



**EG JUSTICE**  
TOWARD A JUST EQUATORIAL GUINEA



## **Joint Submission to the Universal Periodic Review of Equatorial Guinea April – May 2014 (19<sup>th</sup> Session)**

### **Introduction**

1. This is a joint submission by EG Justice<sup>1</sup> and the International Network of Human Rights (RIDH)<sup>2</sup>. The submission by EG Justice to the Universal Periodic Review (UPR) of Equatorial Guinea in December 2009 focused primarily on specific economic and social rights. It also covered the right to be free from torture and other cruel, inhuman and degrading treatment or punishment, and made specific recommendations on those rights.
2. In the present submission for the forthcoming 19<sup>th</sup> session of the UPR of Equatorial Guinea, EG Justice and the RIDH highlight the current human rights situation in the country, particularly with regard to civil and political rights, and makes recommendations to address persistent violations.
3. The signatory organizations also comment briefly on the recommendations to Equatorial Guinea put forward by member states during the previous UPR, and on the state of their implementation. Equatorial Guinea accepted 86 of the 115 recommendations made, rejected four (related to allowing political parties and the press to operate freely in the country, requesting meaningful election reforms, and those pertaining to the eventual abolition of the death penalty, including the ratification of the Second Optional Protocol of the International Covenant on Civil and Political Rights), and declared their intention to continue examining the remaining 25<sup>3</sup>, with a view to incorporating them in their human rights action plan.
4. However Equatorial Guinea has made little progress towards implementing the recommendations it supported or those it took for further consideration. Concerning the

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<sup>1</sup> EG Justice ([www.egjustice.org](http://www.egjustice.org)) is the only non-governmental advocacy organization dedicated to promoting human rights, the rule of law, transparency and civic participation in Equatorial Guinea. It is based outside Equatorial Guinea and works with a network of local human rights defenders.

<sup>2</sup> RIDH ([www.ridh.org](http://www.ridh.org)) is a Geneva-based human rights organization that seeks to: (1) contribute to strengthening the capacities of actors related to the promotion and protection of human rights, providing information, analysis, and technical support in the processes in which they participate. (2) To work as an intermediary in processes of advocacy and dialogue with the goal of having human rights be upheld in a given context.

<sup>3</sup> Report of the Working Group on the Universal Periodic Review of Equatorial Guinea. (A/HRC/13/16), of 4 January 2010.

right to primary health, education and provision of water and sanitation<sup>4</sup>, the signatory organizations have observed no significant improvements in the attainment of these rights by the people, despite significant government investment in lavish resorts, new cities, hospitals, power plants, and other infrastructure projects that fail to prioritize or address poverty alleviation. According to a report by the International Monetary Fund, health and education expenditure in 2011 accounted for only 3% of total capital spending, of which 1% corresponded to education and 2% to health<sup>5</sup>.

5. Equatorial Guinea has not signed or ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>6</sup>, and failed to present its report on the implementation of the Covenant (due in 1990) to the Committee on Economic and Social Rights pre-session in May 2012.

6. In April 2010 the EITI board rejected Equatorial Guinea's candidacy for failure to comply with the organization's rules. One of the EITI requirements for membership is genuine participation of civil society in the process, a requirement that continues to present a serious challenge to the Government. The signatory organizations have learned that in 2012, the Government of Equatorial Guinea sought assistance from the World Bank in the elaboration of its re-application process for EITI membership. The World Bank has since held a series of workshops on transparency in the extractive industry for civil society groups. Nevertheless, related recommendations made during the previous review have still not been implemented<sup>7</sup>.

7. Equatorial Guinea has made little effort to eradicate torture, which continues with almost total impunity, despite the existence of a law banning it. Moreover, Equatorial Guinea has not yet ratified the Optional Protocol to Convention against Torture<sup>8</sup>, a recommendation it took for further consideration.

