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including the right to development**

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

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Addendum

Mission to Equatorial Guinea (16 - 20 August 2010)*

Summary

At the invitation of the Government of Equatorial Guinea, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Equatorial Guinea from 16 to 20 August 2010. In accordance with its mandate, the Working Group focused on the investigations and prosecutions relating to the attempted coup d'état of March 2004 and to the armed attack on the presidential palace by alleged mercenaries on 17 February 2009. The Working Group also inquired about the activities of private military and security companies operating in Equatorial Guinea.

The coup attempt of March 2004 has been the most widely reported incident clearly involving mercenaries, some of whom were employees or former employees of private military and security companies from several other countries. The Working Group found that the attempt illustrates the possible close and disturbing links between mercenaries and some private military and security companies, making the monitoring of such links all the more necessary. In this regard, the Working Group recommends that the Government adopt legislation to regulate the activities of such companies and their employees.

With regard to the armed attack on the presidential palace by alleged mercenaries on 17 February 2009, the Working Group regrets the lack of transparency on the part of the

* The summary is being circulated in all official languages. The report, which is annexed to the summary, is being circulated in Spanish and in the language of submission only.

authorities and the lack of cooperation extended to the Working Group during its visit. In this regard, the Working Group recommends that the Government provide full information in a transparent manner regarding the attack on the presidential palace, and in particular, that all judgements rendered in the criminal cases relating to the attack be made available to the public. In addition, the Working Group urges the Government to provide explanations as to how the four men on trial for their alleged involvement in the attack were brought back from Benin to Equatorial Guinea. The Working Group strongly condemns their execution, which followed a summary trial that severely lacked due process and was carried out so promptly as to deny the four men all possibility of appeal.

The Working Group recommends that the Government consider developing national legislation to criminalize mercenarism and mercenary-related acts. In this context, the Working Group recommends that the Penal Code be revised and updated to bring it into line with the country's international human rights obligations. The Working Group also recommends that the Government consider acceding to International Convention against the Recruitment, Use, Financing and Training of Mercenaries as a matter of priority.

Since all mercenaries should be held accountable for their actions, the Working Group recommends that anyone who is accused of involvement in a mercenary-related incident be tried by a competent, independent and impartial tribunal and in compliance with international human rights standards. The Working Group also recommends that anyone accused of involvement in a mercenary-related incident be treated in accordance with international human rights standards, in particular the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Annex

Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination on its mission to Equatorial Guinea (16 - 20 August 2010)

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I. Introduction

1. At the invitation of the Government of Equatorial Guinea, the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination visited Equatorial Guinea from 16 to 20 August 2010. In accordance with general practice, the Working Group was represented by two of its members, Amada Benavides de Pérez and José Luis Gómez del Prado.¹

2. In its resolution 2005/2, the Commission on Human Rights requested the Working Group to monitor mercenaries and mercenary-related activities in all their forms and manifestations in different parts of the world, and study and identify emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination. In its resolution 7/21, the Human Rights Council also mandated the Working Group to monitor and study the effects of the activities of private companies offering military assistance, consultancy and security services on the international market on the enjoyment of human rights, particularly the right of peoples to self-determination, and to prepare draft international basic principles that encourage respect for human rights on the part of those companies in their activities. In its resolution 15/12, the Council requested that the Working Group continue to monitor mercenaries and mercenary-related activities in all their forms and manifestations, including private military and security companies, in different parts of the world, including instances of protection provided by Governments to individuals involved in mercenary activities, as well as to continue to study and identify sources and causes, emerging issues, manifestations and trends regarding mercenaries or mercenary-related activities and their impact on human rights, particularly on the right of peoples to self-determination.

3. The Working Group is grateful to the Government of Equatorial Guinea for its invitation. In accordance with its mandate, the Working Group focused on the investigations and prosecutions relating to the attempted coup d'état of March 2004 and the armed attack on the presidential palace by alleged mercenaries on 17 February 2009. The Working Group also inquired about the activities of private military and security companies operating in Equatorial Guinea.

4. In the present report, the Working Group uses the term “mercenary” as defined in article 1 of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, namely, any person who (a) is especially recruited locally or abroad in order to fight in an armed conflict; (b) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar rank and functions in the armed forces of that party; (c) is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict; (d) is not a member of the armed forces of a party to the conflict; and (e) has not been sent by a State which is not a party to the conflict on official duty as a member of its armed forces.

5. Article 1 of the Convention also provides that a mercenary is any person who, in any other situation (a) is specially recruited locally or abroad for the purpose of participating in a concerted act of violence aimed at (i) overthrowing a Government or otherwise

¹ The Working Group is composed of five independent experts serving in their personal capacities. Amada Benavides de Pérez (Colombia) was the Chairperson-Rapporteur from July to September 2010. The other members were Najat al-Hajjaji (Libyan Arab Jamahiriya), José Luis Gómez del Prado (Spain), Alexander Nikitin (Russian Federation) and Faiza Patel (Pakistan).

undermining the constitutional order of a State; and (ii) undermining the territorial integrity of a State; (b) is motivated to take part therein essentially by the desire for significant private gain and is prompted by the promise or payment of material compensation; (c) is neither a national nor a resident of the State against which such an act is directed; (d) has not been sent by a State on official duty; and (e) is not a member of the armed forces of the State on whose territory the act is undertaken.

