
amnesty international

EQUATORIAL GUINEA
Submission to the UN Universal
Periodic Review

Sixth session of the UPR Working Group of the
Human Rights Council
November-December 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern over shortcomings in national legislation and national institutions to promote and protect human rights.
- Section C highlights Amnesty International's concerns about human rights violations, specifically arbitrary detention; prolonged detention without charge or trial; incommunicado detention; abductions from neighbouring countries and enforced disappearances; torture and other ill-treatment and death in detention; and unfair trials.
- In section D, Amnesty International makes a number of recommendations for action by the government in each of the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Equatorial Guinea

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B. Normative and institutional framework of the State

The Constitution in force in Equatorial Guinea is that of 1991 as amended in 1995, which contains some limited rights, including the right to life and physical integrity, and guarantees for fair trial. Article 13 lists the fundamental rights owed to every citizen, among others:

- the right to freedom of expression
- the right to freedom of movement
- the right to *habeas corpus* and *amparo*
- the right to association, assembly and demonstration
- the right not to be deprived of one's liberty save by judicial order, except where set out by the law or in the cases of *delito flagrante*
- the right not to have to incriminate oneself.

Article 8 of the Constitution states that the State of Equatorial Guinea will abide by all standards of international law and in particular to the rights and obligations set out in the international treaties to which it is a party. However, apart from Law 6/2006 on the Prevention and Punishment of Torture (*Lei 6/2006 sobre la Prevención y Sanción de la Tortura*), promulgated in November 2006, which reflects some of the provisions of the Convention against Torture. Equatorial Guinea has not enacted legislation to reflect the provisions of those treaties.

C. Promotion and protection of human rights at the national level

Introduction

Despite recent improvements, human rights violations continue to be committed by the security forces against wide sectors of the population. Torture and other ill-treatment, deaths in custody, unfair trials, arbitrary arrest and incommunicado detentions are still common practices. The situation is exacerbated by the lack of training of and accountability mechanisms for the security forces and the fact that impunity is virtually guaranteed for those who commit these violations. A very weak judicial system, which lacks independence, is also a contributing factor in perpetuating impunity. No measures have been taken to investigate and bring to justice the perpetrators or to provide reparation to the victims. However, Amnesty International recognizes that the enactment of the law criminalising torture and other ill-treatment, despite some shortcomings, is a step in the right direction and has called on the government to ensure its effective implementation.

Arbitrary arrest of political opponents

The number of arrests of political opponents has decreased since 2006. Nevertheless, arbitrary arrest and brief detention without charge or trial of political activists and others for peacefully exercising their right to freedom of expression, assembly, or association, continue, albeit on a smaller scale, particularly in remote areas and smaller towns on the mainland. Those arrested are normally held for short periods, varying from one day to one week. Often, they are made to pay “fines” to secure their release. Moreover, soldiers often mount illegal road blocks and demand payment from those entering or exiting villages. Those who refuse to pay are often detained for several hours and beaten.

These arrests are carried out without a warrant, and often on the orders of civilian political authorities and members of the ruling *Partido Democrático de Guinea Ecuatorial* (PDGE), who are often present when the police carry out their orders.

The arrest of political opponents tends to increase around elections, when they are arrested for peacefully exercising their rights to freedom of expression, assembly and association. Allegations of coup attempts or other attacks have also led to the arbitrary arrest of political opponents.

In the aftermath of the attack on the presidential palace in Malabo on 17 February 2009, which the authorities attributed to the Nigerian Movement for the Emancipation of the Niger Delta (MEND), nine members of the opposition party People’s Union (Unión Popular – UP), including the wife of its leader, were arrested without a warrant between 19 February and 26 March 2009 in Malabo and Bata. At the time of writing, the detainees are held at the central police station in Malabo. They have not been charged or brought before a judge to legalise their detention in accordance with Equatorial Guinean law which prescribes that detainees must have their detention legalised by a judge within 72 hours or else be released.

The day after the attack the authorities announced that they had arrested 15 foreign nationals. However, they did not reveal the identity or nationality of those arrested or the circumstances of their arrest. It is not clear whether they were arrested in the course of the attack or following searches for the attackers who escaped and, according to the authorities, sought refuge in neighbourhoods known to house foreign nationals.

Prolonged detention without charge or trial of political opponents/Denial of *habeas corpus*

The practice of detaining government critics and known political opponents without charge or trial for long periods continues.

Twenty people arrested in separate incidents between March and June 2004 were held without charge or trial in Black Beach Prison until their release in a presidential “pardon” in June 2006. They were detained incommunicado for long periods and most of them had been tortured or ill-treated.² Amnesty International considered them to be prisoners of conscience.

