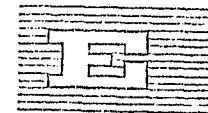
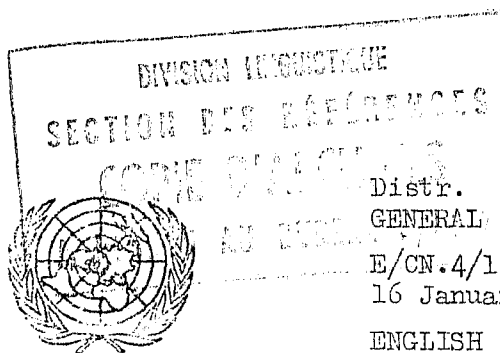


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COMMISSION ON HUMAN RIGHTS

Forty-first session

Items 12 and 22 of the  
provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL  
FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR  
REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND  
TERRITORIES

ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Provision of expert assistance in the field of  
human rights

EQUATORIAL GUINEA

Note by the Secretary-General

At its fortieth session, the Commission on Human Rights adopted on 14 March 1984 resolution 1984/51 entitled "Situation in Equatorial Guinea", by which it recommended to the Economic and Social Council the adoption of a draft resolution in this regard.

At its first subsequent regular session, the Economic and Social Council adopted on 24 May 1984 resolution 1984/36, entitled "Situation of Human Rights in Equatorial Guinea", in which operative paragraph 2 reads as follows:

"Requests the Secretary-General to appoint an expert to visit Equatorial Guinea in order to study, in conjunction with the Government of that country, the best way of implementing the plan of action proposed by the United Nations".

Accordingly, the Secretary-General appointed as the Expert for this purpose Professor Fernando Volio Jiménez, who, on two occasions, the first in 1979 as Special Rapporteur of the Commission on Human Rights, and the second in 1980, as Expert appointed by the Secretary-General, had already visited Equatorial Guinea and submitted reports on the human rights situation in that country. 1/

The Secretary-General hereby transmits through this Note, the report submitted by the Expert, Professor Fernando Volio Jiménez, on his mission to Equatorial Guinea, which took place from 13 to 20 November 1984.

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1/ E/CN.4/1371 and E/CN.4/1439 and Add.1.

Report by Professor Fernando Volio Jiménez, Expert pursuant to  
Economic and Social Council resolution 1984/36

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## INTRODUCTION

1. At its fortieth session, the Commission on Human Rights adopted on 14 March 1984 resolution 1984/51, which recommended to the Economic and Social Council the adoption of a draft resolution whose operative paragraphs read as follows:

"1. Urges the Government of Equatorial Guinea to co-operate with the Secretary-General in order to ensure the full enjoyment of human rights and fundamental freedoms in that country;

2. Requests the Secretary-General to appoint an expert to visit Equatorial Guinea in order to study, in conjunction with the Government of that country, the best way of implementing the plan of action proposed by the United Nations;

3. Requests the Commission on Human Rights to keep this matter under consideration at its forty-first session".

2. At its first subsequent regular session, the Economic and Social Council adopted on 24 May 1984 the draft recommended by the Commission on Human Rights, as referred to in paragraph 1 above, and it became resolution 1984/36 (see annex I).

3. The Plan of Action mentioned in resolution 1984/36, i.e. in operative paragraph 2 thereof, was the one prepared by the Expert, Professor Volio Jiménez, during his previous mission in 1980 and it is contained in annex III to document E/CN.4/1439. A table summarizing the main aspects of the Plan was issued as an annex to the report of the Secretary-General (E/CN.4/1945) and is reproduced in annex II to this report. The purpose of the Plan, divided into three stages, was "to assist the Government of that country in taking the action necessary for the full restoration of human rights", in particular the drafting of the Constitution and in general coupling it with fundamental laws in a democratic legal system. The three stages were initiated in 1981 and concluded in 1984. In addition, the Plan provided for the possibility of co-operation between the United Nations and the Government of Equatorial Guinea for the practical implementation of the measures suggested in the Plan, which at all times met with the official approval of the Government, as is clear from annex IV to document E/CN.4/1439.

4. On 31 May 1984, His Excellency, Mr. Teodoro Obiang Nguema Mbasogo, President of the Republic of Equatorial Guinea, in an interview granted to Mr. Arturo Hein-Cáceres, Resident Representative of the United Nations Development Programme, "expressed interest and made a request for Professor Fernando Volio Jiménez to visit Malabo for consultations in connection with the continued practical implementation of the Constitution". On the following day, 1 June, Mr. Hein-Cáceres transmitted the President's request by cable to Mr. K.F. Nyamekye, Deputy Director of the Centre for Human Rights at Geneva. Therefore, in mid-June, Mr. William Buffum, Under-Secretary-General for Political and General Assembly Affairs, telephoned Professor Volio Jiménez in Costa Rica and asked whether he was prepared, on behalf of the Secretary-General of the United Nations, to undertake a new mission to Equatorial Guinea. Professor Volio Jiménez accepted the mission as a contribution to the cause of promoting full respect for human rights in Equatorial Guinea.

5. Subsequently, Mr. Kurt Herndl, Assistant Secretary-General for Human Rights, Director of the Centre for Human Rights at Geneva, in a letter dated 29 June 1984, informed Professor Volio Jiménez that the Centre had no objection to the visit taking place on the dates suggested by him, i.e. in October or November 1984, for a period of one to two weeks, as on previous occasions. Mr. Herndl also asked Professor Volio Jiménez to confirm his acceptance of the mission as already indicated to Mr. Buffum, and Professor Volio Jiménez did so in a letter dated 24 August. The previous visits had taken place in 1979 and 1980. <sup>2/</sup> In addition, Professor Volio Jiménez, at the request of the Secretary-General, took part in 1982 in the selection and preparation of two specialists in constitutional law to assist the Government of Equatorial Guinea in drafting the country's Constitution or Fundamental Law. Professor Volio Jiménez, in subsequent communications to Mr. Herndl, also reiterated his desire to carry out the visit over a period of two weeks and said that, in order to fulfil his mission properly, it was necessary for the Government of Equatorial Guinea to appoint a liaison officer with sufficient authority to act as liaison between him and the Government.

6. On 29 June, the Secretary-General transmitted to the Minister for Foreign Affairs and Co-operation of Equatorial Guinea a note verbale in which he referred to Economic and Social Council resolution 1984/36, mentioned above, and drew the Minister's attention in particular to operative paragraphs 1 and 2 of the resolution. In connection with the implementation of paragraph 2, the Secretary-General observed that, during the recent conversations between His Excellency the President of Equatorial Guinea and the Resident Representative of the United Nations Development Programme in Malabo, referred to in paragraph 4 of this report, the President had personally expressed the wish for Professor Volio Jiménez, former Minister for Foreign Affairs of Costa Rica and currently Professor of Law at the University of Costa Rica, to visit his country and had made a request to that effect. The Secretary-General also informed the Minister that Professor Volio Jiménez had accepted his appointment by the Secretary-General in accordance with the resolution in question, with a view to studying, in conjunction with the Government of Equatorial Guinea, the best way of implementing the Plan of Action proposed by the United Nations and referred to in the report contained in document E/CN.4/1439 and Add.1. In the same note, the Secretary-General expressed the hope that Professor Volio Jiménez would be provided with all the necessary services and granted appropriate privileges and facilities in fulfilling his mission. Finally, the Secretary-General requested the Minister to inform him as soon as possible of the acceptance of the dates proposed for the visit.

7. Despite various reminders by authorized Secretariat officials in New York to the Permanent Mission of Equatorial Guinea to the United Nations in order to obtain a reply to the above-mentioned request by the Secretary-General, a reply was made only on 26 September by means of an oral communication from the Minister for Foreign Affairs to the Representative of the United Nations in Malabo. In the communication, the Minister informed the Representative, Mr. Hein-Cáceres, of his Government's surprise regarding the Economic and Social Council resolution relating to human rights in Equatorial Guinea since,

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<sup>2/</sup> E/CN.4/1371 and Corr.1 (1980), E/CN.4/1439 and Add.1 (1981).

according to the Minister, a report by the Government on the item had not been duly considered during the voting on the resolution in question.

8. Professor Volio Jiménez, already entrusted with his mandate as the Expert appointed by the Secretary-General, suggested that the mission to Equatorial Guinea should begin on 6 November; the mission would last one week, because the Centre for Human Rights had informed him that, for budgetary reasons, the stay in Equatorial Guinea could not last for the two weeks originally proposed by the Expert. Reasons beyond his control made it necessary for the Expert to postpone by one week the beginning of his mission, which started on 13 November, the date of his arrival in Malabo.

CHAPTER I. ACCOUNT OF THE MISSION

9. To prepare for the mission, Professor Volio Jiménez and his accompanying staff, Mr. José María de Faria, an official of the Centre for Human Rights, and Miss Luz Stella Cuéllar Moreno, secretary in the Centre for Human Rights, met in Madrid on 10, 11 and 12 November 1984, during which period they drew up a programme of work and telephoned the UNDP Deputy Representative at Malabo, Mr. Samuel Nyambi, to check whether the Government was expecting the mission on 13 November 1984, which was confirmed.

10. Upon arrival in Malabo, on 13 November, the Expert and his party were received by the Government representative, Ambassador in Charge of Missions in the Ministry of Foreign Affairs and Co-operation, Mr. Tarsicio Mañé Abeso, who was assigned as Liaison Officer between the Government and the mission, and by Protocol officials and by Mr. Nyambi, Deputy Resident Representative of the United Nations Development Programme.

11. On the same morning, the Expert held his first meeting with Ambassador Mañé, to whom he gave two texts: a Press Release announcing his arrival, the number of persons accompanying him and the nature of his mission, and another document containing the programme of work that the Expert wished to carry out, i.e., the interviews he wished to have with some members of the Government, including, of course, His Excellency the President of the Republic. The two texts in question are reproduced in annexes III and IV, respectively.

12. In the afternoon of the same day, the Expert had talks with the Minister of State for Foreign Affairs and Co-operation, Mr. Marcelino Nguema Onguena, in his office; he was accompanied by officials from his Ministry, while the Expert was accompanied by the other members of his mission. During the interview, the Expert explained the reasons for his presence in Equatorial Guinea, his desire to fulfil his mandate in the most efficient manner, and emphasized evaluation of the Three-Stage Plan of Action which had already been submitted by him and approved by both the Commission on Human Rights and the Economic and Social Council and by the Government of Equatorial Guinea. The Minister was very positive and frank. On behalf of the President of the Republic, the Government and for his own part, he welcomed the Expert's mission, since it would help to improve the image of Equatorial Guinea, give people greater confidence in the country, and the Expert would also be able to assist them in certain matters which were of concern and which they had difficulty in putting into practice. He stressed the importance of improving the people's economic situation, so that the efforts being made towards democratization would be meaningful. With regard to the Plan of Action, he said that the Government required the assistance of the specialists promised by the United Nations (in addition to the two specialists on constitutional issues already sent by the Secretariat to draft the Fundamental Law). On that point, the Minister spoke of problems which, according to the Government, were being tackled with the general technical assistance provided by the United Nations and other sources, for in some cases assistance did not arrive in time.

13. In the interview, the Minister for Foreign Affairs also stressed the limited amount of time available to the Expert to ascertain the real situation, and he wanted the Expert to be able to travel throughout the country and to speak to anyone he wished. He suggested that the Expert should speak with the Minister of Planning. He also said that the President of the Republic had appealed to exiles to return home or, if they were unable to do so for personal reasons, to take part in the country's activities abroad in the organs of the Union of Central African States (UEAC), and the Government would recommend to

those who did return that they should participate in the work of the local bodies of that organization. To that end, the Minister said that a campaign had been conducted in the country's embassies. Lastly, the Minister expressed his wish for the Expert to observe the efforts the Government had made since his last visit in 1980 and pointed out that, although the Government had done its utmost to improve conditions in the country in general since the events of 3 August 1979, much still remained to be done, especially in the economic and social sectors. In that regard, he said that it was essential in particular to raise the living standard of the people of Equatorial Guinea, which was an indispensable complement to the practical implementation of human, political and civil rights.

