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# GUINEA

## The Alpha Condé affair - a mockery of a trial

*“In Guinea, there are ways and means of bringing charges against someone you want to eliminate”* (one of the co-defendants at the April 2000 trial before the *Cour de Sûreté de l’Etat*, (CSE), State Security Court).

### Introduction

The fact that Alpha Condé, one of the main opposition leaders, was sentenced to five years’ imprisonment after an unfair trial before the CSE, a special court, is a good illustration of the state of Guinea’s judicial system, which does nothing to prevent the systematic violation of human rights.

Not one of the universally-established standards relating to a fair and independent trial was respected: the accused were detained *incommunicado* for months; most of them were tortured to extract confessions and these confessions were accepted by the court, despite evidence of serious allegations of torture; and the right to a fair hearing was not respected during the investigation phase because the lawyers did not have access to their clients’ files until five days before the trial started; and during the trial one defence lawyer was subjected to serious intimidation by the Minister of Justice. All these irregularities led to the conviction of 15 people, including four *in absentia*. Amnesty International believes that all these people are prisoners of conscience and calls on the Guinean authorities to release those who are still serving sentences.

Amnesty International is particularly concerned that Alpha Condé and his 47 co-accused were tried by a special court, the CSE. This court was set up by an order of the President of the Republic, Lansana Conté, on 10 July 1985, that is one year after the coup which brought him to power on the death of the first President of Guinea, Ahmed Sékou Touré. The very fact that this special court was created following the attempted coup of 4 July 1985 clearly illustrates the political origins of this court. This court, which is “permanent and with special powers”, hears cases of “state security crimes and offences” and whose operations and procedures allow for frequent political interference, has become an instrument to shore up the political establishment and to combat any signs of opposition.<sup>1</sup>

Since the beginning of the transition to democracy in 1990, the first time the Guinean authorities had recourse to the CSE was in 1998, when 31 members of the armed forces accused of mutiny were given prison sentences of between seven months and 15 years. At the time, Amnesty International sent an observer, but he was not allowed to enter the courtroom. In July 1998, when the trial was coming to an end, the Guinean authorities wrote to the

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<sup>1</sup> Amnesty International had already expressed its concerns about recourse to a special court in a memorandum addressed to the government of Guinea in November 1987.

organization to reiterate their refusal to accept the presence of an Amnesty International delegate. In this letter of 30 July 1998 from the Ministry of Foreign Affairs, the Guinean authorities limited themselves to underlining the fact that “*since the beginning of the Second Republic in Guinea in 1984, the right to a fair hearing has effectively been guaranteed*”.

However, information which has reached Amnesty International concerning this trial leads the organization to conclude that the proceedings were flawed by irregularities: during the hearing, several of the accused stated that their confessions had been extracted under torture, yet these same confessions were used as evidence against the accused and, so far as Amnesty International is aware, no investigation has been opened into these allegations. Others stated that they spent nine months in prison without ever being brought before a magistrate. Some members of the armed forces who were accused of mutiny confided in the delegation that, in addition to being tortured, they were held in secret in a place known as the “cave” in a military camp in the capital.

The trial of Alpha Condé and his 47 co-accused therefore constitutes a second very serious precedent of the use of a special court which, by its very nature, does not respect internationally-established standards relating to the fairness and independence of justice. The court which tried these 48 people was in fact composed of magistrates directly appointed by the President of the Republic, even though Alpha Condé has for years been one of the leading opposition figures and one of the candidates in the December 1998 presidential election. Furthermore, contrary to all international standards, the verdict of this special court is not open to appeal. The only possible appeal, the *pourvoi en cassation*<sup>2</sup>, prohibits any reexamination of the facts<sup>3</sup>.

Amnesty International sent an observer to this trial, who was present when it opened and during the early hearings. In addition, the organization closely followed the court proceedings, which lasted from April to September 2000. During its mission in April 2000, the Amnesty International delegation made several attempts to meet with the political authorities to communicate its concerns, in particular with regard to the serious allegations of torture made by most of those tried. The response of the authorities was that they were very busy and would do everything possible to meet before the mission left. As for the Minister of Justice, he replied that he was very busy with the Alpha Condé trial. Amnesty International regrets that no official meeting took place with the political authorities because the organization would have wished to express its concern with regard to irregularities in the judicial proceedings prior to the opening of the trial and the numerous allegations of torture made by persons arrested in the context of

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<sup>2</sup> Appeal on point of law.

<sup>3</sup> Article 639 bis of the Code of Criminal Procedure.

this affair. The organization would also have liked to present its recommendations with a view to ending such human rights violations in Guinea.

Following its in-depth study of the conditions which characterised the entire judicial proceedings leading to the conviction of 15 people by the CSE, Amnesty International concludes that the trial did not respect the rules of fairness and independence of justice with which Guinea is legally bound to comply. In fact, Guinea has ratified a number of international instruments, including the International Covenant on Civil and Political Rights of 1996 (the Covenant), the African Charter for Human and Peoples' Rights of 1981 (the African Charter), the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (Convention against Torture) which are legally binding and include guarantees with regard to fair trial to measures to prevent torture, in particular when torture is used to extract confessions.

Consequently, Amnesty International calls on the Guinean authorities to release all those still held in detention in the context of the Alpha Condé trial because they are prisoners of conscience, held solely because of their political affiliations, without any proof that they have called for the use of violence.

Amnesty International also calls for the abolition of the CSE, because special courts of this nature cannot guarantee even minimum standards of fairness and independence in the administration of justice. Finally, the organization calls for exhaustive and independent investigations into all allegations of torture made by the accused at the time of the trial or when they met with Amnesty International delegates. The organization's conclusions on the conduct of this trial and on its verdict concur in every respect with those in the report of the Inter-Parliamentary Union which on several occasions sent observers to this same trial<sup>4</sup>.

Unless the Guinean authorities take immediate steps to end the total impunity enjoyed by the Guinean security forces, it is not even possible to imagine the beginnings of the rule of law. It is even more urgent that the rule of law should be established because for several months Guinea has been facing armed incursions from abroad, which have resulted in Guinea failing to respect the human rights of foreign nationals living on its territory. For instance, in September 2000 following a speech by President Conté in which he accused refugees of sheltering the "invaders" and threatened to expel them, hundreds of refugees, principally from Liberia and Sierra Leone, were arrested and some of them were tortured while in detention. Amnesty International immediately made a public appeal, stating that the rights of these refugees should

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<sup>4</sup> See report of the observer mission to the trial of Alpha Condé and his co-accused of the *Comité des droits de l'homme des Parlementaires*, Parliamentarians' human rights committee, October 2000, CL/167/12c)-R.3

be respected and that they should not face *refoulement*, forcible repatriation, to their country of origin where their safety would be seriously compromised.

This report focuses on the case of Alpha Condé and his 47 co-accused. Nevertheless, the Amnesty International delegation that was sent to Guinea in April 2000 has also gathered information about extrajudicial executions resulting from excessive use of force following demonstrations against the arrest of Alpha Condé and his companions. The organization's delegates also met victims of arbitrary arrests followed by torture and ill-treatment. In addition, they collected testimonies from women accused of being opposition sympathisers who had been subjected to sexual violence while in detention. A report containing all this information will be produced at a later date.

## **Alpha Condé and his 47 co-accused**

The trial of Alpha Condé, president of the *Rassemblement du Peuple de Guinée* (RPG), Guinean People's Rally, and the 47 others who were accused with him which was held in Conakry from 12 April to 11 September 2000, ended with the conviction of the RPG leader and 10 others. They were sentenced to terms of between one year suspended and five years' imprisonment; all of the other accused were acquitted, 23 of them "purely and simply" and 10 "with the benefit of the doubt". Alpha Condé himself was sentenced to five years' imprisonment. Four other co-accused who had escaped arrest were sentenced *in absentia* to ten years' imprisonment<sup>5</sup>.

A number of human rights defence organizations sent observers to the opening of the trial, including the African Jurists' Association (AJA), the International Commission of Jurists (ICJ), and the *Fédération internationale des ligues des droits de l'homme* (FIDH), International Federation of Human Rights. The Inter-Parliamentary Union sent delegates on a number of occasions in August and September 2000.

