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Equatorial Guinea
A trial with too many flaws

1. Introduction

Allegations of coup attempts against the government followed by arrests, torture and unfair trials are not uncommon in Equatorial Guinea. Over the past two decades Amnesty International has documented over a dozen coup allegations and the unfair trials that followed, which went largely unnoticed outside the country. By contrast, the trial held in August-November 2004 attracted unprecedented international attention. This was partly attributable to the international background of those brought before the court, but it probably had more to do with the nationality and celebrity of the alleged financial backers of the alleged coup, against whom the Equatorial Guinean authorities were also hoping to secure convictions in separate civil proceedings in the United Kingdom (UK). Nevertheless, in spite of the world attention it received, this trial did not respect internationals law and standards for fair trials and breached national law.

Eleven foreign nationals, five South Africans and six Armenians accused of being "mercenaries", and nine Equatorial Guineans tried *in absentia,* were sentenced to lengthy prison terms ranging from 14 to 65 years after being convicted of attempting to overthrow the government of President Teodoro Obiang Nguema Mbasogo in March 2004. Two other Equatorial Guineans received sentences of 16 months.

The arrest of the foreign nationals and five Equatorial Guineans in Malabo, the capital, and in Bata, the main city on the mainland in Equatorial Guinea, followed the arrest on 7 March 2004 of a group of about 70 people, mainly South African nationals, at Harare International Airport (Zimbabwe) whom the Zimbabwean authorities accused of being "mercenaries" en route to overthrow the government of Equatorial Guinea.

Amnesty International has repeatedly expressed its opposition to all military, security and police transfers which contribute to human rights violations. Mercenaries operate outside military discipline and the legal system, and seldom are they or their sponsors ever held to account for their actions. However, anyone accused of mercenary activity has a right to a fair trial and to have his or her rights protected, including the right to be presumed innocent until proven guilty and not to be subjected to torture or cruel, inhuman or degrading treatment. In the case of these foreign nationals and their Equatorial Guinean co-defendants, these rights were violated: facets of their arrest, detention and trial clearly indicated a violation of the presumption of innocence.

At the invitation of the Equatorial Guinean authorities, an Amnesty International delegation was able to observe the whole trial from 23 August to 26 November 2004. In view of the serious procedural flaws and the admission of confessions allegedly extracted under torture or duress, the delegates concluded that the trial was unfair. No evidence was presented in court to support the charges against the accused and the court repeatedly ignored the allegations made by some of the defendants that they had been tortured while under interrogation.

> "We were arrested and chained and treated like wild animals and tortured by the police." Nick du Toit said in court on the last day of the hearing (18 November 2004).

Amnesty International delegates noted that the court hearing often appeared more concerned with obtaining evidence to further a separate civil case in the UK, brought by the Equatorial Guinean government against several British businessmen it accused of financing the alleged coup.

During both the pre-trial stage and the court hearing itself, there were serious procedural irregularities in the application of Equatorial Guinean law, and a flagrant disregard for the regional and international human rights law and standards. The foreign defendants were made to sign statements in Spanish, a language most of them did not understand.

The South African defendants were apparently subjected to interrogation by security personnel from Angola, South Africa and Zimbabwe, who have no jurisdiction in Equatorial Guinea. Some of the statements given to these forces were subsequently used as evidence in court.

The treatment that the foreign defendants experienced in detention before and during the trial included being handcuffed and shackled 24 hours a day, which constitutes cruel, degrading and inhuman treatment. This treatment has prevailed since the trial. In addition, the foreign nationals were held incommunicado for over four months.

Amnesty International does not support or oppose any government, nor does it support or oppose the political views of the people whose human rights are violated. In the case of Equatorial Guinea, the organization is solely concerned with the protection of human rights in that country, which in this particular case includes those of people who have been accused of attempting to overthrow the government.

This report describes the trial of the alleged "mercenaries", their arrest and their conditions of detention, and gives details of the human rights violations and procedural irregularities that rendered the trial unfair. It also provides brief details of other less known trials which took place in 2004 which were also reported to be unfair. The report also makes recommendations to the government of Equatorial Guinea to improve the human rights situation, particularly with respect to bringing trials into conformity with international standards of fairness. This report also contains recommendations to the international community.

The information in this report is based on extensive notes taken by Amnesty International delegates who were present throughout the trial, official documents related to the case, and interviews conducted in Malabo with officials, lawyers and others.

2. Equatorial Guinean and international law

Amnesty International delegates based their observation of the trial on Equatorial Guinean law as well as international treaties ratified or acceded to by Equatorial Guinea. It was on the grounds of the violations of those laws that the trial was found to be unfair.

The Penal Code and Penal Procedures Code currently in force in Equatorial Guinea are the 1967 Spanish Penal Code and Penal Procedures Code in force at the time of Equatorial Guinea independence in 1968.

The Constitution in force in Equatorial Guinea is that of 1991 as amended in 1995, which contains some limited rights including the right to a fair trial. Article 8 of the Constitution states that the State of Equatorial Guinea will abide by all standards of international law and in particular to the rights and obligations set out in the international treaties to which it has subscribed. Article 13 sets out a list of fundamental rights owed to every citizen which includes:

- the right to *habeas corpus* and *amparo*[i]
- the right to conduct one's defence before a court [j]
- the right not to be deprived of one's liberty save by judicial order, except where set out by the law or in the cases of *delito flagrante* [m]
- the right to be informed of the reasons for a detention [n]
- the right to be presumed innocent until proven guilty [o]
- the right not to have to incriminate oneself [p]
- the right not to be deprived of any of the rights of defence at any stage of the proceedings [r]

Article 83 provides for an independent judiciary. However, Article 86 provides that the President is the First Magistrate of the Nation, which can be seen as negating the provisions of Article 83.

In addition, Equatorial Guinea has ratified most of the major human rights conventions. In particular:

- International Covenant on Civil and Political Rights (ICCPR), ratified on 25 September 1987
- First Optional Protocol to the ICCPR , also ratified on 25 September 1987
- The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), ratified on 8 October 2002
- The African Charter on Human and Peoples' Rights (African Charter), ratified on 18 August 1986

Equatorial Guinea has not yet ratified the Second Optional Protocol to the ICCPR aimed at abolishing the death penalty, which Equatorial Guinea retains.

Other human rights standards applicable here include:

- The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles)
- Standard Minimum Rules for the Treatment of Prisoners and Procedures for the Effective Implementation of the Rules
- Basic Principles for the Independence of the Judiciary
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- UN Code of Conduct for Law Enforcement Officials
- Principles for the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- Principles and Guidelines on the Right to a Fair Trial and Assistance in Africa

3. Background

Allegations of coup attempts followed by arrests, torture and unfair trials are not uncommon in Equatorial Guinea. Since President Obiang Nguema came to power in August 1979, after he

overthrew the country's first president, Francisco Macías Nguema, his uncle, Amnesty International has documented over a dozen allegations of coup attempts. The announcement of a foiled plot has in the past been generally followed by a wave of arrests accompanied by torture and other serious human rights violations and unfair trials. Such allegations have been used systematically to curb political opposition to the government. The authorities seldom produced evidence in court to substantiate the charges which were often based on confessions extracted from the accused under torture. Such cases have invariably been tried in a military court, using summary procedures and went largely unnoticed outside Equatorial Guinea.

3.1 Overview of the most recent trials

In 1998, for example, 84 people of the Bubi ethnic group, native to Bioko Island, were convicted of treason, "terrorism" and illegal possession of weapons following an attack by a small group of Bubis on military barracks on Bioko Island. Fifteen were given death sentences, which were later commuted to life imprisonment, and others were sentenced to long prison terms. Most of those arrested and tried were targeted purely on the basis of their ethnic origin and a background of peaceful opposition to the government, with no evidence of any links to the attack. They were severely tortured in pre-trial detention. In 2002, 64 people were convicted of attempting to overthrow the government. The most probable reason for their arrest was their membership of the Republican Democratic Force (*Fuerza Demócrata Republicana* – FDR), or their family ties and friendship with leaders of that party. Both trials were before a military court using summary procedures, and relied solely on confessions extracted from the accused under torture, as no other evidence was presented in court to substantiate the charges. Amnesty International was present in both trials and concluded that they were grossly unfair. [1]

In 2004 there were at least three alleged coup attempts, which led to the arrest of about 200 people, civilians as well as soldiers. Most of those arrested continue to be held without charge or trial. They include high ranking military officers and members of their families, some of whom are related to or have close ties with President Obiang Nguema[2]. They are apparently perceived as contenders for power, and as such a threat to President Obiang Nguema's rule.

In addition to the August-November trial, in late January 2004, at least 80 soldiers and former soldiers who had been arrested in November and December 2003 were tried by a military court in Bata and given long prison sentences. The trial was held behind closed doors. Details that have since emerged indicate that the trial did not comply with international standards of fairness. The accused had been tried on charges of undermining the security of the state. Their arrest was reportedly linked to deep divisions that emerged within the ruling Mongomo clan and to the reported attempted suicide and subsequent arrest in November 2003 of General Agustín Ona, an uncle known to be very close to President Obiang Nguema.

In the first week of December 2004, five people, including a woman, were also tried by a military court in Bata. They were convicted of treason, "terrorism" and espionage and sentenced to prison terms ranging from 22 to 26 years. Amnesty International has few details of

[1] See Amnesty International reports: *Equatorial Guinea: A country subject to terror and harassment* (AI Index AFR 24/01/99) and *Equatorial Guinea: A parody of a trial in order to crush the opposition* (AI Index AFR 24/14/2002).
[2] The majority of these people are from the town of Mongomo, the birthplace of President Obiang Nguema. The Mongomo Clan has ruled the country since its independence from Spain in 1968.

the trial. However, the organization has established that the accused did not have access to a defence counsel of their own choice and that, just before the trial started they were assigned a military officer to defend them, who reportedly behaved more like a member of the prosecution team than a defence counsel. Apparently, the only evidence against these five was their own confessions extracted under torture. Amnesty International received numerous reports indicating that the five had been severely tortured and the woman raped by several members of the security forces. The accused were presented on television with cuts in their ears and signs of beatings. They were also held incommunicado and handcuffed 24 hours a day until a few weeks before their trial. They had been arrested in late May 2004 following an alleged attack on Corisco Island. The Equatorial Guinean authorities said that the attack had been organized from Gabon by Adolfo Bicó, a political opponent exiled in the United States of America (USA) with family links and business in Libreville, Gabon.

The alleged coup attempt of March 2004 is part of a pattern of alleged coup attempts. In addition, there were a number of crucial distinguishing features that set this particular alleged coup attempt apart from all previous ones. They all flowed directly from one key factor: the international dimension.