14. In response to the Minister, the Expert said that both for the evaluation of the Plan of Action and in order to hear the Government's views, joint meetings should be held with the respective Ministries. In addition, the Expert reiterated his desire to visit the places he had already indicated, both in the island of Bioko and on the mainland (Río Muni). The Expert also asked whether the Special Review Commission recommended in the Plan of Action had been set up. The Minister did not reply directly but reiterated the recommendation that the Expert should contact the Minister of Planning and the Director of Statistics. Furthermore, he suggested that the Expert, as on his previous mission, should prepare questionnaires for the Ministers on what the Expert wished to know in advance of his interviews with them, something which the Expert promised to do and did in due course.

15. On the same day, the Expert prepared four questionnaires: (a) for the Minister of the Office of the President, on constitutional questions and other fundamental laws; (b) for the economic sector; (c) for the social sector; and (d) for the administrative sector (see annex V). With regard to these last three questionnaires, the Expert agreed with the Liaison Officer that, for the replies to the relevant questions, joint meetings should be held with the Ministers and officials for each sector. The questionnaires were transmitted the following day (14 November) through the Liaison Officer. However, the joint meetings scheduled to consider questions relating to the economic, social and administrative sectors were not held for reasons which will be mentioned later.

16. On the same day, 14 November, the Expert had an interview with the General Minister of the Office of the President of the Government, Mr. Julio Ndong Ela Mangui, in his office. Other officials from the Ministry, the Liaison Officer and the staff accompanying the Expert were also present. The interview concerned constitutional questions in particular and the laws adopted from 1981 to 1984 in general. To that end, the Expert made use of the Plan of Action. The Expert asked whether the civil, penal, commercial, civil procedure and criminal procedure codes had been drafted and the Minister stated that the United Nations had been requested through UNDP to provide the specialists proposed in the Plan of Action for that purpose and that to date they had not arrived, which had hampered the drafting of those legal instruments. As a result, the Minister said that the Spanish laws existing prior to 12 October 1968 were still being used, pursuant to Decree-Law 4/1980 of 3 April 1980, something that he considered inappropriate. As to the Constitution, the Expert asked what procedure had been followed for the purposes of drafting and adoption, since the relevant recommendation in the Plan of Action had not been followed. The Minister replied that, to speed up the process, the Government had decided to set up a National Constitution Commission, broad-based, representative and entrusted with the task of preparing the draft Constitution. Representatives had been requested from the various professional and business sectors (such as farmers) and representatives of the different ethnic groups had also been selected. The Commission had met

to carry out its work in a town in Río Muni called Akonibe whose peaceful atmosphere, in the opinion of the Minister, had helped the Commission in its task. Subsequently, the preliminary draft had been completed and the United Nations requested to send the specialists proposed in the Plan of Action. They had arrived, as already stated in this report, and analysed the "Draft Fundamental Law of Equatorial Guinea", together with representatives of the Commission. The report by the specialists had been transmitted on 21 July 1982 to the then President of the Supreme Military Council of Equatorial Guinea, today President of the Republic. Subsequently, according to the Minister, a nation-wide referendum had been held to determine whether or not the people approved of the draft which, in accordance with the suggestions of the specialists, had in the end been entitled "Fundamental Law of Equatorial Guinea", dated April-May 1982. The referendum had been held on 15 August 1982 and the Fundamental Law had been approved. The Expert asked whether, prior to the referendum, the Government had arranged to have the text of the Constitution properly circulated in every way possible, so that people could take a decision in full knowledge of the facts. The Minister replied that the text had been circulated in that way and that the Malabo and Bata radio stations had read out articles of the Constitution over a period of several days and that a pamphlet had been issued, copies being sent to the Town Councils for distribution. The Expert asked for one of the pamphlets and the Minister promised to have one delivered to him; however, by the end of his mission, the Expert did not receive it, despite the fact that he reiterated his request on several occasions.

17. At the same meeting, the Expert asked about other laws contemplated in the Plan of Action and the Minister showed him a list of 13 Laws approved by the Chamber of Representatives of the People during 1984, in addition to other lists of Decree-Laws and Orders promulgated by the Government between 1979 and 1983. On 17 November, the Expert requested the Minister of the Office of the President, through Mr. Pedro-Celestino Ndong Engono Nchama (Protocol Officer), to provide the texts of various laws and decrees which he considered important for the purposes of his mission, but they were not delivered to him by the time he left. On the day of his departure, the Expert none the less repeated his request to the Minister of the Office of the President that the documents should be sent to his home country, which request was agreed to by the Minister.

18. In addition, at the meeting with the Minister of the Office of the President, the latter referred to the following as being important for the evaluation of the Plan of Action: (a) it was essential to have a printing press to enable the circulation of the newspaper Ebano to be resumed and, in general, to enhance the status of the press. Requests had been made to UNESCO through UNDP on a number of occasions, thus far without success. The observations made by the Minister were prompted by the Expert's question regarding freedom of the press, the development of which is envisaged in the Plan of Action. The reference to the possibility of assistance from the United Nations and UNESCO was also based on the Plan and, in this connection, the Minister requested the Expert to use his good offices to ensure that the country was provided with the desired printing press; (b) a considerable effort had been made in the area of legislation, but, in the Minister's opinion, the most important requirement was to deal with the economic and social situation. The Minister's point of view was summed up in his comment that "a Constitution doesn't put food in the people's mouths"; (c) still in connection with the evaluation of the Plan, the Minister referred to the status of women and the progress he felt had been made in that field. He said that a Vice-Ministry for Women's Affairs had been set up under a distinguished lady who had done a great deal of work. For example, a series of lectures had been given on the promotion of women, and the Vice-Minister was at that moment giving such a lecture in Bata, Río Muni;



(d) the Minister stressed the importance of programmes to improve efficiency among existing civil servants and to train the future civil servants required by the country, a topic covered in the Plan. He pointed to the need for United Nations assistance, also provided for in the Plan, and added that the Government had made considerable efforts to secure the necessary international co-operation and that he had himself even travelled to Madrid and had also made a number of requests in writing.

19. At the end of the interview with the Minister of the Office of the President, the Expert referred to the questionnaire he had prepared on the Constitution, with a view to assessing the progress made in that area and to enable him to make appropriate observations. He also reiterated his wish to be provided with a copy of the instruction pamphlet on the draft Constitution used for the referendum, together with the list of laws and decrees adopted thus far. With regard to the Minister's reference to the requests for assistance submitted to the United Nations and to the fact that no reply had been received, the Expert suggested a modus operandi to ensure that future requests by the Government to the United Nations regarding the Plan of Action were sent through the appropriate channels and properly co-ordinated.

20. The second interview of the day was with the President and the First Vice-President of the Chamber of Representatives of the People, Mr. Francisco Boddien Ngalo and Mr. Vicente Owono Minang, respectively. The meeting, which was also attended by other Government officials and by members of the Expert's party, took place in the offices of the Chamber itself. The two Government officials explained the way the Chamber was constituted and its activities during the first two sessions that had been held since its inauguration in 1983, following the referendum of 15 August 1982. Both officials highlighted the fact that four ministers - those for Commerce, Education, Public Works and Information - had been called to account for their actions. They described how, at the sessions in question, the Representatives had asked penetrating questions which had forced the ministers, for the first time, to account publicly for their administration, in response to complaints by citizens and criticisms from the Representatives themselves. The Expert asked about the process for the election of Representatives and they explained that the process had been in conformity with the Fundamental Law. It had begun at grass-roots level, with the public itself designating citizens as electors or delegates for the elections to be held by each Town Council in the administrative centre of each municipality. The chosen electors had then held ballots to elect representatives to be members of the Chamber. The lists of those elected had been sent to the Municipal Elections Board, which had passed them on to the Office of the President of the Republic. Fifteen names of persons designated directly by the President had been added to the list to bring the number of members of the Chamber up to 60, in accordance with the Decree-Law on General Elections. This single official list had been submitted for a nation-wide popular referendum on the day designated for general elections (under article 27 of the Decree-Law on elections, the electoral lists are to be publicly displayed for seven days so that any reasonable objections may be lodged). The two officials also said that the term of office of the Representatives is five years and that the Chamber holds two regular sessions, at the beginning and at the end of each year, in addition to any extraordinary sessions convened on the initiative of the Government or of the Chamber itself.

21. The President and the First Vice-President said that any citizen has free access to the Chamber for the submission of petitions. They also said that meetings of the Chamber are public and that question time for queries to ministers is broadcast over the radio (the Expert was subsequently able to confirm that this is indeed the case, since a number of citizens referred to

such broadcasts). In general, the two officials in question appeared satisfied with the progress of the legislative work and said that they are able to perform their duties freely and are in contact with the citizens they represent. In reply to a question by the Expert, they said that the laws adopted thus far had been Government initiatives. Nevertheless, a bill entitled "Family Relations Act", an initiative of the Representatives of the Chamber, is currently being considered in one of the Committees, namely the "Standing Committee", which is concerned with conducting public opinion polls.

22. The Expert made observations on the source of legislative initiatives and expressed the view that the number of Representatives' signatures required before a bill could be introduced officially (three quarters of the full membership of the Chamber) was excessive. He also said that he did not think that each bill should be submitted to the President of the Republic. It would be better, he added, for that prerogative to be exercised by the Representatives and for no bill to be submitted to the President, thereby confirming the powers of Representatives and the independence of the Chamber. He also requested, and was immediately provided with, a copy of the Decree-Law on General Elections, together with a copy of the Rules of Procedure of the Chamber of Representatives of the People.

23. The last interview on 14 November was at the Law Courts with Mr. Tomás-Alfredo King Thomas, President of the Supreme Court of Justice, and other members of the judiciary. The President described the work done in setting up the judiciary in accordance with the Constitution, a task which had been made very difficult by the prevailing conditions and in particular by the acute shortage of people versed in judicial matters. Nevertheless, the President was satisfied with what had been achieved so far in establishing the independence of the judiciary. To illustrate the type of difficulty encountered, the President described how it had been necessary to provide training courses to serving staff, particularly with regard to the implementation of the Judicial Power Organizational Act and the Act governing the judiciary. In this connection, the President referred to the need felt by judges for the provision of advisory services by the United Nations, which he described as "the last hope of the judiciary".

24. The Expert asked a number of questions on the functions of the judiciary as envisaged in the Constitution. For example, with regard to the power to declare laws, decree-laws and regulations unconstitutional because of defects of form or content, the Expert expressed the view that there appeared to be some ambiguity or obscurity as to the body competent to consider and rule on such matters (article 40). As a result, it was the function of the Council of State (another new body established under the Constitution) to rule, prior to enactment, on the constitutionality of laws classified as institutional, namely, major legislation such as the Organizational Act, and to reach binding decisions on the constitutional legality of the preparation of rules and regulations connected with constitutional laws (article 102). The President expressed the view that actions for unconstitutionality under article 40 should be heard and decided by the Supreme Court of Justice, on the basis of the relevant laws of the Spanish legal system being applied as a supplementary measure under a decree-law currently in force. The Expert said that it would be advisable to amend the Constitution to confer on the judiciary or the Council of State competence to rule on such unconstitutionality if the aim was to concentrate in one body all powers regarding declarations of the inapplicability of laws, decree-laws and regulations on grounds of unconstitutionality. The Expert also referred to the advisability of applying provisions of the Constitution which are to be implemented under appropriate laws. For example, chapter IV of title III, "Constitutional Guarantees", recognizes the right of habeas corpus

and the right of amparo for protection of the rights embodied in the Constitution. The Expert then asked whether appropriate laws for the enforcement of such guarantees existed or were in preparation. From the President's reply, the Expert gathered that neither was the case, whereupon the Expert pointed out that they should be drawn up and that, if the assistance of the United Nations was required in order to do so, a request should be made through the appropriate official channels. The Expert also asked about the Statute of the Organizational Act of the Office of the Government Attorney, an institution responsible for ensuring strict observance of the Constitution and of the laws and other legal provisions referred to in chapter V of title VIII, "The Judiciary and the Office of the Government Attorney". The President replied that no such statute existed. Accordingly, the Expert recommended that such a statute should be prepared and made the same comment as in the case of habeas corpus and amparo. The Expert then asked whether, under the reorganization of the judiciary, the Traditional Courts which he had seen operate effectively in Río Muni during his first visit to the country were still functioning. The President replied that some elements of the traditional system had been retained under the reorganization. Finally, the Expert asked whether a body existed to exercise control over State finances, to which the President replied that that function was performed by a body entitled the "General State Audit Department", which came under the Executive.