## **Legal and human rights framework**

8. In March 2011 President Obiang ordered the revision of the Constitution and subsequently appointed a commission, which lacked independence, to draft the reforms. In July the government-controlled Parliament approved the draft reforms without debate, which was then put to a referendum in November. The draft reforms were only disseminated to the public very few days before they were expected to vote on it. The opposition was not given access to the state controlled media to discuss the draft with the electorate. Security forces arrested and incarcerated a prominent political activist from the opposition, Marcial Abaga Barril, without a warrant and on false charges, and other members of the political opposition were harassed ahead of and during the referendum. The reforms were purportedly approved with 97.7% of the vote, and the new Constitution was promulgated in February 2012.

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<sup>4</sup> Ibid, Paragraph 70, recommendations 64-84 made by the following State Members: Angola, Portugal, Canada, Mexico, Chile, Uruguay, Algeria, Spain.

<sup>5</sup> International Monetary Fund: Republic of Equatorial Guinea. Staff Report on 2012 Article IV Consultation. March 2013, page 8.

<sup>6</sup> Report of the Working Group on the Universal Periodic Review, op. cit. Paragraph 70, recommendation 4 (Portugal).

<sup>7</sup> Ibid, paragraph 70, recommendations 11-13 (UK and Canada).

<sup>8</sup> Ibid, paragraph 71, recommendation 1, made by UK, France, Chile, Czech Republic, Spain and Argentina).

9. The new Constitution increased the already-extensive powers of President Obiang and created a new 75-member Senate; 15 of whom will be directly appointed by the President. It also created and gave the President the power to appoint—contrary to the Paris Principles—the members of an Audit Court and an Ombudsman (Defensor del Pueblo). It is therefore doubtful that these institutions will enjoy any independence to fulfil their tasks or, for example, to monitor the conduct of the security forces, or to promote and protect human rights.

10. The Constitution of Equatorial Guinea affirms the State's rights and obligations under international treaties. But, to the knowledge of the signatories, with the exception of law 6/2006 on the Prevention and Punishment of Torture, which reflects some of the provisions of the Convention against Torture, no legislation has been enacted to incorporate the provisions of those treaties into national law.

11. Equatorial Guinea has ratified a number of UN treaties including: The International Covenant on Economic, Social and Cultural Rights (ICESCR); International Convention on Civil and Political Rights (ICCPR) and its First Optional Protocol; Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). However, it has thus far ignored its reporting obligations under almost all of these treaties, and it has not ratified or taken steps towards ratification of other treaties, as recommended in its previous review, including: The Optional Protocol to the ICESCR; the Second Protocol to the ICCPR aiming at the abolition of the death penalty; the Optional Protocol to CAT; the Convention for the Protection of All Persons from Enforced Disappearances and its Optional Protocol; International Convention on the protection of the Rights of All Migrant Workers and Members of their Families<sup>9</sup>.

## **The Human Rights Context**

12. For all its rhetoric and international human rights commitments the Equatorial Guinea State continues to engage in politically motivated arrests, arbitrary, warrantless, and prolonged incommunicado detentions, and criminal prosecutions to intimidate or punish dissidents. Security personnel and other officials continue to use torture as a means of punishment against criminal suspects with impunity. Judges lack the requisite training and independence to adjudicate, hold security forces accountable for human rights violations, and protect the due process rights of victims. Thus, the culture of impunity persists, and the systematic crackdown on freedoms of the press, expression, association, and assembly has increased, especially since the popular uprisings in North Africa and the Middle East, and in the weeks preceding national elections.

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<sup>9</sup> Ibid, paragraph 70, recommendations 1-8 (UK, France, Chile, Czech Republic, Spain Argentina, Slovenia, Sweden, Azerbaijan, Nigeria and Mexico).

## Harassment and arrest of Human Rights Defenders

13. Human rights organizations cannot register or operate as such in Equatorial Guinea. There is only a small number of lawyers and individual human rights defenders who operate under the auspices of organizations with a more tolerated mandate, and in a very hostile environment. These individuals are routinely harassed, risk losing their jobs or professional licenses, and are frequently arrested without a warrant, often on orders of political authorities, and occasionally convicted and imprisoned on spurious charges.

