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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Report of the Working Group on Arbitrary Detention

Addendum

MISSION TO EQUATORIAL GUINEA*
(8-13 July 2007)

* The executive summary of this mission report is being circulated in all official languages. The report itself is contained in the annex to the executive summary and is being circulated in the language of submission and in English.

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Executive summary

The Working Group on Arbitrary Detention visited the Republic of Equatorial Guinea from 8 to 13 July 2007, at the invitation of the Government. The visit included the capital, Malabo, located on Bioko Island, and the cities of Bata and Evinayong, on the mainland. The Working Group held meetings with the country's highest authorities, including the Prime Minister, the Presidents of the Supreme Court and the Constitutional Court and members of those bodies, the Minister of National Defence and the Governor of Centro-Sur Province. Meetings were also held with representatives of civil society, criminal lawyers, former detainees and the families of people in detention.

The report gives an account of the Working Group's visits to Malabo central prison, known as "Black Beach", to the prisons of Bata and Evinayong, and to the cells of the Malabo police headquarters and the Bata police station and *Gendarmería*. The Working Group was able to interview, in private and without witnesses, approximately 200 detainees.

The report describes the country's institutional and legal framework, referring in particular to the legal framework for detention as part of the criminal justice process. Noteworthy among the positive aspects were the cooperation extended to the Working Group by the Government and its commitment to ensure that the criminal justice system meets international human rights standards, as well as the enactment on 2 November 2006 of Act No. 6/2006 on the prevention and penalization of torture, and of the Organization Act on the Judicial Service Council, notwithstanding the fact that, in the opinion of the Working Group, that law does not go far enough to guarantee the independence of the judiciary. The improvement of infrastructure at prisons and police stations is also worthy of note, in particular at Malabo central prison, as is the work being done in the prisons by the National Human Rights Commission, and the initiatives taken in relation with legal training and human rights.

Areas of concern identified by the Working Group include the fact that laws and regulations inherited from the colonial era and dating back to the Franco dictatorship in Spain are still in effect and enforced, among them the Criminal Code, the Criminal Procedure Act and the Code of Military Justice, which contain principles and standards incompatible with the 1995 Constitution and international instruments. It is also noteworthy that Organization Act No. 4/2002 on the legal status of the judiciary does not provide sufficient guarantees for the independence of the judiciary or of judges and law officers, and that the police and the *Gendarmería*, which often carry out arbitrary arrests and detentions, have excessive powers.

The report also notes the excessive power of the armed forces which effectively control the prisons, carry out arrests, and exercise military jurisdiction over civilians. Secret detentions and the abduction of opposition politicians in neighbouring countries are of particular concern. The report describes cases of people detained for merely exercising their political rights; it looks into the detention of illegal immigrants at police stations, notes the absence of effective defence rights and limitations on legal aid, refers to the physical conditions of detention as a contributing factor to the lack of adequate defence and cites the lack of an effective registration system at prisons and police stations.

The report concludes that the country cannot truly develop unless the current economic growth is accompanied by institution-building, the application of the rule of law and the genuine exercise of human rights. The Working Group presents 13 recommendations for the Government of Equatorial Guinea, emphasizing the urgent need to overhaul the country's legal framework in order to bring it into line with the 1995 Constitution and international instruments; to provide legal guarantees for the independence of the judiciary; to amend the current laws governing habeas corpus, *amparo* and constitutional review; to strengthen the National Human Rights Commission and civil society organizations; and to establish a modern juvenile court system. The Working Group also recommends avoiding incommunicado detention of illegal immigrants and facilitating consular access; immediately halting the practice of secret detention; and resolving the status of persons deprived of their liberty for merely exercising a right.

Annex

REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION ON ITS VISIT TO EQUATORIAL GUINEA (8-13 July 2007)

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I. INTRODUCTION

1. The Working Group on Arbitrary Detention, which was established pursuant to Commission on Human Rights resolution 1991/42 and whose mandate was extended for three years by Human Rights Council resolution 6/4 of 29 September 2007, visited the Republic of Equatorial Guinea from 8 to 13 July 2007 at the invitation of the Government. The delegation was composed of Manuela Carmena Castrillo (Spain) and Soledad Villagra de Biedermann (Paraguay), the Secretary of the Working Group, another official from the Office of the United Nations High Commissioner for Human Rights and two interpreters.

2. The Working Group expresses its gratitude to the Government of Equatorial Guinea and the representatives of civil society with whom it met during its visit for their cooperation. The Working Group enjoyed the cooperation of the central Government and the provincial and local authorities, in a context of collaboration and transparency.

II. PROGRAMME OF THE VISIT

3. The visit included the capital, Malabo, located on Bioko Island, and the cities of Bata and Evinayong, on the mainland. The Working Group held meetings with the Prime Minister, the Presidents of the Supreme Court and the Constitutional Court and members of those bodies, the Vice-Prime Minister responsible for human rights, the Minister of National Defence and senior officials of the Ministry of National Security, including the Director and the Assistant Director of National Security, the Vice-Minister for Foreign Affairs, the Director of the Penitentiaries Service, the Vice-Chairperson and two members of the National Human Rights Commission, the Governor of Centro-Sur Province in Evinayong, the wardens of Malabo central prison (known as "Black Beach") and the prisons of Bata and Evinayong, and military and police authorities in Bata.

4. The Working Group also held meetings with representatives of United Nations agencies in Malabo, representatives of the country's civil society, defence attorneys specialized in criminal law, former detainees and the families of people in detention.

5. The Working Group visited Malabo central prison ("Black Beach"), Bata prison, Evinayong prison and the cells of the Malabo police headquarters and the Bata police station and *Gendarmería*. It was able to hold private interviews with approximately 200 detainees at those facilities, without the presence of witnesses.

