal,

On behalf of Claimant, we welcome the Tribunal's endeavors to move the proceedings forward. I look forward to hearing from the Tribunal Secretary.

In the meantime, Claimant notes its strong objection to any stay of proceedings, as requested by the Respondent in its Response. Likewise, Claimant objects to the bifurcation of these proceedings, which would only create unjustified delays and costs.

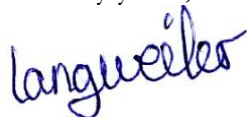
The facts presented warrant neither such a stay nor any bifurcation of the proceedings. Notwithstanding that there may be an examination of all contracts concluded in the context of the Northern Part Development Program, there is so far not even any credible allegation that the Purchase and Supply Agreement is tainted by corruption let alone any proof. The charges brought against Mr. Field relate to two other contracts concluded by him on behalf of Respondent with local firms closely related to the Socialist Party. And far from admitting the charges brought, Mr. Field has announced that he will vigorously defend himself against the "smear campaign organized by the new Government and their supporters in the office of the public prosecutor".

It is noteworthy that the newly appointed head of the public prosecution office himself has been a leading figure in the Liberal Party until his appointment, and has strongly criticized the Northern Part Development Program since its inception. And concerning the objectivity of Ms. Fonseca, the specially appointed prosecutor, and her staff, Claimant merely refers to Exhibit R 2: *Honi soit qui mal y pense!*

Given the information we have from the public prosecution office, until and unless Mr. Field were to confess to crimes he did not commit, a conviction of Mr. Field for taking bribes will not be obtained before July 2024 at best. Even then, any confession or conviction would be just as likely to be procured through duress and political pressure than to be based on discovered facts

The Arbitral Tribunal has sufficient powers, and indeed a duty, to establish the facts for itself.

Sincerely yours,



Joseph Langweiler



Mr. Joseph Langweiler
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7 October 2022

RE: PCA CASE NO. 2022-76
DRONE EYE PLC V. EQUATORIANA GEOSCIENCE LTD

Dear Madame, dear Sir,

I write on instructions from the Tribunal in the above referenced matter.

The Tribunal takes the opportunity to thank the Parties for their participation in the first procedural meeting on 6 October 2022.

Further to the discussions held and agreements reached at the procedural meeting, please find enclosed Procedural Order No. 1, as issued today by the Tribunal. As reflected therein, the Hearing in this matter shall take place in person at the offices of the PCA in Vindobona from 31 March to 6 April 2023. The Tribunal understands that the Parties both agree that, while a videoconference hearing would be perfectly suitable, there remains added value to holding the hearing in person.

Please do not hesitate to contact me at the details set forth above should you have any questions concerning this letter.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Aisha Pax'.

Aisha Pax
Legal Counsel

Encl.: Procedural Order No. 1

cc: Ms. Bertha von Suttner (*by e-mail: bvsuttner@kinsky.com*)
Prof. María Luisa Drago (*by e-mail: mldrago@uvindobona.edu*)
Dr. Michael Carel Asser (*by e-mail: principal@asserlaw.co.da*)

PROCEDURAL ORDER NO. 1

of 7 October 2022

**in the Arbitral Proceedings
PCA Case No. 2022-76:**

- I. Following the receipt of the file from the Permanent Court of Arbitration the Tribunal held a videoconference with both Parties on 6 October 2022 to discuss the further conduct of the proceedings.
- II. The Arbitral Tribunal takes note of the fact that in the videoconference of 6 October 2022 both Parties agreed:
 - to conduct the proceedings in good faith – without any prejudice to the bifurcation request – in accordance with the procedural timetable set forth below;
 - to limit the first phase of the Arbitration to questions listed below addressing the Arbitral Tribunal’s jurisdiction, Respondent’s stay application, questions as to the applicable law, and the avoidance of the Agreement.
- III. In light of these agreements and considerations, the Arbitral Tribunal hereby makes the following orders:
 1. In their next submissions and at the Hearing the Parties shall address the following issues:
 - a. Does the Arbitral Tribunal have jurisdiction to hear the dispute?
 - b. If the Tribunal’s jurisdiction can be established should the proceedings be stayed until the investigations against Mr. Field have been concluded or, alternatively, bifurcated?
 - c. Is the Purchase and Supply Agreement governed by the CISG?
 - d. In case the Purchase and Supply Agreement is governed by the CISG, can Respondent rely on Art. 3.2.5 of the International Commercial Contract Act of Equatoriana to avoid the contract as stated in its letter of 30 May 2022 or is Claimant correct that this is excluded in light of the facts invoked?

The Arbitral Tribunal is aware that the various questions are closely connected to each other. Thus, the Parties are free to decide in which order they address the various issues. **No further** questions going to the merits of the claims should be addressed at this stage of the proceedings, in particular no questions relating to the prayer for relief or further issues.

2. Pursuant to Arts. 17(2), 20, and 21 of the PCA Rules, written submissions are to be made in accordance with the Rules of the Moot agreed upon at the videoconference. For their submissions the following Procedural Timetable applies:

Claimant’s Statement of Claim: no later than 8 December 2022;

Respondent’s Statement of Defence: no later than 26 January 2023.

3. It is undisputed between the Parties that

- Equatoriana, Mediterraneo and Danubia are Contracting States of the CISG;
- Equatoriana is a common law country and has based its International Commercial Contract Act on the UNIDROIT Principles on International Commercial Contracts;
- all three countries are Contracting Parties to the 1899 and 1907 Hague Conventions (the PCA's founding conventions);
- all three countries are Contracting Parties to the United Nations Convention against Corruption;
- all three countries are Member States of the New York Convention, and their national arbitration law is a verbatim adoption of the UNCITRAL Model Law on International Commercial Arbitration with the 2006 amendments.

4. In the event Parties need further information, Requests for Clarification must be made in accordance with para. 29 of the Rules of the Moot no later than 28 October 2022 via their online party (team) account. No team is allowed to submit more than ten questions. Where an institution is participating in both Hong Kong and Vienna, the Hong Kong team should submit its questions together with those of the team participating in Vienna via the latter's account on the Vis website.

Clarifications must be categorized as follows:

- (1) Questions relating to the Claimant and its business;
- (2) Questions relating to the Respondent and its business;
- (3) Questions relating to the two UAVs;
- (4) Questions relating to the arbitration clause and the consent requirement;
- (5) Questions related to the conclusion of the Agreement;
- (6) Questions relating to the corruption allegations and the charges brought against Mr. Field;
- (7) Questions relating to the misrepresentation allegations;
- (8) Questions concerning the applicable laws and rules;
- (9) Other questions.

IV. Pursuant to Art. 28 (1) of the PCA Rules, both Parties are invited to attend the Hearing scheduled for 31 March to 6 April 2023, in Vindobona, Danubia.

Vindobona, 7 October 2022


Dr. Michael Carel Asser, Presiding Arbitrator