

EQUATORIAL GUINEA

No free flow of information

Possessing a two-years-old Amnesty International appeal document, photocopying a Spanish newspaper article and having an opposition newspaper have led five people to be arrested in the last year in Equatorial Guinea. Two are still in prison after an unfair trial in a military court.

None of these publications for which people were arrested called for violence and none were banned. All were published by legal, established organizations. Nevertheless, the documents were described by the courts of Equatorial Guinea as “material of dubious provenance” (*material de dudosa provenencia*). The person accused of possessing an Amnesty International document, **Mariano Oyono Ndong** was tried in December 1999 together with two other people, Sergeant **Antonio Engonga Bibang** and **Carmelo Biko Ngua**, who were charged with “insults against the government and the Armed Forces” (*Injurias contra el Gobierno y contra las Fuerzas Armadas*) and “illicit possession of ammunition” (*Tenencia ilícita de municiones*) respectively. They were also apparently accused of holding an illegal political meeting. In fact these three people appear to have been arrested for being members of the *Fuerza Demócrata Republicana* (FDR), Democratic Republican Force, an opposition political party which has been refused official recognition. **Mariano Oyono Ndong** and **Antonio Engonga Bibang** were sentenced to three years’ imprisonment and **Carmelo Biko Ngua** received a six-month sentence. Their trial, before a military court, was unfair.

Two other people, **Juan Obiang Latte** and **Teodoro Abeso Nguema**, were detained in November 1999 for being in possession of a photocopy of a newspaper article. They were charged with “insults, calumny against the Head of State and reproduction of a newspaper of dubious provenance”. They were provisionally released in January 2000 after two months in prison.

Equatorial Guinea is nominally now a multi-party state with guaranteed freedom of the press. However, the government continues to use military courts, repressive laws and arbitrary arrests and prosecutions to restrict political freedoms and civil rights. The rights to freedom of opinion, expression, sharing and publication of information are severely restricted, contrary to international standards. The cases reported here in detail represent the latest attempts by the authorities to intimidate and punish criticisms of its politics and human rights practices. They illustrate the lengths to which the authorities are prepared to go to intimidate non-violent opposition by targeting ordinary people.

The arrest and imprisonment of individuals for being in possession of information that is in the public domain contravenes international human rights law. Provisions guaranteeing the rights to freedom of expression, association and assembly are contained in Articles 9, 10 and 11 of the African Charter of Human and Peoples’ Rights (African Charter) and Article 19, 21 and 22 of the International Covenant on Civil and Political

Rights (ICCPR). Equatorial Guinea ratified these treaties in August 1986 and September 1987 respectively.

Amnesty International considers the five people named to be prisoners of conscience, arrested solely for exercising their rights to freedom of expression and assembly. Amnesty International calls for the immediate and unconditional release of those who are still in prison and for the charges against the two who were provisionally released to be dropped. It calls on the authorities in Equatorial Guinea to respect and protect the rights to freedom of expression and association in accordance with the country's legal obligations under international treaties.

Unfair military trial

The trial of Mariano Oyono Ndong, Antonio Engonga Bibang and Carmelo Biko Ngua took place before a military court (*consejo de guerra*) in Bata, the main city of the continental part of the country, called Río Muni.

Mariano Oyono Ndong was arrested on 25 May 1999 in his village in Okas Obe, in the district of Mongomo in the eastern part of Río Muni. Carmelo Biko Ngua was arrested three days later in the same village. They were apparently accused of holding an illegal political meeting in Carmelo Biko Ngua's house, where the two men had had dinner a few days earlier. The accusation reportedly came from a member of the ruling *Partido Democrático de Guinea Ecuatorial* (PDGE), Equatorial Democratic Party. The two men were first taken to Mongomo police station, then, a week later, sent to Bata police station. In early September they were transferred to Bata prison. While in Mongomo, they were held incommunicado. After they were transferred to Bata, they were allowed to have access to their families. They appear to have been physically ill-treated.

Army Sergeant Antonio Engonga Bibang, who is a cousin of Mariano Oyono Ndong, was arrested approximately one week after the other two men in the town of Añisok (in Río Muni) where he was posted. It appears that the reason for his arrest was a letter he had sent to Mariano Oyono Ndong, asking if he had finished the work he was to do for him. The police authorities reportedly interpreted the letter as a reference to a plot to overthrow the government. This charge was not upheld by the prosecution during the trial.

It appears that the political affiliation of these three people was the real reason for their arrest. The FDR is a peaceful opposition political party founded in 1997 by former members of the government. Despite numerous applications for official recognition, the authorities have refused to authorize it.

