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Equatorial Guinea

At the Crossroads

October 2003

**Report of a Mission to Equatorial Guinea
by the International Bar Association
Human Rights Institute**



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Report of the IBA Mission to Equatorial Guinea

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Executive Summary

This is the summary of a report following a fact-finding mission to Equatorial Guinea of an international delegation of high level jurists between July 20-26 2003. During the mission, the delegation consulted widely with the Minister of Justice, the Secretary of Justice and other Government members, the Vice-President of the House of People's Representative and other members of the Parliament, members of the Human Rights National Commission, the President of the Supreme Court, the President of the Court of Appeal of Bata, justices of the Constitutional Court, judges of first instance tribunals, the current President and Secretary of the Equatorial Guinea Bar Association, members of the European Union Office in Equatorial Guinea, members of the French technical cooperation office, members of the Spanish international cooperation office, members of the diplomatic corps, and Equato-Guinean doctors. The IBA is extremely grateful for the hospitality and assistance provided by all those whom it met. In particular thanks should go to the Minister of Justice for his invitation to the delegation to visit the country.

The fact finding mission was organised by the Human Rights Institute of the IBA and was funded by the Foundation Open Society Institute (FOSI). The purpose of the delegation's visit to Equatorial Guinea was a fact-finding mission to examine:

The focus of the mission was the following:

- (A) To analyse the legal situation and, specifically, the independence of the judiciary and the legal profession in the course of carrying out their duties.
- (B) To examine any impediment, *de facto or de jure*, that may place limitations on or jeopardize the administration of justice.
- (C) To verify the legal guarantees aimed at the effective functioning of the judicial system, and whether these guarantees are respected in practice.

Equatorial Guinea is a fledgling democracy. Only made fully independent in 1968, the country has now reached a crucial moment on its path to democracy. Following years of oppression and mismanagement under the cruel regime of Macias Nguema, the country was left shattered, impoverished and with little infrastructure.

The recent discovery of oil has enhanced the profile of Equatorial Guinea and propelled it onto the world stage. As the overall wealth of the country increases, so does the pressure to ensure that areas such as justice, human rights and transparency are improved and focussed upon.

The IBA's Human Rights Institute (HRI) was concerned to hear of the dissolution of the Bar Association and of reports of torture during a high profile trial of 144 people accused of plotting a coup. After raising those concerns with the Government, the Minister of Justice invited the HRI to visit the country and produce a report including recommendations of the steps necessary to support the rule of law.

The HRI considers movement towards a true democracy to be critical to Equatorial Guinea playing a credible and leading role within the region. A prerequisite to improving the economy, attracting and maintaining international investors and maximising its own natural resources will be a strong and fair justice system. This must be reinforced by adherence to the rule of law and international and regional human rights standards.

It is in this context that the IBA Human Rights Institute has produced this report.

Summary of findings

1. During its visit to Equatorial Guinea the delegation concluded that there is little respect for the rule of law, in particular there is no separation of powers. It was clear that the Executive exercises considerable control over both the legislature and the judiciary which impacts significantly on their ability to exercise sufficient checks and balances on the powers of the Executive.
2. There is a lack of a viable opposition to the governing party and the political pluralism promised within the constitution has not been fulfilled.
3. Freedom of speech and the press are strongly restricted to the extent that civil society is disempowered. The delegation was very concerned to note that there was no daily newspaper, bookshop or public library in Equatorial Guinea.
4. The combined impact of the lack of freedom of speech, press and association has meant that civil society has not been able to develop. This situation is critical. Without civil society it will be impossible to ensure that the rights and freedoms of the citizens in Equatorial Guinea are protected and upheld.
5. Torture, failure to guarantee the right to a fair trial, lack of freedom of expression and association, and poor prison conditions are just some examples of the abuses that occur with the impunity that exists in Equatorial Guinea. The failure of the judiciary to act independently is a further difficulty as it prevents ordinary citizens from seeking redress for human rights abuses.
6. The delegation was seriously concerned about the fairness of the trial of 144 alleged coup plotters, and the well being of all those now in prison as a result of that trial. From all reports and interviews held by the delegation it is clear that the trial fell well below the regional and international standards regarding fair trial proceedings.
7. While the delegation is delighted to learn of the release of Plácido Micó, the delegation remains very concerned at the conditions in which Felipe Ondo is reportedly being held and at reports of his ill-treatment.
8. The delegation has serious concerns about the lack of independence of the judiciary. This failure takes a number of forms:

- (i) Failure to observe a lack of separation between the judiciary and the Executive;
 - (ii) Interference with independent judicial activity by the Executive, through the appointment process and by failure to offer security of tenure;
 - (iii) Corruption;
 - (iv) The requirement of 'loyalty' to the Government of those judges appointed by the President;
 - (v) The use of military judges who could be subject to pressure by virtue of 'command responsibility';
 - (vi) The appointment of military judges to civilian courts which could lead to meddling in the administration of justice system by the military power and by the Government;
 - (vii) The failure of some Executive authorities, primarily related to security bodies and military institutions, to abide by the law and court orders.
9. The delegation concluded that the laws in Equatorial Guinea are either i) not written and thus never properly or consistently used; ii) the laws are inconsistent with the constitution; iii) the laws are outdated, and iv) they are ad hoc. There is an urgent need to initiate a programme of law reform. Although the Government professes to be engaged in the much needed codification of laws, it needs to demonstrate greater commitment to ensure that the laws are widely disseminated and that sufficiently qualified people are brought into undertake the task. This will require sufficient resources being made available.
10. The delegation was extremely concerned about the lack of an independent Bar Association. The Government must desist from any interference in the Bar Association. The IBA recommends the establishment of a code of ethics and programme of continuing legal education for lawyers. An independent electoral process for positions within the executive of the Bar Association should be established and allowed to function without influence from the Government.

Recommendations

1. The Equatorial Guinea Government must immediately desist from any act of harassment that prevents the Equatoguinean Courts from functioning independently and impartially in compliance with the rule of law.
2. Payment of salaries commensurate with the importance of the role of judges within society must be contemplated. This may help to alleviate corruption.
3. Judges should be trained lawyers with high levels of professionalism and legal ability. A continuing legal education programme is urgently required to provide refresher course in subjects such as judicial independence, human rights and professional ethics. The creation

and implementation of these training courses should be carried out with the necessary help of professional institutions with sufficient experience. The IBA is willing to assist in this important process.

4. An independent judicial regulatory body must be created to oversee judicial appointments, discipline, promotion, removal and salaries. In addition, the law relating to the security of tenure must be reviewed to ensure that it is adequate and steps taken to enforce it. The UN Basic Principles on the Independence of the Judiciary are a guide to the standards that should be adopted by this new independent body.
5. The judiciary should create its own association of judges in compliance with the international standards of freedom of association and freedom of expression. Through this association, judges could meet and discuss professional issues of mutual concern in a supportive atmosphere. It could also provide strong and committed judicial leadership to ensure fairness and equality in Equatoguinean courts. Through effective judicial education and interaction, the association might promote equal access to justice for all
6. The Equatorial Guinea Government must prove it is committed to democratic principles such as freedom of speech and association and allow an independent media to be established. Furthermore, steps must be taken to ensure the activities of political opponents and parties are not unlawfully restricted.
7. The Government of Equatorial Guinea must as a matter of urgency issue instructions to its police officers and other state agents instructing them to refrain from torture and other ill-treatment. Those who continue to do so must be held accountable for their actions and be punished in accordance with the law. All victims of torture are entitled to redress which includes compensation.
8. In order to help combat torture, the Government must implement a training programme for law enforcement offices, security services and prison wardens on the to ensure that when faced with allegations of torture they are aware of the legal and procedural requirements set out in international law.

Chapter 1:

Introduction

- 1.1 This is the report of a fact-finding mission carried out by the International Bar Association's Human Rights Institute to Equatorial Guinea from 20 to 26 July 2003 following increasing concerns at reports of torture, unfair trials and threats to the rule of law in Equatorial Guinea. There were direct reports also that the Minister of Justice had dissolved by decree the Equatorial Guinea Bar Association (the Colegio de Abogados de Guinea Ecuatorial), a member of the International Bar Association (IBA).
- 1.2 The focus of the mission was the following:
- To analyse the legal situation and, specifically, the independence of the judiciary and the legal profession in the course of carrying out their duties.
 - To examine any impediment, *de facto or de jure*, that may place limitations on or jeopardise the administration of justice.
 - To verify the legal guarantees aimed at the effective functioning of the judicial system, and whether these guarantees are respected in practice.
- 1.3 The mission was organised by the Human Rights Institute (HRI) of the IBA and funded by the Foundation Open Society Institute. The IBA is the world's largest lawyers' organisation with members in 192 countries. The HRI works across the association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and legal profession worldwide. It is an independent, non-political organisation that was formed in 1995 under the honorary presidency of former South African President, Nelson Mandela. It is directed by Officers and a Council of members coming from 21 different countries.
- 1.4 The HRI has undertaken other similar missions. Its practice has been to send delegations comprising of experienced lawyers and judges who are required to exercise independence and impartiality in all aspects of their participation within the mission. Delegations take account of relevant standards in international law, customary international law, regional and national laws, and any published findings are assessed against such standards.

Equatorial Guinea Delegation Members

- 1.5 The HRI is grateful to the delegation members who accepted the invitation to take part in this mission. The IBA delegation members were:
- **Ramon Mullerat OBE**, Co-Chair of the IBA Human Rights Institute, Spain
 - **Diego Lopez Medina**, Professor of Constitutional Law, Los Andes University Law School, Colombia.
 - **Tomas da Silva**, Chairman of the Human Rights Commission of the Angolan Bar Association, Angola.

- **Gonzalo Aguilar Cavallo**, LLB, LLM, PhD. Complutense University, Madrid. Gonzalo Aguilar Cavallo is an Italian/Chilean national.

The delegation was assisted during the mission by Esther Major, IBA Human Rights Institute Administrator.

- 1.6 The IBA and the mission members would like to express their gratitude towards Dr da Silva. Dr da Silva made several attempts to join the IBA delegation, but was declined entry to the country twice, despite having collected his visa from the Consulate in Gabon. The IBA is extremely grateful to Dr da Silva for his diligent attempts to join the delegation. Dr da Silva kindly agreed to review the draft report and submit comments from Angola.
- 1.7 All delegation members come from civil law jurisdictions with legal systems similar to that of Equatorial Guinea.

