

THE TRIAL OF MACIAS IN EQUATORIAL GUINEA - THE STORY OF A DICTATORSHIP



# THE TRIAL OF MACIAS

IN EQUATORIAL GUINEA  
The Story of a Dictatorship

by  
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ICJ Observer

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PREFACE

A few days before the trial of Ex-President Macías took place in Equatorial Guinea at the end of September, 1979, the International Commission of Jurists was invited by the leader of the coup which overthrew him, Lt.-Colonel Teodoro Obiang Nguema, in the name of the Supreme Military Council, to send an Observer to the trial. Similar invitations were extended to the United Nations Division of Human Rights and to Amnesty International, neither of whom sent observers.

The International Commission of Jurists was fortunate in having available its legal officer for Spanish-speaking countries, Dr Alejandro Artucio, a Uruguayan lawyer. Dr Artucio is familiar with the Spanish system of law under which the accused were tried, and in his work at the International Commission of Jurists he had been following events in Equatorial Guinea for some years. Accordingly, he had a good knowledge of the circumstances prevailing in the country during the eleven years of Macías' rule.

On Dr Artucio's return an immediate press release was issued commenting briefly upon the decision of the Special Military Tribunal. A copy will be found in the Appendix. This press release was somewhat inadequately reported in most of the international press, stating merely that the observer considered that Macías had had a fair trial. As appears both from the press release and, in more detail from this fuller report, Dr Artucio levelled a number of criticisms against the proceedings, including the fact that so few of those responsible for the regime of terror were being brought to trial. He does, however, say that having regard to the chaotic conditions prevailing in the country and the complete absence for several years of any judicial system, the trial given to Macías and his co-accused was reasonably fair. Moreover, the guilt of the accused on a number of the charges, including mass murder, was clearly established.

It may perhaps be accepted that in the exceptional circumstances prevailing it would have been somewhat artificial to have created another special court as an appeal court, though if a sufficiently qualified appellate court had been available it might have avoided the apparent judicial errors relating to the charges of genocide, violation of the Universal Declaration of Human Rights and treason. More serious is the fact that Macías and the others condemned to death were executed within hours, not allowing time for petitions for clemency to be made on their behalf.

To assist the reader in forming his own judgment about the case, Dr Artucio has described in the first part of his report the nature of the Macías regime and the conditions prevailing in the country at the time of the trial.

This case appears to the International Commission of Jurists to be one of unusual interest, being one of the rare occasions upon which a cruel and barbarous dictator has been brought before the bar of justice to answer for his crimes. The present Supreme Military Council of Equatorial Guinea are to be commended for having exposed this trial to the scrutiny of an international legal observer. This compares favourably with some recent summary trials of former rulers in other countries.

This is a report about a trial, and political implications about the future of Equatorial Guinea should not be read into it. It is too early yet to say whether the positive step of convening the Special Military Tribunal and of bringing Macías and some others to account marks a real turning point in the history of Equatorial Guinea. What cannot be ignored is that large numbers of refugees who fled from the oppression of Macías are not yet willing to return to Equatorial Guinea from a fear that the commitment of the government of Lt.-Colonel Teodoro Obiang Nguema to democracy and human rights may be weaker than the holding of the open trial might suggest. These fears are hardly surprising as Lt.-Colonel Obiang was Vice-Minister of Defence and

Military Governor of the Province of Bioko up to the time of his coup. As Dr Artucio remarks, only a few of those guilty of crimes in the Macías era have been tried and the Supreme Military Council is not yet willing to tolerate political activity. There are also concerns among exiles from Equatorial Guinea about the background of those who hold power today.

The International Commission of Jurists wishes to place on record its gratitude to the International University Exchange Fund for its financial support for Dr Artucio's observer mission.

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## I. INTRODUCTION

The International Commission of Jurists was invited by the President of the Supreme Military Council of Equatorial Guinea to send an observer to the trial of former President-for-life Don Francisco Macías Nguema and several of his close associates. The trial was to be held in Malabo (formerly Santa Isabel) and would open on 24 September 1979. The ICJ accepted the government's invitation and I was honoured to be designated for this mission.

At all times during my stay in Malabo I received full assistance and cooperation from the new authorities of Equatorial Guinea. This allowed me to follow closely the progress of the trial and to become acquainted with the current situation in the country. I had complete freedom to communicate with anyone, including Equatorial Guineans, former prisoners, and their relatives. I wish to express the thanks of the International Commission of Jurists to the government of Equatorial Guinea for this cooperation and my personal gratitude to the President of the Supreme Military Council, Lt. Col. Teodoro Obiang Nguema, for the interview that he granted me as well as for his valuable views on the future of Equatorial Guinea.

A short description of the country and its people and some background information are necessary to understand the special significance of this trial for Equatorial Guinea and for the International Commission of Jurists. I will also set forth my personal observations on the state of the country from an economic, social and cultural point of view.

The Republic of Equatorial Guinea is located in the Gulf of Guinea bordering Cameroon, Gabon, Nigeria and the Atlantic Ocean. Its territory comprises (a) a continental area known as Río Muni with Bata as the main city and (b) an insular area

which includes the island of Bioko (whose former names were Fernando Pó and later Macías Nguema), where Malabo, the country's capital is found, and the islands of Pagalú (former Annobón), Corisco, Elobey Grande, Elobey Chico and several small barren islands. The country's total area is 28,051 km<sup>2</sup>.

The tribe is the basic social unit. Generally speaking, the population is of Bantú origin and is divided ethnically. The principal ethnic units are the Annoboneses (inhabiting the island of Pagalú), Bubis (Bioko island), Fangs (mainly on the continent and found also in Gabon; Fangs account for 70% of the population of Equatorial Guinea), Fernandinos (Creoles, of Spanish descent, inhabiting Bioko Island) and Ndownes. Different tribes exist within each ethnic unit.

The absence of censuses makes it difficult to give an estimate of the population. According to several sources, the current population would be about 300,000 persons, including between 20,000 and 30,000 living in the capital. The same sources estimate that the number of people who went into exile, both for political and economic reasons, may amount to 100,000. Of these, 50,000 live in Gabon, 30,000 in Cameroon, 10,000 in Nigeria and 8,000 in Spain. The new government has declared that all refugees without exception may return to the country but that until such time as the economy is restored it will not be possible to tolerate political activities.

Several observers have pointed out that the different ethnic groups and the tribes within each group are elements of particular importance in the society. Their traditional rivalries, their different outlook, their different customs, their diverse languages, have been determining factors in the repression during the time of Macías (who was of Fang origin) and in the country's present situation. Despite the fundamental importance of the different ethnic groups, the prime factor in my opinion leading to th



repression recently experienced in Equatorial Guinea was political in nature. This opinion is based on the evidence that in well nigh all cases the repression affected several ethnic groups - including Fangs - without distinction, but always on the pretext that the victims were "subversive elements" or "political enemies". Not surprisingly, members of Macías' ethnic group and more specifically of his own tribe, enjoyed certain advantages unavailable to other groups. There were also instances of negative discrimination, as when the population of Pagalú island (the Annoboneses) were abandoned to their fate during an epidemic of cholera.

Equatorial Guinea is a potentially rich country, cocoa, timber, bananas, coffee and fish being the important products. In addition, studies indicate that there may be mineral deposits in the gulf of Guinea. It is thought that oil and natural gas exist in the region. In the late 1960's, Equatorial Guinea had one of the highest per capita incomes in Africa and a relatively developed economic infrastructure.

#### Historical background

Since the 18th century, when Portugal ceded Equatorial Guinea to Spain, colonial policies brought great misfortune to the country. These policies made the natives economically, politically and culturally dependent and prevented their full development. Ideals of independence began to be discussed within the country during the 1950's. A decade later, the first demands for self-determination and independence were heard abroad. Equatorial Guineans appeared before the U.N. Decolonisation Committee. Several political movements were formed in Equatorial Guinea, the main ones being: the National Movement for the Liberation of Equatorial Guinea (MONALIGE), the National Union Movement of Equatorial Guinea (MUNGE), the Popular Idea of Equatorial Guinea (IPGE), and the Bubi Union.

All these movements were drastically suppressed by the colonial authorities, leading to death, imprisonment and exile for many Equatorial Guineans. Guerrillas were formed to fight the Spanish forces. Given the growth of the independence movement, Spain decided in 1963, to enact an "Internal Autonomy" statute. An autonomous government was appointed to prepare the way for independence.

After some time, dissidents from three political groups (MONALIGE, MUNGE, IPGE) agreed to coordinate their activities through a Joint Secretariat. It is during this time that Francisco Macías Nguema came to the fore. He was born in 1920 at Nzeng Ayong in the district of Mongomo and province of Rio Muni. After primary school, he entered the colonial administration. His radical ideas about independence and sovereignty from the colonial power made him a popular leader. He was then designated Vice-President of the pre-independence autonomous government.

In 1967, Spain convened a Constitutional Conference in Madrid to prepare a draft Constitution for Equatorial Guinea. Forty-six Equatorial Guineans representing all ethnic groups attended the conference. Macías Nguema was one of them. A plebiscite was held in Equatorial Guinea in 1968 to approve the Constitution. It is a progressive, democratic, Western-style document. As a matter of fact, if compared with the Constitution then in effect in Spain, it is far more advanced.

Francisco Macías won the elections as candidate for the Joint Secretariat and became President on 29 September 1968. Independence was finally achieved on 12 October 1968 with the official proclamation of the Republic of Equatorial Guinea.

## II. THE MACÍAS REGIME

### From independence to the military coup of 3 August 1979

The first important event of this eleven year period took place on 5 March 1969. A few months before, Macías had ordered the arrest of several leading political figures, including the former President of the pre-independence autonomous government. On 5 March 1969, an unsuccessful plot to overthrow Macías, reportedly with some Spanish involvement, was attempted. Macías was able to stay in power and unleashed a fierce campaign of political repression. As a result, many of his former allies in the independence movement who were then his political opponents were murdered or imprisoned (see ICJ Review, No. 13, December 1974, p. 11). The governmental coalition (Joint Secretariat) was dissolved and the activities of all political parties were suspended.

In 1970, Macías established the Single National Workers Party (PUNT). He was President of its Central Committee up to the time of the military coup. All other political parties were outlawed and any political activity outside PUNT was severely repressed.

At that time, the Popular Revolutionary Militia was organised. Soon after, it became known as "Youth on the March with Macías". It was formed by volunteers dressed in civilian clothes, but they bore arms and received military training. Their activities were conducted all over the country. The regional heads were called District Militia Delegates and they usually had the rank of Second Lieutenant and the status of commanding officers. Ultimately, they reported directly to Macías and were responsible only to him. As volunteers, members of the militia were not paid salaries. Nevertheless, they profited from extortions and lootings against political opponents of Macías and against Spanish, Portuguese and Nigerian nationals. When a militiaman

had achieved sufficient merit, he was promoted to a government post.

