



人权理事会
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议程项目 3
增进和保护所有人权、公民、政治、经济、
社会和文化权利，包括发展权

酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题特别
报告员曼弗雷德·诺瓦克的报告

增编

对赤道几内亚共和国的访问* **

* 迟交。
** 本访问报告的内容提要以所有正式语文分发，报告本身附于内容提要之后，仅以呈件的语文分发。附录仅以呈件的语文分发。

内容提要

酷刑和其他残忍、不人道或有辱人格的待遇或处罚问题特别报告员于 2008 年 11 月 9 日至 18 日访问了赤道几内亚。

特别报告员对政府发出的邀请表示感谢，他将此解释为是政府准备让其拘留地点接受外部客观的专家进行独立检查的一个迹象。他赞赏政府提供合作，发出授权书，允许他进入监狱以及警察和宪兵羁押地点。

他注意到，2006 年通过了一项综合性法律，禁止酷刑，并规定对实施酷刑者的起诉。但是，根据与公务员、法官、律师和民间社会代表的讨论、与暴力受害者以及被剥夺自由者的会晤，而且常常得到法医证据的证实，他发现，在逮捕初期以及在审讯期间，警察惯常实施酷刑，包括采用吊、殴打、电休克等等手法。特别报告员获得报告说在马拉博黑沙滩和巴塔监狱中发生了一些体罚的案件。特别报告员还观察到，该国既没有实行禁止虐待的措施，也没有申诉机制，酷刑和虐待的凶手，除了 2007 年的一个案件以外，都没有受到起诉。相反，在许多案件中，酷刑受害者完全得不到公正，再加上虐待后的生理和心理后果，以及缺乏康复或赔偿机制，就可能造成经常性的痛苦，这可以说是不人道的待遇。

黑沙滩和埃维纳永的监狱以及巴塔警察局的拘留条件标准较高，但巴塔监狱以及其余的警察和宪兵羁押设施急需修缮，以达到国际最低标准。此外，大多数的警察和宪法牢房不提供食物(除非家属提供)，卫生设施也是非常有限，或者完全没有。特别报告员认为，在这种条件下的拘留，特别是长期拘留，相当于不人道待遇。特别报告员关注地注意到，在黑沙滩监狱，涉嫌政治罪的人被长期单独禁闭达 4 年。此外，其中大多数几乎在所有时候都被带上脚镣。他还发现，在黑沙滩监狱，家庭探视几乎被禁止(除了少数囚犯以外)，这令人担忧，也违背国际标准所要求的改造精神。

特别报告员遗憾地说，警察和宪兵羁押违反国际准则，因为妇女和儿童没有与成年男性分开关押，因此极其容易受到性暴力和其他形式的虐待。此外，在驱逐前被拘留的移民常常被长期关押在条件恶劣的警察局，几乎得不到食物和/或水。他们还越来越可能遭到歧视性做法，有时甚至受到其他被拘留者的身体虐待，这种做法得到警察的默许。

据特别报告员估计，为了使赤道几内亚能够履行其国际人权法和《宪法》的义务，必须要实行全面的体制和法律改革，建立以法制为基础的执法机构、独立的司法机构以及有效的监测和问责机制，以有效制止酷刑。

最后，特别报告员提醒说，国际社会，包括跨国公司，都应确保在它们的发展合作和商业做法中不共同参与国家当局违反人权的行為。

Annex

Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Mission to the Republic of Equatorial Guinea (9 – 18 November 2008)

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Introduction

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment of the Human Rights Council, Manfred Nowak, undertook a visit to the Republic of Equatorial Guinea from 9 to 18 November 2008, at the invitation of the Government.

2. The purpose of the visit was: to assess the situation of torture and ill-treatment including the conditions of detention in all places where persons are deprived of their liberty, and to offer assistance to the Government in addressing shortcomings in the administration of justice, including the police/gendarmerie and prison sectors. The Special Rapporteur appreciates the fact that Equatorial Guinea extended an invitation to him and trusts that this is a reflection of the willingness of the Government, based on his observations and recommendations, to improve the situation in order to ensure that the conditions and treatment of persons deprived of their liberty comply with international human rights norms. He also thanks the Government for issuing authorization letters providing him with access to prisons and police and gendarmerie custody.

3. However, he regrets that, in spite of the earlier commitment by the Government to grant him access to all places of detention, he was unable to verify allegations against the military because he was denied access to military detention facilities. This is a clear violation of the Terms of Reference for Fact-finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights of 1998, which guarantee: “(b) Freedom of inquiry, in particular as regards: Access to all prisons, detention centres and places of interrogation...”¹

4. Similarly, he is very concerned that, at the main Police Stations in Malabo and Bata, he was denied access when attempting to undertake follow-up visits, which means he could not ascertain whether or not detainees who provided testimony to him had been subjects of reprisals. In this regard, he wishes to recall that the Commission on Human Rights urged “Governments to refrain from all acts of intimidation or reprisal against: (a) Those who seek to cooperate or have cooperated with representatives of United Nations human rights bodies, or who have provided testimony or information to them”². He also refers to the Terms of Reference for Fact-finding Missions by Special Rapporteurs/Representatives of the Commission on Human Rights of 1998 (c), which provide for “Assurance by the Government that no persons, official or private individuals who have been in contact with the Special Rapporteur / Representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings”³. In light of the above, of the absence of any independent monitoring mechanisms and the reigning impunity in the country, the Special Rapporteur feels that he cannot exclude that there might be reprisals against individuals he interviewed during his mission. He has therefore decided to depart from usual practice and to publish only the names of persons whose story is already in the public domain. The names of all other interlocutors are kept confidential.