Amnesty International also sent an observer who was present at the opening and at the early hearings of the trial. The organization followed the judicial proceedings very closely and came to the conclusion that Alpha Condé and those detained with him were prisoners of conscience, arrested and, in some cases, convicted solely because of their political views without the court being able to provide the slightest tangible proof of their participation in any coup and who have neither used nor advocated violence. Amnesty International therefore calls for the immediate and unconditional release of the prisoners of conscience, including Alpha Condé, who are still serving their sentence.

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<sup>5</sup> See Annex for a list of those convicted at this trial.

## 1. Circumstances surrounding the arrests

On the evening of 15 December 1998 Alpha Condé, a candidate in the presidential election which took place in the country the day before, was arrested by members of the military at Piné (more than 700 km south-east of Conakry), a village situated in *Guinée Forestière* region, close to the border with Côte d'Ivoire.

The Guinean authorities explained this arrest by accusing Alpha Condé of having left the capital, Conakry, on polling day, with a view to travelling in secret to Côte d'Ivoire, from where it is alleged he planned "*to launch a vast armed operation against the Republic of Guinea*". In addition, the indictment states that the RPG President was arrested because he was suspected of wanting to go to Côte d'Ivoire when the Guinean borders were closed during the electoral period.

In January 2000, Alpha Condé disputed this accusation of an attempted coup during an interview in prison with a delegation of the Inter-Parliamentary Union. He explained to his interviewers that he had "*left the capital the previous day, when he learned that a number of his supporters had been detained and that official propaganda was accusing him of preparing to attack Guinea by armed forces from abroad*".<sup>6</sup>



Alpha Condé ©ai

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<sup>6</sup> See report of the Parliamentarians' human rights committee delegation on its mission to the Republic of Guinea, 10-14 January 2000.

Five others who were with him were arrested at the same time: **Ben Karamoko Kourouma**, his bodyguard, **Antoine Gbogolo Soromou**, former mayor of Lola, and his chauffeur **Michel Lah Gongga Morifing Sagno**, whose home Alpha Condé was accused of having gone to in Piné, and a fifth person, **Vassezé Diomandé**. Amnesty International considers all these people to be prisoners of conscience, held solely because of their links with the RPG leader and their presence at the place of his arrest. These five people, together with Alpha Condé, were arrested after the alarm was raised by a villager intrigued by the presence of strangers in Piné. They were all taken to Conakry by military plane. Ben Karamoko Kourouma had first been taken to Lola in the boot of a car.

In the Guinean capital Alpha Condé was held for four weeks in a number of secret places of detention. The RPG leader was first taken to the barracks of an autonomous State Security unit, known as Camp Koundara, where he had no contact with the outside world for over a month. It was here that he was interrogated by the anti-gang brigade, which is answerable to the Ministry of the Interior. He was subsequently transferred to a villa in the Organization of African Unity (OAU) quarter and was not taken to the Central Prison in Conakry until 13 January 1999 at 1am. The RPG President was not placed in an official place of detention until almost one month after his arrest.

At this stage of the investigation, Alpha Condé was accused of “*attempting to cross the border and violence against, or an assault on, a public security agent*”.

Following the police enquiries and the investigation ordered by the Public Prosecutor, further charges were added and the list of persons arrested grew considerably. Early in 1999, the authorities announced that a bag belonging to Alpha Condé had been discovered during a search of Morifing Sagno’s home in Piné. According to the indictment, the evidence found in this bag was proof of the accused’s clear intention “*to use illegal armed force against the Republic of Guinea*”. Among this evidence was foreign currency and documents revealing a planned attack on the country by an armed force recruited abroad. On the basis of this evidence, the RPG leader was accused of “*threatening the security of the State*”.

In September 1999 the authorities announced that the judicial investigation was complete and the trial would commence very shortly. However, it was subsequently postponed and new evidence appeared, which led to a second charge against Alpha Condé of “*threatening the security of the State*”. This second charge was made following the arrest, between 7 October 1999 and January 2000, of more than 30 people, most of whom were members of the armed forces. According to the Guinean authorities, these people who were tried at the same time as Alpha Condé intended to seize power and hand it over to the RPG leader.

This second “attempted coup”, known as “Kissosso Bridge”, is alleged to have been planned during October and November while Alpha Condé was in preventive custody. The

indictment states that “on 6 November 1999, plans to overthrow the government were finalised. They therefore decided to free Alpha Condé on 7 November and take all strategic points in the capital to seize power.” In addition, “considerable quantities of arms and munitions, military uniforms, communication equipments, travel documents and cash, etc., ... were found on members of this group”.

The opening of the trial, which had been announced for 7 September, was postponed until 20 October but did not actually take place until 12 April 2000. Before the date of the trial was announced Amnesty International had on three occasions since December 1998 publicly drawn the Guinean authorities’ attention to the fact that Alpha Condé and five others arrested with him remained in detention. The organization called for the unconditional release of prisoners of conscience and for a fair trial for those who may have committed an offence. In addition, leaders of the Guinean opposition, foreign leaders such as the French President Jacques Chirac, the US Secretary of State Madeleine Albright, the European Union and numerous human rights organizations, including the *Organization guinéenne des droits de l’homme* (OGDH), Guinean Human Rights Organization, and the *Rencontre africaine pour les droits de l’homme* (RADDHO), African Conference for the Defence of Human Rights, based in Dakar, Senegal, raised the issue of the detention without trial of Alpha Condé with President Conté.



## 2. Pre-trial irregularities

Before examining the conditions in which the trial was held, it is appropriate to analyse the violations of human rights committed during preventive custody, which in the case of Alpha Condé and his companions, lasted for more than fifteen months.

### a) *Arbitrary arrests*

Guinean law prohibits arbitrary arrests and detention<sup>7</sup>. It should be noted that Alpha Condé and his companions were arrested by military personnel, whereas in fact the law gives the power to detain civilians to the criminal investigation police, who are answerable to another authority.

In the individual case of Alpha Condé, his arrest presents an additional legal problem because he enjoyed double immunity:

- as a candidate in the presidential election, Alpha Condé was protected from arrest under the terms of Article L 211 of the Electoral Code which provided that no candidate in the presidential election could be arrested before the election results were announced.

- as a Member of the National Assembly, Alpha Condé was also protected by his parliamentary immunity.

This parliamentary immunity is specified in Article 52 of the *Loi fondamentale*, the Constitution, which stipulates that: “*No Member may be arrested or detained outside a session without the authorisation of the Bureau of the National Assembly, except in cases of ‘flagrante delicto’, proceedings authorised by the Assembly, or upon conviction. The preventive detention or prosecution of a Member can be suspended if the Assembly so requires.*”

This parliamentary immunity can therefore be lifted in cases of *flagrante delicto*. This is when an offence is in the process of being committed, or has just been committed, or when the perpetrators are prosecuted as a result of public outcry<sup>8</sup>.

To justify Alpha Condé’s arrest, the indictment states that he was arrested as he was attempting to cross the border in breach of the law, which according to the charge constitutes

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<sup>7</sup> Article 333 of the *Code Pénal (CP)*, Criminal Code.

<sup>8</sup> Article 50 of the *Code de Procédure Pénale (CPP)*, Code of Criminal Procedure.

an act of *flagrante delicto* allowing proceedings to be brought without the prior lifting of parliamentary immunity.

Even if Alpha Condé was indeed intending to leave the country, it is the actual fact of leaving the territory which is an offence, as stressed in the indictment. However, in criminal law attempting to commit an offence does not exist. An offence is an actual breach, which needs only to be observed, and no intention is required. We should however state that Alpha Condé was accused, at the time of arrest, not only of attempting to cross the border but also of “*violence against or assault on a public security agent*”. This charge refers to the fact that Alpha Condé is alleged to have bitten Private Aboubacar Camara at the time of his arrest. The actual commission of this act has not been established, because the only evidence brought forward is a medical certificate noting the scar of “*a bite on the hypochondrium*”; there is however no objective element which makes it possible to establish a link between this scar and any act committed by Alpha Condé. Furthermore, the medical certificate was written in Conakry several weeks after the event, when it would have been possible to record evidence of the wound on the spot in Piné at the time of the incident.