Consultation

- 1.8 The members of the delegation read widely and were familiar with Equatorial Guinea's 1992 Constitution and the 1995 amendment to the Constitution. During the mission, the delegation consulted widely with the Minister of Justice, the Secretary of Justice and other Government members, the Vice-President of the House of People's Representatives and other members of the Parliament, members of the Human Rights National Commission, the President of the Supreme Court, the President of the Court of Appeal of Bata, justices of the Constitutional Court, judges of first instance tribunals, the current President and Secretary of the Equatorial Guinea Bar Association, members of the European Union Office in Equatorial Guinea, members of the French technical cooperation office, members of the Spanish international cooperation office, members of the diplomatic corps, and Equatoguinean doctors.
- 1.9 The IBA would like to thank all those it interviewed for their hospitality, insights, willingness to share information, patience in answering questions and candour.
- 1.10 The HRI and the delegation members wish to express their gratitude and appreciation to those who assisted them, in so many ways, during their visit to Equatorial Guinea. In particular, the delegation members were warmly received by the Minister of Justice Ruben Maye, Director General, the Chief Justice Silvestre Sialé Bileka, the Vice-President of the House People's Representatives Angel Alogo Nchama, also President of the Human Rights Commission. The IBA also acknowledges the generous support of the Open Society Institute without which this mission would not have been possible.
- 1.11 This report is divided into five chapters. In the final chapter the delegation draws its conclusions and makes a number of recommendations. The delegation hopes that its conclusions and recommendations will be helpful in order to consolidate the rule of law in Equatorial Guinea and, in particular, improve the ability of the courts and legal profession to play their part in that process.

Chapter 2:

Overview of Equatorial Guinea

Introduction

- 2.1 The Republic of Equatorial Guinea is 10,830 square miles (28,051 square kilometres), and is located in West Central Africa on the Atlantic coast. It includes the islands of Bioko, Annobón, Corisco, Elobey Grande, and Elobey Chico in the Gulf of Guinea, and Río Muni on the African mainland. Río Muni, which totals about 93 per cent of the nation's land area and 75 to 80 per cent of its population, is bordered by Cameroon in the north, by Gabon in the east and south, and by the Gulf of Guinea in the west.
- 2.2 Malabo, situated on Bioko, is the capital and largest city. In addition to Malabo, other important cities include Luba (also on Bioko) and Bata and Ebebiyín (in Río Muni). Currently, the Government spends six months a year in Bata to stimulate the development of the mainland. The country is divided into seven provinces: Annobón, Bioko Norte, Bioko Sur, Centro Sur, Kie-Ntem, Litoral and Wele-Nzas.
- 2.3 Equatorial Guinea and the island of Bioko were first colonised by the Portuguese in the late 15th century and developed as a major slave market. In 1788, the territory was handed over to the Spanish, who ran it as a protectorate of Spanish Guinea until 1959, when the colony was granted internal self-government. Full independence followed in 1968.
- 2.4 The first decade of independence was, however, blighted by the brutal and incompetent rule of President Macias Nguema. He was overthrown in a military coup led by his nephew, Lieutenant Colonel Teodoro Obiang, in 1979. Initially, conditions improved somewhat, as Equatorial Guinea gained international recognition and aid; it also joined the CFA Franc Zone. Relations with Spain, the former colonial power, remained difficult, as its bilateral aid was made dependent on progress in democratising the political system.
- 2.5 A democratic Constitution was conceded in 1991 and legislative elections held in November 1993. Amid a partial boycott led by the anti-government Combined Opposition Platform, the Obiang-controlled Partido Democratico Guinea Ecuatorial or Democratic Party for Equatorial Guinea (PDGE) won more than three quarters of the seats. A similar situation prevailed for the presidential elections that followed more than two years later, in February 1996. The three main opposition candidates withdrew and President Obiang was elected unopposed. The most recent legislative elections, in March 1999, were yet again boycotted by the bulk of the opposition. The PDGE inevitably won a massive majority.
- 2.6 In effect there has been little more than 'lip-service' paid to multi-party democracy. The incumbent regime has been widely denounced for its continued repression of opposition groups. Over 100,000 Equatoguineans live in exile abroad, and there was wide dissatisfaction

with the slow pace of reform. Due to the deplorable political conditions under which the presidential elections were held, Teodoro Obiang Nguema Mbasogo was re-elected unopposed in 2002.

- 2.7 In December 2002 the Presidency of the European Union stated that ‘the European Union is concerned about the internal situation in Equatorial Guinea with regard to the democratisation process. In particular the European Union (EU) regrets the way the elections were handled on 15 December 2002. The EU considers that the opposition was not represented in the elections in an appropriate way and regrets that opposition leaders remain convicted and in custody, or in exile’¹. In January 2003, the European Parliament ‘deplored the political conditions under which the presidential elections were held in Equatorial Guinea, which led to over 97 % of the votes being cast in favour of the incumbent president, Mr Teodoro Obiang Nguema Mbasogo’.²
- 2.8 It has been recently reported that the Government has called for a national meeting with the only legal opposition party in order to study and develop proposed electoral law reforms.³ The delegation considered movement towards a true democracy to be absolutely critical to Equatorial Guinea playing a credible and leading role within the region.

People

- 2.9 Equatorial Guinea has a population of approximately 510,473.⁴ The great majority of the inhabitants of Equatorial Guinea speak a Bantu language. The main ethnic group in Río Muni, where most of the population lives, belong to the Fang clan. The population of Bioko is primarily made of the Bubi (the oldest of the modern-day inhabitants), descendants of slaves from West Africa liberated by the British in the 19th century, and Nigerians and Fangs who migrated there in the 20th century. Spanish and French are the official languages. Also spoken are Pidgin English, Fang, Bubi, and Igbo. The population is at least nominally Christian and predominantly Roman Catholic; some indigenous religions are practised.
- 2.10 The Fang ethnic group of the mainland constitutes the great majority of the population and dominates political life and business. The Bubi group comprises about 50,000 people living mainly on Bioko Island. The Annobonese on the island of Annobón are estimated at about 3,000 in number. The other three ethnic groups are found on the coast of Río Muni and include the Ndowe and Kombe (about 3,000 each) and the Bujebas (about 2,000). There are also slightly less than 1,000 Europeans living in Equatorial Guinea, the majority of whom are Spanish. Both the current President Teodoro Obiang Nguema and Francisco Macias Nguema belong to the Fang clan.

Economy

- 2.11 Prior to independence, the economy was based on the production of cocoa (mostly on Bioko), coffee and timber (in Río Muni). The rural economy has however suffered years of neglect

under successive regimes and there is now a predominance of subsistence farming. Agricultural products include rice, yams, plantains, cassava, manioc, and palm oil. However, without sustained investment from the Government there is unlikely to be much agricultural-led growth. There is a small fishing industry and some livestock is raised. Equatorial Guinea trades principally with Spain, the United States, Cameroon, Japan, and France. The main exports are petroleum, coffee, timber, and cocoa beans; the chief imports are food (especially rice), beverages, and machinery.

- 2.12 Equatorial Guinea has deposits of manganese, uranium, gold, titanium, and iron ore. However, by far its most profitable natural resource is its large offshore oil deposits which were discovered in the 1990s. Currently, the Equatorial Guinea economy depends almost exclusively on its oil resources for income. Boosts in production and higher world oil prices stimulated growth in 2002, with oil accounting for 90 per cent of increased exports. The Government has claimed that it intends reinvesting some of its oil revenue into boosting agriculture.
- 2.13 Despite the discovery of oil, the majority of Equatoguineans are extremely poor. The average life expectancy is 55 years.⁵ Unemployment is high. The standard of living is generally very low and 80 per cent of the population are without clear water or sanitation. The public educational system and the medical facilities are rudimentary. In terms of infrastructure only Río Muni and Bioko have substantial road networks; there are no railroads.
- 2.14 Equatorial Guinea continues to depend heavily on foreign investment and aid. Both are hampered by allegations of corruption (serious concerns were voiced to the delegation about the levels of corruption which is seemingly endemic in all sectors of society) particularly with respect to the money from oil revenues. Both the International Monetary Fund (IMF) and the World Bank have called on the Government to put in place transparent mechanisms to account for the income generated from oil.⁶ International aid to Equatorial Guinea has been limited since 1994 when most programmes were suspended following allegations of Government mismanagement.⁷
- 2.15 Since the IBA delegation visit, the World Bank has tried to reopen negotiations with the Equatoguinean authorities to gain commitment on transparency in the management of the oil incomes.

Recent Events

- 2.16 In September 1999, authorities arrested and detained lawyer Plácido Micó Abogo, Secretary General of the opposition Convergence Party for Social Democracy (CPDS). Micó was held for a week, and upon his provisional release he was told to report to the authorities in Bata twice a month; however, no formal charges were ever made against him.
- 2.17 Between mid-March and May 2002 more than 140 people were arrested, including former members of the armed forces and relatives of Felipe Ondó Obiang, former Member of

Parliament and leader of the Fuerza Democratica Republicana (FDR), Republican Democratic Force, an unauthorised political party. They were all accused of plotting against the security of the state and appeared to be prisoners of conscience, arrested solely because of their links with the FDR. Many were convicted of treason and of being involved in an alleged coup attempt in a trial of 144 defendants on 23 May 2003. This trial, which was conducted in Malabo has been widely criticised and deemed unfair by all observers who attended the trial. One observer told the delegation that they were shocked and sickened at the physical condition of many of the accused. Many observers reported that the accused displayed broken bones, cuts and bruises consistent with torture and other ill-treatment. It was alleged that the police had tortured the defendants as a means of investigating allegations of conspiracy against the state. The delegation was seriously concerned about the fairness of this trial and the well being of all those on trial. From reports it is clear that the trial fell well below the regional and international standards regarding fair trial proceedings.

