

# ATTACKS ON JUSTICE - REPUBLIC OF EQUATORIAL GUINEA<sup>1</sup>

## *Highlights*

**Lack of judicial independence is an ongoing concern. The executive has total control over judicial appointments and regulates judges' salaries. Members of the judiciary lack adequate legal training, corruption is widespread and judges are internally and externally subjugated to the will of the government. Lawyers continue to be vastly under-trained and the Bar Association is controlled by the Ministry of Justice. Some judges and lawyers hold both positions at the same time. There was talk of judicial reform following a conference on national justice in January 2003 but no substantive steps have yet been taken. Political trials that lack fair trial and due process guarantees continue to take place.**

## BACKGROUND

On **3 August 2004**, President Teodoro Obiang Nguema celebrated the 25<sup>th</sup> anniversary of the coup in which he overthrew his uncle and former dictator of Equatorial Guinea, Macias Nguema. President Obiang was re-elected for a seven-year term with 99.99 per cent of the vote on **15 December 2002**. He had stood unopposed after the four opposition candidates withdrew in protest hours before the ballots were opened. In the months preceding Election Day, the judiciary and the media had been placed under government control. Several opposition leaders were arbitrarily arrested, summarily tried, convicted and imprisoned.

Following his re-election, President Obiang declared his support for a national unity government. He then released a number of prisoners of conscience and engaged in talks on possible reform of the judicial system which, as of **May 2005**, has not taken place. The 1991 Constitution, which was amended in January 1995, entrenches a number of human rights principles and enshrines the separation of powers. However, arbitrary arrests and violations of due process and fair trial rights, as well as long periods of incommunicado detention and torture, are commonplace.<sup>2</sup>

In **July 2003**, there were reportedly no daily newspapers, bookshops or public libraries in the country. Freedom of speech, assembly and the press was also severely curtailed.

In recent years, the country has undergone modernization and, being sub-Saharan Africa's third largest oil producer after Nigeria and Angola, attracted substantial

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<sup>1</sup> Given the extreme difficulty in obtaining published legislation from Equatorial Guinea in electronic format, most references to national law have been obtained from secondary sources (reports, articles etc...)

<sup>2</sup> Fundacio Cidob, '*Teodoro Obian Nguema*'; *Constitution of the Republic of Equatorial Guinea*, Malabo, 17 January 1996, [http://www.ceiba-guinea-ecuatorial.org/guineeangl/nvelle\\_const.htm](http://www.ceiba-guinea-ecuatorial.org/guineeangl/nvelle_const.htm))

foreign investment.<sup>3</sup> As of **October 2004**, laws were said to be inconsistent with the Constitution, outdated and created on an *ad hoc* basis.<sup>4</sup>

## JUDICIARY

### Judicial Reform

In **January 2003**, the government hosted “**the Equatorial Guinea National Justice Conference in order to consolidate the Rule of Law**” to address issues of concern such as judicial corruption, low judicial salaries, the lack of judicial training and inappropriate selection criteria, the slow and outdated procedural mechanisms, the lack of resources, the absence of public information on available judicial remedies, the lack of ethics and qualifications among lawyers, and the inconsistency of legislation.

Several recommendations were made, including proposals for the creation of a judicial training institute to ensure adequate and uniform training, the payment of adequate salaries to judges to combat judicial corruption and the establishment of an Ombudsman’s Office to replace the quasi-judicial functions performed by the legislature. The government is reportedly about to implement a training programme on human rights for judges, lawyers and prosecutors.

According to official sources, several draft laws are currently under consideration with a view to reforming the *Organic Law on the Judiciary* and strengthening the independence of judges and lawyers. However, no further information is available as to their content or progress.<sup>5</sup>

### Independence

Equatorial Guinea lacks an independent and qualified judiciary. Legal insecurity prevails. There is no independent judicial association to regulate the appointment, conduct or training of the judiciary. The former Special Representative of the UN Commission on Human Rights, Gustavo Gallón, stressed in **January 2002** the need “to ensure that the required separation between the executive branch and the judicial branch is achieved, to train judicial officers, to promote the prosecution of human rights violations and to restrict the jurisdiction of military courts, which should not have competence in respect of civilians”.<sup>6</sup>

#### *Appointment and security of tenure*

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<sup>3</sup> For further information, see: *Amnesty International Annual Report 2004*.