3.2 The alleged coup attempt of March 2004

The alleged coup attempt of March 2004 was, according to the Equatorial Guinea authorities, organized from abroad, and financed and carried out by foreigners. The alleged purpose was to install in power **Severo Moto Nsá**, a political opponent exiled in Madrid (Spain), and self-proclaimed president of the "government in exile". The Equatorial Guinean authorities announced that the plot to overthrow the government was uncovered by the South African security services, who had then tipped off the authorities in Equatorial Guinea and Zimbabwe. They alleged that 70 South African nationals, most of whom were former members of the disbanded *32 Battalion*[3] (also known as the *Buffalo Battalion)* a covert unit of the former South African Defence Forces (SADF) under apartheid's National Party Government in the 1980s, were contracted to carry out a coup. They were to join 15 other foreign nationals already in Equatorial Guinea. The South African authorities have however been reported as saying that they did not have evidence on which to arrest and convict the 70 in South Africa.

According to the indictment served on those arrested in Equatorial Guinea, in July 2003, Severo Moto Nsá and **Simon Francis Mann**, a former officer in the British Special Air Service (SAS), signed a contract for the execution of the coup, valued at US $15 million, plus other additional cost to be paid once the coup had succeeded. All these costs were to be financed by several British businessmen.

The indictment contends that on 11 February 2004, Simon Mann, representing his company "Logo Logistics Limited", signed a contract with South African national **Servaas**

[3] The 32 Battalion was set up in 1975 and was made up largely of Angolans opposed to the government of the People's Movement for the Liberation of Angola, (Movimento Popular de Libertação de Angola - MPLA). It operated from South African-controlled Namibia. Following the independence of Namibia the 32 Battalion was transferred to South Africa where, in the final years of the apartheid government, it was used as a "peace-keeping" force in the East Rand townships near Johannesburg where they used "unjustified acts of violence against the local residents. The unit was disbanded in 1993 by the then President F W de Klerk. *(see Interim report on the conduct of members of the 32 Battalion at Phola Part on 8 April 1992, Goldstone Commission of Inquiry regarding the Prevention of Public Violence and Intimidation)*

Nicolaas (Nick) du Toit, the director of "Military Technical Solutions"[4] for the recruitment of "mercenaries" who were to be paid a monthly salary of US $3,000. It states that Nick du Toit then recruited 85 people, 70 of whom remained in South Africa undergoing training for two weeks before embarking for Equatorial Guinea, while 15 were already in Equatorial Guinea. Again according to the indictment, on 10 February, the two men signed a contract with Zimbabwe Defence Industries (ZDI), for the procurement of "war materiel to use to carry out the coup in Equatorial Guinea". On the same day, Nick du Toit is said to have signed another contract with ZDI for the purchase of ammunition which, the indictment states, Nick du Toit had said was for the "rebels" in the Democratic Republic of Congo (DRC). However, in statements apparently signed by him, Nick du Toit declared that he had purchased the ammunition at the request of the DRC government. He also stated that the 70 men had been recruited to work on a mining project in the DRC, and that the weapons they were to pick up in Harare had been legally purchased for the purpose of protecting the mining project.

The indictment further states that the alleged coup was to take place between 17 and 21 February 2004. The transportation of personnel and armament was to be carried out by an *Antonov 12 B* aircraft and its Armenian crew, which left Malabo for Ndola (Zambia) on 17 February 2004 to pick up the 70 "mercenaries" who also on that date left South Africa for Ndola. From Ndola and with the "mercenaries" on board, the *Antonov 12* would fly to Harare to pick up the weapons and then return to Malabo to stage the coup. However, according to the indictment, the coup aborted when the plane developed mechanical problems and had to remain in Ndola for several days undergoing repairs. It was then decided, although it is not clear by whom, to purchase a bigger plane, a *Boeing 727*, to transport the alleged "mercenaries". The indictment does not say what happened to the 70 alleged mercenaries who seemed to have been left stranded in Ndola.

The indictment contains numerous inconsistencies and contradictions regarding the number of "mercenaries" involved, dates and times. The indictment contains few details to indicate that a serious and thorough investigation of the facts had taken place. For instance, it states that the agreement for the recruitment of mercenaries was signed on 11 February, that they were to undergo training for two weeks and that the coup was planned for 17 February. Elsewhere the indictment reads that on 4 and 7 January 2004 and sometime in mid February, Nick du Toit, Simon Mann and two others met in a hotel in the Sandton neighbourhood of Johannesburg to finalize the purchase of weapons, including type of weapons, recruitment of "mercenaries", logistic arrangements in Malabo and the acquisition of a Boeing 727, as it had become obvious that the Antonov 12 did not have the capacity to carry 70 people, their supplies, and the weapons as well. In addition, the plane lacked sufficient flight range to fly direct from Harare to Malabo. The indictment does not specify what arrangements were finalized on which date.

[4] The company is legally registered in South Africa and is licensed to buy and sell arms and to recruit personnel. Amnesty International has seen a copy of the contract between Logo Logistics Ltd. and Military Technical Solutions. The preamble of the contract states that the purpose of the contract is for Military Technical Solutions to recruit trained and competent personnel for projects identified by Logo Logistics in the field of security and logistics in Guinea Republic (sic), Sierra Leone, the Democratic Republic of Congo, Liberia and Angola. The contract does not mention salaries except that Military Technical Solutions would be paid 3 % of the total amount of the monthly salaries of those recruited or US $5,000, whichever was the highest.

The indictment goes on to state that the coup was then rescheduled for the early hours of the morning of 8 March 2004. Prior to that, on 5 March a Boeing 727, registered in the USA (registration number N 4610), bought apparently by Simon Mann in the USA and piloted by US citizens, had landed in Lansaria Airport (Pretoria). At the same time, Simon Mann and two others had arrived in Harare to check the purchased weapons and to await the arrival of the Boeing 727. Two days later, at 6.30 am on Sunday 7 March, the Boeing 727 left for Wonderboom airport, also outside Pretoria, where South African pilots replaced the Americans. From there the plane flew to Polokwane, also in South Africa, where it was boarded by 64 alleged "mercenaries", and departed for Harare at 6.24 pm. In Harare they were to pick up the weapons before continuing for Malabo where they would join Nick du Toit and his group of 14 "mercenaries". Once in Malabo the "mercenaries" would take over strategic points and kidnap and kill the President of the Republic and members of the government. Within half an hour, Severo Moto Nsá would land in Malabo and take over the presidency of the country. The indictment further states that the plan failed after security personnel at Harare airport, who had already been alerted by the South African security services, became suspicious when the pilots denied they were carrying passengers. When they boarded the plane at 7.30 pm they found 70[5] alleged "mercenaries", whom they arrested. They also confiscated what they qualified as "war materiel" and impounded the plane. However, no weapons seemed to have been found on board[6].

According to the indictment, the role of the "mercenaries" in Equatorial Guinea was to provide logistics assistance to those arriving from South Africa. Accordingly, at 7 pm on 6 March 2004, Nick du Toit, who had returned from South Africa two days earlier, held a meeting with some of his employees to inform them of the arrival of the other "mercenaries" from Harare the following morning at 2 am, and instructed them to take three cars to the airport, with bottled water in each, and leave the vehicles there with the keys in the ignition. The order was carried out at 11.30 pm, according to the indictment, which gives details of the specific role of each of these men. **George Olimpic Nunes "Allerson"** was to occupy the control tower at Malabo airport in order to communicate with the Boeing 727 and then lead one group of "mercenaries" to attack the *Elá Nguema* army barracks and also take control of the bridge over the river Water Foll; **Marius Gerhardus Boonzaier "Bone**" was to take his "mercenary" colleagues to the strategic points of the city, which were not specified; **José Passocas Domingos** would lead the group in charge of attacking the *Acacio Mañé Elá* army barracks; **Sérgio Fernando Patrício Cardoso's** group was to attack the two entrances to the Presidency and the residence of the President of the Republic, while Nick du Toit's group would attack the central police station. There is no indication anywhere in the indictment of what role the

[5] This is one of the contradictions found throughout the indictment. Amnesty International has established that 67 people, including the pilots, were arrested on the plane. Three other people were also arrested at Harare International Airport, but they were not on the plane.

[6] The indictment lists all the items found on the plane. They included mosquito nets; sleeping bags; torches; hammers; wire-cutters; masking tape; batteries; several pots containing tablets; items of footwear and clothing including black boots, trousers and shirts "identical to those used by Equatorial Guinean Presidential Security personnel" (seen as proof that those arrested intended to overthrow the government of Equatorial Guinea); as well as a document allegedly containing 15 instructions for the terrorists; forged flight schedules; a map of Malabo showing strategic points; an encrypted document giving names of towns and dates for the coup; flight authorization for the use of air space issued by the governments of Zimbabwe, South Africa and the USA.

Armenian pilots would play once the use of the *Antovov 12* had been discarded for the purpose of the coup.

There are clear discrepancies between this and another passage of the indictment which affirms that at about 11.30 pm on 7 March, Simon Mann (who had already been arrested in Harare) telephoned Nick du Toit and briefly and in an "inaudible voice informed him of the difficulties at Harare airport and ordered him to cancel the operation". Nick du Toit is then said to have ordered his men to withdraw the vehicles from the airport and to return home. The indictment goes on to say that the men were arrested at home at dawn on 8 March by national security forces and that at the time of the arrest the "mercenaries" had in their possession four satellite phones and "other materials…." However, there is no mention of weapons found on them or in their house.

It is not clear from the indictment why Nick du Toit is said to have ordered his men to take the cars to the airport on 6 March as the 70 "mercenaries" were not expected until 8 March. There are clear contradictions regarding the time and date the alleged coup was to take place, as well as with the time the arrests actually took place.

The defendants on the last day of the trial © Estelle Shirbon (Reuters)

3.3 The arrests

The 15 foreign nationals (one German, six Armenians and eight South Africans) were arrested on 8 March 2004 in Malabo and Bata. They were accused of being "mercenaries" attempting to overthrow the government of Equatorial Guinea. Five Equatorial Guineans were arrested in the weeks that followed.

Article 502 of the Equatorial Guinean Penal Procedure Code stipulates that arrest and detention must be ordered by a judge. This rule is consistent with Article 9(1) of the ICCPR and with Article 6 of the African Charter. The authorities had had sufficient time to issue a warrant as they had been tipped off about the alleged coup well in advance and, in any case, no later than 7 March 2004. However, the arrests were carried out without a warrant.