In addition, the judicial authorities have not at any time used the *flagrante delicto* procedure to prosecute Alpha Condé. If this procedure had been followed, the person prosecuted for *flagrante delicto* must be immediately brought before the court for the place where the offence is committed (Articles 69, 386 and 387 of the CPP). In the case in question, this would have meant the Justice of the Peace in Lola taking it on, but this did not happen.

On the basis of the facts set out above, Amnesty International believes that the *flagrante delicto* argument is indefensible in the case of Alpha Condé’s arrest for the following reasons:

- even if it is accepted that Alpha Condé physically attacked a member of the security forces, that could only have happened after his arrest;
- with regard to the other charge of attempting to cross the border, as we have seen, this is nothing more than a simple breach and attempting such a breach is not punishable so it cannot in any way constitute a case of *flagrante delicto*, as the Public Prosecutor acknowledged at the hearing.

This means that his arrest was not lawful because his parliamentary immunity had never been lifted.

**b) *Failure to respect the legal period for garde à vue and prolonged incommunicado detention without trial***

All those arrested in the context of this affair were first held in *garde à vue*. This term describes the period of incommunicado detention, during which a detained person has no access to his family, to a doctor of his choice or to a lawyer. This period of incommunicado detention allows members of the security forces to detain suspects and interrogate them without referring them to the Public Prosecutor.

The Guinean CPP strictly regulates the procedure of *garde à vue* which is only justified “for the purposes of the investigation”. The CPP states, in particular in Articles 60 to 65, that the period of *garde à vue* cannot exceed 48 hours; the CPP does, however, state that this period “*may be extended for a further 48 hour period on the authorisation of the Public Prosecutor or the examining magistrate*”. Given that one day is made up of 24 hours, the renewed period for *garde à vue* cannot, under any circumstances, exceed 96 hours or four days.

Article 62 of the CPP states that the *officier de police judiciaire* (OPJ)<sup>9</sup>, criminal investigation officer, must record on the *procès verbal*, official notes, taken from anyone being held in *garde à vue* the day and time they were either released or brought before a competent magistrate.

None of these rules governing *garde à vue* was respected in the Alpha Condé affair. Alpha Condé and those of his companions who were arrested on 15 December were not brought before the examining magistrate until 28 December 1998. This means that they were in the hands of the security forces for a period of 13 days.

With regard to the others arrested in the same context, primarily military personnel detained between October 1999 and February 2000, they were held incommunicado on the island of Kassa, situated one hour west of Conakry, without any contact with the outside world, for over three months. For example, Second Lieutenant Moussa Keita, and Lieutenant Sekouba Sacko, who were arrested on 9 October 1999, were placed under no detention order until 25 February 2000.

Another provision limiting the improper use of *garde à vue* states that anyone who is detained must be informed of the grounds for his arrest and, in particular, of his rights: the right

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<sup>9</sup> The qualifications and powers of this post are defined in the Code of Criminal Procedure, Articles 14 to 18.

not to give evidence against himself, to make or not to make a statement, to be examined by a doctor<sup>10</sup>.

In the case of Alpha Condé, he did not receive notification of his *garde à vue* until 21 December 1998 at 12.45, that is, five days after his arrest.

The CPP makes provisions for monitoring compliance with the rules governing *garde à vue*. Article 44 states: *“The Public Prosecutor monitors measures relating to ‘garde à vue’. Periodically he monitors, or instructs his deputies to monitor, all criminal investigation departments under his authority and reports thereon to the Public Prosecutor.”* In so far as there is a clear lack of any guarantee protecting the fundamental rights of the person arrested, and in particular the fact that that person cannot see a lawyer, it is essential that the Prosecutor and the examining magistrate fulfil their legal obligation to supervise *garde à vue*.

In this case, it appears that the detention in *garde à vue* of Alpha Condé, his companions and the military personnel were not monitored in this way. Quite the reverse, their *garde à vue* detention took place outside of any judicial control whatsoever and extended beyond the lawful period.

Most of those arrested in the context of this trial before the CSE were held in prolonged incommunicado detention. This constitutes a violation of the standards relating to fundamental rights.

More generally, any prolonged incommunicado detention is contrary to international standards protecting human rights. Article 9 (3) of the Covenant stipulates that: *“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”*

Furthermore, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) states in its principle 16 (1) that: *“Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.”*

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<sup>10</sup> This is guaranteed by Articles 60 and 64 of the CPP.

c) *Failure to respect the right of prisoners to have access to their relatives, their lawyers or to doctors*

None of the accused was authorised to receive visits from members of his family, and this includes Alpha Condé, his companions who were members of the RPG, and the military personnel arrested later. It was not until 12 April 2000 when the hearing began, that a few of the prisoners' relatives who had received permission to enter the court were able to see their loved ones.

This refusal to grant prisoners access to their families violates all international standards governing this area. For instance, rule 92 of the Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) states that a prisoner *"shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and for receiving visits from them..."*

In addition, Principles 15 and 19 of the Body of Principles states that prisoners may not be refused the right to communicate with their families.

Not only did the families not have access to their imprisoned relatives, but Amnesty International has become aware of at least two cases where relatives visiting their loved ones were arrested. Amnesty International has not identified these people, to avoid putting them in danger. For instance, a daughter who attempted to visit her father detained on the island of Kassa, was arrested and held for three days. Amnesty International has learned that the security forces allegedly attempted to rape her during her detention. The wife of another prisoner made a similar attempt to see her husband; she was arrested, then released immediately, but was given ten lashes of the whip and the military personnel extorted the sum of 20,000 Guinean francs from her. The military personnel on the island of Kassa led her to believe that her husband was on mission.

The prisoners were also refused the right of access to their lawyers for a long period of time. In the case of Alpha Condé, his lawyers were not able to see him until ten days after his arrest in the presence of the Public Prosecutor, the examining magistrate and military personnel. Confidentiality was not, therefore, guaranteed during these early visits, which in any event were not easy to obtain. After this period, he was able to meet his lawyers and his doctor on a progressively more regular basis.

These problems of access to lawyers continued until the trial in April 2000. For instance, M<sup>e</sup> Pierre-Olivier Sur, one of Alpha Condé's lawyers, was sent back in January 2000 when he came from France to meet his client. In the end, he was only able to obtain a five-day visa to attend the beginning of the trial.

Similarly, on 6 March 2000 M<sup>e</sup> Camara was obliged to apply to the examining magistrate in order to be able to meet **Nouhan Condé** and **Kaman Camara** who were being held in the Central Prison. These problems of access to their clients made the lawyers' task of preparing their clients' effective defence much more difficult.

The CPP, in Articles 118, 119 and 120, guarantees the right of charged prisoners to communicate with their counsel.

This refusal and subsequent reticence to grant those charged access to their lawyers violates all legislation covering this area. Indeed, Principle 17 of the Body of Principles provides that a detained person shall be entitled to have the assistance of a legal counsel at all stages of the criminal proceedings. Similarly Principle 7 of the Basic Principles on the Role of Lawyers provides that all persons arrested or detained "*shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention*". All prisoners have the right to communicate in confidence with their lawyers (Principle 18 of the Body of Principles and Rule 93 of the Standard Minimum Rules). These rights apply from the time of arrest, during detention before the trial, during the investigation and proceedings and throughout the appeal proceedings (Principles 1 and 7 of the Basic Principles on the Role of Lawyers).

