



**UN HUMAN RIGHTS COMMITTEE
CONCLUDING OBSERVATIONS
ON EQUATORIAL GUINEA:
EVALUATION 2020-2021**

APROFORT

TRANSPARÊNCIA E INTEGRIDADE (TI-PT)



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Abbreviations

APROFORT	Support Protection and Strengthening of Civil Society project
ASONGA TV	ASONGA Television
CEIDGE	Center for Studies and Initiatives for the Development of Equatorial Guinea
CPLP	Community of Portuguese-Speaking Countries
ECOSOC	Economic and Social Council of the UN
EITI	Extractive Industries Transparency Initiative
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Fund
INSESO	National Social Security Institute
NGO	Non-governmental organizations
SEGESA	National Electricity Company of Equatorial Guinea
TVGE	Equatorial Guinea Television
UN	United Nations
UNDP	United Nations Development Programme
UPR	Universal Periodic Review

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Executive Summary

This report assesses compliance with the recommendations, called observations, of the Human Rights Committee (HRC) to Equatorial Guinea made in July 2019 [1]. The HRC specifically examines compliance with the International Covenant on Civil and Political Rights (ICCPR).

The analysis covering 2020 and 2021 highlights that little progress has been made in following up on the HRC recommendations. Positive measures include the enactment of an anti-corruption law, although it is not yet being implemented. It is also positive the fact that there is no registry of a death sentence by any court, although there have been deaths in police stations or at the hands of the security forces that have not been clarified [2]. The criminalization of female genital mutilation is positive, although it is not a common practice in the country.

In March 2021, an armory exploded in an army compound in the city of Bata, killing more than 100 people. This fact also had an impact at Civil and Political Rights. For example, military jurisdiction was used to try those allegedly responsible, a jurisdiction that prevents the victims from suing and whose impartiality was questioned by the HRC. On the other hand, compensation to the victims of the explosions is being audited by independent companies in compliance with a new agreement with the International Monetary Fund, which raises doubts about the management of those compensations. Citizens also had to endure long queues at the military control barriers that exist at the entrances and exits of the city of Bata and that contravene the observations of the HRC on freedom of movement. Finally, up to 18 victims of the explosions were arbitrarily held in a prison in Bata for more than a week without a judicial process. This arrest occurred after being expelled from abandoned houses they occupied after the destruction of their homes by the explosions [3].

On the other hand, this period of global pandemic has led to an increase in restrictions on fundamental rights through the adoption of confinement or lockdown measures. Although these measures were duly regulated by the laws enacted to control of the pandemic, it also highlights the excessive zeal with which the security forces have applied some of these measures such as arrests for not wearing a mask or ill-treatment for skipping confinement, which is contrary to the International Covenant on Civil and Political Rights.

This report is intended to encourage the authorities to accelerate the implementation of the HRC's observations at the legislative and practical levels, such as: the abolition of the death penalty; effective enforcement of the anti-corruption law; reduce arbitrary detentions even acknowledged by the authorities; eliminate and punish any form of torture and ill-treatment by law enforcement agencies; or make more efforts to reduce inequality between men and women.

Finally, this report wants to encourage the authorities to submit their progress report requested by the UNHRC for 2021 regarding the steps taken regarding the situation of "de facto state of emergency" (barriers, raids, or police controls), measures against corruption and management of natural resources and, finally, measures against torture and other degrading or inhuman treatment.

Methodological note

The report analyses the observations of the Human Rights Committee made in the last review of the country in 2019. The HRC made a series of findings for each area analyzed and then made observations or recommendations thereafter. The areas analyzed and the observations made are reflected here in a table and [1] then the available information on each area or issue is presented and the context is analyzed. The objective, therefore, is to see the compliance status by understanding the context. The report covers only the years 2020 and 2021.

For this report, the following sources were consulted: (a) publicly accessible sources; b) cases from social networks and complaints received by the legal clinic of APROFORT; c) workshop held in December 2021 that included two lawyers, a human rights activist, an academic expert and a former member of the European Parliament expert in governance and human rights issues; d) consultation with collaborators of the following collectives or organizations: EG Justice, Somos Parte del Mundo, CEIDGE (Spain), Somos+ and the African Association for Education for Development (UN ECOSOC member).

In addition, the report has had the contributions of the Equatoguinean Commission of Jurists (CEJ).

The report has avoided the use of real names to preserve the privacy of victims; nor has referred to cases that, although the importance of the facts has been verified by the information obtained through social networks, it was not possible to verify the authorship of the information.

About the Human Rights Committee

The Human Rights Committee regularly evaluates the signatory countries of the International Civil and Political Rights Pact, which was ratified by Equatorial Guinea in 1987. Countries are normally reviewed approximately every 5 years, and this is done based on the report submitted by the state parties or, in case of failing to submit a report, by the responses to the questionnaire sent by the committee to the state parties.

In the case of Equatorial Guinea, the analysis took into consideration the government's responses to the questionnaire submitted and the responses offered by the delegation of Equatorial Guinea at the interactive session that took place in July 2019 in Geneva. The HRC also heard oral and written submissions from NGOs during the review [4].

The concluding observations issued by the HRC following the review should be implemented and the state parties should report to its progress. In addition, Equatorial Guinea was invited by June 2021 a report on the progress made on 3 specific themes: the situation of de facto state of emergency related to police controls and barriers in the country; measures to fight corruption and the management of natural resources; and on measures to put an end to the practice of torture and ill-treatment.