Some of the arrests were carried out by soldiers, who, according to national law, have no power of arrest. Principle 2 of the Body of Principles states that "arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose".[7]

Those arrested were not informed of the reasons for their arrest or the charges against them, as required by Article 302 of the Penal Procedure Code, and they were not brought before a judge within 72 hours to legalise their detention, as required by Article 497 of the Penal Procedure Code. This was apparently justified by a secrecy of the investigation order, issued, apparently, by the investigating judge on 7 March, before the men were arrested.[8] The order was for a period of 25 days - however, it lasted for several months. On the basis of this order the detainees were not informed of the accusations against them and remained uncharged until the investigation was closed in late July 2004. During that time, they were denied access to their lawyers, and lawyers were not able to act on their behalf. Amnesty International believes that the "secrecy of the investigation" procedure does not justify any restriction or violation of human rights, including the right to be informed immediately of the reasons for arrest, the right to be informed of any charges, the right to be brought promptly before a judge, the right to have the assistance of legal counsel and the right of foreign nationals to communicate with their embassy or consular post. These rights are guaranteed under international law and standards, including Article 9(2) of the ICCPR and Paragraph M(2) of the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.[9]

Nick du Toit, the alleged leader of the "mercenaries" in Equatorial Guinea and director of "Triple Option Trading 610 cc GE SA" [10] (referred herein as Triple Option GE) was arrested at the central police station in Malabo in the morning of 8 March 2004. **Antonio Javier Nchama,** one of his local partners who was subsequently arrested, had gone to Nick du Toit's house and told him to go to the police station to see about his passport. Once there he was told he was under arrest. He was handcuffed and taken to Black Beach prison where he was placed in isolation for several months.

Five other South Africans, some of Angolan origin: Sérgio Fernando Patrício Cardoso; Marius Gerhardus Boonzaier "Bone"; George Olimpic Nunes "Allerson"; José Passocas Domingos; **Mark Anthony Schmidt** and six Armenian nationals: **Samvel Darbinyan; Ashot Karapetyan; Samvel Matshkalyan; Razmik Khachatryan; Suren Muradyan; Ashot Simonyan** and a German, **Gerhard Eugen Merz**, were arrested at about 8.30 in the evening of 8 March in the house they shared in Malabo. The arrests were carried out by a group of about 10

[7] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment annexed to UN General Assembly resolution 43/173 of 9 December 1988.

[8] According to Article 301 of the Penal Procedure Code the investigation is secret until the start of the trial and anybody divulging any aspect of the investigation will be fined.

[9] Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the African Commission on Human and People's Rights at its 33rd session, held in May 2003.

[10] A subsidiary of Triple Option Trading 610 cc registered in South Africa of which Nick du Toit was the owner and director. The company was registered in Equatorial Guinea in October 2003, to carry out business in fishing, agriculture and air transport. In accordance with Equatorial Guinean law, in order to operate in the country, foreign enterprises must enter local partnerships on a 50 per cent basis. Armengol Ondo Nguema, the National Chief of Security and President Obiang's brother, was the principal local shareholder in "Triple Option GE". In addition, and while a license was sought, in November 2003 Nick du Toit signed a contract with Antonio Javier Nchama the director of the private airline company PANAC, for operating two cargo planes, an Illyshin 76TD and an Antonov 12.

heavily armed soldiers who entered the house accompanied by Antonio Javier Ntchama, while several others surrounded the house. The soldiers handcuffed them with their hands behind their backs and took them to Black Beach prison, where they were put all together in a cell, except for George Olimpic Nunes "Allerson", who was placed in solitary confinement for several months. In Black Beach they were all shackled except for Mark Anthony Schmidt.

The soldiers who arrested them conducted a preliminary search of the house and took the satellite phone and other items. In the following days security personnel reportedly ransacked the house and took other items belonging to the detainees including money, mobile phones, television sets and music players. In accordance with the indictment, no weapons were found either on the detainees or in their house. Nevertheless, these people were charged with possession and storage of arms and ammunition as well as possession and storage of explosives.

Two other South African nationals, **Abel Augusto** and **Américo João Pimentel Ribeiro,** were arrested by four police officers at their home in Bata at about 11.30 pm, when they were already in bed. They were handcuffed with their hands behind their backs and taken to the main police station in Bata. Early the following morning, they were flown to Malabo and taken to Black Beach prison, where they were put in a cell with their compatriots, the Armenians and the German national. The police that arrested them reportedly took their satellite phone, money and other property.

Nick du Toit had arrived in Equatorial Guinea in July 2003. The other South Africans were employed by "Triple Option Trading 610 cc" and arrived in Equatorial Guinea at different times between July 2003 and February 2004. Gerhard Eugen Merz and the Armenian nationals arrived in Equatorial Guinea in January 2004. Gerhard Eugen Merz was the manager in Equatorial Guinea of Central Asian Logistics GmbH (CAL), a German air cargo company which had contracted the services of an Antonov 12 B and its Armenian crew from the Armenian company "Tiga-Eiri". In order to operate in Equatorial Guinea while seeking its own business license, CAL signed a contract with a local airline, PANAC, whose director was Antonio Javier Nchama, to fly under its license.

On 7 March 2004, the day before their arrest, about 70 people, mainly of South African nationality, including Simon Mann, were arrested at Harare International Airport, where they had allegedly stopped to collect weapons. The Zimbabwean authorities alleged that they were "mercenaries" en route to overthrow the government of Equatorial Guinea with the assistance of the British, Spanish and USA secret services. However, those arrested denied the charge and claimed that they were on their way to the DRC where they had been contracted to guard a mine and that they had stopped at Harare airport to collect weapons which had been legally purchased for that purpose. They were tried in Harare in July 2004, charged with breaching the country's firearms and security legislation, as well as immigration and aviation laws. Two men were acquitted while 67 were convicted of immigration offences. In addition, the two pilots were also convicted of aviation offences. They were all sentenced to prison terms ranging from 12 to 18 months. Simon Mann was convicted of trying to purchase weapons and sentenced to seven years in prison. However, their sentences were reduced by four months on appeal in March 2005. Simon Mann's sentence was cut to four years' imprisonment.

The five Equatorial Guineans were arrested at different times between the end of March and June 2004. Antonio Javier Nchama, who at the time of his arrest was a Presidential Adviser

on health matters and the owner and director of the air company PANAC, as well as a partner in *Triple Option GE*, was reportedly arrested at home in Malabo at the beginning of April 2004. He was held at the main police station in Malabo for several days before he was taken to Black Beach prison.

Agustín Massoko Abegue, another shareholder in *Triple Option GE*, was arrested in Malabo on 15 April 2004. He was already at the police station where he had been acting as interpreter for the South African detainees when he was told he was under arrest.

Koldo Martínez Nsang, Crispín Ntutumu Owono and **Anacleto Oyono Nchama** were arrested in Malabo in June 2004. It appears that they were arrested on account of their business contacts with *Triple Option GE.* Anacleto Oyono Ntchama was arrested on 11 June and was released on unconditional bail on 10 July. It is not clear to Amnesty International on whose authority he was released. However, Amnesty International trial observers were told by his lawyer that on 20 August, three days before the trial started, that the Attorney General had told Anacleto Oyono Ntchma to go back to Black Beach prison. However, his lawyer advised him not to.

3.4 Interrogation

Most if not all the defendants stated in court that they had not seen an investigating judge, and that their statements had been taken by the Attorney General who often went to the prison to interrogate the detainees. This is in serious breach of Equatorial Guinean law as the Attorney General has no role at any stages of any criminal proceedings, including interrogation. That is the role of the investigating judge, who is responsible for ordering, arrest and detention, as well as investigating the case, including interrogating and charging the accused. Amnesty International is concerned about the lack of independence of the Attorney General, who is a political official, appointed and dismissed by the President of the Republic [Article 93, Constitution of Equatorial Guinea].

The detainees did not have a lawyer present during interrogation or at any time when they gave statements. They were reportedly not informed of their right to have the assistance of a legal counsel[11]. None of the detainees had access to a lawyer until three days before the trial, despite repeated requests by some of the lawyers to see their clients. Article 118 of the Equatorial Guinean Penal Procedures Code guarantees the right to be assisted by a legal counsel during interrogations. In addition, Principle 1 of the Basic Principles on the Role of Lawyers specifically refers to the right to the assistance of a lawyer "in all stages of criminal proceedings"[12]. The UN Special Rapporteur on the Independence of Judges and Lawyers has stated that:

> "it is desirable to have the presence of an attorney during police interrogation as an important safeguard to protect the rights of the accused. The absence of legal counsel gives rise to potential for abuse [13]."

[11] Koldo Martínez Nsang complained in court that he did not have a lawyer when he was interrogated and that he had not been advised of his right to have one.

[12] Basic Principles on the Role of Lawyers, adopted by the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

[13] Report of the Special Rapporteur on the independence of judges and lawyers, Mr Param Cumaraswany, submitted pursuant to Commission on Human Rights resolution 1997/23, Addendum: Report on the mission of the of the

The foreign detainees were not provided with the assistance of qualified and independent interpreters as prescribed by national law and international standards[14] . Amnesty International has expressed concern that Agustín Massoko Abegue, who was subsequently arrested, acted as the interpreter for the South African detainees, and continued to act as such for some time after he had been arrested himself. He also translated their statements. This raised serious concerns about possible conflict of interest and bias, particularly as, according to his statement in court, he was for some time the interpreter for the Attorney General and Minister of National Security, as well as a member of a commission tasked with travelling to South Africa and Zimbabwe to investigate the alleged coup, and had furthermore provided evidence against the foreign defendants.

It appears that Nick du Toit was first interrogated by the police on the day of his arrest about his business in Equatorial Guinea. He seems to have been interrogated for a second time on 9 March when he apparently made a statement implicating himself in the alleged coup attempt. This statement was added to on several occasions. The statement and the additions are in Spanish. It is difficult to ascertain when the additions took place as only two are dated. Three of the additional statements appear to have been made between 9 and 25 March. He also made further statements to non-Equatorial Guinean officials, including, apparently, South African investigators from the Directorate of Special Operations of the National Prosecuting Authority (commonly known as the "Scorpions") and to Zimbabwean security officers, who have no jurisdiction in Equatorial Guinea. Apparently they were investigating the possible breach of South Africa's Regulation of the Foreign Military Assistance Act (15 of 1998) and the links with those detained in Harare. He also gave statements to a British lawyer acting for the government of Equatorial Guinea in a civil case launched in the UK against the alleged coup plotters and financiers. He made all his statements without the assistance of a defence lawyer.

According to his lawyer, Nick du Toit admitted to the first statement but said he did not recognise the three additions. He also told his lawyer that he had made his second statement in the presence of the "English lawyers" who coerced him to implicate Antonio Javier Nchama and Agustín Massoko, as well as Severo Moto Nsá, and that he gave his third statement to a Zimbabwe police officer who, according to Nick du Toit's statement in court, told him that if the detainees cooperated they would all be unconditionally released, otherwise they would be killed.

All the other detainees were interrogated the day after their arrest in Black Beach prison, when they provided their personal details, including reasons for their presence in the country.