25. On 14 November, while waiting to be informed of the day on which the meetings of the economic, social and administrative groups referred to earlier in this report were to be held, the Expert discussed his planned visit to Río Muni with the Liaison Officer, who stated that it was not certain whether air transport would be available to make the journey on Friday, 16 November, or for the return to Malabo on Monday, 19 November, in time to catch the return plane to Madrid on 20 November. This uncertainty was caused by the itineraries of the air services, currently the only means of transport in Equatorial Guinea to Río Muni. The Liaison Officer also stated that, according to information from the Minister of Education, who had just returned from Río Muni, the road from Bata to Niefang was in very poor condition after the heavy rains, so that the Expert would be unable to go to Evinayong as he had hoped. In the light of this information, the Expert was obliged to cancel his visit to the mainland and to restrict his activities to the island of Bioko.

26. The Liaison Officer then informed the Expert that it would not be possible to hold the joint meetings mentioned earlier, in view of the various commitments of the ministers in the relevant sectors. Consequently, it was decided to visit each one separately on 16 November.

27. On Thursday, 15 November, the Expert was taken very ill with an acute attack of indigestion, and Ambassador Mañé, the Liaison Officer, was informed immediately. Nevertheless, shortly afterwards, a protocol officer, Mr. Pedro-Celestino Ndong Engono Nchama, came to inform the Expert that the President of the Republic would receive him at 10 o'clock that same morning, a visit which had not been scheduled previously, since the Liaison Officer had from the outset informed the Expert that the final interview would be with the President of the Republic at the end of his mission. Despite his serious condition, the Expert made haste to respond to the President's invitation as quickly as possible. On his arrival at the Presidential Palace, the Expert informed the Minister for Foreign Affairs and the Minister of the Office of the President, who were in attendance there, of his indisposition. They suggested that the interview should be postponed. However, the Expert preferred to take advantage of the opportunity as far as his condition would allow. The audience with the President took place in the presence of the Minister for Foreign Affairs. The President received the Expert very cordially and, in the course

of their conversation, told him that he had been waiting for his visit to assess the Plan of Action and that the United Nations had not provided his country with the assistance promised in the Plan, except for the drafting of the Fundamental Law, or Constitution. That assistance was needed, however, in order to continue the work begun with the Constitution. With regard to the Fundamental Law itself, the President recognized that the time-table in the Plan for drafting and adopting the Constitution had not been observed. That had become unavoidable, in view of the fact that the Government had realized that the Constitution was necessary if the process of national democratization was to continue and the basic organs of the State were to be established in such a way as to ensure separation of the principal functions. The Expert said that he appreciated the urgency spoken of by the President, since the aim of the Plan of Action had been to allow room for a number of steps or measures preparatory to the adoption of the Constitution. Nevertheless, if it had been decided otherwise, the matter was not of such great importance, although the arrangements in the Plan could have had more positive results. The Expert went on to say that there had been some criticism from outside of the fact that a clause regarding the designation of the President of the Republic had been included in the text of the Constitution itself, something which had not been envisaged in the Plan of Action. Moreover, it was assumed that the election would take place at the appropriate time, following the referendum on the Constitution. The President explained that, in the course of his visits to various areas of the country, he had realized that people were anxious that the peace they currently enjoyed should continue and it should not be jeopardized by conflicts arising out of political controversies. In addition, the country was in need of discipline and order for the purposes of reconstruction. It had been decided to propose to the Constitution Drafting Committee a transitional provision designating him President of the Republic, so that a presidential election could be held at the end of his term of office. It had been difficult for the Government to convince the Drafting Committee to accept such an amendment, although it had eventually done so. The President went on to explain that the Council of State, another of the basic organs established by the new Constitution, had not yet been set up because of a lack of budgetary resources since the country was suffering a severe economic crisis and, because it was a member of the Union of Central African States, the Bank of Equatorial Guinea had become the Bank of the Union, something that had seriously restricted the Government's ability to finance its normal expenditures. In any event, the Council was expected to be set up at the beginning of 1985. The President also expressed satisfaction with the Chamber of Representatives of the People, which was conducting itself with complete propriety and had even required a number of ministers to give an account of their administration of affairs. After referring to the country's need for greater economic assistance from the United Nations and from the international community in general, so as to meet the acute economic needs of the people, the President went on to say that substantial economic and social development programmes were under way and that he hoped to hold a subsequent working meeting with the Expert and his own ministers, so that they could hear and consider his views. <sup>3/</sup> At that point, the Expert regretfully had to inform the President that he felt extremely ill and was obliged to conclude the meeting. The President was most concerned and asked for the Expert to be given the necessary help and care.

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<sup>3/</sup> The working meeting in question never came to be included in the time-table.

28. Because of the incapacity of the Expert, who received the best possible attention from the President's personal doctor and nurse, the scheduled programme of meetings with ministers in the social, economic and administrative fields had to be postponed and the Liaison Officer was immediately so informed. It was mutually agreed that, if the Expert's condition improved, the visits in question could take place on Saturday, 17 November. The Expert stated that he would be able to undertake the interviews on that day. However, the Liaison Officer said that it would be better, for local reasons, to hold them on Monday, 19 November, from 9.30 a.m. onwards, which was agreed by both parties.

29. Meanwhile, the Expert, who was under doctor's orders to rest, spent his time drafting his preliminary observations and recommendations, which were passed on in due course to the Liaison Officer (see annexes VI and VII). In addition, the Expert informed the Liaison Officer that he would be able to make his planned visit to the town of Riaba, on the east coast, on 18 November, and did so on that date.

30. During his visit to Riaba, the Expert spoke with a number of officials of various bodies, including Mr. Antonio Owono Obama, Secretary of the Riaba Town Council and member of the Chamber of Representatives of the People for the District of Evinayong, Mr. Lucas Obama, Secretary of the District Government Office, Mr. Alberto Sima Nnene, Medical Director of the Riaba Hospital, Mr. Agustín Micha Ngui, Town Councillor, Mr. Dionisio Oyono-Sargento, Military Commander of the District of Riaba, and Mr. Domingo Esono, the Hospital Administrator. The Expert also visited the hospital, where the physician in charge showed him round the various services and described briefly the illnesses mainly contracted by the population. In reply to a question by the Expert, the doctor said that infant mortality had fallen in the last year. The Expert was able to ascertain that, by and large, the hospital was provided with a minimum of medical supplies, equipment and wards, although of course the quantity and quality were not as might have been hoped. At the end of the visit to Riaba, at the suggestion of the Liaison Officer accompanying the Expert and other members of the mission, the party travelled to the other side of the island via Musola, to the coastal town of Luba, which the Expert had visited during his second mission to the country. He also visited the hospital there and found a considerable improvement over the deplorable conditions existing in 1980. The Expert then continued his return journey to Malabo, where he arrived late in the day. (See the schedule of visits for the day in annex VIII.)

31. The following day, Monday, 19 November, the Expert was waiting for the Liaison Officer in order to begin the interviews scheduled for that date with ministers in the social, economic and administrative sectors, but the Liaison Officer came to inform him that the interviews could not take place because it was an official holiday, which the Expert found most annoying since at no time had he been informed of that fact. On the contrary, as stated earlier, it had been the Liaison Officer himself who, with the agreement of the Expert, had scheduled the visits. The Expert, in expressing his vexation to the Liaison Officer, emphasized how damaging such a delay would be to his mission. Later in the morning of the same day, the Expert drafted a note to the Minister for Foreign Affairs informing him of what had happened and again expressing his annoyance (see annex IX). The Expert also wrote another letter to the same Minister in which he stated that he considered his mission to be at an end and extended his thanks to the Government for its courtesy and kindness to him and his party; he also reiterated his earlier recommendations on better future communications between the Government and the Centre for Human Rights for the purpose of monitoring implementation of the Plan of Action and of other measures that might be necessary for the full restoration of human rights in Equatorial Guinea (see annex X). Both letters were delivered by a member of the Protocol Department.

32. For the rest of the day, the Expert waited for the Government to respond and to decide to hold the interviews that had been abruptly cancelled. However, his wait was in vain, since neither the Liaison Officer nor any other official contacted the Expert during the rest of the day or that night.

33. Early on the morning of 20 November, the Expert and his accompanying staff were preparing to leave for the airport in order to begin their return journey when the Liaison Officer arrived to tell them that the Minister for Foreign Affairs would receive the Expert at his office at 8.30 a.m. Despite the inconvenience involved, the Expert decided to keep the appointment. Present at the meeting, in addition to the Minister for Foreign Affairs, Mr. Marcelino Nguema Onguene, were the Minister of the Office of the President, Mr. Julio Ndong Ela Mongue, the Minister of Justice, Mr. Angel Ndong Micita, and the Minister of Planning, Guillermo Negueria Ela, together with Ambassador Mañé.

34. The Minister for Foreign Affairs began by saying that the President and members of the Government had read the notes sent by the Expert on the previous day, as well as his earlier communications, including the preliminary observations and recommendations. Referring to the observations and recommendations regarding the Fundamental Law, or Constitution, the Minister for Foreign Affairs said that the President did not consider it advisable to revise the Constitution as suggested by the Expert, since special circumstances were required for it to be amended, and the President's view was that no such circumstances existed. The opinion of the Chamber of Representatives must also be taken into account.

35. While expressing the opinion that the President and Government saw no reason to amend the Constitution for the time being, except in the case of the official currency, to enable the CFA franc to be adopted following the country's entry into the Union of Central African States, the Minister said that the Expert's views were greatly appreciated and qualified his position to some extent by suggesting that the amendments proposed provisionally by the Expert, without prejudice to the content of his final report, did not represent a priority as far as the Government was concerned, but he did not discount the possibility of amendments being made in the future. However, it was very clear to the Expert that his observations and recommendations had not been accepted by the Government.

36. The Minister also stated that both Mr. Arturo Hein-Cáceres and the previous UNDP Resident Representative, Mr. G. Merrem, had been informed verbally by the President of his interest in obtaining the assistance of United Nations experts in developing topics covered in the Constitution, but that such assistance had not been forthcoming. In the meantime, the Government was applying Spanish legislation - i.e. the same legislation as had existed prior to independence - on a supplementary basis.

37. Moving on immediately to another topic, the Minister said that the Government was "vexed" by the Economic and Social Council resolution authorizing the Expert's mission, for the Government's view was that the Council, in deciding that an evaluation should be made of the Plan of Action, had failed to take into account the report submitted by the Government at the same session at which the resolution in question had been adopted (resolution 1984/36). The Minister further pointed out that the resolution also stated that there had been no change in the human rights situation in Equatorial Guinea, which the Government knew to be untrue, since changes had indeed taken place, as shown by the adoption of the Constitution and other important legislation. A number of significant economic and social development programmes had also been embarked upon.

38. The Minister of Planning said that national development projects did exist, but that the requisite funds from the United Nations were not available. He added that the Plan of Action did not take account of the earlier problems, in 1979, and in his view the plan for democratization should be oriented towards economic development rather than towards legislation on fundamental human rights. In that respect, he would like a development plan together with the Plan of Action.

39. The Minister of the Office of the President reiterated his earlier complaint regarding the request to UNESCO in connection with a printing press. He also said that, in the present circumstances, it was not possible to amend the Constitution, something which should be done only in specific cases such as that of the currency. Changes should be made in the Constitution in the course of the country's development, since it was then that needs became clear and amendments could be made accordingly.

40. Referring to the Expert's observations and recommendations that the Constitution should be redrafted to ensure greater independence for the Chamber of Representatives of the People, the Minister for Justice said that the Chamber was still learning its functions and therefore needed the support of the Government. Again referring to the Expert's preliminary observations and recommendations, he said that the people had become allergic to political parties as a result of their unpleasant experience in the past. In the President's opinion, he could and should present his observations to the Chamber, not only as President, but also as an ordinary citizen.