<sup>4</sup> International Bar Association, *Equatorial Guinea at the Crossroads*, October 2003, Report of a Mission to Equatorial Guinea by the International Bar Association Human Rights Institute; [http://www.ibanet.org/images/downloads/Equatorial\\_Guinea\\_Report.pdf](http://www.ibanet.org/images/downloads/Equatorial_Guinea_Report.pdf) [hereafter “IBA Report 2003”]

<sup>5</sup> Final Declaration of the Equatorial Guinea National Justice Conference in order to consolidate the Rule of Law -- courtesy of the International Bar Association.

<sup>6</sup> Report on the human rights situation in the Republic of Equatorial Guinea by the Special Representative of the Commission Mr. Gustavo Gallón, January 2002, UN Doc. E/CN.4/2002/40, <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/eb054f2cbdc21564c1256b960051ef68?Opendocument>; IBA 2003 report, *op. cit.*

There is no independent body in Equatorial Guinea to regulate the selection and training of judges. This greatly impedes the effective functioning of the judiciary. The President appoints **Supreme Court** judges personally (from a list of nominees compiled by the Minister of Justice). Article 91 of the *Constitution*, the *Organic Law on the Judiciary (Ley Orgánica Del Poder Judicial, LOPJ*, last amended in 1988) and *Decree Number 87* of 22 July 1987 stipulate that judges and magistrates shall be appointed and dismissed in accordance with the law, and list a number of incompatibilities with judicial office. However, the President's appointments are based on family, clan or political ties rather than merit, and reportedly do not comply with the procedure outlined by the LOPJ.

The appointment of judges is therefore conditional upon allegiance to the President and offers little security of tenure, notwithstanding the fact that article 91 of the Constitution states that Supreme Court judges shall serve for a period of five years. This selection procedure, plagued by nepotism, contravenes internationally accepted standards of judicial independence. Another worrying feature is the appointment of members of the military to senior civilian judicial posts. As of **October 2003**, the Supreme Court reportedly comprised two military generals and one of the judges in the Constitutional Court was a colonel in the military.

In **February 2004**, President Obiang appointed Sergio Esono Abeso Tomo, 38, as **President of the Supreme Court**, the country's highest judicial body. The local media reported widely on Tomo's family ties to President Obiang. Former President of the Supreme Court (and former Prime Minister) Silvestre Siale Bileka had resigned in January 2004, officially for "not being able to reach the desired result in terms of improvement of the operation of the judiciary".<sup>7</sup>

### *Lack of training*

As a direct consequence of the prevailing nepotism in judicial appointments, judges at all levels, including those appointed to the Constitutional Court, often have insufficient training. As of **October 2003**, only one fifth of the approximately 60 sitting judges in Equatorial Guinea had undergone legal training or practiced law. Because of the shortage of professors and universities in the country, most judges who did have a background in law had done their legal training abroad (e.g., Spain, France, Russia, China, Cuba or Nigeria). This implies a lack of uniformity in legal and judicial practice. Coupled with the lack of legal and judicial training at the national level, the absence of legal resources, whether in printed or electronic format, means that judges are not informed of legal and judicial developments in a timely and adequate manner. Law registers and jurisprudence are not distributed to judges and lawyers so there is little or no consistency in the application of legislation.<sup>8</sup>

### *Judicial corruption*

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<sup>7</sup> Afrique Express, No. 288, 17 February 2004, *Guinée Equatoriale, Nomination d'un nouveau président de la Cour supreme*, <http://www.afriqueexpress.com/archive/CENTRALE/guineeequato/guineeéquatorialepol/288nominationdun.htm>); IBA 2003 report, *op. cit.*

<sup>8</sup> IBA 2003 report, *op. cit.*

Corruption is prevalent throughout the judiciary, due to executive control over it and the government nepotism that goes on when making judicial appointments. In addition, there is no independent regulatory body with the power to investigate judges suspected of corruption and dismiss them where appropriate. As of **October 2003**, judges' salaries, which are determined by the executive, ranged from US\$350 per month (for first instance judges) to US\$1400-1500 per month (for Constitutional Court and Supreme Court judges). This is a fair basic salary compared with other private and public salaries, which will help in fighting judicial corruption. Some improvements have been made but further measures need to be taken in order to effectively combat corruption. Reforms in the areas of salary, selection and appointment, security of tenure and training are particularly needed.<sup>9</sup>