In recent years, hundreds of peaceful political activists, including members of FDR, have been arrested and held without charge or trial for varying periods for exercising their rights to freedom of speech and assembly. Some FDR members have been confined to their villages, without any legal procedure and without any opportunity to challenge their restriction in court. Mariano Oyono Ndong had been confined to his village in this way since June 1997.

Although Mariano Oyono Ndong and Carmelo Biko Ngua are civilians and the charges against them are not related to strictly military matters, they were tried by a military court. The use of military tribunals to try civilians is common in Equatorial Guinea, and has been widely criticized by lawyers and non-governmental organizations. The country has a civil court system, whose establishment and independence are guaranteed by the Constitution (Title IV, §§ 83-93 of the *Ley Fundamental de Guinea Ecuatorial*, Fundamental Law of Equatorial Guinea). However, in political cases, this system is frequently bypassed by the government in favour of military tribunals. This is made possible by the fact that the 1945 Code of Military Justice (*Código de justicia militar*) is still in use. This Code of Military Justice dates from the era of General Francisco Franco and was introduced when the country was still a Spanish colony. According to this Code, anyone (even a civilian) who disobeys a military authority can be prosecuted by a military court. The Head of State of Equatorial Guinea, President Teodoro Obiang Nguema Mbasogo, is a general. Anyone who criticizes him, or, by extension, any political authority, may be tried by a military court. This contravenes the obligations undertaken by Equatorial Guinea under the African Charter and the ICCPR to establish independent tribunals and to accord to all accused persons all the international guarantees of a fair trial.

For 20 years, United Nations human rights experts -- the UN Independent Expert and the UN Special Rapporteurs on Equatorial Guinea -- have recommended that the jurisdiction of the military courts should be restricted to offences of a military nature committed by serving military personnel. In his report presented in March 2000 to the Commission of Human Rights in Geneva, **Gustavo Gallón**, the *Special Representative of the Commission on the situation of human rights in Equatorial Guinea*, stated:

“Military judges are empowered to arrest, investigate and try civilians. Many of the executive’s senior officials regard such powers as normal and do not see them as contrary to the principle of the separation of powers proper to a State subject to the rule of law. They argue that it

is military justice that should institute proceedings for acts of violence, even when committed by civilians, such as the attack on military facilities, or the use of military weapons or uniforms. Military justice, however, does not limit itself to such cases, in which its impartiality would in any case be dubious since it would simultaneously be judge and party. Military judges pass sentence for offences such as insulting the Head of State, and also conduct interrogations and investigations based on vague charges which do not refer in detail to a specific offence.”¹

Amnesty International has publicly protested on several previous occasions about the trial of civilians by military tribunals. The organization has noted very serious breaches of fair trial standards in these military courts :

- questionable charges, which do not relate to recognizable criminal offences or are based on no substantive evidence or on spurious evidence ;
- military judges assigned and military defence counsel who lack legal training and impartiality;
- no right of appeal to a higher court against conviction and sentence.

¹ See Commission on Human Rights, fifty-sixth session, E/CN.4/2000/40

All these failings were noted in the December 1999 military trial against the three members of the FDR.

Questionable charges

Each of the FDR members was charged with a different offence. All the charges appear to be questionable, either because they were based on no substantive evidence or because they did not relate to recognizable criminal offences.

A) "Possession of material of dubious provenance"

Mariano Oyono Ndong was charged with "possession of material of dubious provenance". This charge does not exist in the penal code. It has, however, been used previously by the authorities to arrest and prosecute people for exercising their right to freedom of expression. Mariano Oyono Ndong was in effect prosecuted for acts that did not even constitute a criminal offence. This is a flagrant breach of international treaty provisions.

Article 15 of the ICCPR states:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed".

Similarly, Article 7(2) of the African Charter states:

“No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed”.

To sustain this illegal charge, the prosecution cited two documents found in Mariano Oyono Ndong’s house by the police. These two documents are an issue of *La Verdad* (The Truth) the publication of a legal opposition party, the *Convergencia para la Democracia Social* (CPDS), *Convergence for Social Democracy*, and a copy of an Urgent Action Appeal issued by Amnesty International two years earlier in November 1997. (See box.)