14. Wenceslao Mansogo Alo, a medical doctor and prominent member of the political party, *Convergencia para la Democracia Social- CPDS* (Convergence for Social Democracy) and well-known human rights activist, was arrested without a warrant in Bata on 9 February 2012, in connection with the death of a female patient during surgery. Without presenting any evidence, the deceased's family had accused Dr Mansogo of mutilating her body. Two reports of post-mortem examinations (one of which was conducted by the then Minister of Health) confirmed that the body was intact and that the woman had died of a heart attack. Nevertheless, again without supporting evidence, the minister claimed that the heart attack had been caused by maladministration of anaesthesia. In May, Dr Mansogo was convicted of medical negligence and sentenced to three years' imprisonment and ordered to pay compensation to the family of the deceased and the State. The political nature of the imprisonment of Dr Mansogo became patently obvious during court proceedings. The prosecution failed to present any evidence to substantiate its charges, and members of the deceased's family admitted in court another member of the family—a police officer in Bata Central Police station—coerced them into lodging the complaint against Dr Mansogo. Dr Mansogo was released under a partial Presidential pardon in June that still requires that he close his clinic and refrain from practicing his profession for five years and pay damages.

15. Subsequently, one of Dr Mansogo's lawyers, Ponciano Mbomio Nvo, was suspended from legal practice for two years by the Bar Association, which is far from independent, for alleged misconduct. He was not given a chance to refute the accusation. His suspension appeared to be politically-motivated, related to criticism he made of the authorities in his closing remarks in the trial of Wenceslao Mansogo, as well as to a case of corruption he was working on in which members of the government and the judiciary were apparently implicated.

16. Another human rights defender and lawyer Fabián Nsue Nguema, was arrested without a warrant on 22 October 2012 at Black Beach prison, Malabo, where he had gone to see his client Agustín Esono who had been arrested a week earlier. Fabián Nsue was held in Black Beach prison for three days. The authorities refused to reveal his whereabouts, although his car could be seen parked inside the prison precinct. After three days he was transferred to Malabo's Central Police Station, from where he was released without charge on 30 October. The police alleged that Fabián Nsue's client had implicated him in a plot to destabilize the country.

## The right to liberty and not to be arbitrarily arrested

17. This right is guaranteed by the Constitution<sup>10</sup>, but it is easily ignored. Political opponents, whether real or perceived, are routinely harassed, arrested and held for varying periods, often incommunicado and without charge. Lawyer Fabián Nsue's client, Agustín Esono, a teacher, was arrested in Bata on 17 October 2012, and transferred to Black Beach prison in Malabo. He was held incommunicado for over a week. During that time, according to his lawyer, Agustín was tortured several times. He was arrested after exchanging money for a French national. However, he was accused of financing a plot—led by an exiled political opponent—to destabilize the country. Almost a year later<sup>11</sup>, he remains in Black Beach prison without charge or trial. As a result of the torture he was subjected to, he is said to suffer from permanent impairment of his hearing in his left ear.

18. National and foreign<sup>12</sup> business associates of government officials and the President's family have also been arrested in what appears to be an attempt to silence them and stop them from testifying in corruption-related cases brought against the President's family and their assets in the USA, Spain, and France. Florentino Manguire, a former employee of President Obiang's eldest son, the Second Vice President, spent two years in prison out of a three-year sentence for alleged misappropriation of company assets. He was arrested in Bata in May 2010, and held without charge or trial for a year. He was released by a presidential pardon in June 2012, only to be arrested again, two months later, and accused of providing third parties with documents relating to the President's son's timber business. Two days after his arrest he was transferred to Malabo central police station, where he was held, uncharged, until his release on 23 August, which coincided with mounting international pressure from rights groups demanding the release of Wenceslao Mansogo and other political prisoners.