III. INSTITUTIONAL AND LEGAL FRAMEWORK

A. Institutional and political framework

1. Political system

6. The Republic of Equatorial Guinea is a young country which declared its independence on 12 October 1968 and whose Constitution was adopted on 17 January 1995. Thus, while the Constitution establishes that Equatorial Guinea is a sovereign, independent, republican, unitary,

social and democratic State which recognizes political pluralism (art. 1), its legal framework is still not sufficiently developed: new laws which have been shaped in accordance with the spirit and principles of the Constitution coexist with the Spanish law that was in force during the dictatorship of General Franco.

7. Many of the enactments that make up the legal order in Equatorial Guinea date back to before independence and were declared applicable by Decree No. 4/80 of 3 April 1980. These laws were in force in Spain prior to 1968. Moreover, they have not been harmonized with other enactments which, though unsystematized, remain in force, such as the Code of Military Justice of 17 July 1945, and no consideration has been given to whether they are compatible with the current Constitution and the laws adopted since 1995.

8. Article 1 of the Constitution also establishes that the supreme values of Equatorial Guinea are unity, peace, justice, freedom and equality. Respect for the human person, for human dignity and freedom and other fundamental rights are among the principles that govern the country's society (art. 5).

9. In the Preamble to the Constitution and in article 8, the State reaffirms its commitment to the principles of international law and to the rights and obligations that stem from the various international instruments governing the international organizations of which Equatorial Guinea is a member.

10. The legislative branch consists of a unicameral parliament, the House of Representatives of the People, whose 80 members are directly elected by universal suffrage for a period of five years. The executive branch is headed by a Prime Minister, who is the leader of the majority party in the House and who is appointed by the President. The body responsible for implementing national policy, which is determined by the President, is the Council of Ministers.

11. The President is the Head of State, and personifies the nation. He is elected for a period of seven years by direct universal suffrage. The President exercises the power to govern through the Council of Ministers.

2. Judiciary

12. Article 83 of the Constitution provides that the judiciary shall exercise the judicial power of the State and shall be independent of the legislative and executive branches. Article 86 states that the Head of State shall be the first magistrate of the nation and shall guarantee the independence of the judiciary. The members of the Supreme Court are appointed by the President for a period of five years. Professional judges and officials of the justice system are appointed and dismissed in accordance with procedures laid down by law (Constitution, art. 91).

13. The structure, functioning and legal status of the Higher Council of Justice are governed by Organization Act No. 4/2002 of 23 May 2002. Article 6 of the Act establishes that the Council shall oversee the competitive procedure for the selection, promotion and induction of law officers and judges, but this has not yet been put into effect. Article 2 of the Act specifies that the Council shall be chaired by the Head of State.

14. Act No. 3/1984 of 20 June 1984 on the jurisdiction of courts and judges merely establishes the various classes of courts and tribunals and their respective jurisdictions.

15. The criminal justice system is composed of tribunals at different levels: local courts, investigating judges of first instance, territorial high courts and the Supreme Court.

16. The Supreme Court is the highest judicial body for all jurisdictions and is competent to hear appeals on points of law against final rulings handed down by the criminal divisions of the territorial high courts.

17. The Constitutional Court was established to guarantee constitutional principles, standards and laws. It is composed of a president and four members appointed by the President of the Republic, two of whom are nominated by the House of Representatives of the People. Its main function is to review the constitutionality of legislation. Constitutional challenges may be filed by the President of the Republic, the Prime Minister, the Attorney-General or the House of Representatives of the People, by a qualified majority vote.

3. Public Prosecutor's Office

18. The main function of the Office of the Attorney-General is to ensure strict compliance with the Constitution and with laws and other decrees and resolutions issued by State bodies at all levels: national, regional, provincial, municipal and local, relating both to citizens of the country and to resident foreigners (Constitution, art. 92). The Attorney-General and his deputies are appointed and dismissed by the President of the Republic (art. 93).

4. Military justice system

19. The Code of Military Justice was adopted in Spain on 17 July 1945, i.e., in the midst of the post-civil war era. It gives the military courts extremely broad jurisdiction over a long list of civilian offences, including national security offences, offences against the country's territorial integrity and crimes of lese-majesty.

20. Under this Code, extremely summary trials are conducted, in which the defence attorney may be either a military officer or an ordinary lawyer. There is no possibility of appeal. As for non-military offences, i.e., criminal offences covered by the ordinary law, article 257 of the Code of Military Justice provides that the Criminal Code (adopted on 28 March 1963) must be applied both to members of the military and to civilians.

5. National Police and *Gendarmería*

21. The National Police have jurisdiction in the cities, and the *Gendarmería* has jurisdiction in rural areas. Both are under the authority of the Ministry of National Security. This division of functions has developed in practice and is not based on any legal provision.

6. Penitentiary system

22. There is no specific law governing the penitentiary system. There are five main prisons. There are no women's prisons, reformatories or juvenile custodial institutions, nor are there any military prisons. Despite coming under the authority of the Ministry of National Security, the prisons are in fact run by the military.

23. The former Spanish Criminal Procedure Act, which is applied pursuant to Decree-Law No. 4/1980 of 3 April 1980, sets out a series of general principles governing the penitentiary system. According to this Decree-Law, the Spanish Prison Regulations adopted by decree on 2 February 1956 are applicable in Equatorial Guinea.

24. Article 520 of the Criminal Procedure Act provides that the treatment of a prisoner, whether convicted or in pretrial detention, must occasion the least possible suffering for the person in question and for his or her reputation. It also defines possible restrictions on freedoms and communications, and stipulates that prisoners must be separated according to sex, age, education and criminal record.