The worst forms of political repression are attributable to the Youth on the March with Macías. It was responsible for most of the atrocities, including killings, executions, torture, burning of villages and lootings. They informed on anyone, resorted to violence as a line of conduct and generally aimed at terrorising the population.

On 7 May 1971, by Decree 415, Macías repealed certain articles of the 1968 Constitution and assumed as President "all direct powers of Government and Institutions", viz. the powers of the legislature, the executive and the judiciary, as well as the prerogatives of the Council of the Republic, a body created to control the Executive. This in itself constituted a coup d'etat. At that time, Macías became absolute ruler exercising complete control over the country.

On 18 October 1971, law 1 (one of the very few passed by the National Assembly) made the killing, attempted killing or threat to kill the President punishable by death. Capital punishment was also contemplated for offences such as arresting the President or forcing him to act against his will, uprising, secession, attacks against the country's territorial integrity, and attempts to replace the government without popular consent. The law also provided for 30 years' imprisonment for accomplices in these offences, and other punishments for insulting, threatening or offending the President or members of his Cabinet.

On 14 July 1972, a constitutional Decree (No. 1) proclaimed Macías as President-for-life, commander-in-chief of the army and Grand Master of education, science and culture. In time, he acquired over 30 titles, including that of "Only Miracle of Equatorial Guinea". This was dictatorship unmasked.

### The Macías Constitution

The 1968 Constitution was repealed on 29 July 1973. The new Constitution giving Macías absolute powers was discussed at the third congress of PUNT and ratified in a referendum organised by the party. Some of its main features are as follows:

- According to art. 42 the President was elected by direct, secret and universal suffrage for a 5 year term. This provision did not apply to the President then holding office, who was appointed for life (articles 49 and 50).
- A National Popular Assembly composed of 60 deputies elected by the people for a 5 year term was established under art. 56. Candidates were proposed by the PUNT and could be dismissed by the party.
- The President-for-life could dissolve the Assembly at any time. A temporary provision adds that the President would assume legislative and executive powers if the Assembly is not elected.
- PUNT became the only legal party. It defined, coordinated and supervised the implementation of government policies (art. 4).
- Equatorial Guinea was divided into provinces, regions and municipalities (art. 6).
- Lands, forests, subsoil, river and sea waters belonged to the State (art. 10). Property rights of farmers were recognised (art. 13) and private property in general was protected subject to the limitations specified by law (art. 14).
- Judicial power rested in the Supreme Popular Tribunal and lower civilian and military tribunals (art. 67). All

judges and prosecutors were directly appointed by the President and could be dismissed by him (arts. 68 and 70).

- A number of rights were guaranteed to citizens and foreigners, including the right to vote, the right to education and culture, freedom of speech, freedom of the press, freedom of association, religious freedom, prohibition of racial discrimination, etc.

On 18 March 1975, Decree No. 6 banned all private education. Private education was deemed "subversive". The Catholic Church was forced to close down its schools. Spanish and Equatorial Guinean missionaries and priests were persecuted and most of them had to leave the country.

In order to cultivate and harvest the cocoa crop the nation's plantations had traditionally relied on migrant labour from neighbouring countries; first Liberia and then Nigeria. Poor labour conditions, low salaries and deaths caused by repression led the Nigerian government in 1975 to evacuate thousands of its nationals. This evacuation left the plantations without workers to harvest the crops. Macías responded to this situation by imposing compulsory labour. In January 1976, the PUNT congress called for a system of compulsory labour. This was adopted by a Presidential Decree in March, making it mandatory for all citizens over the age of 15 to render manual labour in government plantations and mines. In 1977, 25,000 workers were "recruited" under this scheme. These workers were not paid salaries. The sole remuneration was that each worker received a ration of rice, palm oil and fish. This ration was sufficient only for his needs and made no provision for his dependants. In total the dependants numbered 15,000. The workday lasted for some 12 hours. In addition to the strenuous labour, the conditions of work included frequent beatings, withholding of food rations and random brutality. They were prevented from returning home without special permission. Public officials and military personnel were also

forced to do part-time compulsory labour. The remaining time they devoted to their work.

#### The nature of the regime

It is difficult to define the regime of Macías during his eleven years in power. There were numerous proclamations of socialism accompanied by widespread nationalisations, including the majority of the agricultural land, but the mismanagement of the economy and the corruption and exploitation were such that the results for the workers were disastrous. His statements were strongly anti-imperialist and anti-colonialist, and opposed to racial discrimination. These principles did not prevent the inhuman treatment of the few aliens that remained in the country and of many Equatorial Guineans. Spain was forced to evacuate 7,000 nationals. As I have said, repression was due more to political reasons than to ethnic or racial conditions. The regime was an unparalleled instance of extreme concentration of personal power. It was an absolutist regime characterised by a personality cult. Citizens had no rights or guarantees whatsoever; any opponent was branded a "subversive" or a "colonialist" and hence subject to persecution. Even Macías' own followers were persecuted when they lost his confidence.

During his government, serious and systematic violations of human rights were reported. These included illegal arrest and detention without trial before an independent tribunal. Members of Youth on the March with Macías had power to detain on grounds as vague as giving aid to missionaries (especially Catholics), failing to attend national manifestations of "praise and joy", or merely for being "descontento". Offenders would serve unspecified prison terms with no right to defend themselves.

Torture became a regular practice. The following forms of torture were common: indiscriminate blows; "el balanceo", the prisoner being hung upside down from tied or shackled feet, then beaten; "las tablillas", planks of wood were pressed

against the sides of the calf, ankle and the under part of the foot and tightened by ropes, causing intense pain; "los grilletes", metal fetters were tightened around the wrists as hard as possible, so as to prevent circulation in the hands, causing acute pain; "el rombo", both elbows were forced behind the prisoner's back until they met and were tied in that position, and then the wrists were bound in front of his body. These methods sometimes caused the death of victims of torture.

Prison conditions were notorious for their barbarity and for the use of cruel, inhuman and degrading punishment. Prisoners were classified in three categories: Brigade A for political opponents, which Macías - ever fearing plots against his government - considered the most dangerous. The aim was to destroy these prisoners, either morally by breaking their will to resist or physically, since their death was of no account. No one was accountable for dead prisoners and quite often guards were ordered to kill them, for which they were rewarded. This explains why the greatest number of killings took place among the prisoners of Brigade A. They were under compulsory labour but this did not issue from a lawfully passed sentence. Early in the morning prisoners were divided into work teams under an officer called "prisoner escort" who was accompanied by armed guards. They were taken to work in agricultural plantations, construction of roads, bridges and buildings (usually without appropriate equipment), or mowing the grass in public places. Their living and working conditions were indescribable. As a rule, they were given no food. They survived on fruits from the forest. Physical punishment with whips and "machetes" was common. Some were punished to death in front of other prisoners. Brigade B was composed of people who had criticised the government or had had difficulties with the Youth on the March with Macías but were not political opponents. They were also under compulsory labour and were liable to be transferred to Brigade A. Brigade C included common criminals. They were much better off than other prisoners, although they were also forced to do some sort of compulsory labour.



A great many political opponents were executed while in prison. Sometimes, the corpse was delivered to relatives with a certificate attributing death to natural causes. Others were buried in the forest. Except for several cases in which armed groups shot the prisoners, it was more frequent to beat them to death or shatter the head with a "machete" or an iron bar. Of course, these executions were not based on a death sentence, since most prisoners were never sentenced.

A few examples will suffice to show the extent of the liquidation of political opponents. Of 46 persons who attended the Constitutional Conference in Madrid in 1967-1968, not more than 10 are alive today. Except for a few who died naturally, the rest were killed by the regime of Macías. Over two thirds of the members of the first Legislative Assembly died violently or disappeared, (some were part of the group of 46). Of the 12 ministers in the first Cabinet, 10 were murdered. Broadly speaking, repression affected mainly the intellectuals. This helps to explain why most people with some technical or scientific skill went into exile. Macías is reported to have said "In politics, the victor wins and the loser dies".

Political and trade union activities outside PUNT were forbidden and subject to severe punishment. In a speech to women in Bata in 1975 Macías said: "Women should not talk about politics because politics pertains only to the President-for-life." Repression notwithstanding, the opposition began to organise. In August 1974, refugees living abroad formed a political front called "National Alliance for Democratic Restoration" (ANRD). It has done important work in exposing the situation in Equatorial Guinea internationally and in clandestine political organisation within the country, through the distribution of its Bulletin "La Voz del Pueblo".

Freedom of speech did not exist. No newspapers were published after 1975 and the state-owned radio was controlled by Macías. Freedom of assembly and freedom of association were not allowed, except for PUNT.

Religious freedom was completely ignored. A 1974 decree ordered priests and pastors to open their sermons with these words: "Nothing without Macías, everything for Macías, down with colonialism and the ambitious." In a speech in Bata in 1975 Macías said: "Let the false priests know that they are thieves, swindlers, exploiters and colonialists". "Any contact with the Catholic sect will be severely punished by the General Directorate of Security, the government delegates and the popular militia ..."

In the labour field, many State officials were dismissed without regard to the procedure of the Statute for public servants. Others saw their salaries reduced.

Citizens were not free to leave the country and to return. In every case, special permission from Macías himself was required. People were not free to travel within their own country either. A "visa" was required to travel from the islands to the continent or vice versa.

Forced movements of population also took place. For example, Fangs were moved to Bioko island, which is inhabited by Bubis and Fernandinos. The purported objective was to assure labour for the cocoa plantations.

#### International action against Macías

Non-governmental organisations such as Amnesty International, the Commission of the Churches for International Affairs (World Council of Churches) and the International Movement for Fraternal Union among Races and People (UFER) were actively concerned about Equatorial Guinea and submitted pertinent information to UN bodies. The International University Exchange Fund (IUEF) was one of the leading organisations to sound the alarm about human rights violations. The IUEF sponsored a study by Dr. Robert af Klinteberg, a distinguished Swedish anthropologist,

who visited Equatorial Guinea and also spent four months living with refugees in Gabon, Cameroon, Nigeria and Spain. At the end of 1978, IUEF published his research in a book called "Equatorial Guinea: Macías Country - The Forgotten Refugees". This book was the first document of its kind to explain fully the actual conditions in Equatorial Guinea and to describe the situation of the refugees who had escaped repression by fleeing the country. Articles based on this book appeared in the international press. The IUEF sent copies of the book to African Heads of State and governments and to the Organisation of African Unity. It also played an important role in persuading the UN Commission of Human Rights to pass its Resolution of 12 March 1979.