5. In the present report, a private military and/or security company is to be understood as a corporate entity which provides on a compensatory basis military and/or security services by physical persons and/or legal entities.²

6. It should be noted as a preliminary point that the Working Group faced serious problems when attempting to have access to information and relevant interlocutors during the visit. Despite the fact that the authorities were notified of the requested meetings several months before the visit, during the visit meetings were either organized on an ad hoc basis or did not take place at all. Even where the meetings did take place, the Working Group was not provided with clear and detailed responses to its questions. In particular, it was not granted access to documents and the persons detained in connection with the alleged mercenary incident of 17 February 2009.

7. During the visit, the Working Group held meetings in Malabo with the Head of State, Teodoro Obiang Nguema Mbasogo, and senior officials of the executive, the judiciary and the legislative, including the Third Deputy Prime Minister for Human Rights, the Presidential Adviser on Human Rights, the Minister and Vice-Minister for Justice, the Deputy Defence Minister and the Deputy Minister for Foreign Affairs, the Attorney General, the President of the Supreme Court of Justice, the Speaker of Parliament and the Vice-President of the National Human Rights Commission. Meetings were also held with representatives of political parties and lawyers. In addition, the Working Group met with several representatives of the diplomatic community. It met with the United Nations Resident Coordinator as well as with representatives of a private military and security company contracted by the Government and operating in Equatorial Guinea. The Working Group had the opportunity to visit Punta Europa, the port facility of oil companies on the island of Bioko, to obtain information on the security arrangements of oil companies in this area.

II. International human rights commitments

8. Equatorial Guinea has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Discrimination against Women. Equatorial Guinea is also a party to the Optional Protocol to the International Covenant on Civil and Political Rights, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. It is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, although it ratified the Organization of African Unity Convention for the Elimination of Mercenarism in Africa on 12 February 2003.

² See A/HRC/15/25, annex, art. 2.

9. In recent years, Equatorial Guinea has received two visits by special procedures: one by the Working Group on Arbitrary Detention, in July 2007, and one by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in November 2008.³

10. Equatorial Guinea was examined under the universal periodic review mechanism in December 2009.⁴ It accepted most of the recommendations formulated on that occasion and rejected others, including those relating to the abolition of the death penalty and election reform. Among other commitments, the Government pledged to put an end to torture practices, arbitrary and secret detentions, to ensure the independence of the judiciary, to fight corruption and to respect freedom of expression, assembly and association.

11. There is no law in Equatorial Guinea dealing specifically with mercenaries and no crime of mercenarism in the Penal Code. The Code was inherited from the Spanish colonial era and essentially reflects the legal standards that were in force under General Franco's dictatorship.⁵ As such, it urgently needs to be revised and updated to bring it into conformity with the country's international human rights obligations.

12. On 2 November 2006, Equatorial Guinea adopted the Prohibition of Torture Act No.6/2006 in order to implement the Convention against Torture into domestic law. Under the Act, those found guilty of committing acts of torture may receive prison sentences of up to six months and fines of up to 300,000 Central African Francs (CFA). The law also prohibits the use of evidence obtained as a result of torture.

III. Mercenary-related activities

A. Possible causes

13. Equatorial Guinea is a small developing State. Whether in terms of area (28,000 km²) or population (estimated by the Government to be around one million),⁶ it is one of the smallest countries in continental Africa. One should also note that Equatorial Guinea is the only Spanish-speaking country in the whole of the continent. It is made up of a mainland region and several islands, including the island of Bioco, which hosts the capital Malabo. As a small developing State, its military resources are relatively limited and there is no doubt that Equatorial Guinea is most vulnerable to attack.⁷

14. Equatorial Guinea gained independence from Spain on 12 October 1968. Francisco Macías Nguema was elected the first president of the country and soon established a brutal dictatorship that lasted 11 years. During that period, it is estimated that around 100,000 people were killed or left the country, which amounted to almost one third of the population at the time. President Macías declared himself president for life in 1972. He was overthrown in 1979 in a coup orchestrated by Teodoro Obiang Nguema Mbasogo. President Obiang and his political party, the Democratic Party of Equatorial Guinea, have remained in power ever since. A new Constitution was approved by popular vote in 1982, and the first presidential elections were organized in 1989.

15. Presidential terms are for seven years under the Constitution. President Obiang was re-elected in 1996 and 2002. In 2009, he was again re-elected, this time with 95.37 per cent of the vote. In the light of these results, some believe that President Obiang is not prepared

³ See A/HRC/7/4/Add.3 and A/HRC/13/39/Add.4.

⁴ See A/HRC/13/16.

⁵ See A/HRC/7/4/Add.3, para. 58.

⁶ A/HRC/WG.6/6/GNQ/1, para. 7.

