



AMERICAN **BAR** ASSOCIATION

Center for Human Rights

# Monitoring of Mass Trial in Equatorial Guinea

**(Equatorial Guinea 2019)**

September 2019

*Juan Mendez  
Professor of Human Rights Law in Residence  
American University*

**TRIALWATCH FAIRNESS REPORT**  
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE



## ABOUT THE AUTHORS:

**Juan Mendez** is a Professor of Human Rights Law in Residence at American University's Washington College of Law and a Commissioner on the International Commission of Jurists. Originally from Argentina, Mr. Mendez, a member of the Trial Watch Experts Panel, has dedicated his career to human rights work, primarily in the Americas. He formerly served as the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the President of the Inter-American Commission on Human Rights, and the President of the International Center for Transitional Justice.

**Naomi Glassman-Majara** and **Viancy Ortiz Castro** monitored the mass trial in Equatorial Guinea and also assisted in the writing of the report. Ms. Glassman-Majara is the Bertha Justice Fellow at EarthRights International. She was previously the Pinto Fellow at Robert F. Kennedy Human Rights, contributing to strategic litigation in the Inter-American human rights system. Ms. Ortiz Castro is currently a visiting scholar in residence at American University's Washington College of Law. She previously worked as Legal Advisor to the Attorney General of Colombia at the Embassy in Washington D.C. and, before that, as a prosecutor in her native Colombia for 18 years.


## ABOUT THE AMERICAN BAR ASSOCIATION CENTER FOR HUMAN RIGHTS:<sup>1</sup>

The **American Bar Association** (ABA) is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The **ABA Center for Human Rights** has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries. It is an implementing partner in the Clooney Foundation for Justice's TrialWatch initiative and coordinated the trial observation in Equatorial Guinea.

## ABOUT THE CLOONEY FOUNDATION FOR JUSTICE'S TRIALWATCH INITIATIVE

---

<sup>1</sup> The statements and analysis expressed are solely those of the authors, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and do not represent the position or policy of the American Bar Association. Furthermore, nothing in this report should be considered legal advice for specific cases.



**TrialWatch** is an initiative of the **Clooney Foundation for Justice** focused on monitoring and responding to trials around the world that pose a high risk of human rights violations. TrialWatch is global in scope and focused on trials targeting journalists, LGBTQ persons, women and girls, religious minorities, and human rights defenders. It works to expose injustice and rally support to secure justice for defendants whose rights have been violated.

# EXECUTIVE SUMMARY



**Juan Mendez, former United Nations Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and member of the TrialWatch Experts Panel, assigned this trial a grade of F:**

This trial failed to meet some of the most fundamental standards of due process recognized by international law. The court was neither independent nor impartial. Defendants were arbitrarily arrested, subjected to pretrial conditions that amounted to cruel, inhuman, and degrading treatment, and tortured under interrogation. From the moment of their deprivation of freedom, they were held in incommunicado detention and denied access to counsel. At trial, defense attorneys were severely hampered in challenging evidence or even the theory of the prosecution's case, which often amounted to guilt by association. The decision sentencing 112 defendants to prison was based on scant proof, failing to provide an individualized evidentiary basis for the convictions and thereby violating the presumption of innocence. The grading methodology can be found in the Annex.

From March to May 2019, the American Bar Association's Center for Human Rights<sup>2</sup> monitored a mass trial in Equatorial Guinea as part of the Clooney Foundation for Justice's TrialWatch initiative.<sup>3</sup> The proceedings concluded with the unjust conviction of 112 defendants<sup>4</sup> for participation in an alleged coup attempt. From the outset the trial was marred by egregious procedural irregularities, including the President's direct appointment of judges and prosecutors from the military and police, and violated guarantees that are part of every State's obligations under international human rights law.

The case stemmed from what the prosecution alleged to be a failed coup attempt in December 2017. According to the prosecution, the accused planned to overthrow the President of Equatorial Guinea by attacking the presidential palace. The purported plan

---

<sup>2</sup> The American Bar Association is the largest voluntary association of lawyers and legal professionals in the world. As the national voice of the legal profession, the ABA works to improve the administration of justice, promotes programs that assist lawyers and judges in their work, accredits law schools, provides continuing legal education, and works to build public understanding around the world of the importance of the rule of law. The ABA Center for Human Rights has monitored trials and provided pro bono assistance to at-risk human rights defenders in over 60 countries.

<sup>3</sup> The Center would like to thank the Clooney Foundation for Justice for providing funding for the monitoring of the mass trial in Equatorial Guinea and the production of the report. The Center is also grateful to all those who provided valuable information about the trial and helped with the observation mission.

<sup>4</sup> Due to inconsistencies in the listing of defendants in both the judgment and prosecutorial submissions, all numbers in this report are approximate.

involved the recruitment of foreign mercenaries from countries such as Cameroon and Chad. Roughly 130 defendants were charged with treason, crimes against the head of state, rebellion, possession and storage of weapons and ammunition, terrorism, and the financing of terrorism.

The pretrial stage entailed grave abuses of defendants' rights: the majority of defendants were held in incommunicado detention for approximately a year; defendants were not informed of the charges against them; defendants were denied access to their lawyers; many defendants were allegedly tortured and otherwise mistreated; authorities withheld the full case file from defense counsel; and defense counsel received notice of the start of trial only four days in advance.

At trial, violations of defendants' rights were equally stark. In particular, the significant disparities between the court's treatment of the prosecution and defense contravened the principle of equality of arms. The court consistently issued arbitrary rulings against the defense, prohibiting defense lawyers from asking about the aforementioned pretrial abuses, limiting defense questioning to minutes at a time, curtailing defense objections, denying defense requests for witnesses, and barring the defense from cross-examining prosecution witnesses.

In contrast, the court placed no such restrictions on the prosecution, making allowance after allowance for state attorneys. The court permitted the prosecution, for example, to rely on torture-tainted evidence,<sup>5</sup> to introduce pretrial statements obtained without counsel present, and to add new charges at the very end of the trial: a clear violation of both prosecutorial ethics and the defense's right to adequate preparation.

Despite receiving an excess of latitude, the prosecution wholly failed to build its case against the accused, presenting evidence that was at best circumstantial and, at worst, an example of guilt by association. At times, the prosecution resorted to asking defendants themselves to clarify their roles in the alleged coup attempt, reflecting the dearth of proof.

Perhaps the most serious due process violation that occurred was the blatant lack of judicial independence. Although acts of insurrection and attempted assassination are extremely serious, it is precisely because of their gravity that the trial should have been conducted with absolute autonomy, absent any pressure or orders from other branches of government. Instead, the President of Equatorial Guinea directly intervened in the proceedings.

---

<sup>5</sup> This report does not evaluate the veracity of torture complaints. However, absent investigations and compliance with the Convention against Torture and Istanbul Protocol, all statements allegedly obtained through torture are considered torture-tainted.

After the trial had already been underway for a month, it was announced on state television that the President had appointed new magistrates and prosecutors from the military and police via executive decree. Soon thereafter, a military official appeared in the audience to serve - according to local journalists and defense counsel - as an "observer." Monitors noted that throughout the remainder of the proceedings, the official relayed messages to the prosecution and judges. As such, what should have been a trial conducted by a civilian court was transformed into a trial conducted before a hybrid military court, with the degradation of judicial independence and impartiality on display for all to see.

The judgment itself serves as the capstone on the grossly unfair proceedings. In convicting 112 individuals, at least 20 of whom received sentences of over 70 years, the court failed to make individualized findings of guilt or to undertake evidentiary analysis. Numerous people will lose years - if not their whole lives - based on scant proof. The judgment thereby falls far short of the "beyond a reasonable doubt" standard required by the presumption of innocence.

Given the absence of evidence against the vast majority of defendants, the authorities should immediately order their release or, alternatively, overturn the convictions on appellate review. With respect to the other defendants, the Equatoguinean authorities should review the sentences imposed and either institute appellate proceedings that respect the due process of law or release defendants unconditionally. Finally, the authorities must launch investigations into the many credible allegations of torture aired throughout the trial.

# BACKGROUND INFORMATION



## A. POLITICAL AND LEGAL CONTEXT

Equatorial Guinea is a former Spanish colony that has been ruled by President Teodoro Obiang Nguema Mbasogo since he took power in a military coup in 1979. He has maintained control for the last 40 years through a combination of nepotism and repression.<sup>6</sup> The Obiang government has thwarted several purported coup attempts, each of which has ended in a mass trial with insufficient procedural guarantees, severe violations of international law, and long prison sentences.<sup>7</sup>

### Oil and Patronage

Equatorial Guinea gained its independence from Spain in 1968. Equatorial Guinea's first President, Francisco Macías Nguema, "oversaw the near-destruction of his country and the murder and expulsion of a large proportion of the population."<sup>8</sup> The current President, Teodoro Obiang Nguema Mbasogo, overthrew his uncle Macías in a coup in 1979. Macías Nguema, "who had been shot and wounded fleeing into the jungle carrying suitcases full of cash, was tried in a movie theater filled with 1,500 spectators who were treated to the sight of their former ruler confined to a cage suspended from the ceiling. Following Macías's conviction and the pronouncement of his 101 death sentences, he was shot by a firing squad composed of soldiers from Obiang's newly-constituted Moroccan presidential guard."<sup>9</sup>

Since taking power, Obiang has reportedly consolidated political control in his family, relying on clientelism and patronage politics. Indeed, "in order to work for any private company (national or international), one has to be affiliated with the [ruling] PDGE [Partido Democrático de Guinea Ecuatorial]", which mandates personal loyalty to the figure of Obiang.<sup>10</sup> The correlation between loyalty and economic advancement has resulted in the coopting of "regional or ethnic agents and potential dissidents."<sup>11</sup>

Large oil fields were discovered in Equatoguinean territorial waters in the late 1990s and by the early 21st century, U.S. oil companies and the state-run GEPetrol dominated

---

<sup>6</sup> See *infra*.

<sup>7</sup> See *infra*.

<sup>8</sup> Adam Roberts, "Equatorial Guinea: Staying Power", *The World Today*, Volume 65, 2009, pg. 27.

<sup>9</sup> Robert E. Williams Jr., "From Malabo to Malibu: Addressing Corruption and Human Rights Abuse in an African Petrostate", *Human Rights Quarterly*, Volume 33, 2011, pg. 623.

<sup>10</sup> Enrique Nzang Okenve, "Wa kobo abe, wa kobo politik: Three Decades of Social Paralysis and Political Immobility in Equatorial Guinea", *Afro-Hispanic Review*, Volume 28, 2009, pg. 151.

<sup>11</sup> Alicia Campos-Serrano, "Extraction Offshore, Politics Inshore, and the Role of the State in Equatorial Guinea", *The Journal of the International African Institute*, Volume 83, 2013, pg. 327.



the local economy.<sup>12</sup> Equatorial Guinea - particularly in comparison to other oil-producing countries in the region - offers attractive fiscal terms to foreign companies.<sup>13</sup> The oil economy is concentrated in the hands of the political elite, particularly the president's family.<sup>14</sup> Obiang's brother Armengol, for example, was granted contracts to provide security to foreign companies, while Obiang's son Gabriel Mbega Obiang became deputy oil minister in 2003.<sup>15</sup> Meanwhile, "[p]art of [oil] rents ends up deposited in foreign bank accounts in the names of high ranking officials, with the necessary cooperation of companies."<sup>16</sup>

The corrupt dealings of Obiang, his family, and his government have been well documented. In a 2004 Report, the U.S. Senate Subcommittee found that Riggs Bank "accepted \$13 million in cash deposits into accounts controlled by the E.G. President and his wife with few questions asked [and] allowed wire transfers withdrawing more than \$35 million from the E.G. account containing oil revenues for transfer to two unknown companies with accounts in bank secrecy jurisdictions".<sup>17</sup> The Senate Subcommittee further ascertained that "Riggs helped the E.G. President and his sons establish at least two offshore shell corporations," which received numerous large cash deposits, often brought in suitcases of "unopened, plastic-wrapped bundles."<sup>18</sup> Correspondingly, in 2014 the U.S. Justice Department settled a civil forfeiture assets case against the President's son - and current vice President - Teodoro Nguema Obiang Mangue, requiring him to relinquish over \$30 million in assets in the United States.<sup>19</sup> The U.S. DOJ concluded that Teodoro Nguema Obiang "used his position and influence as a government minister to amass more than \$300 million worth of assets through corruption and money laundering".<sup>20</sup> And in 2017, a French criminal court convicted Teodoro Nguema Obiang for embezzlement of more than \$174 million of public funds.<sup>21</sup>

---

<sup>12</sup> See Jędrzej George Frynas, "The Oil Boom in Equatorial Guinea", *African Affairs*, Volume 103, 2004, pgs. 528-30.

<sup>13</sup> *Id.* at pgs. 527, 532-34.

<sup>14</sup> *Id.* at pgs. 528, 541.

<sup>15</sup> *Id.* at pg. 539.

<sup>16</sup> Alicia Campos-Serrano, "Extraction Offshore, Politics Inshore, and the Role of the State in Equatorial Guinea", pg. 325.

<sup>17</sup> United States Senate, Permanent Subcommittee on Investigations, Committee on Governmental Affairs, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, "Case Study Involving Riggs Bank"*, July 15, 2004, pg. 38.

<sup>18</sup> *Id.* at pgs. 47-51.

<sup>19</sup> Department of Justice, Office of Public Affairs, "Second Vice President of Equatorial Guinea Agrees to Relinquish More than \$30 Million of Assets Purchased with Corruption Proceeds", October 10, 2014. Available at <https://www.justice.gov/opa/pr/second-vice-president-equatorial-guinea-agrees-relinquish-more-30-million-assets-purchased>.