The International Commission of Jurists also took action concerning Equatorial Guinea. In 1975, it assisted refugees in the preparation of a communication describing the violation of civil, political, economic, social and cultural rights, which was submitted to the United Nations Secretary-General under ECOSOC Resolution 1503. In addition to articles published in its Review (No. 13, December 1974; No. 21, December 1978), the International Commission of Jurists has made several interventions before the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities and before the UN Commission on Human Rights urging these bodies to investigate the conditions in Equatorial Guinea. Eventually, on 12 March 1979, the UN Commission on Human Rights decided to take action by designating a Special Rapporteur to examine the situation of human rights in the country and report to the Commission. Owing to the complete lack of cooperation by the government of Equatorial Guinea under the confidential Resolution 1503 procedure, the Commission decided to remove the case of Equatorial Guinea from that procedure and to discuss it in public.

### III. THE CURRENT STATE OF EQUATORIAL GUINEA

In order to place the trial in its proper perspective, a brief description must be given of the present state of affairs in Equatorial Guinea, which displays some quite exceptional features.

It can fairly be said that the economic, social and cultural situation I found in Malabo was bordering on a national disaster. A few data will suffice to explain.

#### The economy

The economy was to all intents and purposes paralysed and 90 per cent of the Public Administration was no longer functioning. The basic services - electric power, transport, the post, banking, communications, etc. - were virtually at a standstill. The salaries of public officials, who were very numerous in view of the system of government which had brought most activities under State control, had not been raised for years and in some cases had even been reduced in numerical terms. The majority, or at least a large number of the officials received their tiny salaries 8 or 9 months late, and many of them ceased to draw them several months before. To give one example, the salary of an official in the central administration is now 2,900 ekueles a month (about US\$95), while that of a rural worker on one of the government cocoa estates is 2,500 ekueles a month (about \$85), plus a certain amount in kind (fish, salt, palm oil). Its value is difficult to calculate and in any case it was not provided regularly. A technical official of the People's State Bank was paid 5,000 ekueles a month. In many cases, the remuneration was purely nominal in the last few months because it was simply not paid. Naturally, this intensified the government crisis, and it was the practice for many of the officials to go into the forest in search of fruit and other food for themselves and their families.

The funds of the State had become totally confused with those of Macías. The confusion was such that the technical personnel of the State Bank and the Ministry of Economic Affairs and Finance still claim that they are unable to draw the dividing line between them with any certainty. Macías, as Head of State, took the national treasure to his palace of Nzeng Ayong (district of Mongomo) in the country near the border with Gabon. He administered the funds of the State from his house and sometimes from Bata - for he had not ventured into the capital for five years - without consulting either the bank or the ministry concerned.

Commerce is practically at a standstill in Malabo. There are only a few small shops, known as State Trading Posts, still open but their shelves are almost empty. There is not a single restaurant in the whole town. The only centre of activity left is the market, where goods can be bought. The people also put tables on the pavements where they offer for sale such items as bananas, fruit, cakes and cigarettes (which are usually sold one at a time instead of by packets).

There is also the fact that the country is almost completely cut off from the outside world, including the neighbouring countries. As I have said, a specific permit is necessary both to travel abroad and to move about the country. There have been no regular and reliable communications between the capital and the mainland for a long time. A small passenger boat used to make the trip at irregular intervals up to September 1979, but it has now had to be sent to the Canaries for repairs. The Spanish airline Iberia used to have regular domestic flights between Bata and Malabo, but these were discontinued more than a year ago.

Macías had given orders - which were obeyed - for all private craft including canoes in Malabo and elsewhere on the island of Bioko to be destroyed on the grounds that people were using them to flee to Cameroon to plot against him there.

This prevented people from going out to fish and sharply reduced the traditional supply of protein-rich fish and shellfish.

#### Public services and the media

Since the beginning of 1978 Malabo has had no electric power, so neither the electricity or telephone systems work. More than 95 per cent of the people in the capital are affected by this. Only those with their own generators, such as the embassies and foreign missions, and one or two government buildings have electric light. For four years or so, there has been no written press in the country, because, according to Macías' government, there has been no paper. The population's only means of information and communication has been Radio Malabo (on the island) and Radio Bata on the mainland. Another factor contributing to the absence of information on events in the outside world and in Equatorial Guinea was that generators producing current for the radio often broke down.

In 1973 a wall about 4 metres high was built around the whole of the old inner part of the city of Malabo. Inside its radius were the Cathedral, the Palace of Macías and a large number of houses, whose owners were dislodged and had to find new homes outside the boundary wall. The reasons given were the need to safeguard the President-for-life against possible attacks and conspiracy. Apart from the arbitrary character of this measure (Macías referred to it during his trial as one of his many works for the benefit of the community), it should be recalled that Macías had not been in the capital once in the last five years and had therefore not lived in his Palace. One of the first acts of the new government was to destroy part of the wall so that people could again move about in the centre of the town.

#### Health care

The situation is equally catastrophic from the point of

view of health. I had an opportunity to read a report prepared by a foreign epidemiologist which draws attention to the grave health risks deriving from the lack of medicaments, doctors and specialised personnel, hospital installations, X-ray facilities and instruments. I visited the Malabo hospital, which the new government is trying to improve by painting and repairing it. So far, no food can be given to the patients there who still have to depend entirely on what their families can bring them, although they too are in severe financial straits. The present state of the hospital is undoubtedly far from meeting the minimum health requirements. At the same time, the government of Macías was taking the unusual step of building a modern and well-equipped hospital able to take 120 beds in the district of Mongomo. However, the hospital was never opened because there were no funds to run it.

#### Education

The educational situation is also very serious. The country has no university, and the secondary schools and technical and vocational training colleges had nearly all closed down. The crisis had even affected the primary schools, and several had been shut for years. I had an opportunity to visit a school near the centre of Malabo. It was well-built, and had been designed with an eye to the climatic conditions there, with a big garden and sufficient space to take a large number of pupils. As it had been a private school, it had only been able to function for a year until private education had been abolished in the country by the decree of 18 March 1975 to which I have already referred. It was never reopened by the State, and all the school equipment such as desks, chairs, etc. have now been almost completely destroyed and the tropical vegetation has begun to invade the classrooms. This occurred when there were hundreds of children wandering about who had not been given a place in the State schools. The government of Macías obviously did nothing to encourage education or culture; on the contrary, the intellectuals were one of the most persecuted groups of

people. The adverse effects of a dictatorial regime were felt throughout the educational system. Primary school children were forced to learn a number of slogans designed to further the personality cult for Macías.

### Poverty

As a result of the economic disruption and chaos, there has been an alarming increase in unemployment, poverty, malnutrition, disease and illiteracy during the last few years, and at the same time the country's export income dropped appreciably. I wondered how it was possible that the death rate had not risen more than it did, given the deplorable living conditions of the people. The only explanation I was given is that the country is rich in fruit and natural foods which are accessible to everyone, and has a good climate. Nevertheless, a serious assessment still remains to be made of the full impact of Macías' eleven years in power.

What shocked me most was not the extreme poverty, since unhappily there are even worse conditions to be seen in other parts of the world, but to find that a town once equipped with a substantial infrastructure, and services in working order, had lost them all in the course of a few years. Electric power lines, telephones, administrative offices, buildings for schools, hospitals and offices, can still be seen but all of them have been abandoned or are lying idle.

### The legal system

Juridically and legally, there is also a profound crisis. After independence the Spanish laws applicable in Equatorial Guinea before the establishment of the Republic continued in force under a transitional provision in the 1968 Constitution. This stated:

"The legislation in force in Guinea at the time it assumes independence which does not conflict with



the expressly established principles of this Constitution shall remain in force as long as they have not been repealed or amended by the competent Guinean institutions." However, the new Constitution drawn up by Macías' government, which was ratified by a referendum organised by PUNT on 29 July 1973, stated in the final provisions that:

"The Constitution of 22 June 1968 is hereby repealed in its entirety, together with all such laws and governmental orders as are incompatible with the terms of this Constitution."

This led to a situation of extreme confusion in which no-one knew which of the former laws remained in force. As no penal, civil, administrative or labour code was introduced, there was an extensive legal vacuum.

The administration of justice and judicial functions, which the 1973 Constitution placed in the hands of the "Supreme Court of the People and any other civil and military courts which may be set up by law" (Art. 67), virtually ceased to exist after about 1975. During the eleven years of Macías' regime it was exceptional for persons accused of political offences to be tried. When such trials were held, as in 1974 and 1975, the accused were tried by "Military People's Tribunals" composed of members of the armed forces appointed by the Head of State. I was also told in Malabo that no legal proceedings whatsoever were held in the last few years, but that political prisoners were still kept in custody and new arrests continued.

It would be possible to list many other excesses and violations that occurred during the regime of Macías, but what has been said gives a sufficient idea of the climate of terror and horror that developed in Equatorial Guinea and explains the high number of refugees.

#### IV. THE OVERTHROW OF MACÍAS

##### Military coup of 3 August 1979

On this day the armed forces of Equatorial Guinea, acting through the National Guard, deposed the dictator Francisco Macías and established a Supreme Military Council to rule the country. The President of the Council, Lt. Col. Teodoro Obiang Nguema, was Military Governor of the province of Bioko and Vice-Minister of the Armed Forces for several years during the Macías government.

Macías resisted the uprising with the help of forces remaining loyal to him. In the fighting which broke out on the mainland an unspecified number of people lost their lives. When Macías was abandoned by his supporters, he escaped into the forest and was finally captured on 18 August, alone and hungry. In resisting capture, a bullet slightly injured his left forearm.

##### The release of prisoners

Everyone I spoke to, including former prisoners, officials and ordinary citizens, assured me that all political prisoners were freed immediately after the military coup d'état of 3 August. They did not even wait to promulgate an amnesty law, probably because the prisoners had not been tried or even indicted. I was not told of any political opponents being arrested, except for a score or so of persons directly associated with the ousted government, as well as persons accused of torture, ill-treatment of prisoners, murder or embezzlement of public funds.

I was informed that the People's Revolutionary Militia (Youth on the March with Macías) was disbanded and it is believed that most of its members who remained with Macías during the first few days after 3 August succeeded in crossing into Gabon.

During my stay in Malabo, I felt above all that the atmosphere was one of freedom with at least no visible form of repression. The people talked animatedly on all sorts of subjects, without constraint, and were convinced that a terrible chapter in their lives had closed. There seemed to be a general desire to contribute to the reconstruction of the country, to put the economy and public administration into working order again and to obtain the enjoyment of fundamental rights without any exception. The requirements laid down by the government for the return of political exiles to the country have been mentioned. An important step to facilitate their return was taken on 11 October 1979 with the announcement by the Supreme Military Council that a general amnesty would apply to all refugees who had left the country after 1968.

Although transport problems made it impossible for me to travel to Bata and Río Muni, from all I was told by Guineans themselves, by a number of foreign journalists who had attended the trial and had been in that area, as well as by members of the diplomatic corps stationed in Malabo, the situation in other parts of the country was no better than in Malabo and the main problems I have outlined were to be found there as well.