⁷ E/CN.4/2004/15, para. 42.

to relinquish power and prepare for a peaceful political transition. According to information received, this perceived lack of possibility of changing government through peaceful means, namely through free and fair elections, may have prompted some individuals to turn to other means, including assistance from mercenaries, to achieve political change in Equatorial Guinea.

16. In addition, Equatorial Guinea possesses valuable natural resources that may be coveted by third parties. Within a few years of the discovery of vast oil reserves in the 1990s, Equatorial Guinea became the third-largest oil producer in sub-Saharan Africa, after Nigeria and Angola. Oil companies from the United States of America have invested heavily in the country. Nonetheless, the dramatic increase in oil revenues has not resulted in a corresponding increase in the living standards of the local population; instead, it has been accompanied by a growing number of allegations of corruption against the Government.⁸ Most famously, the United States Senate Permanent Subcommittee on Investigations examined the role of Riggs Bank, in which the Government of Equatorial Guinea had deposited several hundreds of millions of dollars of oil revenue. The investigation revealed that some of the public funds had been misused by members of the Government.⁹ In this regard, the Working Group notes that the recent growth in oil revenues and their misuse may have increased the country's vulnerability to attack and turned it into an attractive and valuable target. Indeed, according to the above-mentioned United States Senate report, these funds are not re-invested in public services for the benefit of the general population, but are misused by a small group of individuals holding power; anybody who takes power in Equatorial Guinea therefore knows that they will also have access to these funds. It appears that gaining control over the country's oil revenues was the main motivation behind the coup attempt in 2004. In this regard, the Working Group was informed that, since 2006, the United States Agency for International Development has managed a social development fund in the country, totally financed by the Government of Equatorial Guinea, for the implementation of projects in the areas of health, education, women's affairs and the environment.

17. Since 1979, there have been many reported coup attempts in Equatorial Guinea. It is unclear how many were real and how many were simply alleged by the authorities, partly as a pretext to crack down on the political opposition.¹⁰ Indeed, there have been reports that allegations by the Government of coup attempts and other attacks have been promptly followed by arrests of political opponents.¹¹ The great majority of these reported coup attempts do not actually involve mercenaries: for instance, during the visit of the Working Group, several officials referred to the attack on the banks that took place in Bata in 2007 as a "mercenary incident", but it appears that no mercenaries were actually involved in what was essentially an armed robbery.

B. The attempted coup of March 2004

18. The attempted coup that took place in March 2004 has been the most widely reported incident clearly involving mercenaries, some of whom were current or former

⁸ See for instance Human Rights Watch, *Well oiled: oil and human rights in Equatorial Guinea*, 9 July 2009. Available from www.hrw.org/en/reports/2009/07/09/well-oiled.

⁹ See United States Senate Permanent Subcommittee on Investigations, "Money laundering and foreign corruption: enforcement and effectiveness of the Patriot Act. Case study involving Riggs Bank", 15 July 2004.

¹⁰ See Human Rights Watch, "Well oiled" (see footnote 8), pp. 61-71.

¹¹ A/HRC/WG.6/6/GNQ/3, para. 24.

employees of private military and security companies from several other countries.¹² The plot was uncovered by several intelligence services, and arrests were made before the coup could take place. On 7 March 2004, Simon Mann, a British national, and 69 other men were arrested at Harare International Airport in Zimbabwe. They were on board a Boeing plane full of weapons to be taken to Malabo. On 8 March 2004, another group of 15 men, including 8 South Africans (among whom Nick du Toit), 6 Armenians and Gerhard Merz, a German,¹³ were arrested in Malabo.

19. It remains unclear who exactly commissioned the men to take part in the coup attempt and who funded the entire operation. The Government of Equatorial Guinea claims that the mercenaries had been hired by Severo Moto, the leader of the Party for Progress of Equatorial Guinea and currently exiled in Spain, in an effort to overthrow President Obiang. Severo Moto himself claimed several years later that he had hired Simon Mann to help to achieve political change in Equatorial Guinea.¹⁴ Many people were alleged to have participated in the funding of the coup attempt, including Ely Calil, a British businessman of Lebanese origin, and Mark Thatcher, son of the former Prime Minister of the United Kingdom of Great Britain and Northern Ireland. To date, Ely Calil has never been questioned about his involvement in the coup attempt. Mark Thatcher, who was residing in South Africa at the time of the events, was arrested in Cape Town on 25 August 2004. In January 2005, under a plea bargain, he admitted to helping to charter a helicopter that could have been used for mercenary activity, and agreed to pay a fine of 3 million Rand.