<sup>20</sup> *Id.*

<sup>21</sup> Transparency International, "Obiang Verdict: Transparency International Welcomes the Corruption Conviction and Seizure of Assets", October 27, 2017. Available at [https://www.transparency.org/news/pressrelease/obiang\\_verdict\\_transparency\\_international\\_welcomes\\_the\\_corruption\\_convictio](https://www.transparency.org/news/pressrelease/obiang_verdict_transparency_international_welcomes_the_corruption_convictio); Angelique Chrisafis, "Son of Equatorial Guinea's president is convicted of corruption in France", *The Guardian*, October 27, 2017. Available at



## Repression

The threat of violence is omnipresent in Equatorial Guinea, with military checkpoints across the country serving as a perpetual reminder.<sup>22</sup> Key to Obiang's mission of social control is the arbitrariness of violence: "As much as Equatorial Guineans try to understand the rules of the system so as to foresee which behavior is likely to be either rewarded or punished, in truth there is no reliable way for people to master these rules."<sup>23</sup> Such unpredictability means that "from the family inner circle to the poor, Equatoguineans live in fear of arbitrary detention, harassment, beatings and the seizure of personal property."<sup>24</sup> In many cases, state repression takes the form of judicial harassment, with "[j]ail sentences for opponents of the regime ... a common feature."<sup>25</sup>

At the same time, the Obiang government restricts freedoms of expression, assembly, and association.<sup>26</sup> For example, "all broadcast media outlets in Equatorial Guinea are state-owned; RTV-Asonga, the exception, is owned by President Obiang's son. ... The media in Equatorial Guinea exists only to praise President Obiang's rule and to obscure as much as possible the truth about conditions in the country."<sup>27</sup> The Obiang government has also refused to allow public marches and protests<sup>28</sup> and has utilized internet blockages, including around elections, to limit the information available in country.<sup>29</sup>

## The Judiciary and Violations of International Standards

Despite a nominal separation of powers, the judicial system in Equatorial Guinea lacks independence. Article 89 of the Fundamental Law of Equatorial Guinea (in essence,

---

<https://www.theguardian.com/world/2017/oct/27/son-of-equatorial-guineas-president-convicted-of-corruption-in-france>.

<sup>22</sup> See Alicia Campos-Serrano, "Extraction Offshore, Politics Inshore, and the Role of the State in Equatorial Guinea", pg. 328; Geoffrey Wood, "Business and Politics in a Criminal State: The Case of Equatorial Guinea", *African Affairs*, Volume 103, 2004, pg. 563; Enrique Nzang Okenve, "Wa kobo abe, wa kobo politik: Three Decades of Social Paralysis and Political Immobility in Equatorial Guinea", pg. 157.

<sup>23</sup> Enrique Nzang Okenve, "Wa kobo abe, wa kobo politik: Three Decades of Social Paralysis and Political Immobility in Equatorial Guinea", pg. 154.

<sup>24</sup> Geoffrey Wood, "Business and Politics in a Criminal State: The Case of Equatorial Guinea", pg. 561.

<sup>25</sup> Robert E. Williams Jr., "From Malabo to Malibu: Addressing Corruption and Human Rights Abuse in an African Petrostate", pgs. 626-27.

<sup>26</sup> See CIVICUS, "Equatorial Guinea". Available at <https://monitor.civicus.org/country/equatorial-guinea/>; Bureau of Democracy, Human Rights and Labor, "Equatorial Guinea 2018 Human Rights Report", 2019. Available at <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/equatorial-guinea/>.

<sup>27</sup> Robert E. Williams Jr., "From Malabo to Malibu: Addressing Corruption and Human Rights Abuse in an African Petrostate", pg. 627.

<sup>28</sup> Amnesty International, "Equatorial Guinea: The authorities must allow freedom of expression and peaceful demonstrations to take place", July 1, 2013. Available at <https://www.amnesty.org/en/documents/afr24/004/2013/en/>.

<sup>29</sup> Bureau of Democracy, Human Rights and Labor, "Equatorial Guinea 2018 Human Rights Report".

Equatorial Guinea's Constitution) establishes that the judicial branch is independent of the executive and legislative branches. This separation is confirmed by Law 5 of 2009,<sup>30</sup> which regulates, among other matters, judicial careers and judicial independence.<sup>31</sup> The Fundamental Law of Equatorial Guinea contradicts itself, however, by providing that the President of the Republic is the First Justice of the Nation - in charge of guaranteeing judicial independence.<sup>32</sup> Correspondingly, as documented by Freedom House, "judges in sensitive cases often consult with the office of the president before issuing a ruling."<sup>33</sup>

The lack of judicial independence as well as the state's wholesale rejection of international standards is best demonstrated through the response to various coup attempts. While some such plots have been genuine, it is worth noting that "accusations of participating in real or imaginary coups d'état justify periodical harassment and military trials to suppress political dissidents."<sup>34</sup>

- In May 1998, a group comprised of individuals of the Bubi ethnicity allegedly attacked a set of military barracks.<sup>35</sup> The military proceeded to harass the Bubi population writ large, including prominent Bubi PDGE members, eventually arresting approximately 500 Bubi citizens.<sup>36</sup> 116 defendants were tried before a military tribunal for treason, terrorism, importation of arms, secession, and refusal to render assistance.<sup>37</sup> Following a five-day trial, the court sentenced 15 people to death (four *in absentia*) and 70 others to prison.<sup>38</sup> Amnesty International documented extensive evidence of torture during detention, including the deaths of six detainees.<sup>39</sup>
- In March 2002, members of the opposition political parties FDR and CPDS were arrested along with 100-150 current or former members of the armed forces for involvement in a supposed coup plot.<sup>40</sup> The International Bar Association's observation of the subsequent trial found that there was significant torture and ill-

---

<sup>30</sup> Law that reforms the original Organic Law of the Judicial Power.

<sup>31</sup> See Title IV, respecting judicial careers, and Title V, respecting judicial independence, of Law 5 of 2009, by which the Organic Law of the Judicial Power No. 10/1984 is regulated.

<sup>32</sup> See Article 92 of the Fundamental Law of Equatorial Guinea.

<sup>33</sup> Freedom House, "Freedom in the World 2018: Equatorial Guinea". Available at <https://freedomhouse.org/report/freedom-world/2018/equatorial-guinea>. See also Bureau of Democracy, Human Rights and Labor, "Equatorial Guinea 2018 Human Rights Report".

<sup>34</sup> Alicia Campos-Serrano, "Extraction Offshore, Politics Inshore, and the Role of the State in Equatorial Guinea", pg. 328. See also Adam Roberts, "Equatorial Guinea: Staying Power", pg. 28.

<sup>35</sup> See Amnesty International, "Equatorial Guinea: A Country Subject to Terror and Harassment", January 1, 1999, pg. 3. Available at <https://www.amnesty.org/download/Documents/140000/afr240011999en.pdf>.

<sup>36</sup> *Id* at pg. 6.

<sup>37</sup> *Id* at pg. 15.

<sup>38</sup> *Id* at pgs. 14-15.

<sup>39</sup> *Id* at pgs. 7-14.

<sup>40</sup> Geoffrey Wood, "Business and Politics in a Criminal State: The Case of Equatorial Guinea", pg. 562; International Bar Association (IBA), "Equatorial Guinea: At the Crossroads", October 2003, para. 4.38. Available at [https://www.ibanet.org/Human\\_Rights\\_Institute/Work\\_by\\_regions/Africa/Equatorial\\_Guinea.aspx](https://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Africa/Equatorial_Guinea.aspx).

treatment as well as “insufficient evidence of criminal activity, or in some instances, none at all.”<sup>41</sup> In May 2003, over 60 of the 144 defendants were convicted on charges of attacking state security.<sup>42</sup>

- The most serious coup attempt took place on March 7, 2004. An airplane carrying military equipment and mercenaries was seized in Zimbabwe en route to Equatorial Guinea.<sup>43</sup> In late 2004, an Equatoguinean court sentenced individuals allegedly connected with the coup to lengthy prison sentences.<sup>44</sup> Simon Mann, a British mercenary, was the purported mastermind of the coup.<sup>45</sup> Mann was arrested in Zimbabwe and extradited to Equatorial Guinea in 2007 for proceedings characterized by scholar Adam Roberts as a “show trial”.<sup>46</sup> Amnesty International noted that six Equatoguinean members of a banned political party were lumped into Mann’s trial despite their lack of connection to the 2004 coup attempt.<sup>47</sup> Although Mann admitted to his role, the prosecution reportedly relied on statements made under duress and torture with respect to the additional Equatoguinean defendants and there was insufficient interpretation.<sup>48</sup>
- On Feb 17, 2009 an armed group connected to the Niger Delta attacked the presidential palace in Malabo.<sup>49</sup> Subsequently, a group of seven Nigerian nationals who claimed to be lost fishermen were arrested at sea.<sup>50</sup> According to Amnesty International, the group was held “incommunicado and without charge until mid-October 2009” and tried in March 2010, along with members of the opposition party Union Popular.<sup>51</sup> Complaints of torture, including the death of one defendant while in custody, were dismissed by the court as “irrelevant to the proceedings.”<sup>52</sup>

<sup>41</sup> IBA, “Equatorial Guinea: At the Crossroads”, para. 4.38.

<sup>42</sup> Amnesty International, “Amnesty International Report 2003-Equatorial Guinea”, 2003. Available at <https://www.refworld.org/docid/3edb47d610.html>.

<sup>43</sup> Geoffrey Wood, “Business and Politics in a Criminal State: The Case of Equatorial Guinea”, pg. 552.

<sup>44</sup> Corpwatch, “Equatorial Guinea: Legal Observers Say Mercenary Trial Unfair”, December 1, 2004. Available at <https://corpwatch.org/article/equatorial-guinea-legal-observers-say-mercenary-trial-unfair>.

<sup>45</sup> Adam Roberts, “Equatorial Guinea: Staying Power”, pg. 28.

<sup>46</sup> *Id.*; Amnesty International, “Equatorial Guinea: Concerns about the recent trial of Simon Mann and other co-accused”, July 16, 2008. Available at <https://www.amnesty.org/download/Documents/52000/afr240092008eng.pdf>. Mann has since written a book about the failed coup attempt. Simon Mann, *Cry Havoc* (2011).

<sup>47</sup> Amnesty International, “Equatorial Guinea: Concerns about the recent trial of Simon Mann and other co-accused”.

<sup>48</sup> *Id.*

<sup>49</sup> Alicia Campos-Serrano, “Extraction Offshore, Politics Inshore, and the Role of the State in Equatorial Guinea”, pg. 332.

<sup>50</sup> Amnesty International, “Equatorial Guinea: Concerns about the recent trial of political opponents and Nigerian nationals”, May 19, 2010. Available at <https://www.amnesty.org/download/Documents/36000/afr240072010en.pdf>.

<sup>51</sup> *Id.*

<sup>52</sup> Amnesty International, “Equatorial Guinea Urged to Retry Nigerian Coup Suspects”, May 21, 2010. Available at <https://www.amnesty.org/en/press-releases/2010/05/equatorial-guinea-urged-retry-nigerian-coup-suspects/>.

This history of unfair mass trials for alleged coup attempts demonstrates how little the judiciary can be trusted to exercise independent judgment and comply with international standards.

## **B. CASE HISTORY**

From March to May 2019, the prosecutor's office of Equatorial Guinea tried approximately 130 individuals in connection with an alleged *coup d'état* and assassination attempt against President Obiang. The events supposedly occurred in December 2017, when the first defendants were arrested. The authorities arrested additional defendants as late as May 2018 and the prosecutor submitted formal charges in February 2019.

### **Prosecution's Account of the Coup Attempt**

The facts surrounding the lead-up to the alleged coup attempt are unclear. The prosecutor's submissions provide minimal detail, the gist of which is set forth below.

The prosecution alleged that the key participants in the coup plot were Salomon Abeso, Onofre Otogo Otogo Ayecaba, Hector Santiago Ela Mbang, Martin Obiang Ondo, Ruben Clemente Nguema Engonga, Feliciano Efa Mangué, and Bienvenido Ndong Ondo.<sup>53</sup> According to the prosecution, the plan was to attack the presidential palace in Mongomo, Equatorial Guinea in December 2017:<sup>54</sup> to this end, individuals allegedly involved in the plot acquired 20 guns, 1,206 bullets, and 20 satellite telephones,<sup>55</sup> which they stored in a house in Ebibeyin.<sup>56</sup>

The prosecution claimed that the coup planners recruited mercenaries from Chad, Cameroon, and the Central African Republic.<sup>57</sup> The prosecution additionally accused French citizens of assisting in implementation of the alleged coup attempt.<sup>58</sup>

Per the statement of Hector Santiago Ela Mbang, Hector and Onofre Otogo Otogo drove the arms out of Ebibeyin on December 27, 2017.<sup>59</sup> On December 28, 2017, they hid the guns in a forest to avoid discovery.<sup>60</sup> By the end of 2017, Hector had been arrested by Equatoguinean security forces.

---

<sup>53</sup> Ministerio Fiscal, Querrela Criminal, February 6, 2018, pgs. 3-4.

<sup>54</sup> Id at pg. 4.

<sup>55</sup> Ministerio Fiscal, Escrito de Calificaciones Provisionales, February 22, 2019, pg. 5.

<sup>56</sup> Id.

<sup>57</sup> Id.

<sup>58</sup> See id at pg. 4.

<sup>59</sup> Juzgado de Instrucción No. II de Bata-Litoral, Declaración de Hector Santiago Ela Mbang, pgs. 17-18.

<sup>60</sup> Id.