The Amnesty International Urgent Action² dealt with the arrest of two leaders of the FDR, **Felipe Ondó Obiang**, former president of the parliament of Equatorial Guinea, and **Guillermo Nguema Ela**, former Minister of Finance. Both were arrested on 5 November 1997 by the Gabonese security forces in Libreville, Gabon, and transferred the same day to Malabo, Equatorial Guinea, in the Equatorial Guinean presidential plane and detained on arrival. The arrests were carried out shortly after the arrival in Libreville of President Teodoro Obiang Nguema for a summit meeting of the ACP-EU (African, Caribbean and Pacific - European Union). Both FDR leaders had been granted refugee status in Gabon, and their repatriation therefore violated the principle of non-*refoulement* established by the United Nations Convention relating to the Status of Refugees and the OAU Convention Governing the Specific Aspects of Refugees in Africa (OAU Refugee Convention). In its Urgent Action, published on 11 November 1997, Amnesty International expressed concern that there had been no news of these two people since their arrest and that they might be at risk of torture.

Four days after the publication of this Urgent Action, the two detainees were released.³

The other document (considered by the prosecution as “material of dubious provenance”) was a special issue of the CPDS publication, *La Verdad*, which examined

² AI Index: AFR 02/28/97

³ Felipe Ondó Obiang and Guillermo Nguema Ela were rearrested some days later after giving an interview to foreign news media. They were sentenced to two and a half years' imprisonment in August 1998 for "denunciation and false accusations".

the March 1999 legislative elections. This issue of *La Verdad* was described by the prosecutor, during the December 1999 trial, as “ a dangerous paper for the country”.

La Verdad, a review issued two or three times a year, is the publication of the CPDS, an opposition political party which was officially recognized in 1993. In the CPDS statutes, which were sent to the authorities to obtain recognition, *La Verdad* is clearly mentioned. Although the authorities did not object to the existence of this publication in 1993, they have sometimes claimed that *La Verdad* is an illegal paper, arguing that the CPDS does not submit each issue in advance for government approval as required under the terms of the Press Law (*Ley de la Prensa*). In March 2000 the embassy of Equatorial Guinea in the United States of America stated:

“this magazine (La Verdad) is certainly considered as illegal for the simple reason that it did not meet the requirements set forth by the corresponding Ministry or Department in charge of legalizing and issuing clearance for periodicals and other reading materials”.

Amnesty International considers that such requirements constitute censorship of news or opinion in advance of publication, and are contrary to the right to freedom of expression guaranteed in international human rights treaties.

In the past, people have been arrested for being in possession of *La Verdad*, despite laws and constitutional provisions guaranteeing freedom of expression.⁴ In 1995, about 20 people were arrested because they had copies of *La Verdad* in their possession, were reading the review or were distributing it. *More recently, however, it had been possible to sell La Verdad openly at least in the capital, Malabo, without being harassed by the authorities.*⁵ *The authorities have allowed it to be sold and have not taken any steps to ban it or declare its publication or distribution unlawful.*

⁴ Article 13, b of the Constitution of Equatorial Guinea states the right to free expression of the thought, ideas and opinions (*la libre expresión de su pensamiento, ideas y opiniones*).

⁵ In the continental part of the country, where most human violations occur (since it is far from foreign scrutiny), it is more difficult to distribute or obtain copies of *La Verdad*. The possession of this publication is interpreted as evidence of sympathy for the opposition and may lead to arbitrary detention and ill-treatment.

The authorities have even invited representatives of *La Verdad* to international seminars and official meetings. In August 1997 an international seminar on the press in Central Africa took place in Malabo and as a result an *Asociación de prensa de Guinea Ecuatorial* (ASOPGE), Press Association of Equatorial Guinea, was created. Those responsible for issuing *La Verdad* were allowed to join this organization. More recently, in January 2000, one staff member of *La Verdad* was invited to an official meeting organized by the Ministry of Information and Tourism to help develop a "Day for the press".

Despite such official acknowledgement of *La Verdad*, Mariano Oyono Ndong was convicted and sentenced to three years' imprisonment for being in possession of this publication.

B) "Insults against the government and the Armed Forces"

Army Sergeant Antonio Engonga Bibang was charged with "insults against the government and the Armed Forces". As evidence, the prosecution quoted a letter written by the defendant to his cousin, Mariano Oyono Ndong. The sergeant told his cousin in this letter that he was fed up with military service because he was living in poverty on a low salary and had a family to maintain. In addition to this complaint about his living conditions, the sergeant said that he was sending 40.000 francs CFA (about US\$70) to his cousin and asked him if he had finished some work he had asked Mariano Oyono Ndong to do. It seems that Antonio Engonga Bibang had requested his cousin to build a house for his own retirement. The police authorities interpreted the letter as a reference to a plot to overthrow the government but this accusation was not incorporated in the charges. Despite the fact that there was no evidence of any "plot" to

overthrow the government, the court apparently accepted this complaint made by an underpaid soldier to his cousin in a private letter as the sole basis for the conviction and imprisonment for three years of Antonio Engonga Bibang.