41. The Expert then explained that, in any event, his observations and recommendations were simply meant to provide the Government with food for thought. As to the observation by the Minister of the Office of the President to the effect that a constitution must be tailored to a country's real conditions, for otherwise it would be like "wearing a shirt which was the wrong size", the Expert said he understood perfectly that each country was different and its institutions must therefore be geared to its special characteristics, adding that he had borne that in mind in proposing the Plan of Action, as was explained in the Plan itself. However, he emphasized that did not mean that individual countries should neglect to establish the legal system essential to guarantee basic human rights. Similarly, with reference in particular to the observations by the Minister of Planning, the Expert underscored the importance of the Plan of Action and especially the need for Equatorial Guinea to implement the appropriate instruments and to ensure full observance of human rights, thereby not only benefiting the citizens but also creating conditions whereby foreigners wishing to come to the country in order to participate through investment in national development could be sure that their interests were properly protected, and to enable the international community to continue and even increase co-operation with Equatorial Guinea. With regard to the criticisms levelled at the Economic and Social Council resolution and the Commission on Human Rights by the Minister for Foreign Affairs, on the grounds that "it tries to politicize things, on the basis of private reports, as if it was trying to oppose the Government", the Expert said that he was there in order to carry out a mission assigned to him by the Secretary-General, namely to evaluate a Plan of Action, one which, at the time, was fully known to and supported by the Government of Equatorial Guinea.

42. Both the Minister for Foreign Affairs and the Minister of Justice regretted that the Expert's visit had been so short, since they had hoped to hold a number of talks with him and to be able to avail themselves of his valuable assistance. The Expert thanked them for their kind words and said that he was always available to the Government, since he was greatly interested in the welfare of the people of Equatorial Guinea.

43. Finally, the Minister for Foreign Affairs thanked the Expert for his visit and asked him to do whatever he could to ensure that experts were sent to assist with the drafting of the basic codes, and of any others that might be needed. The Expert said that he would make the appropriate recommendations in his report. He reiterated his request that the replies to his questionnaires and the texts of the laws which he had requested should be sent to him in his home country. The Minister of the Office of the President said he would see that that was done.

44. With those words, the meeting ended. It was prevented from being as long as the Expert would have liked by the change of plan in the time-table referred to earlier in this report.

45. The Expert and his party immediately travelled to the airport to catch the plane for Madrid. They were accompanied by Ambassador Mañé, the Liaison Officer, and received at the airport by Mr. Pedro-Celestino Ndong Engono Nchema, the Department of Protocol Official. Mr. Hein-Cáceres, the UNDP Resident Representative, also came to see them off.

46. The Expert and his party spent 21 and 22 November in Madrid, during which time they drafted the Introduction and Chapter I. The Expert drafted Chapter II, Conclusions and Recommendations, on his return home.

47. The Expert wishes to express his gratitude for the kind and invaluable co-operation extended to him by Mr. Arturo Hein-Cáceres and Mr. Samuel Nyambi, Resident Representative and Deputy Resident Representative of the United Nations Development Programme in Malabo. Their intelligent and discreet participation in providing assistance to the Expert and his party greatly simplified his task. The Expert also wishes to underline the importance of close co-operation between UNDP and officials and bodies involved in the promotion and protection of human rights within the United Nations. In the course of his three missions to Equatorial Guinea, the Expert saw UNDP as a necessary and useful United Nations presence and as a centre for the co-ordination of activities of direct concern to the United Nations.

48. The Expert also wishes to express his sincere gratitude to Mr. José Maria de Faria and to Miss Luz Stella Cuéllar Moreno for their outstanding work both during the mission and in the preparation and drafting of this report. The Expert would have been unable to discharge his mandate without their assistance. Both of them, within their respective areas of competence, made invaluable contributions without which the objectives of the mission could not have been achieved.



## CHAPTER II. CONCLUSIONS AND RECOMMENDATIONS

### A. CONCLUSIONS

49. The commendable and singularly important efforts made by the Government of Equatorial Guinea in the legislative field have enabled it to speed up the process of democratization which began in late 1979 and was recommended by the Expert when he started his missions to the country.

50. The Fundamental Law or Constitution is the core of the legislation adopted as part of such efforts. During the drafting and adoption of the Fundamental Law, the measures and stages provided for in the Plan of Action were not followed. They were designed to encourage public debate so that the people would be able to participate actively and make the right decisions during the constitutional referendum.

51. The procedure which was followed by the Government (and which was not in keeping with the Plan of Action) did make it possible to adopt the Fundamental Law more quickly and to achieve the primary objective of establishing a system for the protection of fundamental human rights, but the opportunity was lost to make the Fundamental Law truly authentic so that it would reflect the country's particular features and provide a framework for a genuine system of democratic government.

52. The foregoing is demonstrated primarily by the predominant role which the President of the Republic plays in the institutional life of the country, something which stems from the Fundamental Law itself and is a major obstacle to the establishment and proper functioning of other basic components of the new system, such as the Chamber of Representatives of the People, the Supreme Court of Justice and the Council of State, which represent an important step forward in achieving the goals set in the Plan of Action.

53. From the Government's point of view, the role assigned to the President may be a reaction to the country's tragic and cruel experience under the totalitarian regime of the former dictator, Macías, and a result of the need to maintain the unity, order and discipline the country requires at the present time. In the long run and even over the short-term, however, this type of strong, virtually one-man government will sow the seeds for government by force and constitute a serious step backwards in efforts to ensure full observance of human rights.

54. As a follow-up to the written comments on the Fundamental Law which he made in the form of preliminary observations and recommendations during his visit, the Expert now wishes to suggest that the Government should prepare further amendments so that work on the establishment of the system for the protection of human rights provided for in the Plan of Action may proceed without being hampered by the Constitution itself. The Government's resistance to the amendments suggested by the Expert in his preliminary observations and recommendations implies that those suggested in the next section of this report, entitled "Recommendations", are likely to be treated in the same way. Such measures must none the less be adopted for the benefit of the people and in accordance with the Plan of Action.

55. The Fundamental Law must therefore be reviewed and amended in order to guarantee effective independence for the legislative, judicial and supervisory bodies. This is a task that has to be carried out and it cannot be postponed indefinitely.

56. With a view to implementing a number of the provisions of the Fundamental Law, and particularly those which will lead to the establishment of democracy in the country, the necessary measures have to be taken as soon as possible. If such action is not taken immediately or if it is overdue or incomplete, the provisions in question will be ineffective and the Fundamental Law will not serve as the cornerstone of a system of fundamental freedoms and as a firm basis for economic and social reconstruction plans.

57. Generally speaking, there is an enormous gap between the endeavours made in the legal field and what has or might have been done contrary to the goals set in the Plan of Action with regard to the observance of human rights, but it does not necessarily follow, in every instance, that such observance does not exist. There are areas where significant changes have indeed taken place. There is, for example, full freedom of religion, belief and education, but it is a matter of concern that there are so few people who have the necessary training to carry out basic administrative tasks in the processes of the modernization and the democratization of the country, which are closely linked. The process of moving from the planning stage to the stage where action can be taken is always a lengthy and laborious one, particularly in a poor country such as Equatorial Guinea, ravaged by the consequences of the dictatorship that lasted for 11 long years. It is, however, precisely for these reasons that the Government of Equatorial Guinea cannot fail to take up the challenge.

58. The administrative shortcomings referred to in the preceding paragraph are being aggravated by the lack of a flexible decision-making system which can use the country's available resources. Various procedures seem to indicate that there are unnecessary obstacles to the performance of the most important tasks; this may be partly due to the fact that the bureaucracy at the highest level is extremely top-heavy (there are 16 Ministries). In view of this situation and that referred to in the preceding paragraph, the Expert does not believe that the objectives set in the Plan of Action have been achieved.

59. The shortage of lawyers and trained legal staff has become even worse now that the judiciary has been organized and its responsibilities have been defined. Hence, the Plan of Action has not been implemented and this is to the detriment of the ordinary citizen, who not only does not know what his new rights are, but is also unable to assert them in the courts of law. It is also prejudicial to persons who do know what their rights are and how they can avail themselves of the guarantees provided for in the Fundamental Law.

60. The foregoing also has an adverse effect on the important innovations contained in the Fundamental Law, such as the remedies of habeas corpus and amparo, the Office of the Government Attorney, the Office of the Controller General of the Republic and remedies for claiming that unconstitutional laws, decrees and regulations are not applicable. Moreover, laws to give effect to the above-mentioned remedies to protect fundamental freedoms have not been adopted and no drafts have even been prepared.

61. The Plan of Action recommended that an Associations Act should be adopted for the general purpose of enabling citizens to defend their common interests and exercise their right to take part in political life and specifically with a view to the discussion of the Fundamental Law or Constitution and its adoption in a referendum. Such an Act has, however, still not been adopted and not even a bill has been drafted. This is one of the cases covered by paragraph 55 above.

62. There is no freedom to form political parties and the Government has no intention of encouraging them, since it takes the view that their activities would be contrary not only to efforts to promote the unity, the calm and the discipline required for the reconstruction of the country, but also the people's wishes. In this connection, the Plan of Action advocated that citizens should be able to participate intelligently and responsibly in public affairs and, to this end, it recommended the adoption of the Associations Act referred to in the preceding paragraph. The Plan of Action made it clear that the Associations Act would encourage the formation of a number of political parties and, when the Plan was adopted, account was taken of the Government's point of view. The Government's reasons appeared valid at the time and no attempt was made to force the delicate issue of political parties because of the situation prevailing in the country and bad memories of the abuses committed by the only official party allowed under the Macías dictatorship. But it has now been five years since the events of August 1979 and it is no longer reasonable or appropriate to restrict the freedom to take part in public affairs through political parties or groups. Such participation would make a positive contribution to the process of reconstruction: more people, including those who are now in exile, would bring fresh ideas and help to promote, improve and implement the process. Moreover, the Fundamental Law recognizes the electoral rights of the citizens of Equatorial Guinea.

63. There are still no privately owned mass media. Those that do exist, i.e. a radio station and a television station, are State-owned, just as they were when the Plan of Action was adopted. Now, as then (1980-1981), monopoly control over the media jeopardizes the right to freedom of expression, freedom of thought and freedom of the press, as well as other fundamental freedoms, particularly now that the Fundamental Law recognizes freedom of thought, conscience and opinion, as well as the right to disseminate information by any means. Although the Government now says that it has requested financial assistance from UNESCO to purchase a printing press, the fact is that it would be used for official purposes. There is, moreover, no record that any such request for assistance, as recommended in the Plan, has ever been made through the usual channels.

64. With regard to the legislative endeavours referred to in paragraph 49 of these conclusions, the Expert was able to examine the text of the Fundamental Law prior to his visit and he did receive the texts of the Judicial Power Organizational Bill, the Decree-Law governing elections to the Chamber of Representatives of the People and the rules of procedure of the Chamber of Representatives of the people, but he still has not received the texts of other laws which he requested during his visit and whose titles appear in a list made available to him at his request. <sup>4/</sup> For the time being, reference can therefore be made only to the above-mentioned texts.

65. The Expert was unable to assess the Plan of Action from the standpoint of progress with regard to freedom of education and the improvement of educational opportunities for the people, since, as already stated elsewhere in this report, the Government did not facilitate an interview by the Expert with the Minister

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<sup>4/</sup> This list is available for consultation in the secretariat files.

of Education and he did not receive and still has not received any replies to the questions on education which he submitted in writing (see annex V). As noted in paragraph 57 above, however, freedom of education does exist, and as recommended in the Plan of Action, four multilateral co-operation projects have been implemented through UNDP and one has been completed. The Expert obtained this information from the UNDP Resident Representative. For the same reasons, the Expert was also unable to evaluate the situation regarding the right to work and the way in which it is exercised in the country.

66. The Government has made way for a civilian regime, as envisaged in the Plan of Action. Prior to the adoption of the Fundamental Law, which is now in force, the Ministers were accountable to military commissioners. With the possible exception of the Minister of Defence, the Ministers are all civilians, although various people, mainly Equatorial Guineans, told the Expert that the situation was the same as it had been before the new constitutional regime. The Expert has no proof of this, but he does have proof of what he stated at the beginning of this paragraph and it is in itself a good starting point for continuing the process of democratization and consolidating the achievements made thus far.

67. The Expert found that health care has improved considerably since his last visit, but much still remains to be done. This is an area that requires urgent and wide-ranging attention.

68. One of the Government's primary objectives and one to which reference is also made in the Plan of Action is the advancement of women. The useful measures that have been taken in this important area include the establishment of a Vice-Ministry for the Advancement of Women, which is now headed by a very capable and active woman. Training courses have been and are being given in various parts of the country.

69. The Plan of Action called for the establishment of a Special Review Commission which would report directly to the Office of the President of the Republic and be responsible for ensuring the unity, consistency and implementation of the projects and programmes provided for in the Plan. The Commission has not been established, and the resulting adverse effects have been felt.