B. Legal framework for detention under criminal justice procedures

1. Obligations under international human rights instruments

25. The Republic of Equatorial Guinea has ratified seven of the main United Nations human rights instruments, including the International Covenant on Civil and Political Rights and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights. With regard to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Equatorial Guinea acceded on 9 August 2002, the State party entered a reservation concerning the competence of the Committee against Torture. As noted above, article 8 of the Constitution establishes that the State shall observe the rights and obligations deriving from the international instruments to which it is party.

2. Constitutional guarantees

26. Article 13 of the Constitution establishes the rights and freedoms of citizens. It provides inter alia that individuals may be deprived of their liberty only by means of a judicial warrant, except in cases established by law or flagrante delicto cases. Every prisoner must be informed of the reasons and grounds for his or her detention. The presumption of innocence is recognized until guilt is proven in judicial proceedings. Any sentencing must take place subsequent to a trial. The rights to a defence attorney and to legal assistance at all stages of the proceedings are also recognized.

3. Criminal procedure

27. The main features of the legal framework for detention are described in the Spanish Criminal Procedure Act of 14 September 1882, applied in Equatorial Guinea pursuant to Decree-Law No. 4/1980 of 3 April 1980.

28. Any person is authorized to detain another in cases of flagrante delicto. Soldiers often arrest and detain people, despite the fact that they are not specifically authorized to do so unless the person is caught in the act of committing an offence. Arrests are often carried out by members of the police, generally acting under the orders of the civil authorities (provincial governors, Government representatives and army officers). Most arrests are carried out without production of an arrest warrant.

4. Judicial police

29. Article 282 of the Criminal Procedure Act assigns to the judicial police the task of investigating offences committed in its territory or jurisdiction and of carrying out the necessary inquiries to ascertain who the perpetrators are.

30. Under article 492, the police shall, and must, detain any person who is in the act of committing an offence or fleeing, who is under trial or sentenced, and persons who are suspected by the police themselves of being the perpetrators of offences. Article 496 of the Criminal Procedure Act further establishes the obligation of the police, within 24 hours after an arrest, either to release the person in detention or to bring him/her before a competent judge. In Spain, during the period when the Criminal Procedure Act was in force, this 24-hour period was extended to 72 hours under what was then Spain's Fundamental Law, known as the "*Ley del Fuero de los Españoles*" ("*Lex fori* of the Spanish people").

31. The Constitution of Equatorial Guinea makes no mention of a maximum period of police detention, although Act No. 4/2002 of 23 May 2002, which established the police courts, provides in article 4, paragraph 1, that "once the 72 hours have elapsed, if the police investigation has not been completed, the police authority shall bring the detainee before the courts".

5. Habeas corpus

32. Habeas corpus proceedings are governed by Act No. 18/1995 of 11 October 1995. Persons who consider that they are being unjustly detained must have access to a judge, who should normally be the investigating judge of first instance for the place of detention. The judge must rule without delay whether the detention is legal.

33. Article 3 of the Act lists the cases in which it must be considered that the detention is illegal, for example when guarantees have not been respected, or established procedures have not been followed, when the person has been illegally held in an unauthorized facility, or when the maximum period of detention has been exceeded without the detainee having access to a judge.

6. Pretrial detention

(a) Investigating judge

34. The investigating judge must see persons detained by the police within a maximum of 72 hours. He must decide in the following 72 hours on the detainee's release, pretrial detention or release on bail (Criminal Procedure Act, art. 497). The investigating judge has

sole competence to order pretrial detention. To facilitate the proper discharge of this duty, Organization Act No. 4/2002 of 20 May 2002 established police courts, which must operate on a round-the-clock basis, 365 days a year.

35. Police courts are responsible for receiving persons detained by the police. Under article 3 of Act No. 4/2002, a warrant is required for deprivation of liberty in all but flagrante delicto cases. The investigating judge's decision is appealable, under article 518 of the Criminal Procedure Act. Appeals can be made either by the detainee or by the Public Prosecutor's Office, before the criminal division of the territorial high court.

(b) Cases in which pretrial detention may be authorized, and its duration

36. Pretrial detention may be ordered solely by the investigating judge, and only in specific circumstances, in particular for offences punishable by more serious penalties than correctional detention (*prisión reformatoria*) (Criminal Procedure Act, art. 503). Correctional detention is a sentence of between six months and six years, and is the lightest sentence provided for in the Spanish Criminal Code of 28 March 1963. In exceptional cases, pretrial detention may be ordered even where the sentence does not exceed six years, when the detainee has a criminal record or when there are reasonable grounds to suspect that he will not appear before the judicial authority when summoned to do so. Detainees must be released as soon as their innocence has been proven (Criminal Procedure Act, art. 528).

(c) Solitary confinement during pretrial detention

37. Under article 506 of the Criminal Procedure Act, solitary confinement may be ordered during pretrial detention, but its duration must be restricted "to the time that is absolutely necessary for carrying out the investigations into the offence". As a general rule, the maximum time provided for is five days.

7. Public Prosecutor's Office

38. During the pretrial proceedings the role played by the Public Prosecutor's Office is limited to that of prosecuting party (or one of the prosecuting parties, since there may also be a private prosecuting party); the Office is not involved in the investigating judge's decision to order pretrial detention. Its role of defining offences and leading the prosecution is only relevant during the trial itself, in accordance with article 649 of the Criminal Procedure Act.

8. Criminal proceedings

39. Proceedings are conducted in the court of first instance or the criminal division of the territorial high court, depending on the offences charged. Courts of first instance deal with wilful wrongdoing of a less serious and flagrant nature (Act No. 3/1984 of 20 June 1984 on the competence of tribunals and courts, art. 12). The criminal division of the territorial high court tries all other offences, subject to the exceptions provided for in the Criminal Procedure Act in which competence is granted to other courts (for example, criminal cases against members of the Government, and other authorities, which must be tried by the Supreme Court).

