

# AMNESTY INTERNATIONAL

## Public Statement

AI Index: AFR 24/017/2004 (Public)  
News Service No: 308  
30 November 2004

### Equatorial Guinea: Trial of alleged coup plotters seriously flawed

Eleven foreign nationals and nine Equatorial Guineans were sentenced to lengthy prison terms and hefty fines in Equatorial Guinea after a grossly unfair trial ending on 26 November 2004. They were convicted of (an attempt to commit) crimes against the Head of the State and against the government. The Equatorial Guineans were tried *in absentia*. The lawyers of the foreign defendants have lodged an appeal to the Supreme Court against the convictions.

Neither the verdict nor the sentences were translated, and the defendants left court with no knowledge of their fate.

An Amnesty International delegation observed the trial from its commencement on 23 August 2004, and, in view of serious procedural flaws and the admission of confessions allegedly extracted under torture, and deemed it to be unfair.

Nineteen people, including five Equatorial Guineans, six Armenians and eight South Africans were charged with crimes against the Head of State; crimes against the government; crimes against the peace and independence of Equatorial Guinea; possession and storage of arms and ammunition; treason; possession of explosives; and terrorism, for which the prosecution had demanded the death penalty for South African Nick du Toit and prison sentences ranging from 26 to 86 years for his co-defendants.

No evidence was presented in court to sustain the charges against the accused other than their statements, which the defendants said had been extracted under torture. However, defendants' protestations to this effect were ignored by the bench. No court can ignore allegations as serious as these. They are sufficient grounds for a trial to be suspended and an investigation to be instituted. The statements were presented in Spanish and without adequate translation into languages of the defendants, none of whom spoke Spanish. On at least two occasions when the defence counsel attempted to raise the issue of torture it was ruled inadmissible by the bench.

Other items presented as evidence included commercial contracts and lists of telephone numbers called by some of the defendants in February 2004, shortly before they were arrested. The prosecution failed to show how these items constituted proof of any of the charges. About half a dozen weapons produced in court were not found in the possession of any of the accused but were presented in court as examples of what the prosecution claimed the defendants intended to buy in Zimbabwe.

Throughout the trial, and without any hindrance from the judges, the foreign defendants were referred to as "mercenaries" or "dogs of war". They were brought to court and were cross-examined handcuffed and shackled. This constituted cruel, degrading and inhumane treatment.

A total of 15 foreign nationals had been arrested on 8 March 2004 in Malabo. Their arrest followed the arrest of 70 people, mainly South Africans, in Zimbabwe the day before. Gerhardt Merz, a German

national, died in custody in Black Beach prison in Malabo nine days later. The authorities claimed that he died of cerebral malaria but two of the defendants insisted in court that he had died in front of them as a result of torture. The five Equatorial Guineans were arrested subsequently.

The organization is deeply concerned that, from the time of their arrest in March 2004, the fundamental rights of the accused were routinely violated. In the particular case of Nick du Toit, the alleged leader of the "mercenaries" in the Equatorial Guinean capital of Malabo, the authorities regularly exposed him to the international media and to interrogation by foreign lawyers and security officers. As a consequence, his rights to remain silent, and to the presumption of innocence until proven guilty, were severely curtailed. All defendants were held incommunicado, handcuffed and shackled 24 hours a day. They did not receive an adequate diet, and only rarely received medical treatment for the many ailments that afflicted them in prison. These conditions, together with the minimal access by family members permitted while in Equatorial Guinea, had a negative impact on the physical and mental health of the defendants.

At the request of the prosecution the trial was adjourned indefinitely at the end of August, ostensibly in the light of emerging evidence deemed vital to the case. However, when the trial resumed in November, no new evidence was presented in court. Instead, new names were added to the list of accused, including that of Severo Moto, a political opponent exiled in Madrid, eight members of his "government in exile" who were tried *in absentia*, and several British and South African businessmen.

Amnesty International welcomes the fact that the court did not impose the death penalty. It also welcomes the acquittal of three Equatorial Guinean and three South African defendants. Although the accused received shorter custodial sentences than those sought by the prosecution, Nick du Toit was sentenced to a total of 34 years in prison while his South African co-defendants were given 17 years' prison sentences. Of the Armenian co-defendants one received a 24-years prison term and the remaining six received 14-years terms. In contrast, two Equatorial Guineans for whom the prosecution had asked for prison terms of 62 and 42 years respectively, each received a prison sentence of 16 months and one day for *imprudencia temeraria* (reckless behaviour). Severo Moto was sentenced to 63 years' imprisonment while the members of his government were each given prison terms of 52 years.

Amnesty International is concerned about the following unfair procedures prior to the trial:

- the defendants were arrested without a warrant, and were not promptly informed of the charges against them in a language that they understood, as prescribed by law;
- they did not have access to their defence lawyers until two days before the start of the trial. In addition, the defence did not have sufficient time to prepare the defence. Furthermore, they were not served with the prosecution's evidence against their clients;
- all the accused stated in court that their statements were taken not by the *juez de instruccion* (investigating judge) as prescribed by Equatorial Guinean law, but by the Attorney General, who was prosecuting the case in court and who, under the law, has no legal role in the interrogation stage of the proceedings;
- the defendants were required to sign statements in Spanish without the assistance of qualified interpreters. The initial statements of the South Africans were translated by one of the Equatorial Guinean co-defendants who, according to his own statement in court, also provided evidence against them. In court, interpretation for the South African defendants was performed by the Attorney General's official interpreter, which begs the question of his independence and impartiality. Amnesty International delegates observed that vital pieces of information, such as defendants' statements about torture, were not translated, while others were distorted;
- one South African of Angolan origin spoke only Portuguese. The court was not aware of this crucial fact and there was no official interpreter for him. This raises serious concerns regarding the circumstances in which he signed his statement.

Amnesty International calls for the allegations of torture and misconduct by the prosecution authorities to

be investigated as a matter of urgency, and for those suspected of involvement in either or both of these allegations to be brought to justice.

The organization urges the authorities to remove immediately the handcuffs and shackles of these prisoners. They should also grant them immediate access to their lawyers and families, and provide them with adequate food and medical treatment.