OPINION No. 2/2008 (Equatorial Guinea)

Communication addressed to the Government on 23 August 2007.

Concerning Mr. Juan Ondo Abaga (Naval Commander), Mr. Florencio Elá Bibang (Lieutenant Colonel), Mr. Felipe Esono Ntutumu (civilian) and Mr. Antimo Edu Nchama (civilian).

The Republic of Equatorial Guinea acceded to the International Covenant on Civil and Political Rights on 25 September 1987.

1. (Same text as paragraph 1 of Opinion No. 14/2007.)

2. (Same text as paragraph 3 of Opinion No. 15/2007.)

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[24] CCPR/CO/71/SYR, para. 16.

3. The Working Group regrets that the Government has not provided the requested information despite repeated invitations to do so.

4. According to the communication received, Naval Commander Juan Ondo Abaga was abducted in Benin – where he was a refugee – on 25 January 2005 by members of the security forces of Equatorial Guinea and taken to his native country. Lieutenant Colonel Florencio Elá Bibang and the civilians Mr. Felipe Esono Ntutumu and Mr. Antimo Edu Nchama were apprehended on 19 April 2005 in Nigeria by that country's security forces, imprisoned and subsequently abducted by the forces of Equatorial Guinea, and were also taken to that country, on 3 July 2005. In Equatorial Guinea they were imprisoned, held incommunicado and tortured over a long period without having access to lawyers or to their relatives.

5. On 6 September 2005, Mr. Ondo Abaga, Mr. Elá Bibang and Mr. Edu Nchama were brought before a military court, in Bata, composed of persons appointed by the Government. The charges were acts against national security, rebellion, treason, negligence and attempting to overthrow the Government, based on their alleged participation in the attempted coup d'état of 8 October 2004. Mr. Esono Ntutumu has not been tried.

6. The source adds an important element: Although they were forcibly taken to the country and detained in Malabo prison (known as Black Beach), their trial was conducted *in absentia* since the authorities denied that they had been abducted abroad and brought into the country, i.e. they were considered missing persons.

7. In the absence of any cooperation from the Government, the Working Group regards the alleged facts as true, especially since they were corroborated by other evidence received. During the Working Group's visit to Equatorial Guinea from 3 to 8 July 2007, it was denied that these persons were in custody and the Working Group could not therefore interview them (A/HRC/7/4/Add. 3, paragraph 69). However, the Working Group received a letter from these persons.

8. The Working Group considers that the crimes with which they were charged (namely acts against national security, rebellion, treason, negligence and attempting to overthrow the Government) are typically classified as political offences and, in the present case, they were allegedly committed by civilians in conjunction with military personnel.

9. The Human Rights Committee, in paragraph 4 of its general comment No. 13, on the administration of justice (article 14 of the Covenant), notes the "existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned. Quite often the reason for the establishment of such courts is to enable exceptional procedures to be applied which do not comply with normal standards of justice. While the Covenant does not prohibit such categories of courts, nevertheless the conditions which it lays down clearly indicate that the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in article 14".

10. The Working Group has stated in previous Opinions and reports that "one of the most serious causes of arbitrary detention is the existence of special courts, military or otherwise, regardless of what they are called." Although the Covenant does not expressly prohibit such courts, the Working Group observes that "virtually

none of them respects the guarantees of the right to a fair trial enshrined in the Universal Declaration of Human Rights and the said Covenant" (E/CN.4/1996/40, para. 107), adding that they "are not independent, act partially and do not apply the rules of due process of law, all of which is translated into impunity for violations of human rights and arbitrary detentions" (para. 108). In the report on its visit to Peru in 1998 (the era of the Government of Alberto Fujimori), the Working Group strongly criticized the absurd situation where the military courts in that country had convicted foreigners of treason; obviously those persons had no emotional links with the country, the existence of such links being the very essence of the crime of treason (E/CN.4/1999/63/Add.2, paras. 47 to 53).