Analysis of Observations

1. Constitutional and legal framework within which the Covenant is implemented

The State party should guarantee, in practice, the primacy of the Covenant over national law and an effective remedy for individuals seeking justice in the event of a violation of the Covenant. It should also make efforts to train all legal professionals, including judges, prosecutors and lawyers, public officials and the general public, on the rights enshrined in the Covenant and its Optional Protocol and on their application.

In practice, there haven't been court rulings invoking the precepts of the International Covenant on Civil and Political Rights.

In 2020, the Supreme Court of Justice began a training course aimed at magistrates, judges and prosecutors. This training was resumed in 2022 after a suspension due to the limitations of the pandemic. It has not been possible to determine whether the training included information on the Covenant, the Optional Protocol and its implementation.

There have been no other trainings for public officials and the population in general on the ICCPR.

Context:

It is difficult to access the judgments of the judicial bodies. According to the governance program between the Government of Equatorial Guinea and the International Monetary Fund [5], the judgments would be published in the Official State Gazette [6] and made available to the public online. However, the court rulings database on the Official State Gazette website does not contain such information [6].

2. Customary rules and domestic application of the Covenant

In accordance with general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the State party should ensure to all individuals within its territory the rights recognized in the Covenant and should take all possible steps to ensure that traditional and customary norms are consistently harmonized and made compatible with the Covenant.

Accordingly, the State party should eliminate discrimination against women in all matters relating to marriage, guardianship and inheritance, and ensure that the provisions applied by the traditional courts are in line with the Covenant. It should also ensure that traditional authorities receive training on the primacy of the Covenant's provisions and of positive law over customary law.

The Organic Law of the Judicial Power includes [7] the structure and competences of the Traditional Courts, and article 71 establishes the supremacy of positive law and international treaties. In practice, however, cases of discrimination continue to occur when applying customary rules.

Context:

In many cases, the courts do not apply the principles of equality between men and women enshrined in the Covenant. For example, when it comes to the distribution of inheritance or in cases of children's

custody, traditional criteria prevail, which are usually discriminatory for women. In a few cases, the decision-making of some family judges has been perceived to ensure that discrimination does not occur.

There is a proposed Family Code law that has not been enacted [8]. In general, families interpret family relationships as marriage, inheritance, filiation, etc. with customary law and in a subsidiary manner through the civil code in force, which corresponds to the period prior to independence in 1968. Nor is this code in conformity with the precepts of the Covenant.

3. Legislative reform

The State party should expedite the process to review the Code of Criminal Procedure and the Civil Code within a clear time frame and in a transparent and participatory manner. It should also adhere to the plan for adoption of the Criminal Code, enacting the Code as soon as possible through a transparent process involving civil society.

The State party should ensure that the rights enshrined in the Covenant are fully incorporated into the relevant domestic laws and take the necessary measures to ensure that all laws are interpreted and applied in full compliance with the Covenant.

In Equatorial Guinea, both the civil code and the criminal code in force in Spain before independence in 1968 remain in force [9]. The Code of Criminal Procedure, the Criminal Code and the Civil Code have not been replaced.

Context:

The government announced the imminent publication of a new criminal code before the HRC in 2019, but it has not been approved. During the process of drafting the reform project of the criminal code, some international institutions, or organizations such as the United Nations have received the draft and have had the opportunity to offer comments, however, there is no known process of formal consultation with civil society organizations.

On a practical level, the application of the obsolete criminal code continues to cause major irregularities as there is no legal certainty regarding the application of fines, for example, given that these are indicated in “pesetas” the currency existing in Spain in the past.

During the last Universal Periodic Review (UPR), which also took place in 2019, the government also announced the imminent publication of a new criminal code. However, as of mid-2021 it was still under study in parliament [10]. Likewise, the family code under study [8] would cover some of the provisions of the still applicable Spanish civil code.

4. National human rights institution

The State party should establish an independent national human rights institution with a broad human rights protection mandate and adequate human and financial resources, in accordance with the Paris Principles.

No independent national human rights institution has been established. There is no record of a specific law that establishes this institution in the period under review.

Context:

There is the National Human Rights Commission chaired by the current president of the lower house of the Parliament and therefore lacking the necessary independence required by the Covenant, as the HRC noted. There is also the figure of the Ombudsman created after the constitutional reform of 2012 [11]. However, neither of these two institutions is recognized as a National Human Rights Institution before the United Nations [12] and they do not comply with the recommended Paris Principles. [13]

During 2021, the General Directorate of Human Rights made a national tour of the penitentiary centers. According to the Director General, many citizens spend more time in detention than required by law. However, this body admits that it is not competent to demand respect for fundamental rights in compliance with the legal [14] provisions and the Covenant, redirecting it to the National Human Rights Commission.

5. Submission of periodic reports and statistics relating to the exercise of human rights

The State party should accelerate its efforts to ensure compliance with its reporting obligations and to implement the Committee's recommendations and views.

It should also improve the collection of statistics, in order to make progress in monitoring the implementation of the Covenant, and avail itself of technical and capacity-building assistance, as necessary.