#### V. THE TRIAL

On 5 September, the Supreme Military Council decided to convene a Special Military Tribunal whose only and express function was to try the deposed dictator and several of his close collaborators for crimes committed between 5 March 1969 and 18 August 1979.

On 24 September 1979 the public trial began, in the Marfil cinema of the town of Malabo, of:

1. Francisco Macías, former President-for-life and Head of State;

2. Pastor Nsué, a soldier, who had acted as prison guard\* in the Mongomo gaol. After one of the prisoners escaped, he was demoted by Macías from second lieutenant to private soldier;
3. Salvador Ondo Ela, an army sergeant, also a prison guard\* in the Bata public gaol, and later in charge of Blackbeach prison at Malabo;
4. Fortunato Nsogo, an army corporal, first class, and prison guard\* at the Bata public gaol;
5. Eduardo Nguema Edu, an army sergeant. Chief of Macías' personal body guard;
6. Miguel Eyegue, former Civil Governor of the Province of Rio Muni, and later Vice-President of the Republic;
7. Bienvenido Michá Nsué, an army lieutenant. Commanding the personal bodyguard of Macías, of whom he was a nephew. Director of the Military Academy;
8. Norberto Nsué Michá, former Director-General of Security;
9. Alberto Ndongo Ayang, a government official and later Civil Governor of the Province of Rio Muni;
10. Román Mbá Edú, a soldier;
11. Tobías Nvulu, a soldier.

At 8 a.m., which was the time fixed for the start of proceedings, a long queue of people anxious to enter the Marfil cinema had already formed. Once the cinema had been filled (it held about 500 people), thousands of Guineans followed the proceedings from the street by means of loudspeakers which broadcast the proceedings from the hall in Spanish, followed at intervals by a summary in Fang. The same pattern of events was repeated every day during the trial. The first rows inside the hall were reserved for members of the diplomatic corps accredited to Malabo (about 30) and I was also allotted a seat among them. On one side there was a space reserved for foreign

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\* These guards supervised prisoners to and from and at their places of work and were known as "prisoners escorts".

journalists and national radio commentators. They were allowed to take films and photographs of the opening of the proceedings, but once the trial proper began, no cameras (including movie and TV cameras) were permitted. The security measures taken were thorough but not excessive.

At 9 a.m. members of the Tribunal, the defence counsel and prosecutor arrived at the hall, and at 9.30 a.m. Macías entered, escorted by two male nurses and a military guard. The other defendants were led in almost immediately afterwards. They all looked well, including Macías who had a bandage round a wound on his forearm. Although I was not able to talk to the accused in private, from the attitude of their lawyers and from what I was told by a Norwegian television correspondent who had visited and filmed Macías a few days before in Blackbeach prison, I gained the impression that they had all been well-treated and had not testified under duress.

#### The Special Military Tribunal

There were five members of the Tribunal (three military men and two civilians), and care had been taken to ensure that the two main ethnic groups, the Fangs and Bubi, were equitably represented on it. They were:-

- Chairman - Captain of the National Guard Eulogio Oyó Rechesa (Bubi) and Military Governor of the Province of Bioko.
- Member - Lieutenant of the National Guard (Fang).
- Member - Lieutenant of the National Guard (Fang).
- Member - Luis Maho Sikachá (a civilian lawyer, Bubi). He had been imprisoned by Macías' orders in Malabo gaol and was one of the few survivors of the group of 46 citizens of Equatorial Guinea who had taken part in the Madrid Constitutional Conference of 1967-68, held to prepare for independence and to draft the first Constitution.
- Member - a civilian lawyer.

Office of the State Prosecutor

- Represented by José Luis Jones Dougan, a civilian lawyer and native of Malabo (Bubi). Two years earlier he had been imprisoned in Malabo, and had been released after the military coup d'état of 3 August. He came from a well-known family, and his uncle, who was a survivor of the group which had attended the Constitutional Conference of Madrid, had been over two years in prison on political grounds.

Defence counsel

- for Francisco Macías: Eloy Elo Nvé Mbengono, a civilian lawyer from the Province of Rio Muni (Fang).
- for the other defendants: Alfredo Thomas King, notary public. A civilian and native of Malabo (Bubi). He had been imprisoned three times on political grounds.

At the opening of the proceedings, the Chairman of the Tribunal stated (and his words were not challenged) that Macías had been allowed to choose his defence counsel, who could be a national of Equatorial Guinea or a foreigner, but he had not exercised his right to do so and the Tribunal itself had appointed counsel. Mr Eloy Elo Nvé obviously defended him as convincingly as possible and made use of all the possibilities offered to him in the trial. His task was, of course, a difficult and unpopular one, since many people, being unfamiliar with the workings of justice, no doubt failed to realise that he was doing his duty and that his was an essential function if it was to be said that justice had been done.

Military Examining Magistrate - A Captain of the National Guard.

The case was given the number 1/979, and categorized as a "summary military trial" in accordance with the Spanish Code of Military Justice. The Military Examining Magistrate proceeded to read out the file of the case, which had been opened on

18 August. It was a comprehensive record, containing statements by the accused, the testimony of a large number of witnesses, written documents, reports on physical evidence and financial accounts.

When this had been concluded, the indictment was read out, viz.: (The following is not a textual copy.)

"The Deputy Minister of the People's Army, Lieutenant-Colonel Teodoro Obiang Nguema:

In view of the manifest inability of the President of the Republic and Head of State to assume responsibility in an honourable and dignified fashion for the destiny of Equatorial Guinea;

In view of his abandonment of the capital for more than five years, thereby paralysing the economy;

In view of the international political and diplomatic isolation brought about by the dictatorial regime;

The Armed Forces, conscious of their great and historic mission, established a Supreme Military Council, which resolved to assume power and to shoulder the responsibilities of government;

Considering that the Council forthwith informed Francisco Macías Nguema of his removal from office, and assured him that he and his family would be given guarantees and had nothing to fear;

Considering that Macias refused to accept their decision, and mobilized his troops against the government, thereby initiating a civil war;

Considering that Francisco Macías, during his term of office, had launched a violent campaign against all those he considered to be his political adversaries, against the intellectual and economic élite and against people of high standing (dignitaries);

Considering that this led to many deaths, which took place on his orders;

Considering that he obtained personal gain by neutralising banking activities and transferring the National Treasury to his native town;

Considering that no distinction or separation was made between his personal assets and the National Treasury and that he was consequently able to draw on the financial resources of the nation to finance works of personal benefit to himself;

Considering that he ordered the villages of Jangzé in the district of Mbini, and of Melén in the district of Mongomo to be burnt, confiscating the possessions of the inhabitants and imprisoning them;

Considering that numerous public officials, protected by Statute, were dismissed without due cause;

(1) Without prejudice to possible rectification, these facts should be designated as continued and repeated crimes of genocide, mass murder, embezzlement of public funds, damage to property, systematic violation of human rights, and treason; that such acts are covered by art. 406, no. 1, in relation to para. 2, and art. 14 of the Ordinary Penal Code (of Spain); art. 258 of the Code of Military Justice (Spain) and arts. 394, para. 4, 396 and 558 of the Ordinary Penal Code (Spain); the United Nations Convention on the Prevention and Punishment of the Crime of Genocide; and the Universal Declaration of Human Rights;

(2) That the following should answer for these: Francisco Macías, as the principal offender, and, as accomplices, ... (all the other accused);

(3) Considering that they are committed for trial under art. 553 of the Code of Military Justice (of Spain);

(4) Considering that, under arts. 673 et seq. of the Code of Military Justice, the accused shall remain in preventive detention during the trial;

Hereby indicts .... (the accused are here named) in accordance with the Spanish Code of Military Justice, which is in force in the country.

They shall be informed of the legal guarantees and other rights to which they are entitled".



(The text has been reconstructed from notes taken by the observer. It was not possible to obtain a copy of the indictment.)

The Examining Magistrate concluded the first stage of the trial by reading out his report.

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During the trial, all the accused made statements on several occasions and a number of confrontations with witnesses took place. Every opportunity was given to the defence counsel and prosecutor to question them repeatedly. One interesting aspect was that from the outset all Macías' collaborators tried to lay all the blame on him, while Macías claimed that if anyone was to blame, it was they alone: "I was the Head of State, I was not a prison governor or prison guard". This was the line also followed to some extent by the two defence counsel. Another remarkable detail which demonstrates that the trial followed a rather unusual course was that on various occasions, when one of the accused denied the charges, the Tribunal asked whether anyone attending the trial could give evidence on the particular point before it and was prepared to testify in court. Each time it did so, several of those present stood up and gave evidence. The defence counsel did not object to that form of procedure and were allowed to question the witnesses.

The charges against Macías and his collaborators can be grouped as follows:

- (A) Genocide
- (B) Mass Murder
- (C) Embezzlement of public funds
- (D) Material injury
- (E) Systematic violations of human rights
- (F) Treason.

(A) Genocide

As regards the first charge, that of genocide, both the

indictment and the Prosecutor's case were based on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948.

By April 1979, 82 States were parties to the Convention. However, it was never ratified by Equatorial Guinea, and this raises the first problem. Was the Convention applicable in that country?

Whereas the Genocide Convention declares genocide to be a crime under international law, it is such a crime only when committed in a country which has ratified or acceded to the Convention. It is true that in an opinion given on 28 May 1951 the International Court of Justice stated\*: "the principles underlying the Convention are principles which are recognised by civilised nations as binding on States even without any conventional obligation." This does not, however, make genocide a punishable crime wherever it has been committed. To be a crime under international law it must be committed in the territory of a country which is a party to the convention, and to be a crime under national law it must have been incorporated directly or indirectly into the national law.

In the indictment the Defendants were charged with various offences, including genocide, under the Spanish civil and military codes.

Genocide was first introduced as a crime under the Spanish Penal Code in 1971 in Article 137 bis, following Spain's ratification of the Genocide Convention. As has been explained, the 1968 Independence Constitution provided that the legislation in force at the time of independence continued in force until it was repealed or modified by the competent Guinean institutions.

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\* International Law Reports, Lauterpacht, vol. 36, pp.29-30.

The 1973 Constitution, however, declared that the Constitution of 1968 was repealed in its entirety. It contained no provision about the law in force. No argument was raised at the trial to suggest that the pre-independence Spanish law was no longer relevant. Nor was there any discussion whether Spanish law subsequent to independence was relevant. It appears to have been assumed by the prosecutor and by the tribunal that it was relevant, but it is difficult to see how this can have been so. However, no argument was raised by the defence to this effect.

Art. 137 bis of the Spanish Penal Code defines genocide as follows (in the section on "Crimes against mankind" (*ius gentium*)). "A person who with intent to destroy, in whole or in part, a national, ethnic, social or religious group, commits any of the following acts, shall be punishable:

- 1) by long-term imprisonment or death\*, if he causes the death of a member of the group;
- 2) by long-term imprisonment if he should cause their castration, sterilization, mutilation or any serious injury;
- 3) by short-term imprisonment if he compels the group or any of its members to live in conditions which endanger their lives or seriously impair their health.