- 2.18 Both Plácido Micó, Secretary General of the Convergencia para la Democracia Social or Convergence for Social Democracy, and Felipe Ondo Obiang were among those sentenced in the 23 May trial. Plácido Micó was sentenced to six years' imprisonment.
- 2.19 During the visit, the IBA delegation took up the case of Plácido Micó and the other prisoners of conscience with the Minister of Justice and several other officials. The IBA delegation is pleased to report that shortly after the IBA visit, 18 political prisoners were released on the weekend of 4 August 2003 to commemorate Day of the Armed Forces. Plácido Micó was among those released, although Felipe Ondo Obiang remains in prison.
- 2.20 The IBA delegation is concerned to learn from several reliable sources of the paucity of Felipe Ondo Obiang's imprisonment conditions in the Evinayong public jail. Reports suggest he is not being treated in accordance with Equatorial Guinea's international human rights obligations. Felipe Ondo Obiang has now been detained since March 2002 initially at the Black Beach jail, Malabo and subsequently at Evinayong prison, on the mainland. The IBA delegation expresses its hope that Felipe Ondo Obiang's case will be reviewed by the Government and that he immediately receives medical attention and his family have access to him, in accordance with the Equatorial Guinea international legal obligations.

Notes

- 1 Presidency statement on behalf of the European Union on the elections in Equatorial Guinea: Bulletin 12-2002, point 1.6.22, Common Foreign and Security Policy (22/37).
- 2 Parliament resolution on Equatorial Guinea, bulletin EU 1/2-2003, ACP countries and OCTs (6/21).
- 3 See www.GuineaEcuatorial.net 8 August 2003
- 4 Source: The World Factbook, <http://www.odci.gov/cia/publications/factbook/geos/ek.html>
- 5 CIA World Factbook, figures from 2003.
- 6 Global Corruption Report 2002, available at: http://www.globalcorruptionreport.org/download/gcr2003/21_C

Chapter 3:

The Constitution, Legal System and Equatorial Guinea's International Human Rights Treaty Obligations

Constitution

- 3.1 The current Equatorial Guinea Constitution was approved by national referendum on 17 November 1991 and was subsequently amended in January 1995. It is composed of five sections. The first two sections are the most relevant in the light of the terms of reference of the IBA delegation. The first section enshrines the fundamental principles of the state. Article 1 recognises political pluralism and provides, at least in name, for multi-party democracy. Article 5 details the fundamental rights said to constitute the foundations of the Equatoguinean society and includes respect for human dignity and freedom. According to Article 8 Equatorial Guinea is required to respect the principles of international law and confirms its commitment to the rights and obligations that are set down by the Charter of the International Organisations to which it has become a member. Article 13 ensures a number of rights and liberties to all citizens including: the right to a fair trial, the right to freedom of expression, equality, and freedom of movement, the right to habeus corpus, the right to legal representation, the right to be given reasons for detention and the presumption of innocence.
- 3.2 The second section establishes the various bodies of the state including those of the legislature and the Executive. Notably Article 64 grants the legislature fewer powers as compared to those of the President. Article 83 guarantees the independence of the judiciary from the legislature and Executive and Article 86 goes on to assert that the President is responsible for guaranteeing judicial independence (although see below for the practical effects given to this provision).
- 3.3 Within the Equatorial Guinea Constitution there is some provision for the separation of powers, widely recognised as the core of a democratic state.¹ Within the constitutional text itself it is clear that a true separation of powers cannot exist given the extensive powers of the Executive over the other branches of Government. Further, Article 86 which translated provides that 'the chief of state is the First Magistrate of the Nation and guarantees the independence of the judicial function' has been interpreted by judges and officials alike as a right of the President to intervene in judicial proceedings through formal or informal channels. This reportedly occurs particularly where the President's familial, political or personal interests are at stake. Further given the extensive powers of the President it is clear these can be and are used to frustrate judicial independence. In addition, it is understood that judges are strongly discouraged from issuing judicial decisions that might contradict the *raison d'état* as determined by the President.

- 3.4 One of the most pressing problems facing the Equatorial Guinean judicial system is that of legal modernization and legal codification. The IBA delegation learned from the Secretary General of the Ministry of Justice during its meeting with him on 21 July 2003 that ‘there was not an integrated legal system in the country’. The legal system in Equatorial Guinea is a combination of customary law, Spanish civil law and military justice.² Notably Spanish Codes from the Franco era are still used despite their being outdated and inappropriate for a modern democracy. Tribal laws and customs are honoured in the formal court system when not in conflict with national law. The difficulty of applying consistent and appropriate laws has been compounded by the fact that many, if not all of the Equatoguinean laws are not in written form and are therefore not available to those working within the administration of justice. This raises serious concerns about the ability of lawyers and judges to apply the law consistently and correctly. The delegation concluded that the law operates in an ad hoc manner due to a lack of codification, inconsistent interpretation and lack of established legal procedures.
- 3.5 The delegation was pleased to note that the Government has recognised these difficulties and has created a National Commission of legal codification. The delegation also learned that while there was considerable support from civil servants in this process, the Government still needed to be more proactive to move the project forward. In addition, there has been support, most notably from the French Government for this initiative; however it was felt that progress has been obstructed by a lack of national legal technicians. A further development in the distribution of legal materials has been the creation in 2000 of a Government printing office which publishes the *Boletín Oficial del Estado*. The *Boletín Oficial del Estado* contains laws and administrative acts, although this has yet to be sufficiently widely distributed to have any real impact. The delegation noted that case law was not available to legal practitioners or judges.
- 3.6 The EU has a global project on rule of law in Equatorial Guinea. This project also includes a component on legal codification.

Executive Branch

- 3.7 The Equatorial Guinea President serves as Chief of State. The incumbent, Brig. Gen. (Ret.) Teodoro Obiang Nguema Mbasogo, has been in power since 3 August 1979 following a military coup.
- 3.8 The President is elected by popular vote for a seven-year term. Elections were last held on 15 December 2002 and the next are due to be held in December 2009. At the last elections President Teodoro Obiang Nguema Mbasogo received 97 per cent of the vote. His opponent, Celestino Bonifacio Bacale received 2.2 per cent. The elections were reportedly marred by widespread fraud.
- 3.9 The Prime Minister and Deputy Prime Ministers are appointed by the President. The President also appoints the Cabinet and Council of Ministers. The current Prime Minister, Candido

Muatetema Rivas, has been in post since 26 February 2001. Both the first Deputy Prime Minister, Miguel Oyono Ndong, and Deputy Prime Minister, Demetrio Elo Ndong Nze Fumu, have been in post since January 1998.

Legislative Branch

- 3.10 The legislative branch is made up of a House of People's Representatives or *Cámara de Representantes del Pueblo*; its 80 members are directly elected by popular vote for a term of five years. Elections were last held on 7 March 1999. The next are due to take place in March 2004. At the last election the PDGE received 80 per cent, the Popular Union (UP) 6 per cent and the CPDS 5 per cent.³ The delegation noted that those elected as people's representatives still require ratification by the President of the Republic in accordance with the Constitution. The delegation presumed that this power is one that the President could potentially use to refuse to accept the election result of members of the House of People's Representatives. This would clearly represent a significant interference with the democratic process.
- 3.11 The House of People's Representatives was set up in 1982. It meets twice a year, in March and in September. According to Article 64 of the Constitution, its main duties comprise approving the National Budget Act, passing legislation on fiscal matters, determining the basis of civil, commercial, procedural, criminal and labour law and regulating fundamental rights. The House of People's Representatives also authorises the President to enact 'decretos leyes' or 'laws by decree' on a very wide range of issues which are identified in Article 76.
- 3.12 The legislature also has the authority (shared with other public institutions) to hear petitions from individuals in compliance with the law number 5/1991 which governs the right to complaint and petition. The right to petition is varied and can include complaints related to judicial decisions. According to Article 6 of law number 5/1991 (subsequently modified by law number 2/1998), the legislature must give a written, well-founded response. Article 166 of the legislative regulation provides that the House of People's Representatives can forward the complaint to another suitable authority or retain the issue and determine the petition in a plenary session. It is understood that much of the time complaints are retained by the legislature who then go on to make decisions.⁴ The delegation was concerned to hear from several credible sources that the House of People's Representatives even extended these powers to declare null and void judicial decisions.
- 3.13 The delegation concluded that the use (or misuse) of such powers by the legislature seriously undermines the rule of law, the independence of the judiciary and raises grave concerns about the protection of individual rights. The delegation noted that in a similar case the African Commission found a violation of Article 7 (the right to a fair trial) of the African Charter on Human and Peoples' Rights.⁵
- 3.14 While embroiled in a quasi-judicial function, it is notable that the House of People's Representatives does not effectively undertake its role as a legislative branch, insofar as it does

not provide the checks and balances on Executive powers and produces little by way of new legislation. The delegation was advised that only ten laws have been enacted so far this year.

Judicial Branch

- 3.15 Equatorial Guinea has a Constitutional Court, Supreme Court, Court of Guarantees, Military Courts and two Courts of Appeal located in Malabo and Bata and several tribunals of first instance, and tribunals of district and comarcales (district courts) which are situated in the rural areas.
- 3.16 In the rural areas, tribal elders still adjudicate civil claims and minor criminal matters in traditional courts.
- 3.17 As noted above, the independence of the judiciary seems to be compromised both by the interference of the President and the interpretation given in Article 86 of the Constitution.

Equatorial Guinea's International Human Rights Obligations

- 3.18 Equatorial Guinea is a party to a number of international and regional human rights treaties which are pertinent to the terms of reference of the mission and to the findings of the delegation. It is a party to the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), and the Convention on the Rights of the Child (CRC) and its Optional Protocol. Equatorial Guinea is not a party to the Rome Statute pursuant to which the International Criminal Court (ICC) was established.
- 3.19 Within the Africa region, Equatorial Guinea is a party to the African Charter on Human and Peoples' Rights and its Protocol on the establishment of an African Court on Human and Peoples' Rights.
- 3.20 Aside from the instruments to which it has become a party listed above, Equatorial Guinea is also bound to comply with customary international law which comprises a range of standards widely accepted as general practice regardless of any treaty obligation.⁶ Examples of customary law are the prohibition on slavery, genocide, systematic racial discrimination and torture and any other cruel, inhuman or degrading treatment or punishment.
- 3.21 As a member of the United Nations (UN), Equatorial Guinea also has an obligation to uphold a number of human rights standards agreed by the UN through resolution of the General Assembly. Although standards set in UN resolutions (known collectively as 'soft law') are not legally binding, they nonetheless provide more detailed guidelines which complement legally binding agreements. The relevant standards for the purposes of this report are: the Body of

Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the UN General Assembly in 1988; the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955; the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in 1979; the Basic Principles on the Role of Lawyers, adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990; the Guidelines on the Role of Prosecutors, adopted at the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in 1990; the Basic Principles on the Independence of the Judiciary, adopted by the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders in 1985; the United Nations Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, adopted by the UN Economic and Social Council in 1984; the Standard Minimum Rules for the Administration of Juvenile Justice ('the Beijing Rules'), adopted by the General Assembly in 1985; the General Assembly Resolution on UN Rules for the Protection of Juveniles Deprived of their Liberty of 1990; the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly in 1985.