20. The coup attempt in 2004 is a typical case that illustrates the possible close ties between mercenaries and certain private military and security companies. Indeed, Simon Mann has been involved in Executive Outcomes, a private military and security company established in South Africa late in the 1980s. Mr. Mann then went on to establish another private military and security company, Sandline International, in 1996. Nick du Toit also worked for Executive Outcomes, in Angola and Sierra Leone, in the 1990s.¹⁵ In addition, Laurens Horne and Jacobus “Harry” Carlse, two of the South African men arrested in Zimbabwe together with Mr. Mann in March 2004, were part-owners of Meteoric Tactical Systems, a company providing security to the Embassy of Switzerland in Baghdad, to Jay Garner, the first civilian administrator from the United States in Iraq, and providing training to the Iraqi army.¹⁶ They had actually taken holiday leave and came directly from Iraq to participate in the operation in March 2004.¹⁷ Also arrested in Zimbabwe was a former employee of Executive Outcomes, Raymond Stanley Archer, who had worked for Steele Foundation when President Aristide of Haiti was deposed.¹⁸

21. Following the failed coup attempt in March 2004, several trials were held in several countries. The Working Group was informed that some of these proceedings were still ongoing, for instance in Lebanon, Spain and the United Kingdom. The present report focuses on the trials held in Equatorial Guinea.

¹² For more information of the attempt, see for instance Adam Roberts, *The Wonga coup* (Profile Books, London, 2006) and Robert Young Pelton, *Licensed to kill: hired guns in the war on terror* (Random House, New York, 2006), chap. 12.

¹³ Gerhard Merz was an aviation broker and chemical weapons trader. President United States President Bill Clinton signed an executive order indicating that Merz had promoted proliferation of nuclear, biological and chemical weapons. See Roberts, *The Wonga Coup* (see footnote 12), p. 127.

¹⁴ See Fiona Govan, “Exiled leader of Equatorial Guinea breaks silence over Simon Mann coup plot”, *Daily Telegraph*, 3 September 2008.

¹⁵ See Pelton, *Licensed to kill* (see footnote 12), p. 308.

¹⁶ See “Iraq’s mercenary king”, *Vanity Fair*, April 2007, available from www.vanityfair.com/politics/features/2007/04/spicer200704. See also Roberts, *The Wonga Coup* (see footnote 12) p. 144.

¹⁷ See Pelton, *Licensed to kill* (see footnote 12), p. 326.

¹⁸ See Peta Thornycroft, “Mercenary accused ‘guarded’ Haiti’s Aristide”, *The Star*, 20 August 2004.

22. The trial of Nick du Toit and his accomplices began in Malabo on 23 August 2004. However, on 31 August 2004, proceedings were suspended in the hope that more evidence would be revealed in the civil proceedings brought in England by the Government of Equatorial Guinea against several British businessmen accused of financing the coup. When it became clear that such evidence was not forthcoming, the trial in Malabo resumed on 16 November 2004, when the Attorney General presented cases against 12 additional individuals to be tried in absentia, including Severo Moto.

23. On 26 November 2004, three South Africans and three citizens of Equatorial Guinea were acquitted. Those tried in absentia were convicted of attempted treason and conspiracy to commit crimes against the Head of State and against the form of government. The remaining defendants were found guilty of attempting to commit crimes against the Head of State and against the form of government, or being accomplices in such attempts. They received prison sentences of between 16 months and 62 years. Those tried in absentia remain abroad.

24. It should be noted that a number of reports indicated that the above trial failed to comply with international human rights standards and that some of the defendants had been subjected to torture and ill-treatment.¹⁹ The defendants were reportedly regularly beaten and tortured during interrogation in order to extract confessions from them. One of the defendants, Gehard Merz, a German national, died in Black Beach Prison on 17 March 2004. It has been alleged that he died as a result of the torture he was subjected to since his arrest a few days earlier.²⁰ The Working Group addressed letters to the authorities of Equatorial Guinea on 2 June 2005 and 8 March 2006 to express its concern at the reported situation in prison of the alleged mercenaries convicted in 2004 of attempting to overthrow the Government, and related allegations of torture and mistreatment.²¹ To date, the Working Group has not received any reply to its letters. During its visit, the Working Group did not receive information on these allegations. During his visit in November 2008, the Special Rapporteur on torture was able to visit some of the detainees who had been arrested in March 2004 and who reported that they had been tortured during their interrogation.²²

25. Simon Mann and his accomplices, who were arrested in Zimbabwe, were tried there and found guilty of arms smuggling on 22 July 2004. After serving their prison sentence in Zimbabwe, most of them were released in May 2005 and returned to South Africa, where some were prosecuted under the Regulation of Foreign Military Assistance Act of 1998. Mr. Mann was extradited from Zimbabwe to Equatorial Guinea on 2 February 2008 and detained in Black Beach Prison. While in detention, he reported that he had been well treated because he had agreed to cooperate with the authorities from the start, whereas the other prisoners who had refused to cooperate were held in much worse conditions.²³

26. Mr. Mann and Mohamed Salam, the Lebanese businessman, were tried in June 2008 in Malabo. Six nationals of Equatorial Guinea were also tried in the same trial, although they seemed completely unrelated to Mr. Mann and Mr. Salam. Again, there were reports that some of the defendants had been beaten while in police custody and not given access to their families or to a lawyer until five days before the trial. Some defendants were allegedly forced to sign statements. In court, the nationals of Equatorial Guinea retracted their statements on the grounds that they had been made under duress and torture. However, the court did not examine the allegations of coercion and allowed the statements to be admitted

¹⁹ See for instance Amnesty International, "Equatorial Guinea: a trial with too many flaws", 6 June 2005.

