

I. Complainant's allegations

Facts as submitted by the author:

1. The complainant alleges that one Mr. Moto Nsa, along with 12 others, both military and civilian personnel, was tried and sentenced on charges of attempting to overthrow the Government of Equatorial Guinea and high treason. He was sentenced to imprisonment rather than the death penalty as an act of lenience on the part of the court.
2. Mr. Moto Nsa was officially arrested on 6 March 1995, but had already been imprisoned for two and a half years on charges of insulting the President. At the time of his arrest, Mr. Moto Nsa was planning to participate in Equatorial Guinea's planned May 1995 municipal elections, after having led an opposition boycott of the country's first multiparty national elections, which were criticized by United Nations and European Union observers for lack of transparency and impartial administration.
3. From the time of his arrest until the trial he was denied the right to consult with the defense counsel and not permitted to examine the evidence against him.
4. Although the victim has now been released as a result of a presidential pardon, the complainant wishes the Commission to declare that Mr. Nsa's conviction and imprisonment were violations of the African Charter.

II - The Government's Version

5. In its response to the accusations levelled against it, the Equato-Guinean government asserts that human rights are fully protected by the country's constitution and according to the Government, the complainant's accusation are based on unfounded information. It agrees that Equatorial Guinea has a legislation governing the activities of political parties, freedom of religion, freedom of assembly and freedom of the press.
6. Furthermore, Government maintains that all ethnic groups in Equatorial Guinea live in harmony, without any discrimination; the Prime Minister as well as other members of the government belong to ethnic groups different from that of the Head of State. The impartiality of the Courts, according to him, are fully guaranteed by the laws of Equatorial Guinea. He further asserted that the law on the press and information was recently revised by the Parliament. It henceforth authorizes private individuals and associations to possess their own papers and radio and television stations. According to the government all political parties have access to the media during electoral campaigns and political meetings are freely organized throughout the country.
7. According to the government, Mr. Moto was assisted by three "great" lawyers during his trial. And pursuant to the practice in Equatorial Guinea, when there are loopholes in the domestic law, to ensure a proper administration of justice, the courts resort to

Spanish law. It further asserted that inspite of being the leader of The Progress Party, one of the fourteen recognized political parties in Equatorial Guinea, Mr. Moto was tried as an ordinary citizen and convicted for “insults and endangering state security and the form of government “Finally, the Government finally emphasized that Mr. Moto Nsa appealed against the sentence, of twenty eight years imprisonment imposed on him and after serving only three months in prison “he was granted an amnesty. In a view of the foregoing, the Government concludes that the complainant’s accusations have no legal basis.

III - **The Procedure before the Commission**

8. The Communication is dated 5 May 1995. It was filed by Mr. William Andrew Courson, member of Magnus F. Hirschfeld Centre for Human Rights, an organisation based in the US. The matter was brought before the Commission on 23 May of the same year and on 30 May, it wrote to the Equato-Guinean Government to inform it of the Communication.
9. On 22 September 1995, the complainant wrote to the Secretariat of the Commission to inform it that Mr. Moto Nsa had been released following a presidential amnesty. He however requested that his qualification of the facts, that is, the arrest and detention of Mr. Moto constitute a violation of the provisions of the Charter, be maintained. In other words, he requested the Commission not to close the matter. He further requested that the Commission orders the payment of damages to Mr. Moto for the period spent in detention.
10. At its nineteenth session held in March 1996, the Commission declared the communication admissible and decided to rule on its merits at its twentieth session; the complainant and government have been informed accordingly.
11. At its twentieth Session, after hearing from an official delegation from Equatorial Guinea, the Commission deferred the consideration of the case on its merits to its 21st Session and requested for additional information on the exhaustion of local remedies.
12. During its twenty first Session, the Commission decided to postpone the consideration of the case on its merits pending the outcome of the appeal that Mr. Moto, according to the Government, is reported to have lodged against the decision sentencing him to a prison term.
13. At its 22nd Session held from 2 to 11 November 1997 in Banjul (Gambia), the Commission ruled on the merits of the communication.

IV - **The Law**

a) **Admissibility:**

14. Article 56 paragraph 5 of the Charter requires that Communications be brought before the Commission only “after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged.”
15. What the complainant is seeking is a ruling by the Commission that Mr. Moto’s arrest and detention constitute a violation of the Charter. As for the Government, it maintains that Mr. Moto has appealed against the two charges for which he was prosecuted. The Commission notes that the outcome of this appeal remains unknown.
16. Moreover, given that Mr. Moto has been granted amnesty, it appears most unlikely for any domestic court to entertain this appeal as, this would only be a purely theoretical exercise. However, certain elements of the case seem to indicate procedural of laws during the trial and the Commission would like these issues clarified to enable it come to a valid decision on the case. On these grounds, the Commission declares the communication admissible.

b. On the Merits:

17. The complainant invokes the violation of articles 2 (enjoyment of the rights and freedoms recognized and guaranteed in the Charter without discrimination), 9, paragraph 2 (the right to express disseminate has opinions), 10 paragraph, (the right to free association), 13 paragraph 1 (the right to participate freely in the government of his country) and 20 paragraph 1 (to right to self determination).
18. All these allegations are founded on the assertion that Mr. Moto Nsa was arrested, detained, tried and sentenced because of his political opinion. The Commission is of the view that, although this could be the case, the communication does not however contain elements likely to reasonably lead to such a conclusion.
19. The information relating to the arrest of another opposition leader contained in the complainant’s submission are rather circumstantial and does not enable the commission to clearly establish that Mr. Moto was arrested because of his political opposition to the government of the day. The information does not also indicate how Mr. Moto allegedly tried to express his political opinions or set up associations with other persons. In view of the foregoing, the Commission is of the view that the violation of the above-mentioned provisions of the Charter has not been established.
20. The complainant then goes on to base his complaint on certain provisions of article 7 of the Charter, which stipulates that:
 1. Every individual shall have the right to have his cause heard. This comprises:
 - a) The right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

- b) the right to be presumed innocent until proved guilty by a competent court or tribunal;
 - c) the right to defence, including the right to be defended by counsel of his choice;
 - d) the right to be tried within a reasonable time by an impartial court or tribunal.
2. No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.
21. The Commission notes that the submission made by the complainant contains certain elements outlining the circumstances of the trial of Mr. Moto. It notes that as regards the right to defence that the latter includes the right to be informed of the charges against him, as well as the evidence of the said charges; all sorts of elements required to prepare his defence, if all these elements were not brought to the knowledge of the accused (as alleged by the complainant) then article 7 paragraph 1 - C of the Charter had been violated.
22. The Commission recalls that the right to defence, including the right to a counsel is exercised not only during the trial, but also during detention. Unfortunately, once again, the information at its disposal does not allow it to clearly establish whether article 7 paragraph 1 - C has been violated.
23. Moreover, the Commission deplors the silence maintained by the parties in spite of its repeated request for information relating to the exhaustion of local remedies and other procedural aspects of the case. It is of the view that such lack of co-operation does not help the Commission to have a clear and precise understanding of the case brought before it.

On these grounds, the Commission:

decides that no provision of the African Charter on Human and Peoples' Rights has been violated.

Taken at the 22nd Ordinary Session, Banjul (Gambia), on 11 November, 1997.