

£GUINEA-BISSAU

@In defiance of the law

The murder of a senior military officer in March 1993 in the context of a mutiny by some units of the armed forces led to scores of arbitrary arrests and the denial of the detainees' rights to due process of law. These events have cast a shadow over Guinea-Bissau's recent attempts to build a society based on the rule of law. The detainees were held incommunicado while they were questioned by a military Commission of Inquiry set up to investigate the affair which, according to the military authorities, involved an attempt to overthrow the government of President João Bernardo Vieira. The Commission allowed or ordered parts of some detainees' statements to be shown on television, without considering that this could seriously prejudice their rights, such as the right to be presumed innocent until proved guilty according to law. The authorities paid no heed to a local human rights group or representatives of opposition political parties who called for the detainees to be brought to court and given access to lawyers. They ignored a Supreme Court order for one of the detainees, João da Costa, to be brought before a judge within 48 hours so that the legality of his detention could be tested. Over two weeks later João da Costa was brought before the Higher Military Tribunal, apparently for the pre-trial judicial process to begin. His lawyer was then permitted to accompany him.

Amnesty International is calling on the government to act immediately to respect Guinea-Bissau's own judicial institutions and procedures and to restore the detainees' rights in accordance with international human rights standards. Amnesty International believes that the procedures of the Commission of Inquiry were so seriously flawed that its findings should be totally excluded as evidence in any trial. Since there has already been, in effect, a "trial by television" only the highest standards of proof will suffice to show that the court which tries the case has reached a just verdict.

The shooting incident

On 17 March 1993, Major Robalo Gomes de Pina, the head of an elite security unit, the Rapid Intervention Force, was shot dead in the capital, Bissau. The precise details of events on 17 March are not clear. According to press reports, Sergeant Amadú Mané, after killing Major Robalo Gomes de Pina, hijacked the victim's car and forced the driver to take him to two other military barracks where soldiers had mutinied. Amadú Mané reportedly fled when a third barracks refused to join the mutiny. The city was placed on a state of alert and scores of people, mainly military personnel, were arrested. Some were later released.

Initially, the military authorities denied that there had been an attempt to overthrow the government, suggesting instead that the incident had been related to the serious discontent within the armed forces – soldiers in many units had not been paid for several months and veterans of the war for independence were complaining about unfair

promotions in favour of military academy graduates. Later, however, the military authorities said that they were investigating an attempt to seize power and that Sergeant Amadú Mané, who had been arrested in late March or early April, claimed that members of opposition parties had been involved with him in a plot. As a result, João da Costa, president of the opposition *Partido da Renovação Democrática* (PRD), Democratic Renewal Party, and Tagmé Na Waié, a member of the *Resistência da Guiné-Bissau - Movimento Bafatá* (RGB-MB), Guinea-Bissau Resistance - Bafatá Movement, were arrested on 14 April.

Since Guinea-Bissau's Constitution was altered in 1991 to introduce a multi-party political system over a dozen opposition parties have been preparing to contest elections expected to take place later in 1993. Some members of the ruling *Partido Africano para a Independência de Guiné e Cabo Verde* (PAIGC), African Party for the Independence of Guinea-Bissau and Cape Verde, opposed these reforms. Others, including João da Costa, left the PAIGC to form other parties.

The Commission of Inquiry hearings

A few days after the death of Major Robalo Gomes de Pina, a Commission of Inquiry composed of military and security officers and headed by the Chief of General Staff, Saco Cassama, was set up. The Commission's purpose was not clear since its mandate and terms of reference were not made public. President João Bernardo Vieira invited members of the *Forum Democrático*, Democratic Forum, an opposition umbrella group, to select four opposition party representatives who would attend the Commission of Inquiry sessions, apparently in order to see that the detainees were not being unfairly treated. However, two political parties refused to participate on the grounds that the case should have been referred to the courts.

Extracts from some of the Commission of Inquiry's sessions were broadcast on television. Immediately after his arrest on 14 April, João da Costa was brought before the Commission of Inquiry to face Amadú Mané. A recording of part of the session was played on radio and television later that day. In it, Amadú Mané accused João da Costa of persuading him to join the coup plotters by promising that he, Amadú Mané, would be given the post of Minister of Defence after the coup. Amadú Mané also claimed that João da Costa had given him a drugged soft drink so that he would have the courage to act. João da Costa denied the allegations. In the following weeks further excerpts of statements made to the Commission of Inquiry were broadcast.

João da Costa being questioned by the Commission of Inquiry in April 1993. João da Costa, a former Minister of Health, had been arrested twice before. He had been held for a few months after the present government came to power in a coup in November 1980, apparently because he had opposed the coup. He was again arrested in June 1982 and accused of plotting against the government. This time he was held without charge or trial for 17 months before being released.

On 21 April the Guinea-Bissau Human Rights League obtained permission to visit the prisoners who were held in the army's Amura Fortress, the Navy headquarters, and a prison known as the Second Squadron Police Station or *Comando Operacional - 2* (COP-2), Operational Command - 2, where political prisoners have routinely been held in the past. The prisoners all reportedly assured the League that they had not been physically ill-treated. However, both the League and members of opposition political parties expressed concern about the way the case had been dealt with outside the ordinary legal procedures. In particular, they protested that the prisoners were being denied access to legal counsel and to their families. The president of the League, Fernando Gomes, subsequently received several threats against his physical safety. He had received similar threats in September 1992 after exposing the case of a soldier arrested for illegal arms dealing who had died in custody as a result of a severe beating¹.