²⁰ See Roberts, *The Wonga coup* (see footnote 12), p. 199, and Amnesty International, "Equatorial Guinea: a trial with too many flaws" (see footnote 19), pp. 16-17.

²¹ See A/HRC/4/42, para. 23.

²² A/HRC/13/39/Add.4, appendix I.

²³ Ibid.

as evidence. Furthermore, in the summing up at the end of the trial, the Attorney General requested an additional 20 years to be added to their sentences for their failure to collaborate with the administration of justice by stating in court that they had been forced to sign statements under duress.²⁴ On 7 July 2008, Mr. Mann was sentenced to 34 years of imprisonment, Mr. Salam to 18 years, while the others received shorter prison sentences. One defendant from Equatorial Guinea was acquitted.

27. Mr. Mann and other South African nationals, including Nick du Toit, were pardoned on 3 November 2009 by President Obiang. Upon their release, they all returned to their respective home countries. The authorities claim that all the foreigners involved in the attempted coup had been released. It was recently reported that Mr. Mann has been hired as an adviser to President Obiang.²⁵ If this information is correct, such a move would not be in accordance with the Government's obligation and declared intention to hold mercenaries accountable for their activities.

C. The armed attack of 17 February 2009

28. Another incident that is regularly mentioned by the Government of Equatorial Guinea as a mercenary-related incident is the armed attack on the presidential palace of 17 February 2009. The Government claims that, in the early morning of that day, members of the Movement for the Emancipation of the Niger Delta (MEND) of Nigeria attacked the presidential palace in Malabo with assistance from inside the country. Details about the incident and the people involved are scarce. The Working Group has even received information that the alleged attack amounted to mere few gun shots. The Movement has denied any involvement in the attack. There were reports that some unidentified individuals came to attack the presidential palace on speed boats, left promptly and were never caught.

29. Following the attack, the authorities arrested a number of Nigerian nationals. Many of them were irregular migrants and, as such, were expelled from the country. Some who were in a regular situation were released. Seven Nigerian fishermen and traders who were arrested on their boat in the territorial waters of Equatorial Guinea remained in custody pending their trial. It was reported that the authorities also detained Afiong Etim, the wife of one of the fishermen, who allegedly subsequently died from beatings administered during interrogation.²⁶ When the Working Group enquired about consular access to the Nigerian detainees, it did not receive a clear response.

30. The authorities also arrested 10 nationals of Equatorial Guinea who were all members of the political party Union Populaire (UP). The authorities claimed that the UP members had contracted the Nigerian "mercenaries" to launch the assault on the presidential palace. To this day, the nature of the link between the Nigerian fishermen and the UP members remains unclear. The 10 UP members were held in Malabo police station for months, and some were allegedly tortured.²⁷ Two of them, Marcelino Nguema and Santiago Asumu, were transferred to Black Beach Prison, while the other eight were released on bail. The Nigerian fishermen and the two nationals of Equatorial Guinea were allegedly detained incommunicado and without charge until October 2009.

²⁴ See Amnesty International, "Equatorial Guinea: concerns about the recent trial of Simon Mann and other co-accused", 16 July 2008.

²⁵ See "Mercenary advises Equatorial Guinea president", *Financial Times*, 22 October 2010.

²⁶ See United States Department of State, 2009 Human Rights Report: Equatorial Guinea, 11 March 2010.

²⁷ See Amnesty International, "Equatorial Guinea: arrest and torture of political opponents following February attack on presidential palace", 25 March 2009.

31. The Working Group received information that, of the Nigerian nationals arrested and detained, one woman died in detention before the trial, as mentioned above. It was also informed that a second Nigerian national may also have died while in detention, although this information was never confirmed by the authorities. Seven Nigerians – Marck Etim Marck, Eyoh Okon Ikara, Eyon Kun John, Effiong Matew, Okokon Iyanam (also known as Mintay), Isangadighi Emmanuel and Ekaette Eyo Okon – were present at the trial. It was unclear whether the Nigerian consular authorities were officially informed of their arrests, the charges held against them, the status of proceedings or the death of one or possibly two of them, and whether they were granted access to them. It should be recalled that, under articles 36 and 37 of the Vienna Convention on Consular Relations, to which Equatorial Guinea is a party, the authorities were under the obligation to grant the Nigerian consular authorities access to its nationals in detention without delay, and to inform them, also without delay, of any case of death of its nationals.

32. In March 2010, the seven Nigerian fishermen stood trial in Malabo. They were tried together with three nationals of Equatorial Guinea: Marcelino Nguema and Santiago Asumu, the two UP members arrested in February 2009; and Faustino Ondo Ebang, the former UP president, in exile in Spain and therefore tried in absentia. The Nigerian fishermen argued in court that they had got lost on their boat because of the fog and ended up in the territorial waters of Equatorial Guinea, where they were arrested on 17 February 2009. No weapons were found on the boat or presented in court. The only evidence that seems to have been presented in court was weather reports for 16 and 17 February 2009, which indicated that visibility was good on those two days and that the Nigerians' boat could not have got lost in fog. Several sources raised serious doubts about the fishermen's involvement in the attack and the lack of evidence presented at the trial. All defendants complained in court of having been subjected to torture while in Black Beach Prison, but the claims were not examined.