- 3.22 Equatorial Guinea's human rights obligations may also be influenced by the jurisprudence of human rights bodies, both within the UN ⁷ and the African Commission, as well as of international criminal tribunals ⁸ which provide important guidance on the interpretation and application of human rights law.
- 3.23 As a party to the ICCPR, ICESCR, CERD, CEDAW, CAT and the CRC, Equatorial Guinea is required to submit periodic reports to the relevant monitoring committees on the measures it has taken to give effect to the rights contained within the various treaties. To date Equatorial Guinea has failed to comply with the state reporting requirements stipulated in the ICCPR, ICESCR, CEDAW and the CRC. It is due to report to the Committee on the Elimination of Racial Discrimination and the Committee Against Torture in November 2003.
- 3.24 Equatorial Guinea is a participant in the Cotonou Agreement between the EU and African, Caribbean and Pacific (ACP). This agreement, signed in 2000 succeeded the Lomé Conventions and is now the principal framework for cooperation between the participating states. The framework agreement covers many aspects of cooperation, including the EU's aid to ACP countries, and the trade arrangements between the EU and those countries. It makes clear association between politics, trade and development, and establishes mutual obligations rather than offering aid to assist the developing world. In particular, Article 9 provides that 'respect for human rights and fundamental freedoms, including respect for fundamental social rights, democracy based on the rule of law and transparent and accountable governance are an integral part of sustainable development'.

Notes

- 1 IBA Report, Sri Lanka: Failing to Protect the Rule of Law and the Independence of the Judiciary, November 2001, p. 18.
- 2 See in Annexe I, document 'Derecho Sustantivo Consuetudinario'.
- 3 This resulted in the PDGE holding 75 seats, the UP 4 and the CPDS 1.
- 4 The delegation was pleased to have the opportunity of witnessing a quasi-judicial proceeding of the House of People's Representatives. It noted that the Vice-President and the Secretary General took on the role of judges.
- 5 See M. Evans and Rachel Murray (eds.) *The African Charter on Human and People's Rights: The System in Practice, 1986-2000*, (Cambridge: Cambridge University Press, 2002).
- 6 Article 38(1)(b) of the Statute of the ICJ refers to international custom 'as evidence of a general practice accepted as law'. Accordingly, most commentators hold that customary international law is made up of two elements: general practice of states and the conviction that such practice reflects law (*opinio juris*). See, for example, Antonio Cassese, *International Law*, (Oxford University Press, 2001), p 119. It is generally accepted that grave violations of human rights, when practised as state policy, are violations of customary international law. See, for example, *Third Restatement of US Foreign Relations Law*, Vol. 2 (1987), p 165. The prohibition on torture is also accepted as belonging to the corpus of customary law. See the decision by the US Circuit Court of Appeals, 2nd Circuit, in *Filatiga v Pena-Irala*, 630 F 2d 876 (1980). At a much more general level, it has even been argued that the standards laid down in the Universal Declaration of Human Rights have become part of customary international law. See, for example, the Proclamation of Teheran, proclaimed by the International Conference on Human Rights at Teheran on 13 May 1968, para. 2, and Rosalyn Higgins, *The Development of International Law through the Political Organs of the United Nations*, (Oxford University Press, 1963), p 118.
- 7 A distinction may be drawn between UN treaty monitoring bodies, established to monitor implementation of the treaty and to investigate complaints that the provisions of the treaty have been violated, and UN thematic mechanisms, appointed by the UN Commission on Human Rights to investigate complaints of a particular type of human rights violation in all countries, whether or not the state is bound by treaties. The body monitoring the implementation of the ICCPR is the Human Rights Committee. Its General Comments provide authoritative guidance on interpretation of the ICCPR. Further, the First Optional Protocol to the ICCPR gives the Human Rights Committee the competence to consider complaints submitted by individuals claiming that a state party to the Protocol has violated rights guaranteed by the ICCPR. Other UN treaty monitoring bodies include the Committee against Torture and the Committee on the Elimination of Racial Discrimination. UN thematic mechanisms include the Working Group on Arbitrary Detention, the Special Rapporteur on Torture and the Special Rapporteur on the Independence of Judges and Lawyers.
- 8 See the jurisprudence of the International Criminal Tribunal for the former Yugoslavia (ICTY) and of the International Criminal Tribunal for Rwanda (ICTR). Further, the Statutes of these tribunals and their Rules of Evidence and Procedure are important international standards, representing contemporary fair trial guarantees. Many of these standards have been incorporated into the Statute of the ICC.

Chapter 4:

The Courts and the Judiciary

- 4.1 Equatorial Guinea has a Constitutional Court, Supreme Court, Court of Guarantees, Military Courts, two Courts of Appeal located in Malabo and Bata and several tribunals of first instance, and tribunals of district and comarcales which are situated in the rural areas.
- 4.2 The Supreme Court of Justice is the highest judicial body in Equatorial Guinea. It is composed of civil, criminal, commercial, labour, administrative and customary law sections.
- 4.3 The delegation was concerned to hear that the Supreme Court is currently composed of two military Generals and allegedly none of the judges are qualified jurists.
- 4.4 The IBA delegation was told that in 1995 the Constitutional Court was established, to replace the constitutional branch of the Supreme Court. This court is supposed to have jurisdiction over cases where it is claimed an individual's constitutional rights have been violated. However, The IBA delegation was advised that the procedural rules governing the Constitutional Court had not yet been enacted. Therefore, the Court was still governed by the internal rules which formerly governed the constitutional branch of the Supreme Court, which restricts its proper function.
- 4.5 The delegation was also concerned to learn that not all the judges on the Constitutional Court had legal training and that allegedly one of those appointed is a Colonel in the military. Military involvement in civilian trials contradicts international and regional standards on the administration of justice.
- 4.6 The IBA delegation was informed by governmental sources of the creation of a court of guarantees to supervise the lawfulness of detentions. Unfortunately, the delegation was not able to obtain the text by which this new judicial institution has been set up. While the step of creating the Court of Guarantees is welcomed by the delegation, it is viewed as essential that such a move should be implemented effectively and immediately.
- 4.7 In the interim the other courts should be hearing cases concerning detention. However, it appears that to a large extent, habeas corpus is not being used and, where it is used, petitions are not upheld. The reason for the lack of habeas corpus applications appears to be because some lawyers are unaware of the right or they avoid making such applications for fear of the threat of reprisal or the high chance of it being rejected by the court. In addition, the general population is unaware of its rights to habeas corpus. The delegation concluded that this essential remedy is virtually non-existent in Equatorial Guinea despite a clear need for the rights of those in detention to be protected.
- 4.8 The delegation was concerned to note that the use of military courts in cases not involving military activities is common. Although the Government claimed that military tribunals were

trying only military crimes, other sources confirmed that military jurisdiction was conferred in many types of case and that both civilians and members of the military were tried by such courts regardless of the type of offence. In particular the delegation was concerned to note that military courts are used to try cases that are essentially political in nature even when defendants are civilians and the charges are not related to military activities.

- 4.9 Gustavo Gallón, the former Special Representative of the Commission on Human Rights in Equatorial Guinea, stated that ‘military judges are empowered to arrest, investigate and try civilians’.¹ This situation has been publicly denounced by Amnesty International who stated: ‘the organization has noted very serious breaches of fair trial standards in these military courts: a) questionable charges, which do not relate to recognizable criminal offences or are based on no substantive evidence or on spurious evidence; b) military judges assigned and military defence counsel who lack legal training and impartiality; c) no right of appeal to a higher court against conviction and sentence’.²
- 4.10 The military courts do not provide for due process or other procedural safeguards, and their proceedings are held in camera. The UN Special Representative and various UN Special Rapporteurs have all recommended that the jurisdiction of military courts should be restricted to offences of a military nature committed by serving military personnel.
- 4.11 In a lawsuit before the African Commission on Human and Peoples’ Rights, the Commission has observed that the Dakar Declaration and Recommendations notes that, ‘in many African countries Military Courts and Special Tribunals exist alongside regular judicial institutions. The purpose of Military Courts is to determine offences of a purely military nature committed by military personnel. While exercising this function, Military Courts are required to respect fair trial standards’.³ The Commission thus held that, ‘the denial of the victim's right of appeal to competent national organs in a serious offence as this is falls short of the requirement of the respect for fair trial standards expected of such courts’.⁴ Competent national organs mean here the regular judicial institutions. It would appear that not only is Equatorial Guinea failing to provide a fair trial in compliance with its obligations under the ICCPR and various other UN agreements, it is also failing to uphold the standards required in the African Charter.

Judicial Regulation, Appointments, Security of Tenure and Terms and Conditions

- 4.12 Equatorial Guinea has approximately 60 judges nationally. There is no independent body regulating the conduct, appointment or training of the judiciary. It was strongly suggested to the delegation that there is an urgent need to set up such a body.
- 4.13 The delegation was told that the members of the Supreme Court were nominated by the Minister of Justice and designated by the President. The delegation was also advised that, in practice, members of the Supreme Court report to the President and their appointments are revocable, although Article 91 of the Constitution stipulates that they shall serve for five years.

