EQUATORIAL GUINEA

Continued institutional and key human rights concerns in Equatorial Guinea

Amnesty International
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INTRODUCTION

In this submission, prepared for the Universal Periodic Review (UPR) of Equatorial Guinea taking place in May 2014, Amnesty International assesses the implementation of recommendations made to Equatorial Guinea in its previous UPR in 2009. Equatorial Guinea has failed to implement most of the recommendations it accepted, including regarding the ratification of the Optional Protocol to the Convention against Torture and those pertaining to the rights of real or perceived political opponents. Amnesty International notes that incommunicado secret detention, enforced disappearances, confinement of political opponents to their areas of origin, as well as their arbitrary arrest and detention and that of their families still prevail throughout Equatorial Guinea.

Equatorial Guinea has a poor track record in relation to domestic human rights legislation and ratification of international human rights treaties. Although Equatorial Guinea accepted a recommendation to reform its institutions and judiciary, this has only been partly implemented, and the newly amended Constitution creates an ombudsman who is appointed by the President, effectively undermining the independence of the function as required by the Paris Principles. Equatorial Guinea also accepted a recommendation to create a national human rights institution; however, this is yet to come to fruition.

Amnesty International is also concerned that the death penalty continues to be imposed on political opponents and that the right to fair trial is regularly infringed. Torture and other ill-treatment are used to extract confessions, and unlawful killings are reported to have occurred, including in the context of prisoner escapes. Moreover, the right freedom of expression, association and assembly are routinely suppressed.

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in December 2009, Equatorial Guinea accepted 111 recommendations and rejected four, including to ratify the Rome Statute of the International Criminal Court and the Second Optional to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; to allow access to the UN Rapporteurs and others to military installations, and to allow political parties and the media to operate freely.

Amnesty International regrets Equatorial Guinea’s rejection of those important recommendations and that in the intervening four and a half years it has made little progress in implementing the recommendations it accepted.

Equatorial Guinea agreed to consider ratifying the Optional Protocol to the Convention against Torture; however, no steps have been taken in that direction. Despite Law 6/2006 on the Prevention and Punishment of Torture (Lei 6/206 sobre la Prevención y Sanción de la Tortura), of November 2006, torture persists.

Equatorial Guinea has not fulfilled its commitment to end incommunicado, secret detention and enforced disappearances; and several such cases have been brought to Amnesty International’s attention during the reporting period.
Amnesty International acknowledges that since 2010 it has received no reports of abductions by Equatorial Guinean security forces of political opponents exiled in neighbouring countries. However, the confinement of political opponents to their areas of origin is common practice, as is the secret transfer of detainees to prisons in other parts of the country.

During the period under review, no steps were taken to end arbitrary arrest and detention of political opponents, who are often subjected to prolonged detention without charge or trial. Amnesty International is also concerned about the practice or arresting relatives of political opponents sought by the authorities.

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN EQUATORIAL GUINEA

Amnesty International notes serious shortcomings regarding the protection of human rights in the Constitution and in national legislation, as well as outstanding ratifications of international human rights treaties.

Equatorial Guinea still uses the 1967 Spanish Penal Code and Penal Procedures Code, which breach Equatorial Guinea’s international human rights commitments as well as provisions in its Constitution.

Equatorial Guinea is already party to several international human rights treaties; however, it has yet to ratify other treaties as agreed to during its 2009 UPR. Moreover, although Article 8 of the Constitution states that the State of Equatorial Guinea will abide by all standards of international law, particularly the rights and obligations set out in the treaties to which it is a party, no legislation has been enacted to reflect the provisions of those treaties.

There are no independent human rights institutions in the country and the judiciary lacks independence, despite guarantees in Article 83 of the Constitution. This Article, however, is contradicted by Article 85 which declares the President of the Republic as the first Magistrate of the Nation. Provincial Courts were created by the Organic Law of the Judiciary (Law 5/2009 of 18 May 2009) to replace the Appeal Courts, but these are not yet functioning nationwide.