40. Prosecution functions are exercised by the Public Prosecutor's Office and the private prosecuting party. The accused person must always be assisted by defence counsel. Minor offences are tried by local courts and, in these cases, there is no need for defence counsel. Sentences handed down by local courts in proceedings for minor offences are appealable to courts of first instance. Sentences handed down by courts of first instance are appealable to the criminal division of the territorial high court. Sentences handed down by the criminal division of the territorial high court are appealable on points of law to the Supreme Court.

9. Access to legal assistance

41. Under article 13, paragraph (r) of the Constitution, all citizens have the right of defence at all stages of the proceedings. However, the Criminal Procedure Act provides that the presence of a lawyer is required only during the oral proceedings. Article 652 of the Criminal Procedure Act provides that, once the Public Prosecutor's Office has made the case for the prosecution, the courts shall provide a defence lawyer to accused persons who do not have one.

42. There is no specific legal requirement concerning free legal assistance. This is provided in practice through the official appointment of defence lawyers by bar associations.

10. Detention of minors and juvenile justice

43. Under the former Spanish Criminal Code of 1963, which is in force in Equatorial Guinea, the minimum age of criminal responsibility is 16 years. Although the Code provides for extenuating circumstances for persons aged between 16 and 18, no specific provisions exist regarding their detention, including pretrial detention.

44. Decree-Law No. 4/1980 refers to the *Tribunal Tutelar de Menores* (minors' court) established by the Spanish law of 11 June 1948. In Spain this court was responsible for trying offences committed by minors aged under 16. However, the Working Group has no evidence that this minors' court is in operation in Equatorial Guinea. There are no special courts for minors. Minors who commit less serious offences are usually taken to police stations, where they sometimes spend several days or weeks and are then handed back to their families, sometimes on the condition of carrying out community work. Minors who commit serious offences are sent to prisons for adults if they have reached the age of criminal responsibility - 16 years.

11. Detention of foreigners

45. There are no legal provisions covering persons who enter the country illegally or remain after their entry visa has expired. Nor is the detention or holding of foreigners provided for in law. Equatorial Guinea requires an entry visa for all foreign nationals other than citizens of the United States of America.

46. The police routinely carry out raids and checks on city streets and highways, with the aim of identifying and detaining foreign nationals who have entered the country without the necessary visa, or who have remained in the country illegally after their visas have expired. Undocumented foreigners detained by the police are held indefinitely in police station cells, pending expulsion.

IV. POSITIVE ASPECTS

A. Cooperation of the Government

47. The Working Group benefited from the Government's cooperation during its visit. The Group was able to inspect the detention centres it had requested prior authorization to visit. It was able to hold private meetings in these facilities with all the detainees it wished to speak to, without the presence of witnesses.

48. The only exception occurred towards the end of its inspection of Black Beach prison in Malabo. In response to the Working Group's well-founded suspicion that Juan Ondo Abaga, Felipe Esono Ntutumu, Florencio Ela Bibang and Antimo Edu Nchama - who had been kidnapped in other countries and brought to Equatorial Guinea - might be being kept in one of the prison's old wings separate from the ones already visited, and the Group's request to visit the wing in order to speak to those persons, the Group was forced to terminate its visit and leave the prison.

B. Commitment to meet international human rights standards in the criminal justice system

1. New legislation and accession to international instruments

49. Following the promulgation of its first Constitution, Equatorial Guinea made various changes to the legal system it had inherited from the colonial era, which have had positive effects for the democratic functioning of the State and for the protection of the individual and collective rights of citizens. In recent years the Government has acceded to the main international human rights instruments, thus sending out a clear sign of its political commitment to ensuring the observance of human rights in the country.

50. Especially positive is the promulgation of Act No. 6/2006 on the prevention and penalization of torture, on 2 November 2006, and the Organization Act on the Judicial Service Council, despite the fact that it does not sufficiently guarantee the independence of the judiciary.

51. Given the historical background of this young country, Act No. 6/2006 on the prevention and penalization of torture is of particular significance for the proper conduct of criminal procedure. The articles of the Act explicitly state that the practice of torture is prohibited and define as torture those acts carried out by police officers, in the course of their duties, that cause a person physical or mental pain or suffering, with the aim of investigating an offence or obtaining information or a confession from the person tortured.

2. Improving the infrastructure of prisons and police stations

52. In addition, as a result of the recent discovery of oil reserves, the Government is now able to assign sufficient resources to improving the infrastructure of prisons and places of detention. In this connection, the process of improving the physical infrastructure of prisons and reforming internment institutions has already begun, and training programmes for prison and police authorities and officers have been introduced.

53. A number of prisons have been rehabilitated or are in the process of being built. Malabo central prison has been rehabilitated and a new central wing has been built with the necessary hygiene and sanitation facilities. In Bata, a new building is being built to replace the current central prison, as is a new central police station. There is also a plan to build a new prison in Evinayong to replace the current prison.

3. Work of the National Human Rights Commission

54. Another positive development is the work of the National Human Rights Commission, which made visits to the country's prisons and police stations, including the *Gendarmería*, in February and September 2006. The conclusions of its first inspection tour were published in 2006 in a report, which contains reliable, serious and critical information together with specific recommendations aimed at improving the situation in prisons and detention centres. Another inspection was carried out in March 2007.

55. The National Human Rights Commission had no major difficulty in visiting prisons and police detention centres in Malabo, Baney and Luba (Bioko Island) and Bata, Evinayong, Akurenam, Akonibe, Nsok, Mongomo, Añisok, Nsok-Nsomo, Ebebiyin, Micomiseng, Niefang, Mbini and Kogo (mainland). It was particularly successful in reminding local authorities of the limits to their powers of arrest and detention of citizens.