- 4.14 Article 91 also provides for the appointment of magistrates and justice officials to be appointed and dismissed in conformity with the law. However it was widely reported to the delegation that in practice judges serve at the pleasure of the President, and in general they are appointed by the Chief of State by virtue of their belonging to the President's family, clan or political party.⁵ The IBA delegation was also concerned to hear from a number of sources that the judges appointed were expected to be 'loyal' to the Government. The delegation concluded that demanding 'loyalty' from judges amounted to a fetter upon their ability to determine cases with independence and impartiality as required in various international standards (see below).
- 4.15 In addition to the constitutional provisions, the body of law applicable to the judiciary is contained in the *Ley Orgánica del Poder Judicial*,⁶ promulgated in 1984 and amended in 1986 and 1988. Decree Number 87 of 22 July 1987 establishes a list of incompatibilities in respect of the personnel qualified to administer justice. It appears that these are not, however, followed where appointments are made by the President based on familial or other ties.
- 4.16 It is widely recognised in various international standards that judges should be appointed on merit, rather than other family or political connections and that they must have security of tenure. Thus, judges should be subject to removal from office only for proven incapacity, conviction of a crime, or conduct which makes the judge unfit to be a judge. The delegation was concerned that the appointment and tenure of judges in Equatorial Guinea falls far below acceptable international standards.⁷
- 4.17 The Government determines judicial salaries. It is understood that first instance judges are paid on average the equivalent of around US \$350 per month. Constitutional Court Justices are believed to receive approximately US \$1,400 per month. In the case of Supreme Court Justices, they are paid roughly US \$1,500 per month. The minimum wage in the private sector is considered to be CFA \$90,000 per month (about US \$ 160) and public sector CFA \$75,000 (about US \$130).
- 4.18 The IBA delegation was pleased to note that during the Equatorial Guinea National Conference on Justice held in January 2003 in Malabo, it was recommended that the establishment of a good basic salary would assist in the fight against corruption.⁸ The IBA delegation is keen to see the immediate implementation of this conference recommendation.

Judicial Training and Resources

- 4.19 The IBA delegation noticed that one of the most urgent problems facing the judiciary was that of a lack of training. The delegation was able to establish that approximately 20 per cent of judges in Equatorial Guinea were legally trained or practised law. Of those who were not legally trained it appeared that many had received no training in law to become a judge. The IBA was told by many officials that they would welcome assistance from the international community with developing training programmes for staff at all levels. This proposition was supported by many of the people the delegation consulted during the mission.

- 4.20 One of the main obstacles to training is the lack of professors and universities in the country. There is a National University of Equatorial Guinea (UNGE) which offers law degrees. However, very few lawyers have graduated from this school of law since it has only recently been created. Furthermore, UNGE suffers from a lack of staff and resources which also makes its task in training competent lawyers and legal professionals difficult.
- 4.21 The IBA delegation was repeatedly told that the lawyers currently practising in Equatorial Guinea were trained overseas in a variety of countries including Russia, China, Spain, France, Nigeria, and Cuba. However, these countries have very different legal traditions that do not necessarily mirror legal practice in Equatorial Guinea. Even at this basic level, there is, therefore a lack of uniformity in legal and judicial practice. The delegation noticed, for example, that the President of the Supreme Court had been trained in Spain and Switzerland, the President of the Court of Appeal in Bata had been trained in Russia, and one of the legal advisers to the Minister of Justice had studied in China.
- 4.22 The IBA delegation heard from many sources that there is an urgent need for a specific continuing legal education training programme designed to upgrade the skills of all those involved in the judicial activities. The Minister of Justice also acknowledged the need to create a Judicial Training Institute. The IBA delegation is pleased that this will be considered a priority by the authorities.
- 4.23 The Judicial Training Institute was outlined in the Final Declaration of the National Conference on Justice in Equatorial Guinea in order to consolidate the rule of law held in Malabo between 9 and 11 of January 2002.⁹ The IBA hopes that the Judicial Training Institute will be developed shortly and that this continues to be a high priority for the authorities in Equatorial Guinea.
- 4.24 In addition to the training needs of judges, the delegation also noted the paucity of legal materials available either through a law library or by internet access. This lack of legal resources represents a serious challenge to the judiciary in terms of applying the law consistently and keeping updated on the latest judgments. The delegation concluded that it was virtually impossible for judges to keep abreast of all the relevant legal developments.

Independence of the Judiciary

- 4.25 As noted earlier in this report, the delegation has serious concerns about the lack of independence of the judiciary. The independence of the judiciary is recognised as fundamental principle of international law and is asserted in Article 14 of the ICCPR, Article 10 of the Universal Declaration of Human Rights and Article 8 of the American Convention on Human Rights (ACHR). The right to be tried before an independent and impartial tribunal is one of the foundations of the right to a fair trial which in itself is crucial to ensuring the promotion and protection of the rights and freedoms guaranteed by international instruments to which Equatorial Guinea is a party.

4.26 The lack of judicial independence in Equatorial Guinea takes a number of forms:

- (1) Failure to observe a lack of separation between the judiciary and the Executive;
- (2) Interference with the independent judicial activity by the Executive, through the appointment process and by failure to offer security of tenure;
- (3) Corruption;
- (4) The requirement of 'loyalty' to the Government of those judges appointed by the President;
- (5) The use of military judges who could be subject to pressure by virtue of 'command responsibility';
- (6) The appointment of military judges to civilian courts which could lead to meddling in the administration of the justice system by the military power and by the Government;
- (7) The failure of some Executive authorities, primarily related to security bodies and military institutions, to abide by the law and court orders;
- (8) Low remuneration.

4.27 The IBA delegation was given an account of the way pressures were exerted over the judiciary. If there are any legal proceedings considered particularly important or sensitive involving a family member of the President, or influential party figure, the respective judge would be visited by someone from the Executive and is informed of how inconvenient it may prove to be if the legal proceedings were continued. In this context, the delegation was told that if it is relating to a political issue, in other words, linked to the Government, judges are not free to pronounce judgment in accordance with the law without pressure or interference. With regard to other less politically sensitive cases it appears judges have greater freedom to exercise independence.

4.28 Many people with whom the delegation met agreed that there was duplicity in the civil service which affected judicial independence. Indeed, it was recognised by several of those interviewed that they had dual responsibilities, for example a civil servant and a sitting judge. Obviously, to be a civil servant and a Justice at the same time could lead to pressures which impede judicial independence. Such a situation is in breach of the Basic Principles on the Independence of the Judiciary.¹⁰

4.29 It was also suggested to the delegation that there were judges and Justices who also in fact practised as lawyers at the same time. This was similarly thought to be an impediment to judicial independence.

4.30 In addition, it was brought to the attention of the mission that judges leading inquiries are often pressured by governmental security forces to sign an arrest warrant of someone without

any evidence against the individual resulting in their detention. The delegation noted however that any detention which is not in accordance with the law amounts to an arbitrary detention and is in violation of international human rights standards.

- 4.31 The judiciary is further undermined by a failure to enforce judicial orders. The delegation heard many examples of the police and military failing to comply with judicial orders. Many judges expressed their frustration with, and fear of, the police and military. Judges often issue court orders only to have them completely ignored by the law enforcement officials. There is still a widely-held belief that the police and army are completely above the law. Judges feel demoralised and their judgments are rendered worthless. Civilians who do take cases through the slow and unreliable court system know that there is a likelihood that even if there is a decision in their favour it may not even be enforced by the police.
- 4.32 It is clear to the delegation that law enforcement officials in Equatorial Guinea are in great need of training in areas such as the rule of law, basic human rights, civil liberties and the treatment of prisoners.
- 4.33 As noted earlier in this report, the legislative branch undermines the judiciary when it acts in its capacity to hear individual petitions through a quasi-judicial process. This problem was acknowledged by delegates during the National Conference on Justice. The activity of the House of People's Representatives was viewed as perhaps an incipient form of the Ombudsman figure.¹¹ Thus, within the Conference's recommendations was 'the creation of the People's defender institution' (Ombudsman)¹² as a separate and independent institution.
- 4.34 One of the reasons for the reliance upon alternatives to the court system is because the Equatoguineans do not have confidence in the legal system and lack information and education on its functions. This leads to many individuals taking their cases to the legislature. Problems, particularly family matters, end up being dealt with either by traditional courts or by the House of People's Representatives. In this regard, traditional courts or Parliament are widely considered to be a more reliable, cheaper and faster recourse.

Judicial Corruption

- 4.35 Since 1999, the Minister of Justice and a Special Commission have been investigating judicial corruption, in particular investigating the diversion of an alleged US \$7 million from judicial budgets. In January 2000, the President removed the entire Supreme Court, as well as a number of other judges during the impending investigation. The subsequent investigation resulted in the implication and replacement of the President of the Supreme Court, two other justices and the Secretary of the Court. Five other Supreme Court justices were not implicated and were returned to their positions or promoted to other positions.
- 4.36 During the visit to Bata, the delegation was told that the Special Commission on Corruption had been set up to deal with the corruption problem which lay at the heart of the state

machinery. The IBA delegation heard from many judges and justices interviewed that they recognised that corruption posed a problem but they were implementing measures to put an end to this situation.¹³ The delegation heard that a number of judges and justice officials had been fired or suspended on account of acts of corruption. The IBA delegation was repeatedly told from many sources that corruption existed ‘everywhere’.

- 4.37 The IBA delegation heard from a number of members of the Supreme Court and the Court of Appeal that one of the reasons for corruption was the lack of a proper regulating authority. With no independent body set up to deal with allegations of corruption against a judge this means the Executive has the power to regulate the tenure of judges. Regulation by the Executive, as noted above, does not however, take the place of an impartial and independent regulatory body, but rather creates a system of favouritism and partiality. This situation is further exacerbated by the insufficient remuneration of the judiciary, making it more susceptible to external influence.

Political Trial of 2002

- 4.38 During its mission to Equatorial Guinea, all members of the delegation met a range of people who were present at the trial of Plácido Micó and 144 others. The delegation heard many complaints that the trial was not a fair, independent and impartial one. It appeared that in many cases there was insufficient evidence of criminal activity, or in some instances, none at all.
- 4.39 The delegation also heard from many different sources about the sorry plight of people tried. They arrived at the Court totally beaten, unable to walk, some of them with their bones broken. The delegation heard from credible sources that the defendants were tortured.
- 4.40 In such a situation it is incumbent upon the judges presiding over cases where there are allegations or suspicions of torture to take a number of steps including: halting the proceedings, ensuring the detainees are granted medical attention, gaining medical evidence and asking the State to account for its agents’ behaviour. The IBA delegation noted that none of these steps were in fact taken, representing a travesty of justice which largely came about

through the inability of judges to act independently and through their lack of training in international human rights standards.