Three or four days after their arrest all the detainees were interrogated by the local police at the police station. They made their statements in their own language which were then translated into Spanish. The detainees were then asked to sign the Spanish translation of their statements without being able to check the accuracy of the translation. In accordance with

Special Rapporteur to the United Kingdom of Great Britain and Northern Ireland. UN Doc. E/CN.4/1998/39/Add. 4. 5 March 1998, par. 47.

[14] Principle 14 of the Body of Principles states: "A person who do not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands the information referred to in principle 10, principle 11, paragraph 2, principle 12, paragraph 1 and principle 13 and to have assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest."

national law, accused persons should only sign the statements made in their own language, the translated version being only for the benefit of the court. This rule is consistent with international law.

Malabo police station © Amnesty International

Amnesty International does not know who interpreted or translated for the Armenian nationals or the circumstances in which they made their statements, as they spoke neither Spanish nor English.

The South African detainees were subsequently interrogated by members of the Angola, South Africa and Zimbabwe security forces, who have no jurisdiction in Equatorial Guinea.

A week to 10 days after their arrest, they were interrogated by South African investigators of the "Scorpions", to whom they gave verbal statements only. The detainees were not asked to sign any document. It is not clear to Amnesty International whether Nick du Toit had to sign any statements he reportedly gave to the "Scorpions". Two acquitted defendants told Amnesty International that they were asked to tell what they knew about the coup and that they were told that if they told the truth they would be released, but if they lied they would be held in prison in Equatorial Guinea for a long time. They were also asked if they had been in the army and what they were doing in Equatorial Guinea. They said, however, that the "Scorpions" told them they did not believe their account of event. Those of Angolan origin were also interrogated by Angolan security officers but were not asked to write or sign any statement.

About three weeks after their arrest they were interrogated by Zimbabwean security officers, who asked them about the coup and also about the people arrested in Harare. Like the "Scorpions" they were apparently particularly interested in the military careers of the detainees, particularly their experiences in the *32 Battalion*. Some of the defendants stated in court that the Zimbabwean officers told them that if they cooperated and said certain things they would all be released. George Olimpic Nunes "Allerson" signed an incriminatory statement which was later presented in court as evidence. This was the only statement in English presented as evidence.

Once in court, however, George Olimpic Nunes "Allerson" retracted his statement. He accepted that he had signed it but specifically stated that he had been forced to do so, and had been told by the Zimbabwean officers that once the detainees signed they would be released. He denied that the contents of the statement were true and said that it did not reflect the answers he had given to the Zimbabwean authorities. He added that the person who had taken that statement was "sitting behind me". Behind him sat the Attorney General.

3.5 Coerced confessions, torture and ill treatment

Article 14(3)(g) of the ICCPR guarantees the right not to be compelled to testify against oneself or to confess guilt. This right is in line with the right to remain silent and with the presumption of innocence, as well as with the prohibition of torture and other ill-treatment. Article 15 of the Convention against Torture which Equatorial Guinea acceded to in October 2002, clearly states that any statement elicited as a result of torture should not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

When the defendants appeared in court several months after their arrest there were no obvious signs of torture or other ill-treatment other than, in the case of the foreign defendants, clear weight loss and marks around the wrists and ankles made by the cuffs, which in some cases were clearly too tight. Amnesty International trial observers were not able to examine them at closer range. However, all the foreign defendants looked unwell.

Despite the defendants' claims that they had been subjected to torture during interrogation in order to force them to sign statements, the issue of torture was not dealt with adequately in court and no doctor was called to examine the defendants. The court repeatedly ignored the allegations of torture made by some of the defendants. Those who raised these issues were cut short by the bench and told that they would have an opportunity to expand on the issue later in the proceedings. That opportunity, however, never arrived. On the few occasions when the defence counsel tried to raise the issue of torture or explore it with their clients they were overruled by the bench. In addition, some of the torture allegations made by the defendants in court were not interpreted. No investigation into the allegations of torture has taken place.

The admission of statements obtained under torture or duress, which includes holding detainees incommunicado and handcuffed and shackled 24 hours a day, violates Article 14 (3) (g) of the ICCPR and Article 15 of the Convention against Torture. In addition, the Human Rights Committee has also stated in its General Comments No. 13 and 20 that statements obtained through torture, other prohibited treatment or any form of compulsion should also be excluded[15]. Furthermore, Guideline 16 of the Guidelines on the Role of Prosecutors states that:

> "When prosecutors come into possession of evidence against suspects that they know or believe on reasonable ground was obtained through recourse to unlawful methods, which constitute a grave violation of the suspects human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all the

[15] Human Rights Committee, General Comment No.13(1984), par.14 and General Comment No.20 (1992), par. 2.

necessary steps to ensure that those responsible for using such methods are brought to justice."

This is also relevant in relation to the foreign lawyers assisting the government of Equatorial Guinea.

In the later stages of the trial when the new defence lawyer for the South African defendants, Fabián Nsué Nguema[16] asked for his clients to be examined by a doctor and for the cuffs to be removed, the bench told him that although they were "sympathetic" to his request, it was not the place to make it, and told him to stick to procedures.

On 9 March 2004, Nick du Toit was taken to the Ministry of Foreign Affairs where, in front of television cameras and the diplomatic corps accredited to Equatorial Guinea, he confessed to his role in the alleged coup attempt. He made his public confession without legal advice and without having been made aware of his rights, and after he had been held in an isolation cell for about 24 hours. On that occasion, Nick du Toit said that he was "freely" confessing and that he had not been tortured. However, he later told his lawyer that he had had a gun pointed at him and had been told to confess or he would be killed.

The lawyer representing the Armenian pilots told Amnesty International in August 2004 that his clients had been threatened: "You are going to die. You are terrorists." Such threats to kill may also constitute torture.

When the trial resumed on 16 November 2004, Nick du Toit retracted his previous statements implicating himself in the alleged coup attempt. He stated in court that they had all been tortured and ill-treated and made to sign statements which were not true and to implicate others. If they cooperated, they were told they would be unconditionally released, otherwise they would be killed. He added that it was after they had been so badly tortured that Gerhard Eugen Merz had subsequently died that he decided to tell the other detainees to cooperate and do as they were told to save their lives.

Marius Gerhardus Boonzaier "Bone" said in court that he had been "treated very badly" and was forced to sign statements. However, he was not allowed to elaborate.

One of the defendants had earlier written a concise account of his torture on the back of a carton of cigarettes, which was smuggled out of prison. Below are extracts of his account.

"10/3 22h00-23h00 I was taken to the police station for interrogation. I had no lawyer. I was asked many questions. I had no answers for them.

1. *Handcuffs tightened and cut into my flesh, into bone of right hand. In the office.*
2. *I was beaten with the fist. I had no answers… Beaten on head and jaw.*
3. *They took me to a small dark room down the stairs into the police courtyard. Here I was put on the ground. A dim light was burning. I saw Sérgio Cardoso hanging, face down, in the air with a pole through his arms and legs. The police guard started asking questions which I still could not answer. Every question a guard would stand on my shin bone, grinding off the skin and flesh of the right leg with the military boots. This carried on for at least 30 minutes. I was shouting, begging them to stop.*

[16] Fabián Nsué Nguema took over from the late Fernando Micó, who passed away in October 2004, just before the trial was due to resume.

4. *Later I begged them rather shoot me for I could not take the pain and agony anymore…After no answers it stopped. I was taken back at 2 o'clock*

6. 11/3 about 15h00 I was tied to a bed with cuffs on my right hand. I was beaten and slapped…my right thumb broke
7. At my bed….I was beaten with a blow unconscious.
8. The same afternoon I was burnt with a lighter
9. At 17h00 I was taken to the police station and told to write everything I knew. Anything that came to my mind. I will have the same and worse treatment of the previous evening. I was terrified and wrote down as if I was involved in everything (which I was not) because they were to torture me again.
10. About six weeks later I had septicaemia…pus was running out of my wound…my ankle was heavily swollen of the infection…"

Sérgio Cardoso said in court that he had been taken to the "torture room" and was tortured there and then he was taken back to the other room for further interrogation. He added that the person who tortured him was present in court and that this person had also taken his statement. The court did not seek further information.

After the trial Amnesty International learned that on arrival to Black Beach prison the foreign detainees were shackled and chained to their beds and beaten on their backs and legs. For the first 10 days after their arrest, they were frequently beaten with batons by the soldiers in the cells or outside in the courtyard. One, Abel Augusto, who was acquitted at the trial, sustained broken ribs for which he received no treatment. George "Allerson" was also reported to have sustained broken ribs, and to have been threatened with death. Apparently, the beatings only stopped after the death of Gerhard Merz.

In August 2004, Agustín Massoko Abegue was reportedly beaten in prison after he gave evidence in court against another co-defendant. On that occasion, he had also accused the Attorney General of asking for bribes to release him and of putting pressure on him to incriminate a government minister and a high ranking military officer in the alleged coup attempt.

Amnesty International was also informed that José Passocas Domingos had been beaten and placed in solitary confinement for nearly a month in October 2004, because, one night, as a result of his noticeable weight loss, his handcuffs had slipped off. He was released from confinement only two days before the trial resumed in November.

3.6 Death in Detention

Gerhard Eugen Merz died in custody at 9pm on 17 March 2004, about 10 days after his arrest. The Equatorial Guinean authorities announced that he had died in hospital of cerebral malaria. However, at the time Amnesty International received reports indicating that he had died as a result of torture. More details have emerged since his death, which seem to confirm those reports. The organization has publicly expressed concern about his death and reiterates its call for an investigation. Principle 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that whenever a person dies while in custody, a judicial or other authority must carry out an inquiry to establish the causes of death. The findings of such investigation should be made available upon request. In addition, such an

investigation must be in accordance with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

Several South African defendants stated in court that Gerhard Eugen Merz had been subjected to severe torture, including lighter-burns on his back and feet, and had died in front of them, in the cell, soon after he was tortured. It appears that the immediate cause of his death was a massive heart attack. Apparently, he collapsed in the cell. The other detainees called the guards who reportedly dragged him into the bathroom and poured water on him, apparently to revive him. He was then taken to hospital but he was already dead on arrival. No autopsy was carried in Equatorial Guinea to establish the precise causes of death, and the authorities refused to release the body to the German authorities until June, three months after his death.

Gerhard Eugen Merz was known to suffer from a serious heart condition and was on medication, including beta blockers. He did not have his medicines with him when arrested. According to reports, the authorities were made aware of his condition, and were asked to give him his medicines, but they refused.

A German official who saw the body the day after his death told Amnesty International that the body bore marks around the wrist and ankles, consistent with marks made by the cuffs. He also said that there were bruises on the torso but he had been told they were caused by attempts to resuscitate him. The official was not able to examine the rest of the body and, as he was not medically trained, was unable to make an assessment.