The same penalty shall be incurred by those who forcibly transfer the group or its members, adopt any measure which tends to make impossible their way of life or their reproduction, or forcibly transfer individuals from one group to another".

During the trial the Tribunal mentioned at first this article 137 bis, but thereafter reference was always made to the International Convention against Genocide, without any argument as to how it was to be regarded as applicable, bearing

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\* The death penalty was abolished in Spain by the 1978 Constitution, except under Military Penal Law in times of war.

in mind that this Convention had not been ratified or acceded to by Equatorial Guinea.

The juridical crime of genocide was of special interest. The first time in the history of penal law that genocide was mentioned in a criminal indictment was in the trial of Nazi war criminals by the International Military Tribunal of Nuremburg, by the national courts of countries which had been occupied by the Nazis, and by the International Military Tribunal for the Far East\*. Repeated references were made to genocide in the sentences passed by the Tribunals. This was, of course, prior to the 1948 Convention.

The other known precedent is the trial of Adolf Eichmann, the notorious Nazi official, who was tried by the Jerusalem District Court and subsequently appealed to the Supreme Court of Israel (judgments of 12 December 1961 and 29 May 1962). In his case, Israeli law No. 5710 of 1950 was applied, which sanctions crimes "against the Jewish people" in similar terms to the definition of genocide given in art. II of the Convention.

The elements of genocide are clearly defined in the Genocide Convention. Under Article II genocide and acts of genocide are defined as:

- "(a) killing members of the group;
- (b) causing bodily or mental harm to the members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group."

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\* See the Statutes of the Nuremburg International Military Tribunal of 8 August 1945, of the International Military Tribunal for the Far East of 19 January 1946, and the trials held in 1946, 1947 and 1948.

But the acts described will not constitute genocide unless they are committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". The same applies to the offences of "conspiracy to commit genocide", "direct and public incitement", "attempt to commit genocide" and "complicity" (art. III). If the specific subjective element, the dolus specialis (particular intent) is disregarded, it is impossible to distinguish genocide from ordinary or even multiple homicide (these remarks also apply to the conduct described in art. 137 bis of the Spanish Penal Code).

In his first exposition in the Malabo trial, the Public Prosecutor pointed out that it was not he but "the people of Equatorial Guinea which had cried out against the regime of Macías", an expression he was to repeat on many occasions. He said that they were dealing with a historic case, as they were trying the person who represented a personalised regime and who was guilty of many crimes; unlike the Nuremburg and other earlier trials, it was now the person primarily responsible who was being judged, and he invoked the Convention against Genocide.

It is my opinion, from the evidence brought in the trial, that even if the charge of genocide was legally valid, the charge was not proved. Numerous and horrifying murders of political prisoners and opponents were proved, but not genocide. I have the impression that the word "genocide and mass murder" were used synonymously. At no time did the Prosecutor or the Tribunal attempt to define the offence of genocide as it has been defined in the Convention or in Spanish law, or explain or attempt to establish the different elements which constitute his crime. I was surprised that defence counsel also failed to explain the elements of the offence or to show that they had not been proved.

The "intent to destroy" was not proved in the trial. Nor was it proved - and no attempt was made to do so - that the victims belonged to a national, ethnic, racial or religious

group. What did emerge clearly was that the regime of Macías attacked its political opponents, but although the persecution and destruction of political adversaries is as revolting a crime as genocide, it is not the same. This question was discussed at length in the General Assembly Sixth Committee, when the text of the Convention was under consideration, and it was eventually decided, after weighing all the pros and cons, not to include political groups among those protected by the Convention.

In commenting on this aspect, the International Commission of Jurists recommended in January 1973 that "the definition of genocide should be expanded to include acts committed with the intent to destroy, in whole or in part, a political group as such as well as national, ethnic, racial and religious groups. The massacre of unarmed political adversaries is just as criminal as the massacre of these other groups, and should be recognised as such".\*

#### B. Mass murder

As already stated in relation to genocide, the terms "mass murder" and "genocide" were interchangeable throughout the trial. Both crimes were taken to mean the same thing. I have, however, explained the differences between them.

During the preliminary inquiries prior to the trial, a list was drawn up of 441 citizens of Equatorial Guinea who had been assassinated by the regime. In the course of the trial, another 33 cases were added, bringing the total up to 474. From the outset, the Chairman of the Tribunal made it clear that the list was merely indicative, since the actual number of persons who had been killed as a result of the political repression was far higher.

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\* For the question of genocide generally, see the "Study on the question of the prevention and punishment of the crime of genocide", (E/CN.4/Sub.2/416), July 1978, by Mr Nicodème Ruhashyankiko, Special Rapporteur of the United Nations Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

Nearly all the victims were persons who either had been, or were suspected of having been, political opponents of Macías. As stated at the beginning of this report, all such people were described by the previous government as subversives, colonialists or conspirators. The names on the list - many of which were read out by the Military Examining Magistrate - included those of former Ministers of State, one-time members of the first National Legislative Assembly, and people who had participated in the Constitutional Conference of Madrid.

From the testimony of the accused, the confrontations which took place in court and the evidence given by other witnesses, it was possible to prove many cases of violent death and also to establish some general facts:

- the pretext for the first mass liquidation of political opponents was the unsuccessful attempt at a coup d'état against Macías (5 February 1969), who was then Constitutional President;
- the majority of deaths occurred among the political prisoners, and especially those in Brigade A (see p.10), in the gaols of Bata, Mongomo and Malabo (Blackbeach);
- most of them died from blows and ill-treatment during forced labour, while others died in the gaols themselves. They were hit with machetes, sticks and whips until they died, or death sometimes supervened for lack of subsequent medical attention. A minority were shot at night, after being removed from prison. Most of the bodies were buried in the jungle and their families were not informed of their deaths;
- In general, the deaths were a direct sequel to visits of inspection by Macías, accompanied by his personal bodyguard, to gaols and prison camps or forced labour camps. There was always a coincidence of timing between

his visits and deaths which took place either the same day or very shortly afterwards, and when there were no deaths for a long period, it was observed that Macías had not visited the prison or labour camp in question;

certain words of Macías during his visits of inspection were recalled: "I have no soldiers strong enough to rid me of my political enemies", "if my son were old enough, he would get rid of them...", "you treat these prisoners too well; why don't you finish them off?";

- the following are some of the incidents which were proved in the trial (1) one of the "escorts of political prisoners" from Bata gaol confessed that 8 of the prisoners had died in one day from ill-treatment; (2) after a visit by Macias to a forced labour camp, where there had been 40 persons detained after returning from Gabon, 5 were taken from the gaol that night and shot in the jungle by members of Macías' personal bodyguard; (3) 17 prisoners were killed in the Malabo gaol in the space of a few months; (4) dozens of prisoners in the Bata gaol were killed in one day, on the grounds that a plot to escape had been discovered; (5) 8 persons were assassinated by troops hidden on the roads leading to Gabon, in order to stop people fleeing to other countries;
- Macías was kept fully informed by the prison governors, the local representatives of the central government and the civilian provincial Governors, on an almost daily basis, of each prisoner who died in gaol or as a result of forced labour;
- during the 11 years his government remained in power, no members of the armed forces, police or militia were ever tried for the death of prisoners;



- one of the accused claimed that Macías had given him verbal orders to liquidate certain prisoners, whereas Macías asserted that he had never given verbal orders and that the person in question had always received his orders in writing. Apart from the fact that numerous witnesses testified that Macías always gave his orders by word of mouth and only rarely in writing, the recipient of the particular order of liquidation in question, who was the governor of a prison, eventually confessed that he could neither read or write and that there were no prison regulations or anything remotely resembling them;
  
- the main persons responsible for the repeated and multiple murders were the Head of State, the prison governors, the escorts of political prisoners, the officers and privates in Macías' personal bodyguard and the militia of Youth on the March. Those present at the trial were Francisco Macías, Pastor Nsué, Salvador Ondo Ela, Fortunato Nsogo, Eduardo Nguema Edú and Bienvenido Michá Nsué.

In conclusion, in my opinion sufficient and convincing proof was given in the course of the trial of the occurrence of a large number of political assassinations and of the identity of some of the principal parties responsible for them, including the Defendants.

(C) Embezzlement of public funds

This was one of the charges that was proved most conclusively, and it occupied a considerable part of the trial, as the Tribunal appeared to attach special importance to it. Statements by numerous witnesses were heard, including officials from the Ministry of Economic Affairs and Finance and from the People's Bank of the Republic, who confirmed the statements already made during the preliminary investigation and replies to new questions put by the Tribunal, the Prosecutor and the Defence. Testimony was also given by members of the Commission for the Purchase of Produce from the State Plantations (cocoa and coffee)

and by managers of the State Trading Posts (stores). Financial reports and audits concerning the bank accounts held by Macías and his family were read out, as well as reports on salaries paid to the former Head of State, reports on transfers of money abroad and statements on foreign travel. Statements were also heard by the principal defendant and by two of his co-defendants, who had been Civil Governors of the Province of Rio Muni and one of them had also been Vice-President of the Republic. The accused were extensively cross-questioned by members of the Tribunal, by the Prosecutor and by their own counsel, and a number of documents that had not formed part of the preliminary inquiries were added to the records of the case.

It seemed to me that this offence was amply proved, as well as the responsibility borne by three of the accused. The facts proved can be summarised as follows:

- the former Head of State removed the National Treasury from the State Bank and took it to his own home, in the small town of Nzeng Ayong, near the border of Gabon. The explanation given by Macias for such an unusual and extraordinary action was that he had feared a robbery at the Bank of Malabo. With the same intention, he had ordered that the money collected each day should be taken to his own home. He and some of his collaborators administered the People's Bank and the funds of the State either from Rio Muni (Bata) or directly from his palace in Nzeng Ayong. The various State enterprises were administered in the same way. It often happened that the competent bodies were not even informed about the financial transactions that were carried out, with the result that these could not be entered on the books. In this way, many of the transactions involving import and export income in foreign exchange were never registered either at the Bank or at the Ministry of Economic Affairs and Finance. Statements made by various expert officials indicate that the Bank has no data from which to determine the

present position of the country in the international credit market. Moreover, from what they said, it is impossible to draw a line between money that is owned by Macías and the funds of the State, as both have been inextricably intermingled;

The car in which Macías fled in August 1979 contained various suitcases full of money. During the trial he alleged that he had been robbed of the equivalent of \$4,000,000 (in different currencies), which represented the proceeds of the coffee harvest from his own plantations;

The last annual State budget was approved in 1974. Since then, the estimates prepared yearly by the Ministry and sent to the Head of State for his consideration were never approved. Macías tried to explain this away by stating that he had had no press to print the budget and that in any case the question was immaterial since he was the Head of State;

At the time of the August 1979 military coup, Francisco Macías had been receiving salaries in all the following capacities: as Head of State, as titular Minister for the People's Armed Forces, as titular Minister for National Security, as titular Minister for Popular Construction, and as titular Minister for Foreign Affairs. The amounts of the salaries were fixed by him, as the national budget had been frozen in 1974. His explanation for this was that he had had heavy responsibilities to bear and as he had been performing a number of functions, it was only natural that he should be paid for them;

The auditing of the salaries paid to him yielded a surprising result. In 1968 he had received 516,000 Ekueles (\$17,200), whereas in 1978 he had received 320,000,000 (\$10,600,000), and in 1979 he had already

collected 78,000,000 ekueles. It should be remembered that the salary of the average public official ranged from 35,000 to 60,000 ekueles a year (i.e. \$1,160 to \$2,000) (see p. 14). Macías was unable to explain why the salaries of many officials had been reduced and why a large number of them had not received any salary at all for some months while he had been paid more and more, collecting sums that were astronomical for the country. At that point, an official, who was an electronics engineer, stated that in 1969 he had been paid 25,000 ekueles a month, but in 1972 had been receiving only 14,000 and later as little as 10,000.