In addition, although Alpha Condé had the right to see a doctor, the military personnel who were held for four months on the island of Kassa were refused the right to any medical examination. This is contrary to Principle 24 of the Body of Principles which states that: "*A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.*"

**d) Failure to respect the right to a reexamination of the lawfulness of detention**

Any person arrested or placed in detention has the right to be brought without delay before a magistrate to permit the latter to decide on the lawfulness of this detention. This right is set out in paragraphs 3 and 4 of Article 9 of the Covenant and by Principles 32(1) and 37 of the Body of Principles. This procedure makes it possible to determine whether the detention is legally justified and whether it is necessary before the trial. It is also designed to guarantee the well-being of the prisoner and to prevent any violation of his fundamental rights. For instance, Article 9(4) of the Covenant provides that anyone placed in detention has the right to appeal to a court "*in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful*". These rules were not complied with in the case of those accused and tried by the CSE in April 2000.

e) ***Failure to respect the right to “dual investigation”***

Guinean criminal law is largely inspired by French law, according to which “dual investigation” in criminal matters is a principle which is designed to guarantee the fairness of the proceedings. In Guinea, this principle is applied to all criminal matters, except those which are heard by the CSE. In general, the examining magistrate directs the proceedings at the first stage, then, once he has completed his investigations, the file is put before the Office of the Director of Public Prosecutions. It is this office that then decides to refer the matter to the competent court, in this case the Criminal Assize Court. The office is also a court of appeal against orders of the examining magistrate: the parties can plead and appeal against decisions of the examining magistrate.

With regard to the charges of threatening State security, the CPP states that is the Minister of Justice who prepares the case<sup>11</sup>. In this case, for the investigation into the Condé affair, the examining magistrate was given responsibility for the case and he then transmitted the file to the Minister of Justice who, in his report of 10 August 1999, in turn forwarded it to the Public Prosecutor to prepare the indictment. No appeal against orders of the examining magistrate was possible before the Office of the Director of Public Prosecutions; the file had not been put before it. On the other hand, the Minister of Justice could intervene directly in this affair, which is contrary to the principles of independence of justice and the separation of powers guaranteed by Article 80 of the Guinean Constitution: “*The power of the judiciary is independent of the executive and the legislature. It is exercised exclusively by the courts.*”

f) ***The right to be tried within a reasonable period of time***

Article 14(3)(c) of the Covenant provides that anyone accused of a criminal offence must be “*tried without undue delay*”. Principle 38 of the Body of Principles states that: “*A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release pending trial*”.

The Guinean authorities used the charge of *flagrante delicto* to justify the arrest of Alpha Condé in December 1998. He was then accused of “*attempting to cross the border and violence against or assault on a public security agent*”. However, Alpha Condé was not tried on these grounds and it was only in January 1999, three weeks after his arrest, that other evidence against him was found to prolong his detention without trial. These new charges, including “*the illegal use of armed force and the fraudulent transfer of currency*” were linked to the discovery of documents concerning a planned attack on Guinea. These charges were formulated while he was still being held in the villa in the OAU quarter in January 1999.

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<sup>11</sup> Article 634(7) of the CPP.

The investigation was concluded in August 1999, enabling the Guinean authorities to state that Alpha Condé's trial would begin on 7 September 1999; it was then postponed until 20 October 1999. However, it was during this period that "*associated*" new elements were added to the existing charges. At that time, in September/October 1999, according to the indictment, military personnel were preparing to seize power to hand it over to Alpha Condé<sup>12</sup>.

Consequently, almost 16 months separate Alpha Condé's arrest and his trial. Amnesty International considers that the Guinean authorities deliberately delayed Alpha Condé's trial because they needed new charges to justify his prolonged detention and secure a political verdict in advance.

**g) *Detention in secret locations***

Almost all those arrested in the context of the Alpha Condé affair were held, at one time or another, in secret places of detention. Before being transferred to the prison in Conakry, Alpha Condé had been held in unofficial places of detention, including the Koundara military camp and somewhere known as the "OAU quarter".

The military personnel arrested in October 1999 told the Amnesty International delegation that they had been held in inhuman conditions and had been subjected to cruel, inhuman and degrading treatment on the island of Kassa.

The Director of Prisons, whose responsibility it is "*to coordinate every aspect of personnel administration... and equipment of penal establishments of the Republic*" confirmed to the Amnesty International delegation in April 2000 that the Koundara military camp and the island of Kassa were not lawful places of detention. However, many statements gathered by Amnesty International reveal that prisoners were, indeed, held in detention there.

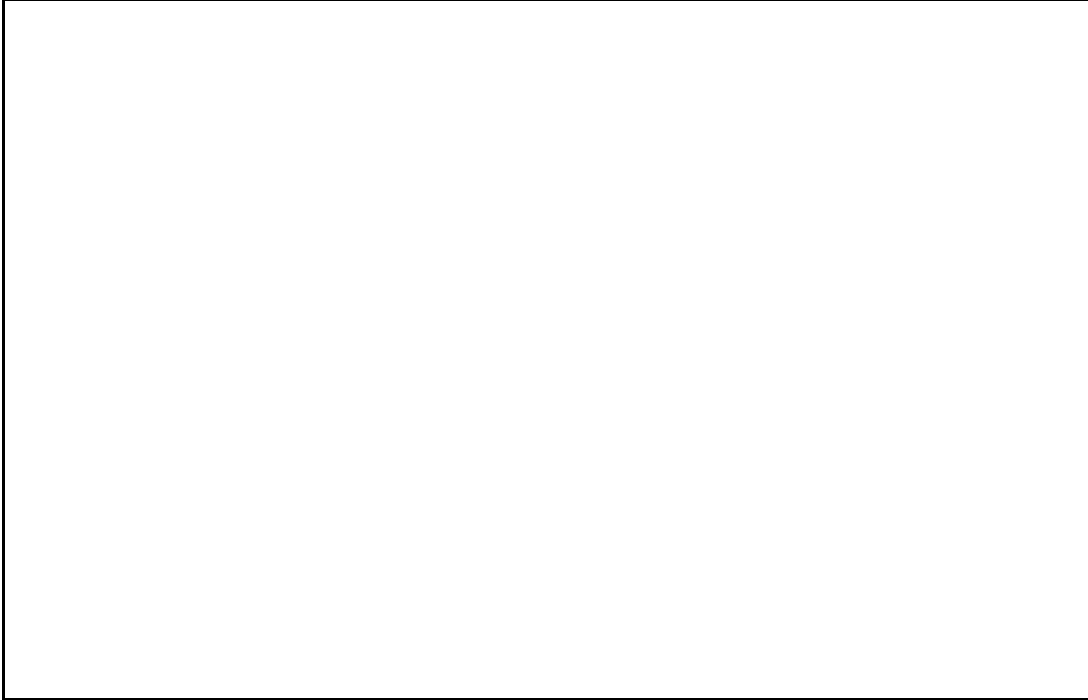
**h) *Use of torture during incommunicado detention***

The majority of those arrested in the context of this affair were subjected to ill-treatment or torture. Alpha Condé himself was beaten at the time of his arrest. The thirty or so

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<sup>12</sup> These events were recounted in the indictment as being the attempted coup known as "Kissosso Bridge".





Front view of the prison on the island of Kassa (drawing by one of the co-defendants at the April 2000 trial before the CSE who was held in this prison) ©ai

members of the armed forces arrested in October 1999 were all subjected to torture with a view to extracting confessions or making them sign accusations against the RPG leader.

During its fact-finding mission in April 2000, the Amnesty International delegation was able to collect a number of statements from these tortured military personnel. The names of these people have not been mentioned in this document to avoid reprisals.

As a general rule, the acts of torture were carried out immediately after arrest in the police station or military barracks or, subsequently, when the prisoners were secretly transferred to the island of Kassa.

Commenting on the treatment inflicted on many of the military personnel detained with him, one detainee informed the Amnesty International delegation in April 2000 that on their arrival at the prison in Kassa, the prisoners were undressed and beaten during the interrogation:

*“At 2.30am on 9 October 1999, a commando group of six wearing hoods entered the cell without a word and ordered three prisoners to strip naked. This was quickly done and one by one they were tied up hand and foot and placed face*

*down on the ground; water was poured over each of them before they were given 150 lashes of the whip. The beating lasted until 3.10 in the morning.”*

Another torture testimony, given by a number of military detainees, was reproduced in *Le Lynx*, a Guinean weekly publication in its 1 May 2000 edition: “*We were put on a ship and transferred to Kassa. Some of us were held for four months, others for three months or two months. We were subjected to all kinds of torture.*”

The victims have implicated people close to the Presidency, who were present at the time they were tortured. These people apparently wanted to know whether the detainees were in contact with Alpha Condé and whether they had received money from him. Some prisoners told the Amnesty International delegation that they had also been asked to acknowledge the charges brought against Alpha Condé in exchange for a promise of release and promotion.