## Procedural History

After the first round of arrests in December 2017 and January 2018, the prosecutor's office submitted a criminal complaint against 15 Equatoguinean civilians (including Hector, Ruben, Bienvenido, and Onofre), 12 members of the Equatoguinean military, and 26 foreigners.<sup>61</sup> According to the criminal complaint, a key group of between 7-10 individuals "planned to remove the President through violent and undemocratic means."<sup>62</sup> The prosecutor's office alleged that all 53 named defendants had committed treason, crimes against the head of state, rebellion, possession and storage of weapons and ammunition, and terrorism.<sup>63</sup>

Between March 12-29, 2018, an investigating judge in Bata heard the declarations – sworn pretrial statements – of 39 defendants who were being held by Equatoguinean security forces.<sup>64</sup> On April 20, 2018, based on declarations that implicated other individuals, the prosecutor's office expanded its criminal complaint to include approximately 80 additional defendants:<sup>65</sup> individuals who "planned the criminal acts together ... they were orchestrating an armed action to occupy the presidential residence."<sup>66</sup> Namely, the expanded complaint added 4 French citizens, 3 Cameroonian citizens, 14 Central African Republic citizens, and 5 Chadian citizens,<sup>67</sup> alleging that the group acted as "financiers, executors and mercenaries."<sup>68</sup> The expanded complaint further listed 29 members of Equatorial Guinea's army<sup>69</sup> who "in a knowing and deliberate manner enabled the entry of the mercenaries, as well as the entry of the arms, as well as their transfer within the national territory."<sup>70</sup> Finally, the expanded complaint charged 9 Equatoguinean civilians and 17 non-resident Equatoguineans<sup>71</sup> with money laundering and improperly transferring money to the Bata central prison.<sup>72</sup>

On April 23, 2018, the Second Criminal Chamber of the Bata Provincial Court ordered the search and capture of various individuals listed in the expanded complaint.<sup>73</sup> On May 11,

---

<sup>61</sup> Ministerio Fiscal, Querella Criminal, February 6, 2018. In later documents, this document is cited with the date February 8, 2018.

<sup>62</sup> *Id.* at pg. 4.

<sup>63</sup> *Id.* at pg. 1.

<sup>64</sup> See Juzgado de Instrucción No. II de Bata Litoral, Procedimiento Sumario Núm. 001/2018, Auto Acordando la Busca y Captura, April 23, 2018. See, e.g., Juzgado de Instrucción No. II de Bata Litoral, Declaración de Julian Ondo Nkumu Mangué, March 27, 2018.

<sup>65</sup> Ministerio Fiscal, Ampliación de la Querella Criminal, April 20, 2018, pg. 1.

<sup>66</sup> *Id.* at pg. 5.

<sup>67</sup> *Id.* at pg. 4.

<sup>68</sup> *Id.* at pgs. 5-6.

<sup>69</sup> *Id.* at pg. 4.

<sup>70</sup> *Id.* at pg. 6.

<sup>71</sup> *Id.* at pgs. 3-4.

<sup>72</sup> *Id.* at pg. 7.

<sup>73</sup> Juzgado de Instrucción No. II de Bata Litoral, Procedimiento Sumario Núm. 001/2018, Auto Acordando la Busca y Captura, April 23, 2018.



2018, the court formally accepted the expanded complaint, which at that point included more than 130 individuals. The court stated that based on declarations taken from March 13 through May 11, the evidence “revealed without a doubt the authorship and participation of the defendants in their forms of participation and the proof of the commission of the crimes” with which they were charged”.<sup>74</sup>

On May 18, 2018, the Bata court expanded its earlier order of search and capture to include 5 additional defendants.<sup>75</sup> On June 13, 2018, the court deemed over 70 defendants whose location was unknown to have “absconded”, temporarily suspending the case against them.<sup>76</sup>

On June 20, 2018, the court pronounced the Auto de Conclusión, summarizing the procedural history of the case up to that point and declaring the investigation complete.<sup>77</sup> Subsequently, on January 25, 2019, the prosecutor’s office requested the extension of the Auto de Procesamiento to formally accuse an additional 8 defendants.<sup>78</sup> The court accepted the prosecutor’s request and on February 6, 2019, expanded its Auto de Conclusion to cover two additional defendants who had given their initial declarations in September 2018 as well as – notably – the absent defendants.<sup>79</sup> This expansion was partially a response to the prosecutor’s submission of new evidence purporting to show a supposed plan B for the coup in case the initial attempt failed.<sup>80</sup>

On February 22, 2019, the prosecutor’s office submitted its provisional charging document.<sup>81</sup> Over 130 defendants were charged with the same offenses:<sup>82</sup> “treason, crimes against the head of state, rebellion, possession and storage of weapons and ammunition, and terrorism and its financing.”<sup>83</sup> The document draws little distinction between the accused, relying on broad categories: Equatoguinean civilians, foreign

---

<sup>74</sup> Juzgado de Instrucción No. II de Bata Litoral, Auto de Admisión de la Querella, Fundamentos Jurídicos, Considerando Primero, May 11, 2018, pgs. 9-10.

<sup>75</sup> Juzgado de Instrucción No. II de Bata Litoral, Auto de Ampliación de Conclusión, Resultando Tercero, February 6, 2019, pg. 3.

<sup>76</sup> Juzgado de Instrucción No. II de Bata Litoral, Auto Acordando la Rebeldia, Fundamentos Jurídicos, Considerando Primero, Considerando Segundo, June 13, 2018, pg. 6.

<sup>77</sup> Juzgado de Instrucción No. II de Bata Litoral, Auto de Conclusión, June 20, 2018

<sup>78</sup> Juzgado de Instrucción No. II de Bata Litoral, Auto de Ampliación de Conclusión, Resultando Cuarto, February 6, 2019.

<sup>79</sup> See Juzgado de Instrucción No. II de Bata Litoral, Auto de Ampliación de Conclusión, February 6, 2019, pgs. 2-3. The additional defendants in question were Francisco Micha Obama and Fulgencio Obiang Esono Ntongono.

<sup>80</sup> See *id.*

<sup>81</sup> Ministerio Fiscal, Escrito de Calificaciones Provisionales, February 22, 2019.

<sup>82</sup> The prosecutor’s charging document lists 136 defendants. However, the names listed do not fully match up with other court documents. Of note, the prosecutor’s office states in the charging document that the omission of defendants’ names should not be understood as precluding their prosecution. Ministerio Fiscal, Escrito de Calificaciones Provisionales, Otro Si Digo, February 22, 2019, pg. 16.

<sup>83</sup> Ministerio Fiscal, Escrito de Calificaciones Provisionales, Configuración jurídica de los hechos, February 22, 2019, pg. 7.

nationals and, in terms of roles in the coup, planners, recruiters, mercenaries, financiers, and so on.<sup>84</sup>

The majority of defense lawyers were appointed by the Equatoguinean Bar Association in January 2019, despite the fact that the case had been ongoing since December 2017. Three of the defense lawyers represented just one defendant each, apparently having been individually hired, while the remaining 12 defense lawyers were assigned between 6-14 defendants,<sup>85</sup> seemingly at random.

On March 18, 2019, at which point defense counsel had yet to be permitted access to their clients, the Secretary of the Bata Court publicly announced the schedule of upcoming cases, including the coup trial - which was to start on Friday March 22, 2019.<sup>86</sup> This announcement, read aloud on state TV, was the only notification defense attorneys received with respect to the beginning of the trial and gave them 72 hours to meet with their clients in the Public Prison of Ncoantoma.<sup>87</sup>

The defendants faced substantial sentences. The prosecutor had requested that those accused convicted of treason, crimes against the head of state, or rebellion receive – respectively – a sentence of “reclusión mayor”, between 20 years and a day and 30 years; that those convicted of possession and storage of arms receive a sentence between six years and a day and 12 years; and that those convicted of terrorism and its financing receive a sentence of up to 20 years.<sup>88</sup>

## Different Groups Among the Defendants

As described above, the defendants fell into a number of categories. Given that the prosecutor’s office provided minimal to no individualized information on each defendant, the outline below is based primarily on in-court testimony.

### Central Players

Two defendants who testified in court, Hector Santiago Ela Mbang and Onofre Otego Otego Ayecaba, admitted to some degree of involvement in a regime change plan.<sup>89</sup> According to Hector’s testimony, there were between six and ten central players who were either present for planning meetings or played a role in the execution of operations. Most of these individuals were tried *in absentia*.

---

<sup>84</sup> See *id* at pgs. 1-6.

<sup>85</sup> See Juzgado de Instrucción No. II de Bata Litoral, Judgment, May 31, 2019, pgs. 1-5.

<sup>86</sup> José Luis Abaga Nguema, Secretario de lo Penal, Audiencia Provincial del Litoral, March 18, 2019.

<sup>87</sup> *Id*.

<sup>88</sup> Ministerio Fiscal, Escrito de Calificaciones Provisionales, Determinación de las penas, February 22, 2019, pg. 13; Ministerio de Justicia, Código Penal, Título III, Capítulo III, Sección Primera, Article 30.

<sup>89</sup> Monitor’s Notes, March 25, 2019; Monitor’s Notes, March 26, 2019.



## Family Members

A number of the defendants were family members of central players who had not been arrested.<sup>90</sup> The prosecutors argued that said family members (brothers, uncles, in-laws) had knowledge of the coup attempt due to their connection to central players and that they should have intervened. This line of argument was particularly prevalent with defendants who were military officers. For example, Isaac Newton Ela, a military lieutenant, testified that he did not know anything and was only there because his uncle Bienvenido (alias Riki) was a central player. The prosecutors kept asking him if he had informed his superiors of the coup plot, to which he repeatedly affirmed that he did not know of any coup plot and could not have informed his superiors about something he knew nothing about.<sup>91</sup>

## Additional Equatoguinean Civilians

The prosecutors additionally charged a number of Equatoguinean civilians who possessed seemingly attenuated connections to the alleged plot. For example, Desiderio Ndong Abeso, who worked for U.S. oil company Marathon, was arrested because he picked up Hector from the airport. The prosecution claimed that Hector had informed Desiderio of the entire coup plot during the ride from the airport.<sup>92</sup> Similarly, prosecutors alleged that David Cayetano, the owner of the house rented in Ebibeyin, knew that his house was being used to shelter terrorists.<sup>93</sup>

## High Ranking Defendants

A few of the defendants had previously held high ranking positions in Obiang's government. Given the lack of evidence against them, it is possible that they were prosecuted in order to strip them of power and preclude potential opposition to Obiang – a view expressed by local sources. For example, defendant Enrique Nsue Anguesemo was the former Ambassador to Chad for Equatorial Guinea. He testified that he had been informed of a possible coup plot and reported the rumors to the Minister of External Security, per official protocol.<sup>94</sup> The prosecutors repeatedly asked Mr. Anguesemo why he had not directly called the head of state, President Obiang.<sup>95</sup> Meanwhile, Julian Ondo Nkumu, who had previously been Director General of

---

<sup>90</sup> Within the Fang culture, the definition of family is extensive and based on community instead of direct blood ties. Carlota Nsang Ovono, "Fang Marriage, in *Las Formas del Matrimonio Bantú en Guinea Ecuatorial*", Dykinson, 2018, pg. 151.

<sup>91</sup> Monitor's Notes, March 26, 2019.

<sup>92</sup> Juzgado de Instrucción No. II de Bata-Litoral, Declaración de Hector Santiago Ela Mbang, pgs. 13-14; Monitor's Notes, March 28, 2019.

<sup>93</sup> Monitor's Notes, March 22, 2019; Monitor's Notes, March 25, 2019.

<sup>94</sup> Monitor's Notes, March 28, 2019.

<sup>95</sup> Id.

Presidential Security, stated in his declaration before the investigating judge: “I ratify and maintain that none of [the alleged plotters] maintained any communication with me, whether by telephone or in person. And further, I remain loyal to the Head of state, despite my current state of health.”<sup>96</sup>

### **Equatoguinean Military Officers**

The prosecutor’s office charged military officers who were serving at the Kie-Osi border post between Equatorial Guinea and Cameroon at the time of the coup. Based on testimony at trial, some were working as border guards in late December 2017 – when the alleged mercenaries passed through the border – while others were not on duty that day.<sup>97</sup>

### **Foreign Nationals**

The prosecutors’ office charged a large number of foreign defendants – primarily from Chad, the Central African Republic, and Cameroon – for serving as mercenaries. The foreign defendants repeatedly confirmed in court that they had been promised work and had no knowledge of an alleged coup plot.<sup>98</sup>

---

<sup>96</sup> Juzgado de Instrucción No. II de Bata Litoral, Declaración de Julian Ondo Nkumu Mangué, March 27, 2018.

<sup>97</sup> Monitor’s Notes, April 9-10, 2019.

<sup>98</sup> For example, testimony of Tom Hamad Awan, a Chadian national, Monitor’s Notes, April 15, 2019. See also testimony of Hamad Tourou Yal, a Chadian national, Monitor’s Notes, April 16, 2019.



## A. THE MONITORING PHASE

As part of the Clooney Foundation for Justice’s TrialWatch initiative, the ABA Center for Human Rights deployed five observers to Equatorial Guinea to monitor the mass trial. The monitors were fluent in Spanish and able to understand the proceedings. Prior to the trial, the Center conducted background research, consulted with country experts, and prepared a memorandum for monitors outlining the case’s procedural history and the political/legal context in Equatorial Guinea.

The monitors did not experience any significant impediments in entering the courtroom<sup>99</sup> and were present for the entirety of the trial, which began on March 22, 2019, before the Second Criminal Chamber of the Bata Provincial Court and proceeded steadily until the pronouncement of the judgment on May 31, 2019.

The monitors used the TrialWatch App to record and track what transpired in court and the degree to which the defendant’s fair trial rights were respected. The monitors’ TrialWatch App responses and notes were shared with Juan Mendez, former United Nations Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the member of the TrialWatch Experts Panel responsible for evaluating the fairness of the trial.

## B. THE ASSESSMENT PHASE

To evaluate the trial’s fairness and arrive at a grade, TrialWatch Expert Juan Mendez reviewed responses to the standardized questionnaire (collected via the CFJ TrialWatch App) as well as information collected by monitors during the proceedings. Former Special Rapporteur Mendez found that the trial failed to conform to many fundamental standards of fairness that are binding norms of international law.