Even though the committee requested that information be submitted, by June 2021, on recommendations 19 (fight against corruption and management of natural resources), 21 (state of emergency) and 39 (prohibition of torture and other cruel, inhuman, or degrading treatment or punishment), during 2020 and 2021 no report on these themes was found either on the official website of the Government or on the Human Rights Committee's. [13]

Context:

The collection of statistical data on human rights is uneven or generally of poor quality. For example, despite initiatives on human trafficking, in July 2021 the Director General for Human Rights acknowledged that there was no record of cases of trafficking in persons. [15]

6. Anti-corruption measures and natural resource management

- A. Intensify its efforts to combat corruption, including money-laundering, review the legal framework with a view to making it more comprehensive and protective of whistle-blowers, and reinforce good governance practices by monitoring the implementation of the anti-corruption strategy adopted;
- B. Strengthen the capacity of the prosecution service and law enforcement agencies to combat corruption, in particular through the provision of in-service training and adequate resources;
- C. Ensure that all acts of corruption are investigated in an independent and impartial manner, and that those responsible are brought to justice and, if found guilty, appropriately punished;
- D. Carry out further awareness-raising campaigns on the economic and social costs of corruption, directed at politicians, government officials, the business sector and the general public;
- E. Take the necessary measures, including the enforcement of Decree No. 42/2007 on the inclusion of civil society in the transparency initiative relating to the extractive industries, to ensure transparent management of natural resources, with the participation of civil society

Equatorial Guinea published an anti-corruption law in May 2021. In addition [16], in line with the anti-corruption and good governance plan agreed with the International Monetary Fund, the website of the Official State Gazette has been created. [6] Finally, in November 2021 a law was passed that required the publication of the ultimate beneficiaries of state contracts, although it is not available within the deadline established by law and, on the other hand, only refers to contracts for the fight against COVID-19 and reconstruction works caused by the explosions of March 7, 2021, in the city of Bata.

Context:

Despite these advances, the new anti-corruption law suffers from several loopholes [17]. For example, there is no provision for a regulation on international judicial cooperation. On the other hand, after the publication of the Law, the planned Anti-Corruption Commission has not been constituted within the period of 6 months included in the Law. The participation of civil society has not been properly developed, on the contrary, actions are foreseen that may limit its activity. Similarly, lawyers have been equated with public officials in some sections of the law, which could affect the fundamental rights of the defendants by undermining the right to effective judicial protection advocated by the Covenant.

The Good Governance and Anti-Corruption Plan signed with the International Monetary Fund provided for measures such as the publication of all laws in force, however, the Official State Gazette does not have all the legislation. This bulletin was also meant to publish the judgments of the courts and tribunals, which has not been implemented.

During 2021 mainly, the arrest and prosecution of officials and citizens involved in corruption cases were made public in the national media. For example, an investigation was opened in the administration of the country's ports [18], the Electricity Society of Equatorial Guinea (SEGESA), the State Treasury [19] or the National Social Security Institute (INSESOS) [20]. Many cases have been tried without basic judicial guarantees.

Several cases at the international level that have affected members of the government have not led to the opening independent investigations at the local level.

In October 2020, the Government of Equatorial Guinea withdrew its candidacy for the Extractive Industries Transparency Initiative (EITI) after several attempts to be validated. This withdrawal came after several delays. Among the issues that have impeded progress are the constraints to creating an enabling environment for civil society [21]. Following this withdrawal, the government has continued to carry out activities to join the initiative again.

7. State of emergency

The State party should, as soon as possible, take steps to end the de facto state of emergency and ensure that any state of emergency applied in its territory, and measures taken pursuant to that state of emergency, comply with the provisions of article 4 of the Covenant. In accordance with general comment No. 29 (2001) on states of emergency, the State party should promulgate

legislation containing clear provisions on states of emergency, so that there can be no derogation from the rights protected under article 4 (2) of the Covenant under any circumstances, and should ensure that any derogation is in accordance with the Covenant.

During 2020 and 2021, different measures were taken aiming at containing the spread of the COVID-19 pandemic. These regulations have included limitations on freedom of movement between regions and provinces of the country, establishing curfews and health tests to access a given territory. [22]

There is no knowledge of any additional legislative measures with respect to the regulation of the facto state of emergency required by the Human Rights Committee.

Context:

The observation of the Human Rights Committee refers to the elimination of all road barriers and controls that limit freedom of movement and that are not justified, a priori, by any regulations, such as those that were published in relation to the control of the pandemic. The HRC also made this observation addressing reports of police raids against the migrant population, events that continued to happen [23].

It should be noted that on the island of Bioko fixed roadblocks are less frequent than on the mainland. Fixed controls are joined by random controls which are also not provided for by specific regulations.

8. Counter-terrorism measures

The State party should ensure that measures taken to combat terrorism are fully compatible with its obligations under the Covenant and are directed solely at the suspected perpetrators.

During the period under review, no measures have been taken to comply with this observation.

9. Combating discrimination

- A. Enact comprehensive legislation providing full and effective protection against multiple discrimination, both direct and indirect, in all spheres and on all grounds enumerated in the Covenant;
- B. Provide access to effective and appropriate remedies for all victims of discrimination;
- C. Effectively protect lesbian, gay, bisexual, transgender and intersex persons, persons living with HIV/AIDS and persons with disabilities, and safeguard their fundamental rights, while ensuring that all cases of discrimination are duly addressed;
- D. Conduct wide-ranging education and awareness-raising campaigns that promote equality, tolerance and respect for diversity.

In Equatorial Guinea, no additional anti-discrimination legislation has been enacted between 2020 and 2021 as recommended by the HRC. Only the Organic Law of the Ombudsman has been modified in December 2021 [24]. This modification, however, has not included significant improvements, on the contrary, this new law has eliminated, among the functions of the Ombudsman, the hearing of direct appeals against acts of the administration that violate fundamental rights called “recurso de amparo”.

Campaigns have been carried out to raise awareness of the stigmatization [25] of people with HIV/AIDS in the public media [26]. On the other hand, the National Health Development Plan 2021-2025 [27] includes, among its objectives, the fight against discrimination and stigmatization of people living with HIV/AIDS. This plan specifically provides for "promoting the defence of human rights in the population covered by the creation of a national observatory that contributes to the elimination of discrimination and stigmatization; (...) develop a communication programme to eradicate discrimination and stigmatisation of workers and the promotion of preventive activities in the workplace (...)". These initiatives have been supported by different United Nations programmes such as the United Nations Population Fund within the Joint United Nations Programme on HIV/AIDS [28].