4. Initiatives in legal and human rights training

56. The Working Group was informed that human rights training courses for police authorities and officials are being organized in cooperation with the European Union. The Government informed the Working Group of its intention to introduce human rights courses in school curricula.

57. The Working Group was also informed of the establishment of the country's first law faculty, which it is hoped will increase the number of jurists able to join the judiciary, the Public Prosecutor's Office and the legal profession.

V. ISSUES OF CONCERN

A. Legal standards incompatible with international standards

58. While the promulgation of the Constitution in 1995 and the accession to the main human rights instruments are of considerable importance, it should be noted that the country's criminal legislation is still essentially the same as that inherited from the colonial era. At the time of independence in Equatorial Guinea, the legal standards in force were those of General Franco's dictatorship. The Criminal Code, the Criminal Procedure Act, the Code of Military Justice and other basic laws relating to detention that are in force today in Equatorial Guinea contain principles and standards that are undemocratic and incompatible with the rule of law. A great many of these standards run counter to the principles and standards of the Constitution and the international instruments to which Equatorial Guinea is a party.

B. Lack of independence of the judiciary

59. The Working Group observed that Organization Act No. 4/2002 on the legal status of the judiciary does not sufficiently guarantee the independence of judges and law officers. Crucial to the independence of the judiciary are both the manner in which judges and magistrates are appointed, and their irremovability. Article 6 of the above-mentioned Organization Act provides that "rules shall be established regarding the competitive procedure for the selection, promotion and induction of new judges under the terms of this Act". The Organization Act does not guarantee independence in the appointment of judges or their irremovability. The way in which this independence and irremovability are to be guaranteed should be clearly defined in law.

60. The Working Group received information to the effect that, in practice, only those lawyers who share, or sympathize with, the ideas of the party currently in Government - the Democratic Party of Equatorial Guinea (PDGE) - are elected as judges and law officers. Although it was impossible to confirm this, the legal provisions do not, in point of fact, guarantee the independence or irremovability of judges. The regulations referred to in the above-mentioned article 6 do not bridge this legal gap. The criteria on which public competitive examinations must be based, and the specific disciplinary sanctions that the Higher Council of Justice can impose on judges or law officers to dismiss or suspend them from office must be clearly established in law. The lack of such a legal provision means that there is no real independence of the judiciary.

C. Excessive power of the police

61. The Working Group observed that both the police and the *Gendarmería* have, in practice, excessive powers and authority; this often leads to arbitrary arrests and detentions, which have no legal basis whatsoever. Frequently, authorities order arrests and detentions with no legal authorization, despite the provisions of Organization Act No. 4/2002 on police courts. Police and gendarmes interviewed by the Working Group also cited, as one reason for detention, the need to protect detainees from violence on the part of families or neighbours, or the need to punish them for acts that are not in themselves illegal.

62. The Working Group was also able to observe the general non-compliance with the rule that all detainees must be brought before a judicial authority within a maximum period of 72 hours, in order for the judge to decide on their release or continued detention. Detention beyond the 72-hour limit appears to be a common, widespread practice. The vast majority of the detainees interviewed by the Working Group in police stations and *Gendarmería* offices in Malabo and Bata said that they had been held for more than four or five days, and some for over a month, without having been brought before the judicial authority. Others stated that they had been interviewed not by a judge, but by a court secretary.

63. The Working Group was able to confirm the detention of persons who stated that they were being held because of disputes with relatives or neighbours, or simply owing to civil debts. In other cases, arrests of a purely arbitrary nature had been carried out on the basis of an order by higher authorities. When police superintendents were asked about this, they stated that the detentions had been carried out on the "orders of a superior".

64. In none of the cases had detainees filed for habeas corpus as a remedy against their arbitrary detention. A number of lawyers who had used this remedy stated that in general it was not effective.

65. The Working Group has the impression that many local, military and police authorities consider their powers to include ordering and carrying out the arrest and detention of citizens. At no time has any authority, agent or other person responsible for arrests or arbitrary detentions ever incurred an administrative or criminal penalty. This means that they enjoy total impunity.

D. Excessive power of the military

66. The armed forces have effective control over prisons, which were built inside military compounds. Black Beach prison is located inside a former military compound and Bata central prison is also located inside an army compound. This results in countless difficulties, particularly with regard to access to prisoners. Families wishing to visit a prisoner must first apply to the military authorities for access to the military camp.

67. According to information received, soldiers often make arrests and detentions, despite not having the legal powers to do so. They often set up road checkpoints, especially at the entrance to cities, and demand payment of a sum of money for passage. Those who refuse to pay these illegal charges are often beaten and arrested.

68. There are no legal channels through which persons detained by military authorities can claim their rights. Civilians are sometimes tried by military courts. The Working Group has previously expressed its views on the nature of military courts, calling into question their independence. Accused individuals are not able to meet the costs of their defence, and must use the services of officially appointed lawyers, most of whom are army officials and do not provide an effective defence. Judges and defenders in military courts are not lawyers or jurists, but military officials with no legal training. Frequently, civilians are subjected to summary trials and are convicted without having been afforded the guarantees of a fair trial. Nor do they have the right to appeal their convictions to a higher court. There is no service of judgements and convicted persons cannot obtain a copy thereof. Some persons have only learned of their sentences from State radio.

E. Secret detention

69. The Working Group is particularly concerned by the practice of secret detention. It has received information about the kidnapping by Government agents of nationals of Equatorial Guinea, who are taken from neighbouring countries to Malabo and held in secret detention there. In some cases the authorities have not acknowledged that the persons in question are being held in detention, which means that technically they are considered to be missing. This is the case for the following four individuals: Juan Ondo Abaga, Felipe Esono Ntutumu, Florencio Ela Bibang and Antimo Edu Nchama, who could not be interviewed by the Working Group at Black Beach, and who were kept in a separate wing of the prison, according to a letter they sent to the Working Group.