During these interviews with prisoners in April 2000, the Amnesty International delegation obtained precise details of some forms of torture used against these prisoners. The following is a non-exhaustive list of such methods.

**(i) Blows all over the body, slaps, punches and kicks**

Some prisoners told Amnesty International that they had been hit on the genitals with rubber and others were beaten with cables or sticks.

**(ii) Suffocation under water at sea**

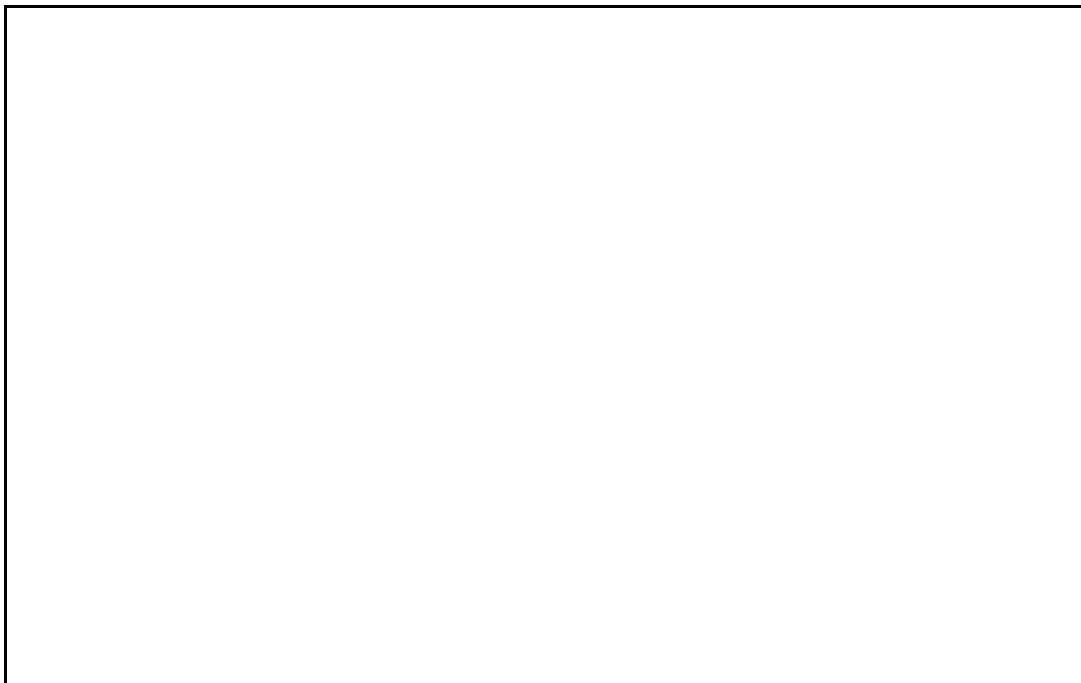
Some prisoners were tied up and thrown into the water while at sea several kilometres off the island of Kassa. Others had their wrists tied together and were then dragged on a rope in deep water from a boat (zodiac).

**(iii) Imprisonment in a cell known as “hell”, situated on the island of Kassa**

Other prisoners had been held in a cell underneath a water tank. Everyone in the cell was regularly drenched whenever water overflowed from the tank. In addition, the cramped conditions obliged them to remain standing all the time.

**(iv) Starvation**

Some prisoners told Amnesty International that they had been deprived of food as a means of obliging them to implicate Alpha Condé.



The cell known as “hell”, located on the island of Kassa (drawing by one of the co-defendants at the April 2000 trial before the CSE who was imprisoned on this island). ©ai

**(v) *Death threats against prisoners***

After they left Piné, Alpha Condé and his companions were taken to a military camp in Lola. The RPG leader told *Jeune Afrique*<sup>13</sup>: “*The person in charge of the camp (...) shouted to his men: ‘Line them up against the wall and load your weapons!’*”

Other prisoners also told the Amnesty International delegation that they had received death threats.

**(vi) *Death following torture***

In April 2000, the Amnesty International delegation was informed of at least one death in detention as a result of torture. This was the case of Sergeant Guey Keita during the night of 15 January 2000. The evening before his death, he had been subjected to ill-treatment - his torturers wanted to make him admit that he had received money from Alpha Condé. One of his co-detainees said that Sergeant Guey Keita “*had been starved for eight days - this had completely exhausted him*”.

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<sup>13</sup> *Jeune Afrique* n° 1987 of 9 to 15 February 1999.

All these concurring eyewitness statements gathered by Amnesty International show that torture was inflicted systematically by the security forces with a view to causing serious physical and psychological harm to the detainees.

Torture and other cruel, inhuman or degrading treatment or punishment are unreservedly prohibited by international law. The African Charter refers to the ban on torture in its Article 5. Similar provisions are contained in international treaties, in particular the Convention against Torture and Article 7 of the Covenant. However, in the light of the trial before the CSE, there is a clear contradiction between Article 6 of the Guinean Constitution ‘*No one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment*’ and current practice in particular in military barracks. Torture is widespread in Guinea and appears to be encouraged by the authorities who have taken no steps to put a stop to it, in particular by failing to prohibit the existence of secret detention centres. Furthermore, torturers enjoy complete impunity.

*i) Violation of the rights to defence*

Throughout the judicial investigation which lasted more than 15 months, the defendants’ lawyers were never regularly involved in the proceedings. The defence lawyers complained on numerous occasions about the refusal of the judicial authorities to give them access to their clients’ files, which *de facto* made it impossible to prepare their defence adequately. In fact, the lawyers did not have access to the files until the end of the day on Friday 7 April 2000, when the trial was due to start on Wednesday 12 April, barely five days later. None of the examining magistrates’ orders was communicated to them and they were not even informed of a handwriting test carried out in Abidjan.

Since none of the trial documents was forwarded to the defence lawyers, they were not able to make their point of view known, or refer the matter to the Office of the Director of Public Prosecutions in order to contest them.

Excluding the lawyers in this way throughout the judicial proceedings is contrary to the provisions of Articles 118, 119 and 120 of the CPP. These articles state, in particular, that no interrogation of the accused should take place without the presence of their lawyers, who have been duly summoned, and the file should have been made available to them at the latest 24 hours before each interrogation. In addition, this violates the right to defence as guaranteed, in particular, by Article 14 (3) of the Covenant.<sup>14</sup>

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<sup>14</sup> This text states that: “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing”.

Moreover, with regard to confiscations and searches, serious irregularities occurred. Articles 54, 76, 98, 99 and 101 of the CPP regulate the circumstances in which searches and confiscations must take place. Articles 98 and 99 state:

*“If the search takes place at the home of the accused, the examining magistrate must comply with the provisions of Articles 54, 55 and 56 of this Code.”*

*“If the search takes place at a domicile other than that of the accused, the person whose home it is shall be invited to be present. If such person is absent or refuses to be present for the search, this will take place in the presence of any relatives who may be present or, failing that, in the presence of two witnesses.”*

In the case in question, neither Alpha Condé nor Morifing Sagno, nor Antoine Gbogolo Soromou were present when the searches took place. Furthermore, they had not appointed any representatives. The searches took place without their knowledge and the results were shown on Guinean television before being given to the examining magistrate. This is contrary to the provisions of Article 102 of the CPP, which sanctions the disclosure of confidential matter relating to the investigation. This confidentiality of the investigation is, in particular, guaranteed by Principle 13 (c) of the Guidelines on the Role of Prosecutors.

This failure to respect the rules governing searches had serious consequences particularly since one overwhelming piece of evidence cited by the prosecution had been found during one of these irregular searches. This was the search carried out at the home of Morifing Sagno, when they allegedly found a travel bag belonging to Alpha Condé. According to the indictment, this bag contained a number of documents, including some referring to the purchase of arms and to the routing of fighting units.