Sometimes detainees are charged after months and even years in detention. For instance, five people “extradited” from Gabon in June 2004 were held incommunicado for over two years before they were charged and subsequently tried in July 2007.

Although the right to *habeas corpus* is guaranteed in Article 13 of the Constitution, the authorities do not respect this right. The judicial authorities failed to act on a writ of *habeas corpus* issued by a lawyer on behalf of a man arbitrarily arrested and detained without charge for some five months in Malabo police station in 2007. He was released in June that year without the writ of *habeas corpus* having been heard.

² See News service 144, *Equatorial Guinea: Prisoners of conscience released* (AI Index AFR 24/002/2006) of 7 June 2006.

In February 2008, the same lawyer issued a writ of *habeas corpus* on behalf of the wife of a prisoner of conscience, who had been arbitrarily arrested in December 2007 and was being held without charge in Malabo Central Police Station. On this occasion, the judicial authorities promptly issued an order for her to be brought to court in order to determine the legality of her arrest and detention. However, the police authorities did not comply with the order. The woman was released from detention in April 2008 on the orders of a high-ranking police officer.

Incommunicado detention

Incommunicado detention for long periods is not rare. Although it is more common for political detainees to be held incommunicado following their arrest, prolonged incommunicado detention *after* their conviction, presumably as a form of punishment, is also not uncommon. About 30 political prisoners currently serving long sentences after being convicted in unfair trials of plotting against or attempting to overthrow the government were held incommunicado in pre-trial detention, some for up to two years. Some were permanently handcuffed and shackled during that time.

Amnesty International is also concerned that another group of political prisoners have been held incommunicado and permanently in shackles since their arrest in March 2004³. They were also held in handcuffs for at least two years.

In addition, three people abducted from Nigeria in June 2005 (see below) and unlawfully taken to Black Beach Prison in Malabo continue to be held and in shackles. Until June 2008 they were also handcuffed.

Amnesty International considers that prolonged confinement, incommunicado detention and the use of shackles amount to cruel and inhuman treatment and contravenes the UN Minimum Rules for the Protection of Prisoners according to which prisoners should be allowed at least one hour of physical exercise daily.

Amnesty International is concerned that since December 2007, when the authorities banned visits to prisons by families and other communications with the outside world, prisoners throughout the country are *de facto* held in incommunicado detention.

Unlawful transfers and abductions of political opposition exiles/Enforced disappearance

Abductions of Equatorial Guineans exiled in neighbouring countries and their subsequent unlawful transfer to secret detention in Equatorial Guinea are quite common. Amnesty International has received numerous reports of such enforced disappearances, which usually occur with the connivance of officials in the neighbouring countries. Once back in Equatorial Guinea, they are often held incommunicado for long periods of time, often years, in conditions which amount to torture or other ill-treatment, in handcuffs and shackles. The authorities do not acknowledge that they are holding them or disclose their whereabouts.

The authorities have not acknowledged the detention of three political opponents abducted in Nigeria in 2005, despite the fact that they are widely known to be held in Black Beach Prison, in solitary confinement and in shackles. Amnesty International has been reliably informed that prior to visits to the prison by delegations from the National Human Rights Commission and the Red Cross these and other prisoners held in secret detention were blindfolded and taken to either the central police station or military barracks for the duration of the visits. Amnesty International is also aware that neither the UN Working Group on Arbitrary Detention nor the UN Special Rapporteur on Torture were able to see these prisoners when they visited the prison in July 2007 and November 2008, respectively. The authorities have also failed to publicly acknowledge the abduction in October 2008 from Cameroon of a former high-

³ See UA 116/04, AI Index AFR 24/003/2004 of 19 March 2004 and updates; News service 065, *Equatorial Guinea: Alleged mercenaries and opposition activists at grave risk of torture and death*, AI Index AFR 24/004/2004 of 19 March 2004; News Service 308, *Equatorial Guinea: Trial of alleged coup plotters seriously flawed*, AI Index AFR 24/017/2004 of November 2004; *Equatorial Guinea: A trial with too many flaws*, AI Index AFR 24/005/2005 of June 2005.

ranking military officer and his subsequent detention in Black Beach Prison, or the most recent abduction of two men from Nigeria in December 2008 who are reportedly held in Bata Prison.⁴

Suspected criminals have also been subjected to enforced disappearance. Repeated requests for information by the family of a man arrested in June 2004 in connection with an armed robbery in the headquarters of the oil company *Total Guinea Ecuatorial* in Malabo, have met with silence from the authorities. The whereabouts of two foreign nationals also arrested in connection with the robbery have never been disclosed either.