There is no knowledge of specific protection initiatives for lesbian, gay, bisexual, transgender and intersex people. The pre-independence Spanish Code of Military Justice remains in force, which in its article 352 sentences to up to 6 years in prison "dishonest acts with individuals of the same sex" [29].

Context:

The Ombudsman's last annual report published on its website is from 2017. Since then, the types of cases received in the last 2 years are unknown. [30]The online complaint system of its website is not functioning [31]. Several users have highlighted the difficulties of accessing their facilities and the lack of adequate response to their requests. On the other hand, the reform of article 7 of the Organic Law on the Ombudsman, eliminating the possibility of using the constitutional remedy of appeal (“recurso de amparo”, is again in the hands of the Constitutional Court that exercised this function before the creation of the figure of the Ombudsman. Access to the constitutional court in appeal is even more difficult and was already ineffective in the past.

In relation to the protection of lesbian, gay, bisexual, transgender, and intersex people, in addition to the failure to legislate for greater protection, a bill was made public that worsened the treatment of this group. The bill did not enter into force; however, the treatment of the collective has remained

discriminatory especially in police custody. Several members of this group have denounced ill-treatment, torture, or arbitrary detention because of their sexual orientation [32]. It should also be noted that the judicial authorities refer to legislation prior to independence in 1968 to take discriminatory measures against this group. This is the case of the Spanish Law of “Vagos y Maleantes” (lazy and mean people) of 1933, whose reform of 1954 [33] specifically includes this group among those against whom measures of prison, forced displacement or surveillance could be taken.

10. Rights of minorities

The State party should take effective measures to combat discrimination against minority ethnic groups. It should further ensure, when land expropriations do occur, that they comply with the law, that they are not discriminatory, that they are duly compensated and that the affected persons are provided with an effective and appropriate remedy

It has not been possible to identify specific policies or legislative measures aimed at combating discrimination against specific ethnic minority groups.

Context:

In Equatorial Guinea, laws prevent the creation of regional political parties and therefore groups representing minority groups lack institutional representation. Most of the demands of minority groups have been made in the diaspora, for example, of the Annobonese, Ndowé or Bubi people.

Within the majority ethnic group, there have also been regionalist or sub-ethnic (or clan) discriminations against those who do not exercise positions of power.

One of the manifestations of discrimination occurs precisely in the field of land grabbing where, although the motivations may be merely commercial, the origin of the victims can determine their degree of judicial and practical weakness.

Another manifestation of discriminatory treatment also occurs before law enforcement agencies in the treatment of ethnic minorities or in the use of national languages before institutions.

11. Non-discrimination and equality between men and women

- | | |
|--|--|
| A. Strengthen measures to raise public awareness with a view to combating gender stereotypes in the family and in society; | D. Take appropriate measures to reduce the incidence of polygamy, with a view to achieving its abolition, including by making the public more aware of the discriminatory nature of this practice. |
| B. Eliminate from its domestic legislation all provisions that discriminate against women; | |
| C. Take all necessary measures to promote women's equal participation in all aspects of public life, in particular their representation at the highest levels of the Government, and in legislative and judicial bodies; | |

Campaigns have been carried out essentially against violence against women, however, those aimed at combating stereotypes were lacking.

Discriminatory laws continue to exist in criminal matters, civil filiation, inheritance, or nationality. Many of these laws have rooted discriminatory practices in force in colonial times, as well as those of a customary nature that have continued to be implemented. [34]

No campaign was recorded aimed at raising awareness against the practice of polygamy with a view to its abolition or reducing its impact on society.

Context:

The percentage of women in government (ministers and ministers delegates) was between 5 and 8% between 2020 and 2021. In the legislative branch, about 18%, or 31 of 172 seats, in both the lower house and the Senate, are held by women. [35]

Regarding polygamy, it remains a practice in society. This is also reflected in discriminatory practices when distributing inheritance in polygamous families. Cases of polygamy among high-net-worth individuals in urban areas have increased.

12. Violence against women and domestic violence

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|--|--|
| <p>A. Adopt, in consultation with civil society, a comprehensive law to prevent, combat and punish all forms of violence against women and girls, including domestic violence, in both the public and the private spheres;</p> <p>B. Encourage women and girls who have been victims of violence to report cases to the police, prosecute all acts of violence against women and girls, and punish perpetrators appropriately;</p> | <p>C. Conduct nationwide awareness-raising initiatives and training programmes for State officials, especially judges, prosecutors, police officers, and medical and paramedical personnel, to ensure that they respond effectively in all cases of domestic violence and gender-based violence;</p> <p>D. Ensure that victims receive material and psychological support, and have access to legal services..</p> |
|--|--|

Campaigns on violence against women have been carried out in collaboration with United Nations agencies and the Ministry of Social Affairs and Gender Equality. [36]

In 2021, the authorities announced the elaboration of a National Action Plan on Security Council Resolution 1325 related to women, peace and security referring to the impact of armed conflict on women and girls. [37]

Although female genital mutilation is not a common practice in Equatorial Guinea, the Sexual and Reproductive Health Law [38] published in October 2021 includes its express prohibition.

Context:

According to data from the National Institute of Statistics of Equatorial Guinea, cases of gender violence have been 161 cases in 2020, representing an increase compared to 2019 (109 cases), although at similar levels to 2018 (155 cases). [39]

The government has announced the reform of the criminal code whose content seems to include the crime of violence against women even within marriage, a situation that is mitigated in the current criminal code. At present, judicial decisions remain discriminatory against women.