11. In its above-mentioned visit to Equatorial Guinea, the Working Group observed that the Code of Military Justice, which is still in force in Equatorial Guinea, had been adopted in Spain (former colonial power) on 17 July 1945 (in the midst of the Franco dictatorship) and that it "gives the military courts extremely broad jurisdiction over a long list of civilian offences, including national security offences, offences against the country's territorial integrity and crimes of lese-majesty." (A/HRC/7/4/Add. 3, para. 19). The offences with which Ondo Abaga, Elá Bibang and Edu Nchama were charged are of the same nature.

12. It should be noted that the concern expressed by the Working Group during its visit is fully consistent with the draft set of principles governing the administration of justice through military tribunals, whose preparation was requested by the former Subcommission on the Promotion and Protection of Human Rights (see E/CN.4/Sub.2/2004/7) and which is currently under consideration by the Human Rights Council, and, in particular, with Principle No. 2, which states that "military courts should, in principle, not have competence to try civilians. In all circumstances, the State shall ensure that civilians accused of a criminal offence of any nature are tried by civilian courts".

13. Principle No. 5 of the draft establishes the guarantee of habeas corpus, No. 14 that of the public nature of proceedings, No. 8 the guarantee of the rights of the defence and the right to a just and fair trial, and No. 10 recourse procedures in the ordinary courts. These principles are applicable even to military personnel tried in military courts. They were not adhered to in the irregular proceedings referred to in the present Opinion and totally disregarded in the trial conducted against Mr. Ondo Abaga, Mr. Elá Bibang and Mr. Edu Nchama.

14. With regard to Mr. Esono Ntutumu, his detention incommunicado, without trial, for over three years from the time of his abduction in Nigeria or for almost three years since his deprivation of liberty at the hands of the Government of Equatorial Guinea, is a serious violation of the standards of due process, which gives the deprivation of liberty an arbitrary character.

15. It should be pointed out that, in addition to irregular abduction by the security forces of Equatorial Guinea operating in Benin (in the case of Ondo Abaga) and apprehension by the security forces of Nigeria in Nigeria, where the individuals were held incommunicado, they were all detained in secret locations upon their arrival in Equatorial Guinea until the date of the trial, with no orders from any authority, without any legal basis whatsoever and in wretched conditions.

16. The Working Group also notes that Mr. Ondo Abaga had been recognized as a refugee in Benin and that the action by the security services of Equatorial Guinea in

that country amounts to a grave transgression of the principle of *non-refoulement* established in the Convention relating to the Status of Refugees of 1951. In the case of Mr. Esono Ntutumu, Mr. Elá Bibang and Mr. Edu Nchama – the formal recognition of whose refugee status was in process – that transgression was committed by the security services of both Nigeria and Equatorial Guinea.

17. In the light of the foregoing, the Working Group renders the following Opinion:

> The deprivation of liberty of Naval Commander Juan Ondo Abaga, Lieutenant Colonel Florencio Elá Bibang and the civilians Felipe Esono Ntutumu and Antimo Edu Nchama is arbitrary, being in serious contravention of articles 1, 5, 8, 9 and 10 of the Universal Declaration of Human Rights and articles 9 and 14 of the International Covenant on Civil and Political Rights, and falls within category III of the categories applicable to the consideration of cases submitted to the Working Group. It is also arbitrary, under category I, in regard to the entire period prior to the initiation of the trial in Equatorial Guinea, i.e. between 3 July and 6 September 2005.

18. Consequent upon the Opinion rendered, the Working Group requests the Government of Equatorial Guinea to remedy the situation of Mr. Juan Ondo Abaga, Mr. Florencio Elá Bibang, Mr. Felipe Esono Ntutumu and Mr. Antimo Edu Nchama in order to bring it into conformity with the provisions of the Universal Declaration of Human Rights. The Working Group believes that, given the circumstances of the case and bearing in mind the prolonged period during which they have been deprived of liberty, the adequate remedy would be their immediate release.

19. In line with the comments in paragraph 16 of this Opinion, the Working Group agrees to transmit this Opinion also to the Governments of the Republics of Benin and Nigeria and to the Office of the United Nations High Commissioner for Refugees (UNHCR).

Adopted on 7 May 2008