70. One of the adverse effects of the absence of appropriate machinery for reviewing the Plan of Action is that there is no co-ordination of the provision of experts, as called for in the Plan of Action, and of others who might be required in the same context. To this end, the Plan of Action proposed not only the Special Review Commission referred to in the preceding paragraph, but also the training of a group of experts under the guidance of a co-ordinator appointed by the United Nations Secretary-General at the request of the Commission on Human Rights. The group was also to co-ordinate its activities with those which were being and would be carried out by experts appointed by multilateral donors (see document E/CN.4/1439, para. 87). Yet such a group has never been set up and a good opportunity has been missed to help the Government implement what was agreed on in the Plan of Action and the Expert's recommendations at that time.

71. Equatorial Guinea has not acceded to the International Covenant on Economic, Social and Cultural Rights or to the International Covenant on Civil and Political Rights, as recommended in the Plan of Action, but it has become a party to the Convention on the Elimination of All Forms of Discrimination against Women.

72. The economic and social situation is very serious. The population is weighed down by poverty. The country's resources are not being used because of the lack of financial, technological and trained human resources. The Government's emphasis on priorities to overcome such obstacles, which stand in the way of general well-being, was one of the dominant themes of the Expert's talks with Government officials. In 1980, the President of the Supreme Military Council, who is now President of the Republic, placed particular emphasis on the problem of poverty, but, during his latest visit, the Expert found that the entire Government (the President and the Ministers whom he interviewed) appeared to be deeply committed to the priority task of raising the population's standard of living. Although the Expert finds such concern to be reasonable and commendable, he considers that, by making it a matter of priority, the Government is minimizing or attaching less importance to efforts to promote fundamental political and civil rights, but this may be because of its understandable desire to improve the social conditions of the great mass of poverty-stricken citizens. This attitude was most noticeable on the part of the Minister of the Office of the President and the Minister of Planning.

73. This line of reasoning is not unfamiliar to the Expert because the debate between those who advocate so-called "genuine freedoms", as opposed and compared to so-called "formal freedoms", which also have ardent supporters, has been going on for a long time. The Expert is, however, of the opinion that such a debate, which was once justified, is no longer relevant because common sense indicates that the two concepts go hand in hand, since both "families" or "generations" of rights are instruments which the human person needs to promote and defend his inherent dignity.

74. The Expert therefore fears that the Government's emphasis on economic and social rights may work against efforts towards full restoration of fundamental rights and freedoms and lead the Government ruinously astray, to the detriment of the Plan of Action, however logical its reasoning may now seem.

75. Any neglect of the tasks called for in the Plan of Action, as well as of others that will be required as circumstances change, might also discourage international co-operation with Equatorial Guinea, something that was regarded as being closely linked to the Plan of Action in Commission on Human Rights resolution 33 (XXXVI). The Expert is of the opinion that this link still exists and that it should be strengthened for the benefit of the people of Equatorial Guinea.

#### B. RECOMMENDATIONS

76. Pursuant to his mandate during his latest visit to Equatorial Guinea, i.e. "to study, in conjunction with the Government of that country, the best way of implementing the Plan of Action proposed by the United Nations" (Economic and Social Council resolution 1984/36) "in order to ensure the full enjoyment of human rights and fundamental freedoms" (ibid.), the Expert makes the following recommendations:

77. The "Fundamental Law of Equatorial Guinea", which dates from March-April 1982 and was adopted by referendum in August 1983, has to be reviewed. To this end, a special commission composed of members of the Government, the Chamber of Representatives of the People, the Supreme Court of Justice and the Council of State should be established in 1985. The commission would have one year in which to complete its work and promptly submit to the Chamber of Representatives of the People its report, in the form of draft amendments to the Fundamental Law, to be adopted in 1986 on the basis of the procedures provided for therein. If the Government so requests, the United Nations might supply an expert who would serve as a consultant to the special commission and provide advice in connection with the amendments recommended in the following paragraph.

78. As a follow-up to the suggestions made in the form of preliminary observations and recommendations (see annexes VI and VII) regarding the amendments referred to in the preceding paragraph, the Expert also recommends that: (a) With regard to the right to work and the prohibition on forced labour, as embodied in the Fundamental Law, the clause referring cases in which a person may be compelled to perform forced labour (article 20, paragraph 11) to other legislation should not be maintained because the exceptions provided for by law might deprive such a prohibition of any practical significance; (b) The provision under which the exercise of political rights may be suspended and which specifies that the cases and the manner in which such rights may be suspended or restored is subject to other legislation (article 28) should also be deleted, for the reasons indicated above in connection with forced labour; (c) In the event of "imminent danger", suspension of the rights and guarantees of citizens should apply only to certain rights, but not to fundamental rights whose enjoyment and protection should never be suspended in any circumstance, the reason being that, as article 93 now stands, individuals would be totally defenceless and subject to the will and possible mistakes of the Government; (d) The President of the Republic should not be empowered to declare war and make peace (article 92 (e)) for such broad power should be shared by the President and the Chamber of Representatives of the People; (e) It should not be the President of the Republic who appoints and dismisses the Government Attorney and the Deputy Prosecutors (article 148), because the main function of the Office of the Government Attorney is "to ensure full compliance with the Fundamental Law" and all other laws (ibid.); it thus forms part of the judicial power and article 148 is indeed contained in chapter V of the Constitutional Law, entitled "The Judicial Power and the Office of the Government Attorney". The Supreme Court of Justice should therefore make such appointments, thereby guaranteeing the independence of the Prosecutors.

79. In addition to the preliminary observations and recommendations on the Fundamental Law and those made in the preceding paragraph, the Expert wishes to draw attention to the recommendations made in July 1982 by the two constitutional law experts appointed by the United Nations Secretary-General in accordance with the Plan of Action. The Experts, Mr. Rubén Hernández and Mr. Jorge Mario García, submitted 37 proposals for amendments to the "Draft Fundamental Law of Equatorial Guinea" and 25 of them were accepted. The 12 that were not accepted were nevertheless important and, apart from the one relating to academic freedom, in a country which has no university and will not have one in the near future, the Expert endorses and supports them. They relate to the principle of the rule of law on which the conduct of government officials must be based; the principle of pluralism as one of the characteristics of the State; the abolition of the death penalty; the prohibition of censorship in connection with the exercise of the right to freedom of thought, conscience and opinion; the right

of everyone not to be tried by special ad hoc courts; the prohibition on giving retroactive effect to the laws at the expense of acquired rights, existing legal situations or individuals; the system concerning veto power, since it is now merely stated that the President of the Republic is authorized to veto laws, but not whether he may do so on the grounds of unsuitability or unconstitutionality or on both grounds or whether the Chamber of Representatives of the People may uphold or reaffirm the decisions it has taken; the system whereby the Chamber of Representatives of the People would be able to censure Ministers for unconstitutional acts, except, as far as the Expert is concerned, the part relating to the compulsory resignation of a Minister who has been censured; and the elimination of the power of the President of the Republic to dissolve the Chamber of Representatives (article 121). A recommendation to this effect was also made by the Expert during his visit, as were recommendations concerning the submission of parliamentary bills. The Expert also made the same observations as Mr. Hernández and Mr. García concerning the death penalty, censorship, the non-retroactivity of the laws and the dissolution of the Chamber of Representatives (see annex VI).

80. The rules of procedure of the Chamber of Representatives of the People should be amended and brought into line with the above-mentioned amendments to the Fundamental Law in order to give the Representatives greater independence.

81. With regard to the drafting of the civil, penal, civil procedure and criminal procedure codes, the United Nations should appoint an expert to advise the Government, at its request.

82. The Government should also be given advice, at its request, in connection with the drafting of the legislation referred to in various articles of the Fundamental Law, as stated in the conclusions to this report, and in connection with any other laws that are urgently needed, in accordance with the Plan of Action.

83. With a view to modernization of the administrative system, the United Nations should work in co-operation with specialized bodies, such as the Central American Public Administration Institute (San José, Costa Rica), to provide the Government with assistance, at its request, for the training of administrative staff. Such modernization was recommended by the Expert in his previous report and called for in the Plan of Action.

84. The Expert once again stresses the urgent need to train legal staff and new lawyers in order to give effect to the new provisions relating to the Judicial Power, as recommended in the Plan of Action. Co-operation by the United Nations is also needed in this field, if the Government so agrees.

85. It is necessary to prepare an electoral law for the election of the President of the Republic, the Representatives of the People and other officials. This law should fully guarantee the right to take part in political affairs, as provided in the Fundamental Law (chapter II, "Political Rights"), as well as the right to form political parties. Decree Law No. 5/1983 of 9 July 1983, which governs general elections, might serve as a point of departure if the necessary changes were made in the provisions which concern electoral supervisory bodies, and also the format of ballot papers, which do not guarantee elections by secret ballot. In this connection as well, efforts should be made to meet any request for assistance which the Government might make.

86. For the purpose of improving the situation with regard to the press and consolidating the process of democratization which began in August 1979 and which was called for in the Plan of Action in order to ensure co-operation by the Government in the restoration of human rights, the United Nations might provide assistance to the Government, at its request, not only by improving existing mass media, but also by reopening the newspaper that is no longer in operation because it has no equipment. It would, of course, be desirable for the country to have a privately-owned press, but, in the meantime, citizens should have guaranteed access to the State press so that opinions expressed therein reflect the pluralism that must be fostered in Equatorial Guinea.

87. The new legislation that has been adopted and has entered into force should be given ample coverage for the benefit of citizens and all interested persons. In this connection, the Expert suggested, in the note he sent to the Minister for Foreign Affairs in Malabo on 17 November, that the "Programme of Instruction in Law for the People" should be re-established and adapted to new circumstances with the co-operation of lawyers and teachers. The Expert also suggested that a voluntary corps of young people who are completing secondary school might be organized for the purpose. The Expert now reiterates those suggestions and draws attention to the fact that co-operation by the Universidad Estatal a Distancia, in Spain, which is already offering some of its services in Equatorial Guinea, would help to publicize such information. The Open University (United Kingdom), in co-operation with UNESCO, would also be very useful in this field (see annex VII).

88. The Expert also reiterates his idea of formulating an emergency plan for the training of legal staff. Such a plan would be a way of implementing the over-all Plan of Action and might benefit from United Nations technical assistance. The emergency plan would begin immediately and would last one year.

89. The economic and social situation also requires immediate attention. A task force might be set up to identify priorities, with the requisite participation of the new Minister of Planning, and of the United Nations, if the Government so requests.

90. Legislative activities to establish an institutional framework for the protection of fundamental rights and freedoms should be continued, as envisaged in the Plan of Action. This is the only way in which participation by the United Nations in the tasks the Government has set itself in this area, as well as in improving the standard of living of Equatorial Guineans, can produce the desired results.

91. It is therefore necessary to establish better communications and co-ordination between the Government and the United Nations Centre for Human Rights. The Expert recommends what he suggested in Malabo on 19 November, namely, that close and constant contacts should be established between the



Government and the Centre in order to avoid any unnecessary lag between the Plan of Action and the new measures that might be taken, and also to ensure the necessary follow-up to the plans that have been adopted.

92. The co-ordination suggested in the preceding paragraph might be worked out and established at a joint meeting of representatives of the Government and the Centre which could be held in Geneva or New York. It would thus be possible, inter alia, to implement the Expert's suggestion concerning the establishment of a group of United Nations specialists or co-operation experts to work on the programmes for Equatorial Guinea called for in the Plan of Action.