Several announced draft laws remain unpublished, for example: Laws on the "Code of the Family and Persons", "Regulation of Traditional Marriage in the Republic of Equatorial Guinea", "Organic Law on Comprehensive Protection to Prevent, Punish and Eradicate Violence against Women", all of them would have the purpose of preventing violence against women. [40]

In relation to violence against women and girls, public denunciations have been made in the official media. However, the prosecution of cases is generally very weak. Families in many cases desist from continuing cases. Victims in many cases are helpless and do not trust the action of justice due to inaction or slowness. In the few cases in which proceedings are carried out, procedural guarantees are not usually respected for defendants.

13. Voluntary termination of pregnancy and reproductive rights

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|--|--|
| A. Amend its legislation to guarantee safe, legal and effective access to the voluntary termination of pregnancy when the life or health of the pregnant woman or girl is at risk or when carrying the pregnancy to term could cause the pregnant woman or girl substantial harm or suffering, especially in cases where the pregnancy is the result of rape or incest or when it is not viable; | B. Ensure that women and girls who have recourse to abortion and the doctors who attend to them are not subject to criminal penalties, given that the existence of such penalties obliges women and girls to resort to unsafe abortions; |
| | C. Ensure full access to sexual and reproductive health services and comprehensive sexuality education for men, women, boys and girls throughout the country, including in rural and remote areas.. |

Equatorial Guinea published the Sexual and Reproductive Health Law in October 2021. This regulation establishes the "right to safe motherhood" (art. 8) and considers abortions performed outside the hospital environment a crime (art. 11). Access to voluntary interruption is guaranteed in case of risk to the woman, as well as in cases of incest or serious pathologies and in circumstances that violate morality or public order (such as rapes), provided that it is carried out before 12 weeks of pregnancy or 22 weeks in other exceptional cases. The law also includes the obligation of every health professional to care for a patient victim of a clandestine abortion (art. 69). [41]

The National Health Development Plan [27] includes among its objectives, measures aimed at reducing the risks of early pregnancies, clandestine abortions, and maternal deaths of adolescents through communication strategies.

Context:

Although the new Sexual and Reproductive Health Law improves the regulation of cases in which abortion could occur, this law does not repeal Law No. 1/1,991, dated April 4, which also regulates Abortion [42]. This regulation continues to include very high penalties for cases of voluntary interruption

of pregnancy for both the mother and the doctors (up to 12 years in prison). Fortunately, this regulation has not been implemented exhaustively.

Access to quality health services remains expensive for most layers of the population who are constrained by the lack of means. Several health centers offer care services at a reduced cost, but only available in specific population centers.

14. Death penalty

In accordance with general comment No. 36 (2018) on the right to life, the State party should consider formally abolishing the death penalty in law and repealing any provisions of the Criminal Code that provide for its application. It should also take all the necessary measures to expedite the process of ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

During 2020 and 2021 no death sentence of any individual was made public. Nor has any additional measures been taken to implement the commitment to the Community of Portuguese-Speaking Countries (CPLP) to abolish the death penalty. [43]

The Government has not developed or put forward any initiative to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights on the abolition of the death penalty.

Context:

In Equatorial Guinea, a moratorium on the application of the death penalty remains in force by "Government Resolution number 426 dated February 13, 2014" [44], but the death penalty has not been abolished. A draft criminal code has been introduced in parliament that excludes the death penalty [45]. Several analysts have indicated that elimination in the criminal code would not be sufficient for a definitive abolition because there is a penalty in the military jurisdiction [29] that is also applicable to civilians. Several death sentences that have been published in the past have been under military jurisdiction. [46]

15. Excessive use of force and conduct of law enforcement officers

The State party should take measures to effectively prevent and eliminate all forms of excessive use of force by police and security officers, including by:

- A. Adopting appropriate laws and policies to control the use of lethal force by law enforcement officials, based on the Committee's general comment No. 36 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- B. Intensifying the provision of training for law enforcement personnel on international standards on the use of force, and raising awareness of those standards among judges, prosecutors and lawyers;
- C. Introducing procedures designed to ensure that law enforcement operations are properly planned in a manner consistent with the need to minimize the risk they pose to human life;
- D. Ensuring that all cases of excessive use of force are independently investigated, that the perpetrators are prosecuted and sentenced to penalties commensurate with the seriousness of their acts, and that victims are provided with comprehensive reparation.

During 2020 and 2021, there is no record of laws or policies developed by the government to control the use of lethal force by law enforcement officers. In 2020, government media announced the participation of members of the gendarmerie in a training at the International School of Security Forces in Cameroon, this was a training for trainers of UN formed police units [47]. Also in 2021, a training was announced for several members of the security forces on human rights, among other topics. [48]

The French navy assists Equatorial Guinea by offering military training at the Naval Military School in the town of Tika in the continental region of the country.

According to the government, 230 cases of agents accused of aggressions, illegal tax collections, illegal detentions, robberies, murders, kidnappings, etc. were submitted to the Military Jurisdiction [49], however, this jurisdiction does not guarantee reparation to the victims since it does not provide adequate representation and defense.

Context:

Cases of abuse by law enforcement officers continue to occur. During the application of curfews due to the pandemic, cases of abuses by law enforcement agencies were reported, sometimes leading to situations of mistreatment of citizens [50]. As an example, the police proceeded to make arrests, leaving detainees locked until the fine was paid in a banking establishment [51]. In videos distributed by social networks that have not been verified, it has been possible to see abuses against several citizens by security forces for allegedly skipping the curfew or lockdown measures. It is unknown whether any action has been taken against the perpetrators of such abuses.