#### *Executive and legislative interference in the judiciary*

The legal system, being a combination of local customary law, military law and Spanish codes dating from the days of the Franco regime in 1963, lacks clarity and systematic codification. Pre-trial investigations in criminal cases are often carried out by state security agencies instead of by an examining magistrate (*juez de instrucción*), which can affect objectivity and impartiality in areas such as evidence gathering.<sup>10</sup>

The executive exerts pressure on members of the judiciary in cases involving people connected with the President. Reportedly, in such instances, members of the executive often visit or call judges and pressurize them to abandon the legal proceedings in question. Similarly, government and state security forces often pressurize judges to sign arrest warrants for individuals when there is no supporting evidence. Failure to enforce judicial decisions impedes the effective impartial functioning of the judiciary. Police and army officials often refuse to enforce judicial rulings.<sup>11</sup>

## **LEGAL PROFESSION**

### **Independence**

As is the case for judges, most lawyers lack independence. It is reportedly easier to obtain employment in the legal profession if one is a member of the ruling party or at least perceived as being sympathetic to the government.<sup>12</sup>

The dual role problem also affects the legal profession, as some lawyers hold positions as judges at the same time. There are also allegations of lawyers paying to obtain favourable rulings or to get their cases assigned to judges who are likely to be more sympathetic to their interests. There is no code of ethics or professional conduct or any kind of disciplinary measures and/or process for lawyers.

Lawyers, particularly those practicing criminal law, are reportedly often threatened with violence or intimidated by the police. They are thus often reluctant to represent clients who are in custody or file petitions for *habeas corpus*. Lawyers are often not

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<sup>9</sup> Ibidem.

<sup>10</sup> Ibidem.

<sup>11</sup> Ibidem.

<sup>12</sup> Ibidem

allowed to see their clients until the day before the proceedings, or even hours before proceedings are due to commence, and are therefore unable to prepare their defence properly.

## **Training**

The legal profession is afflicted by the same issues of inadequate training and resources as the judiciary. It has been reported that in order to obtain a certificate to practice law in Equatorial Guinea from the Ministry of Education, the only requirement is to prove completion of a law degree in any country. Allegedly, certificates can sometimes be obtained even without such a degree. There is also no program of continuing legal education and there is little or no access to legal materials, either in print or online. Law registers and jurisprudence are not distributed to judges and lawyers so there is little or no consistency in the application of legislation.

## **The Bar Association**

On **10 May 2002**, the then Minister of Justice and Worship, Ruben Mayé Nsue Mangué, dissolved the Bar Association (*Colegio de Abogados*) of Equatorial Guinea and its governing council (*Junta de Gobierno*) by ministerial resolution. The minister said that there was no presidential decree recognizing the creation of the Bar Association and no government regulations of any kind governing its operation and status, and that some of its members had misused the governing body for their own individual political ends. All lawyers in the country were then asked to report their professional status to the Ministry of Justice.<sup>13</sup>

The dissolved *Junta de Gobierno* was replaced with a temporary board, presided by Sergio Esono Tomo who, at the time, was legal adviser to the Minister of Justice. The Bar Association was replaced by a Higher Council (*Consejo Superior de la Abogacía*) which appointed a temporary governing council of lawyers (*Junta de Gobierno Provisional*) chaired by the Minister of Justice himself. This temporary governing council drafted articles of association for the Bar Association and held elections among the country's lawyers for a new governing council in **January 2003**. The elections were reportedly rigged. Members of the previously dissolved governing council were not permitted to stand for election. All current members of the new Bar Association were reportedly appointed by, and are under the control of, the Minister of Justice.

A majority of the 100 lawyers practicing in Equatorial Guinea at the **end of 2003** held some other position also, either as a minister, senior civil servant or judge. Only some 20 or 30 were practicing law solely.<sup>14</sup>

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<sup>13</sup> Convergencia Para la Democracia Social, 13 May 2002, *Disuelto el Colegio de Abogados de Guinea Ecuatorial*.