The inspection of Macías' bank accounts showed that his 'savings' had risen in two years from 20,000,000 ekueles (in June 1977) to 406,383,892 ekueles (\$13,540,000) in September 1979. Macías himself had decided in 1977 that he should be paid 8% interest annually on his accounts, which was higher than the official rate paid by the State Bank to holders of savings accounts.

It was established that Macías held several accounts in banks abroad. One of his wives had made various trips abroad, for which he had given her funds drawn from the Treasury, and had also made a trip to Gabon taking with her 7 suitcases full of money. She had been accompanied on those trips by a Bank official but the record of the accounts in question could not be found. Macías had ordered in August 1979 that the record of the code numbers of certain bank accounts abroad (containing money from the National Treasury) should be destroyed and that in future he alone would keep them.

Under the 1968 Constitution (which was subsequently repealed) a mechanism was established for controlling the actions of the Executive, under the direction of

the Council of the Republic. It soon ceased to function, since in May 1971 the President assumed all the powers of the government and institutions, including those of the Council in question.

All this, combined with very poor administration of the State enterprises and stores led to the total dislocation of the economy and financial collapse. Meanwhile, Macías and some of his direct collaborators were enjoying unsuspected wealth to an extent inconceivable for public officials in a country that was in such a parlous state.

To sum up, the offence of embezzlement of public funds and wrongful gains by Francisco Macías and, to a lesser extent, by Miguel Eyegue and Alberto Ndongó Ayang was fully proved.

(D) and (E) Damage to property and systematic violations of human rights

The allegations made under these headings can conveniently be summarised as follows. Some of the allegations were proved; others not. The legal validity of these charges will be considered after the evidence in support of them has been described.

(a) Torture and cruel, inhuman and degrading treatment and punishment systematically inflicted on political prisoners

No doubts remained after the trial of the horrifying tortures and cruel physical punishment to which political prisoners were subjected, almost continuously, and particularly those in Brigade A. It was proved that they were not exceptional cases, or due to an excess of zeal or sadism on the part of certain officials, but reflected a deliberate policy designed to wear down all their powers of resistance, sometimes to the point of destroying them. In this aspect too, as in the case of the assassinations, Macías' tours of inspection of the gaols

and prisons often coincided with the infliction of torture and ill-treatment. In my view the following were some of the matters established in relation to these offences.

- On one occasion after visiting Bata gaol, Macías told the Civil Governor (Miguel Eyegue) that the prisoners were being "spoilt", and that they should be sent to build roads and not be treated "so well". The treatment described by Macías in those terms was already brutal, but became even worse after his visit, as a result of the Governor's zeal in carrying out orders. Several prisoners died following Macías' visit.
- One of the "prisoners' escorts" in Bata asserted that he did not kill the prisoners, he only punished them, beating them always on the orders of the Head of State.
- One of the heads of Macías' personal bodyguard stated that, during one of Macías' frequent visits to the Bata gaol, he ordered all the beds and coverings used by the political prisoners to be removed because they "were very comfortable". They were taken to a State store and were not returned to the families which had brought them in the first place. Macías then ordered the prisoners to be given physical punishment.
- One of the accused, Salvador Ondo Ela, who was the governor of Blackbeach prison in Malabo, had trained a dog to attack and bite any prisoner he was beating (who would of course have had his hands tied behind his back) to the point of tearing pieces of flesh from him. When the accused denied this, the Tribunal asked members of the public who were able to testify to come forward and do so. A women (who had been imprisoned with her son from 1975 to 1977) and three men gave evidence, and all of them confirmed the

accusations made, and added further details. The only explanation given by the accused, in view of their testimony, was that he would have been punished by his superiors if he had not beaten the prisoners.

- The technicians of Malabo airport were tortured and punished because the runway lights were turned off just as the presidential plane with Macías on board was about to land one night, and the plane had to continue to Douala in the Cameroons. They were eventually released as it was found that the lights had been turned off by accident.
  
- The defendants were among the persons principally responsible for these offences, but they also named other people (7 or 8, most of them military men), who had been implicated in the killings, torture and ill-treatment. These others were not brought to trial, however, nor have any charges been made against them as far as is known.

To my mind this was a salient defect of the trial, since only a few of those guilty of these offences were tried.

(b) Forced labour by citizens in general and by political prisoners in particular

The practice of forced labour was generally adopted in Equatorial Guinea and affected large sectors of the population. Reference was made earlier in this report (p.8) to the effects of the Presidential Decree of March 1976, compelling all citizens over 15 years of age to do certain work on the State plantations and in the mines, for which they were paid solely in kind.

With regard to the political prisoners in particular, the kind of forced labour they had to do was described, together with the utterly inhuman conditions in which it was performed.

In no case, of course, had any judicial sentence been passed ordering the victims to do forced labour as part of a punishment, this being the only circumstance in which it would have been lawful, always provided that it had been performed in proper conditions under the supervision of the judiciary. On the contrary, it was proved that the Head of State himself had ordered his subordinates to remove the machinery from certain works and use it for other purposes, while the prisoners were left to work virtually with their hands. In relation to the forced labour, an important post was created - that of "prisoners' escort" which was reserved for people in Macías' personal confidence. It was their task to conduct the prisoners every morning to forced labour, to punishment and sometimes to execution. Several of the accused on trial had occupied that position.

- (c) Arbitrary and illegal detention; failure to bring the detainees before the courts; lack of penal proceedings and hence of the right to legal defence

When considering these allegations it must be remembered that there was no genuine and independent system of law in force in Equatorial Guinea. In the case of political offences or those against the public order, the following procedure was applied in practice. Affairs of State security and public order were in the hands of the Head of State, the National Director of Security (resident in the capital), the Provincial Governors and the local chiefs of the Militia (district representatives of Youth on the March with Macías). When someone was suspected of conspiring or intending to conspire against the security of the State, or of being liable to endanger it, or of committing offences against public order, he was arrested. After being interrogated, frequently under torture, his conduct was reviewed, not by a court of law, but by a committee consisting of the Director-General of Security and other officials. When the inquiries had been completed, the case was placed before the Head of State so that he "might decide what was to be done with the accused", according to the statement made in the trial by



the Director-General of Security. In other words, in the majority of cases, there was no trial or sentence and naturally no right of defence. Nor were the detainees told how long they were to remain in prison, which would depend on the will of Macías. They were simply sent to gaol to do forced labour.

In the few cases in which a trial was held, the accused were brought before "People's Military Tribunals", composed of military officers appointed directly by the President-for-life. One such trial was held at Bata in June 1974, following an unsuccessful attempt at a coup d'état against Macías' government. On 10 June, the political prisoners of Brigade A from the Bata public gaol, who were members of an organisation called "Crusade for the Liberation of Equatorial Guinea by Christ", planned to escape from the gaol, overcome the guards, occupy the town of Bata and ultimately seize power. Their plan was nipped in the bud, and a People's Military Tribunal was set up composed of 5 military officers, a military Prosecutor, a military Defence Counsel and a military examining magistrate. None of them had any legal training or qualifications. The trial was extremely brief, and the Tribunal invoked as legal texts Law No. 1 of 18 October 1971 (referred to, with comments, on p.6), and, in the second place, the Spanish Ordinary Penal Code and Spanish Code of Military Justice.

Of the 102 accused, 12 were publicly executed by firing squad on 26 June 1974, having been condemned to death for rebellion, attempted murder, offences against the security of the State and subversive propaganda. There were 10 acquittals and the remainder were sentenced as accomplices in the offences in question to 29 years and 8 months imprisonment, 26 years and 8 months or 17 years and 4 months.

In this case, neither the procedure adopted nor the composition of the court complied with the provisions of the 1973 Constitution. Instead a special military tribunal was set up. As stated before, during the last 4 to 5 years before August 1979,

there were no penal proceedings whatever in Equatorial Guinea although persons suspected of political or other crimes continued to be arrested and held in custody.

Consequently, the allegations against Macias and his collaborators of illegal detention and of failing to give the detainees access to due process of law, thereby depriving them of exercising their right to a legal defence, may be considered to have been proved.

(d) Looting and theft by the members of Youth on the March with Macías, and abuse of authority in general

The People's Revolutionary Militia (Youth on the March) were guilty of every kind of abuse of authority, illegal detention, ill-treatment, looting and theft of possessions and damage to property. One of the accused recalled at the trial that Macías had said to him, in relation to some acts of extortion committed by the Militia, that "as these boys are not paid, they should be allowed to have some fun with the Spaniards and their political enemies ...". The Militia was also implicated, together with members of the Presidential Guard, in certain assassinations and the burning of villages.

(e) Deliberate burning of two villages and forcible transfer of the inhabitants elsewhere

There was ample evidence that Macías and several of his collaborators were guilty of deliberately setting fire to the villages of Jangzé in the district of Mbini, and of Melén, in the district of Mongomo. These extraordinary acts were motivated by Macías' desire to punish the people he considered to be his political enemies.

In August 1975, following a charge that one of the wives of the former Vice-President of the Republic - he had several - had gone to the village of Malén to buy "medicines (poison) to

kill Macías", Macías gave orders to the Civil Governor of Rio Muni to burn the houses of 5 families related to the woman in question. He then announced publicly, in the course of a speech made at the inauguration of a State work in Mongomo, that they had been burnt and at the same time gave sweeping orders to have the whole village burnt. According to Macías, his reason had been that that whole population "was involved in subversive activities". In carrying out the order, Governor Alberto Ndongo Ayang (one of the accused) took a direct part in the action. A group of soldiers and militia forcibly transferred all the villagers (173 persons) and their belongings to another part of the country for resettlement there. The village was then burnt to ashes. At the close of the trial, no doubt remained as to the facts themselves, but the allegation was not proved that the villagers' possessions had been confiscated as well. Subsequently, some of the victims were arrested and taken to Bata gaol, where they were condemned to 11 and 12 years' imprisonment but it is not clear whether this was done by a special tribunal or by Macías. The former Vice-President himself, Miguel Eyegue, who had enjoyed the personal confidence of Macías and was standing trial with him, did not escape the whirlwind of punishment and was condemned to 12 years' imprisonment. A few months later, however, he was released by Macías himself after paying a large sum in bail, and was confined to the island of Bioko.