The same official informed Amnesty International that a preliminary autopsy was carried out in Germany on arrival of the body which confirmed that Gerhard Eugen Merz had not died of cerebral malaria, as the death certificate stated. He added that the preliminary autopsy report stated that there were no signs of torture and that Gerhard Merz had died of natural causes owing to the lack of treatment for his medical condition. However, he had not seen the report of the autopsy himself.

On 11 December 2004 Agence France Press quoted an article in the German newspaper the *Frankfuter Rundachau,* in which it was stated that the prosecutor's office in Frankfurt had refused to say whether the autopsy had shown that Gerhard Merz had been tortured and that even several months after the autopsy its investigations were still ongoing.

3.7 Prison conditions

Although all the defendants were charged with the same offences, the prison conditions endured by the Equatorial Guineans and the foreign nationals were markedly different. The authorities justified the difference in treatment by saying that the foreign nationals were mercenaries and posed a high security risk. However, no security risk would justify conditions which amount to cruel, inhuman or degrading treatment or punishment.

Following their arrest in March 2004, the foreign nationals were handcuffed and shackled and have been kept like this 24 hours a day ever since. They were taken to court and cross-examined with their hands and legs cuffed. Mark Anthony Schmidt, who cooked for his colleagues in prison, was handcuffed but not shackled. Amnesty International believes that this may constitute torture. This treatment violates Article 7 of the ICCPR and Article 5 of the

African Charter. In addition, the UN Standard Minimum Rules for the Treatment of Prisoners specify that instruments of restraint (such as handcuffs, chains, irons and strait-jackets) should not be applied for any longer time than is strictly necessary, and should never be applied as a punishment[17].

The shackled feet of a defendant giving evidence in court © Estelle Shirbon (Reuters)

The foreign detainees were held incommunicado, together in a cell until July 2004. Nick du Toit and George Olimpic "Allerson" were reportedly held in solitary confinement in separate cells for several months. Except for Mark Anthony Schmidt, they were not allowed out of the cell and were not able to wash for several weeks. An acquitted defendant told Amnesty International that their only opportunity for a proper wash was to be taken into the courtyard where a convicted prisoner would wash them in front of the whole prison population, including women, while the soldiers would mock them.

In addition to this degrading treatment, they did not receive an adequate diet. They seldom received medical treatment for chronic ailments, or for the frequent attacks of malaria and diarrhoea that afflicted them. Only rarely were any taken to hospital for treatment. During the court hearing in November 2004, Nick du Toit told the court that there was a flu epidemic in the prison and that they were all ill. He asked for a doctor to see them, and to be given the medicines and food that their wives had brought for them from South Africa. On this point, however, the bench remained silent.

The situation of the foreign detainees was made worse by the fact that they did not have families in Equatorial Guinea. The wives of two South African detainees travelled to Equatorial Guinea on several occasions and spent several weeks there on each occasion. However, they did not have regular access to their husbands and their requests to visit them were often turned down. In July 2004, they were able to see their husbands on four occasions, sometimes with visiting government delegations from South Africa. However, in subsequent trips the number of

[17] Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, rules 33 and 34.

visits to their husbands and the length of each visit were greatly reduced. In November, they were only granted a 20 minute visit a few hours before their return to South Africa after the trial.

Amnesty International is aware that the Armenian and South African nationals were visited on several occasions by government delegations from their countries. The organization is also aware that in November, a South African delegation observing the trial was not able to see their imprisoned nationals while the Armenian delegation saw their nationals only on the day of their departure from Equatorial Guinea. Amnesty International has also learned that South African consular staff in Equatorial Guinea have been denied access to the prisoners on several occasions. This is in breach of Article 36 of the Vienna Convention on Consular Relations[18].

Amnesty International has been informed that after the trial, the prison conditions of these prisoners deteriorated, that for a few months the only food they received was a cup of rice daily and that their lawyer has not been allowed to visit them. Since early March 2005 the prison conditions for all prisoners in Black Beach prison have deteriorated further and all the prisoners have been kept inside the overcrowded cells 24 hours a day and have not been allowed to bath. In addition, the foreign prisoners have gone without food at times for several days.

In contrast with the conditions endured by the foreign nationals, the Equatorial Guinean detainees, not all of whom were remanded in custody, enjoyed markedly different treatment. One, Anacleto Oyono Ntchama, was granted unconditional bail. The grounds for this, however, are not known to Amnesty International, but it appears that it was not a judicial decision. The other four, although they were in custody, were accorded different treatment. They were neither handcuffed nor shackled, and were not forced to appear in court in cuffs. They were not held incommunicado and were visited regularly by their families. Amnesty International was informed that one Equatorial Guinean detainee was held in an air-conditioned office at the police station where he was detained for six days and was allowed to sleep at home. When he was transferred to Black Beach prison he was put in a cell by himself, with all kinds of facilities including television and a fridge, which he shared with his wife when she was in Malabo. In addition, he was allowed to receive unlimited visits.

Amnesty International was made aware that Agustín Massoko Abegue had his custody conditions changed the day after he gave evidence in court. He was reportedly handcuffed and placed in solitary confinement for some weeks.

4. Intimidation of family members

The wives of two South African prisoners complained of being harassed and intimidated on several occasions by the Equatorial Guinean authorities and a foreign lawyer assisting the Attorney General during their first visit to Equatorial Guinea. According to the two women, the foreign lawyer presented herself as the lawyer representing their husbands. The women said that they knew this was not true. The same lawyer was then present in a meeting they had with their husbands in which a visiting South African government delegation was also present. When they

[18] According to Article 36 of the Vienna Convention on Consular Relations, "consular officers shall have the right to visit a national of the sending State who is in prison, custody or detention, to converse and correspond with him and to arrange for his legal representation. They shall also have the right to visit any national of the sending State who is in prison, custody or detention in their district in pursuance of a judgment…" The Convention was acceded by Equatorial Guinea on 30 August 1976.

started to talk in Afrikaans, the lawyer reportedly reprimanded them and told them to speak only English or else she would stop the visit.

The women said that at the time of their first visit in July 2004, they were coerced into giving a press conference and were told what to say. They reported that on 20 July, following the publication of an article in a South African newspaper about the conditions of the South African detainees in Equatorial Guinea, the Equatorial Guinean Minister of National Security summoned them and threatened to make life for their husbands more difficult if there were any further press reports.

5. Trial
5.1 General

The trial (Case 14/2004) of the 19 people arrested in Equatorial Guinea and charged with crimes against the Head of State and form of government began on 23 August 2004 and concluded on 26 November with the reading of the sentences. At the request of the prosecution, and in spite of protests by the defence counsel, the trial was adjourned indefinitely on 31 August. The prosecution said that the reason for the adjournment was the emergence of new evidence vital to the case. When the trial resumed on 16 November, however, no new evidence was presented. Instead, several new names were added to the list of accused, including those of Severo Moto Nsá and the eight members of his "government in exile", as well as those of several British businessmen whom the Equatorial Guinean authorities have accused of financing the alleged coup. Ultimately however, only the Equatorial Guineans were charged and tried in *absentia.*

An Amnesty International delegation was present throughout the trial. The conclusion of their observation was that the trial did not respect international standards for fair trials and that it was flawed with serious breaches of national procedural law.

The trial was held in the Conference Centre of Banapá, a Malabo suburb, and was open to the public. It was, however, a good distance from the city centre, which limited attendance by the general public. Previously, trials of this nature were held in the city's cinema, and the sessions attracted hundreds of people. Representatives of the governments of Armenia and South Africa were in attendance, as were most of the accredited diplomatic corps.

The trial attracted considerable international media attention, particularly after 25 August, when Mark Thatcher, the son of a former British Prime Minister, was arrested in South Africa in connection with the alleged coup plot. Following his arrest a large contingent of newspaper and television reporters arrived in Malabo. However, only two foreign journalists were present throughout the trial. The Spanish media was absent, apparently unable to obtain visas. Amnesty International delegates were told of the difficulties some journalists faced in obtaining visas, and that some were granted visas only through the mediation of a foreign lawyer employed by the Equatorial Guinean government. The delegates were also told that journalists were barred from the court unless they were accredited and that some were forbidden from taking notes. Some journalists said that they were not allowed to take interpreters into the courtroom, and some interpreters reported that they had been intimidated by security personnel and had therefore opted not to enter.

5.2 Composition of the court and proceedings

The proceedings were held before a civilian court, the *Tribunal de Apelación de Malabo,* which, belying its name, is in fact a court of first instance. In Equatorial Guinea, trials involving coup allegations have routinely been tried by military courts using summary procedures. Some defence lawyers suggested that this particular trial was originally going to be no exception, and that the decision to use the ordinary jurisdiction in this case was made in deference to the wishes and advice of the South African authorities. Nevertheless, the trial fell far short of international standards of fairness.

As the trial proceeded it became clear that the judge was allowing aspects of the prosecution's case that violated the defendants' right to be presumed innocent until proven guilty. Throughout the court hearing the prosecutor frequently referred to the foreign defendants as "mercenaries" or "dogs of war", without hindrance from the judge. Those terms are also found throughout the indictment. This clearly violated the defendants' rights to presumption of innocence, which is guaranteed by Article 13 (o) of the Equatorial Guinean Constitution, as well as Article 14 (2) of the ICCPR and Article 7 (1) (b) of the African Charter.

"….This is the first time that we have a situation of this calibre and we hope that the population has a 'national conscience'…. they are commandos, they are more highly trained than an ordinary military officer….they were going to come into Equatorial Guinea under the effects of drugs, and so they were not going to have pity on anyone. Therefore, as Attorney General, I call on the population to be vigilant with foreigners, regardless of colour, because the target is the wealth of Equatorial Guinea, the oil." Attorney General – Interview , published on Ebano (the ruling party's paper) on 10 October 2004

Amnesty International delegates were informed that only the Presiding Judge had practised as a lawyer, and this was limited to one year's experience. Rebeca Oyona Ona had graduated from law school only six months earlier, while the other judge had always worked in a Ministry. Amnesty International delegates were further informed that two of the judges were related to President Teodoro Obiang Nguema. This, added to their lack of experience, raised serious concerns about the independence and impartiality of the court. Both Article 14 (1) of the ICCPR requires courts and tribunal to be competent, independent and impartial. Principle 2 of the Basic Principles on the Independence of the Judiciary states that: "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". Principle 10 states: "Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives"[19].

The impartiality of the court was further undermined by the Presiding Judge's reference to the South African detainees as "mercenaries" in a legal document dated 17 August 2004, which he signed in his capacity as acting notary. The purpose of the document was to confer

[19] Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985 and endorsed by UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985.

power of attorney on Georga Boonzaier so that she might act on behalf of her husband and the other South African detainees in engaging the services of a defence lawyer.