The contents of this bag were therefore deemed to be proof of a clear intention on the part of the defendant *“to make unlawful use of armed force against the Republic of Guinea”*, even though these exhibits were not shown to Alpha Condé until 20 April 1999, four months after their discovery. In the circumstances, it is probable that the contents of the bag had been interfered with by the investigators and the pieces of evidence it contained may not have been attributable to Alpha Condé and his companions.

### **3. The trial of Alpha Condé and his co-accused**

It is in the context of these multiple violations of the rights of the prisoners and, in particular, their right to defence that the trial of Alpha Condé and his 47 co-accused, some of whom were tried *in absentia*, began.

It is appropriate at this point to recall the minimum rules on fairness which are unanimously accepted by Guinean national law and international law. Two conditions, in particular, are required in order that a trial can be fair or deemed to be fair. From beginning to end, the proceedings must comply strictly with universally-recognised standards of fairness. These standards must, in addition, be applied by an independent and impartial judicial apparatus.

Strict compliance with a fair trial appears in the Guinean Constitution. Article 9 of the Constitution states that “*Everyone is entitled to a fair and equitable trial in which the right to defend oneself is guaranteed*”.

The right to a fair trial is also a rule of international human rights law designed to protect individuals against the unlawful and arbitrary restriction or deprivation of other rights, in particular the right to life and the right to freedom. This right is guaranteed by Article 14 (1) of the Covenant which states, in particular, that:

*“...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.”*

The African Charter also guarantees this right to a fair trial in its Article 7.

#### **a) The charges**

After an investigation which lasted over a year, the indictment of the Public Prosecutor with regard to Alpha Condé and his 47 co-accused contained five charges:

- violence towards, and assault on, a public security agent;
- holding and fraudulent transfer of foreign currency;
- violation of a regulation published by the administrative or municipal authority;
- unlawful use of armed force and complicity;
- threatening the authority of the State and its territorial integrity and complicity.

**b) *The choice of a special court***

These last two offences constitute a threat to the security of the State. According to Article 634(4) of the CPP, it is the CSE which is competent to deal with such offences.

According to the Guinean Criminal Code, the penalty for unlawful use of armed force and threatening territorial integrity (Articles 70 to 104 of the CP) can, in certain circumstances, go as far as the death penalty: Article 70 stipulates that “*Any Guinean subject (...) who bears arms against the Republic of Guinea will be guilty of treason and punished by death*”; and, according to Article 91, the death penalty could be applied when certain offences contained in Article 89 (recruitment of armed troops without the authorisation of the legitimate power) and 90 (unlawful military command) have been “*attempted or carried out with the use of arms*”.

The use of this special court poses a number of problems. With regard to the composition of the members of the CSE, this varies according to the status of the defendant. According to the order of 1985, if they are civilian, “*the court shall consist of three established professional magistrates, including a magistrate of the Supreme Court as chairman of the CSE, and three alternate law officers of the same rank*”. Where the defendants include one or more military personnel, “*two established high-ranking army officers and two alternates of the same rank will join the bench*”. As soldiers were implicated in the Alpha Condé affair, the CSE was therefore joined by two military judges. The independence of the CSE is further compromised by the close links between the army and the executive power. In addition, Amnesty International has learned that these officers had allegedly received no legal training.

The method of appointing members of the CSE also poses a problem in terms of the independence of the magistrates. In fact, the members of this special court are appointed by the President of the Republic, according to Article 634(3) of the CPP. This power to appoint members to the CSE granted to the Head of State can constitute an impediment to the fundamental independence of the magistrates, which must be respected according to the Basic Principles on the Independence of the Judiciary, adopted by the United Nations General Assembly in 1985. According to this document, the State must guarantee the independence of the judiciary and of its decisions and remove it from any influence on the part of those holding political power. In as much as the appointment of magistrates to the CSE is dependent on a decision of the executive, this could compromise both the independence of the administration of justice and the separation of judicial and executive powers.

The members of the CSE who were called upon to try Alpha Condé were appointed by a decree of the President of the Republic on 4 August 1999, that is, after the arrest of Alpha Condé.

**c) Conduct of the trial before the CSE**

Throughout the trial before the CSE, which began on 12 April 2000 and ended in September of the same year, the area surrounding the court was closed off. Military roadblocks screened all access roads to the court. The CSE sat inside the Ministry of Justice. The hearing was supposedly public, but access required an entry permit signed by the Minister of Justice's principal private secretary, which was extremely difficult to obtain. Even the families of the accused experienced great difficulty in attending the hearings.

The day the trial began the Minister of Justice himself seated people in the chamber. Apart from the defendants, journalists and lawyers, a number of plain-clothes members of the security services were present. Nevertheless, the President of the Court, Mamadou Sylla, was courteous, neutral and impartial, in particular during the stage when the defendants and witnesses were being interrogated.

The proceedings were broadcast by Guinean television; however, many reports highlighted the fact that only an edited version of the hearings was broadcast, reporting almost exclusively on the prosecution's evidence.

The trial was suspended on several occasions and there were a number of incidents during the hearing. The court agreed to the presence of foreign lawyers, which benefited not only the defence lawyers but also those for the prosecution.

**(i) Violation of the right to defence**

When the trial opened, defence lawyers raised a number of objections to demonstrate the nullity of the proceedings which were flawed by a number of irregularities. These concerned the arrest, the length of time in *garde à vue*, the powers of the examining magistrate, the right to appeal to a higher court, and even parliamentary immunity.

In a decision on 25 April the CSE rejected all these objections, which it deemed to be "unfounded". As a sign of protest against this rejection all the defence lawyers, with the agreement of their clients, withdrew "to avoid giving their support to a parody of justice". After a suspension of several weeks, the Court allocated defence lawyers to them. The defendants rejected this, but the President of the Court stated that it was compulsory for anyone tried before the CSE to be assisted by a lawyer.

Throughout the trial irregularities of procedure emerged. For example, the principle that the defence and prosecution should have the same opportunities to prepare their argument and present their case was not respected and the defence did not enjoy the same benefits as those associated with the Public Prosecutor and the prosecution. This is why the defence lawyers demonstrated their discontent by refusing to attend the opening of the hearing on 9 August 2000.



(ii) *Confessions extracted under torture or other coercive methods accepted by the Court*

During the trial most of the accused, especially the members of the military, told the court of the torture and ill-treatment to which they had been subjected in order to extract confessions to implicate Alpha Condé.

For instance, the defendants told the court that during their period in *garde à vue* they had been systematically humiliated, beaten and tortured in order to extract confessions from them.

This was true of Ben Karamoko Kourouma, Alpha Condé's bodyguard, who was handcuffed and thrown into the boot of a car which was to transport Alpha Condé and his companions just after their arrest. He was deprived of food and sleep. At the hearing on 24 May 2000 he showed the marks of torture.

Another defendant explained during the trial that his statement to the examining magistrate was fabricated, and that it had been "*extracted by force and under the influence of psychological threats*". Furthermore, he added that he had been promised promotion if he would agree "*to play the game .... read and sign a statement which accuses (Alpha Condé) of wanting to seize power by force*".

However, the court nevertheless accepted this evidence without ordering any investigation into these serious allegations. Ben Kourouma, in particular, bore the traces of his injuries on his arms, back and thighs. All these people denounced the harsh conditions in custody on the island of Kassa and in other detention centres. This refusal to investigate allegations of torture is in contravention of the obligation on all States which are party to the Convention against Torture which stipulates in Article 12:

*"Each State Party shall ensure that its competent authorities 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 its jurisdiction."*

Article 15 of the Convention against Torture states that: *"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."* A declaration made under torture is not, therefore, lawfully admissible as evidence, except in the context of proceedings against the presumed perpetrator of acts of torture. Other international standards, which are wider in scope, exclude not only statements obtained by torture, but also those that have been obtained by means of cruel, inhuman or degrading treatment or punishment. These standards apply to statements made both by the accused and by witnesses.

The role of the judiciary in eliminating torture is crucial. It was raised in 1992, by the United Nations Special Rapporteur on torture:

*“...the judiciary can provide an immediate remedy and compensation in such individual cases. If it assumes this responsibility, it will make the use of torture less attractive and will effectively contribute to the disappearance of this practice.”*<sup>15</sup>

The Special Rapporteur on torture emphasised the responsibility of the judiciary in enforcing compliance with international law. He stated: *“No member of the judiciary can be in doubt any longer as to the rights which a person in detention has under international law, and which consequently have to be ensured to him...”*<sup>16</sup>.