A revised Constitution was approved by referendum in November 2011 and promulgated in February 2012. The declared aim of the constitutional revision was to “broaden the judicial framework for the exercise of fundamental freedoms”. However, the revised Constitution fails to increase the limited human rights protections already enshrined in the 1995 Constitution which includes the right to life and physical integrity; freedom of movement; freedom of expression, assembly and association; the right not to be deprived of liberty except by a judicial order or in cases of delito flagrante. These provisions are routinely violated.

The amended Constitution increases presidential powers and creates an audit court and an ombudsman. Amnesty International is concerned, however, that the ombudsman is appointed by the President. Given the lack of independence of state institutions responsible for the protection of human rights it is all the more
important that the ombudsman is established in accordance with the Paris Principles and fully independent of government and presidential control.

**PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND**

Despite repeated promises to improve the human rights situation in the country, the rights to freedom of expression, assembly and association, as well as freedom of the press, remain severely curtailed. People are arbitrarily arrested and imprisoned for exercising or attempting to exercise these rights. Incommunicado or secret detention, and prolonged pre-trial detention without charge are common, as is the practice of arresting the families of political activists, in effect as hostages. Torture and other ill-treatment remain a concern and unlawful killings by soldiers are not uncommon. Underlying these violations is the impunity which is virtually guaranteed by the absence of the rule of law and a weak and politicised judicial system which itself often violates human rights. Only rarely are human rights violations investigated and the perpetrators brought to justice.

**THE DEATH PENALTY**

Equatorial Guinea retains the death penalty and rejected recommendations calling for its abolition during its first UPR. The death penalty remains mandatory for premeditated murder. It has also been applied to political opponents convicted of crimes against the state in unfair trial, usually by military courts.

On 21 August 2010, four political opponents, who had earlier been abducted by Equatorial Guinean security personnel from exile in a neighbouring country and imprisoned in the Black Beach prison in Malabo, were convicted by a military court of attempting to kill President Obiang, as well as of treason and terrorism, and sentenced to death. They were executed in secret within one hour of being sentenced, and one day after the UN Working Group on the use of mercenaries left the country without having been allowed to see them. The speedy execution deprived the four men of their right to appeal against their sentence and to seek clemency. They were also denied the right to see their families. President Obiang justified the speedy execution by saying that the men presented a threat to his life and that of his family.

A Malian national was sentenced to death in May 2012 for the killing of his lover in December 2011, although the prosecution accepted that the killing was not premeditated and asked for a custodial sentence. His appeal to the Supreme Court has not yet been heard.

**UNFAIR TRIALS**

The Constitution provides for the right to be tried fairly. However, political opponents and other critics have been tried on trumped-up charges usually of plotting against the government. Whether tried by a military or a civilian court, invariably these fail to meet international standards of fairness. The courts accept confessions obtained under torture, including in cases where this constitutes the sole evidence against the defendants.
The Organic Law of the Judiciary limits the use of military courts to strictly military matters. However, military courts have been used to try civilians in the past four years. Judges and defence counsel are appointed by military or political authorities and often lack legal training.

In March 2010, Marcelino Nguema, Santiago Asumu and seven Nigerian nationals were convicted in an unfair trial in the Malabo Appeal Court (Tribunal de Apelación) on charges of attempting to assassinate President Obiang. These charges related to an alleged attack on the presidential palace on 17 February 2009. The two Equatorial Guineans were acquitted while the Nigerian nationals were convicted and each sentenced to 12 years’ imprisonment. They had been arrested at sea and were convicted on the basis of alleged weather reports for 17 February 2009, according to which the weather was good and with good visibility; consequently, the authorities claimed, their presence in Equatorial Guinean waters on that day was not justified other than to participate in the attack. The nine defendants had been held incommunicado and without charge for nearly a year and had been tortured during that time. Despite their acquittal, Marcelino Nguema and Santiago Asumu remained in prison. Although forbidden by law, they were tried again in August 2010 on the same charges, together with four other men who were sentenced to death (see above), this time by a military court which sentenced them to 20 years’ imprisonment. None of the defendants were informed about their trial until they arrived in court, where two military officers, without legal training, were assigned to defend them. In both trials, the court accepted as evidence confessions extracted under torture.