C) "Possession of ammunition"

The third FDR defendant Carmelo Biko Ngua was charged with "possession of ammunition". The security forces had found some ammunition in the house of the defendant. It consisted of seven old and very rusty bullets. They had reportedly been lying in a box for 20 years, together with some old disks. The court convicted the defendant of possession of ammunition but in view of the state of the ammunition merely sentenced him to six months' imprisonment, which corresponded to the time he had spent in jail awaiting trial. He was released the day after his conviction.

Denial of fair trial

Mariano Oyono Ndong, Antonio Engonga Bibang and Carmelo Biko Ngua were tried on 2 December 1999 and convicted and sentenced the following day. Most of the most elementary requirements that would have guaranteed a fair trial were absent.

- None of the defendants were represented by defence counsel of their choice. One of them, Mariano Oyono Ndong, had no legal representative at all. The two other defendants were assigned military officers as legal representatives, but these officers had no legal training or experience.
- The court was composed only of military personnel, and was chaired by Brigade General Antonio Obama Ndong, who has no legal training.
- Two military defence counsel failed to give any adequate legal representation to their clients either because of incompetence, unwillingness or because they were afraid of their military superiors who were sitting as judges in the court.

They had no right of appeal to a higher court against conviction and sentence which is contrary to internationally recognized standards of fairness of trial.

Amnesty International is concerned that this trial, like previous trials of people charged with politically motivated offences in Equatorial Guinea, did not conform to internationally recognized standards of fairness. The trial should have taken place before a civilian court and in full accordance with the provisions of Article 14 of the ICCPR and Articles 7 and 26 of the African Charter. Among other things, Article 14 of the ICCPR requires that the defendants be guaranteed the right to a defence lawyer of their choice and the right of appeal to a higher tribunal. None of these minimal requirements were met.

The Human Rights Committee, the expert body which monitors implementation of the ICCPR, issued a critical statement on military courts of this nature. It stated notably that “in some countries such military and special courts do not afford the strict guarantees of the proper administration of justice in accordance with the requirements of article 14 which are essential for the effective protection of human rights”.⁶

The African Commission on Human and Peoples’ Rights found a violation of Article 7(1)(d) of the African Charter in a case where the judges of a special tribunal were mainly people without legal expertise who belonged to the executive branch of government. The African Commission has also stated that military courts should in no circumstances whatsoever have jurisdiction over civilians.⁷

Two arrested for photocopying a foreign newspaper article

In November 1999, Juan Obiang Latte and Teodoro Abeso Nguema were arrested in Bata and charged with “insults, calumny against the Head of State and reproduction of a newspaper of dubious provenance” (*injurias, calumnia al Jefe de Estado y reproducción de un periodico de procedencia dudosa*). They were accused of photocopying an article published by the Spanish daily newspaper *El Mundo* (The World) which is accessible on the Internet. This article repeated rumours about the alleged illness of the Head of State. The two were provisionally released in January 2000 but were required to present themselves to the court on a regular basis.

Although Juan Obiang Latte and Teodoro Abeso Nguema were reportedly not ill-treated during their detention, the authorities tried to prevent Gustavo Gallón, the UN

⁶ Human Rights Committee, General Comment 13, para. 4

⁷ Declaration and Recommendations of the Seminar on the Right to a Fair Trial, organized by the African Commission on Human and Peoples’ Rights, Dakar, Senegal, 9-11 September 1999

Special Representative, from having access to them when he tried to visit them in custody in November 1999. When Gustavo Gallón first went to the Bata police station, the two prisoners were not there and their names were not on the list of detainees present on that day. However, they were listed as having been present on the previous day, and the reason for their arrest was given as “by order of higher authority”. The senior officers at the police station refused to say what had become of those two men and only said that, as they were not listed, it was because they had already been released. The Special Representative decided to return to the police station, unannounced, the following day and he was able to talk to Teodoro Abeso Nguema, who told him that he and his companion Juan Obiang Latte had been taken from the police station the previous day to prevent the Special Representative from talking to them.