Many cases of abuses reported by citizens do not have the necessary legal course, which leads to impunity for the security forces. Exceptionally, cases of abuse that have generated social alarm, such as the case of alleged sexual abuse of minors on the island of Annobon in July 2020 [52], have triggered the announcement of investigations which result are unknown.

16. Prohibition of torture and other cruel, inhuman or degrading treatment or punishment

The State party should, as a matter of urgency, put an end to the practice of torture and ill-treatment. In particular, it should:

- A. Ensure prompt, thorough and effective investigation of all allegations of torture and ill-treatment; where appropriate, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offence; and provide effective remedies for the victims, including rehabilitation;
- B. Take all necessary measures to prevent torture, including by enhancing the training given to judges, prosecutors and members of the police, the military and the security forces;
- C. Collect accurate data on cases of torture and ill-treatment and on the ensuing prosecutions, convictions and sentences, and make such information public;
- D. Establish an independent mechanism for investigating complaints of torture and ill-treatment by law enforcement officials.

In November 2021, the government reported that in the last 5 years it has submitted to the military jurisdiction 230 cases of looting, aggression, illegal tax collections, illegal detentions, robberies, murders, kidnappings, etc. It also announced that at least 17 individuals had been expelled from the National Police as a result. [49]

The General Directorate of Human Rights of the government made a visit to the country's detention centers distributing the different human rights instruments, but there are no known specific trainings in the prevention and prohibition of torture.

There is no public record of the existence of a database indicating the exact number of cases of torture, ill-treatment, prosecutions, etc.

No independent mechanism has been established to investigate cases of torture and ill-treatment of law enforcement officials.

Context:

Cases of torture [53] continue to occur in facilities and/or at the hands of law enforcement agencies. Cases of complaints of torture are generally not dealt with by either the police authorities or the judicial authorities. In cases where they occur against minorities, activists or people of the LGTB+ collective, the investigations are almost dismissed or simply ignored, say several experts and activist consulted.

The military jurisdiction has been responsible for prosecuting many of the cases of complaints against the security forces. However, this jurisdiction does not guarantee reparation for victims by not allowing them to appear in court as accusation, although sentences may occasionally determine reparations. [54]

17. Prison conditions

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| <p>A. Effectively implement measures to reduce overcrowding, in particular through the promotion of alternatives to detention, such as bail and house arrest;</p> <p>B. Safeguard the right of all persons deprived of their liberty to be treated with humanity and dignity, and ensure that the conditions in which prisoners are held comply, in all places of detention, with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including those concerning access to health care, sanitation and food;</p> | <p>C. Take the necessary measures to separate prisoners according to age, sex and grounds for deprivation of liberty;</p> <p>D. Establish a centralized official register of the names and places where individuals are held, and times of arrival and departure, as well as of the names of persons responsible for their detention; that register should be made readily available and accessible to those concerned, including relatives.</p> |
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There is no record of specific measures to reduce overcrowding in prisons. There is no knowledge of a central register of detention centres or places of detention available to relatives of detainees and publicly disposed of in such detention centres.

Context:

Testimonies from people who have been detained indicate that conditions are deplorable, highlighting overcrowding, lack of health care and adequate food [55]. Sources consulted also indicate that suspects or convicts are still not adequately separated by age, gender, and reasons for detention.

In most cases, information on the whereabouts of detainees is not immediately provided to families or interested parties. Families continue to have to move from one detention centre to another to ascertain the whereabouts of their relatives. This situation also makes it difficult for defence counsel to act, who require the authorization or power of attorney of suspects to initiate defence proceedings, which violates their fundamental rights and the provisions of the Covenant.

18. Trafficking in persons and forced labour

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| <p>A. Enforce anti-trafficking legislation by conducting gender- and age-sensitive investigations and ensuring that perpetrators, including public officials who are complicit in trafficking, are prosecuted and appropriately punished;</p> <p>B. Train law enforcement officials on standards for the early identification of trafficking victims and their referral to appropriate assistance and rehabilitation services;</p> | <p>C. Allocate adequate resources for the creation of easily accessible reception centres in all provinces of the State party and for the provision of adequate legal, medical and psychosocial assistance in those centres;</p> <p>D. Take all necessary measures to eliminate forced labour and all forms of child labour, in particular in the domestic sector.</p> |
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Awareness campaigns have been conducted in collaboration with supporting organizations of the United Nations Development Programme and the U.S. Embassy. [56]

Training activities have been carried out for law enforcement agencies on trafficking in persons [57]. The specific budget allocation for the fight against trafficking in persons is unknown and the existence of reception centres in the country is unknown.

Context:

In 2019, the U.S. Department of State Report on Trafficking in Persons improved Equatorial Guinea's assessment by having reported 2 cases of human trafficking. However, the 2021 report also indicates that there have been no judicial convictions under the current 2014 human trafficking law [58]. Despite the trainings, the report indicates, there has been no improvement in reducing cases of human trafficking in the country.

In November 2021, there were raids against the migrant population without treating cases individually, which could determine whether migrants were victims of smuggling who may need protection.