Per Professor Mendez’s assessment, the convictions and sentences were issued by a court that failed to meet the requirement of independence from other branches of the State. This lack of independence was evidenced by the executive’s mid-trial appointment of judges from the military and police, as well as by the presence of a military “observer” who did little to hide his influence over the judges. Meanwhile, there were many examples of the demonstrable partiality of the presiding judge, particularly with respect to rulings that contravened the principle of equality of arms between prosecution and defense. In addition, despite continuous pleas by the defense, there was no consideration of the

---

<sup>99</sup> Monitors were pulled aside and asked to provide their passports and explain their presence but were ultimately let into the courtroom and left undisturbed.

invalidity of allegedly torture-tainted confessions, which were repeatedly used against defendants. Indeed, neither the court nor the prosecution attempted to ensure that all such statements were freely and knowingly given, the State's responsibility under both the Convention against Torture and the International Covenant on Civil and Political Rights. Finally, given the dearth of evidence presented by the prosecution, the court's conviction of 112 defendants evinced its bias as well as its disregard for the presumption of innocence.



## A. APPLICABLE LAW

This report draws upon the International Covenant on Civil and Political Rights (ICCPR);<sup>100</sup> jurisprudence from the United Nations Human Rights Committee (HRC), tasked with monitoring implementation of the ICCPR; the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT);<sup>101</sup> and jurisprudence from the Committee against Torture, tasked with monitoring implementation of CAT. Equatorial Guinea acceded to the ICCPR in 1987 and to the CAT in 2002. Additionally, the report draws upon relevant provisions in Equatorial Guinea's criminal and criminal procedure codes.

## B. INVESTIGATION AND PRETRIAL STAGE VIOLATIONS

In the investigation and pretrial stage of the proceedings, the authorities committed violations that compromised the fairness of the trial. Many of the accused were detained for over a year without access to a lawyer or being informed of the charges against them. Defendants were reportedly frequently forced to give declarations under torture during this period.

### Right to be Informed of the Reasons for Arrest and the Charges

The right to be informed of the charges against you is so fundamental that it appears twice in the ICCPR - once with respect to arrest and once with respect to trial. ICCPR Article 9(2) states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." Similarly, ICCPR Article 14(3)(a) states: "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him." The Human Rights Committee has determined that the right to be informed of the charges requires that the defendant be provided with details regarding "both the law and the alleged general facts on which the charge is based."<sup>102</sup>

<sup>100</sup> UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, Vol. 999, pg. 171 [hereinafter "ICCPR"].

<sup>101</sup> UN General Assembly, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, Vol. 1465, pg. 85 [hereinafter "CAT"].

<sup>102</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 31.

However, as repeatedly stated in court, the Equatoguinean authorities failed to inform many defendants of the rationale behind their arrests or the charges against them. During the examination of Patricio Micha Medang on March 27, 2019, for example, the accused stated that he had not been so informed upon arrest and detention.<sup>103</sup> Similarly, Enrique Nsue Anguesemo, the former ambassador to Chad, testified that he had not been informed of the reasons for his arrest or the charges against him in any manner, written or verbal.<sup>104</sup> In contrast, defendant Onofre Otogo Otogo testified that he was immediately informed of the charges against him when detained.<sup>105</sup> Such testimony, however, was the anomaly.

Even after the trial had already started, multiple defendants stated that they were still unaware of the alleged facts connecting them to the coup. On April 30, 2019, for example, a group of former military officers who testified repeatedly asserted that they “had no idea why” they were being prosecuted.<sup>106</sup>

Omissions in the prosecution’s submissions partially explain why defendants remained in the dark about the nature of the charges. The criminal complaints issued in February 2018 and April 2018 did not provide a detailed factual basis for the case against the named defendants and the accusations were not individualized.<sup>107</sup> Meanwhile, as noted above, the charging document issued in February 2019 failed to clarify matters, relying on broad groupings and again lacking individualized explanations of each defendant’s criminal responsibility.<sup>108</sup> In the facts section of the charging document, approximately 70 defendants are not even mentioned.

Violations of the right to be informed of the reasons for arrest and/or the charges were heightened by the fact that foreign defendants did not consistently receive interpreters upon arrest.<sup>109</sup> The Human Rights Committee has repeatedly held that the reasons for arrest as well as any charges “must be given in a language that the arrested person understands.”<sup>110</sup> To the contrary, foreign defendants reported not knowing what the charges were pretrial due to the language difference.<sup>111</sup>

---

<sup>103</sup> Micha Medang was a military officer who was called to meet with his supervisor and then detained. The Court refused to permit further questioning regarding his detention. Monitor’s Notes, March 27, 2019. See also testimony of Desiderio Ondo Ndong (stating that he was not informed of the charges against him upon arrest and detention), Monitor’s Notes, March 27, 2019.

<sup>104</sup> Monitor’s Notes, March 28, 2019.

<sup>105</sup> Monitor’s Notes, March 26, 2019.

<sup>106</sup> Monitor’s Notes, April 30, 2019.

<sup>107</sup> See Ministerio Fiscal, Querrela Criminal, February 6, 2018; Ministerio Fiscal, Ampliación de la Querrela Criminal, April 20, 2018.

<sup>108</sup> Ministerio Fiscal, Escrito de Calificaciones Provisionales, February 22, 2019.

<sup>109</sup> Interview with Court Interpreter, Monitor’s Notes, March 26, 2019; Monitor’s Notes, April 29, 2019.

<sup>110</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, paras. 26, 29-30; Human Right Committee, *Wilson v. Philippines*, U.N. Doc. CCPR/C/79/D/868/1999, November 11, 2003, paras. 3.3, 7.5, 8.

<sup>111</sup> See Monitor’s Notes, April 23, 2019.

## Right to Judicial Review of Detention

When an individual is detained, international law requires prompt judicial review. ICCPR Article 9(3) mandates that criminal detainees “be brought promptly before a judge or other officer authorized by law to exercise judicial power and ... be entitled to trial within a reasonable time or to release.” The Human Rights Committee has interpreted this provision to mean that the time between arrest and judicial presentation must be limited to a maximum of 48 hours absent exceptional circumstances.<sup>112</sup>

In contravention of Article 9(3), prompt judicial review failed to occur in the case at hand. The only judicial order regarding detention was issued in April 2018, four months after the first defendants had been detained.<sup>113</sup> This time period far exceeds the 48-hour threshold established by the ICCPR. The prosecution later expanded the charges to include additional defendants,<sup>114</sup> none of whom received judicial review of their detention. Moreover, even the first tranche of defendants who received judicial review in April 2018 languished in prison until the start of trial (an additional 11 months) without being provided another opportunity for judicial review. The Human Rights Committee has ruled that even legitimate detention becomes arbitrary without periodic re-evaluation.<sup>115</sup>

Meanwhile, it appears that the investigating judge did not evaluate the circumstances of each defendant’s case before ordering that all accused be kept in pretrial detention. Under the ICCPR, judicial review requires an individualized determination of whether a defendant should be released or held in pretrial detention.<sup>116</sup> Article 9(3) establishes an assumption of release excepting situations in which the defendant poses a security threat, there is a risk of interference with evidence, or there is a risk of flight.<sup>117</sup> The *Auto Acordando la Busca y Captura* – the aforementioned judicial decision ordering pretrial detention – provides no justification for or information regarding the basis for this determination apart from stating that the prosecutor’s office requested the detention of all involved given evidence of crimes against the head of state,<sup>118</sup> a blatant violation of Article (9)(3).<sup>119</sup>

---

<sup>112</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/CG/35, December 16, 2014, para. 33.

<sup>113</sup> See *Juzgado de Instrucción No. II de Bata Litoral, Auto Acordando la Busca y Captura, Parte Dispositiva, Considerando Cuarto*, April 23, 2018.

<sup>114</sup> See *Juzgado de Instrucción No. II de Bata Litoral, Auto de Ampliación de Conclusión, Resultando Tercero*, February 6, 2019.

<sup>115</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 12.

<sup>116</sup> Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/CG/35, December 16, 2014, para. 36.

<sup>117</sup> See Human Rights Committee, *Kulov v. Kyrgyzstan*, U.N. Doc. CCPR/C/99/D/1369/2005, August 19, 2010, para. 8.3.

<sup>118</sup> *Juzgado de Instrucción No. II de Bata Litoral, Auto Acordando la Busca y Captura, Parte Dispositiva, Considerando Cuarto*, April 23, 2018.

<sup>119</sup> *Id.*



## Right to Communication with Counsel

A criminal defendant's right to legal assistance is a fundamental component of fair trial guarantees. ICCPR Article 14(3)(b) provides that criminal defendants must "have adequate time and facilities for the preparation of [their] defense and to communicate with counsel of [their] own choosing." In the case at hand, defendants were held incommunicado for almost the entire duration of their detention.

Defense lawyers were not allowed access to their clients until three days before trial: as mentioned above, counsel learned of the lifting of incommunicado detention on March 18, 2019, when the Secretary of the Bata court publicly announced on state TV that defense lawyers would have 72 hours to meet with their clients.<sup>120</sup> Exacerbating the problems with this tiny window of communication, approximately half of the defense lawyers lived in Malabo – a flight away from Bata, where defendants were being held. These lawyers were thus unable to meet with their clients until the following day.

Additionally, according to defense counsel, the authorities failed to provide interpreters during the three-day window, meaning that some lawyers could not communicate with their foreign clients at all prior to trial.

## Right to Interpretation

The right to interpretation is essential to ensuring a fair trial and is codified in Article 14(3)(f) of the ICCPR. As established by the HRC, the right is applicable during pretrial proceedings<sup>121</sup> and protects "aliens as well as [] nationals."<sup>122</sup> In *Singarasa v. Sri Lanka*, for example, the HRC found a violation of Article 14(3)(f) where the applicant was convicted on the basis of a confession extracted without an interpreter present.<sup>123</sup>

In the present case, the right to interpretation was repeatedly violated during the investigative stage. Multiple defendants were foreign nationals – primarily from Chad, Cameroon, and CAR – who did not speak Spanish. During pretrial interrogations of these defendants, the Equatoguinean authorities generally failed to provide interpretative assistance. One defense lawyer, for example, alleged that the statements used against her foreign clients had been taken without an attorney or interpreter present, in contravention of HRC jurisprudence.<sup>124</sup> Two Chadian defendants reported that although interpreters were present for questioning, the interpreters left the room

---

<sup>120</sup> José Luis Abaga Nguema, Secretario de lo Penal, Audiencia Provincial del Litoral, March 18, 2019.

<sup>121</sup> See Human Rights Committee, *Singarasa v. Sri Lanka*, U.N. Doc. CCPR/C/81/D/1033/2001, August 2, 2004, para. 7.2.

<sup>122</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 40.

<sup>123</sup> Human Rights Committee, *Singarasa v. Sri Lanka*, U.N. Doc. CCPR/C/81/D/1033/2001, August 2, 2004, para. 7.2.

<sup>124</sup> Monitor's Notes, May 21, 2019.

when the defendants were presented with “confessions” to sign: the defendants thus did not understand the contents of what they were endorsing.<sup>125</sup>

In failing to ensure adequate interpretation for all defendants during pretrial proceedings, the authorities breached the guarantees established by Article 14(3)(f).

## **Torture and Other Cruel, Inhuman, or Degrading Treatment**

International law imposes an absolute prohibition on torture.<sup>126</sup> Nonetheless, at trial defendants credibly testified that the Equatoguinean authorities had repeatedly tortured them to induce confessions of guilt as well as accusations against others. During the hearing on March 28, 2019, for example, Secundino Esono Mba testified that he had devised an accusation against Lt. Col. Desiderio Ondo Ndong in an attempt to get the authorities to stop torturing him. In turn, Desiderio Ndong Abeso testified that he had been tortured “like a crocodile”, with his arms pulled behind his back, until he admitted to knowing people he had never met.<sup>127</sup> Several military defendants not only stated that they had been tortured but alleged that torture was common practice within the Equatoguinean security forces.<sup>128</sup>

Beyond torture, international law prohibits cruel, inhuman, or degrading treatment.<sup>129</sup> Cruel, inhuman, or degrading treatment encompasses treatment that causes mental or physical suffering and/or offends basic human dignity.<sup>130</sup> The Human Rights Committee has found violations in cases of small cells, lack of natural light, poor sleeping conditions, the deprivation of food/water, and limitations on bathroom access.<sup>131</sup>

In the present case, defendants reported conditions of detention that mirrored those deemed violations by the HRC. Secundino Esono Mba, for example, stated that defendants’ cells were 2mx2m small and that all windows were covered for the entire time he and the other accused were detained.<sup>132</sup> An Equatoguinean defendant told a trial monitor that foreign nationals were subjected to heightened mistreatment, with guards forcing them to sleep on the floor and also delivering food on the floor.<sup>133</sup> A foreign

---

<sup>125</sup> Monitor’s Notes, April 24, 2019.

<sup>126</sup> CAT; ICCPR, Article 7.

<sup>127</sup> Monitor’s Notes, March 28, 2019.

<sup>128</sup> Testimony of Patricio Micha Medang, Monitor’s Notes, March 27, 2019; Testimony of Isaac Newton Ela, Monitor’s Notes, March 26, 2019.

<sup>129</sup> See ICCPR, Article 7.

<sup>130</sup> See Human Rights Committee, General Comment No. 20, March 10, 1992, paras. 2, 5.

<sup>131</sup> Human Rights Committee, Sannikov v. Belarus, U.N. Doc. CCPR/C/122/D/2212/2012, April 6, 2018, paras. 2.9, 6.2; Human Rights Committee, Barkovsky v. Belarus, U.N. Doc. CCPR/C/123/D/2247/2013, July 13, 2018, para. 6.2; Human Rights Committee, Xavier Evans v. Trinidad and Tobago, U.N. Doc. CCPR/C/77/D/908/2000, May 5, 2003, paras. 2.3, 6.4.

<sup>132</sup> Monitor’s Notes, March 28, 2019.