70. According to the complaints received, these four individuals were transferred to Equatorial Guinea in a military aircraft and imprisoned in Black Beach. They had official refugee status in the countries where they were living. They were kidnapped and subsequently detained without the benefit of any legal proceedings.

71. The Working Group also interviewed four other persons who were detained in secret for 18 months before being transferred to Bata. During their secret detention, they wore handcuffs and leg irons, the marks of which the Working Group was able to observe directly.

72. These persons were part of a group of five exiles who were arrested in Libreville on 3 June 2004 by members of the Gabonese security forces for their alleged participation in the incidents that took place on the island of Corisco in 2004. Ten days after they were apprehended, they were handed over to security officials of Equatorial Guinea and transported in secret to Malabo. No formal extradition proceedings were observed. For one and a half years they were held incommunicado and underwent torture. In 2006, Carmelo Ncogo Mitogo, Jesús Michá Michá, Juan Bestue Santander and Juan María Itutu Méndez were accused of rebellion, but they have not yet been tried. Their defence lawyer has had difficulties meeting with them since he saw them on the day they were formally charged. Salvador Ndong Nguema was not charged and was released as a result of a presidential pardon.

F. Lack of an effective defence

73. The Working Group has observed that the lawyers in criminal proceedings do not provide a genuine and effective defence. Recruiting the services of a lawyer is possible only for those with sufficient economic resources, as there is no effective system of court-appointed representation for all the detainees who require such representation. Furthermore, there is a real lack of lawyers in the country, especially outside the cities of Bata and Malabo. Many lawyers are also public officials or engage in other remunerated activities. A system of court-appointed representation is only available to accused persons formally summoned to appear in court, which is likewise very unsatisfactory. The lack of available lawyers to take on court-appointed defence cases tends to delay the start of trials.

74. The Working Group was informed of the serious difficulties faced by lawyers in defending their clients. Lawyers do not have access to police stations, nor can they contact detainees while they are held there. The police superintendents interviewed said that they did not see the need for or the advisability of such access. If the charges relate to offences of a political nature, the difficulties are even greater.

G. Persons detained for exercising their political rights

75. During its visit, the Working Group was able to ascertain that a number of detainees are in prison for exercising their political rights. These persons are generally accused of having committed crimes against the State or offences against the President of the Republic, as defined in the Spanish Criminal Code of the colonial era. Some of them are serving particularly long sentences, having been convicted by military courts without the guarantees of due process. In some cases detainees were tried summarily, without the right to appeal their sentences. Non-governmental sources informed the Working Group that about 100 individuals are currently in detention for offences relating to the exercise of political rights.

76. The Working Group also received information relating to the detention for short periods of political activists, mainly members of the opposition party, the Convergence Party for Social Democracy (CPDS), or the People's Union (UP). Other individuals are in detention merely for exercising their rights to freedom of opinion, expression, assembly and association, principally in rural areas or towns on the mainland. These individuals are detained for short periods in police stations or in the *Gendarmería*, sometimes for up to three or four days, without being formally charged. They are generally released after being forced to pay a fine. In other cases, detainees have been deprived of their liberty for committing politically-motivated violent acts.

77. In the current situation, the number of detentions and prosecutions for merely exercising political rights appears to have decreased. As a result of the broad discretion and impunity with which the authorities are acting and the fact that the old Spanish Criminal Code is in force and applied, that code continues to be used contrary to the Constitution in force and international human rights instruments, principally with regard to specific rights, such as freedom of opinion and expression, association, assembly and political participation.

78. On 8 May 2004, 10 members of the Convergence Party for Social Democracy (CPDS) were arrested at Malabo airport and detained for a week in police cells.

79. Antonio Eusebio Edu, a 75-year-old member of the Convergence Party for Social Democracy (CPDS), resident in Nsok-Nsomo, was arrested for refusing to clean a road in May 2006. He was detained for a short period and released after being forced to pay a fine. Carlos Oná Boriesa, Carmelo Iridi and eight other CPDS activists were arrested in April 2006 in Rebola, on the island of Bioko, while taking part in a party meeting. They were taken to Baney police station where they were subjected to 50 lashes. The following day they were released without charge.

80. Four members of the banned Progress Party of Equatorial Guinea (PPGE), Filomón Ondó, José Antonio Nguema, Florencio Ondó and Basilio Mayé, were arrested in October 2006 in their respective homes without any judicial authorization. They were taken to Bata central police station and then to the central prison of that city. On 12 November 2006, the investigating judge of first instance ordered their immediate release without charge.

81. Secundino Boleko Brown was arrested on 28 March 2007 in Malabo. He had just returned to the capital city from Spain, where he had been living since 2000. He went voluntarily to the Malabo central police station when summoned, where he was unexpectedly accused of taking part in protests by members of the Bubi ethnic group in January 1998. Mr. Boleko Brown claimed that he had never been questioned, summoned, searched or charged in connection with those incidents. On 20 April 2007 he filed an application for habeas corpus with the first-instance investigating judge of Malabo. No decision was taken on the application. His lawyer was informed that the case would be transferred to a military court.

H. Foreigners

82. Despite the lack of any legal basis on which to detain illegal immigrants, the Working Group observed that they are systematically apprehended and detained, especially in police cells. Given the country's recent economic growth, many workers and artisans from neighbouring

countries are migrating to Equatorial Guinea to seek better prospects. Many are apprehended by the police at roadblocks or during raids carried out by the police on city streets. They are usually victims of police corruption and can avoid detention by paying illegal bribes.