33. On 5 April 2010, the seven Nigerian fishermen were found guilty of attempting to assassinate President Obiang on 17 February 2009, and sentenced to 12 years of imprisonment. Although the three nationals of Equatorial Guinea were acquitted, both Marcelino Nguema and Santiago Asumu remained in custody after the verdict. According to information received during the visit, President Obiang was apparently displeased with the court decision to acquit the three UP members, which may have explained why they remained in custody despite the judgement. The seven Nigerians did appeal against their conviction and sentence. On the other hand, the Attorney General appealed the decision to acquit the three nationals of Equatorial Guinea.

34. In the meantime, according to information received during the visit, four nationals of Equatorial Guinea – José Abeso Nsue Nchama, Manuel Ndong Anseme, Jacinto Michá Obiang, former military officers, and Alipio Ndong Asumu, a civilian – were detained in Black Beach Prison around the end of January 2010. They reportedly confessed that they were the ones who had come and fled on the above-mentioned speedboats on 17 February 2009. It remains unclear to the Working Group how and when these four men, who were living in Benin for many years, ended up in Black Beach Prison. According to information received by the Working Group, the men may have been abducted from Benin by Equatorial Guinean security personnel or by mercenaries contracted by the Government. When the Working Group requested clarification from the authorities on this matter, it did not receive a clear response; the authorities merely claimed that the four men had been brought back to Equatorial Guinea with the cooperation of other States. The Working Group did not obtain further information on how the four men had been brought back into the country. According to information received during the visit, they were not subjected to formal extradition procedures.

35. It should be noted here that many abductions of high-profile nationals of Equatorial Guinea in neighbouring countries and their subsequent transfer to prisons in Equatorial Guinea have taken place in the past, often with the assistance of the security forces of those countries. Once brought back into the country, they are often held in secret detention.²⁸ In the present case, according to interlocutors, the authorities refused to acknowledge their presence in Black Beach Prison for several months, despite requests from their families, lawyers and diplomats in Malabo. The four men were reportedly tortured and forced to confess their involvement in the 17 February 2009 attack on the presidential palace.

36. The four men, along with Marcelino Nguema and Santiago Asumu who had been acquitted by a civilian court few months earlier as mentioned above, were tried in a military court from 14 to 16 August 2010 (therefore over the weekend). The Working Group received information that the men were not allowed to be represented by counsel of their own choosing. It is unclear to the Working Group why Marcelino Nguema and Santiago Asumu were tried for the same facts for a second time. When the Working Group requested an explanation, it was told that the two men were tried in a military court this time because some of the other defendants who were tried with them were former military officers. The Working Group was also informed by the authorities that new evidence against the two men had come to light since the trial of April 2010. Again, it is unclear what the link between the two UP members and the four men “repatriated” from Benin is and why they all had to be tried together before a military court. It should be recalled here that the Code of Military Justice, which was adopted in Spain on 17 July 1945, allows for summary trials to be conducted, with limited due process guarantees.²⁹

37. On 21 August 2010, only a few days after a summary military trial at the end of which they were found guilty of “an attack against the Head of State and Government representatives, treason and terrorism”, José Abeso Nsue and Manuel Ndong Anseme, Jacinto Michá Obiang and Alipio Ndong Asumu were sentenced to death, while Marcelino Nguema and Santiago Asumu were sentenced to 20 years of imprisonment.

38. Within hours of the verdict, the four men were executed. They had no opportunity to exercise their right to appeal. The right of appeal was introduced by Judiciary Act No. 5/2009 of 18 May 2009, which provides that the decisions of military courts may be appealed before the Supreme Court.³⁰ Furthermore, they had no opportunity to see their families before the executions. José Abeso Nsue reportedly asked to see his family, which lives in Malabo, but had already been executed by the time they arrived at Black Beach Prison. The bodies of the four men were reportedly not returned to their families, and buried on the same day in Malabo cemetery.

39. While the Working Group was in Malabo, it insisted in its reiterated requests to visit those allegedly involved in the attack of 17 February 2009 and still detained in Black Beach Prison. The authorities denied the requests on various grounds. The Working Group was told, for instance, that it should not interfere with ongoing investigations by talking to defendants. The Working Group also requested to see the relevant judicial decisions, in vain. The lack of transparency regarding the trials conducted in April and August 2010, despite the repeated requests by the Working Group to have to access judicial decisions and to visit the detainees, points to severe shortcomings in the implementation of international human rights standards in the administration of justice by the Government of Equatorial Guinea. These shortcomings had already been witnessed by the Special Rapporteur on torture during his visit in November 2008.³¹ The Working Group condemns in the strongest

²⁸ See A/HRC/7/4/Add.3, paras. 69-72, A/HRC/13/39/Add.4, para. 53, and A/HRC/WG.6/6/GNQ/3, para. 6.