Notes

- 1 See Commission on Human Rights, fifty-sixth session, E/CN.4/2000/40.
- 2 'Equatorial Guinea. No free flow of information', AI Index: AFR 24/004/2000, <http://web.amnesty.org>
- 3 See The Dakar Declaration and Recommendations, Seminar on the Right to a Fair Trial in Africa 9-11 September 1999, Dakar, Senegal.
- 4 Case Forum of conscience vs. Sierra Leone, African Commission on Human and Peoples' Rights, Communication No 223/98, done at the 28th Ordinary Session held in Cotonou, Benin, from 23 October to 6 November 2000.
- 5 See Article 91 of the Equatorial Guinea Constitution
- 6 Judicial Organisation Act.
- 7 Principle 10 of the UN Basic Principles of the Independence of the Judiciary stipulates that: 'Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives.'
- 8 See Annexe 3: Recommendation 2, 'The Equatorial Guinea National Conference on Justice in Order to Consolidate the Rule of law'.
- 9 See Annexe 1.
- 10 'Judges may not, during their term of office, serve in Executive functions, such as ministers of the government, nor may they serve as members of the Legislature or of municipal councils, unless by long historical traditions these functions are combined', Article 35, IBA Minimum Standards of Judicial Independence, adopted 1982.
- 11 The delegation was informed that the House of People's Representatives had been visited by an Inter-Parliamentary Union mission. As a result of the Inter-Parliamentary Union mission, the Equatorial Guinea Parliament had developed a reform law project in order to set up the Ombudsman institution.
- 12 See Annexe 3: Recommendation number 27, 'The Equatorial Guinea National Conference on Justice in order to consolidate the Rule of law'.
- 13 See Annexe 2, Recommendation number 3, 'The Equatorial Guinea National Conference on Justice in Order to Consolidate the Rule of Law'.

Chapter 5:

The Legal Profession

- 5.1 In accordance with the UN Principles on the Role of Lawyers, states are obligated to ensure that lawyers are permitted to carry out their professional skills without ‘hindrance, harassment or improper interference.’¹
- 5.2 Article 86 of the Equatorial Guinea Constitution claims to ensure the independence of the legal profession. However, in practice, there are few independent lawyers and judges. It is difficult to get a job in the legal profession unless an individual is a member of the ruling party, or in the very least considered sympathetic to the ruling party. This situation is particularly troublesome given the traditional role of lawyers as watchdogs both over the independence of the judiciary and the rule of law.
- 5.2 The legal profession was found to be perceived very negatively in Equatorial Guinea. The population do not have any faith in the justice system and there is a lack of understanding about the role of the legal profession. There are a number of reasons for this loss of prestige: i) the complete lack of uniformity within the lawyers’ legal background resulting in inconsistent legal practice and standards; ii) paucity of legal skills; iii). duplicity of functions, ie lawyers also acting as judges; and iv) the lack of independence within the profession.
- 5.3 The IBA delegation heard allegations of corruption within the legal profession and a lack of professional work ethic and standards amongst lawyers. It was reported to the delegation that lawyers usually pay for obtaining favourable rulings and judges
- 5.3 There is no legal aid system within Equatorial Guinea to ensure the poorest and most vulnerable are able to access legal advice. Neither is there an administered pro bono scheme.

Requirements to be a Lawyer

- 5.4 As noted in Chapter 4 there is a lack of uniformity among lawyers’ background legal tradition as each of them had received legal education in different countries. To date the newly opened Equatorial Guinea National University has produced few law graduates and is hampered by a lack of resources.
- 5.5 Currently, any law graduate, whether trained in Equatorial Guinea or abroad may be granted a certificate to practise as a lawyer from the Ministry of Education provided that he or she is able to prove the completion of a law degree. The IBA delegation was concerned to hear that it was apparently easy to obtain a certificate from the Ministry of Education to practise law even without the required university degree.
- 5.6 Once a lawyer is granted permission to practise there is no programme of continuing legal education in Equatorial Guinea to ensure legal skills are updated and refreshed. This means

that coupled with the low standards required to admit lawyers, the legal profession is grossly under-trained and commonly lacking in professional skills. Such a situation is of particular concern given that many laws are not written down and the law itself is formed from a variety of sources and legal traditions.

- 5.7 The delegation noted that like judges, lawyers have little or no access to legal materials either through law libraries or via the internet.

Professional Ethics

- 5.8 There is no governing statute for the legal profession and no professional code of ethics or disciplinary code specific to lawyers. In effect lawyers cannot be disciplined for unprofessional conduct or professional negligence. The IBA delegation felt that this situation required immediate attention to help encourage the development of a professional ethos and to improve professional skills. The delegation was interested to learn that the majority of lawyers it met were keen to adopt a professional code of ethics.
- 5.9 During the National Conference on Justice in 2002, it was recommended that a Legal Practice Institute be created which can at least offer training in substantive laws and professional ethics.²

Dissolution of the Bar Association

- 5.10 In March 2002 the Bar Association was dissolved by the Government (through resolution of the Minister of Justice and Culture) on the pretext that there were internal disputes. The delegation was given a number of explanations for the adoption of this resolution. First, it was suggested there were some lawyers practising who did not have the necessary training to exercise their profession. Secondly, there was no legal professional statute regulating the Bar Association. Thirdly, the Bar Association became divided either on the basis of politics or clan loyalties. Fourthly, it is understood the Bar Association was no longer under the control of the Minister of Justice, hence its dissolution.
- 5.11 While it was functioning the Bar lacked funds, office accommodation and centralised administration of records.
- 5.12 After the dissolution of the Bar Association, the Government appointed a provisional board made up of Sergio Esono Tomo as President and José Sialé as Secretary. New elections were held between the 9 and 15 of January 2003 although they were marred by allegations of corruption and vote rigging. The current President of the Equatorial Guinea Bar Association is Ramon Nonato Obama Nengono and the Secretary is Mauricio Bocup. The delegation was advised by different credible sources that the members of the directory board of the Equatorial Guinea Bar Association are all designated and controlled by the Minister of Justice.

- 5.13 The underlying problem of the Equatorial Guinea Bar Association is its lack of independence from the Government and lack of governing powers to regulate and control legal practitioners.
- 5.14 The delegation was interested to learn that there are between 90 and 100 lawyers in the whole country, taking account of ministers, judges and other civil servants. Perhaps only 22 to 30 are practising lawyers who have no other professional calling.

Notes

- 1 Principle 16 (a).
- 2 See Annexe 3: Recommendation number 33, 'The Equatorial Guinea National Conference on Justice in Order to Consolidate the Rule of law'.

Chapter 6:

The Human Rights Situation

- 6.1 Although Equatorial Guinea is a party to a number of human rights treaties (see Chapter 3) there are serious concerns that it commonly acts in violation of these international obligations and the obligations set out within the Constitution.

Torture and Ill-Treatment

- 6.2 The prohibition on torture and other ill-treatment is found in all the major regional and international standard-setting treaties.¹ The international community has also adopted the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to which Equatorial Guinea is party. Torture and other ill-treatment is also considered a principle of customary international law from which no state can derogate, even during times of national emergency. Violations of this prohibition are considered so serious as to warrant individual and state responsibility.
- 6.3 Despite having agreed to prohibit torture and other ill-treatment, the delegation was told that torture and other forms of ill-treatment by state agents is a serious problem in Equatorial Guinea. The delegation learned that the police and security forces are not trained in methods of carrying out investigation into crimes or cases and sometimes resorted to torture instead.
- 6.4 It was reported to the delegation that lawyers are scared to represent a client in police custody due to the threat of violence or intimidation. The delegation heard from a number of lawyers who stated that they were intimidated by police and security forces while carrying out their professional duties. A number of lawyers said that when they had gone to submit the petition of habeas corpus on behalf of a client at the police station they themselves had been attacked or threatened with violence.
- 6.5 The delegation noted that during the trial of Plácido Micó and others the judges had proved unwilling or unable to exercise basic protectionary measures as required by international standards. There is a clear need for extensive training across the administration of justice to help prevent torture including for prosecutors, judges, lawyers, the police and security forces.

Right to a Fair Trial

- 6.6 The right to a fair trial is recognised across a range of regional and international treaties² and non-treaty standards.³ It applies both to criminal and civil tribunals and incorporates a number of principles: the right to legal counsel; the right to equality of arms; the right to a public hearing; the right to appeal; the right to have adequate time and facilities to prepare the defence; the right to be tried without undue delay; the right to be present at trial; the right to call and examine witnesses; and the right not to be compelled to testify against oneself. Basic

fair trial standards apply in any court, whether ordinary, special or military.⁴

- 6.7 The majority of these guarantees are derogable.⁵ Nonetheless, the UN Human Rights Committee, the body that monitors state compliance with the ICCPR, has expressed the view that ‘the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected.’⁶
- 6.8 One of the most fundamental aspects to the right of a fair trial is the right to be tried by an independent and impartial tribunal. For the reasons set out in Chapter 4 in many cases a trial is partial and the judge not independent. This situation represents a serious abuse of individual human rights for which Equatorial Guinea is accountable to the international community.
- 6.9 Although the Equatorial Guinea Constitution and laws provide for legal representation in trials and the right to appeal,⁷ the delegation was informed that, in practice, the authorities often do not respect these provisions. At the 2002 trial of 144 people, observers expressed concerns that the trial had been unfair and that there was insufficient evidence (and in some cases no evidence at all) from which to convict.