<sup>133</sup> Monitor’s Notes, March 27, 2019. The Human Rights Committee has found that forcing defendants to sleep on the floor, especially when this measure is not imposed on all defendants, violates Article 7. Human Rights Committee, Uchetov v. Turkmenistan, U.N. Doc. CCPR/C/117/D/2226/2012, July 15, 2016, paras. 2.6, 7.2.

defendant likewise described discrimination based on nationality, testifying that accused not from Equatorial Guinea were denied potable water, health care, and the opportunity to wash their clothes.<sup>134</sup>

The Human Rights Committee has found that incommunicado detention can amount to cruel, inhuman, or degrading treatment due to “the degree of suffering involved in being incarcerated indefinitely without contact with the outside world.”<sup>135</sup> As noted above, defendants were held incommunicado for the duration of their pretrial detention: on the first day of trial, one of the defense lawyers requested the court’s dispensation to permit defendants to greet their family members in court.<sup>136</sup> Defendant Desiderio Ondo Ndong even used his testimony to plead to be allowed visitors once convicted.<sup>137</sup>

Lastly, the death of at least two detainees in the Public Prison of Ncoantoma serves as further potential evidence of an Article 7 violation.<sup>138</sup> The Human Rights Committee has found that “loss of life occurring in custody, in unnatural circumstances, creates a presumption of arbitrary deprivation of life by State authorities”.<sup>139</sup> Defendants’ repeated testimony regarding abuses in detention heightens the likelihood that ill-treatment combined with a lack of medical care led to the deaths.<sup>140</sup>

## **C. VIOLATIONS AT TRIAL**

### **Right to Prepare a Defense**

ICCPR Article 14(3)(b) requires that every defendant “have adequate time and facilities for the preparation of his defense.” The calculus of what constitutes adequate time involves inquiries into the extent to which parties are able to familiarize themselves with the evidence, whether the case is particularly complex, whether the charges are serious, the volume of relevant materials, and the amount of time provided. In *Bee v. Equatorial Guinea*, for example, the Human Rights Committee found that informing the defense of the basis of criminal charges only two days before the start of trial was insufficient time for adequate preparation.<sup>141</sup>

---

<sup>134</sup> Monitor’s Notes, April 23, 2019.

<sup>135</sup> Human Rights Committee, *Aboussedra v. Libya*, U.N. Doc. CCPR/C/100/D/1751/2008, October 25, 2010, paras. 7.2, 7.4; Human Rights Committee, General Comment No. 20, March 10, 1992, para. 11.

<sup>136</sup> Monitor’s Notes, March 22, 2019.

<sup>137</sup> Monitor’s Notes, March 27, 2019.

<sup>138</sup> See Ministerio Fiscal, *Escrito de Calificaciones Provisionales, Otro Si Digo*, February 22, 2019, pg. 16 (announcing death in detention of Alfredo Mba Nguema); Monitor’s Notes, March 22, 2019 (confirming death in detention of Alfredo Mba Nguema); Monitor’s Notes, March 28, 2019 (announcing death in detention of Carmelo Ebo Nduy).

<sup>139</sup> Human Rights Committee, General Comment No. 36, U.N. Doc. CCPR/C/GC/36, October 30, 2018, para 29.

<sup>140</sup> Alfredo Mba Nguema died in detention prior to trial. Carmelo Ebo Nduy died on the third day of trial.

<sup>141</sup> Human Rights Committee, *Bee v. Equatorial Guinea*, U.N. Doc. CCPR/C/85/D/1152 & 1190/2003, October 31, 2005, para. 6.3.

In the present case, the time allotted for preparation fell short of ICCPR standards. The prosecution was complex, involving over 100 defendants, a mass of pretrial materials, and difficult legal issues such as trials *in absentia* and the combination of military and civilian defendants. Meanwhile, the charges were extremely grave, with alleged offenses including terrorism, treason, and crimes committed against the head of state. Notwithstanding these factors, defense lawyers were only appointed in January 2019 although the case had been ongoing since December 2017. Further, defense lawyers were given limited notice regarding pretrial procedures and the scheduling of the trial. As mentioned above, the court announced on March 18, 2019 that the trial would start on March 22, 2019: four days before the beginning of the proceedings. This truncated time for preparation is grossly inadequate under the ICCPR.

The Human Rights Committee has established that adequate facilities must include access to documents and other evidence, including all exculpatory materials.<sup>142</sup> Again, the case at hand saw repeated violations of this right. According to a prosecutor and defense lawyers, counsel received only the declarations of their respective clients and, in certain cases, select pretrial decisions. The explanation given for denial of access to the entire case file was that it filled three suitcases of paper and would be too expensive to copy for every lawyer.<sup>143</sup>

As stated by various defense lawyers at trial, this meant that documents essential to the preparation of a defense were missing, including the declarations of other defendants that potentially implicated their own clients, documentary evidence, and exculpatory evidence.<sup>144</sup> One defense lawyer noted that she did not receive pretrial documents until the first day of trial, thus undermining her ability to effectively challenge pretrial issues.<sup>145</sup>

Even with respect to the parts of the case file made available to counsel, the aforementioned lack of detail prevented lawyers from preparing an effective defense. Given that the prosecution's submissions failed to provide individualized factual bases for the respective charges, it was nearly impossible for defense lawyers to understand why their clients were being prosecuted and, correspondingly, to gather evidence and develop lines of argument.

Due to the inadequate "facilities" outlined above, the defense did not submit any evidentiary requests at the commencement of trial. Instead, counsel were forced to make *ad hoc* requests throughout the proceedings based on information garnered from the

---

<sup>142</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 33.

<sup>143</sup> Felix Nguema Mba Afang, Fiscal de la Región, Interview with Monitor, March 28, 2019; Statement of the President of the Court in response to defense lawyer Hermenegildo Alogo Monsuy Nchama, Monitor's Notes, March 22, 2019.

<sup>144</sup> Monitor's Notes, March 22, 2019.

<sup>145</sup> Maria de Jesus Bikene, Interview with Monitor, Monitor's Notes, March 25, 2019.

prosecution's arguments.<sup>146</sup> In contrast, the prosecution made a number of evidentiary requests prior to trial.<sup>147</sup>

Meanwhile, near the end of the trial, on May 20, 2019, the prosecution introduced new charges, including the charges of negligence and inciting military sedition.<sup>148</sup> The addition of previously unmentioned offenses thoroughly undercuts the right to be informed of the charges and the right to prepare a defense. Because of the insertion of charges at such a late stage, counsel had no opportunity to call witnesses, present evidence, or formulate arguments. Moreover, the prosecution reportedly refused to provide defense attorneys with copies of the new charge sheet, further preventing counsel from effectively responding to the offenses.

## **The Right to an Independent, Competent, and Impartial Tribunal**

Article 14(1) of the ICCPR states, in part: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law..." As asserted by the HRC, the requirement of competence, independence and impartiality "is an absolute right that is not subject to any exception."<sup>149</sup>

The defendants in the present case did not receive a fair trial because the court was not independent, competent, or impartial and was likewise not established by law.

### **Judicial Independence**

With respect to judicial independence, the Human Rights Committee has proclaimed: "[t]he requirement of independence refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature".<sup>150</sup>

---

<sup>146</sup> See Monitor's Notes, March 22, 2019.

<sup>147</sup> See Juzgado de Instrucción No. II de Bata Litoral, Judgment, May 31, 2019, pg. 22.

<sup>148</sup> Monitor's Notes, May 20, 2019.

<sup>149</sup> See Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 19.

<sup>150</sup> *Id.*

The HRC has further noted that a “situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal.”<sup>151</sup>

Throughout the trial at hand, it was evident that there was no functional separation between the executive and judicial branches. At the beginning of the proceedings, for example, the presiding judge publicly announced that the Equatoguinean President was the First Magistrate of the Nation. Meanwhile, midway through the trial, the President ordered by executive decree that two magistrates from the military and police<sup>152</sup> - Rear Admiral of the Navy Francisco Javier Nzo Mba and Police General Francisco Agustin Ela Ondo - and two prosecutors from the military and police - Aviation General Francisco Asumu Obama and Police General Vicente Mba Abeso - be added to the proceedings despite the fact that the trial was taking place before a civilian court.<sup>153</sup> These individuals were reportedly close to the President and had limited judicial experience.<sup>154</sup>

The egregiousness of the executive decree<sup>155</sup> was exacerbated by three factors: 1) the new composition of the Court violated Equatoguinean law, which clearly requires that cases such as the present one be heard by civilian judges and that the naming of magistrates conform with established procedures (to be discussed in more detail below);<sup>156</sup> 2) the addition of magistrates and prosecutors transpired while the trial was in progress; and 3) the President was a named victim in the case. No explanation for the appointments was given to the defendants and their attorneys.<sup>157</sup>

From April 8 onward, monitors reported that an individual started attending hearings on a daily basis, relaying information to the magistrates and prosecutors. Journalists and defense counsel informed monitors that this person was a high ranking military official. On April 15, a monitor observed the official passing notes to the magistrates. Another monitor noted that on May 21, a uniformed military officer brought a briefcase and books to the courtroom for prosecutors and later served as a messenger between the official and the magistrates. Namely, the military official whispered messages to this intermediary, who then went and spoke to the president of the court. Notably, immediately after their conversation, the president requested that the defense lawyer making a presentation conclude his remarks. Similarly, on May 23, court security personnel passed

---

<sup>151</sup> Id; Human Rights Committee, *Oló Bahamonde v. Equatorial Guinea*, U.N. Doc. CCPR/C/49/D/468/1991, November 10, 1993, para. 9.4.

<sup>152</sup> In court, the parties referred to both the new additions from the military and the new additions from the police as military officials due to the reported lack of practical distinction between the different branches. See also Fundamental Law of Equatorial Guinea, Articles 129-130.

<sup>153</sup> See Radio Macuto, “Nadie tiene que volvir a morir en Ngolo Ayop como antes”, April 3, 2019. Available at <https://www.radiomacuto.cl/2019/04/03/nadie-tiene-que-volver-a-morir-en-ngolo-ayop-como-antes/>.

<sup>154</sup> Id.

<sup>155</sup> There is no record or copy of an actual Decree. Rather information with respect to the Decree was announced on a local newscast but never published on the official website of the State.

<sup>156</sup> See Articles 11, 162 of Law 5 of 2009, Organic Law of the Judicial Power of Equatorial Guinea.

<sup>157</sup> The monitor who observed this hearing reported that the presiding judge limited himself to saying that - as everyone present could see - the composition of the bench had changed.



whispered messages between the president of the court and the military official. The monitor heard the official whisper to one of the nearby guards: "they should finish at 1:00". Subsequently, the president closed the session at 1:30 p.m. without any explanation.<sup>158</sup>

The presence and seeming influence of this observer, an officer of the Republic, was a clear demonstration of the executive's interference in the trial, as was the excessive and intimidating security presence in the courtroom and its vicinity. As reported by monitors, the streets in front of the courthouse were closed, with military personnel patrolling the area. Approximately 5 or more military personnel were stationed at each of the entrances to the court building, all wearing full combat gear and displaying high powered weaponry. Meanwhile, military officers filled the hallways leading to and from the courtroom.

Inside the court a human fence of uniformed personnel stood guard between the public and the defendants. Additionally, military officers with combat weapons were positioned at the two side doors of the room as well as behind the judges. One officer patrolled the public gallery at the back of the room. The ubiquity of the military, which is strongly tied to the President, made an unmistakable statement regarding executive supervision of the proceedings.

### **Judicial Impartiality**

As mentioned above, Article 14(1) of the ICCPR mandates judicial impartiality. The HRC has stated: "[t]he requirement of impartiality has two aspects. First, judges must not allow their judgment to be influenced by personal bias or prejudice, or have preconceived ideas about the matter under study, or act in a manner that improperly promotes the interests of one of the parties to the detriment of the other. Second, the Tribunal must also appear impartial to a reasonable observer."<sup>159</sup>

Throughout the proceedings, the presiding judge disregarded these requirements, exhibiting bias and undermining the necessary procedural balance between the prosecution and the defense. No reasonable observer could have believed the court to be impartial.

The court, for example, prevented the defense from putting forth arguments regarding violations committed in the pretrial stage, stating that any such abuses were irrelevant to the trial. On March 22, counsel Hermenegildo Alogo Monsuy Nchama raised the issue that defense attorneys had received only a fraction of the evidence, while the prosecution

---

<sup>158</sup> On April 15, 2019, the court rejected a defense motion that the inclusion of 2 military magistrates, 2 military prosecutors, and a military general as an observer was unlawful, ignoring the executive's palpable encroachment on judicial independence.

<sup>159</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 21. See also Human Rights Committee, *Karttunen v. Finland*, U.N. Doc. CCPR/C/46/D/387/1989, November 5, 1992, para. 7.2.



had access to the entire case file.<sup>160</sup> In response, the court president asserted that the case file was 3 suitcases worth of paper: too hefty to distribute to all defense attorneys. The president cut off attempted rebuttal arguments by several lawyers, stating that the court had provided the defense with the most important documents.

The court further shut down defense questions about abuses in custody. For example, on March 27, during the examination of former military official Patricio Micha Medang, the president intervened when defense counsel asked about Medang's detention, deeming the issue immaterial.<sup>161</sup> Most problematically, the court barred defense questions with respect to torture. During the same examination of Patricio Micha Medang, a defense lawyer attempted to ask Medang about whether statements he gave to interrogators were coerced by torture. At this point, the court president interrupted, precluding further questions and avowing: "this is not a trial about torture."<sup>162</sup> Subsequently, when Matias Ondo Mba Nchama stated during direct examination that he had been tortured, the president instructed the defense to stop "making a spectacle" of the process.<sup>163</sup>

At times, the president arbitrarily limited defense counsel's time for questioning to just minutes, a constraint clearly detrimental to the mounting of a robust defense, to competent examination of witnesses, and to the presentation of cogent legal arguments based on the evidence. During the questioning of former ambassador to Chad Enrique Nsue Anguesemo, for example, the majority of defense counsel were subjected to a one-minute cap. When a lawyer attempted to ask a question about Mr. Anguesemo's responsibilities as ambassador, the judge interrupted him and stated: "Your minute is up."<sup>164</sup>

Correspondingly, the court repeatedly prevented defense counsel from making objections and, near the end of the proceedings, denied defense counsel the opportunity to question the prosecution's expert witnesses.<sup>165</sup> These limitations - which violate the right to counsel and the right to call and examine witnesses - were all the more egregious because the court placed no such restrictions on prosecutors, a discriminatory action that contravened the principle of equality of arms and demonstrated the court's bias.