83. The Working Group was able to interview many immigrants in Malabo central police station who were awaiting deportation. Those who have difficulty proving their identity or their nationality, or those who come from distant countries, can remain in detention for an indefinite period while their situation is being clarified or until they can be deported. The Working Group found that the authorities do not provide the minimum conditions of detention as regards food and drinking water, sanitary conditions and hygiene. Detainees have to wait to receive food and medical aid from the city, which is extremely complicated or even impossible for foreigners with no contacts in the population. The Working Group noted the presence in the cells, among adults, of a 12-year-old Nigerian boy.

84. The Working Group mentions these circumstances because even deportation to neighbouring countries seems to be a very slow process. Many detainees stated that they would prefer to be returned immediately to their countries of origin rather than remain in detention trying to find a way to stay in Equatorial Guinea. The detainees have no way of accessing the outside world, or any possibility of appealing against the deportation order or the lawfulness of their detention.

85. The situation of detained illegal immigrants does not seem to be a priority for the Government, as was recognized by the Director General of National Security during his meeting with the Working Group. The Government, according to the Director General of National Security, has urgent priorities in the areas of health, work, education and infrastructure for its own citizens and it does not wish to facilitate the entry of illegal immigrants.

86. The number of areas for improvement faced by the current Government of Equatorial Guinea may explain the fact that the situation of detained illegal immigrants is not a priority. However, the dramatic situation noted by the Working Group obliges the Government to adopt immediate urgent measures to allow detainees to appeal against their detention and deportation and to prevent the serious violation of their human rights.

I. Conditions of detention as a contributing factor to the lack of adequate defence

87. Even though, as mentioned above, the physical conditions of some prisons, such as Black Beach, have improved significantly and there are plans quickly to improve the conditions of others, the Working Group found that the old prisons of Bata and Evinayong do not meet the necessary minimum conditions of habitability. Of the 177 prisoners in Black Beach at the time of the Working Group's visit, 124 were in pretrial detention. The situation is similar in other prisons in the country, with the exception of Evinayong prison, which held 11 prisoners at the time of the Working Group's visit, all of them convicts.

88. The cells in the police stations of Malabo and Bata and the Bata *Gendarmería* are proof, however, of an intolerable situation. When the Working Group visited the Malabo central police station, it observed that, for the most part, it is made up of mere huts which do not offer even

minimum hygiene or comfort. Its cells are packed, mainly with a large number of foreign immigrants in administrative detention. They are not even allowed, for security reasons, to go out into the communal courtyard.

89. Unlike Malabo, almost no foreign citizens are being held in Bata police station. This police station has only one detention area: a small room in which, in total darkness and filth, some 40 detainees are crowded together. Not only are there no beds, cots or mattresses, there is not even enough space for all the detainees to lie down at the same time to sleep on the floor. Furthermore, there is no separation between men, women, children or adolescents. The Working Group spoke, in that cell, to a pregnant woman and a 13-year-old girl.

90. Despite the fact that Equatorial Guinea has acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, many of the detainees interviewed in the police stations and the *Gendarmería* reported that they had been tortured or ill-treated. The marks left by blows were visible on many of them. Torture and ill-treatment are widely practised and the guilty parties are never punished, so that they are able to act in a climate of impunity. There is no effective means of applying for redress for cases of torture, physical harassment or ill-treatment in prisons or police stations. Nor is there any possibility, in the prisons, of effectively lodging appeals to challenge punitive measures imposed by the prison authorities, such as the use of handcuffs, leg irons or chains, or confinement in punishment cells.

91. The circumstances described seriously limit the detainees' defence options, an essential aspect of due process which is covered by the Working Group's mandate. The situation of the detainees in police stations and the *Gendarmería* is even worse in this respect, given that they are denied contact with the outside world.

92. During its visit to Evinayong prison, the Working Group interviewed Felipe Ondó Obiang, leader of the Republican Democratic Force (FDR) political party, and protestant pastor Bienvenido Samba Momesori. Felipe Ondó Obiang was arrested in March 2002 along with 150 other people, including various members of his family, friends, FDR party members and sympathizers. The majority of them claimed to have been the victims of severe torture while they were in pretrial detention. They were accused of subversion, attempting to overthrow the Government, and rebellion, during an attempted coup d'état which took place in 1997. They were prosecuted in May 2002 before a civil court, allegedly without the guarantees of due process. Felipe Ondó Obiang was sentenced to 20 years' imprisonment. The Working Group observed the serious restrictions to which he is subjected in his prison life, which include being shackled every night to sleep.

93. Reverend Bienvenido Samba Momesori, a member of the Bubi ethnic group from the island of Bioko, was prosecuted together with 110 other people in May 1998 in a summary trial before a military court that lasted only five days and failed to meet minimum guarantees of due process. He was sentenced to death. In September 1998, the President of the Republic commuted his sentence to 30 years' imprisonment. In October 2002, he obtained a presidential pardon and was released. However, he was rearrested on 26 October 2003 for failing to respect the conditions of the presidential pardon. He was transferred to Evinayong prison without his family being informed. He has been in solitary confinement several times.

94. Felipe Ondó Obiang and Reverend Bienvenido Samba Momesori are 2 of the 11 people detained in Evinayong prison, but they are the only ones who are not allowed to leave the prison during the day to try to find work or additional food.

95. The Working Group also interviewed in Black Beach four of the South Africans accused of working as mercenaries and of being involved in the attempted coup d'état of March 2004. They claimed to have been severely tortured while in pretrial detention. The Working Group observed that they are forced to wear leg irons.

96. The four South African nationals accused of being mercenaries had marks from the torture they have suffered on their hands, legs and feet. They are subjected to extremely harsh conditions of detention. Their food is limited to what they receive from the prison authorities because, unlike other prisoners, they do not have access to additional food from the city.