**TORTURE AND OTHER ILL-TREATMENT**

Amnesty International has recorded several cases of torture or other ill-treatment since 2009. In addition to being subjected to physical ill-treatment, political detainees may be subjected to other forms of cruel, inhuman or degrading treatment or punishment, including being held in prolonged incommunicado detention without charge or trial and being denied adequate medical assistance. Torture and other ill-treatment occur mainly in pre-trial detention to extract confessions which are then used in court to convict people in unfair trials. Agustín Esono Nsogo, held without charge or trial since his arrest in October 2012, was tortured on three occasions immediately after his arrest to force him to confess to a plot to destabilise the country. He was beaten on both wrists, the soles of his feet and on the head with batons and as a result lost the hearing in his left ear.

In some cases, the torture resulted in death. Rufino Masié died on 19 January 2012 after being beaten by the police in Bata. The police arrested him without a warrant on suspicion of involvement in a theft of merchandise. When he arrived at Bata police station he was unconscious and bore signs of beatings. He died in hospital two hours later.

Marcelino Buichekú Epan died on 30 June 2013 after having been beaten by soldiers who stopped him at a roadblock in Malabo. After he fainted the soldiers took him to their post where they continued to beat him. They then threw him into the street unconscious, where he was found hours later by a passerby. He died in hospital one hour after being admitted. No one has been held accountable for this or other similar incidents.

Foreign nationals, especially from West African countries, suspected of being undocumented migrants are also regularly subjected to ill-treatment. Often,
soldiers raid the communities and homes of West Africans, beat them, steal or destroy their property, arrest and detain them in appalling and overcrowding conditions, sometimes for months before expelling them from the country. Amnesty International has documented several such cases in the past four years, which are more prominent prior to important events taking place.

UNLAWFUL KILLINGS

The Constitution guarantees the right to life. However, police and soldiers continue to enjoy almost total impunity for unlawful killings, including extrajudicial executions. Since 2009, several people, including foreigners, have been killed at road blocks after refusing to pay bribes. There have been no investigations into most of these cases.

One of those killed was Malian national Oumar Koné, who was shot dead by soldiers in Bata in May 2012 for refusing to pay a bribe at a routine road block.

Vicente Abeso Nguema died in a hospital in Malabo on 1 September 2013 as a result of chest injuries. He had been shot in the chest by a soldier at a road block after refusing to give him money.

Luis Ondo Mozuy was killed by soldiers in Bata on 13 March 2010, a few hours after he and a friend had been arrested following an argument with other youths in the street. The two of them were taken to Bata police station. However, while his friend was put in a cell, Luis Ondo was taken out of the police station. A few hours later, soldiers took Luis Ondo's body to the morgue at Bata hospital and forced the official on duty to accept it without following established procedures.

Only one soldier is known to have been prosecuted for the extrajudicial execution of Policarpo Monsuy Ncogo in November 2010, following an argument with a member of the Army Special Forces. As Policarpo Monsuy lay on the ground, the soldier shot him in the back of the head. A month later the soldier was convicted of his killing and sentenced to 28 years' imprisonment.

Other unlawful killings have occurred in the context of prisoner escapes in May and June 2012. Blas Engó was reportedly shot at close range by a soldier just outside the prison in Bata as he tried to escape with 46 other prisoners on the night of 14 May. A month later, about 20 prisoners escaped from Black Beach prison in Malabo. Amnesty International was informed that at least one of them was captured a week later and shot dead. No one has been held accountable for these deaths.

ARBITRARY ARREST AND DETENTION OF POLITICAL OPPONENTS AND THEIR FAMILIES AND CONFINEMENT

Arbitrary arrest and detention of political activists and others, including human rights defenders, continue. These tend to intensify around elections or prior to other important events, and it is not uncommon to accuse those detained of plotting to destabilize the country. The length of detention varies from days to months. Often, upon their release, they are confined to their places of origin. One Equatorial Guinean was forcibly exiled to Spain.