Torture/ill-treatment/death in custody

In the last two years, Amnesty International has received fewer reports of torture and other ill-treatment of political detainees and no reports of torture of political prisoners. Nevertheless, Amnesty International continues to receive reports of torture or other ill-treatment, primarily of suspected criminals, in police stations, especially in Bata. Convicted criminals are reportedly routinely beaten in both Black Beach and Bata Prisons as punishment.⁵ Political prisoners, although not physically tortured, are subjected to other forms of cruel, inhuman or degrading treatment or punishment, including by being held in prolonged incommunicado detention, in handcuffs and/or shackles; and denied adequate medical assistance or food.

Torture and other ill-treatment are mostly reported at the time of arrest and in pre-trial detention. It is practised to obtain confessions to use as evidence in court, contrary to international human rights standards, and as punishment. It is directed at political detainees as well as at suspected criminals. In the absence of a juvenile justice system, such treatment is also meted out in police stations to minors suspected of petty crimes.

Torture and other ill-treatment usually consist of beatings on parts of the body, commonly on the sole of the feet and buttocks, with batons, rubber-covered cables, and sticks; and of electric shocks with battery chargers or car batteries. The detainees often have their hands and feet tied together and then suspended from the ceiling and beaten. Sometimes a heavy object is placed on their backs. They rarely receive medical treatment for injuries sustained as a result of torture or other ill-treatment.

Since 1998 Amnesty International has recorded several cases of death in custody as a result of torture. Other deaths have occurred as a result of the denial of medical care for chronic illnesses or diseases contracted while in detention. None of these instances have been investigated and those responsible have not been brought to justice.

Despite the promulgation in November 2006 of a law banning torture, impunity prevails. Amnesty International knows of only one police officer who was tried in early 2008 and sentenced to seven months' imprisonment in connection with the death of a man as a result of torture. However, other officers, some of them high-ranking, known to have regularly tortured detainees continue in active service in police stations.

Unfair trials

Trials of large numbers of people accused of plotting to overthrow the government have occurred at regular intervals, the most recently in July 2008. Such trials invariably fail to comply with international standards of fairness. In the past they were routinely conducted by military courts using summary procedures and without right of appeal against conviction or sentence, and the judges were appointed by the government and had little or no legal training. Since 2002, some trials of political opponents and others charged with plotting or attempting to overthrow the government have been held in civilian courts. Nevertheless, these trials were grossly unfair.

⁴ See AU58/09 *Enforced disappearance/incommunicado detention/fear of torture or ill-treatment*, AI Index: AFR 24/001/2009, of 5 March 2009

⁵ See the UN Special Rapporteur on Torture's report of his visit to Equatorial Guinea in November 2008, A/HRC/10/44/Add.1, of 23 January 2009.

Confessions, including confessions obtained under torture, are regularly admitted in court and often constitute the main if not the only basis for conviction. Defendants seldom have access to lawyers until a few days before their trial, which seriously limits the ability of their lawyers to prepare an adequate defence.⁶

In violation of both Equatorial Guinean law and international law, defendants are often tried in their absence; sometimes even when they are known to be detained in prisons in Equatorial Guinea. The three men abducted from Nigeria in June 2005 mentioned above, were tried in their absence in September of that year. The authorities claimed that they were not in the country, although their detention in Black Beach Prison was widely known.

Administration of justice system

Human rights violations occur in the context of a weak judicial system, which lacks independence, and in the absence of the rule of law. Article 83 of the Constitution provides for an independent judiciary. However, Article 86 provides that the President is the First Magistrate of the Nation, which can be seen as negating the provisions of Article 83.

In practice, there is no clear distinction between the functions of the different branches of state security forces, which are militarised and control the judicial system.

The Penal Code and Penal Procedures Code in force in Equatorial Guinea are the 1967 Spanish Penal Code and Penal Procedures Code in force at the time of Equatorial Guinea's independence in 1968. There appears to have been no attempts to reform the two codes or to embark on a comprehensive reform of the criminal justice system.

Prisons, although under the jurisdiction of the Ministry of Justice, are in effect controlled by the Ministry of Defence with soldiers carrying out the functions of prison guards.

D. Recommendations for action by the State under review

Amnesty International calls on the government to:

Ratification of human rights treaties

- Ratify all outstanding human rights treaties, in particular the Second Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, and the Optional Protocol to the Convention Against Torture;
- Incorporate the provisions of international human rights standards into domestic law.