²⁹ See A/HRC/WG.6/6/GNQ/3, para. 14.

³⁰ A/HRC/WG.6/6/GNQ/1, para. 34.

³¹ A/HRC/13/39/Add.4, para. 55.

terms these executions, which followed a summary trial that clearly lacked due process. It also condemns the fact that the sentence was carried out the same day, depriving the defendants of any possibility of appeal.

40. The Working Group wishes to recall that Equatorial Guinea is a party to the International Covenant on Civil and Political Rights, which provides that the death penalty can only be applied in a strictly defined set of circumstances. One of these is that the death sentence can only be imposed after a trial in which the minimum fair trial standards demanded by article 14 of the Covenant have been respected. In the present case, the Working Group is concerned that the military trial was not conducted in accordance with basic fair trial guarantees, including the prohibition of the use of evidence (including confessions) gathered under duress or torture, equality of arms, the provision of competent defence counsel and the right not to testify against oneself and confess guilt. In addition, article 6 of the Covenant states that no death sentence should be carried out until a final judgement has been rendered by a competent court, and that anyone sentenced to death has the right to seek pardon or commutation of the sentence. It should also be recalled that a delegation from Equatorial Guinea recently informed the Human Rights Council that a moratorium on the application of the death penalty had been put in place and that many of those condemned to capital punishment have been reprieved or had their sentences commuted.³²

41. On 6 October 2010, President Obiang signed Decree No. 79/2010, whereby he pardoned, among others, the seven Nigerians who had been sentenced to 12 years of imprisonment in April 2010, and Marcelino Nguema and Santiago Asumu, who had been sentenced to 20 years of imprisonment in August 2010.

D. Legislative framework

42. As mentioned above, no law in Equatorial Guinea deals specifically with mercenaries, and mercenarism does not exist as a crime in national law. Most of the alleged mercenaries arrested after the attempted coup of 2004 and the attack on the presidential palace in 2009 were mainly charged with crimes pertaining to State security and defined in the Penal Code. Many were charged with treason (article 121, paragraph 3, and article 124 of the Penal Code), crimes against the Head of State (article 142 of the Penal Code) and/or crimes against the form of government (article 163 of the Penal Code).³³ During the visit, the Working Group was informed that the Government was contemplating the possibility of introducing a new provision in the Penal Code to address the crime of mercenarism, but no further details were provided.

43. While Equatorial Guinea is not a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the Working Group was informed that all conventions that had not yet been ratified by the State were being studied by Parliament. No further details were provided.

44. During the visit, several references were made to a regional arrangement in the Gulf of Guinea on security issues. The Gulf of Guinea Commission treaty was signed in February 2001 by Angola, Cameroon, the Congo, the Democratic Republic of the Congo, Equatorial Guinea, Gabon, Nigeria and Sao Tome and Principe. The treaty covers conflict resolution, socio-economic prosperity, environmental protection and maritime security in the Gulf of Guinea. The organization was officially launched in 2006 and is based in Angola. The treaty does not address explicitly the issue of mercenaries.

³² A/HRC/13/16, para. 66.

³³ See Amnesty International, "Equatorial Guinea: a trial with too many flaws" (see footnote 19), p. 22.

IV. Private military and security companies

45. The Working Group notes that there is at least one United States-based private military and security company, Military Professional Resources Initiatives (MPRI), in Equatorial Guinea. MPRI is part of the L-3 Communications group. The company was reportedly asked by the Government of Equatorial Guinea in 1998 to assess its defence systems, in particular its need to protect its oil reserves. In order to respond to that request, MPRI needed a licence from the United States State Department, which was refused at the time. A licence was eventually granted to MPRI by the State Department, allegedly because the company offered to provide human rights training in Equatorial Guinea.³⁴

46. According to representatives from MPRI, the company is contracted by the Government of Equatorial Guinea to provide training to the armed forces and the police, including human rights training, and advice to the Government on legislative reform. According to the Government, the training, which started in 2007, has included “instruction on appropriate human rights practices”.³⁵ MPRI reportedly does not take part in any operations alongside the police or the armed forces, and does not provide training in firearms. Following the rise in piracy in the Gulf of Guinea in recent years, MPRI was also awarded a \$250 million contract to ensure the country’s maritime security. MPRI has improved coastal security by increased radar surveillance. The two main operations centres are located in Malabo and Bata. The Working Group was also informed that Israeli private military employees were protecting vessels from Equatorial Guinea.

47. While the Working Group can only welcome the provision of human rights training, it recommends that the Government request an independent evaluation of the training programme to assess its actual impact on the conduct of the armed forces and the police. The Working Group is not aware of any allegations of human rights violations committed by MPRI. In its visit to Punta Europa, the Working Group came across other private security companies in charge of the protection of oil infrastructures.

48. In view of the possible increase in the number of private military and security companies operating in Equatorial Guinea, the Working Group recommends that the Government envisage the adoption of legislation on such companies accordingly.