J. Lack of a registration system

97. The Working Group confirmed that there is no systematic registration of information relating to persons held in detention, covering such matters as the dates detainees enter and leave police stations; the names of the arresting officers; the names of the judicial authorities before which they appear and the corresponding dates; or the different authorities responsible for the detainees. Some police stations keep entry registers separate from books recording departures, as well as report books and incident logs, but there is no verifiable and effective registration system. At Evinayong prison the Working Group was informed that the registers were in the court. A registration system is essential for ascertaining a detainee's situation at any point in time and, above all, for preventing the occurrence of cases of enforced disappearance and other serious violations of human rights.

VI. CONCLUSIONS

98. Equatorial Guinea has enormous potential for economic development. The discovery of large oil reserves points to the advent of an era of great economic prosperity in the near future. However, the Working Group confirmed, and it could not be otherwise given the recent history of the country, that institution-building is still limited and the human rights culture has not taken sufficient root in institutions, in public moral awareness, or in the attitudes of individual citizens. The Working Group considers that there cannot be true development in the country if the current economic growth does not go hand in hand with institution-building, the enforcement of the rule of law and the genuine exercise of human rights.

99. The Working Group noted the progress made by the Government of Equatorial Guinea over the past few years towards providing the country with a legal framework, in conformity with the international instruments it has ratified, to enable it to develop into a democratic State. But this is not enough. There is a clear need to supplement this system as soon as possible, and at the same time to promote the determinants of balance between the different powers of the State, particularly the genuine independence of the judiciary. Only in this way would it be possible to prevent the continued occurrence of situations such as kidnapping abroad and secret detention, as referred to in this report, which belong to a past that is totally incompatible with the current positive process of change noted by the Working Group.

VII. RECOMMENDATIONS

100. **On the basis of the situation encountered during its visit to the country and the conclusions set out above, the Working Group invites the Government of the Republic of Equatorial Guinea to consider and apply the following recommendations:**

(a) To adopt the necessary measures to put an immediate end to the practice of secret detentions. The situation of Juan Ondo Abaga, Florencio Ela Bibang, Felipe Esono Ntumu and Antimo Edu Nchama, detained in secret in Black Beach prison, should be immediately remedied, as they were kidnapped in foreign countries where they had international refugee status;

(b) To resolve the situation of the deprivation of liberty of individuals detained for simply exercising a right recognized by international human rights law, such as the right to freedom of opinion and expression, the right of assembly, the right of association and political participation (the exercise of which rights cannot be punished);

(c) To consider the desirability of an urgent revision of the national criminal law framework, to bring it into line with the 1995 Constitution and the international instruments to which Equatorial Guinea is a State party. The Working Group therefore invites the Government to consider drafting a new criminal code and a new code of criminal procedure in accordance with those instruments. The Criminal Code should establish sentences that correspond to the seriousness of the offences defined, and provide for the possibility of community service and alternatives to imprisonment. The possibility of establishing systems of restorative justice should also be examined. There is an urgent need for the periodic publication of laws in an official gazette;

(d) It is necessary to establish by law an independent judiciary. All the necessary measures should be taken to guarantee, in law and in practice, the independence of judges, prosecutors and lawyers, in accordance with the Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers adopted by the General Assembly in 1985 and 1990, respectively. In that connection, the possibility of revising the Judiciary Organization Act should be studied. The objective conditions in which competitive examinations for the appointment of judges and law officers are to be conducted shall be established by law, as shall the disciplinary measures to which they could be liable, in order to guarantee their independence and irremovability;

(e) Judges and law officers should make periodic visits to prisons and police detention centres and the advisability of establishing criminal enforcement tribunals should be examined;

(f) The Working Group invites the Government to bring the legal framework for the organization, functioning and jurisdiction of military courts into line with international principles and standards. In that connection, the jurisdiction of military courts should be limited exclusively to military offences committed by armed forces personnel and they should have no jurisdiction to try civilians. Disputes as to the jurisdiction of military

courts, in particular with regard to appeals against detention, should be settled by civil courts. The need to draft and promulgate a modern code of military justice that is consistent with the Constitution and the international instruments in force should be considered;

(g) Training for authorities, officials and police officers should continue. The training should aim to prevent human rights violations and abuses, and at the same time prevent and eradicate impunity. Human rights training courses should be extended to judges and law officers of all grades, members of the Office of the Attorney-General, lawyers, court-appointed defence counsel, regional and local authorities, and military officials;

(h) The current application procedures for habeas corpus, *amparo* and constitutional review should be revised and redesigned with a view to making them easier to use and more effective as remedies against violations of constitutional guarantees and human rights, and in particular against arbitrary detention. Lawyers should be guaranteed free access to police stations in order to be able to interview detainees from the beginning of their detention so that they can exercise these remedies. Likewise, lawyers' access to all prisons should be guaranteed;

(i) The national budget should guarantee the resources required to ensure the effective functioning of the justice administration system as well as the prison and police detention system. The necessary resources should be made available to ensure the provision of sufficient and adequate food, medical care, sanitation facilities and minimum conditions of habitability for persons detained in prisons and police stations;

(j) The authorities should take concrete steps and measures aimed at promoting, protecting and strengthening civil society institutions, in particular non-governmental organizations working in the field of human rights;

(k) The National Human Rights Commission should be strengthened and granted the facilities necessary to continue its visits to prisons and police detention centres;

(l) As far as possible, the detention of foreigners who enter the country without the necessary visa or who remain in the country once their visa has expired should be avoided. If the detention is necessary to ensure their expulsion from the country, a reasonable maximum duration of detention should be established. During their detention these persons should enjoy all the rights recognized to persons deprived of liberty by international instruments. The access of consular representatives to foreigners detained in prisons and police stations should be facilitated, and detainees should be able to communicate with their respective consulates. The situation of foreigners held in incommunicado detention should also be reviewed;

(m) The possibility of establishing a modern juvenile justice system should be examined and the presence of minors in prisons and detention centres alongside adults should be prohibited.

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