The prosecution was led by the Attorney General, assisted by three military prosecutors. However, the Attorney General's duties do not include acting as a prosecutor in court. As a political official, his appearance as the prosecutor in a court case raises serious concerns. Furthermore, as the guarantor of legality, he is the highest authority to whom complaints might be brought in relation to this case.

Several times during the trial, the Attorney General was seen to pass notes to the bench. He was also called to the bench without the defence counsel being called at the same time. At one point, the judge called one of the defendants, Anacleto Oyono Nchama, to the bench and spoke to him without his lawyer present. Amnesty International is concerned that the principle of "equality of arms" was not observed during the trial, as made patent by these three examples. The "equality of arms", which must be observed throughout the trial process, ensures that the defence has a reasonable opportunity to prepare and present its case on a footing equal to that of the prosecution. There were further violations of this principle.

The defence counsel consisted of about 10 lawyers, all freely chosen by the defendants. The defence lawyers were not given adequate time to prepare their defence and, despite repeated requests, they were not allowed to see their clients until 20 August, a Friday, three days before the trial began. Moreover, they did not have access to the whole indictment, and only received the charge sheet and the statements in Spanish signed by their own clients. They did not have access to the other defendants' statements, or the evidence offered by the prosecution against their clients. Amnesty International is aware of veiled attempts to intimidate the defence counsel. The organization was informed that on 19 August the defence lawyers were called to a meeting in the Ministry of Justice where, in the presence of the Dean of the Bar Association and the Attorney General, they were told by the Second Vice- Prime Minister - who is in charge of human rights - to be "patriotic".

Defendants arriving at the courtroom © Estelle Shirbon (Reuters)

The defendants were brought to court in police cars escorted by scores of heavily armed soldiers and police. The foreign nationals were handcuffed and shackled. Amnesty International is concerned about such over-use of restraints, as it can degrade the accused persons in their own eyes and in the eyes of the court, undermining the presumption of innocence and prejudicing the outcome of the trial. On the first and last day of the trial, when the indictment and the verdict and sentences were read, all the defendants were present in court. However, the foreign nationals were not provided with interpretation at those crucial moments. At other times, the defendants sat in an adjacent room and were brought into the court room to give evidence individually. When giving evidence, there was interpretation to and from Spanish into English, for the South African defendants, and Russian for the benefit of the Armenians.

5.3 Charges and evidence

The defendants appeared to have been collectively charged with six crimes but the indictment did not indicate which defendants were being prosecuted on what charges, or the level of responsibility of each defendant. The crimes charged were:

- crimes against the Head of State (*delitos contra el Jefe de Estado*) (an offence under Article 142 of the Penal Code)
- crimes against the form of government (*delitos contra la forma de gobierno*) (Article 163 of the Penal Code)
- crimes against the peace and independence of the State (*delitos que comprometen la paz e independencia del Estado*) (Article 129 of the Penal Code)
- possession and storage of arms or ammunition (*delito de tenencia y depósito de armas o municiones*) (Article 254 of the Penal Code)
- terrorism and possession of explosives (*delito de terrorismo y tenencia de explosives*) (Article 260, paragraph 3 of the Penal Code)
- treason (*delito de traición*) (Article 121 paragraph 3 and 124 of the Penal Code)

In court the Attorney General confirmed the charges and defined the level of responsibility of each defendant. Only the Equatorial Guinean defendants were charged with treason. He asked for the death penalty for Nick du Toit and Severo Moto Nsá, as perpetrators, and prison sentences of between a total of 86 and 102 years for each of the members of the Equatorial Guinean "government in exile" and the South African defendants, all as perpetrators; and sentences of 26 to 62 years' imprisonment for the Armenian nationals and the five Equatorial Guineans, as accomplices.

The charges bore little or no relation to any evidence presented in court, and seemed to be geared to demonstrating that there had been an attempt to overthrow the government and to kill President Obiang Nguema orchestrated abroad, in connivance with foreign governments and carried out by foreigners, to install in power a known political opponent, and thus gain support for the government's civil case against the alleged financiers in the United Kingdom. The proceedings focused overwhelmingly on the foreign defendants, especially on Nick du Toit, and devoted a considerable amount of time to establishing the role of the South African defendants in the *32 Battalion*. The prosecution attempted to implicate unnamed Equatorial Guinean high-ranking military officers and government officials. The defence lawyers repeatedly asked for those officials to be named and charged. However, these attempts were ignored, and, the Presiding Judge instead ordered the prosecutor to withdraw the generic references to "members of the government" allegedly implicated.

Crimes against the Head of State refer to the killing or an attempt to kill the Head of State. However, no evidence was presented of any attempt on the life of the President Obiang Nguema. Equally, there was no evidence to support the accusation of an attempt to overthrow the government.

In relation to the charge of terrorism and possession of explosives, Article 260 of the Penal Code describes the charge as an attempt to undermine the security of the State or to alter public order by carrying out acts geared to the destruction of factories, military installations, churches, museums, bridges… using explosives or other inflammable or other substances. However, public order had not been altered and no explosives or such substances were found in the possession of the defendants. The charge of possession of arms and ammunition is also unsupported, as no arms or ammunition were found in the possession of the defendants.

When they were brought into the court-room to give evidence, the judge asked each defendant if he knew of the reasons why he was there or of the charges against him. While the Equatorial Guinean defendants confirmed that they were aware of the charges against them, most foreign defendants said that they either did not know why they were in court or that they had only learned about the charges a few days earlier. One Armenian defendant responded that he did not know why he was in court but he had been told that it was because he was a "terrorist", which he denied. No attempt was made to have the charges explained to them. Furthermore, none of the defendants was asked to plea. Nevertheless, they all protested their innocence and said that they had been made to sign statements in Spanish.

When asked by the judge if they recognised any part of George Olimpic Allerson's statement, several other South African defendants including Sérgio Cardoso and Marius Boonzaier stated that they had refused to sign because the statements were lies. They added they had not given statements but had instead given answers to questions posed to them by the Zimbabwean officers. The defendants also stated that Zimbabwean officers had offered them inducements to sign, namely that they would be released. However, Sérgio Cardoso said that he had been tortured by the Zimbabwean officers in order to persuade him to sign.

The prosecution's case rested largely on confessions made by Nick du Toit in which he admitted participating in the alleged coup attempt. On his first appearance in court he reiterated his confession; however, he said that none of the other defendants were involved. Unlike his co-defendants, he was called to give evidence on several occasions during which he denied any participation in the alleged coup attempt but said he knew about the plot. However, when the trial resumed on 16 November 2004, he retracted his previous statements saying that he had been held incommunicado and tortured and forced to confess and that there had been no plot. He added that the Attorney General had put pressure on him to implicate Severo Moto Nsá and that he had decided to cooperate with the authorities, and had advised his co-defendants to do so, in order to save their lives.

No evidence was presented in court to substantiate the charges. The main evidence offered by the prosecution was documentary and physical exhibits. However, it failed to demonstrate that a crime had been committed. The charge sheet contained a long list of pieces of evidence which were never produced in court or disclosed to the lawyers or the defendants.

In fact, the only evidence presented in court consisted of the following items:

i) The defendants' signed statements in Spanish, a language most of them did not understand, and which they claimed had been extracted under torture;
ii) The statement in English signed by George Olimpic "Allerson";
iii) A list of bank transactions in January and February 2004, commercial contracts and a list of telephones numbers called by the defendants in February 2004. The prosecution failed to explain how these items constituted proof of any of the charges.

Importantly, the prosecution failed to produce in court the key piece of evidence it deemed most vital, on which most of the case rested, namely, the contract between Severo Moto Nsá and Simon Mann. The prosecution claimed that the original contract was kept in a safe in London and that only a photocopy was available in Equatorial Guinea. However, not even the photocopy was presented in court.

According to the authorities these were examples of weapons the "mercenaries" were going to buy in Zimbabwe © Amnesty International

About half a dozen weapons, including a pistol, an AKA 47 and an AKM, and ammunition, which had not been found in the possession of the defendants, were produced in court, apparently as examples of what the prosecution claimed the defendants intended to buy in Zimbabwe. It was not clear to the Amnesty International delegates what the probative value of such a display was. When the defence lawyer for the South Africans raised objections to the display, the bench told him that they were not interested in technicalities.

In addition, a contract was presented in court which purported to bear the name of Ashot Karapetyian, the Antonov 12 flight commander, printed in his handwriting. However, the defendant denied that it was his writing. The Attorney General then effectively attempted to give expert evidence and despite the defence lawyers' objections, insisted that he was expert enough to see that it was the same calligraphy.

5.4 Convictions and sentencing

The verdict and sentences were read out on 26 November 2004. The written document became available only on 30 November 2004, as it originally contained errors, which were rectified, regarding the level of responsibility of some of those convicted, as well as the omission of the name of one of the convicted prisoners. At total of 22 people were convicted, including nine tried *in absentia.* Three Equatorial Guineans and three South African nationals were acquitted (see appendix 1 for full list). Significantly, the three acquitted South African defendants had not been members of the *32 Battalion.* Those convicted were found guilty of crimes against the head of State, crimes against the form of government, and treason (in the case of some of the Equatorial Guineans) at the level of conspiracy or attempt. Fourteen, including the nine tried *in absentia* were sentenced as perpetrators to between 17 and 65 years in prison; the six Armenian nationals were sentenced as accomplices to terms of imprisonment varying from 14 to 24 years. Two Equatorial Guineans were convicted of reckless behaviour, a charge which had not been previously laid and which is normally applicable to traffic offences, and were sentenced to 16 months in prison.

The defence lawyers of the Armenian and South African prisoners lodged an appeal to the Supreme Court against the conviction and sentence. However, a date for the hearing has not yet been set.

6. Amnesty International's concerns about the trial

Amnesty International welcomed the fact that the court did not apply the death sentence as requested by the prosecution. However, the organization is seriously concerned about the numerous procedural irregularities of the trial, both at the pre-trial stages and during the court proceedings.

From the time of their arrest in March 2004, the fundamental rights of all the accused, in particular those of the foreign defendants, were systematically and routinely violated. The Amnesty International delegation present at the trial noted several serious irregularities which breached national and international law, rendering the trial unfair. However, the procedural irregularities were not confined to the court hearing, but were found at all stages of the proceedings.

6.1 Procedural irregularities at the pre-trial stages

In addition to the violation of the rights of the defendants in the pre-trial stages, such as the right to liberty and not to be arbitrarily arrested, which were detailed above, other rights were also violated including the right of detainees to be informed of the reasons for the arrest and the charges against them.

The foreign detainees were not informed promptly of the reasons for their arrests. The first opportunity for them to learn about it would have been at the time of the arrest itself. However, they were arrested without a warrant. The next opportunity would have been during interrogation. However, the Amnesty International delegates at the trial did not see any indication that the detainees were told even at this stage of the reasons for their arrest.