The court also permitted the use of torture-tainted statements, shattering the privilege against self-incrimination and further evincing the court's lack of impartiality. For example, the aforementioned defendant Patricio Micha Medang testified that he had given his

---

<sup>160</sup> Monitor's Notes, March 22, 2019.

<sup>161</sup> Monitor's Notes, March 27, 2019. See also Monitor's Notes, April 16, 2019; Monitor's Notes, April 26, 2019.

<sup>162</sup> Monitor's Notes, March 27, 2019.

<sup>163</sup> Monitor's Notes, March 27, 2019.

<sup>164</sup> Monitor's Notes, March 28, 2019. These time limitations will be addressed more thoroughly in the section on the right to call and examine witnesses.

<sup>165</sup> Monitor's Notes, May 7, 2019. The judge stated that the defense could address the testimony of the prosecution's experts during closing arguments.

declaration “under the pressure of torture”.<sup>166</sup> The judge nonetheless allowed the prosecution to proceed with questions based on Medang’s pretrial declaration. This tolerance of torture-tainted statements continued throughout the proceedings. On April 17, almost a month after Medang’s appearance in court, defendant Goundoukou Gary testified that his confession was coerced by torture. Again, the judge neither excluded Goundoukou’s statements from evidence nor instituted any of the additional measures required by CAT – to be discussed below. In affording the prosecution leeway to build its case through unlawful means, the court’s bias was on full display.

The court correspondingly permitted the prosecution to rely on defendant statements obtained without the presence of counsel. In so doing, the court did not ask any questions regarding the circumstances of the interrogations or take any action to remedy these clear violations of Article 14(3)(b). Such allowances benefited the prosecution to the “detriment” of the defense and would have led any reasonable observer to doubt the court’s objectivity.

Finally, the judgment itself serves as evidence of the court’s lack of impartiality, as will be discussed in detail with respect to presumption of innocence and the right to a well-reasoned judgment. In convicting 112 individuals of participation in the alleged coup attempt, the court ignores the significant inconsistencies and abuses raised by the defense, resolving all issues in the prosecution’s favor.

In conclusion, the court’s conduct throughout the trial as well as its convicting judgment “improperly promot[ed] the interests” of the prosecution over the defense, in violation of the principle of judicial impartiality set forth in Article 14(1). Moreover, these actions created the appearance of bias, contravening the second prong of the ICCPR standard.

### **Violations of Article 14(1) Writ Large**

As established by the HRC, the right to an independent, competent, and impartial tribunal is often violated when civilians are tried before military courts. In assessing these situations, the HRC has typically described violations in general terms, without specifying which prong of Article 14(1) is at play.<sup>167</sup>

In its Concluding Observations on the second periodic report of Kyrgyzstan, for example, the HRC raised concerns regarding the competence of military courts in cases in which military officials and civilians had been jointly accused, requiring the State Party to “eliminate” without delay further such prosecutions.<sup>168</sup> Similarly, in its Concluding Observations on the fourth periodic report of Rwanda, the HRC noted that while military

---

<sup>166</sup> Monitor’s Notes, March 27, 2019.

<sup>167</sup> See Organization for Security and Cooperation in Europe, “Legal Digest of International Fair Trial Rights”, 2012, pgs. 58, 68-70.

<sup>168</sup> Human Rights Committee, Concluding Observations on the Second Periodic Report of Kyrgyzstan, U.N. Doc. CCPR/C/KGZ/CO/4, April 23, 2014, para. 20.

courts may lawfully try civilians in limited circumstances, “[t]he State party should take the legislative and other measures to ensure that ... [m]ilitary courts are prevented from exercising jurisdiction over civilians.”<sup>169</sup>

The only exception to this standard is where the State party demonstrates a special justification for the trial of civilians before a military court: “that the regular civilian courts are unable to undertake the trials; that other alternative forms of special or high-security civilian courts are inadequate to the task; and that recourse to military courts is unavoidable. The State party must further demonstrate how military courts ensure the full protection of the rights of the accused pursuant to article 14.”<sup>170</sup>

These requirements were not met in the present case. As discussed above, a midstream executive decree resulted in the addition of judges and prosecutors who were members of the military and police. Meanwhile, around this same time, a high-ranking military official started attending the proceedings and relaying messages to the judges and prosecution. Finally, in the case’s last week, the prosecution added the charges of negligence, inciting sedition, and abandonment of service, which are found not in ordinary criminal legislation but in Equatorial Guinea’s Military Penal Code.<sup>171</sup> The court ultimately convicted 20 individuals of military offenses.<sup>172</sup> Due to said developments, the court evolved into a hybrid military tribunal.

There was, however, no explanation for this transformation, let alone the multi-pronged justification mandated by the HRC. According to defense counsel, lawyers were not officially notified of the executive decree and it was not made available in writing. Correspondingly, neither the prosecutor nor the court offered any rationale for why military offenses had been incorporated into a civilian trial or why a military “observer” was seemingly informing the court’s decisions. Absent special justification, the prosecution of civilians before a hybrid military tribunal contravenes the Article 14(1) principles set forth by the HRC.

### **Established by Law**

Article 14(1) of the ICCPR requires that a tribunal be “established by law.” The HRC has found violations in this respect where the given court did not comply with domestic regulations due to improper constitution of a jury.<sup>173</sup> In the present case, the court

---

<sup>169</sup> Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Rwanda, U.N. Doc. CCPR/C/RWA/CO/4, May 2, 2016, paras. 33-34.

<sup>170</sup> Human Rights Committee, *Madani v. Algeria*, U.N. Doc. CCPR/C/89/D/1172/2003, March 28, 2007, para. 8.7. See Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 22.

<sup>171</sup> Monitor’s Notes, May 20, 2019.

<sup>172</sup> Juzgado de Instrucción No. II de Bata Litoral, Judgment, May 31, 2019, pgs. 71-72.

<sup>173</sup> See Human Rights Committee, *Bandejevsky v. Belarus*, U.N. Doc. CCPR/C/86/D/1100/2002, March 28, 2006, para. 10.10.

contravened Equatoguinean laws on the appointment of magistrates and the jurisdiction of military tribunals and was thus not “established by law”.

Under Article 162 of Law 5 of 2009, judges in a criminal case must be assigned on the basis of an assessment of professional competence and experience. Moreover, Article 11 of that same law provides that if military personnel and civilians are allegedly involved in the same criminal acts, the case should be tried by a civilian, not military, court: the provision states that the only cases that should be resolved by military courts are those “strictly in the military sphere with respect to facts typified as crimes or offenses by the Military Criminal Justice Code.” As noted above, the Equatoguinean President appointed judges in the middle of trial via executive decree, absent any apparent procedure for evaluating competence. Correspondingly, the addition of judges and prosecutors from the armed forces, the seeming influence of the military “observer”, and the use of military penal laws meant that the court assumed a pseudo military character.

Accordingly, in bypassing the criteria for selecting magistrates and transforming what should have been a provincial court into a hybrid military tribunal, the authorities violated domestic legislation and – in the process – Article 14(1) of the ICCPR.

### **Right to Communicate with Counsel**

In addition to violations of the right to communicate with counsel pretrial, defendants were denied access to their lawyers once the trial had begun, in contravention of Article 14(3)(b).<sup>174</sup> As established by the HRC, this provision requires that defendants be permitted confidential consultations with counsel.<sup>175</sup> In the present case, the court limited defense attorneys’ contact with their respective clients to a short stretch before each day’s hearing and a 20 minute break around midday. These conversations were far from confidential, taking place – absent any other option – in the middle of the courtroom. Defendants were then returned to prison and, according to counsel, obstructed from further communication with their lawyers.

### **Right to Counsel**

Under Article 14(3)(d) of the ICCPR, a defendant has the right “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing”. The HRC has stated that Article 14(3)(d) is violated “if the Court or other relevant authorities hinder appointed lawyers from fulfilling their task effectively.”<sup>176</sup>

---

<sup>174</sup> See Human Rights Committee, *Rayos v. Philippines*, U.N. Doc. CCPR/C/81/D/1167/2003, July 9, 2004, para. 7.3.

<sup>175</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 34.

<sup>176</sup> See Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 38.

During the trial, the court repeatedly “hinder[ed] appointed lawyers from fulfilling their task effectively”, in breach of Article 14(3)(d). In addition to the many violations already discussed in this report, the court placed severe limitations on defense objections.

On March 26, 2019, near the beginning of the trial, the president of the court specifically warned defense attorneys to only object “when necessary”.<sup>177</sup> The court intervened in this regard throughout the proceedings. On the same day the warning was given, for example, the president instructed Isaac Newton Ela’s lawyer not to make “many objections”.<sup>178</sup> Meanwhile, on March 28, during the prosecution’s cross-examination of Enrique Nsue Anguesemo, former Ambassador of Equatorial Guinea to Chad, the court interrupted defense counsel as he sought to make an objection, stating that it had already heard defense arguments and had no need to hear them again.<sup>179</sup> Also on March 28, during the testimony of Secundino Esono Mba, a defense lawyer attempted to object to leading questions asked by the judges.<sup>180</sup> The court president stopped him, stating that counsel had already had his opportunity to speak and that his prior objections had been noted. Counsel, however, had yet to make this specific objection and was thereby prevented from “fulfilling [his] task effectively”.

Meanwhile, such restrictions were not imposed on the prosecution. To the contrary, the prosecution’s objections to defense questions were generally granted and the prosecution was correspondingly allowed to ask repetitive, irrelevant, and suggestive questions in the face of legitimate defense objections, exacerbating the procedural imbalance. On March 26, 2019, for example, the court accepted a prosecutorial objection to a series of defense questions about defendant Onofre Otogo Otogo’s mental health.<sup>181</sup> During the prosecution’s cross-examination of Onofre, however, the court rejected defense objections to irrelevant and/or speculative questions asked by the prosecution, such as whether the defendant believed weapons were the appropriate means to remove a constitutional government and whether some of the defendants were innocent.<sup>182</sup>

The court’s arbitrary limitations on defense objections hindered attorneys from executing the duties owed their respective clients. As will be discussed below, the court also interfered with the defense’s right to call and examine witnesses, significantly impeding counsel’s ability to present an effective defense – again in contravention of Article 14(3)(d).

## Right to Call and Examine Witnesses

---

<sup>177</sup> Monitor’s Notes, March 26, 2019.

<sup>178</sup> *Id.*

<sup>179</sup> Monitor’s Notes, March 28, 2019.

<sup>180</sup> *Id.*

<sup>181</sup> Monitor’s Notes, March 26, 2019.

<sup>182</sup> *Id.*

Under Article 14(3)(e) of the ICCPR, all persons accused of a crime shall be entitled “to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.” As stated by the HRC, this provision “is important for ensuring an effective defence by the accused and their counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution.”<sup>183</sup>

In the present case, the right to call and examine witnesses was repeatedly violated, with the court denying the defense “the same legal powers” as the prosecution.

First, as discussed above, the court prevented defense counsel from questioning witnesses about pretrial issues, such as conditions of detention, the use of torture to coerce statements, the denial of access to counsel, and so on. In contrast, the prosecution faced no such categorical restrictions in its line of questioning. Defense attorneys’ inability to interrogate the circumstances in which their clients had given pretrial statements greatly hampered the “ensuring [of] an effective defence.”

During the examination of Cirilo Meye Ebang Ayingono on April 9, for example, a defense attorney tried to ask questions about Mr. Ayingono’s interrogation.<sup>184</sup> The court immediately interrupted counsel and stated that questions should be limited to the facts set forth in the prosecution’s provisional conclusions, thereby forcing the defense to hew to the prosecution’s case.<sup>185</sup> Such constraints on defense questioning recurred throughout the trial, especially with respect to allegations of torture. As proclaimed by the court president (his standard response to defense queries about torture claims): “this is not a trial about torture.”<sup>186</sup>

At times, the rationale behind the court’s intervention in defense questioning was unclear, if just as problematic. On April 15, for example, after the prosecution’s extensive cross-examination of defendant Tom Hamad Awan, a defense attorney sought to follow up with questions.<sup>187</sup> The judge interrupted counsel and ordered that the microphone be passed if there were no more “interesting questions”.<sup>188</sup>

In addition to such intercessions, the court frequently placed time limits on defense questioning, a restriction to which the prosecution was not subjected. In particular, the court impeded counsel from examining defendants who were not their clients, despite the

---

<sup>183</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 39. See Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, U.N. Doc. CCPR/C/119/D/2555/2015, March 21, 2017, para. 8.8.

<sup>184</sup> Monitor’s Notes, April 9, 2019.

<sup>185</sup> *Id.*

<sup>186</sup> See Monitor’s Notes, March 27, 2019.

<sup>187</sup> Monitor’s Notes, April 15, 2019.