IBA 2003 report, *op. cit.*; Amnesty International, *Equatorial Guinea: A parody of a trial in order to crush the opposition*, <http://web.amnesty.org/library/Index/ENGAFR240142002?open&of=ENG-GNQ>

<sup>14</sup> Report of the Special Rapporteur on the independence of judges and lawyers, Dato' Param Cumaraswamy, submitted in accordance with Commission on Human Rights resolution 2002/43, 25/02/2003, UN Doc. E/CN.4/2003/65/Add.1,

## Cases

Lawyers **Felipe Ondo Obiang** and **Plácido Micó**, who also hold senior posts in political opposition groups, were among the 68 opposition leaders arbitrarily detained, summarily tried and convicted between **March and May 2002**. Ondo Obiang was arbitrarily detained in March 2002 and held incommunicado with several others. Micó was interrogated on several occasions and placed under house arrest between March and May 2002. Both lawyers were charged and convicted for crimes against state security, including rebellion, attacking the form of government and ‘murdering’ the head of state. Micó was freed in **August 2003** after receiving a presidential pardon. Ondo Obiang was still in prison as of **May 2005**. (See Access to justice, Cases below)

## ACCESS TO JUSTICE

The population has no confidence in the justice system and finds traditional courts or the legislature to be more effective. There is no legal aid or *pro bono* legal assistance scheme in the country, which makes access to justice difficult.

Under *Law 5/1991*, the legislature, the House of People’s Representatives (*Cámara de Representantes del Pueblo*), is empowered to hear individual petitions. It has been reported that, due to the public’s lack of faith in the judiciary, citizens often view the quasi-judicial functions of the House of Representatives as being tantamount to those of an Ombudsman, as well as a cheaper, quicker and more reliable alternative to the court system. Some of these individual petitions have even resulted in judicial rulings being overturned.<sup>15</sup>

Although legislation regulating the right to *habeas corpus* has been in force since October 1995 (*Ley Reguladora del Procedimiento de "Habeas Corpus"*), this right is reportedly non-existent in practice. Most citizens, as well as some lawyers, are unaware of its existence or do not use it for fear of reprisals or because of the likelihood in practice that it will be rejected.<sup>16</sup>

Military courts frequently try civilians and hear cases that do not directly deal with military affairs. In particular, concern has been expressed about the use of military courts in cases that are deemed “politically sensitive”. Military courts do not offer the same fair trial and due process guarantees, and proceedings are often held behind closed doors.

## Women

In **2002**, the government adopted a law prohibiting the imprisonment of women for

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[www.unhchr.ch/Huridocda/Huridoca.nsf/0/e8f08be3cbd783bdc1256cec00473376?Opendocument](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/e8f08be3cbd783bdc1256cec00473376?Opendocument);  
IBA 2003 Report, *op.cit.*

<sup>15</sup> IBA 2003 report, *op. cit.*

<sup>16</sup> Report on the human rights situation in the Republic of Equatorial Guinea submitted by Mr. Alejandro Artucio (Uruguay), Special Rapporteur of the Commission, pursuant to Commission resolution 1995/71 and Economic and Social Council decision 1995/282, January 1996,  
<http://daccessdds.un.org/doc/UNDOC/GEN/G96/101/68/PDF/G9610168.pdf?OpenElement>

failing to repay dowries in the aftermath of a divorce or marital separation.<sup>17</sup>

## Cases

*Case (Sumario) 17/2002 - The Cine Marfil 'Macro-trial', 23 May - 9 June 2002.*

The trial of 68 opposition leaders was held between **23 May and 9 June 2002** in a specially designated court in the *Cine Marfil* (a large public cinema in the capital, Malabo, which had already hosted the trial of former dictator Macias Nguema in August 1979). The proceedings, which were attended by international observers, were condemned as lacking due process and fair trial guarantees and described as being a political trial.<sup>18</sup>