Local NGOs have carried out awareness-raising programmes to reduce trafficking and child labour, indicating that cases continue to occur in the country. [59]

19. Arbitrary arrest and pretrial detention

The Committee encourages the State party to:

- A. Take appropriate measures to ensure that no person under its jurisdiction is subject to arbitrary arrest or imprisonment, or incommunicado detention, in accordance with the relevant provisions of the Covenant;
- B. Investigate all cases of arbitrary arrest and bring disciplinary action and/or judicial proceedings against those responsible;
- C. Ensure that those who have been detained enjoy all legal guarantees, in accordance with articles 9 and 14 of the Covenant;
- D. Amend its national legislation to limit the duration of pretrial detention, in accordance with the criteria established in article 9 of the Covenant and taking into consideration paragraph 37 of general comment No. 35 (2014), on liberty and security of person
- E. Take all necessary measures to ensure that judges have recourse to pretrial detention only in exceptional circumstances and preferably use alternative, non-custodial measures..

The General Directorate of Human Rights made public the situation of arbitrary detention of several inmates in the country's prisons [14]. There is no record of judicial proceedings against those responsible for arbitrary detentions.

Despite the government's announcement about submitting in the last 5 years 230 agents to the military jurisdiction for various crimes, among which are illegal detention, there is not record of specific policies to avoid these cases from happening. There is no information of any implementation of alternative measures to pre-trial detention.

Context:

Detentions continue to occur for periods exceeding 72 hours established by the 1995 habeas corpus law [60]. In cases of pre-trial detention, the type of crime committed, or the profile of suspects is generally not taken into account when placing them in police custody or prisons.

In several cases, illegal fines called "cell" rights have been required to be able to leave the detention centre despite the absence of a prison order, resulting in an increase in detention time.

Many of the complaints made about arbitrary detentions are not processed, or when they are processed, they are not exhaustively followed up by the judicial authorities.

Extortion by law enforcement agencies has been reported. The authorities also announced detention measures to sanction those skipping lockdown measures, when only an administrative fine should be applied. [51]

In November 2021, there were raids against the migrant population with arbitrary detentions that included people who did have residence permits [61]. Many of the detainees were locked in for weeks in police stations and overcrowded detention centers where they did not have the necessary care and suffered mistreatment as denounced by civil society groups. [62]

20. Freedom of movement

The State party should guarantee freedom of movement and lift all restrictions incompatible with article 12 of the Covenant, taking into account general comment No. 27 (1999) on freedom of movement. In this connection, it should ensure that all persons who are in its territory legally have the right to move about freely without prior notice, regardless of their political affiliation or any other reason.

Control barriers can be seen throughout the country at the entrances or exits of the main towns where, in addition, extortion by the security forces occurs regularly, as stated in the circular of July 16, 2021 to military personnel, signed by the Military Chief of Staff of the Continental Region, demanding not to extort citizens. [63]

Context:

There have been mobility restrictions to control the COVID-19 pandemic. However, there have been abuses by the security forces implementing these measures [50], such as arrests for not wearing a mask.

During the explosions produced in the city of Bata on March 7, 2021, part of the affected population decided to flee to the rural areas of the country, however, road barriers and controls prevented the free movement of citizens during such critical period.

In November 2021, there were raids against immigrants with or without documentation in violation of the freedom of movement enshrined in article 12 of the Covenant. [23]

21. Independence of the judiciary and administration of justice

The State party should continue its efforts to reform the justice system and ensure that all court proceedings are conducted in full observance of the due process guarantees set forth in article 14 of the Covenant. In particular, it should:

- A. Guarantee the tenure and independence of judges and the impartiality of public prosecutors, by protecting the work of the judiciary from any interference;
- B. Intensify its efforts to eliminate corruption in the judiciary by, inter alia, prosecuting and punishing perpetrators, including any judges and prosecutors who are complicit therein;
- C. Ensure that judges and public prosecutors are appointed through an independent process that is based on objective, transparent criteria for assessing candidates' suitability in terms of the required skills, competence and reputation;
- D. Ensure that military courts adjudicate only cases involving military personnel, in keeping with domestic legislation.

During the period under review, no specific reforms have been adopted to guarantee the independence of judges or to prevent any interference with the judiciary.

Context:

Situations of corruption in the judiciary continue to occur and in most cases no prosecution is initiated to investigate them. In a notorious case of bribery to an investigating judge in Malabo, whose case was published in the national media, the accused judge was subsequently relocated to a rural court, but there is no procedure in accordance with the Organic Law of the Judiciary [7], which provides for an

investigation procedure for cases of prevarication [64] or offences committed by judges and magistrates.

In January 2020, the arrest of 2 judges in Malabo and Bata was published [65]. In one of these cases, it was a process initiated by the prosecutor's office where it questioned the release of two defendants by the judge which is under his or her prerogatives undermining judiciary independence. Several sources also denounced that the arrested judge allegedly suffered torture. [66]

There are cases of impunity given that no investigations are launched at the national level of cases involving defendants with special prosecutorial rights (such as high-level public officials). This procedure must be initiated by the Supreme Court of Justice instead, but there's no record of any such investigations initiated by this court. [67]

Cases of harassment of lawyers in the exercise of their function of defending their clients continue to occur, undermining the right to effective judicial protection. [68]

Despite the existence of regulations governing the judicial career, appointments still do not follow the established procedure regarding the training of magistrates [69], as well as the mechanisms for their dismissal [70] also included in the Organic Law of the Judicial Power.

In the military jurisdiction, civilians continue to be prosecuted [71], despite what is expressed in the Organic Law of the Judicial Power in its article 11 which prioritizes ordinary jurisdiction when the defendants are civilians.