In addition, the earliest opportunity for them to be informed of the charges would have been 14 July when the investigating judge issued the indictment. However, the South African defendants stated in court that they either did not know the reasons why they were on trial, or that they had first been made aware of the charges on 20 August, three days before the trial started, when they had been given a translated copy of the charges. The Equatorial Guinean defendants, by contrast, confirmed that they knew why they were being charged. However, it is not clear to Amnesty International whether they received a copy of the indictment as required by law.

The right of the defendants to legal advice and to prepare a defence was also violated. None of the detainees had access to a lawyer until three days before the trial, despite repeated requests by some of the lawyers to see their clients.

Although the defendants were able to choose their lawyers freely, the delay in seeing their lawyers meant that they did not have adequate time to prepare their defence, a right which is guaranteed by Article 14 (3) of the ICCPR. Although the lawyers were served the documents within the minimum five days stipulated by the law, they complained in court and in private that they did not have sufficient time to examine the documents and discuss them with their clients. In addition, they complained that they had not been given access to the full indictment, and that they had not been served with the prosecution's evidence against their clients.

Nick du Toit in court - separated from the other defendants after he retracted his previous confessions
© Estelle Shirbon (Reuters)

In relation to the interrogations, most of the defendants stated in evidence that they had not seen an investigating judge and that their statements had been taken by the Attorney General at the police station and at Black Beach prison and that the investigation judge had simply signed the documents. This is in serious breach of Equatorial Guinean law. When the lawyers attempted to pursue this allegation in court the bench immediately stopped this line of questioning.

Several defendants specifically stated in court that they were made to sign statements, in Spanish, a language most of them did not understand, by the Attorney General, who also told them that if they said certain things they would be released. Specifically, Agustín Massoko stated that the Attorney General had told him to incriminate a government minister and an army general. He added that the Attorney General had asked him for bribes in return for his release, but that although his family had paid a certain sum of money he was not released. When his lawyer tried to explore this allegation the bench stopped him. Accusations such as these are so serious that they are arguably grounds to suspend the trial and institute an investigation.

6.2 Concerns during the court hearing

As well as being concerned that the court apparently accepted statements that several defendants claimed were extracted under torture or duress, Amnesty International is also concerned that:

a) On 31 August 2004, the trial was adjourned indefinitely at the request of the prosecution, on grounds of emerging evidence which it deemed vital to its case. However, when the trial resumed no new evidence was presented in court. The adjournment of the trial at that late stage was in breach of national legislation. Furthermore, national law does not allow for the indefinite adjournment of a trial.

b) Trial *in absentia*. The law in Equatorial Guinea provides that an accused person has a right to be present and to defend himself or herself in court. When the accused is not present in court, the trial must be suspended until such time as the accused can be brought to court. In cases involving more than one accused where one or more are absent, the court hearing will continue in relation to those present, but the case will remain open for those *in absentia* until such time as they too can appear in court. These provisions are consistent with international law, including Article 14(3)(d) of the ICCPR. In the case of Severo Moto Nsá and the members of the "government in exile", charges against them were not brought until shortly before the end of the trial, as an apparent afterthought, although Severo Moto Nsá had been named in the indictment as the instigator of the alleged coup.

In addition, those being tried also had their rights infringed as they were not present in the courtroom throughout the hearing, but were brought in only when they were being cross-examined. Consequently, they did not know what the other defendants had said in court, which could have serious consequences for each defendant individually as evidence against them or, on the contrary, exculpatory evidence.

c) The right to an interpreter and translation is guaranteed by Article 440 of Equatorial Guinea's Penal Procedure Code, as well as Article 14 (3) (f) of the ICCPR. In addition to the concerns expressed above regarding the translation of statements in the pre-trial stages, interpretation in court for the South African defendants was performed by the Attorney General's official interpreter, which begs the question of his independence and impartiality. His bias was confirmed when he told one of the Amnesty International delegates that he considered the defendants guilty and stated that he considered the defendants had full opportunity to see their lawyers. In his view the trial was fair but the press was not objective.

None of the interpreters were required to swear an oath regarding their conduct in performing their task. The Amnesty International delegates were not in a position to assess the

quality of the Russian interpretation for the Armenian defendants but were informed by those who understood the language that it was faultless. However, in relation to the English interpretation the delegates observed that vital pieces of information, such as defendants' statements about torture, were not translated for the benefit of the court, while others were distorted. Furthermore, the interpreter added to the defendants' statements words they had not said. Sérgio Cardoso, who clearly understood enough Spanish, complained that the interpreter was not translating correctly. This complaint was not translated. The issue of biased interpretation was also raised by some of the defence lawyers. However, these complaints were ignored.

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 was interrogated and signed his statements.

In addition, although the defendants were present in court on the first day when the indictment and the prosecution's and defence lawyers' observations were read, and again at the end of the trial when both parties summed up, they were not provided with interpretation. More importantly, neither the verdict nor the sentences were translated, and the defendants left court with no knowledge of their fate.

One of the striking aspects of the case was the number of foreign lawyers acting on behalf of the Equatorial Guinean government. Some are acting on behalf of the government in a civil case against the suspected financiers of the alleged coup. The reason for the presence of these lawyers in court and in the criminal proceedings was not clear. However, all were seen speaking to the Attorney General during the trial, and at least one was seen passing notes to the Attorney General. A British lawyer asked for Nick du Toit to be recalled in order to obtain further evidence about Mark Thatcher following his arrest in South Africa during the trial. The South African newspaper the "Mail and Guardian" in an on-line article dated 6 September 2004 stated:

"The foreign lawyers - who refused to be identified - at times present[ed] themselves as orchestrating the trial, which is playing out in a done-over convention centre. One day the British lawyer used a journalist to pass a note to a French colleague reminding the prosecution to introduce photos of Thatcher and the Britons as evidence."

Amnesty International was informed by several sources that the British lawyer questioned Nick du Toit on several occasions, including on 1 or 2 October 2004, half-way through the trial in Malabo, apparently in relation to the civil case in the UK. The lawyer himself told Amnesty International that, on 19 August 2004, he had contacted the lawyer representing the South Africans and asked him whether the lawyers intended to ask for an adjournment. He also suggested that delays accessing a lawyer was entirely the fault of the accused themselves who delayed engaging a lawyer. However, Amnesty International learned that after the lawyers were contracted, despite their repeated request, none of them was given access to their clients until three days before the trial started, including the lawyer for the Armenian defendants who had been contracted immediately after their arrest. This information was later used by the Attorney General in court when he summed up at the end of the trial. He stated that he was satisfied that the trial had been fair and cited as proof, among others, that "the lawyers have not raised the issue of torture and did not ask for an adjournment, because they had had enough time".

In addition, a French solicitor appeared to be directly assisting on the criminal prosecution and was present throughout the trial.

7. International dimension/foreign involvement

In a meeting on 31 August 2004, the Equatorial Guinean Attorney General told Amnesty International's delegates that the trial of the "mercenaries" was "not just about Equatorial Guinea but was of 'universal' importance as it affected other countries too". He repeated the claim that the collaboration of the security forces of Angola, South Africa and Zimbabwe had led to the arrest of the "mercenaries" in Harare and Equatorial Guinea. However, the South African authorities reportedly said that they did not have enough evidence to charge those arrested in South Africa.

No trial in the history of Equatorial Guinea has ever attracted so much media interest. The trial seemed partly geared to proving the existence of a network of "mercenaries", of which the foreign defendants were supposedly part. In that respect, the trial was of particular importance to South Africa, the country of origin, naturalisation or residence of most of the alleged "mercenaries" arrested in Equatorial Guinea and Zimbabwe. Most of those arrested had been members of the *32 Battalion* [20]. When the *32 Battalion* was disbanded in 1993, some of its members apparently joined private companies effectively as "mercenaries" and fought in the civil wars of countries such as Angola, DRC and Sierra Leone, among others.

South Africa had often been accused of being the cradle of mercenaries in Africa. The government in 1998, mindful of the threats posed by skilled and experienced members of the former security forces who were operating outside any system of discipline or accountability, enacted the Regulation of Foreign Military Assistance Act which prohibits the recruitment, use or training of persons for financing or engaging in mercenary activity by South Africans or foreign nationals operating from within South Africa. Amnesty International welcomes South Africa's efforts to make "mercenaries" accountable to the law, so long as this is achieved in accordance with full respect for human rights.

It is perhaps mainly in this context that South African officials took an interest in this trial in Equatorial Guinea. It is not clear to Amnesty International the actual extent of government knowledge of the activities of the accused prior to their arrest in Equatorial Guinea and of those arrested in Zimbabwe, or if this knowledge could have provided the basis for their arrest in South Africa on charges under the Regulation of Foreign Military Assistance Act.

There were police and members of the National Prosecuting Authority (NPA) among the South African delegations which visited Equatorial Guinea prior to and during the trial. Two of the accused, who were later acquitted, told Amnesty International that they had been questioned by South African investigators, who referred to themselves as "Scorpions"[21]. The two defendants told Amnesty International that the questioning took place in the police station and focussed primarily on the detainees' suspected "mercenary" activities, their past activities as members of *32 Battalion*, or confirming their past links to that battalion, their association with those detained in Harare, and their knowledge of the alleged coup. Nick du Toit was

[20] See footnote 3, on page 5 of this report.
[21] See page 13 of this report.

questioned also by the South Africans as well as agents and lawyers from other countries. The NPA, however, later told Amnesty International that their investigators were not involved in gathering any information from the defendants for any prosecution purposes in South Africa.

In South Africa, in early 2005, three men were convicted in the Regional Court of breaches of Section 3 of the Act, which prohibits the rendering of any foreign military assistance unless with state approval. In a separate trial, a plea bargain arrangement resulted in payment of a large fine by Mark Thatcher [22].

Following the arrests in Equatorial Guinea and Zimbabwe, the government of South Africa publicly stated that it would let justice take its course and it would only intervene if the accused were given the death sentence. The authorities reportedly made it clear that "any South African mercenaries abroad cannot expect much help from the Pretoria government"[23]. There was some domestic criticism of the government's position including from the South African Human Rights Commission[24], due to the longstanding record of gross human rights violations in Equatorial Guinea. In a press briefing on 24 May 2004 the Minister of Defence, Mosiuoa Lekota, stated that the government would ensure that the men received a fair trial but would not interfere with the legal processes in Equatorial Guinea and Zimbabwe[25].

