

126TH SESSION OF THE HUMAN RIGHTS COMMITTEE
EVALUATION OF EQUATORIAL GUINEA
REPORT BY: CENTRO DE ESTUDIOS E INICIATIVAS PARA EL
DESARROLLO DE GUINEA ECUATORIAL (CEIDGE)
June 2019

INTRODUCTION

1. The NGO CEIDGE is a registered NGO in Equatorial Guinea and has presented reports to different mechanism of the UN, particularly within the Universal Periodic Review of the Human Rights Council. This report will focus primarily on LOI 1, 2, 3, 4, 19 and 22 in the absence of a country report.
2. It is the opinion of CEIDGE that the government did no improvement in the implementation of the previous concluding observations of the committee. While the government created institutions such as the Ombudsman or declared a moratorium on the death penalty, unfortunately, the overall systematic violation of human rights such death in custody in custody, torture, the use military courts to judge civilians or the arbitrary detentions of activists and opposition members have increased in the last years.

IMPLEMENTATION OF ICCPR ARTICLES

Constitutional and legal framework within which the Covenant is implemented (art. 2) – LOI 1, 2 and 3.

3. According to article 8 of the national constitution, international conventions or treaties take precedence over national legislation. However to the best of our knowledge, there are no examples of a court at any level in Equatorial Guinea, applying or specifically alluding to the International Covenant of Civil and Political Rights (ICCPR). Similarly, we cannot say or point to examples in which courts, at any level, have given precedence to provisions of the ICCPR. Numerous examples of rights violations of national and international legislation protecting civil and Political Rights have taken place.

4. In 2011 the government initiated a constitutional reform process. The commission for the reform of the constitutions only included the names of 2 members of the opposition that rejected this appointment. This commission was primarily composed of members of the ruling party and its main coalition parties. The main opposition party CPDS with one member in parliament¹ claimed that *“the reform bill was read to Parliamentarians, but they were not given hard copies of the text and could not debate it in the committees or at the plenary session of Parliament.*
5. Formally, the Article 71 of the law on the Judiciary² indicates what issues fall under the traditional courts. These involve marriages, inheritances and filiation. In practice, the traditional sentences discriminating women particularly when married under the traditional customs, are not corrected during appeals in general. The appellate courts would only be accessible to those with the means and knowledge of this process. Concurrently rural women with less financial resources would not have possibilities to appeal or would not be aware of this recourse.
6. The constitutional reform of November 2011 created the figure of the Ombudsman, and charges him/her with “defending the constitutionally-guaranteed rights of citizens.” The current Ombudsman, Mr. Marcelino Nguema Onguene was appointed on Nov. 12, 2014. He is a former minister, former MP and deputy secretary general of the ruling Democratic Party of Equatorial Guinea (PDGE)³ generating doubts on its independence. As an example, in August 2018 a group of public selling women evicted by the Mayor of Malabo filed a complaint before the ombudsman. Having convened them on 09/10/2018, the Ombudsman expelled from the meeting a Civil Society activist who accompanied the women by telling him that “with activism you cannot change the country,” and also rejecting the presence of the lawyer, Angel Obama.

¹ http://egjustice.org/sites/default/files/CPDS_Communication--Gov%27t_Reforms.pdf (07/06/2019)

² “Ley nº 5/2009 de fecha 18 de mayo por la que se reforma la Ley Orgánica del Poder Judicial”

³ <https://www.pdge-guineaecuatorial.com/instalacion-del-despacho-del-defensor-del-pueblo/> (07/06/2019)

7. The Independence and pluralism required by the Paris Principles for national human rights institutions (NHRIs) are not fulfilled in the case of the Ombudsman, as he is appointed by a Parliament wholly controlled by the ruling party. Most of the cases brought to the Ombudsman that refer to acts of violation of political rights are either rejected or not pursued by his office.⁴
8. It is somewhat complicated for most citizens to file reports to the ombudsman, as the process requires that individuals submit their complaints in person at the Office of the Ombudsman in Sipopo, Bioko. Claimants have reported that they never obtained any updates on their cases, remaining unresolved⁵.
9. In September 2017, the Ombudsman presented a report of his office's activities before the Senate and Chamber of Deputies. The ombudsman's reports emphasized that majority of complaints filed by citizens are directed against the administration, in particular, against the judiciary, approximately 50%, for reasons such as legal insecurity and/or misappropriation by judges and magistrates of public goods.
10. However, a spokesman from an opposition political party declared publicly shortly afterward that the Office of the Ombudsman (created in 2014) would be more effective if reports were accessible to all citizens and followed up consequently by investigations⁶.
11. To the best of our knowledge the government did not take measures to promote the ICCPR in Equatorial Guinean or the individual communications procedures. There have been human rights workshops to police forces, carried out by foreign governments, particularly the USA,