After the explosions at a barrack in the city of Bata, the investigation concluded with convictions of 3 individuals without being able to guarantee their defense or the intervention of the victims to claim, for example, reparations for the damages suffered [72]. Sentences of military jurisdiction can be appealed to the Supreme Court of Justice, however, in practice military judges do not hand over written sentences to defendants or family members, hindering their options for appeal to the Supreme Court. [72]

22. Right to privacy, and surveillance

The State party should ensure:

- A. that all types of surveillance activities and interference with privacy, including online surveillance for the purposes of State security, are governed by appropriate legislation that is in full accordance with the Covenant, in particular article 17, including with the principles of legality, proportionality and necessity, and that State practice conforms thereto;
- B. that surveillance and interception are subject to judicial authorization, and to effective and independent oversight mechanisms; and
- C. that affected persons have proper access to effective remedies in cases of abuse..

No specific measures have been taken to improve or regulate the surveillance measures reported in the past, as stated in the committee's examination. Nor have been any mechanisms to allow access to effective remedies for those affected by these abuses.

Context:

The US State Department's Human Rights report in 2021 denounced cases of surveillance and interference in the private lives of politicians, activists, etc. [34]. Most cases of interception of communications have not occurred in the context of a judicial process and with a known judicial order. There is a law on the protection of personal data, but it is not perceived as effective in preventing reports of interception of communications.

23. Freedom of expression and protection of journalists

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| <p>A. Ensure that all provisions of its legislation are in accordance with article 19 of the Covenant;</p> <p>B. Review all restrictions imposed on press and media activities, so as to ensure that they are strictly in accordance with the provisions of article 19 (3) of the Covenant;</p> | <p>C. Protect journalists and the media from any form of undue interference, harassment or attack, promptly investigating all such acts and bringing those responsible to justice.</p> |
|---|--|

No amendments have been made to existing legislation aimed at improving freedom of expression.

Context:

In November 2021, in a police campaign raid against immigrants, law enforcement seized material and detained a protesting activist for several hours at the police station. [61]

In September 2021, a lawyer was charged with allegedly sharing or forwarding by social media information deemed secret or protected. The legal basis for the retention of the lawyer who was released hours later is unknown. [73]

In July 2021, an army officer was convicted for libel and slander against the vice president of the republic in the military jurisdiction, which does not guarantee an effective defense of the defendants.

In May 2020, seven journalists from the ASONGA TV channel, owned by the vice president, were suspended after having published a report denouncing mistreatment by the military against civilians during the lockdown due to the COVID-19 coronavirus pandemic. [74]

In April 2020, a nurse was also arrested following the publication on social networks of a private conversation. The nurse was imprisoned despite being a private sector employee expressing her opinion about the lack of oxygen in hospitals to care for COVID-19 patients. [75]

At the national level, several online media have been created that publish more diverse information and events. Despite this, self-censorship by the media is common in the country, where many of the information of international impact affecting the country, for example, is not published.

24. Freedom of peaceful assembly

The State party should revise its laws, regulations and practices, with a view to guaranteeing the full enjoyment of the right to freedom of assembly, both in law and in practice, and to ensuring that any restrictions on the freedom of assembly, including through the application of administrative and criminal sanctions against individuals exercising that right, comply with the strict requirements of article 21 of the Covenant.

The State party should promptly and effectively investigate all cases of excessive use of force by law enforcement officials, take the necessary administrative measures and bring the perpetrators to justice.

No specific measures have been taken both in law and in practice to ensure the full enjoyment of the right to freedom of assembly.

Context:

Several peaceful gatherings have taken place in the country after the explosions of March 7, 2021, in the city of Bata. However, only those who expressed their solidarity with the victims were allowed. One of the few demonstrations demanding accountability was approached by law enforcement officers as a measure of persuasion. In another demonstration in protest over police raids against immigrants, law enforcement officers seized the organizers' material [76]. As a result of this incident, in addition, an activist was arrested and then released a few hours later. [61]

25. Freedom of association

A. Take and implement, without delay, effective measures to protect civil society organizations, in particular those defending human rights, and enable them to register and operate freely and without fear of harassment, violence or intimidation, or the threat thereof, ensuring that perpetrators of such acts are brought to justice;

B. Work with civil society organizations on the design, implementation and monitoring of policies, programmes and measures aimed at the advancement of civil and political rights, as well as on the process of reporting to the Committee.

No new measures have been identified for the protection of civil society and human rights defenders, particularly in relation to their registration or their work without fear of harassment or threat. Nor have areas of collaboration with independent civil society have increased.

Context:

Several organizations are still waiting for the resolution of their pending application for registration in official registers, undermining their capacity to act in the country and violating the fundamental right of association of citizens. These organisations generally act in exercise of their rights of association but cannot access public funding or obtain their own legal status to defend the interests of their members. In addition to the number of requirements for registration, there are unjustified delays on the part of the administration in the resolution of the submitted registration request.

26. Participation in public affairs

The State party should ensure that its electoral regulations and practices are in full compliance with the Covenant, particularly article 25, by guaranteeing, inter alia:

A. the full and effective enjoyment of rights by all, including opposition candidates; and

B. national elections that promote political pluralism, through the adoption of rules on the equal treatment of political parties in elections.

No electoral process has taken place since the last review by the human rights committee.

Context:

According to the legal deadlines, the parliament will have to be renewed in 2022 and the presidential elections will have to be held in 2023. The parliament is composed of parties belonging to the same coalition.

Meanwhile, no consultation has been carried out with the political parties aimed at improving the conditions for the participation of the political opposition or the adoption of measures to guarantee equal treatment in the electoral processes as recommended by the UNHRC.

27. Dissemination and follow-up

The State party should widely disseminate the Covenant, the Committee's written replies to the list of issues and the present concluding observations, with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public, including members of minority communities.

There are record of specific dissemination measures carried out by the authorities containing the concluding observations of the Human Rights Committee.

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