There was an upsurge in arbitrary arrests following the mass uprising in North Africa and in the run-up to the African Union Summit held in Malabo in June 2011. Several political opponents and some 100 students were arrested as a pre-emptive...
measure to prevent demonstrations before the summit. The referendum for constitutional reform in November of the same year was also marred by the harassment and arrest of voters and observers. For instance, Marcia Abaga Barril, the representative of the opposition political party *Convergencia para la Democracia Social* - CPDS (Convergence for Social Democracy) in the national electoral commission was arrested and accused of homicide. He was released four days later without charge.

Another leading member of the CPDS and human rights defender, Wenceslao Mansogo Alo, who is also a medical doctor, was arrested without a warrant in February 2012 following the death of a female patient during an operation in his clinic. He was accused of mutilating the body, although two post-mortem reports confirmed that the body was intact and that the woman had died of a heart attack. However, without evidence to back it up, the minister of health asserted that the heart attack had been caused by the mal-administration of the anaesthesia and subsequently Wenceslao Mansogo Alo was charged with professional negligence, convicted in an unfair trial and sentenced to three years’ imprisonment. He was released in a presidential pardon in June 2012.

Several people were arbitrarily arrested in Malabo, Bata, and Mongomo on 12 and 13 March 2013, in connection with an alleged conspiracy against the state. Most of those arrested in Bata and Mongomo were transferred to Malabo and held in the central police station there for a week before being released without charge. However, one of them, Eleuterio Esono, an Equatoguinean citizen who had returned to the country from exile in Sweden earlier in the year, remained in detention until the end of April 2013 when he too was released without charge. Five foreign nationals whose only connection to the alleged plot appears to be that they had rented rooms from one of those arrested were also arrested and held in Bata police station for at least one month. No charges were filed against them and their detention was not legalized by a judge.

Between 8 and 15 May 2013, the organisers of a peaceful demonstration protesting the authorities’ refusal to legalise a political party, were arbitrarily arrested and held for about two weeks, before being released uncharged. They included Clara Nsegue Eyí, the founder of the unregistered political party, who was sent to Mongomo on the mainland and imprisoned in the Gendarmerie. Upon her release without charge in late May, she was banned from leaving Mongomo. However, she ignored the order and returned to Malabo where she was arrested without a warrant two weeks later, in late June, and sent back to Mongomo. She was held without charge in the Gendarmerie until her release in mid-October. Also arrested was Jerónimo Ndong on 15 May, who was held for several hours. He was re-arrested on 20 May and released seven days later without charge.

Amnesty International is concerned about the practice of confining detainees and pardoned prisoners to their areas of origin, regardless of their actual place of residence, and of arresting relatives of political activists to force them to hand themselves in to the authorities. On 20 May, the wife and brother of Jerónimo Ndong (see above) were arrested and detained for several hours until he handed himself in at the police station.

 Relatives and friends of two political prisoners, who escaped from Evinayong prison in October 2010, and of those suspected of aiding their escape, were arbitrarily arrested and held without charge for over one year in Bata Prison. They included
several women and an infant. They appeared to have been arrested solely because of their links with the escaped prisoners and those suspected of aiding their escape. After a year they were tried by a military court in a trial which did not comply with international standards. Most of them were acquitted and released.

Amnesty Internationals is also concerned about the forced exiled of Weja Chicampo, the coordinator of the Movimiento para la Auto-determinación de la Isal de Bioko - MAIB (Movement for the Self-Determination of Bioko Island), who was not allowed back into the country in September 2013, after a two month stay in Spain. Weja Chicampo had been forced into exile in Spain in 2006, after spending two years in prison without charge or trial.