Apparently at the request of the Equatorial Guinean authorities, the South African government agreed to assist them to conduct a fair and transparent trial. For that purpose, a team of officials comprising members of the South African Police Service, the NPA and officials from the Ministries of Justice and Foreign Affairs visited Equatorial Guinea on several occasions. Members of the delegation reportedly visited the detained South African nationals. Amnesty International was informed that on at least one occasion, in April, the detainees gave details of the circumstances of their arrest, their ill-treatment and torture to the visiting delegation. One member of the delegation was quoted in the press as saying that the South African detainees had been tortured and that they would not receive a fair trial[26].

A South African government delegation was also present at the trial. At least one of its members was present throughout the entire trial and was aware of the many flaws. However, at the end of the trial the authorities reportedly accepted the verdict and said that in their view the trial had been fair [27]. It is possible though that South African and other international interventions might have helped ensure the defendants did not receive the death penalty after conviction.

The Equatorial Guinean Attorney General also informed Amnesty International's delegates that several western governments had been involved in the alleged attempted coup and specifically mentioned those of Spain, UK and USA. However, he said he would not attempt to bring charges against those governments and instead would go for "physical people" that is,

[22] In relation to Mark Thatcher, Reuters 31 January 2005 and 18 February 2005, quoted the "Scorpions" spokesperson as saying that they were unsure of winning a conviction and that they were not confident they had a case that any judge would convict him.
[23] Minister of Foreign Affairs Nkosazama Dlamini–Zuma, Reported in AFP on 17 March 2004.
[24] Letter from the Chairperson, Narandran Jody Kollapen, to the Minister of Foreign Affairs, The Honourable Minister Nkosazama Dlamini–Zuma, dated 6 May 2004.
[25] Reported by SAPA and AFP on 24 May 2004.
[26] See BBC News World Edition – 4 April 2004.
[27] AFP 26 Novermber 2004.

individuals. Hence a civil court case was filed in the UK against the suspected financiers of the alleged coup, which seeks damages for the "distress caused to President Obiang Nguema" and for the costs of increased security. It also seeks an injunction to prevent those involved from plotting another coup.

The authorities have claimed that the alleged coup attempt was orchestrated by foreign economic interest groups who wanted to take control of Equatorial Guinea's wealth and that those groups used Severo Moto Nsá to further their interest. Once Severo Moto was in power, it was alleged, he would hand out lucrative contracts to his financiers.

Nick du Toit was frequently exposed to interrogations by a British lawyer acting on behalf of the Equatorial Guinea government in the civil court case in the UK and to interviews by the British media who questioned him about the role of others in the alleged coup. In court, the prosecution's cross-examination also ran along those lines. On 28 September 2004[28], Nick du Toit told a British Broadcasting Corporation (BBC) journalist that he had been given inducements by the Equatorial Guinean Attorney General to implicate Severo Moto Nsá and others in the alleged coup. He repeated this claim in court.

The case in the UK had not been heard by 5 May 2005. On 6 April 2005, the Appeal Court in Guernsey overturned an earlier ruling that papers showing details of transactions concerning the bank accounts of Logo Logistics Ltd. and Systems Design Ltd, both owned by Simon Mann, should be released to lawyers acting on behalf of Equatorial Guinea's President Teodoro Obiang Nguema Mbasogo. The lawyers were apparently hoping to access details of transactions between the companies and Nick du Toit and Simon Mann.

8. Amnesty International's recommendations

8.1 Recommendations to the Government of Equatorial Guinea

a) Torture

Amnesty International has received information indicating that the security forces routinely torture or ill-treat perceived or real political opponents in detention in order to extract confessions or as punishment. At least four of the prisoners convicted in November 2004 of crimes against the Head of State and against the government stated in court that they had been tortured. Since the trial, Amnesty International has received a few more details about the torture and ill-treatment of these prisoners. The organization calls on the Equatorial Guinean authorities to:

- remove immediately the handcuffs and shackles of the Armenian and South African prisoners;
- investigate the allegations of torture made in court by the prisoners and, if sufficient evidence is gathered, bring suspected perpetrators to justice;
- ensure that all torture allegations are investigated and that judges are informed of their obligations so that a prompt and impartial investigation is initiated. This should include a medical examination of the alleged victims by a doctor qualified in forensic medicine;
- ensure that all allegations of torture, as well as other human rights violations, are promptly and thoroughly investigated by an independent body, and if enough evidence is gathered, prosecute the suspected perpetrators.

[28] The interview was shown on BBC 1's *News at 10*, on 1 October 2004.

b) Death in detention

The authorities should immediately:

- investigate the death in custody of Gerhard Eugen Merz;
- if enough evidence is gathered, prosecute anyone suspected of responsibility into the death of Gerhard Eugen Merz;
- provide Gerhard Eugen Merz's family with full reparation, including restitution and adequate compensation.

c) Prison conditions

The prison conditions this group of prisoners have endured in pre and post-trial detention are particularly harsh. This is aggravated by the fact that they are foreigners with no family in Equatorial Guinea and no, or limited, knowledge of the Spanish language. Furthermore, they seem to have been subjected to treatment which is considerably harsher than that of their co-defendants.

- The Equatorial Guinean authorities must immediately end the incommunicado detention of all prisoners currently being held incommunicado in Equatorial Guinea;
- improve the conditions of imprisonment under which all prisoners are held, including by providing them with an adequate diet and prompt and adequate medical treatment as needed;
- allow the prisoners visits by their lawyers and, in the case of the foreign nationals, by consular representatives from their countries, in accordance with the Vienna Convention on Consular Relations;
- make all efforts to facilitate family visits whenever the families request them;
- encourage frequent visits to the prison by the ICRC.

d) Unfair trial

Most of the defendants in court made serious allegations against the Attorney General whom they accused of offering them inducements, such as that they would be released, to incriminate others, as well as asking for bribes and taking statements from the detainees instead of the investigating judge. Amnesty International is very concerned about these allegations and recommends that the authorities should:

- as a matter of urgency, set up an independent and impartial investigation into the allegation of misconduct by the prosecution authorities with a view to prosecuting those suspected of involvement in these allegations;
- consider the application for an appeal against conviction and sentences lodged by the defence lawyers and set a date for its hearing without delay;
- ensure that the court hearing the appeal is independent and impartial;
- ensure that the lawyers are given access to documentation and facilities needed to discharge their responsibilities unhindered.

e) Other measures

In addition, Amnesty International believes the Equatorial Guinean authorities should undertake certain other measures to improve the human rights situation in the country and to end impunity, including:

- taking immediate steps to incorporate human rights standards into domestic law so as to halt long-term patterns of human rights violations by ending arbitrary arrests; ending

torture and ill-treatment of detainees and prisoners; ensuring that all trials are conducted in accordance with international law and standards; abolishing the death penalty and allowing full rights to freedom of expression and association;
- carrying out the necessary constitutional amendments to ensure the independence of the judiciary and that the Attorney General conforms to the UN Guidelines on the role of the Prosecutors;
- amending the Penal Code and the Penal Procedures Code, to bring them into conformity with international human rights law;
- issuing clear orders to police and other officers to act in accordance with the law and the UN Code of Conduct for Law Enforcement Officials;
- investigating all human rights violations. Such investigations should be thorough, independent and impartial. If enough evidence is gathered, the suspected perpetrators should be brought to justice, and the victims and/or their families given full reparation;
- inviting the Special Rapporteurs on torture, prison conditions and independence of the judiciary to visit the country;
- seeking technical assistance from appropriate bodies.

8.2 Recommendations to the international community

The Office of the High Commissioner for Human Rights should take into account the above recommendations and work with Equatorial Guinea's government to identify areas in which to provide technical assistance which would be beneficial in improving the human rights situation in the country.

The UN Centre for Human Rights' programs and seminars should aim to bring law and practice in Equatorial Guinea into conformity with international and regional human rights standards.

The UN Special Rapporteurs on Torture, Prison Conditions and the Independence of the Judiciary, as well as the African Commission's Rapporteur on Prison Conditions should seek an invitation to visit Equatorial Guinea to carry out investigations into their areas of competence and discuss with the authorities ways to improve the situation.

The European Union, the International Organization of Francophone Countries (of which Equatorial is a member) and other regional bodies such as the Economic and Monetary Community of Central African States should exercise influence on the Equatorial Guinea government to ensure that it implements the recommendations listed above, including the provision of adequate food and medical treatment to the prisoners, and the removal of hand and leg cuffs.

Governments providing aid or other assistance to Equatorial Guinea, as well as governments with economic and trade links with Equatorial Guinea, should also consider the above recommendations and press the government to implement them, including those referring to the conditions of imprisonment.

Appendix 1

LIST OF PEOPLE CONVICTED AND THEIR SENTENCES

A. Perpetrators:

1. Severo Moto Nsá, (tried *in absentia*) convicted of:

-	treason (at the level of attempt) =	25 years
	crimes against the Head of State (level of conspiracy =	20 years
	crimes against the form of government (level of conspiracy) =	20 years
	total =	65 years

2. Armengol Ngonga; Donato Ndong Biyogo; Gabriel Moto Nsá; Pablo Ndong Ensema; Amalio Buaki; Miguel Esono Eman; Regina Mañe Ela (f); Daniel Zamora (the "government in exile" – tried *in absentia*), convicted of:

-	treason (at the level of attempt) =	20 years
	crimes against the Head of State (level of conspiracy) =	15 years
	crimes against the form of government (level of conspiracy) =	15 years
	total =	50 years

3. Servaas Nicolaas (Nick) du Toit, convicted of :

-	crimes against the Head of State (level of attempt) =	21 years
	crimes against the form of government (level of attempt) =	13 years
	total =	34 years

4.George Olimpic Nunes "Allerson"; Marious Gerhardus Bonzaair "Bone"; Sérgio Fernando Patrício Cardoso; José Passocas Domingos, convicted of:

-	crimes against the Head of the State (level of attempt) =	12 years
	crimes against the form of government (level of attempt) =	5 years
	total =	17 years

B. Accomplices

1. Ashot Karapetyan, convicted of:

-	crimes against the Head of the State (level of attempt) =	12 years
	crimes against the form of government (level of attempt) =	12 years
	total =	24 years

2. Ashot Simonyan; Suren Muradyan; Samvel Matshkalyan; Samvel Darbinyan; Razmik Khachatryan, convicted of:

-	crimes against the Head of the State (level of attempt) =	7 years
	crimes against the form of government (level of attempt) =	7 years
	total =	14 years

3. Antonio Javier Nguema Nchama; Agustín Massoko Abegue, convicted of:

-	reckless behaviour =	16 months

C. Acquitted:

Abel Augusto; Americo João Pimentel Ribeiro; Mark Anthony Schmidt; Koldo Martínez Nsang; Anacleto Oyono Nchama and Crispín Ntutumu Owono

Appendix 2

Map of Malabo with strategic points marked by the alleged “mercenaries”. On top, a note signed by Nick du Toit saying the markings had not been done by him.

A**ppendix 3**
Maps of Africa and Equatorial Guinea