19. Roberto Berardi, an Italian citizen and business partner of President Obiang's eldest son in a civil construction company, was arrested without a warrant in January 2013 in Bata, held without charge for several weeks and reportedly tortured. After three weeks in detention he was informed that his business partner, the Second Vice President, had accused him of theft of company assets. Late in 2012 Mr. Berardi learned of the asset forfeiture case by the United States Department of Justice against the US-based properties purchased by his partner with transferred company funds. He subsequently raised the matter with his partner, and this resulted in his arrest and imprisonment. At the time of writing, Roberto Berardi is serving a two year and six month jail sentence, after a sham trial. There are reasons to believe that the arrest and imprisonment of Roberto Berardi was instigated to pre-empt the possibility of his being called by US prosecutors, as a witness against his partner.

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<sup>10</sup> Ley Fundamental de Guinea Ecuatorial, - Reformed Constitution of 16 February y 2012. Article 13, paragraph 1 (m. and paragraph 1 (n).

<sup>11</sup> At the time of making this submission.

<sup>12</sup> See article "La extorsión de los Obiang- Inversores españoles revelan cómo perdieron sus empresas en Guinea Ecuatorial. Los empresarios se asociaron con los hijos de Obiang. Jueces franceses recaban sus testimonios en Madrid y los toman declaración en Anticorrupción" in the Spanish newspaper, El País of 24 March 2013, which can also be found in: [http://politica.elpais.com/politica/2013/03/22/actualidad/1363976497\\_597498.html](http://politica.elpais.com/politica/2013/03/22/actualidad/1363976497_597498.html).

## **Freedom from torture and ill-treatment and other cruel, inhuman or degrading treatment**

20. Despite the existence of a law forbidding torture, police and soldiers continue to torture civilians with impunity. Little effort has been made to implement the law or the recommendations of the UN Special Rapporteur on Torture<sup>13</sup>. To our knowledge, the government pursued one case of torture. Nevertheless, the perpetrator soon received a presidential pardon and received a military promotion. While fewer political detainees have been subjected to physical torture or ill-treatment in the past four years, they are nevertheless subjected to other forms of inhuman treatment such as being held incommunicado. Torture is used to extract confessions, or as a form of punishment for criminal suspects.

21. Foreign nationals suspected of being undocumented migrants are frequently targeted and ill-treated by the security forces in periodic raids on their homes and neighbourhoods. They are often beaten, have their property stolen, and are imprisoned and held in inhuman conditions for weeks or months before eventually being deported, often regardless of their legal status in the country.

## **Violations of the right to life - unlawful killings**

22. Police and soldiers continue to violate the right to life, which is guaranteed by the country's Constitution<sup>14</sup>. The victims of such violations include foreign nationals. Most are killed for refusing to pay bribes at illegal road checkpoints. Some are shot, others beaten to death. At least three such cases were reported in 2012: in May police beat a Nigerian national to death for refusing to provide an official with extra fuel.

23. In another incident also in May, Oumar Kone, a Malian national was shot in the head at point blank range by a soldier for refusing to pay a bribe at a road block. According to the Malian consul in Malabo, he was the sixth Malian national to be killed by security personnel in Equatorial Guinea since 2011<sup>15</sup>. Later, in November, another Malian national was beaten to death at a roadblock by a soldier for refusing to pay a fine.

## **Freedom of expression, assembly and association and freedom of the press**

24. These rights are not respected despite being enshrined in the Constitution and national law<sup>16</sup>. The government exerts total control over the media, and journalists are subject to harassment, dismissal and even arrest when they show any degree of

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<sup>13</sup> "Promotion and protection of All Human Rights, civil, political, Economic, Social and Cultural Rights, including the Right to Development: Preliminary note of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Novak – Mission to Equatorial Guinea" A/HRC/10/44/Add.1 (23 January 2009).

<sup>14</sup> Ley Fundamental de Guinea Ecuatorial, Op. cit. Article 13, para 1 (a).