PROLONGED PRE-TRIAL DETENTION, INCOMMUNICADO DETENTION AND SECRET TRANSFER OF DETAINEE

It is common practice to secretly transfer political detainees to prisons or police stations in other cities, where they are then held incommunicado for some time, becoming, in effect, victims of enforced disappearances. In all the cases known to Amnesty International, the authorities denied or refused to acknowledge that they were holding the detainees or to give details of their whereabouts.

Agustín Esono (mentioned above) was arrested at his home in Bata on 17 October 2012 and then taken secretly to Black Beach prison in Malabo, where he was held incommunicado for one week. He remains in prison a year later without having been charged. His lawyer, human rights defender, Fabián Nsue, was arrested in Black Beach prison while visiting his client, and held incommunicado for three days, before being transferred to the central police station. He was released uncharged five days later.

Juan Manuel Nguema Esono, a teacher and leading member of CPDS was arrested by the police without a warrant in the street in Bata on 25 April 2011. He was taken to Bata police station and later that evening he was put on plane to Malabo where he was held incommunicado at the police station until his release four days later. A party colleague, Vicente Nze, was arrested at Bata police station when he went there to make enquiries about Juan Manuel Nguema. He too was held incommunicado until his released on 28 April 2011. During their detention the authorities failed to inform relatives of their arrest or whereabouts. Both were accused of trying to organise a demonstration to commemorate May Day. Both were later released uncharged.

FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION

The Constitution guarantees freedom of expression, assembly and association. However, these rights are routinely suppressed in Equatorial Guinea. Although the law does not require official permission to hold demonstrations, these are not allowed and the organisers and those who attempt to demonstrate are often arrested.

In March 2011, the government banned all demonstrations and deployed large numbers of security personnel in the streets to enforce the ban. Requests for peaceful rallies to celebrate May Day were turned down and at least two people suspected of organising them were arrested and held for four days. In November 2011, the police dispersed rallies against the constitutional reforms prior to the referendum.
Demonstrations planned for May and June 2013 in Malabo were also forbidden. On both occasions, the presence of security personnel in the streets was stepped up and the city centre cordoned off. The June demonstration, to protest irregularities of the general elections on 26 May, was called off owing to threats of violence against the demonstrators.

The media remains firmly under government control and freedom of the press is severely curtailed. Since the last UPR, journalists in the state-controlled media have been harassed, suspended, dismissed, arrested and beaten for reporting certain events. For instance, following the popular uprisings in North Africa and the Middle East, in February 2011 the government ordered a news blackout on events on those countries. Then in March 2011, a radio journalist working for the state French-language broadcaster was suspended for mentioning the situation in Libya in his radio programme. Juan Pedro Mendene was ordered by the Secretary of State for Information to leave the radio station. As he was leaving, he was attacked and beaten by the Secretary of State's bodyguard. A week later, the director of the radio station announced that broadcasts were temporarily suspended on the orders of higher authority. No other explanation for the suspension was given.

More recently, in October 2012, a popular radio programme was stopped and suspended indefinitely as it broadcast an interview with a woman representing 18 families who had been forcibly evicted from their homes in Bata. She had alleged personal involvement of a high-ranking judicial official in the dispute. Foreign journalists have also been subjected to harassment, arrest and detention, and ill-treatment before being expelled from the country.

**RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW**

Amnesty International calls on the government of Equatorial Guinea:

**The national human rights framework**

- To carry out the necessary reforms to ensure the independence of the judiciary;
- To amend the Penal Code and the Penal Procedures Code to bring them in line with international human rights law.

**Death penalty**

- To ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

**Unfair trials**

- To ensure that all trials are conducted in accordance with international standards for fair trials and that no one is tried twice for the same offence;
- To ensure that military courts are used solely to try military personnel on purely military matters;
• To ensure that statements made under torture are not admitted as evidence in court and where necessary to order a re-trial.

**Torture and other ill-treatment**
• To fully implement Law 6/2006 banning torture and to bring to justice those suspected of involvement in torture, including political officials;
• To ensure reparation, including compensation, for victims of torture as stipulated in Law 6/2006;
• To ratify the Optional Protocol to the Convention against Torture.