After João da Costa's arrest his lawyer submitted a *habeas corpus* petition to the Supreme Court on 16 April. The Supreme Court, in a ruling dated 27 April, found that João da Costa's detention had not conformed to the law. The court said that João da Costa should have been handed over to the Military Prosecutor. The Prosecutor should, within 48 hours,

¹ Some security personnel were arrested in connection with the killing but they have not been tried.

have brought him before a judge who is supposed either to formally remand the detainee in custody or to order his or her release. The Supreme Court said that in the absence of sufficient details about the case it had sought further information from the authorities who were detaining João da Costa but that they had not replied. The Supreme Court therefore ordered: first, that João da Costa, a civilian, be transferred immediately to the Brá Rehabilitation Centre - a civilian prison on the outskirts of Bissau; and secondly, that the President of the Higher Military Tribunal, should carry out an inquiry within 48 hours into the legality of João da Costa's detention by the military authorities.

Tagmé Na Waié, who was arrested on the same day as João da Costa, had been released from prison in an amnesty in September 1991. A former military police commander, he had been convicted in July 1986 of plotting to overthrow the government. The trial before the Higher Military Tribunal was unfair. Tagmé Na Waié and 11 others were sentenced to death: six people were executed and six had their sentences commuted to 15-year prison terms. The executions sent a shock wave through the country and led to the formation of the RGB-MB which Tagmé Na Waié joined after his release.

The Supreme Court's instructions were not carried out. In a televised debate on 2 May the spokesperson of the Commission of Inquiry claimed that the Supreme Court's ruling was illegal because the case fell under the jurisdiction of the military court. In fact, the Supreme Court had not sought to impinge on the jurisdiction of the military court since it ordered that the President of the Higher Military Tribunal should himself make a ruling on the legality of the detention. The Commission of Inquiry spokesperson also suggested that some of the detainees could face the death penalty. He pointed out that although the National Assembly,

Guinea-Bissau's parliament, had abolished the death penalty in a constitutional amendment in February 1993, the new Constitution had not yet entered into force as it has not yet been published in the government gazette. Tagmé Na Waié's lawyer also sought a writ of *habeas corpus* in mid-April but by late May the Supreme Court had not responded to the petition.

João da Costa continued to be held incommunicado until 13 May when, accompanied by his lawyer, he was brought before the Higher Military Tribunal for the pre-trial judicial process to begin. He was allowed to see his wife for the first time on 19 May and on 21 May he was transferred to Brá Rehabilitation Centre. Tagmé Na Waié was reportedly summoned to the court on 18 or 19 May, but was not accompanied by his lawyer. He has recently been allowed to receive visits from his wife. As far as Amnesty International knows, none of the other detainees have yet been brought before the court.

Amnesty International's concerns and appeals

Amnesty International is concerned that the rights of those arrested in connection with the shooting of Major Robalo Gomes de Pina and with the alleged coup attempt have been violated. In particular:

- **Many of the detainees were arbitrarily arrested and detained in defiance of international standards²:** João da Costa and Tagmé Na Waié and possibly others were imprisoned without a warrant of arrest and without being informed of the reasons for their arrest. Although the detainees have the legal right to challenge the legality of their detention, the military authorities showed, by flouting the Supreme Court ruling in response to the *habeas corpus* petition concerning João da Costa, that they had no intention of respecting this right. The detainees were held incommunicado for long periods - most appear to be still held incommunicado near the end of May. Under international standards the period for which detainees may be held without appearing before a court is limited to a 'few days' at most.

- **The Commission of Inquiry was flawed and appeared to have been set up for political ends.** The Commission's mandate and terms of reference were not made public and its purpose was unclear³. In addition, the detainees who testified before the Commission were not assisted by legal counsel despite the fact that they were being questioned about alleged serious criminal offences. Furthermore, the television and radio broadcasts of part of the Commission's hearings could seriously prejudice the right of the detainees concerned to be presumed innocent until proved guilty in a properly constituted court of law - particularly as the excerpts appeared to have been selected for the purpose of discrediting the opposition. It is an open question whether or not the Commission of Inquiry was created or manipulated to serve particular political interests. The Commission's findings have not been made public and it is also not clear what is the status of these findings in relation to the judicial proceedings which have apparently begun before the Higher Military Tribunal.

In view of these concerns:

- Amnesty International is calling upon the government to act rapidly to ensure that those who are not to be charged with a recognizably criminal offence are released and that the rest are tried in full conformity with international fair trial standards.

² For example, the United Nations (UN) *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* of December 1988 which applies to all UN member states. Principle 11 states: *A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.*

³ Amnesty International, in a letter to the government in April, requested a copy of the commission's mandate and terms of reference but received no reply.

- Amnesty International recommends that, since the proceedings of the Commission of Inquiry were so seriously flawed, its findings should be totally excluded as evidence in any trial. The detainees' statements to the Commission of Inquiry may have been made under some form of duress - they were certainly made without the benefit of legal advice. Since there has already been, in effect, a "trial by television" only the highest standards of proof will suffice to show that the court which tries the case has reached a just verdict.
- Furthermore, in view of the potentially damaging effects of the Commission of Inquiry, and in view of the fact that previous trials before the Higher Military Tribunal have fallen far short of international standards of fairness⁴, Amnesty International believes that the only way to ensure a fair hearing would be for the trial to take place in the ordinary courts, from which there is a right of appeal to the Supreme Court.

⁴ For example, there is no right of appeal. In the trial of Tagmé Na Waié and others in July 1986, defendants' claims that they had been subjected to torture or other forms of duress were not investigated, they were convicted on the basis of statements of other detainees without corroborating evidence and they were unable to appeal to a higher court against their convictions or sentences.