In **March 2002**, lawyer Felipe Ondo Obiang, a former member of the legislature and leader of the opposition party *Fuerza Democrática Republicana*, Republican Democratic Force, was illegally detained and held incommunicado, along with relatives, friends, party members and acquaintances. Several of the detainees had parliamentary immunity. The leader of the main opposition party, lawyer Plácido Micó, had also been questioned by police on numerous occasions since **March 2002** and was placed under house arrest until the start of the proceedings on 23 May 2002. A total of **144 detainees** were tried in the end. It has been estimated that as many as 250 people may have been arrested during this campaign.<sup>19</sup>

The detainees claimed that they were tortured in order to force them to make confessions that were used in evidence at the trial. Many of the accused reportedly appeared at the hearing with broken limbs and other injuries and were denied access to medical treatment and food. One death in custody was reported.

The 144 defendants were charged with “attempt murder” of the head of state (article 142 of the *Penal Code*), attacking the form of government (article 163 of the *Penal Code*) and rebellion (article 214 *et seq.* of the *Penal Code*), in relation to an alleged plot to overthrow the existing government in March 2002.

The trial was riddled with irregularities throughout the entire process. The detainees were not informed of the charges against them until the day of the trial. The defence lawyers themselves only received the committal document (*auto de procesamiento*) the day before the proceedings started. The documentation they were given was reportedly substantially different from that given to the prosecution.

The government designated all five judges (of whom only two had legal training), the prosecution team and the 14 defence lawyers.<sup>20</sup>

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<sup>17</sup> Official website of the Republic of Equatorial Guinea, <http://www.ceiba-guinea-ecuatorial.org/guineees/indexbienv1.htm>; Committee on the Elimination of Discrimination against Women, Concluding Observations on Equatorial Guinea, 651<sup>st</sup> and 652<sup>nd</sup> Session, 8 July 2004, <http://sim.law.uu.nl/SIM/CaseLaw/uncom.nsf/0/eeab7f3b8638e42dc1256ef300336dfd?OpenDocument>

<sup>18</sup> Fundació Cidob, *Teodoro Obiang Nguema*; EU Parliament Resolution of 13 June 2002 on the situation in Equatorial Guinea, [http://europa.eu-un.org/articles/es/article\\_1443\\_es.htm](http://europa.eu-un.org/articles/es/article_1443_es.htm)

<sup>19</sup> Amnesty International, *Equatorial Guinea: A parody of a trial in order to crush the opposition*, AFR 24/014/2002, (<http://web.amnesty.org/library/Index/ENGAFR240142002?open&of=ENG-GNQ>)

<sup>20</sup> Ibidem.

Although the prosecution accepted that torture had taken place during detention, the court attached no importance to it and accepted confessions extracted under torture as admissible evidence. It refused to further investigate the allegations of ill-treatment or reject the confessions as evidence.<sup>21</sup>

**A total of 64 people** (including three *in absentia*) were eventually sentenced to prison terms ranging from six to 20 years. **Eleven of the sentenced prisoners**, including Plácido Micó, subsequently received presidential pardons and were freed in **August 2003**. All other prisoners remain in detention as of **May 2005**.<sup>22</sup>

*The trial of several alleged mercenaries, November 2004*

The ‘mercenaries’ trial of **November 2004** was considered unfair by international observers. Five Guineans, six Armenians and eight South Africans were accused of preparing the way for an abortive mercenary-led coup. The defendants were arrested in Harare airport, Zimbabwe, where, in **March 2004** on their way to Malabo, they allegedly stopped to pick up weapons.<sup>23</sup>

Other people indicted as coup plotters in November 2004 included exiled government opposition leader Severo Moto and members of his cabinet, as well as Mark Thatcher and a Lebanese financier.<sup>24</sup>

The **20 accused** were charged with crimes against the head of state, crimes against the government, crimes that compromise the peace and independence of the state, treason, possession and storage of arms and ammunition, terrorism and possession of explosives under articles 142, 163, 129, 254, 260 and 124 of the *Penal Code* of Equatorial Guinea.<sup>25</sup>

The defendants, mostly foreigners, were not informed of the charges against them in a language they could understand. Failure to provide adequate translation and interpretation throughout the proceedings was commonplace. Although translators were eventually provided, they were reportedly not independent, professional or qualified, and the translation of the court proceedings was incomplete. Information concerning the sentences was also not translated for the Armenian defendants.