<sup>188</sup> *Id.*



fact that all charges were connected and these inquiries were thereby necessary. On March 25, for example, after Hector Santiago Ela Mbang's lawyer had questioned his client, the court imposed a three minute time limit on all other defense attorneys.<sup>189</sup> A number of these attorneys complained about unequal treatment, at which point the court stated that they each had only two minutes left. On March 27, after Patricio Micha Medang's counsel had examined his client, the court again imposed a three minute limit on all other defense lawyers.<sup>190</sup>

On March 28, the situation escalated.<sup>191</sup> After Enrique Nsue Anguesemo's attorney concluded his questioning, the court imposed an even more restrictive time limit of one minute on all other defense attorneys. When an attorney argued that the restriction violated the right to a defense, the court interrupted him, asserting that he had already used his one minute. Subsequently, another defense attorney tried to ask the defendant (former Equatoguinean Ambassador to Chad) whether ambassadors could ever directly call the President, a key question given the prosecution's argument that the defendant should have directly notified the President of a potential coup. The court cut off the defense attorney, stating that his minute had concluded. Mr. Anguesemo was not permitted to answer the question. When even the prosecution intervened, professing that in the interests of equality all defense lawyers should be allowed to speak, the court stated that the decision had already been made.<sup>192</sup>

Near the end of the trial, after the prosecution had called and questioned several expert witnesses, the court refused to allow the defense to cross-examine any of these experts.<sup>193</sup> The experts had presented information on key evidentiary matters, such as the defendants' plan of attack – as laid out on seized drawings and maps; operations at military checkpoints; and the financing of the alleged coup plan.<sup>194</sup> In prohibiting defense interrogation of this testimony, the court severely undermined counsel's ability to mount an effective defense.

Meanwhile, the prosecution was permitted great latitude in questioning witnesses. On April 16, for example, in the face of several overruled defense objections about repetitiveness, the prosecution spent two hours cross-examining defendant Sahll Bahaba Madi about his entry into Equatorial Guinea from Cameroon.<sup>195</sup> On April 17, the prosecution questioned defendant Goundoukou Gary for more than three hours, asking – as noted by the monitor – the same questions over and over again.<sup>196</sup> On April 18, a

---

<sup>189</sup> Monitor's Notes, March 25, 2019.

<sup>190</sup> The court repeated this time restriction on March 28 after Secundino Esono Mba's defense attorney questioned his client, imposing a three minute limit on all other defense attorneys.

<sup>191</sup> Monitor's Notes, March 28, 2019.

<sup>192</sup> Id.

<sup>193</sup> Monitor's Notes, May 7-9, 2019.

<sup>194</sup> Id.

<sup>195</sup> Monitor's Notes, April 16, 2019.

<sup>196</sup> Monitor's Notes, April 17, 2019.



third foreign defendant was questioned by the prosecution for 3 hours, despite similarly repetitive and superfluous queries.<sup>197</sup> The contrast to the mere minutes allocated to the defense was stark.

The court also rebuffed defense attempts to call witnesses.<sup>198</sup> On May 7, 2019, for example, the defense requested the attendance of the Minister of External Security so as to confront him with the testimony of aforementioned defendant Enrique Nsue Anguesemo, former ambassador to Chad.<sup>199</sup> Mr. Anguesemo had testified that he had in fact informed the Minister of a potential coup. The court responded that the Minister had a busy schedule and could not attend the trial.<sup>200</sup>

Lastly, while the obvious violation of Article 14(3)(e) is a court's refusal to permit examination or cross-examination, the withholding of essential information can also hinder the defense's capacity to question witnesses.<sup>201</sup> Without understanding the basis for a prosecution, it is almost impossible for counsel to conduct effective questioning or determine which witnesses would be helpful. In the present case, the defense was denied timely access to key materials. The court failed to provide counsel with crucial parts of the case file and the vagueness of the indictment left defendants and their attorneys in the dark with respect to the factual underpinning of the charges. In addition, the prosecution gave the defense no notice as to the evidence it planned to present at trial, in contravention of normal discovery processes. As such, the severe limitations on the defense's access to essential information constituted an additional breach of Article 14(3)(e).

## Right to Interpretation

As noted above, Article 14(3)(f) codifies the right to interpretative assistance, encompassing foreign nationals as well as citizens of the state in which the trial takes place.<sup>202</sup> At trial, an individual is entitled to interpretation if he or she is unable to adequately understand court proceedings.<sup>203</sup>

In the present case, necessary interpretative assistance was not always available. For example, the prosecution's presentation of expert witnesses entailed the playing of lengthy audio-recordings of alleged coup financiers speaking in French. The court,

---

<sup>197</sup> Monitor's Notes, April 18, 2019.

<sup>198</sup> See Radio Macuto, "Graves Violaciones De La Ley Por Parte Del Tribunal Del Macrojuicio De Bata", May 9, 2019. Available at <https://www.radiomacuto.cl/2019/05/09/graves-violaciones-de-la-ley-por-parte-del-tribunal-del-macro-juicio-de-ngolo/>

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Human Rights Committee, *Peart v. Jamaica*, U.N. Doc. CCPR/C/54/D/464/1991 & 482/1991, July 19, 1995, paras. 11.4- 11.5.

<sup>202</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 40.

<sup>203</sup> *Id.*

however, refused to allow for interpretation, declaring that all in the room should be able to understand French.<sup>204</sup> Many defendants and their lawyers did not speak French and could not follow this portion of the hearing.

Correspondingly, interpretative assistance was at times insufficient. On April 16, due to confusion over interpretation, foreign defendant Sahll Bahaba Madi repeatedly stated that he agreed with the charges against him. Eventually, a second defendant explained the prosecution's questions, at which point the accused clarified that another person had provided his declaration because he did not speak Spanish and vehemently denied any involvement with the coup.<sup>205</sup>

Such episodes demonstrate how crucial it is that defendants unable to comprehend proceedings be afforded adequate interpretative assistance. In failing to provide these services on a consistent basis, the court contravened the guarantees established by Article 14(3)(f).

### **Right Not to be Compelled to Testify Against Oneself**

Article 14(3)(g) of the ICCPR establishes the right “not to be compelled to testify against [one]self or to confess guilt.” This right means that both confessions and statements against one's interest made under physical or psychological pressure must be “excluded from the evidence”.<sup>206</sup> As discussed above, many defendants reported that they were coerced into admitting guilt due to abuse inflicted by the security forces.

In the event of disputed torture allegations, the burden is on the state to prove that statements were given of the accused's own free will.<sup>207</sup> Namely, the state must provide information about the circumstances in which the statements were made so that the court can assess the validity of the torture claims.<sup>208</sup> The court should correspondingly take measures to corroborate the truthfulness and voluntariness of confessions, such as by establishing a voir dire proceeding within the trial to determine if statements were in fact coerced.

In the present case, despite claims that pretrial admissions were the product of torture, the prosecution failed to provide any information about the circumstances under which allegedly coerced statements were made, shirking the burden of proof required by Article 14(3)(g). Instead, this burden was placed on the defense. On March 27, 2019, for

---

<sup>204</sup> Monitor's Notes, May 8-9.

<sup>205</sup> Monitor's Notes, April 16, 2019.

<sup>206</sup> See Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 41; Human Rights Committee, *Yakubova v. Uzbekistan*, U.N. Doc. CCPR/C/122/D/2577/2015, April 6, 2018, para 9.6.

<sup>207</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 41.

<sup>208</sup> *Id* at para 33.

example, after Patricio Micha Medang testified that he had been tortured, the president of the court requested that a medical exam be conducted to “prove that this was false”: as raised by various defense lawyers, however, the defendants had been in prison for over a year and physical injuries were not always visible.<sup>209</sup>

Meanwhile, the court permitted the prosecution to rely on allegedly coerced statements,<sup>210</sup> pursuing none of the aforementioned inquisitorial measures and – to the contrary – preventing defense objections and arguments in this regard.<sup>211</sup> As referenced above, the court president went so far as to accuse defense lawyers who inquired about torture of turning the trial into a spectacle and manipulating the process.<sup>212</sup> In his own words: “this is not a trial about torture.”<sup>213</sup> As such, given the court’s open door policy to torture-tainted statements and its closed door policy to any information that might verify torture claims, the trial shattered the ICCPR privilege against self-incrimination.

## Right to a Reasoned Judgment

Article 14(1) of the ICCPR establishes the right to a reasoned judgment. According to the HRC, the judgment must include “essential findings, evidence, and legal reasoning”.<sup>214</sup> In the present case, the judgment fails to explain the evidence or reasoning behind the conviction of 112 individuals.

The judgment is divided into four sections: “Factual Background”, “Proven Facts”, “Principles of Law”, and the court’s ruling. In none of these sections does the court provide a detailed evidentiary basis for its decision, let alone an assessment of the probative value of evidence presented at trial.

The “Proven Facts” section, for example, contains a generalized factual summary that hews closely to the prosecution’s arguments: which individuals planned the coup, which individuals recruited mercenaries, which individuals were in charge of acquiring weaponry, where the money came from, where and when planning meetings were held, the date on which the coup was scheduled to be executed, an alternative plan in the event that the coup failed, and so on.<sup>215</sup> The court connects only a single one of these “Proven Facts” to actual evidence presented in court.<sup>216</sup> Notably, just 25 defendants out of the over 100 accused are mentioned in the “Proven Facts” section.

---

<sup>209</sup> Monitor’s Notes, March 27, 2019.

<sup>210</sup> See *id.*; Monitor’s Notes, March 28, 2019; Monitor’s Notes, April 16, 2019; Monitor’s Notes, April 17, 2019.

<sup>211</sup> See Monitor’s Notes, March 27, 2019.

<sup>212</sup> See *id.*

<sup>213</sup> *Id.*

<sup>214</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 29.

<sup>215</sup> Juzgado de Instrucción No. II de Bata Litoral, Judgment, May 31, 2019, pgs. 37-43.

<sup>216</sup> *Id.* at pg. 42

In the subsequent sections – "Principles of Law" and the court's ruling – the judgment links so-called "Proven Facts" to the corresponding crime articulated in Equatorial Guinea's Criminal Code, proceeding to list those accused found guilty of the respective offenses and the sentences to be imposed.<sup>217</sup> Again, there are almost no individualized findings with respect to each defendant's guilt and, more broadly, scant evidentiary analysis. Additionally, the court offers no justification for the length of the issued sentences.

As such, in dispensing with the requisite evidentiary and juridical foundation, the judgment is unreasonable, arbitrary, and capricious, violating the Article 14(1) standard.

## **Presumption of Innocence**

Article 14(2) of the ICCPR provides that "[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." The presumption of innocence is fundamental to the protection of human rights and, for criminal convictions, requires that the prosecution prove guilt beyond a reasonable doubt.<sup>218</sup> In *Larranaga v. the Philippines*, for example, the HRC found a violation of the presumption of innocence partially because the court had failed to address serious evidentiary issues in its convicting judgment.<sup>219</sup> Similarly, in *Ashurov v. Tajikistan*, the HRC found that the Tajik court system had failed to consider major gaps in the case, meaning that the accused was "not afforded the benefit of the doubt" – in violation of Article 14(2).<sup>220</sup>

In the present case, 112 individuals were convicted despite the fact that the prosecution's presentation left significant doubts as to their guilt, falling far short of the "proof beyond a reasonable doubt" standard. Namely, the trial was dominated by evidentiary defects, as deemed unacceptable by the HRC in *Ashurov v. Tajikistan* and *Larranaga v. The Philippines*.

## **The Prosecution's Presentation**

As discussed above, the prosecution's charging document lacked individualized explanations of each accused's responsibility for the coup attempt. At trial, the prosecution generally failed to provide further clarification, presenting evidence that was at best circumstantial and, at worst, an example of guilt by association: many

---

<sup>217</sup> *Id* at pgs. 43-74.

<sup>218</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 30.

<sup>219</sup> Human Rights Committee, *Larranaga v. The Philippines*, U.N. Doc. CCPR/C/87/D/1421/2005, July 24, 2006, para 7.4.

<sup>220</sup> Human Rights Committee, *Ashurov v. Tajikistan*, U.N. Doc. CCPR/C/89/D/1348/2005, March 20, 2007, para. 6.7.

defendants testified that they had been prosecuted solely because of ties to other accused, a theory bolstered by the dearth of proof as to their culpability.<sup>221</sup>

For example, two defendants who were – respectively – related to Hector Santiago and Onofre Otogo, stated that they had no knowledge of the coup and had been arrested due to their connection to the purported coup leaders.<sup>222</sup> Instead of producing evidence to the contrary, the prosecution merely asked the defendants about their activities on the day of the attempted coup.<sup>223</sup>

Evidentiary shortcomings were likewise on display during the prosecution’s cross-examination of alleged foreign mercenaries. When these accused testified that they had been promised jobs in Equatorial Guinea and had no knowledge of the coup, the prosecution did not offer evidence to rebut their claims.<sup>224</sup> The questioning of Javiera Mbang Maye on April 9, 2019 exemplifies the issue of insufficient proof. The prosecution – struggling to connect Maye to the coup – stated that Maye should help the prosecutor better understand her responsibility for the alleged offenses, as the prosecution “was not there.”<sup>225</sup>

Defense attorneys repeatedly cited such holes in the evidence and/or highlighted the unreliability of the scant evidence presented.<sup>226</sup> Counsel Maria de Jesus Bikene, for example, pointed out that a prosecution expert’s testimony regarding the number of munitions acquired for the coup differed from the number cited in the criminal complaint.<sup>227</sup> The prosecution provided no explanation for this disparity. Ms. Bikene additionally raised concerns that the court had accepted a declaration of guilt in French as evidence against a non-French speaking defendant.<sup>228</sup> Again, there was no explanation as to why this particular defendant’s confession had been transcribed in French.

In a particularly egregious fair trial violation, it turned out that a Cameroonian defendant – Jean Richard Obiang – had actually been in prison leading up to and during the attempted coup. He was released from prison on February 6, 2018 and rearrested for his alleged part in the coup on February 26, 2018. When defense counsel identified this issue at trial, the prosecution professed confusion as to why Obiang had been charged.<sup>229</sup> Although Obiang was ultimately acquitted, the prosecution’s ignorance

---

<sup>221</sup> See Monitor’s Notes, March 27-28, 2019.

<sup>222</sup> Monitor’s Notes, April 30, 2019.

<sup>223</sup> *Id.*

<sup>224</sup> See Monitor’s Notes, April 29, 2019.