Annex I

ECONOMIC AND SOCIAL COUNCIL RESOLUTION 1984/36

1984/36. Situation of human rights in Equatorial Guinea

The Economic and Social Council,

Recalling its resolutions 1982/36 of 7 May 1982 and 1983/35 of 27 May 1983,

Bearing in mind Commission on Human Rights resolution 1984/51 of 14 March 1984,

Considering that there has been no major change in the situation of human rights in Equatorial Guinea since the events of 3 August 1979,

Noting that it has not been possible to implement all the recommendations contained in its resolution 1983/35,

1. Urges the Government of Equatorial Guinea to co-operate with the Secretary-General in order to ensure the full enjoyment of human rights and fundamental freedoms in that country;

2. Requests the Secretary-General to appoint an expert to visit Equatorial Guinea in order to study, in conjunction with the Government of that country, the best way of implementing the plan of action proposed by the United Nations;

3. Requests the Commission on Human Rights to keep this matter under consideration at its forty-first session.

20th plenary meeting  
24 May 1984

Annex II

DRAFT PLAN OF ACTION FOR THE RESTORATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN EQUATORIAL GUINEA DRAWN UP ON THE BASIS OF THE RECOMMENDATIONS OF THE EXPERT CONTAINED IN HIS REPORT TO THE COMMISSION ON HUMAN RIGHTS AT ITS THIRTY-SEVENTH SESSION (E/CN.4/1439)

No.	FIELD OF ACTIVITY AND ACTIONS RECOMMENDED	PROPOSED TECHNICAL ASSISTANCE FOR IMPLEMENTATION OF RECOMMENDATIONS
I.	<p><u>Preparation of the basic legislation and the drafting and adoption of a new democratic national constitution</u></p> <p>It is recommended that the preparation of the basic legislation and the drafting and adoption of a new democratic national constitution should be executed in stages and, if possible, in accordance with the following schedule:</p> <p style="text-align: center;"><u>1981</u></p> <p>(i) A drafting committee should be established with a view to drafting civil, penal, commercial, labour, civil procedure and criminal procedure codes;</p> <p>(ii) The provisions of the Universal Declaration of Human Rights and of the United Nations Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights could be used as a basis for drafting of appropriate decree-law which could serve as a national law in regard to the fundamental freedoms of the citizens of the country pending the adoption of a new constitution;</p> <p>(iii) It is recommended that Equatorial Guinea should accede to the United Nations Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights and should ratify them in due course;</p> <p>(iv) The attention of the Government should also be drawn to the international Declarations and Conventions concerning marriage, the family and child, so that they may serve as a guide for the improvement of the conditions prevailing in these matters in the country.</p>	<p>The United Nations could provide the Government with a team of experts to assist the drafting committee in the preparation of the basic legislation. It is suggested that the team should consist of one lawyer specializing in public law and another lawyer specializing in private law. In selecting the experts the United Nations could consult various relevant institutions, among them the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), Headquarters, San José, Costa Rica.</p>

Annex II (continued)

No.	FIELD OF ACTIVITY AND ACTIONS RECOMMENDED	PROPOSED TECHNICAL ASSISTANCE FOR IMPLEMENTATION OF RECOMMENDATIONS
	<p style="text-align: center;"><u>1982</u></p> <p>(i) Continuation and completion of the tasks envisaged for 1981;</p> <p>(ii) The enactment of an Associations Act which would enable the country duly to promote and organize activities aimed at the association of citizens to defend common interests and at the same time to participate intelligently and responsibly in public affairs; and the enactment of an Electoral Code;</p> <p>(iii) The establishment of a drafting committee to work on a new constitution with the participation of lawyers, other qualified persons, and persons with political and administrative experience;</p> <p>(iv) Submission of the draft constitution to the Government for its consideration.</p> <p style="text-align: center;"><u>1983</u></p> <p>(i) The establishment of the Constituent Assembly or Conference or other similar body;</p> <p>(ii) Submission by the Government of the approved draft constitution to the Constituent Assembly for consideration.</p> <p style="text-align: center;"><u>1984</u></p> <p>(i) The holding of a popular referendum on the draft constitution as adopted by the Constituent Assembly or other body;</p> <p>(ii) Promulgation and implementation of the constitutional provisions, including those concerning the establishment of fundamental State bodies and powers.</p>	<p>The United Nations could provide the Government with experts specializing in constitutional law to assist the work of the drafting committee of the constitution. The team could hold an initial meeting with members of the drafting committee to study the procedure and plan of work for the preparation of an outline of the constitution. The drafting committee would then continue its work until it has produced the first draft, which it would discuss with the United Nations experts at successive meetings (until a final draft has been approved by the drafting committee and the Government).</p>

Annex II (continued)

No.	FIELD OF ACTIVITY AND ACTIONS RECOMMENDED	PROPOSED TECHNICAL ASSISTANCE FOR IMPLEMENTATION OF RECOMMENDATIONS
II.	<p><u>Establishment of an appropriate legal system</u></p> <p>(i) The Judicial Power Organizational Bill should be discussed and approved and the corresponding regulations for its application should be prepared as soon as possible (early 1981). The enactment of this legislation would establish an appropriate legal system to assert the rule of law and thus provide guarantees of respect for human rights;</p> <p>(ii) The number of lawyers in Equatorial Guinea should be increased. It is suggested that as soon as possible a law school should be established, and a system should be prepared for the further training of practising lawyers;</p> <p>(iii) Courses and seminars must be organized for court officials to enable them properly to apply the Judicial Power Organizational Bill when it becomes law;</p> <p>(iv) An intensive course should be arranged for persons with secondary education and persons with judicial skills in order to provide better trained staff to fill judicial offices and to equip such persons to assume certain functions that are indispensable in safeguarding the rights of accused persons.</p> <p>(v) The programme of instruction in law for the people now being studied by the Ministry of Justice should be implemented via radio and other media. It is suggested that simple booklets be prepared for use in educational centres, religious communities and work centres. The booklet should include information on provisions relating to prison procedures.</p>	<p>The United Nations could provide the Government with an expert to assist in the establishment of a law school in the country and in the preparation of training projects for court officials and other government officials of the judicial office.</p> <p>The United Nations Department of Public Information or UNESCO could be requested to assist the Government in the preparation of the booklet and other information material.</p>

No.	FIELD OF ACTIVITY AND ACTIONS RECOMMENDED	PROPOSED TECHNICAL ASSISTANCE FOR IMPLEMENTATION OF RECOMMENDATIONS
III.	<p><u>Public administration</u></p> <p>(i) The draft Civil Service Statute should be put into practice as soon as possible (during the early part of 1981) in order to regulate matters concerning the duties and rights of members of the administration and to set a standard of efficiency that is essential for every Government, and specially one dedicated to the task of national reconstruction.</p> <p>(ii) There is an urgent need for the establishment, as envisaged by the Government, of a School of Administration for State public activities, so as to provide civil servants with the necessary skills. This would facilitate the implementation of the Act relating to the legal regime of the central administration of the State, which requires professional training and preparation.</p> <p>(iii) Courses and seminars should be organized to improve the efficiency of the present body of civil servants;</p> <p>(iv) The Government's plan to establish a Ministry for the advancement of women should be put into practice during the early part of 1981.</p>	<p>The United Nations could provide the Government with an expert in public administration to assist in implementing the various projects in this field.</p>
IV.	<p><u>Education</u></p> <p>(i) The Education Bill should focus its attention on the training of citizens in the values of representative democracy, linking those values to the indigenous cultural heritage that can enrich them, and promote the adoption of a democratic regime suited to Equatorial Guinea that permits the full exercise of human rights;</p> <p>(ii) The professional and working conditions of teachers should be improved;</p>	<p>The United Nations/UNESCO could provide the Government with an expert to assist in the drawing up of fellowship schemes on the basis of broad criteria adapted to the needs of Equatorial Guinea for the training of professional staff. It could seek the assistance and co-operation of</p>

Annex II (continued)

No.	FIELD OF ACTIVITY AND ACTIONS RECOMMENDED	PROPOSED TECHNICAL ASSISTANCE FOR IMPLEMENTATION OF RECOMMENDATIONS
V.	<p><u>Labour</u></p> <ul style="list-style-type: none"> <li>(iii) High priority should not only be given to the training of future teachers, but also to the further training of existing teachers. Hence, refresher courses should be introduced ;</li> <li>(iv) Private education, especially education provided by religious orders, should be encouraged;</li> <li>(i) The Bill concerning the Statutes of Farmers' Associations and the Bill that declares such associations to be "agrarian bodies of priority interest" should be approved;</li> <li>(ii) The number of labour inspectors must be increased in order to ensure better monitoring of compliance with labour contracts, particularly on the cocoa plantations;</li> <li>(iii) The formation of associations or genuine co-operatives for the marketing of agricultural products, in order to complement the efforts of the producers' groups, should be encouraged;</li> <li>(iv) The working conditions on the plantations should be modified, since they do not appear to be such as to ensure an essential minimum level of well-being.</li> <li>(v) Greater incentives should be provided for agricultural workers, especially cocoa plantation workers, in order to increase the national level of employment. The system which the Ministry of Labour is introducing on an experimental basis should be implemented on a sufficiently wide scale to lead to a real system, which will be the forerunner of enterprises managed by the workers themselves.</li> </ul>	<p>the World Confederation of Organizations of the Teaching Profession (WCOTP), with headquarters at Morges, Switzerland.</p> <p>The ILO could be asked to provide an expert to assist the Government in implementing these recommendations.</p>

No.	FIELD OF ACTIVITY AND ACTIONS RECOMMENDED	PROPOSED TECHNICAL ASSISTANCE FOR IMPLEMENTATION OF RECOMMENDATIONS
VI.	<p><u>Electoral processes</u></p> <p>On this subject it is considered desirable to return to the system of popular election of the members of the town councils, since not only would this represent the valuable restoration of a good system, but it would be a useful exercise for the greater task entailed in electing a Government.</p>	
VII.	<p><u>Development of a free press</u></p> <p>For the discussion of the draft constitution, freedom of expression would be indispensable. To achieve this, one of the requirements is that the mass communication media should be free from any kind of censorship. The State organs would also have to contribute to the discussion not only by disseminating information and comments on the new constitution, but also by providing opportunities for ordinary citizens to express their points of view.</p>	<p>The United Nations/UNESCO could provide the necessary technical and financial assistance in promoting the development of a free press in the country.</p>
VIII.	<p><u>Establishment of a Special Review Commission</u></p> <p>In order to supervise the legislative process referred to above, together with any other equally basic legislation that may be required, it is recommended that the Government should establish a Special Review Commission which would report directly to the President of the Government and Head of State. The Commission would not only deal with matters relating to laws and bills, but it would also have responsibility for supervising other plans for the full realization of human rights. It would be responsible for establishing an order of priorities and would make monthly reports to the President and a bi-annual evaluation. The Commission would be a standing body and would remain in existence until the promulgation of the constitution.</p> <p><u>Note:</u> The technical assistance to be provided by the United Nations and the specialized agencies to the Government should be arranged without prejudice to any other aid the Government may receive from other sources under bilateral agreements for the purpose of assisting similar projects as recommended by this Plan of Action.</p>	



Annex III

PRESS RELEASE

A mission representing the Secretary-General of the United Nations arrived in Malabo today, 13 November. It is composed of the following persons:

Professor Fernando Volio Jiménez, the Expert appointed by the Secretary-General and head of the mission;

Mr. José Maria de Faria, an official of the Centre for Human Rights; and

Miss Luz Stella Cuéllar Moreno, secretary, Centre for Human Rights.

The mission's purpose is to hold consultations with the Government of Equatorial Guinea to determine the best way of implementing the Plan of Action proposed by the United Nations in 1981 and subsequently approved by the Government. The Plan involves co-operation with the Government on appropriate means of fully developing democratic institutions.

The Expert will meet with Government representatives and private individuals in Bioko and in Rio Muni.

The Expert may be contacted at the UNDP Office, Kenya Street, telephone 3269.

Annex IV

PROGRAMME OF WORK

13 November 1984

To the representative of the Government of Equatorial Guinea:

For the purpose of consulting with the Government of Equatorial Guinea to determine the best way of implementing the Plan of Action proposed by the United Nations in 1981 and approved by the Government, the Expert representing the Secretary-General of the United Nations hereby informs you that, during his stay in the country from 13 to 20 November 1984, he would like:

1. To meet with the President of the Republic, His Excellency Mr. Teodoro Obiang Nguema Mbasogo.
2. To meet with persons who may be able to give him information on the implementation of the Plan of Action and, in particular, the Minister of the Office of the President, the Secretary of the Office of the President, the Economic Adviser of the Office of the President, the Minister of Finance, the Minister of Labour, the Minister of Education, the Minister of Defence, the Minister of Health, as well as members of the Council of State, the Chamber of Representatives of the People, the Judiciary, the Prosecutor's Department and the National Economic and Social Development Board.
3. To visit Riaba to meet with the competent authorities and with citizens who may be able to provide information to help him carry out his mission. He also wishes to visit the towns of Bata and Evinayong in Rio Muni in order to meet with the Governor of Rio Muni and other competent authorities, such as members of local associations and town councils.
4. The Expert will thus be in Bioko from 13 to 15 and from 19 to 20 November (the day of his departure) and in Rio Muni from 16 to 18 November.
5. The Expert trusts that the Government will give him every assistance he may need to discharge his mandate, including means of transport in Bioko and in Rio Muni. He will, in particular, need a car or vehicle to visit places other than those referred to above. He will also require accommodation for himself and for the members of the mission who are accompanying him.
6. The Expert trusts that the Government will make arrangements for a press release announcing the arrival of the mission sent by the Secretary-General of the United Nations.
7. The Expert thanks the Government in advance for the arrangements it has made to ensure the success of his mission, whose members are:

Expert appointed by the Secretary-General and head of the mission:  
Professor Fernando Volio Jimenez; date of birth: 29 October 1924; Costa Rican national, former Minister for Foreign Affairs; passport No. 002705 (diplomatic), issued on 16 April 1984 and expiring on 8 May 1986.