The CSE should, therefore, have rejected all evidence obtained by torture or under duress and, in particular, the defendants’ confessions. Principle 16 of the Guidelines on the Role of Prosecutors states: *“When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice”*.

Instead of rejecting these confessions obtained under torture, the Public Prosecutor tried to minimise the impact of such allegations by talking of *“manoeuvres by the defence”*, stating that the defence was attempting to divert attention from the deeds for which the prisoners were being prosecuted. He also denied the existence of a prison on the island of Kassa, but did concede that the general disciplinary rules of the armed forces provided for disciplinary cells in the military establishment situated on this island. However, with regard to the confessions extracted under torture, he commented that the Prosecution Department would *“check for the sake of our country’s image, and act”*. As far as Amnesty International is aware, no action has been taken in this regard.

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<sup>15</sup> Oral communication of the Special Rapporteur on torture to the Commission on Human Rights, 11 February 1992, E/CN.4/1992/17.

<sup>16</sup> *ibid.*

**(iii) Intimidation and threats to defence lawyers**

Intimidation and threats were made against the defence lawyers. M<sup>e</sup> Paul Yomba Kourouma, one of the lawyers appointed *ex officio* by the court to defend the accused, sent a letter in July 2000 to the chairman of the Bar, reporting the threats he had received from the Minister of Justice when the Minister summoned him. In this letter, extracts of which were published by the press, M<sup>e</sup> Paul Yomba Kourouma stated that the Minister had threatened “*purely and simply to withdraw*” the lawyer’s accreditation; he is reported to have said: “*It is the State which trained you and which made you what you are today; we can withdraw your assent without anyone saying a word*”.

Some time previously, in June and at the request of the defence, the CSE had to remove Colonel Kandé Touré, one of the members of the court, who was making threatening gestures to M<sup>e</sup> Paul Yomba Kourouma. In fact, the defence had called for Colonel Touré’s competence to be challenged; the court had rejected this request, but felt that the military judge should be replaced. Colonel Kandé Touré was therefore replaced by another military judge, Colonel Mohamed Cherif Diallo.

**(iv) Denial of the right to call and interrogate witnesses**

Unlike the prosecution which had the opportunity to call and interrogate witnesses for the prosecution, the defence was not able to call the witnesses it wanted, in particular Commander Mamadouba Soumah and Madame Manou Cissé. The court refused to summon them. This refusal was particularly harmful for the defence because Commander Soumah, who had participated in the arrest of the military personnel, had been accused by Alpha Condé’s supporters of having fabricated evidence.

Equality of power between the parties throughout the trial is an essential criterion for a fair hearing. This principle implies that the treatment afforded the two parties guarantees them an equal place in the proceedings during the trial and enables them to defend their position with equal resources. This means that each party must have a reasonable opportunity to present its case under conditions which do not definitively disadvantage one from the other. A fundamental element of the principle of equality of power and the right to defence is the right of the accused to call and interrogate witnesses. This right “... *is designed to guarantee to 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>17</sup>.

Furthermore, Article 14(3) of the Covenant states: “*In the determination of any criminal charge against him, everyone shall be entitled to the following minimum*

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<sup>17</sup> Human Rights Committee, General Comments 13, paragraph 12.

*guarantees, in full equality: [...] (e) 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.”*

However, it should be stressed that the defence lawyers were able to examine all of the witnesses presented by the prosecution.

**d) Verdict**

At the end of the trial, on 11 September 2000 the Court sentenced 11 of the defendants to prison sentences of between one year suspended and five years; all the other defendants were acquitted, 23 “purely and simply” and 10 “with the benefit of the doubt”. Four people, who had been charged but were not in custody, were sentenced *in absentia* to ten years’ imprisonment<sup>18</sup>.

**e) Right of appeal**

No appeal may be made against this verdict. In fact, the order of 10 July 1985 creating the CSE states that “no appeal may be made against a decision of the Court”. The only possible remedy is the *pourvoi en cassation*, when the matter is reconsidered on points of law but the facts of the case are not re-examined.

The possibility of the limited recourse to *cassation* does not comply with the obligations of the Covenant, which states in Article 14 (5) that: “Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law”.

In the specific case of the Alpha Condé trial, the effectiveness and fairness of any appeal to the Supreme Court could not be guaranteed. In fact, the President of the Supreme Court, Lamine Sidimé, is also the Prime Minister which is contrary to Article 84 of the Guinean Constitution: “The office of member of the Supreme Court is incompatible with any other public or private function, in particular where the incumbent is elected”. This provision of the Constitution is designed to guarantee the independence and freedom of members of this highest court; this is not the case at present and doubt could be cast on any decision taken by the Supreme Court as long as these two incompatible functions are filled by the same person.

**f) Conclusion**

All these points explored above make it clear that the trial of Alpha Condé and his 47 co-detainees met none of the minimum conditions with regard to fairness and impartiality.

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<sup>18</sup> See Annex.

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Firstly, the fact of bringing the defendants before a special court which undermines the ordinary courts is a subject of grave concern for Amnesty International in that it contravenes international standards for trials. Principle 5 of the Basic Principles on the Independence of the Judiciary states: “*Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals*”.

The very existence of the CSE, which has been maintained and used to judge numerous civilian opponents, constitutes a systematic violation of the fundamental rights of defendants. International law is strongly opposed to special courts, which should only be used in exceptional circumstances and which must respect international standards of fairness. Any special court that systematically violates these basic standards ought to be abolished.

The UN Human Rights Committee has on numerous occasions expressed its concern about special courts. In particular, it has stated: “*The Committee notes the existence, in many countries, of military or special courts which try civilians. This could present serious problems as far as the equitable, impartial and independent administration of justice is concerned [...] the trying of civilians by such courts should be very exceptional and take place under conditions which genuinely afford the full guarantees stipulated in Article 14 [of the Covenant]*.”<sup>19</sup>

Since the establishment of a multi-party system in 1990, Guinea presents itself to the world as a peaceful, democratic, state governed by the rule of law. In this context, the existence of a court whose remit it is to depart from the rules of common law, in particular in the case of proceedings against civilians, might appear to be less than appropriate. It opens the way to misuse which aims to reinforce a system where the opposition is threatened by improper use of the CSE, and which benefits those in power and attacks opponents, such as Alpha Condé, who have become too obstructive.

Amnesty International therefore believes the CSE does not appear to have met the conditions contained in Article 14(1) of the Covenant, namely that it must be “a competent, independent and impartial tribunal established by law”. A similar provision is contained in Article 10 of the Universal Declaration and in Article 7 of the African Charter. The very composition of the CSE almost guaranteed its lack of impartiality, since its members were chosen by President Conté, well-known as an adversary of Alpha Condé, the principal defendant.

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<sup>19</sup> General comment 13 on Article 14 adopted in 1984 at the 21<sup>st</sup> session of the Human Rights Committee, HRI/GEN/p.13, paragraph 4.

The trial of Alpha Condé and his co-accused was furthermore tarnished by political interference throughout the entire proceedings. This made itself felt on a number of levels: it was evident in the choice of lawyers appointed by the Court and the attempts to interfere with their defence strategy; it manifested itself again throughout the Court whose members had been appointed by the President of the Republic.

The main obstacles which prevented the defendants being given a fair trial are related to:

- the period spent in *garde à vue*, which in the case of Alpha Condé, was over 15 days and, in the case of the military personnel held in secret places of detention, over 120 days. The fact that the detainees were isolated from the outside world during this period made it more likely that a good number of them would be subjected to ill-treatment and torture and that they would be forced to make statements which were subsequently used by the prosecution during the trial.
- the fact that the judicial investigation period lasted for over a year, during which time the main defendants were held in detention, often in poor conditions, further compromised their right to a fair trial.
- the fact that the hearings before the examining magistrate were carried out in an unfair manner. For example, the defendants' lawyers were not called to attend the interviews, which amounted to denying the defendants their right to defence, a fundamental right recognised by all international standards relating to the fairness of trials, and in particular by Article 7(1)(c) of the African Charter.