The defendants were not allowed access to a lawyer until three days before the proceedings began on 20 August 2004, despite having been in custody since March of that year. Access to a lawyer was also denied during the adjournment period.

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<sup>21</sup> Ibidem.

<sup>22</sup> Amnesty International Annual Report 2004, <http://web.amnesty.org/report2004/gnq-summary-eng>

<sup>23</sup> AFROL News, 9 March 2004, *Mercenaries Arrested In Equatorial Guinea* <http://www.afrol.com/articles/11601>; IRIN news, *Equatorial Guinea: Mercenary trial was unfair, legal observers say*, [http://www.irinnews.org/report.asp?ReportID=44461&SelectRegion=west\\_Africa&SelectCountry=EQ\\_UATORIAL\\_GUINEA](http://www.irinnews.org/report.asp?ReportID=44461&SelectRegion=west_Africa&SelectCountry=EQ_UATORIAL_GUINEA)

<sup>24</sup> BBC News, *Mark Thatcher on new ‘coup plot’ list*, 17 November 2004 <http://news.bbc.co.uk/1/hi/world/africa/4015895.stm>; International Bar Association, *Brief Points on the Trial Observation in Equatorial Guinea*, <http://www.ibanet.org>

<sup>25</sup> Amnesty International, *Equatorial Guinea: Trial of alleged coup plotters seriously flawed*, <http://web.amnesty.org/library/Index/ENGAFR240172004>; International Bar Association, *Brief Points on the Trial Observation in Equatorial Guinea*, <http://www.ibanet.org>



The prosecution relied almost exclusively on confessions made in custody and obtained under torture. Yet another of the defendants died in custody. Official sources gave the cause of death as cerebral malaria but two of the defendants declared in court that death was the result of torture.<sup>26</sup>

The *Criminal Procedure Law (Ley de Derecho Procesal)* forbids trials *in absentia* and states that if a defendant is absent, the proceedings must be suspended until such time as they appear before the court. Yet Severo Moto was sentenced *in absentia* to 63 years' imprisonment. All the remaining defendants, except five who were acquitted, were sentenced *in absentia* to prison terms ranging from one to 52 years.

## LEGAL REFORMS DURING THE PERIOD

*These legislative reforms are listed by the government of Equatorial Guinea on its website (LINK <http://www.ceiba-guinea-ecuatorial.org/>). No further information is available as to their effective enactment or date of adoption.*

### Laws enacted

- Law prohibiting the imprisonment of women in connection with dowry matters (*Ley por la que se prohíbe el encarcelamiento de la mujer por causa de dote*) (2002)

### Laws pending adoption

- Bill amending the Organic Law on the Judiciary, the purpose of which is to guarantee the independence of the judiciary, ensure professionalism among the judiciary and determine the scope of military jurisdiction (*Proyecto de Ley que revisa la Ley Orgánica del poder judicial, cuya finalidad, es garantizar la independencia del poder Judicial, la profesionalidad de la carrera judicial y la definición del ámbito de la jurisdicción militar*).

- Bill establishing the Higher Council of the Judiciary, the purpose of which is to regulate the status of the judiciary, the system for recruiting and appointing judges and magistrates and the issue of their irremovability (*Proyecto de Ley Orgánica que crea el Consejo Superior del Poder Judicial, cuyo objetivo es regular el estatuto de la Magistratura, el sistema de reclutamiento y nombramiento de los jueces y magistrados, así como su inamovilidad*).<sup>27</sup>

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<sup>26</sup> War Profiteers, *Equatorial Guinea: Legal Observers Say Mercenary Trial Unfair*, [www.corpwatch.org/article.php?id=11721](http://www.corpwatch.org/article.php?id=11721)

<sup>27</sup> *Disposiciones Legales Promulgadas por el Gobierno de la República de Guinea Ecuatorial para la Materialización efectiva del Proceso Político Pluralista Garantizar los Derechos Fundamentales de las Personas y garantías de dichos Derecho*, [http://www.ceiba-guinea-ecuatorial.org/guineees/evolution\\_demo.htm](http://www.ceiba-guinea-ecuatorial.org/guineees/evolution_demo.htm)