In April 1976, following an accident to a helicopter of the National Guard in the village of Jangzé, in which the pilot, a representative of the Governor, and a woman he had arrested were all killed, Macías gave orders from his palace at Bata for the whole village to be burnt down. Another representative of the Governor was sent to the spot, called the people together, and told them that, by order of the Head of State "the village no longer existed", as it had been discovered that the inhabitants planned to flee to Gabon. They were all forcibly transferred to another area and forbidden to return. The same day, the village was fired and burnt to the ground. In the course

of the operation (in which a direct part was played by the accused Sergeant Eduardo Nguema Edu, head of the presidential bodyguard, with the help of his soldiers and the Militia) radios, animals and various other objects were stolen. Many of the victims were taken to prison and spent several months there.

(f) Preparation of lists of political opponents to be liquidated: violation of women by the Militia and Macías' soldiers

These charges examined by the Tribunal were not proved. There were simply indications that they had occurred.

(g) Dismissal of public officials and members of the armed forces for political reasons without compliance with the requirements laid down in the Statue for Public Servants

It was proved, however, that a large number of officials and soldiers of different ranks had been arbitrarily dismissed on political grounds by Macías and the Civil Governors. The Tribunal mentioned the figure of 1,289 government officials and 751 soldiers, although only a few specific cases were proved, together with the existence of a general policy of dismissal without giving the injured parties the benefit of the safeguards which theoretically at least were still in force. It was established that the persons dismissed had not supported Macías in the 1968 elections or had subsequently disagreed with his policies. The explanation given by Macías was that, as President of the Republic, he had the power to appoint and dismiss his Ministers and other State officials, and, as Minister for the People's Armed Forces, had been entitled to do the same in the case of the military. It is hardly necessary to point out that, under the rule of law, the Executive is also limited in its powers and subject to the law, and may not exercise powers conferred by the Constitution and the law in an arbitrary or capricious manner. Even when the Constitution empowers the head of state to appoint and remove officials, this power must be used in accordance with the law. When there appears to be good reason to dismiss an

official, this can be done only after the relevant case has been made out and the person in question has had an opportunity to make a rebuttal and possibly to appeal to the courts against his dismissal. Persons who fail to respect these norms are acting illegally and incur political and civil liability by so doing, but this does not give rise to criminal liability.

- (h) Abandonment of the capital by the President-for-life during more than 5 years, and a charge brought - although not described in these terms - to the effect that he had systematically deprived the population of the enjoyment of their political, economic, social and cultural rights

It was alleged and proved that the policy imposed by Macías and followed by his collaborators had virtually paralysed the economy, had left the administration and public services practically inoperative, and had isolated the country from others, thereby causing grave damage to the population. Although these charges were proved, the acts in question were not penal offences. They had political and possibly civil implications, but did not give rise to criminal liability.

- (i) Lastly, another of the charges against Macías in this section was that of violating the 1968 Constitution and of having assumed dictatorial powers

In other words, Macías was charged with having adopted and imposed diverse Decrees, Decree-Laws, Constitutional Laws, Presidential Decisions and a new constitutional text which put an end to the constitutional and democratic system established by the country on achieving independence. This charge was easily proved upon the enumeration of the different legal provisions introduced by the regime during the 11 years it remained in power (pp.6-8). Violation of the Constitution, repeal of the Constitution approved by the people in a free referendum and the establishment of an antidemocratic system without consulting the people, in whom sovereignty is invested,

self-appointment as President-for-life and usurpation of all the powers of the government and institutions are acts which usually carry criminal liability in countries under the Spanish system of law, as well as having political implications. Law No. 1/71, approved by Macías on 18 October 1971, although it is not applicable in this case, illustrates what are considered to be punishable acts:

"Any person who performs acts designed to replace the Government of the Republic of Equatorial Guinea by another government or to change it without the consent of the people, or by any other illegal means shall be sentenced to death" (art. 7).

Spanish legislation, which was applied in the trial, sanctions the type of conduct described above. The question of the ratification of the new Constitution by the referendum in 1973 was not raised by the defence, but in my view Macías cannot be exculpated on this ground since the referendum was held without any freedom to campaign against the Constitution and in circumstances where all civil and political liberties were denied and with no independent control over the voting. At the trial, Macías merely said that, as Head of State, he had suspended the Constitution and drafted another endorsing his proclamation as President-for-life.

\* \* \* \* \*

The considerations set out in this section were of particular interest since the legal basis of the Prosecutor's case was the Universal Declaration of Human Rights of December 1948. The Declaration establishes a number of individual and collective rights which States should guarantee to the inhabitants of their territories. Despite its immense importance and the role it has played in the subsequent codification of human rights at the international and national levels, the violation of one or more of its articles is not in itself a breach of the law liable to

punishment. For such violations to be punishable, the articles of the Declaration or the acts defined in them must have been incorporated by States into their criminal law. Equatorial Guinea never did this. Moreover, contemporary penal law still accepts as one of its most important principles that of nulla poena sine lege, which prevents the sanction and punishment of offences that are not covered by law existing at the time of the offences.

The legislation of Equatorial Guinea - which in any case was virtually non-existent, as we have seen - did not include the specific offence of "systematic violation of human rights". Nevertheless, the majority of the acts referred to in this section constitute in themselves violations of specific articles of the Spanish Penal Code, which was invoked in the trial. One example is that of torture, and cruel, inhuman and degrading treatment or punishment, which are covered by the Penal Code inasmuch as it sanctions the ill-treatment of detainees, harsh conditions not permitted by law and the bodily injury resulting therefrom. (A recent Spanish law has raised these acts to the level of a special crime of torture). The same applies to forced labour of a kind not envisaged by law, in that the person is forced to do something he is not required to do by law and is subjected to inadmissibly harsh conditions. It is also true of illegal and arbitrary detention and illegal sentences; of looting, theft, damage to property and the abuse of authority; the deliberate burning of people's homes and their arbitrary deprivation of the right to live in a particular place; the violation and repeal of the Constitution and introduction of new laws without following the procedures established by the legal system.

However, we cannot say the same of other acts, which were not penal offences, although they were reprehensible and did great harm. In this category are the wrongful dismissals of public officials, the denial of political, economic, social and cultural rights and the abandonment of the capital. There

was also the violation of the principles laid down in Convention No. 105 of the International Labour Organisation of June 1957, on the abolition of forced labour (to which, in any event, Equatorial Guinea was not a party). These acts are not open to punishment. Any consequences can only be of a political or civil nature.

In relation to all these matters both the Prosecutor and Tribunal referred throughout to a single offence, "the systematic violation of human rights". This is another aspect of the Malabo trial which led me to describe it as "sui generis". One of the defence counsel did say that although the conduct of the accused had been open to condemnation, they had not specifically violated any penal law. Unfortunately, he did not develop that idea any further.

In short there were errors in the legal classification of the offences charged against the accused. They were convicted of a "crime" having no legal basis, but at the same time the evidence clearly established that they had been responsible for many grave offences with which they were not specifically charged.

(F) Treason

It remains to review the last charge brought against Macías, for having resisted the uprising which overthrew him, one which the armed forces considered to be the most important. Macías was accused of having betrayed his native land and of having caused a civil war which had led to the death of dozens of his countrymen. The charge was based on two facts:

(a) On 3 August 1979 a military uprising occurred followed by the establishment of the Supreme Military Council, which that same day sent a telegram to the then Head of State informing him that, in view of his manifest inability to lead the country in an honourable and dignified manner, the Armed Forces had deposed him, but that they guaranteed his complete safety and



that of his family if he remained in his native town and accepted his deposition. Macías resisted the uprising and opposed it militarily with the support of those troops who remained loyal to him. This led to some fighting at Njema, near Bata, on 8 August. The situation was rapidly brought under control by the forces of the Supreme Military Council, and all the soldiers, officers and militia who had begun by following the dictator deserted him and either gave themselves up or crossed into Gabon. On 18 August Macías was found wandering alone in the jungle near the frontier with Gabon and was taken prisoner.

At the trial Macías contended that he had not entered into combat (which is not true), and that he could have destroyed roads and bridges but had refrained from doing so. As to the telegram sent by the Supreme Military Council, he claimed that it had been delayed. His defence counsel pleaded, quite rightly, that a Head of State was not obliged to accept his dismissal simply because a telegram had been sent to him, and that was not sufficient reason for considering that he had caused a civil war.

To my mind, the Prosecutor was in error on this point by confining himself to alleging that Macías was "a war criminal" and was being judged as such. Moreover, he did not demonstrate the truth of his allegations. The Tribunal also was in error in calling upon the defence to prove that Macías had not caused a civil war. It was for the Prosecutor to prove the charges made against the accused, not to expect the defence to prove that he was innocent.

(b) A letter signed and sent by Macías on 4 August 1979 to the Head of State of a neighbouring country asking for military assistance from abroad to put down the uprising. The letter was to this effect (though not textually exact):-

"Dear Brother,

In view of the ties of friendship, good neighbourliness and fraternal affection between our countries, and of the

situation created by the desire of Lt.-Col. Obiang Nguema to seize power, I appeal for your assistance and for the military intervention of your country in support of the legitimate forces of the constitutional government.

Our forces are fighting 12km away from Bata and intend to occupy it. I am leading them, and all the interior of the country is under my control. We respect human rights."

The Tribunal reserved the right not to name the country to which the letter was sent on the grounds that it was a state secret. However, it is known that the letter never left Equatorial Guinea and so did not reach its destination.

Both the Prosecutor and Tribunal viewed the fact of the letter as evidence of the crime of treason, since a foreign power was asked to intervene militarily in an internal conflict caused by Macías' refusal to accept his deposition. Macías, for his part, asserted his right to send the letter and ask for help in crushing a rebellion.

In my opinion, from the facts given, the charge of treason was not proved and still less that of being a war criminal, which in any case was rejected by the Tribunal.

\* \* \* \* \*

The State Prosecutor finally read out the arraignment, in which he recapitulated the charges against the accused and the evidence obtained, and on that basis asked for the following sentences to be passed:

1. for Francisco Macías, the death penalty;
2. for Pastor Nsué  
Salvador Ondo Ela  
Fortunato Nsogo  
Eduardo Nguema Edé  
Bienvenido Michá Nsué  
30 years' imprisonment

3. for Miguel Eyegue  
Norberto Nsué Michá  
Alberto Ndongó Ayang  
1 year's imprisonment.