⁴ <http://www.asodeguesegundaetapa.org/el-defensor-del-pueblo-se-hace-el-sueco-ante-los-problemas-de-las-vendedoras-coraje-coordinadora-somos/> (07/06/2019)

⁵ https://aai.globalintegrity.org/indicator-details?country=equatorial_guinea&num=12&year=2018 (07/06/2019)

⁶ https://aai.globalintegrity.org/indicator-details?country=equatorial_guinea&num=13&year=2019 (07/06/2019)

- as military assistance. These trainings however did not lead to any perceptible changes in the behaviour of the police.
12. The National Human Rights Commission has been dormant or inactive in the last years. The last communication known made to the public was made in 2014. Since the appointment of the Ombudsman the Human Rights Commission became even more irrelevant.
 13. The president of the Human Rights Commission is the Speaker of the Parliament and member of the ruling party⁷. There is no information that can provided to civil society organisations or to the public in general regarding its composition, gender representation, budget or its independence.
 14. According to the national Budget of 2017 as an example, the government allocates 190 million FCFA (USD 326,059.00) to the parliament and Senate on Human Rights. Another Centre for Human Rights and Democracy belonging to the prime minister's office in charge of Human Rights received approximately another USD 176,000.00. There is no evidence of material or activities reported by any of these institutions regarding human rights in promoting the ICCPR, except for a public statement made on International Human Rights day in December 10th every year.

Anti-corruption measures and natural resource management (arts. 1, 2 and 25) LOI 4.

15. Vast oil revenues fund lavish lifestyles for the small elite, while a large proportion of the population continues to live in poverty. Mismanagement of public funds and credible allegations of high-level corruption persist, as the judiciary and the rule of law continue to crumble.
16. Civil and criminal charges were brought against Vice President, Teodoro Nguema Obiang (Teodorin) or his assets in the United States of America, France, Switzerland, South Africa, and Brazil. In the US, the Department of Justice (DOJ) found that Teodorin illegally acquired more than \$1.8

⁷ <https://www.guineaecuatorialpress.com/noticia.php?id=4592&lang=es> (07/06/2019)

million worth of Michael Jackson memorabilia, a \$38.5 million Gulfstream G-V jet, a \$30 million mansion in Malibu, California, and close to a dozen luxury cars. Ultimately, the US DOJ and Teodorin agreed to settle the case in 2014 for approximately \$33 million. French, Swiss, and Dutch judicial authorities have seized additional assets worth hundreds of millions of Euros. In October 2017 a French court convicted Mr. Nguema Obiang of embezzlement, money laundering, breach of trust and bribery⁸. No investigation or charges could be brought against the vice president and son of the President in Equatorial Guinea courts and jurisdiction despite of the overwhelming incriminating information.

17. As with other state-owned companies, the national oil and gas companies (GEPetrol and SONAGAS, respectively) do not publish audits or any financial information. The Government's bid to join the Extractives Industries Transparency Initiative (EITI) has continued to run into roadblocks. As a result, contract, production and revenue data related to oil and gas industry were not made available to the members of the EITI National Commission.
18. The IMF noted the high spending on a new capital city, Oyala, in the context of "limited movement on structural reforms, and weak governance and corruption [that] remain a serious impediment."
19. The government acceded the United Nations Conventions Against Corruption in 2018. No improvement or relevant development regarding improved accountability has been seen so far.

Independence of the judiciary, administration of justice and the right to a fair trial (arts. 9 and 14). LOI 18 and 19.

20. On April 16 2016, the police arrested Enrique Asumu and Alfredo Okenve of the CEIDGE at the Malabo airport and prevented them from taking a

⁸ <https://www.egjustice.info/content/teodorins-conviction-landmark-victory-in-fight-against-corruption> (07/06/2019)

flight to the city of Bata. The Minister of National Security ordered their arrest and detention at the Central Police Station of Malabo. On April 25 and May 3, the authorities released Asumu and Okenve without charges, but they imposed fines of two million CFA francs (US \$ 3,350) to each one without any judiciary process or oversight and disregarding Article 9 of the convention. According to the Habeas Corpus Law⁹ detainees should be brought for judicial determination within 72h from detention. More recently in November 2018 Alfredo Okenve was bitten by security forces and abandoned in the suburbs of the city of Bata badly injured; in addition Alfredo Okenve was arrested at the airport of Malabo when the government impeded the reception of a human rights prize awarded by the French and German ministries of foreign affairs¹⁰.