In his report, the Special Representative said in relation to this case:

“The case described shows flagrant irregularities practised by the security agencies in violation of the right to freedom. The men in question had been detained for over 72 hours without any intervention by a judicial authority. The detention itself was arbitrary in that it had not been ordered by a judicial authority and was not the result of an arrest flagrante delicto. The so-called “order of higher authority” is a form of arbitrary detention by State officials. According to the detainees, the reason for their arrest was the fact that they had printed out from the Internet an article published in the Spanish newspaper El Mundo about the health of the President of Equatorial Guinea; such action cannot reasonably be regarded as constituting an offence.”

Amnesty International considered Juan Obiang Latte and Teodoro Abeso Nguema to be prisoners of conscience, arrested solely for exercising their right to freedom of expression. The organization is appealing to the authorities to unconditionally withdraw all charges against them.

Restriction on the right to freedom of expression

Amnesty International is concerned by these attempts to restrict the freedom of expression in Equatorial Guinea, including physical attacks against a journalist and a newspaper vendor.

Pedro Nolasko, a journalist who used to work for the state-run Radio-Television of Equatorial Guinea, was dismissed in 1992 because he had begun to call for greater democracy. Since 1997 he and his family have been receiving threats, including death threats. Despite this intimidation, he succeeded in obtaining authorization to publish a

newspaper called *La Opinión* (The Opinion), which he began to publish in March 1998. Some days after the publication of the first issue, he was summoned by the Secretary General of the Ministry of Interior, **Tarcisio Nguema Ondó**, who reproached him for having published an interview with a leader of an opposition party, *Unión Popular*, Popular Union. The Secretary General of the Ministry of Interior insisted on being handed over the tapes of this interview and when the journalist refused, he physically assaulted him, punching him twice on the shoulder.

On 11 April 2000, a newspaper vendor who was trying to sell issues of *La Opinión* inside the building of the General Secretariat of the government was physically assaulted by the Minister Delegate of the Interior, **Clemente Engonga Nguema Andene**. The vendor tried to defend himself and people at the scene succeeded in separating the two.

The authorities have also removed **Manuel Nze Nzogo**, an independent journalist, from the presidency of the Press Association, ASOPGE, because he resisted attempts by the authorities to turn the organization into a mere showcase for the government. In April 1999, the Minister of Information ordered the removal of Manuel Nze Nzogo, despite the fact that he had been democratically elected in accordance with the ASOPGE statutes. The other members of the ruling bureau of this press association lodged an official complaint but have received no response to date.

Despite all these incidents, the authorities deny that freedom of expression and information are being severely limited in their country. When the UN Commission of Human Rights examined the report of the UN Special Representative for Equatorial Guinea in Geneva, in March 2000, the Minister of Justice of Equatorial Guinea, **Ruben Maye Nsue Mangue**, contested the content of his report, claiming that the existence of 12 newspapers and magazines, five of which represented the opinion of opposition parties, proved that there was freedom of expression in his country. In fact, there are only a few, sporadic publications in Equatorial Guinea. There is no daily or weekly newspaper, and neither the government controlled press nor the privately owned papers are published regularly. Financial constraints prevent independent newspapers from appearing regularly, but the main restraint on the development of a free press in this country is the constant intimidation of journalists.

Article 19 of the ICCPR states that:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”.

None of these fundamental rights are being respected in Equatorial Guinea. People are arrested and prosecuted for holding opinions, expressing them, and for seeking information, being in possession of it and imparting it. As long as such restraints and intimidation remain unpunished, and nothing is done to prevent further abuses taking place, there can be no serious hope of any improvement in the situation of freedom of expression in Equatorial Guinea.

RECOMMENDATIONS

Amnesty International has repeatedly brought to the attention of the government its concerns about freedom of expression and association and has on many previous occasions following human rights violations urged the authorities to introduce and implement safeguards to prevent arbitrary arrests, torture and ill-treatment and unfair trials. The recommendations below have been based on the provisions of the African Charter and the ICCPR which the government has pledged to respect. However, human rights continue to be violated with impunity.

Amnesty International urges the government of Equatorial Guinea to:

- immediately and unconditionally release **Antonio Engonga Bibang** and **Mariano Oyono Ndong**;
- publicly declare that no further trials of civilians will take place before military courts, and set up a legal commission to change the law relating to military courts and the judiciary to bring it into conformity with international human rights treaties to which Equatorial Guinea is a party;
- unconditionally withdraw all charges against **Juan Obiang Latte** and **Teodoro Abeso Nguema**;
- take genuine measures to implement provisions of the Constitution and obligations undertaken under the African Charter and ICCPR, to protect the right to freedom of expression and the right to freedom of association.