With regard to the confessions extracted under torture, although the accused had said that they had been tortured, the CSE did absolutely nothing to ascertain the circumstances in which these statements had been taken by the officers in charge of the police investigation into the allegations against Alpha Condé and his co-accused, which is in contravention of Articles 12 and 13 of the Convention against Torture.

An essential element of the right to a fair trial is, as defined in Article 14(3)(e) of the Covenant, the right to "obtain the attendance and examination of witnesses" on the same terms as the prosecution. However, witnesses named by the defence did not appear and the court took no effective steps to secure their attendance.

With regard to the principal thesis of the charge, the submissions of the prosecution contained sufficient omissions and incoherences to throw considerable doubt on the "facts" it presented. The court was unable to establish any proof of the existence of a plot to violently overthrow the government of Guinea, or of any other acts of violence. No weapons or military

equipment were found in the possession of the principal defendant, or associated with him in any way.

The legal and procedural irregularities of the CSE ought to have sufficed for an independent tribunal to declare the entire judicial proceedings “*null and void*”. The conclusion reached by Amnesty International, and based on the conclusion reached by its observer, is that the entire judicial proceedings, and more particularly the trial and convictions, were patently unfair. Alpha Condé and his companions as well as the military personnel, were wrongly arrested and ought not to have been found guilty, or sentenced to terms of imprisonment.

The organization therefore calls upon the Guinean authorities to release all those who were convicted following this trial, because they are prisoners of conscience, that is to say persons imprisoned because of their political views, who have neither used nor advocated violence.

## 4. Recommendations

Amnesty International urges the Guinean authorities strictly to comply with the legally-binding international standards incorporated in both their national legislation and the international treaties they have ratified. In particular, the organization calls on the Guinean authorities to take the following steps:

### A) TO RELEASE PRISONERS OF CONSCIENCE

#### To release all prisoners of conscience

All prisoners held for the peaceful expression of their political opinions must be immediately and unconditionally released.

### B) TO RESPECT INTERNATIONAL STANDARDS FOR FAIRNESS AND INDEPENDENCE IN THE ADMINISTRATION OF JUSTICE

#### To respect the minimum standards relating to arrest

The authorities responsible for making arrests must immediately inform the persons they have detained of the grounds for their arrest and of the charges against them. The authorities must also enable all detained persons to have access to the documents concerning their arrest, in accordance with Principle 12 of the Body of Principles.

#### To guarantee the separation of the authorities responsible for detention and those responsible for interrogation

As a guarantee against torture and ill-treatment, the authority responsible for detention must not be the same as that responsible for interrogation. Each detention centre must be monitored by an authority separate from the one which governs it.

#### To guarantee the right of appeal

All courts whatever their nature must permit convicted people to lodge an appeal with a higher court against the verdict and the sentence. Appeal procedures must comply with international standards on fairness.



### To abolish the *Cour de Sûreté de l'Etat*

The CSE is a special court that can be used as a government weapon against its opponents. The Guinean authorities should take steps to abolish it or change its procedures in order to ensure that judges are chosen independently, in particular to comply with the recommendations of the UN Human Rights Committee, as set out in its General Comment No. 13 concerning Article 14 of the Covenant.

## C) COMBATTING TORTURE

### Putting a stop to incommunicado detention

It is the opinion of all experts that incommunicado detention is the principal factor which encourages the use of torture. The Guinean authorities must publicly take a stand against the practice of holding people incommunicado and inform the security forces that such abuses will be punished. No-one should be held incommunicado. All prisoners should be held in officially-recognised places of detention. Up-to-date registers ought to be kept in all detention centres, as well as centrally. Prisoners' relatives, lawyers, judges and official bodies trying to locate people who have been arrested, as well as any third party with a legitimate interest, ought to have access to such information.

### Allowing detainees to have contact without delay with their relatives, a lawyer and a doctor

All detainees should have access to a lawyer and doctor of their choice, at any stage of the proceedings, as well as their relatives, in complete confidentiality, promptly after arrest, and on a regular basis thereafter. The right to consult a lawyer promptly is required by Principles 15 and 18 of the Body of Principles as well as by Principle 7 of the Basic Principles on the Role of Lawyers. All prisoners should be permitted to consult an independent doctor without delay, as provided for by Rules 22 to 26 of the Standard Minimum Rules and Principles 24 to 26 of the Body of Principles. The authorities should immediately inform the arrested person's family where their relative is being held, and of all transfers from one place of detention to another, as provided for by Rule 92 of the Standard Minimum Rules and Principle 16(1) of the Body of Principles. Detainees should be permitted to meet their family without delay, in accordance with Principles 15, 16, and 19 of the Body of Principles and Rule 92 of the Standard Minimum Rules.

### Allowing detainees to be brought before a magistrate without delay

All detainees must automatically be brought promptly before a judicial authority in the presence of their lawyer. This authority must be competent to decide upon the lawfulness and validity of detention, as well as on the treatment of the detained person. Prisoners must have the

opportunity at any time to request a judicial re-examination of the validity of their detention, and of any decision of a prosecutor which prevents them from meeting their relatives, their lawyer or their doctor. These guarantees are enshrined in Article 9(3) of the Covenant and by Principles 11 and 37 of the Body of Principles. Judges who renew detention orders should be independent from the police and the prosecution.

#### Ending torture and investigating such allegations

Appropriate guarantees should be put in place to put a stop to torture and ill-treatment inflicted on persons in detention. The perpetrators of such actions should be brought to justice and the victims compensated. Accusations of torture should be investigated promptly and in an impartial manner. No statement made under torture should be accepted as evidence during proceedings, unless it is made against the person accused of torture to establish that a statement has been made.

**ANNEX: VERDICT OF 11 SEPTEMBER 2000**

Information obtained from the three judgments given on 11 September 2000.

Sentenced *in absentia* to 10 years' imprisonment

- Sékou Souapé Kourouma
- El Hadj Mory Kaba
- Amara Sacko
- Lanciné Komara

Sentenced to various terms of imprisonment

- Alpha Condé: five years
- Lieutenant Lansana Keita and Ben Karamoko Kourouma: three years
- Antoine Gbogolo Soromou: two years
- 2nd Lieutenant Mamadou Lamarana Bah, Lieutenant Amadou Sow, 2nd Lieutenant Youssouf Banoro: 18 months
- 2nd Lieutenant Bô Moussa Keita, 2nd Lieutenant Sékouba Sacko, 2nd Lieutenant Aly Doumbouya: 18 months

Sentenced to suspended prison sentences

- 2nd Lieutenant Mamady Souaré: one year, suspended.

Acquittals

1) acquitted "purely and simply"

- Mamadou Kindy Barry
- Lansana Kourouma
- 2nd Lieutenant Koulako Diawara
- Morifing Sagnon
- 2nd Lieutenant Mory Dioubate
- Assistant Commissioner Sékou Sidibe
- 2nd Lieutenant Niankoye Loua
- Captain Karamoko Dioubate
- Staff Sergeant Mamoudou Condé
- Lancei Berete
- Warrant Officer Sékou Camara
- Commander Bouh Sangare
- 2nd Lieutenant Moussa Magassouba
- Captain Dianka Condé
- 2nd Lieutenant Mamadou Diam Barry dit Gaston

- 2nd Lieutenant Karounka Doumbouya
- Lieutenant Harouna Camara
- Commander Youssouf Cissé
- Warrant Officer Yémoiba Camara
- 2nd Lieutenant Sény Bangoura
- Staff Sergeant Ben Daouda Condé
- Ibrahima Keita
- ex-Captain Kaman Camara

2) acquitted “with the benefit of the doubt”

- Michel Lah Gongga
- Vassézé Diomandé
- Lt Ansoumane Camara
- Abdoulaye Keita dit Nounkalaye
- Akim Zeze Koivogui
- Warrant Officer Lansana Camara
- Mouctar Keita
- Saïdouba Condé
- Naby Nouhan Condé
- Hadja Gnamoye Kande