<sup>15</sup> Reported by APA on 5 May 2012. Found in [http://www.malijet.com/les\\_faits-divers\\_au-mali/43099-guinee%3%A9e-equatoriale%E2%80%93mail-%3A-un-malien-de-24-ans-tu%3%A9-%C3%AO-bata-par-un-html](http://www.malijet.com/les_faits-divers_au-mali/43099-guinee%3%A9e-equatoriale%E2%80%93mail-%3A-un-malien-de-24-ans-tu%3%A9-%C3%AO-bata-par-un-html).

<sup>16</sup> Article 13.1 (b); 13.1 (k). Ley Fundamental de Guinea Ecuatorial, op cit.

independence, or report on subjects deemed as damaging to the authorities or the country's image.

25. In February 2010 a Radio Bata journalist was arrested without a warrant immediately after he reported the discovery of several bodies, believed to be victims of human trafficking, in a landfill outside the city. Two months later, a foreign news agency correspondent was also arrested without warrant at Malabo airport on the grounds that he did not have special accreditation to cover the arrival of Economic and Monetary Community of Central Africa (CEMAC) heads of state for the inauguration of CEMAC's parliament.

26. In February 2011 the government ordered a news blackout on events in North Africa. A month later a radio journalist was suspended and beaten for reporting on the situation in Libya. Foreign journalists are not spared harassment. In June, three members of the German television network ZDF were arrested, detained for five hours and expelled from the country for interviewing the leader of the opposition party CPDS and filming the Malabo slums.

27. Freedom of assembly is severely curtailed. Following mass uprisings in North Africa and the Middle East in March 2011, all demonstrations—except those orchestrated by the government—were banned. To enforce the ban, security personnel were deployed in the streets of all the main cities.

28. One demonstration planned by political activists in May 2013, and another one planned by the main political opposition party for June in Malabo were forbidden and the authorities threatened to use force against demonstrators. In both instances, the organizers sought and were denied a permit to hold a peaceful march. Security personnel were deployed in large numbers to pre-empt any possible demonstration, with the proposed demonstration sites blocked off by tanks, and helicopters hovering overhead. Organizers of the May demonstration were arrested, including lawyer, Fabian Nsue Nguema, Enrique Nsolo Nzo, Jerónimo Ndong and Clara Nsegue Eyí "Lola", who was confined to the town of Mongomo, where she remains imprisoned, without charge.

29. Since May 12, following the first request by political activist to hold a peaceful demonstration, the government has blocked off access to the web sites of opposition political parties, dissident groups and social networking site Facebook. All the affected sites remain inaccessible via the government provided networks, while the government's and the ruling party's web sites have been fully accessible and were never interrupted.

## **Recommendations**

30. The government of Equatorial Guinea should:

- Ratify all the human rights treaties still pending, as recommended in the first review in 2009, specifically: the Optional Protocol to CAT; the Optional Protocol to the ICESCR; the Second Protocol to the ICCPR aiming at the abolition of the death penalty; the Convention for the Protection of All Persons from Enforced

Disappearances and its Optional Protocol; International Convention on the protection of the Rights of All Migrant Workers and Members of their Families.

- Refrain from intimidating, harassing, arresting and incarcerating human rights defenders to prevent their legitimate human rights work.
- End the practice of arbitrary arrest to silence critics.
- Ensure that those arrested are brought promptly before a court to determine the legitimacy of their arrest.
- Implement the law banning torture and carry out independent, thorough and impartial investigations into all allegations of torture and prosecute those responsible.
- Prosecute not only those who carry out acts of torture but also the political authorities who order or condone torture or ill-treatment.
- Carry out full investigations into all unlawful killings, including extrajudicial executions, and bring those responsible to justice.
- Respect and promote the right to freedom of expression, assembly and association, and refrain from arresting those who peacefully exercise those rights.
- Allow and promote the establishment of a truly free and independent media.
- Carry out reforms to ensure the independence of the judiciary.