21. The government of Equatorial Guinea accepted Universal Periodic review recommendations regarding the establishment of an independent judiciary and ensure that all laws are in line with the principles of international law. The courts are not independent or impartial since the executive exercises total control over the judiciary. I.e. the President of Equatorial Guinea published a presidential decree removing all the judiciary members without due process¹¹. In 2018 the president of the Supreme Court was removed and replaced. The president of the constitutional court was also replaced without due process¹². These key positions oversee the election results or would counterbalance the executive powers.
22. In 2018, 4 judges were arrested on allegation of corruption, one of the judges, José Esono Ndong Bindang¹³, died in custody for unclear causes. In 2017 another judge, Inoncencio Membila Mbula was arrested for allegedly releasing a detainee for lack of proofs incriminating him.

⁹ Ley 18-1995 de 11 de octubre Habeas Corpus.

¹⁰ <http://www.ceidge.org/index.php/quienes-somos-3/68-alfredo-okenve-arrested-once-again> (07/06/2019)

¹¹ El Mundo, "Obiang destituye a todos los jueces del Tribunal Supremo de Guinea Ecuatorial", 26/05/2015

¹² Diario Rombe, "El nombramiento del presidente del tribunal constitucional es inconstitucional", 28/08/2018

¹³ La Vanguardia, "Muere un magistrado bajo custodia policial en Guinea Ecuatorial", 22/07/2018

Allegedly, the Minister of National Security, Nicolas Obama Nchama ordered the arrest of the judge. In 2018 another judge was also arrested and released a week later for allegedly releasing a member of the opposition from prison.

23. The lack of independence of the judiciary has caused the violation of the right to a fair trial. Members of one political, “Ciudadanos por La Innovacion” party were tried without due process, their party was also banned and members of the party have denounced deaths, torture, cruel, inhuman or degrading treatment and punishment¹⁴ during detention.
24. In October 2017 the vice-president of Equatorial Guinea was sentenced for corruption in a French court. The judiciary in Equatorial Guinea was unable to initiate any formal and independent investigation and thereof prosecution given the lack of independence of the judiciary¹⁵.
25. The Government of Equatorial Guinea have continued to use military courts to try civilians even when the Law on the Judiciary of 2009¹⁶ specifically established that they should be tried in civilian courts. In a most recent case of 2019, members of a political party and other associates from the opposition in exile were tried in Bata, Equatorial Guinea, and the process was interrupted to appoint military prosecutors and judges by Presidential Decree in an ongoing civil process marred by irregularities¹⁷.

Freedom of expression, peaceful assembly and association, and protection of journalists and human rights defenders (arts. 6, 7, 9, 19, 21, 22 and 25) - LOI 22

26. In the previous evaluation the committee noted with alarm that Act No. 1 of 1999 on non-governmental organizations was not amended, because it does not provide for human rights organizations. The government of

¹⁴ La Vanguardia, “*Diputados piden intervención en apoyo a la oposición en Guinea Ecuatorial*”, 28/02/2018

¹⁵ Cesge.org, “*Condena al vicepresidente de Guinea Ecuatorial, Teodorin Obiang, por corrupción*”, 04/11/2017

¹⁶ See footnote 3

¹⁷ https://www.americanbar.org/groups/human_rights/reports/mass-trial-eg/ (07/06/2019)

Equatorial Guinea did not amend this Act as per the observation since then.

CONCLUSIONS AND SUGGESTED RECOMMENDATIONS

27. The committee should require the government of Equatorial Guinea to:
1. Abide to their obligations to report and promote the ICCPR in Equatorial Guinea. Including training and facilitating the use of individual communications.
 2. Ensure that the complaint mechanisms in the country are effective and independent, particularly the conflict of interest of the President of the Human rights commission and the independency of the Ombudsman office, including ensuring gender balance and participation of civil society organisations.
 3. To immediately suspend the military courts given the unconstitutional use of its jurisdiction and its violation of the ICCPR until the criminal code is amended in line with international obligations of Equatorial Guinea.
 4. Ensure independence of the judiciary to allow for prosecution of corrupt individuals without fear of reprisal.
 5. Ensure that the Act 18/1995 on Habeas Corpus is implemented without any limitation and in line with the ICCPR and other human rights instrument.
 6. The government should ratify the optional protocol 2 and investigate any cases of killings in custody or as a consequence of lack of medical treatment in prison facilities.
 7. Amend the Act 1/199 on Non-Governmental organisations to allow full and active participation of NGOs in monitoring of implementation of the UPR and this committee recommendations providing all the means necessary to this end.
 8. Grant all the means necessary for traditional courts to be trained on the human rights instruments and ensure legal assistance to those willing to appeal to ordinary courts, particularly rural women.

9. Immediate release from prison of activists and opposition political party members that have been tried without respecting their basic rights recognised under the ICCPR.
10. Invite the committee to visit the country to verify and follow-up on the recommendations.