**Arbitrary arrest or confinement of political opponents and their families**
• To ensure that nobody is arrested for exercising their rights to freedom of expression, assembly and association;
• To bring to an immediate end the practice of arresting the families of political opponents as hostages.

**Unlawful killings**
• To carry out investigations into all unlawful killings by security personnel and to prosecute those responsible;
• To end the illegal practice of confining political opponents to their places of origin regardless of where they reside.

**Prolonged pre-trial detention/incommunicado detention/secret transfers**
• To ensure that detainees are brought before a judge to determine the legality of their detention within the 72 hours prescribed by law;
• To ensure that all those suspected of a recognizable criminal offence are promptly charged and tried within a reasonable time;
• To end immediately the practice of incommunicado and secret detention and to disclose the whereabouts of all detained;
• To ensure that all detainees are officially registered and have access to their families and lawyers;
• To ratify the Convention for the Protection of All Persons from Enforced Disappearance.

**Freedom of expression/assembly/association**
• To end the restrictions on the rights to freedom of expression, assembly and association and to refrain from arresting those who exercise these rights;
• To end the harassment, intimidation and attacks on the media and to promote the development of a truly free media, free of restrictions.
ENDNOTES


2 A/HRC/13/16, recommendation 71.9 (Egypt)

3 A/HRC/13/16, recommendations 71.2 (Slovenia, Sweden, Chile, Argentina, Spain, France), 71.23 (Germany), 72 (USA).

4 A/HRC/13/16, recommendation 71.1 (UK, France, Czech Republic, Spain, Argentina).

5 A/HRC/13/16, recommendations 70.28-70.29 (France, Ghana).

6 A/HRC/13/16, recommendations 70.27-70.29 (Italy, France, Ghana).

7 The treaties that are not yet ratified by Equatorial Guinea include: the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty; the Optional Protocol to CAT; the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families; and the Rome Statute of the International Criminal Court.

8 This continues to be the case at the time of preparing this submission


10 The Partido Democrático de la Justicia Social – PDJS (Democratic Party for Social Justice), seated in January 2013, the authorities refuse to register PDJS on the grounds that the founders of the party are from Mongomo, the area where President Obiang comes from


ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE

Equatorial Guinea: Fears for health of detained female activist (AFR 24/011/2013)

Equatorial Guinea: The authorities must allow freedom of expression and peaceful demonstrations to take place (AFR 24/004/2013)

Equatorial Guinea targets opposition ahead of elections (press release issued 15 May 2013)

Equatorial Guinea: Family of opposition leader arrested (AFR 24/002/2013) and update

Equatorial Guinea: Human Rights concerns prior to the elections (Joint press release – PRE 01/221/2013)

Equatorial Guinea: Prominent human rights defender missing (AFR 24/010/2012) and update (AFR24/011/2012)

Equatorial Guinea: Sentenced to death, against prosecution call (AFR 24/008/2012)

Equatorial Guinea: unjustified conviction of human rights defender (AFR 24./006/2012)

Equatorial Guinea: Opposition Figure Held- Concern That Activism, Not Medical Case, May Be Real Reason (AFR 24/002/2012)

Equatorial Guinea: Relatives of two escaped prisoners detained without charge or trial for a year (AFR24/003/2011)

Equatorial Guinea: surge in arbitrary arrests ahead of the AU summit (Press release dated 20 June 2011)

Equatorial Guinea: Execution of four men in Equatorial Guinea condemned (Press Release of 23 August 2010)

Equatorial Guinea: Concerns about the recent trial of political opponents and Nigerian nationals (AFR 24/007/2010)

Equatorial Guinea urged to retry Nigerian coup suspects (AI Index: PRE01/167/2010)

Equatorial Guinea: Four at risk of torture in Equatorial Guinea (AFR 24/003/2010)

Equatorial Guinea: Refugee abducted from Benin is seriously ill (AFR24/004/2010)

1 All of these documents are available on Amnesty International’s website:
http://www.amnesty.org/en/region/EquatorialGuinea