Arbitrary arrest

- Ensure that nobody is arrested for exercising their rights to freedom of expression, association and assembly, and that arrests are carried out in accordance with the law, by law enforcement officials.

Detention without charge or trial/ habeas corpus

- Ensure that detainees are brought before a court to have their detention legalised by a judge within 72 hours, in accordance with law, or released;
- Ensure that *habeas corpus* is an effective resource and that writs of *habeas corpus* are dealt with as a matter of urgency.

Incommunicado detention

- End immediately the practice of incommunicado and secret detention;

⁶ See: *A trial with too many flaws*, AI Index: AFR 24/005/2005, of June 2005 and *Equatorial Guinea: Concerns about the recent trial of Simon Mann and other co-accused*, AI Index: AFR 24/009/2008, of 16 July 2008.

- Ensure prisoners have access to their families and lawyers and reinstate regular family visits.

Abductions/enforced disappearances

- Thoroughly investigate all reports of abduction of political opponents from neighbouring countries and bring those responsible to justice;
- Publicly acknowledge the detention and disclose the whereabouts of those held;
- Introduce an effective registry of prisoners to ensure that they can be promptly traced;
- Allow unrestricted inspections by national and international organizations to all places of detention.

Torture, ill-treatment, death in detention

- Implement Law 6/2006 banning torture and other ill-treatment and bring to justice all police officers or other law enforcement officials suspected of being responsible for acts of torture or other ill-treatment, in accordance with international standards for fair trial;
- Ensure reparation, including fair and adequate compensation for victims of torture and other ill-treatment inflicted by state agents;
- Remove immediately handcuffs and shackles from prisoners and abstain from their further use.

Unfair trials

- Ensure that military courts are not used to try civilians or to try military personnel except for purely military matters;
- Ensure that all trials are conducted in accordance with international standards for fair trial.

Administration of justice system

- Carry out the necessary reforms to ensure the independence of the judiciary;
- Amend the Penal Code and the Penal Procedures Code, to bring them into conformity with international human rights law;
- Provide systematic training to all law enforcement officials on their responsibility to protect human rights;
- Carry out reform of the security forces to clearly define the responsibilities of each branch and end their interference with the judicial system;
- Improve conditions of detention, particularly in police station by providing, food, water, sanitation and washing facilities and by reducing overcrowding.

Appendix: Amnesty International documents for further reference⁷

Equatorial Guinea: Enforced disappearance/incommunicado detention/fear of torture or ill-treatment (AFR 24/001/2009), 5 March 2009

Equatorial Guinea: Enforced disappearance/incommunicado detention/fear of torture or ill-treatment (AFR 24/013/2008), 27 October 2008

Equatorial Guinea: Opposition under threat (AFR 24/011/2008), 22 September 2008

Equatorial Guinea: Concern about the recent trial of Simon Mann (AFR 24/009/2008), 16 July 2008

Equatorial Guinea: Amnesty International calls for the release of all prisoners of conscience (AFR 24/006/2008), 11 June 2008

Equatorial Guinea: Denial of medical care (AFR 24/008/2007), 12 June 2007

Equatorial Guinea: Fear of torture/ill-treatment (AFR 24/011/2006), 26 October 2006 and update (AFR 24/013/2006), 14 November 2006

Equatorial Guinea/Nigeria: Concern about an unfair trial, torture and possible "disappearance" (AFR 017/2005), 23 September 2005

Nigeria/Equatorial Guinea: Fear for the safety/torture/focible return (AFR 44/009/2005), 20 May 2005 and updates AFR 24/016/2005), 26 August 2005; and (AFR 24/018/2005), 23 September 2005

Equatorial Guinea: A trial with too many flaws (AFR 24/005/2005), 7 June 2005

Equatorial Guinea: Prisoners starving to death (AFR 24/006/2005), 14 April 2005

Equatorial Guinea: Denial of food/medical concern (AFR 24/007/2005), 12 April 2005, and update (AFR 24/011/2005), 8 June 2005

Equatorial Guinea: Stop the killings, the rape and arbitrary arrest (AFR 24/009/2004), 4 July 2004

Equatorial Guinea: Fear for the safety/fear of torture/medical concern (AFR 24/008/2004), 2 July 2004 and update (AFR 24/010/2004), 29 July 2004

Equatorial Guinea: alleged "mercenaries" and opposition activists at grave risk of torture and death (AFR 24/004/2004), 19 April 2004

⁷ These documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/equatorial-guinea>