Official of the Centre for Human Rights: Mr. José María de Faria;  
date of birth: 17 October 1927; Portuguese national; passport No. MNE 178  
(diplomatic), issued on 6 March 1975 and expiring on 7 September 1985.

Secretary, Centre for Human Rights: Miss Luz Stella Cuéllar Moreno;  
date of birth: 21 September 1948; Colombian national; passport No. T 7124538,  
issued on 23 August 1978 and expiring on 23 August 1985.

8. The Expert will inform the Government-appointed officer of any other matters relating to the smooth functioning of the mission.

Annex V

FOUR QUESTIONNAIRES

1. QUESTIONNAIRE FOR THE MINISTER OF THE  
OFFICE OF THE PRESIDENT

A. The Constitution (Fundamental Law of Equatorial Guinea)

1. What criteria were taken into account in following a procedure different from the one suggested in the Plan of Action which sets a time-table for the Political Constitution?

2. How has the Constitution been implemented?

Have any of the articles thereof been suspended?

If so, why? Which ones have been brought back into force?

3. What action has been taken to implement measures called for under the Constitution, such as laws, institutions, monitoring of constitutionality (respect thereof) and measures to bring the Constitution to the attention of the public (I, 1984, (ii))? a/

For example, the Constitution provides for the right to freedom of association. Does a law on freedom of association exist or is one being prepared?

Is there an electoral code or is one being enacted to give effect to the constitutional provisions relating to political rights?

Are there laws on habeas corpus and on amparo or are they being prepared?

Is there a law by which laws, decree-laws and regulations may be declared unconstitutional because they are defective?

Is there a law on freedom of expression and freedom of thought which also applies to freedom of the press?

Is there a law on the filling of vacancies in the Chamber of Representatives of the People?

What is the procedure for amending the Fundamental Law?

Is there a separate procedure, stricter than the usual one, for the adoption of such amendments?

Why are Representatives of the People unable to propose amendments to the Fundamental Law?

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a/ Annex III, Draft Plan of Action..

The aim is to determine whether, in cases where the Constitution refers the implementation of its provisions to other laws, such laws have been or are being enacted. The two experts who assisted the Constitutional Drafting Committee recommended the inclusion of principles such as the abolition of the death penalty, the establishment of new machinery for parliamentary control over the Government and the elimination of the President's power to dissolve the Parliament at any time, but these recommendations were not taken into account in the Constitution.

On what basis was it decided not to adopt these recommendations?

B. Other fundamental laws

4. The Plan of Action recommended the establishment of a committee to draft the civil, penal, commercial, labour, civil procedure and criminal procedure codes.

Was such a committee established?

Has any of these codes been adopted (I, 1981, (i))? b/

5. Has the Government of Equatorial Guinea acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights?

Has it acceded to the conventions on marriage, the family and the child (I, 1981, (iv))? c/

6. Has the Judicial Power Organizational Bill been adopted (II, 1984, (i))? d/

7. Has the Special Review Commission recommended in the plan of action been established?

If so, how does it operate?

What results has it achieved (VIII, 1984)? e/

2. QUESTIONS RELATING TO THE ECONOMIC SECTOR

1. What measures has the Government taken to create incentives for the development of the economy and of production in general?

- . Is there a law on incentives for foreign investment of various kinds, including mixed (State/private) enterprises?

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b/ Ibid.

c/ Ibid.

d/ Ibid.

e/ Ibid.

Is there a public finance audit institution?

Is there a law on the national tax system?

How is national income invested in economic and social development plans?

2. Have the Statutes of Farmers' Associations and the bill describing such associations as "agrarian bodies of priority interest" been adopted?
3. Have measures been taken to promote the establishment of co-operatives for the marketing of agricultural products?
4. What is the minimum wage for cocoa plantation workers?  
What system is used to recruit such workers?  
What system is used to settle labour disputes?  
Is there any kind of trade unionism?
5. What percentage of the national budget is used for education, health, roads?  
What and how much does the country export?  
Are there economic development programmes in Rio Muni?  
What are they and how do they work?
6. What are the main imports and what is their total value?  
Are there any international economic co-operation programmes?  
In which areas? What results have been achieved? The same questions with regard to technical assistance.  
Why and how were they adopted?

### 3. QUESTIONS RELATING TO THE SOCIAL SECTOR

1. What measures have been taken to give effect to the recommendations on education (IV, 1984, (i) to (iv))? f/  
What other measures have been taken to improve education?  
What measures have been taken to give effect to the recommendations on labour (V, 1984, (i) to (iii))? g/

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f/ Ibid.

g/ Ibid.

What other measures have been taken to improve conditions for the workers?

2. What measures have been taken to improve health throughout the country?
3. What measures have been taken to apply the recommendations on teacher training (IV, 1984, (ii) and (iii))? h/
4. What measures have been taken in connection with the recommendation contained in item IV, 1984, (iv)? i/
5. How many hospitals and health centres are there in the country? Have they been improved since 1980? How many doctors have come to the country since 1980 (Equatorial Guineans)?

How many nurses are there and what is the figure for paramedical staff?

How many dentists are there?

Has there been any reduction in the incidence of epidemic diseases?

What health programmes are being implemented?

Do they receive multilateral (United Nations) or bilateral external assistance?

How many students are enrolled in the country's primary and secondary schools?

How many educational centres are there?

How many teachers are there at all levels?

Are there any new educational plans and programmes?

How does technical education function?

Are there any technical education centres?

Are there any non-formal education programmes?

Is there a literacy programme?

What is the situation with regard to teaching materials?

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h/ Ibid.

i/ Ibid.

4. QUESTIONS RELATING TO THE ADMINISTRATIVE SECTOR

1. Have measures been taken to increase the number of lawyers and to train court officials (II, 1984, (ii) to (iv))? k/
2. Has the programme of instruction in law for the people been implemented and, if so, what results have been achieved?
3. What measures have been taken to improve the efficiency of public administration officials?
4. Has the number of courts increased?
5. Are there any rules relating to the practice of law?  
  
Are there any political prisoners?
6. Have the organizational statutes of the Office of the Government-Attorney been adopted?

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k/ Ibid.



Annex VI

PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS

(Letter by Professor Fernando Volio Jiménez dated 17 November 1984  
addressed to the Minister of State for Foreign Affairs and  
Co-operation, Malabo)

Malabo, 17 November 1984

Sir,

I have the honour to send you this provisional report containing my observations on the Plan of Action which was proposed in 1981 for the establishment in successive stages of a legal system for the protection of fundamental human rights and democratic institutions.

1. The Fundamental Law or Constitution

(a) This is a modern document and it is suited to the above-mentioned purposes, but I find that it contains provisions which are inappropriate from the point of view of the separation of powers and functions and that, since it is not clear how some of its provisions should be interpreted, they will be difficult to understand and to apply properly. The first comment applies to the powers of the President of the Republic and the requirements for becoming President (title 8, chapter I).

In view of the situation under the dictatorship which ended in 1979 and of the exile of hundreds of citizens of Equatorial Guinea, the provision contained in article 9(e), is unsuitable and unjust. It should be deleted.

A declaration of war should require approval by the Chamber of Representatives (article 92 (e)).

The calling of elections or the performance of other functions in connection with voting should be in the hands of a specialized independent body (article 92, (o)), thereby affording better guarantees of the Government's neutrality.

The members of such an important body as the Council of State should not, with the exception of the ex officio members, be appointed by the President of the Republic, nor should the latter appoint the Chairman and Vice-Chairman of the Council (chapter II, article 101).

There should be another way of setting up the Council, whose members should, for example, be appointed by the Supreme Court of Justice, which has similar jurisdictional functions, or by the Chamber of Representatives on the basis of a list submitted by the Court.

Since the system is presidential, not parliamentary, it should not be possible to dissolve the Chamber of Representatives and such excessive power should certainly not be exercised by the President of the Republic (article 21). This was recommended by the experts, Mr. Hernández and Mr. García Laguardia.

The President of the Republic should not be able to intervene in the Chamber's internal affairs, such as setting the date of commencement of its sessions (article 125).

The Government should not be consulted on bills proposed by the Representatives of the People because this restricts their independence (article 131).

For the same reasons, the President of the Republic should not be empowered to settle disputes relating to the admissibility of legislative texts (article 138).

Justice should be administered not on behalf of the Head of State (chapter V, article 138) but on behalf of the people, as I pointed out in my earlier report.

The members of the Court and the President thereof should not be appointed by the President of the Republic because this is contrary to the principle of separation of powers (article 147). There should be some other system whereby candidates might be nominated by the President of the Republic and elected by the Chamber of Representatives.

With regard to problems of interpretation, an amendment should be adopted to make it clear which body is to decide that laws, decree-laws and regulations in force are unconstitutional (article 40), since this function is performed by the Council of State prior to the adoption of institutional laws and of rules and regulations giving effect to such laws (article 100 and article 102 (e) and (f)).

The members of the Supreme Court of Justice with whom I spoke take the view that it is their function to implement article 40 and they may do so on the basis of supplementary Spanish legislation. I believe that either body may carry out either task, provided that enough lawyers are available.

(b) The Fundamental Law states that some provisions will be implemented in accordance with the laws, as is usually the case, but this means that the relevant laws have to be adopted. For example, an Associations Act has to be passed: this was recommended in the Plan of Action as a measure to be taken before adopting the Fundamental Law or Constitution (article 12).

This comment also applies to the Act on the Organization of the Office of the Government Attorney (article 149), the Expropriation Act (article 75), etc. The Electoral Act, which was brought into force by a decree-law, should be replaced by another law adopted by the Chamber, since the present one refers only to the election of Representatives of the People and not to the election of the President of the Republic and the members of other representative bodies.

(c) The prohibition on censorship of ideas and the principle of the non-retroactivity of the laws are not provided for as basic human rights. Furthermore, the recommendation on the death penalty made by the experts, Mr. Hernández and Mr. García Laguardia, was not adopted.

(d) Suspension of rights and guarantees should not be for an indefinite period of time and should not apply to all fundamental rights, such as the right to life and others. The approval of the Chamber of Representatives should, moreover, be required in every instance and the Chamber should be convened for that purpose if it is not in session (article 93). Any state of siege should be declared for a period of time specified in the Constitution (article 94).

A time-limit of no more than two years should be set for drafting the above-mentioned laws and amendments.

(e) It is inappropriate that individual deputies or Representatives of the People should not be able to introduce draft laws and that they should have to do so jointly, with the approval of three fourths of the 60 representatives. They should therefore be allowed to do so individually or, if they so wish, in certain cases along with others (article 131).

(f) It is also inappropriate for the Government alone to be able to propose amendments to the Fundamental Law (article 156). This right should be vested in the Representatives of the People and it would be better if the Government required the amendments it proposes to be subject to the approval of a particular number of Representatives (1, 10 or 15). In other words, the Government itself should not be able to propose such amendments directly, because they involve the exercise of law-making power, which is vested in the people.

## 2. Other questions relating to the Programme of Work

(a) Drafting of the civil, penal, commercial, labour, civil procedure and criminal procedure codes (I, 1981, (i)). a/ The drafting committee should start as soon as possible and take no more than two years to complete its work.

(b) As recommended in 1981, Equatorial Guinea should accede to the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (United Nations) as soon as possible.