Right to Freedom of Expression

- 6.10 It is widely recognised the fundamental importance of freedom of expression as a cornerstone of democracy. Freedom of expression is a fundamental right guaranteed by the African Charter on Human and Peoples’ Rights, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, as well as other international documents.⁸ The right to freedom of speech is understood to be a general norm of customary international law and includes the right to a free press.⁹ Free expression may only be restricted where prescribed by law and where necessary in a democratic society in the interests of national security, public safety for the prevention of crime or disorder or for the protection of the rights and freedoms of others. .
- 6.11 The Equatorial Guinea Constitution includes provisions that it guarantees the right to freedom of expression and opinion.¹⁰ In practice however, both the constitutional and the treaty right are ignored.
- 6.12 Only one newspaper is distributed in the whole country: La Gaceta, a Government-controlled Malabo-based publication, is monthly published but not widely distributed. La Gaceta is printed in Spain. There are currently no local newspapers. There is no technical capacity to produce newspapers in the country. There are no bookshops and no public libraries in Equatorial Guinea. In addition, the Government has banned the Equatorial Guinea Press Association
- 6.13 The current press law, enacted in 1992, is reportedly based on Spain's 1967 Franco-era press law, and authorises government censorship of all publications. The delegation learnt that there

have been recent attempt to distribute a small current independent newspaper called Ebano. The overly restrictive press law represents, in the view of the delegation, an abuse of the right to free speech as freedom of expression may only be restricted for one of the reasons listed earlier.

- 6.14 The right to freedom of expression includes the right to express political opinions and the right of civil society to receive information. There are concerns that the freedom of speech, an important component in a democracy, is not properly respected in Equatorial Guinea.
- 6.15 The combined impact of the lack of freedom of speech, press and association has meant that civil society has not been able to develop. This situation is critical. Without civil society it will be impossible to ensure that the rights and freedoms of the citizens in Equatorial Guinea are protected and upheld.

Right to Peaceful Assembly and Association

- 6.16 The right to peaceful assembly and association is found in many international and regional human rights treaties.¹¹ It may be restricted only where prescribed by law and only where necessary in a democratic society in the interests of national security, public safety for the prevention of crime or disorder or for the protection of the rights and freedoms of others. .
- 6.17 The Equatorial Guinea Constitution provides for the right of association,¹² however, the Government does not always respect this right in practice. As noted in Chapter 5, in March 2002, the authorities dissolved the Bar Association on the pretext that some lawyers did not have the necessary training to exercise their profession. In May, the Deputy Minister of Information called for the Asociación de la Prensa de Guinea Ecuatorial, Equatorial Guinea Press Association, to also be dissolved. In effect the Government has restricted the right of lawyers to freely associate.

Prison Conditions

- 6.18 The international norms applicable to the standard of prison conditions can be found in the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of any all Persons Under any Form of Detention or imprisonment, the UN Standards Minimum Rules for the Administration of Juvenile Justice and the UN General Assembly Resolutions on UN Rules for the protection of Juveniles Deprived of their liberty. In addition, the treatment accorded detainees must not violate the prohibition on torture and other ill-treatment. In a previous case regarding prison conditions in Nigeria, the African Commission on Human Rights held that aspects of imprisonment such as overcrowding, beating, torture, excessive solitary confinement, shackling within a cell, extremely poor quality food and denial of access to adequate medical care constituted a violation of Article 5 of the African Charter.¹³

- 6.19 The IBA delegation was informed by the General Director of Justice during its meeting with him on 21 July 2003 that there are a total of 120 prisoners in prison in Equatorial Guinea. The delegation was also told that all of them were being punished for common criminal offences. The delegation was informed that currently, women, men and children are detained at the same facilities. The delegation was also advised that the Government had a reform project to build a detention unit for young offenders below the age of 18.
- 6.20 The delegation was informed that the prisons currently in use were jails built during Spanish colonial rule and therefore are old and need of urgent repair. The delegation heard from credible sources that there was a lack of access to adequate medical care and extremely poor quality food for the prisoners.
- 6.21 There are concerns that prison conditions in Equatorial Guinea fail to meet international standards both in terms of segregating women and children from male prisoners and through a failure to provide suitable detention conditions with adequate access to food and medical facilities.

Government Action

- 6.22 The IBA delegation concluded that respect for Equatorial Guinea's human rights obligations both domestically and internationally was sadly lacking and that urgent reform is required across the range of Government institutions. The delegation was pleased to note that the Equatorial Guinea Government expressed on a number of occasions its willingness to make the necessary reforms to improve upon fundamental human rights. It was also pleased to note that the Minister of Justice during its meeting with him on 23 July 2003 that they were already committed to proceed with the ratification of both the International Criminal Court Statute and the Protocol of the African Charter of Human and People's Rights to establish the African Court of Human and People's Rights. The mission members and the IBA welcome these decisions.
- 6.23 However, the delegation considers that the Government needs to strengthen its commitment to democracy and human rights¹⁴ through clear measures and policies for the implementation of an effective domestic protection system of human rights. The delegation also encourages the Equatorial Guinea Government to apply the constitutional principles of law and the basic guarantees of the Constitution and also the fundamental rights embodied in the international human rights instruments.

Notes

- 1 See Article 5 of the UDHR, Article 7 of the ICCPR, Article 5 of the African Charter, Article 5 of the American Convention on Human Rights (ACHR), Article 3 of the European Convention on Human Rights (ECHR).
- 2 See Article 14 of the ICCPR, Article 8 of the ACHR, Article 6 of the ECHR, and Article 7 of the African Charter.
- 3 See Article 10 of the UDHR, the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, and the Guidelines on the Role of Prosecutors.
- 4 See Human Rights Committee General Comment No. 13, para. 4.
- 5 The ACHR extends non-derogable status to 'judicial guarantees essential for the protection of [the non-derogable] rights'. See Article 27(2) of the ACHR. The Inter-American Court has ruled that the judicial guarantees of habeas corpus and amparo are non-derogable. See Inter-American Court of Human Rights, *Habeas Corpus in Emergency Situations*, supra note 16. The UN Commission on Human Rights has called on all states 'to establish a procedure such as habeas corpus or a similar procedure as a personal right not subject to derogation, including during states of emergency.' See UN Commission on Human Rights, Resolution 1994/32 on the question of arbitrary detention, 4 March 1994, UN Doc. E/CN.4/RES/1994/32, para. 16.
- 6 Human Rights Committee General Comment No. 29, para. 16.
- 7 See Article 13 of the Equatorial Guinea Constitution.
- 8 See, in particular, ACHPR: Declaration of Principles on Freedom of Expression in Africa, Seminar on Freedom of Expression and the African Charter on Human and Peoples' Rights. Johannesburg, South Africa, 22-25 November 2000.
- 9 See IBA Report: Sri Lanka: Failing to Protect the Rule of Law and the Independence of the Judiciary, November 2001, p. 50.
- 10 See Article 13 (b) of the Equatorial Guinea Constitution
- 11 See Article 20 of the UDHR, Article 22 of the ICCPR, Article 10 of the African Charter, Article 15 and 16 of the American Convention on Human Rights, Article 11 European Convention on Human Rights.
- 12 See Article 13 (k) of the Equatorial Guinea Constitution
- 13 See Communications 137/94, 139/94, 154/96 and 161/97, *International Pen, Constitutional Rights Project, Interights on behalf of Ken Saro-Wiwa Jr and Civil Liberties Organisation v. Nigeria*, Twelfth Activity Report 1998-1999, Annexe V (Documents of the African Commission, p. 729), paras. 79-80; C. Heyns, 'Civil and Political Rights in the African Charter', in M. Evans and R. Murray (ed.), *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, (Cambridge University Press, Cambridge, 2002), p. 150.
- 14 'Effective domestic protection of human rights requires a network of complementary norms and mechanisms. These include the following: state adherence to human rights treaties; implementation of international human rights obligations in domestic law; a domestic legal system that provides comprehensive substantive and procedural human rights laws; effective and accessible state institutions where individuals can obtain redress for human rights breaches, such as independent courts and national human rights institutions; a lively human rights NGO community; and a population that has developed a strong human rights culture', Linda C. Reif, 'Building Democratic Institution: The Role of National Human Rights Institution in Good Governance and Human Rights Protection', in 13 *Harv. Hum. Rts. J.* 1, Spring 2000, at 3.

Chapter 7:

Conclusions and Recommendations

The HRI considers movement towards a true democracy to be critical to Equatorial Guinea playing a credible and leading role within the region. A prerequisite to improving the economy, attracting and maintaining international investors and maximising its own natural resources will be a strong and fair justice system. This must be reinforced by adherence to the rule of law and international and regional human rights standards.

It is in this context that the IBA Human Rights Institute has produced the following conclusions and recommendations:

- 7.1 During its visit to Equatorial Guinea the delegation concluded that there has been a breakdown in the rule of law, in particular there is no separation of powers. It was clear that the Executive exercises considerable control over both the legislature and the judiciary which impacts significantly on their ability to exercise sufficient checks and balances on the powers of the Executive. In addition there is a lack of a viable opposition to the governing party and the political pluralism promised within the Constitution has not been fulfilled. In addition, freedom of speech and the press are strongly restricted to the extent that civil society is disempowered.
- 7.2 Equatorial Guinea is an African country that is trying to set up a legal system to serve the legal needs of both the national population (still very much ruled by customary law and living according to their traditional and rural ways) and those of the modern economy. The Government wants, and indeed needs to legitimise itself through the adequate functioning of a modern democracy. However, it is unclear whether this is as a result of (i) a clear commitment to implement properly functioning legal institutions or (ii) of a rather manipulative attempt to legitimise an authoritarian Executive power through a masquerade legal system. If the Government is seeking the latter it will want to have the legitimating effects of the rule of law, democracy and Human Rights, but without effectively reducing the power of the President.
- 7.3 The vast majority of the people in Equatorial Guinea are extremely poor. Corruption is said to be endemic in all sectors of society. However, the discovery of large offshore oil reserves does present a wonderful opportunity for the country to generate much needed revenue and thus help alleviate poverty. However, with oil revenue has come further allegations of corruption and lack of transparency. There are some concerns that oil wealth will not trickle down through society but will instead be mismanaged and perhaps lost through corrupt practices. The Government needs to be encouraged to use the country's wealth to fund essential services, including in health, education and the administration of justice. Furthermore the Government needs to be encouraged to respect the principles of democracy and human rights. The delegation concluded that overseas investors have a significant role to play to ensure that the Government of Equatorial Guinea does indeed take measures to ensure that oil revenues are

transparent and accountable, that the funds are used for the benefit of the country as a whole and that the Government moves towards the creation of a fully functioning democracy and respects human rights.