V. Conclusions and recommendations

49. The Working Group reiterates its appreciation to the Government of Equatorial Guinea for extending to the Working Group an invitation to discuss the measures taken by the Government to address the phenomenon of mercenaries. During the visit, the Working Group had the opportunity to assess the geopolitical situation of Equatorial Guinea, a country with important natural resources, which has allegedly experienced several attempted coups involving organized groups, including mercenaries.

50. The Working Group found that the coup attempted in 2004 illustrates the possible close and disturbing links between mercenaries and some private military and security companies. Employees of such companies are not all mercenaries. Nonetheless, with regard to the coup attempt in 2004, the Working Group cannot but

³⁴ See Barry Yeoman, “Soldiers of good fortune”, Mother Jones, May/June 2003. Available from <http://motherjones.com/politics/2003/05/soldiers-good-fortune>.

³⁵ See “Equatorial Guinea reaffirms its commitment to human rights”, official website of the Republic of Equatorial Guinea, 26 January 2009, available from <http://ciber.jp/?q=node/265>.

observe that many of the individuals involved had had or still had close links with private military and security companies.

51. The Working Group recalls that using international private military and security companies to provide oil infrastructures with protection may have an impact on the Government's control over natural resources.³⁶ Recourse to international private military and security companies to secure maritime borders may also have serious implications for national security. Indeed, it may further weaken the State's ability to control its borders and natural resources, and hence its ability to ensure its security.³⁷

52. The Working Group regrets the lack of transparency by the authorities and the lack of cooperation extended to the Working Group during its visit. Most notably, the Working Group requested on several occasions to have access to those allegedly involved in the armed attack on the presidential palace of 17 February 2009 and to all relevant judicial decisions concerning them, but its requests were denied. In this regard, the Working Group recommends that the Government provide full information in a transparent manner regarding the attack and, in particular, that all judgements rendered in the criminal cases relating to the attack be made available to the public, in accordance with article 14(1) of the International Covenant on Civil and Political Rights, to which Equatorial Guinea is a party.

53. The Working Group also urges the Government to provide explanations as to how the four men on trial for their alleged involvement in the attack of 17 February 2009, namely José Abeso Nsue, Manuel Ndong Anseme, Alipio Ndong Asumu and Jacinto Michá Obiang, were brought back from Benin to Equatorial Guinea. The Working Group condemns in the strongest terms their execution, which followed a summary trial that clearly lacked due process and were carried out so promptly as to deny the four men any possibility of appeal. The Working Group recommends that the Government ensure that anyone accused of involvement in a mercenary-related incident be tried by a competent, independent and impartial tribunal and in compliance with international human rights standards, including with regard to the application of the death penalty. In this regard, the Working Group recommends that the Government consider abolishing the death penalty or at least imposing a moratorium on executions, and acceding to the second Optional Protocol to the International Covenant on Civil and Political Rights.

54. With regard to the Nigerian fishermen arrested immediately after the armed attack on the presidential palace on 17 February 2009, the Working Group regrets the lack of information on the death of one or possibly two of them during their detention. The Working Group urges the Government to provide full information on any investigations carried out into the circumstances leading to these deaths.

55. With regard to the failed coup attempt of 2004, the Working Group urges the Government to respond to its communications of 2 June 2005 and 8 March 2006, in which it expressed its concerns about the reported situation in prison of the alleged mercenaries convicted in 2004 of attempting to overthrow the Government of Equatorial Guinea, and related allegations of torture and mistreatment.

56. The Working Group recommends that the Government consider developing national legislation to criminalize mercenarism and mercenary-related acts. In this context, the Working Group recommends that the Penal Code be revised and updated

³⁶ See E/CN.4/2005/23, 18 January 2005, para. 57, and A/HRC/4/42, para. 54.

³⁷ See Abiodun Alao, *National Resources and Conflict in Africa: The Tragedy of Endowment*, (University of Rochester Press, Rochester, 2007), p. 141.

to bring it into conformity with the country's international human rights obligations. The Working Group also recommends that the Government consider acceding to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries as a matter of priority.

57. The Working Group recalls that all mercenaries should be held accountable for their actions. Accordingly, the Working Group recommends that anyone who is accused of involvement in a mercenary-related incident be tried by a competent, independent and impartial tribunal and in compliance with international human rights standards. The Working Group also recommends that anyone who is accused of involvement in a mercenary-related incident be treated in accordance with international human rights standards, in particular the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

58. The Working Group believes that the Government could reduce its vulnerability to mercenary attacks by promoting and strengthening democracy, economic, social and cultural rights and development in general, as well as good governance. In this regard, the Working Group calls on the Government to ensure free political participation, the independence of the judiciary, and transparent and efficient administration of justice.

59. With regard to private military and security companies, the Working Group recommends that the Government evaluate the need for their use for army or police training and the actual impact of the current training programme on the conduct of the armed forces and the police. In addition, it recommends that the Government adopt legislation to regulate the activities of private military and security companies and their employees.