(c) It should also accede to other conventions (I, 1981, (iv)). b/

(d) With a view to the implementation of the Judicial Power Organizational Act, which is now in force, the necessary lawyers and administrators have to be made available without delay, particularly now that the judicial power has been established by the Fundamental Law. The courses and seminars referred to in the Plan of Action therefore have to be arranged without delay (II, 1984, (i) to (v)). c/

(e) It is also an urgent matter to implement the measures relating to public administration (or to extend those which have already been implemented). Otherwise, the administrative system will not be able to promote national reconstruction and the restoration of democracy. Various measures are suggested in the Plan of Action (III, 1984, (i) to (iv)), d/ but others will be required as a result of the structure established by the Fundamental Law and I may suggest some in my final report.

(f) With regard to the need for a free press in order to contribute to democratic development, major efforts have to be made to provide the necessary incentives, for newspapers at least, so that ordinary citizens may have access to newspapers and State radio and television pending the establishment of independent bodies.

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a/ Annex II, Draft Plan of Action.

b/ Ibid.

c/ Ibid.

d/ Ibid.

3. Education and labour

Until I have visited the persons responsible for the social sector on Monday, I cannot comment on progress in the implementation of the sections of the Plan of Action relating to education and labour, but I shall do so in my final report in which I shall also comment on the economic and administrative sector.

4. United Nations assistance

The Plan of Action suggests possible types of co-operation by the United Nations for the purposes of implementation. The services of two constitutional law experts have already been made available. The Government told me that it made a verbal request for assistance in the drafting of the basic codes, referred to earlier, but no formal request appears to have been made.

In this connection, I recommend that: (a) a list of priorities should be drawn up, and (b) assistance should be officially requested from the Centre for Human Rights in Geneva through the UNDP Office in Malabo or through the Permanent Representative of Equatorial Guinea to the United Nations in New York.

As I recommended in the Plan of Action here in Malabo, a Special Review Commission should be established at Government level to ensure continuity and co-ordinated action by all members of the United Nations family and the Government of Equatorial Guinea.

I also suggest that annual reviews should be conducted in New York or Geneva with the participation of Government representatives.

The foregoing does not mean that I will not deal with other matters which have been or might be raised by your Government at the end of my stay in Malabo or, subsequently, in any communications you may send to me in my country, to the Secretary-General of the United Nations or to the Centre for Human Rights in Geneva or through UNDP here.

Accept, Sir, the assurances of my highest consideration.

(Signed) Fernando Volio Jiménez

Annex VII

ADDENDUM TO THE ANNEX ON THE PRELIMINARY OBSERVATIONS AND RECOMMENDATIONS

(Letter by Professor Fernando Volio Jiménez dated 18 November 1984,  
addressed to the Minister of State for Foreign Affairs and  
Co-operation, Malabo)

Malabo, 18 November 1984

Sir,

Since my last visit, the Chamber of Representatives of the People and the Government itself have adopted a number of important laws and decree-laws, in addition to the Fundamental law and other laws to which I referred in my letter dated 17 November. The necessary measures must therefore be taken to acquaint the people with the legal system and to set up machinery to monitor the way it is enforced. Otherwise, these valuable law-making activities may well have been in vain.

Despite existing problems, such as the absence of newspapers, the Government will be able to find the best way of publicizing the results of these activities. I suggest that radio and television should be used until the newspaper "Ebano" resumes publication and that the programme of "Instruction in law for the People" should be revived and adapted to the new circumstances, with the co-operation of lawyers and teachers. A volunteer corps of young people who are completing secondary school might be organized for this purpose.

This brings me back to the idea of formulating an emergency plan for the training of legal officials. There would thus be more people who are trained to use the new legal instruments and the population would also be in a better position to exercise its rights in this sphere, which is of such vital importance for the effective protection of fundamental human rights. The emergency plan might be drawn up with guidance from the United Nations and the Centre for Human Rights in Geneva.

Another way of circulating such information would be to prepare booklets which might be published abroad and written by competent citizens of Equatorial Guinea in co-operation with United Nations experts.

I am sure you will agree with me that even though it is always difficult to translate theory into practice, this task should be given priority.

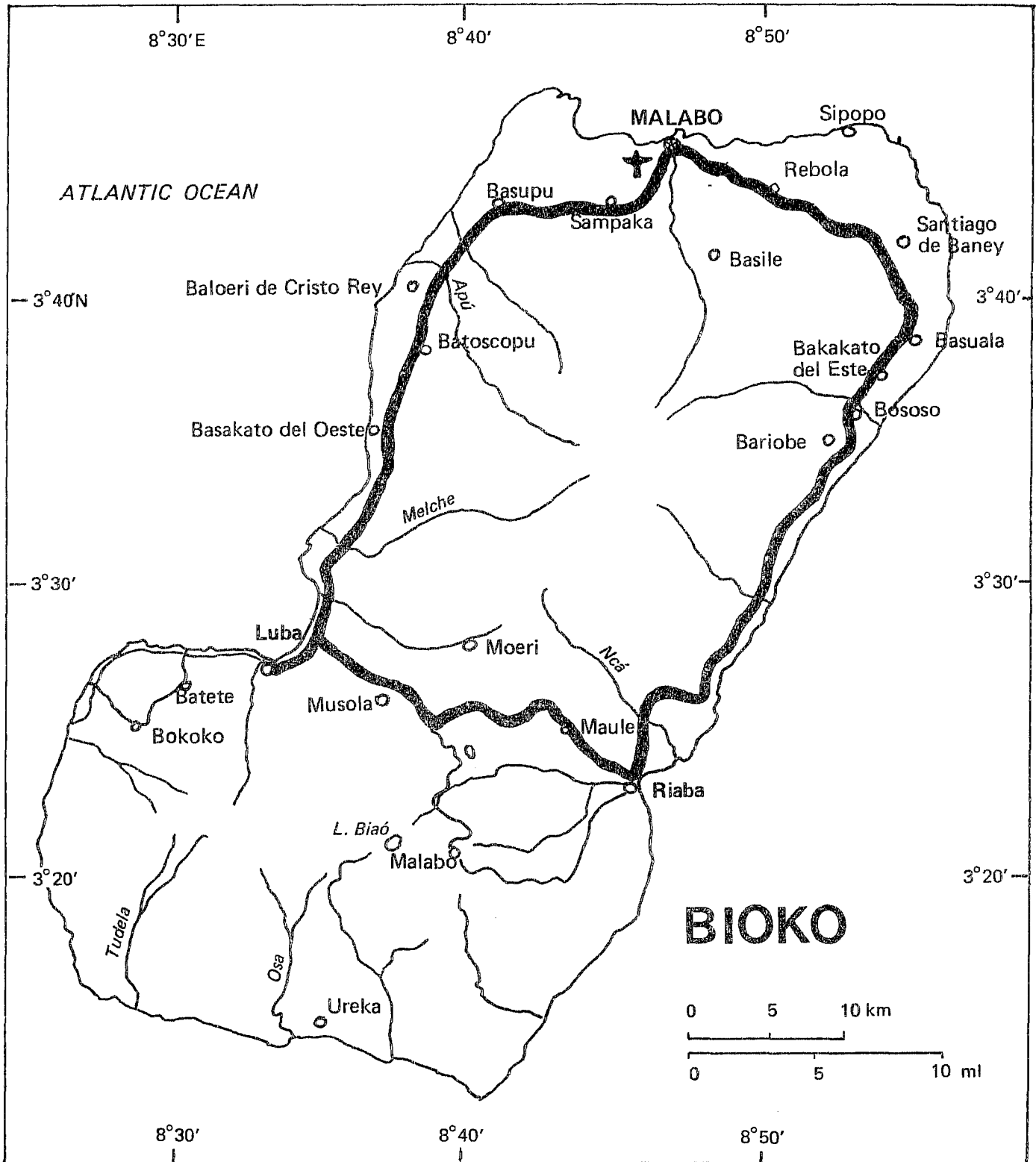
Nevertheless despite this inherent difficulty, greater efforts will have to be made to achieve the desired goal.

Accept, Sir, the assurances of my highest consideration.

(Signed) Fernando Volio Jiménez

# ISLAND OF BOKO (Equatorial Guinea)

Itinerary of the visits by the Expert



⊕ National capital

○ Town, village

— Road

**Itinerary by car**

*The boundaries and names shown on this map do not imply official endorsement or acceptance by the United Nations.*

Annex IX

LETTER BY PROFESSOR FERNANDO VOLIO JIMENEZ DATED  
19 NOVEMBER 1984, ADDRESSED TO THE MINISTER OF  
STATE FOR FOREIGN AFFAIRS AND CO-OPERATION, MALABO

Malabo, 19 November 1984

Sir,

At 10.45 this morning, Ambassador Tarsicio Mañé Abeso, who served as liaison officer between my mission and the Government of Equatorial Guinea, informed me that, since today is a holiday in Malabo, I would be unable to hold the interviews scheduled for today with the Ministers of Planning, Education, Health and Administrative Affairs. According to Ambassador Mañé Abeso, the Ministers would have replied to the questionnaires I sent them on 14 November through the Ambassador himself and I would have asked other questions and received any information the Government was ready to give me on the human rights situation in the country, as you yourself told me when I met with you in your office on 13 November. However, today's change of schedule and the possibility of not being able to follow it at all, since, as Ambassador Mañé explained, the Ministers will be away from the city at their country estates, have completely changed my own plans and placed me in the difficult position of not being able to continue my work.

I am therefore writing this further note to inform you of what has happened and to request you to arrange a meeting with some Minister or Vice-Minister with whom I might discuss matters pertaining to my mission, as well as the above-mentioned questionnaires. If this is not possible, I suggest that the replies to the questions I have already asked should be sent as soon as possible to my country through Mr. Arturo Hein of the UNDP Office in Malabo, together with any other information which the Government of Equatorial Guinea may wish to bring to my attention.

In view of these circumstances, I would be grateful if you could send me the texts of the laws and decree-laws which I asked the Protocol Officer, Mr. Pedro Celestino Ndong Engono Nchama, to provide on Friday, 16 November. I took the titles of the texts from a list supplied by the Minister of the Office of the President on the day I met with him, but I still have not received the texts, which I need for my final report.

Since I was unable to meet with the Vice-Minister for Women's Affairs, who was in Rio Muni on business, I would also like to have information on current programmes and on the results achieved in connection with the advancement of women.

I deplore the fact that this has happened, but as late as yesterday evening, when we returned from our visit to Riaba and Luba, Ambassador Mañé Abeso reconfirmed the schedule for today and told me that he would pick us up at 9.30 a.m.

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I would be grateful if you would give my regards to the President of the Republic, His Excellency Mr. Teodoro Obiang Nguema Mbasogo, and assure him that I appreciate the very useful interview he accorded me, as well as the attention I received while I was ill.

I would also request you to convey to the President and his family my best wishes for their continued health and happiness and for the well-being of the noble people of Equatorial Guinea.

Accept, Sir, the assurances of my highest consideration and personal appreciation.

(Signed) Fernando Volio Jiménez



Annex X

LETTER BY PROFESSOR FERNANDO VOLIO JIMENEZ DATED  
19 NOVEMBER 1984, ADDRESSED TO THE MINISTER OF  
STATE FOR FOREIGN AFFAIRS AND CO-OPERATION, MALABO

Malabo, 19 November 1984

Sir,

The very satisfying mission assigned to me by the Secretary-General of the United Nations is ending today and I wish to express my appreciation and that of my colleagues for the hospitality extended to us during our stay in Equatorial Guinea and for the facilities made available to us by the Government of Equatorial Guinea to enable us to carry out our task properly.

The two notes I sent you as preliminary observations and recommendations will be followed by the final report which I shall prepare for Mr. Javier Pérez de Cuéllar, Secretary-General of the United Nations. The report will be officially submitted to the Government of Equatorial Guinea through the proper channels.

I trust that I personally will be able to take part in the implementation of some of the measures I will be suggesting in my final report, if this is acceptable both to the Government of Equatorial Guinea and to the Secretariat of the United Nations.

In any event, the most important thing is to maintain close and constant co-operation between you and the Secretariat. I therefore suggest once again that the Permanent Mission of Equatorial Guinea to the United Nations or the UNDP Office should be used as channels for communication with Mr. Kurt Herndl, Assistant Secretary-General for Human Rights (Centre for Human Rights, Geneva, Switzerland).

For any questions you may wish to ask me in connection with the report, my address is: Apartado 572, San Pedro, Montes de Oca, Costa Rica, Central America. My home telephone number is 257010 and my office number is 248025.

Accept, Sir, the assurances of my highest consideration.

(Signed) Fernando Volio Jiménez