- 7.5 Equatorial Guinea has a poor human rights record. Torture, failure to guarantee the right to a fair trial, lack of freedom of expression and association, and poor prison conditions are just some examples of the abuses that occur with impunity. The failure of the judiciary to act independently is a further difficulty as it prevents ordinary citizens from seeking redress for human rights abuses.

The Constitution and Legal System

- 7.6 The delegation concluded that the laws in Equatorial Guinea are either i) not properly or consistently used; ii) the laws are inconsistent with the Constitution; iii) the laws are outdated, and iv) they are ad hoc. There is an urgent need to initiate a programme of law reform. Although the Government professes to be engaged in the much needed codification of laws, it needs to demonstrate greater commitment to ensure that the laws are widely disseminated and that sufficiently qualified people are brought in to undertake the task. This will require sufficient resources being made available.
- 7.7 The delegation found that the constitutional provision for the separation of powers was not in fact practised. It is also clear that society has very little confidence in the legal system hence the use of petitions to the legislature. However, by taking on a quasi-judicial function the legislature is on occasion undermining the judiciary by overturning court judgments.

Recommendations

- (1) The Government needs to adopt a strategic plan to initiate law reform. It may wish to seek the assistance of constitutional and legal experts from within the international community. The process of law reform needs to consider constitutional and legal revision which moves Equatorial Guinea close to a democratic state. It is also recommended that the process of legal codification and reformation be prioritised and that if necessary international and regional legal technicians are brought into assist.
- (2) The Government must consider, as part of its law and constitutional reform means by which it can ensure a true separation of powers.
- (3) Revision of the complaints and petition process by which it is possible for the legislature to overturn court decision should be urgently contemplated.
- (4) Urgent consideration must be given to reducing the powers of the Executive, especially in relation to its control over the judiciary and legislature.
- (5) Reform of the legislature should be contemplated to ensure that it plays a role in curbing the checks and balances of Executive powers.

The Courts and the Judiciary

- 7.8 The courts are not independent and impartial. The range of external pressures flows from both systemic difficulties and from direct intervention from the President in order to protect his personal interests.
- 7.9 The process of judicial appointments, discipline, security of tenure and salaries are subject to influence through the Executive.
- 7.10 The endemic corruption which runs through civil society is also prevalent within the judiciary.
- 7.11 The judiciary lacks an independent regulatory body. The delegation concluded that the creation of such a body may help combat systemic failures to promote judicial independence.
- 7.12 The judiciary lacks sufficient training both before taking office and during its tenure. Of those who are legally trained, there is no consistency in the training (many of whom qualified overseas). This contributes to uncertainty and inconsistency in applying the laws and Constitution of Equatorial Guinea.
- 7.13 There are insufficient legal resources available to the judiciary. This is compounded by the lack of written laws and access to judicial decisions.
- 7.14 Society does not have confidence in the administration of justice in Equatorial Guinea. The population is uninformed about the justice system and how to access it.

Recommendations

- (1) The Equatorial Guinea Government must immediately desist from any act of harassment that prevents the Equatoguinean Courts from functioning independently and impartially in compliance with the rule of law.
- (2) In turn judges must be willing to work to a higher standard of professionalism which requires them to act with independence, impartiality and integrity.
- (3) Payment of salaries commensurate with the importance of the role of judges within society must be contemplated. This may help to alleviate corruption.
- (4) Judges should be trained lawyers with high levels of professionalism and legal ability. A continuing legal education programme is urgently required to provide refresher course in subjects such as judicial independence, human rights and professional ethics. The creation and implementation of these training courses should be carried out with the necessary help of professional institutions with sufficient experience. The IBA is willing to assist in this important process.
- (5) An independent judicial regulatory body must be created to oversee judicial appointments, discipline, promotion, removal and salaries. In addition, the law relating to the security of tenure must be reviewed to ensure that it is adequate and steps taken to enforce it. The UN

Basic Principles on the Independence of the Judiciary are a guide to the standards that should be adopted by this new independent body.

- (6) The judiciary should create its own association of judges in compliance with the international standards of freedom of association and freedom of expression. Through this association, judges could meet and discuss professional issues of mutual concern in a supportive atmosphere. It could also provide strong and committed judicial leadership to ensure fairness and equality in Equatoguinean courts. Through effective judicial education and interaction, the association might promote equal access to justice for all.

The Legal Profession

- 7.15 The delegation was concerned to note that the legal profession is not independent from the Government. There are concerns that corruption exists within the legal profession both in terms of obtaining permission to practise law without the necessary qualifications and the use of bribery to sway the outcome of court cases.
- 7.16 Many lawyers receive training from overseas and are not sufficiently skilled or knowledgeable in Equatoguinean law. This has the potential to lead to inconsistency in the advice and representation given to clients and a failure to abide by uniform professional standards. The lack of written laws and access to case law is a further impediment to the consistency of legal practice.
- 7.17 There are limited legal resources for lawyers to undertake legal research. This is compounded by the lack of written laws and access to judicial decisions.
- 7.18 Equatorial Guinea does not have a fully functioning and independent Bar Association.
- 7.19 Lawyers have been subject to harassments and intimidation in the carrying out of their professional functions.

Recommendations

- (1) There must be developed a national programme of legal education in order to achieve uniformity within the legal practice. This educational programme must start from the gaining of initial legal qualifications through to continuing legal education for practising lawyers. Any training should promote knowledge and understanding of the legal and ethical duties of a lawyer, human rights and the role of lawyers in protecting judicial independence and the rule of law.¹ The IBA is willing to assist in this important process.
- (2) The delegation suggests that in order to build confidence and greater understanding between the Minister of Justice and legal profession they should initiate regular meetings to discuss matters of mutual interest and concern.

- (3) The Government must desist from any act of harassment of the legal profession in the course of their carrying out professional duties in such a way that lawyers would be able to conduct their professional activities without interference.
- (4) Legal resources must be made available to ensure that lawyers are able to carry out their professional duties with sufficient skill and expertise.

The delegation was extremely concerned about the lack of an independent Bar Association. The Government must desist from any interference in the Bar Association. The IBA recommends the establishment of a code of ethics and programme of continuing legal education for lawyers. An independent electoral process for positions within the executive of the Bar Association should be established and allowed to function without influence from the Government.

Human Rights

- 7.20 There are serious concerns over the level and consistency of human rights violations in Equatorial Guinea. The country has in most instances failed to submit periodic reports to the United Nations treaty monitoring bodies, as required by its becoming a party to various UN human rights treaties. The Government did indicate its willingness to improve respect for human rights and compliance with its international treaty obligations.
- 7.21 Torture would appear to be used systematically by the police and security forces. The judiciary has ignored allegations of torture when presented with victims of torture and other ill-treatment at court.
- 7.22 The failure to ensure the independence of the judiciary has led to the violation of the right to a fair trial. In turn this means that individuals complaining of human rights violations are unlikely to have a judicial remedy.
- 7.23 Other aspects of a fair trial, such as the right to counsel and the right to appeal are not respected in Equatorial Guinea.
- 7.24 There is no freedom of speech of the press despite these rights being set out within the Equatorial Guinea Constitution. Laws which restrict the press are in contravention of Equatorial Guinea's international human rights obligations.
- 7.25 The right to freedom of association is unduly restricted. The combined impact of the lack of freedom of speech, press and association has meant that civil society has not been able to develop. As a crucial component of any democratic structure, it is essential that civil society groups are allowed to establish themselves independently of the Government.
- 7.26 Prison conditions do not meet with accepted international standards. In severe cases failure to adhere to certain standards could amount to a violation of the prohibition on torture and other ill-treatment.

7.27 The IBA strongly recommends that the Government reviews the case of Felipe Ondo and ensures that in the meantime, Mr Ondo is being held in humane conditions with access to his family, medical attention and legal representation.

Recommendations

- (1) The Equatorial Guinea Government must prove it is committed to democratic principles such as freedom of speech and association and allow an independent media to be established. Furthermore, steps must be taken to ensure the activities of political opponents and parties are not unlawfully restricted.
- (2) The Government of Equatorial Guinea must as a matter of urgency issue instructions to its police officers and other state agents instructing them to refrain from torture and other ill-treatment. Those who continue to do so must be held accountable for their actions and be punished in accordance with the law. All victims of torture are entitled to redress which includes compensation.
- (3) In order to help combat torture, the Government must implement a training programme for law enforcement offices, security services and prison wardens on the to ensure that when faced with allegations of torture they are aware of the legal and procedural requirements set out in international law.
- (4) A review of prison conditions must be carried out urgently. Measures should be taken to ensure the separation of women and children from male inmates and to segregate convicted prisoners from those in remand. Improvements in the medical facilities available should be implemented.
- (5) The Government should consider the creation of an independent national commission on human rights whose mandate it would be to: i) undertake studies patterns of human rights violations and make recommendations for reform; ii) monitor systemic changes to see if the situation has improved; iii) disseminate human rights within civil society; iv) help in the creation and implementation of national human rights training programmes; and v) advise the Government on its human rights obligations and its UN treaty monitoring reporting requirements. The Commission will need to cooperate with the UN and African Commission on Human Rights.

The HRI would like to take this opportunity to reiterate it's thanks to all those with whom it met for their honesty and cooperation. The HRI hopes that this report will provide practical and useful advice to those involved in the administration of justice in Equatorial Guinea. The HRI would welcome the opportunity to provide support in the realisation of some of the recommendations contained in this report.

Notes

See the IBA Standards for the Independence of the Legal Profession, adopted 1990.

Appendix I

About the International Bar Association

the global voice of the legal profession

In its role as a dual membership organisation, comprising 16,000 individual lawyers and 180 Bar Associations and Law Societies, the International Bar Association (IBA) influences the development of international law reform and shapes the future of the legal profession.

Its Member Organisations cover all continents and include the American Bar Association, the German Federal Bar, the Japan Federation of Bar Associations, the Law Society of Zimbabwe and the Mexican Bar Association.

Grouped into three Sections – Business Law, Legal Practice, and Energy & Natural Resources Law – more than 60 specialist Committees provide members with access to leading experts and up-to-date information as well as top-level professional development and network-building opportunities through high-quality publications and world-class Conferences. The IBA's Human Rights Institute works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.



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