Defence counsel for Macías' collaborators (10 accused) made a long plea referring to the reign of terror that prevailed during the 11 years of Macías' government and the systematic violations of human rights that had taken place during that time. He also stated that, while he had been impressed by the testimony given by the witnesses, the persons he was defending were merely links in a chain of horror. All of them had acted in obedience to Macías' orders, and experience had shown that no one could refuse to obey his orders without being killed, imprisoned or prejudiced in some way. Consequently, it had been impossible for Macías' collaborators to refuse to obey the orders they were given. In view of that, he asked the Tribunal to invoke extenuating circumstances, which were greater for some and less for others.

Macías' defence counsel, who, subject to his failure to present certain legal arguments, performed his difficult task with great courage and skill, argued in his closing plea that his client was guilty only of acts of omission, not of specific offences provided for in criminal law. He stressed the point that other officials (the co-defendants) were responsible for such specific crimes as murder, torture, ill-treatment and illegal arrest, and that each one could be held liable only for what he had done. Macías had been the Head of State and not a prison warder. He concluded by asking for his acquittal.

Macías himself, who, at the request of his counsel, had previously been allowed to make long statements which were undoubtedly intended to be his political valedictory message to the people following the trial, recapitulated all the works and great services he considered he had performed for the benefit of the people of Equatorial Guinea, including the expulsion of the Spanish colonial troops, the construction of housing,

bridges and roads, the establishment of State control over the rural plantations, the creation of State stores and the inculcation of a revolutionary education. He went so far as to state, in reply to the charge of embezzlement of public funds, that he had spent the money in question on commissioning statues of himself to be placed in the State banks, and on reproductions of his photograph to be hung in all the educational establishments. The fact that he had not done so earlier was, in his view, an omission.

In short, he denied all the charges made against him, stating that it was unjust to hold him to account for trivial mistakes, which were made by everyone, while overlooking his positive achievements as father and leader of the Nation. He ended his statement by asking to be pardoned, to be permitted to return to his native town and to be given back all the assets of which he had been divested, as he was over 60 years of age and was too old to become involved in politics again.

#### The verdict

On 29 September 1979, at 12 noon, the Special Military Tribunal held its closing session. Captain Oyó Rechesa, President of the Tribunal, in addressing the people, world public opinion, international organisations and the press present in the hall, explained the course of the proceedings, referring to texts such as the Universal Declaration of Human Rights. On behalf of the Tribunal, Advocate Luis Maho Sikachá, then read out the verdict reached by the Tribunal and the respective sentences. These were more severe than those requested by the Prosecutor including, as they did, seven death sentences in place of one which had been requested. The sentences were:

- sentence of death and confiscation of goods and property for:

Francisco Macías Nguema  
Pastor Nsué  
Salvador Ondo Ela  
Fortunato Nsogo

Eduardo Nguema Edú  
Miguel Eyegue  
Bienvenido Michá Nsué

- sentence of 14 years, 4 months and 1 day in prison, and an order to indemnify all material damage caused to third parties and to return all goods and property illegally acquired, for:

Norberto Nsué Michá  
Alberto Ndongo Ayang

- sentence of 4 years, 2 months and 1 day in prison, for:

Román Mba Edú  
Tobías Nvulu

The public in attendance, who had followed the unfolding of the trial, greeted the sentence with enthusiastic demonstrations of approval. The session ended at 13.15 hours.

There was no right of appeal against these sentences. The Special Military Tribunal was at the apex of the system of military justice. As a result, there existed no higher court capable of reviewing its decision. Also, no opportunity was given to the defendants, or to others on their behalf, to seek clemency or pardon from the highest state authorities. For, less than 5 hours later, at 1800 hours on the same day, Francisco Macías and the six of his collaborators condemned to death were executed by firing squad at the Blackbeach prison. Their bodies were handed over to their relatives, who buried them at the Malabo cemetery.

#### CONCLUDING OBSERVATIONS

The first observation is that given the truly exceptional situation found in the country, it would not be possible nor fair to appraise the trial in Malabo based on a comparison with trials in developed countries, which possess an old tradition of legal practice, a coherent legal system and

experienced judges and advocates. To do that would be to depart from reality, disregarding the specific circumstances surrounding this sui generis trial.

Having said this, it must be pointed out, however, that a series of irregularities were noted during the trial.

In normal times, two of the members of the tribunal would be liable to disqualification for having themselves being persecuted by the previous regime. The State Prosecutor was released from prison in August 1979. Appointing the tribunal was a difficult task in a small country where few people were not affected by political repression, intellectuals being a frequent target.

The trial was limited to only a few of those responsible for the regime of terror. Yet, according to denunciations made in the past and in the opinion of several persons that I met in Malabo, numerous other members of the Macías government were also responsible for various crimes. Moreover, the charges related to assassinations, torture and illegal detentions that occurred mostly during the early years of the Macías government. It is common knowledge that in more recent years the repression had not eased. As far as this observer was able to ascertain, there are no plans to bring those responsible for these other crimes to trial.

The State Prosecutor attempted to force Macías to confess his guilt, although a defendant should not be made to give evidence against himself or to admit his guilt. He may simply be invited to confess.

Obvious errors were made in the legal designation of several of the crimes. This was the case with regard to genocide, systematic violation of human rights and treason.

There existed no higher court to which an appeal could be made. The Tribunal was itself the highest court of the military

justice system. In view of the circumstances surrounding the trial, this omission could have been remedied only by establishing a special appeal court. In the absence of more highly qualified jurists, such a court would in practice have been a largely formal one, lacking the necessary qualities of independence and legal skill.

No opportunity was given for the defendants, or anyone else to petition the military council for clemency. Sufficient time should always be allowed before executing a death sentence to enable such petitions to be made, including, in a political case of this nature, petitions from outside the country. It should be recalled that the right of appeal in criminal cases and the right to seek pardon or commutation of a death sentence, are guaranteed under articles 14(5) and 6(4) of the International Covenant on Civil and Political Rights.

In sentencing Macías' accomplices to death, the Tribunal exceeded the sentences requested by the State Prosecutor, who is to be considered as acting on behalf of society and the victims of the crimes (*ultra petita*).

It would perhaps have been preferable if the Tribunal had been a purely civilian one. The fact that the majority of the members were military officers gave the court the character of a military tribunal. In the view of the International Commission of Jurists the jurisdiction of military tribunals should, save under a proclamation of martial law, be restricted to crimes which are alleged to have been committed by members of the armed forces and are specifically military offences, i.e. ones which cannot be committed by civilians or are not normally considered as crimes when committed by them (e.g. desertion, insubordination).

The main drawback of military tribunals lies in the fact that the rigidity of the military hierarchy, with its permanent subordination to authority, makes it unusual for the judges and prosecutors, who frequently lack legal qualification, to

have the independence of mind required for the administration of justice. Military codes and military courts are often instruments of discipline rather than of justice.

Despite these observations and criticisms this observer has been mindful of other aspects that are essential to an understanding or an appraisal of this case. These include the catastrophic conditions of the country from an economic, social, cultural and political point of view, which have already been described.

What is more important, there existed an enormous legal vacuum - not only on criminal matters. For many years the regime had enacted hardly any legislation, and there was no system of criminal law in operation. At the time of many of the crimes alleged, the state was in practice governed without law by a system of purely arbitrary rule. Nevertheless, it must be assumed that those provisions of the Spanish penal code which had not been repealed and which did not conflict with the Constitution, remained part of the law of Equatorial Guinea. In so far as the accused were charged and tried under that code, they were tried according to law.

During the eleven years of the Macías government the judicial system did not operate as provided for in the Constitution. The very few trials that took place were conducted not by ordinary courts but by Popular Military Tribunals. In the past 4 or 5 years no criminal trials were held, although many people were detained and imprisoned. All this led to great inexperience since the few lawyers who remained in the country had no opportunity to practice. It is hardly possible to expect that a sophisticated legal system, complete with appeal procedures, could be rapidly established, considering that there were very few lawyers in the country.

The defendants were given ample opportunity to explain themselves and to prove their innocence. They were allowed to appoint national or foreign advocates to represent them.



Since they did not do so, two of the country's few jurists were appointed, who carried out their unpopular task conscientiously and to the best of their ability.

The defence lawyers were allowed to examine the defendants and to examine and cross-examine witnesses for as long as they wished to do so.

Most of the charges against the defendants were fully proved. They encompassed a series of very serious and repeated crimes. In the opinion of this observer, the defendants would have been convicted in any country of the world and under any legal system.

The very convening of a trial open to representatives of international opinion represents in itself an important progress and shows determination to see justice done.

Although the trial in itself is not easy to classify and could not be said to comply with internationally established norms, it is the opinion of this observer that it was as fair and equitable a trial as could be expected in the exceptional circumstances described.

To a considerable extent, the new authorities of Equatorial Guinea presented a unique and exceptional scene before the international community: a dictator who was tried for his responsibilities during 11 years of systematic violations of civil, political, economic, social and cultural rights resulting in great misfortune for the population and in the destruction of a democratic system of government.

Geneva, November 1979

Alejandro Artucio  
Legal Officer of the  
International Commission of Jurists

Press-release

30/9/79

BIBLIOTECA C. M. EYA NCHAMA N.º 628 Fecha 15.11.1979
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APPENDIX

Immediate

ICJ OBSERVER'S COMMENTS ON  
MACIAS TRIAL

Dr. Alejandro Artucio, the International Commission of Jurists observer at the Macias trial from 24 to 27 September in Equatorial Guinea and the only legal observer, makes the following comments pending publication of a fuller report:

1. The military tribunal was composed of 3 military members and 2 civilians, the latter with appropriate legal qualifications. The two major ethnic groups of Equatorial Guinea were represented on the tribunal. The trial of Macias and 10 accomplices was held in public and thousands of people followed the proceedings through loudspeakers in the streets.
2. There was abundant and convincing evidence that multiple murders have been committed on direct orders of Macias. Embezzlement of public funds has been equally well established.
3. There were other charges however which did not rest on any sound legal basis. For example, Equatorial Guinea had not ratified the Genocide Convention or embodied Genocide in its national law at the time that the alleged offences were committed. Other charges were purportedly based on articles of the Universal Declaration of Human Rights, which does not in itself give rise to any offence in criminal law.
4. As all legal process had been suspended for many years both the prosecution and the defence lawyers were, inevitably, somewhat inexperienced.

5. Macias and his accomplices however were represented by lawyers and they were given all opportunity to examine witnesses and to comment upon their testimonies. Macias had been well-treated in prison.
6. The ICJ observer was received by the head of state, who made an appeal for immediate material assistance by the international community, as the country is in desperate need of food, medical supplies and other essential commodities. He declared his intention to return to democracy "as soon as possible", but said that no political activity could be allowed until the economy of the country was working again. All exiles were free to return, but must accept these conditions.
7. The observer was satisfied by information from many sources that all political prisoners were in fact released immediately after the August coup.