<sup>225</sup> Monitor’s Notes, April 9, 2019.

<sup>226</sup> Monitor’s Notes, May 21, 2019. The closing arguments of the various defense attorneys focused on evidentiary issues.

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Monitor’s Notes, April 29, 2019.

regarding his inclusion amongst the accused reflects the overarching deficiencies in the evidence.

Meanwhile, the prosecution time and again relied on untrustworthy torture-tainted statements to prove defendants' guilt. Matias Ondo Mba Nchama, for example, testified that he had no prior knowledge of the attempted coup and had simply driven two foreigners from Ebibeyin to Mongomo so that they could work on his brother's patio.<sup>230</sup> The prosecution then read Mr. Nchama's declaration, which stated that Mr. Nchama had been aware of the planned coup. Mr. Nchama responded that the declaration was false and that it had been induced by torture. He further testified that there was no attorney present when he gave his declaration. The prosecution offered no additional evidence of Mr. Nchama's involvement. This scenario repeated itself over the course of the proceedings.

### **The Convicting Judgment**

The court's judgment ignores the aforementioned evidentiary defects, convicting 112 defendants based on almost no proof. As discussed above, the judgment avoids individualized findings of guilt: instead, it primarily consists of pronouncements of general "facts" pertaining to the coup, omitting indication of what evidence the court used to arrive at such findings, how the court weighed the evidence, which issues the court considered dispositive, and how the court addressed gaps or inconsistencies.<sup>231</sup>

With respect to the supposed foreign mercenaries, for example, the judgment simply states: "they were hired to wage war and fight against the Republic of Equatorial Guinea, that is what can be inferred, based on the manner of recruitment, their journey, their clandestine entry without any documentation or visas, how they remained hidden in a rented house in the city of Ebibeyin."<sup>232</sup> The court – in line with the prosecution's approach – relies on "infer[ence]" alone, convicting the enumerated foreign nationals without even acknowledging their repeated testimony that they entered Equatorial Guinea because they had been promised work: a promise that would explain their transportation across the border and accommodation in the rented house.

Similarly, with respect to former Ambassador to Chad Enrique Nsue Anguesemo, the judgment asserts that he provided coup plotters with advice on defense and security, offering no proof in this regard and bypassing his testimony that he informed the Minister of Security of the planned coup.<sup>233</sup> The sections convicting military personnel of negligence are equally vague, stating that they failed to perform their duties as required

---

<sup>230</sup> Monitor's Notes, March 27, 2019.

<sup>231</sup> Juzgado de Instrucción No. II de Bata Litoral, Judgment, May 31, 2019, pgs. 37-43.

<sup>232</sup> *Id.* at pg. 40.

<sup>233</sup> *Id.* at pg. 39.



by law yet providing no evidentiary basis for such findings.<sup>234</sup> The dearth of proof in the judgment thus mirrors the prosecution's presentation.

Troublingly, the judgment wholly fails to address defense arguments regarding flaws in the evidence: the numerous discrepancies noted above, the prosecution's use of torture-tainted statements and statements obtained without counsel/interpretative assistance, the practice of guilt by association, and so on.

In sum, the decision falls far short of the "beyond a reasonable doubt standard" required to sustain a conviction, violating the presumption of innocence established by the ICCPR.

### **Trials in Absentia**

While the HRC permits trials *in absentia* when defendants are properly notified and choose not to be present, it has noted that due to the risks of abuse, "strict observance of the rights of the defence is all the more necessary."<sup>235</sup> In the instant case, numerous defendants were tried and convicted *in absentia*. It is unclear that these accused were notified in accordance with ICCPR standards. Moreover, as detailed above, the rights of defendants who *did* attend court proceedings were thoroughly violated. Consequently, the trial does not pass the heightened muster due to defendants tried *in absentia*.

### **Right to Appeal**

Article 14(5) of the ICCPR states: "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher court according to law."

As established by the HRC, "the expression 'according to law' in this provision is not intended to leave the very existence of the right of review to the discretion of the States parties, since this right is recognised by the Covenant, and not merely by domestic law. The term according to law rather relates to the determination of the modalities by which the review by a higher tribunal is to be carried out."<sup>236</sup> Further, the review guaranteed by Article 14(5) must be "substantiv[e]", carried out "on the basis of sufficiency of the evidence and of the law ..."<sup>237</sup>

In the present case, the right to appeal was violated because of the trial court's failure to publish a reasoned judgment and generate trial transcripts.

---

<sup>234</sup> Id at pgs. 41, 60-61.

<sup>235</sup> See Human Rights Committee, General Comment No. 13, April 13, 1984, para. 11.

<sup>236</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 45.

<sup>237</sup> Id at para. 48.

As noted by the HRC, exercise of the right to an appeal necessitates a “duly reasoned” judgment: if a court does not provide sufficient rationale for a conviction, a defendant will be unable to effectively challenge the decision before a higher tribunal.<sup>238</sup> As discussed above, the judgment in the present case was not “duly reasoned”. It omits explanation of the evidentiary basis for the convictions, eschews individualized findings of guilt, and neglects the many arguments put forth by the defense. It would be difficult for a defense lawyer reading the judgment to ascertain the reasoning behind his or her client’s sentence, thereby impairing the right to appeal.

Per HRC jurisprudence, trial transcripts are also necessary to exercise the right to appeal.<sup>239</sup> Given that appellate proceedings center on the arguments, evidence, and testimony presented at trial, reviewing trial transcripts is a vital component of preparation. In the instant case, court officials consistently failed to record what transpired during the hearings. Various defense lawyers raised this issue,<sup>240</sup> which was also documented by monitors. The absence of trial transcripts contravenes Article 14(5).

Finally, the many irregularities and violations that characterized the judicial process in the first instance – including the transformation of the court into a hybrid military tribunal – cast doubt on the adequacy of appellate review that awaits the convicted defendants. As stated by the HRC, while States can determine the mechanism through which substantive appellate review takes place, they cannot preclude the effective exercise of this right.<sup>241</sup>

## **D. OTHER FAIRNESS CONCERNS**

### **Equality of Arms**

Article 14(1) of the ICCPR states: “all persons shall be equal before the courts and tribunals.” The HRC has established that this provision guarantees equality between parties to judicial proceedings: “the procedural conditions at trial and sentencing must be the same for all parties ... [calling] for a ‘fair balance’ between the parties, requiring that each party should be afforded a reasonable opportunity to present the case under

---

<sup>238</sup> Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 49; Human Rights Committee, *Van Hulst v. Netherlands*, U.N. Doc. CCPR/C/82/D/903/1999, November 1, 2004, para 6.4.

<sup>239</sup> See Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, August 23, 2007, para. 49; Human Rights Committee, *Peter Lumley v. Jamaica*, U.N. Doc. CCPR/C/65/D/662/1995, April 30, 1999, para. 7.5.

<sup>240</sup> Monitor’s Notes, March 27, 2019.

<sup>241</sup> Human Rights Committee, *Terron v. Spain*, U.N. Doc. CCPR/C/82/D/1073/2002, November 5, 2004, para. 7.4.

conditions that do not place her/him at a substantial disadvantage vis-à-vis the opponent.”<sup>242</sup>

In the case at hand, the prosecution and defense faced vastly different “procedural conditions”. As discussed throughout this report, the court consistently exhibited hostile behavior towards the defense, issuing arbitrary rulings to the detriment of the accused whilst displaying a permissive attitude toward the prosecution – even in the face of grave misconduct.

Perhaps the starkest example of procedural imbalance occurred at the beginning of trial. As referenced above, while the prosecution arrived with a plethora of evidentiary requests, the defense was unable to muster a single request due its complete lack of knowledge about the charges and supporting evidence. Though noting this disparity, the court made no attempt to correct it.

Manifestations of the imbalance that persisted throughout the proceedings include the denial of defense access to the case file; severe time and substance restrictions on defense arguments, objections, and questioning; limitations on defense lawyers’ access to their clients, whom the authorities had free rein to engage; and the overarching asymmetry of information – encompassing insufficient notification of the scheduling of proceedings, the vagueness of the factual basis of the charges, and the prosecution’s addition of new charges at a late stage in the trial. In contrast to the treatment meted out to the defense, the court afforded the prosecution great leeway in the presentation of evidence, the questioning of witnesses, objections, clarifications, and conclusions.

In fostering “conditions” that placed the defense at a “substantial disadvantage”, the court wholly dispensed with the principle of equality of arms.

## **Torture Investigation**

The Equatoguinean authorities have failed to take the necessary measures to respond to defendants’ claims of torture.

Article 12 of the Convention against Torture mandates that State Parties “proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under [their] jurisdiction.”<sup>243</sup> Article 13 further requires State Parties to ensure that complaints are “promptly and impartially examined by ... competent authorities.”<sup>244</sup>

---

<sup>242</sup> Organization for Security and Cooperation in Europe, “Legal Digest of International Fair Trial Rights”, 2012, pg. 110. See also Human Rights Committee, *Mariam Sankara et al v. Burkina Faso*, U.N. Doc. CCPR/C/86/D/1159/2003, March 28, 2006, para. 12.4.

<sup>243</sup> CAT, Article 12.

<sup>244</sup> *Id* at Article 13.

In *Dimitrov v. Serbia and Montenegro*, for example, the Committee against Torture considered a case in which the petitioner had filed a criminal complaint alleging that he had been beaten by a police officer: the State had taken no concrete steps to ascertain the veracity of this claim.<sup>245</sup> The Committee found that Serbia and Montenegro had violated Articles 12 and 13 of the Convention by failing to carry out a prompt and impartial investigation when there were reasonable grounds to believe that torture had taken place and by failing to ensure the prompt and impartial examination of the complaint by competent authorities.<sup>246</sup>

Significantly, torture need not even occur in order for a state to violate its obligations under Article 12. In *Halimi-Nedzibi v. Austria*, the Committee against Torture concluded that although the petitioner had failed to “sustain” his allegation of mistreatment, Austria had breached Article 12 by waiting 15 months to conduct an investigation into the petitioner’s criminal complaint.<sup>247</sup>

Article 14(3)(g) of the ICCPR imposes similar obligations on State Parties. The HRC has found that where there are credible allegations that authorities have employed physical or psychological pressure to extract confessions, the State is required to investigate said reports promptly and impartially.<sup>248</sup>

In the case at hand, 112 individuals have been convicted and are languishing in prison as the result of a trial filled with allegations of torture. As described above, neither the court nor the prosecution took any steps to assess the validity of defendants’ torture claims. Correspondingly, there is no indication that the authorities writ large are launching an investigation into defendants’ allegations. Until this situation is remedied, Equatorial Guinea will be in breach of both CAT and the ICCPR.

---

<sup>245</sup> Committee against Torture, *Dimitrov v. Serbia and Montenegro*, U.N. Doc. CAT/C/34/D/171/2000, May 23, 2005, paras. 2.1-2.4.

<sup>246</sup> *Id.* at para. 7.2.

<sup>247</sup> Committee against Torture, *Halimi-Nedzibi v. Austria*, U.N. Doc. CAT/C/11/D/8/1991, November 18, 1993, paras. 13.4-13.5.

<sup>248</sup> Human Rights Committee, *Grishkovtsov v. Belarus*, U.N. Doc. CCPR/C/113/D/2013/2010, April 1, 2015, para 8.2.

## CONCLUSION AND GRADE



Despite overwhelmingly adverse conditions, defense lawyers performed commendably. Among the abundance of challenges one must note: 1) that the lawyers were appointed many months after their clients' deprivation of liberty; 2) that most were asked to represent a relatively large number of defendants, without proper notice of what each defendant was charged with; 3) that throughout the trial they were not afforded private communication with their clients; 4) that their objections to the presentation of evidence against their clients were routinely dismissed; 5) that they were prohibited from cross-examining prosecution witnesses; 6) that the court prevented their questions about pretrial abuses; and 7) that the court severely limited their time to ask questions and present arguments while – in contrast – the prosecution was allowed unlimited time to make its case. If there is a saving grace of this trial, it is counsel's perseverance in the face of immense adversity.

The convictions and sentences are pending appeal. For the many defendants who were convicted absent any evidence, the Equatoguinean authorities should immediately order their release or, alternatively, overturn the convictions on appellate review. For the remaining defendants, the appellate court should closely examine the trial's many deficiencies, throw out the sentences, and order a new trial that complies with due process of law.

**GRADE:**

**F**



## GRADING METHODOLOGY

Experts should assign a grade of A, B, C, D, or F to the trial reflecting their view of whether and the extent to which the trial complied with relevant international human rights law, taking into account, *inter alia*:

- The severity of the violation(s) that occurred;
- Whether the violation(s) affected the outcome of the trial;
- Whether the charges were brought in whole or in part for improper motives, including political motives, economic motives, discrimination, such as on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,”<sup>249</sup> and retaliation for human rights advocacy (even if the defendant was ultimately acquitted);
- The extent of the harm related to the charges (including but not limited to whether the defendant was unjustly convicted and, if so, the sentence imposed; whether the defendant was kept in unjustified pretrial detention, even if the defendant was ultimately acquitted at trial; whether the defendant was mistreated in connection with the charges or trial; and/or the extent to which the defendant’s reputation was harmed by virtue of the bringing of charges); and
- The compatibility of the law and procedure pursuant to which the defendant was prosecuted with international human rights law.

### Grading Levels

- A: A trial that, based on the monitoring, appeared to comply with international standards.
- B: A trial that appeared to generally comply with relevant human rights standards excepting minor violations, and where the violation(s) had no effect on the outcome and did not result in significant harm.
- C: A trial that did not meet international standards, but where the violation(s) had no effect on the outcome and did not result in significant harm.
- D: A trial characterized by one or more violations of international standards that affected the outcome and/or resulted in significant harm.
- F: A trial that entailed a gross violation of international standards that affected the outcome and/or resulted in significant harm.

---

<sup>249</sup> ICCPR, Article 26.