5. The Special Rapporteur held meetings with the First Deputy Prime Minister for Human Rights; the Minister of Foreign Affairs, International Cooperation and Francophone Affairs, the Minister of National Security; the Minister of Justice, Cults and Penitentiary Institutions; the Minister of Internal Affairs and Local Corporations; the Minister for Social Affairs and the Promotion of Women; the Vice Minister of National Defense; the

¹ E/CN.4/1998/45

² Commission on Human Rights resolution E/CN.4/RES/2005/9, para. 1;

³ E/CN.4/1998/45

Prosecutor General of the Republic of Equatorial Guinea, and the Governor of the Province of Bata – Litoral.

6. Outside of Government, the Special Rapporteur met with the Chairman of the Appeals Court of Malabo and the Secretariat of the National Human Rights Commission. He also had discussions with civil society representatives, persons in places of detention and victims of ill-treatment. In addition, the Special Rapporteur held meetings with the United Nations country team and the diplomatic community. The Special Rapporteur visited a number of prisons and police/gendarmerie custody facilities on Bioko Island and on the mainland (please see appendix).

7. The Special Rapporteur wishes to express his gratitude to the United Nations Country Team, in particular the Resident Coordinator; and the OHCHR staff for the excellent assistance prior to and throughout the mission; Dr. Derrick Pounder, forensic expert; and Ms. Isabelle Tschan and Ms. Johanna Lober of the Ludwig Boltzmann Institute of Human Rights in Vienna.

8. The Special Rapporteur shared his preliminary findings with the Government at the close of his mission. On 2 September 2009, a preliminary version of this report was sent to the Government. On 16 October 2009, the Government provided comments, which are attached to this report.

I. Legal framework

A. International level

9. Equatorial Guinea is party to the major United Nations human rights treaties prohibiting torture and ill-treatment: the International Covenant on Civil and Political Rights (ICCPR); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Equatorial Guinea has acceded to the first Optional Protocol to ICCPR and has therefore recognized the competence of the Human Rights Committee to consider complaints by individuals regarding violations of the Covenant. It has not acceded to the Second Optional Protocol aiming at the abolition of the death penalty. Equatorial Guinea has not made a declaration under Art. 22 of CAT, recognizing the competence of the Committee against Torture to receive and consider communications from or on behalf of individuals claiming to be victims of a violation of one or more provisions of the Convention and has not signed the Optional Protocol for the Prevention of Torture (OPCAT).

10. Equatorial Guinea has ratified the four Geneva Conventions of 1949 and the Additional Protocols I and II but is not a State Party to the Rome Statute of the International Criminal Court.

B. Regional level

11. Equatorial Guinea also ratified the African Charter on Human and Peoples' Rights as well as the African Charter on the Rights and Welfare of the Child. It has signed Protocols on the Rights of Women and the African Court on Human and Peoples' Rights. As a member of the African Union, Equatorial Guinea is encouraged to abide by the Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture,

Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) adopted in 2002 by the African Commission on Human and Peoples' Rights.

C. National level

12. Many of the laws and decrees on which Equatorial Guinea's legal order is based, date prior to its independence and were declared applicable by Decree No. 4/80 of 3 April 1980. Some legal acts therefore remain in force, such as the Code of Military Justice of 17 July 1945, the Spanish Criminal Procedure Act (CPA) of 1882, and the Spanish Penal Code of 1965, without any thorough assessment having been made to determine whether they are compatible with the current Constitution and the laws adopted since 1995.

1. Constitution of the Republic of Equatorial Guinea

13. According to article 5 of the Constitution of 17 January 1996, the principles that govern the society of Equatorial Guinea are, inter alia, the respect of the individual, his/her dignity, freedom and other fundamental rights. Article 8 provides that the State shall endeavour to follow the principles of international law and shall reaffirm its commitment to the rights and obligations enshrined in the instruments of international organizations and bodies of which Equatorial Guinea is a member. Article 13 guarantees a wide range of civil and political rights and a number of economic, social and cultural rights.

2. Prohibition of torture in national legislation

Constitutional guarantees for the prohibition of torture

14. The Constitution of Equatorial Guinea does not contain an explicit prohibition of torture but rather provides for the right of every citizen to the respect of his or her person, life, integrity and physical and moral dignity (article 13(a)). The principle of the respect for human dignity is enshrined in article 5 (1) as well as article 14 of the Constitution.

Provisions criminalizing torture and other cruel, inhuman or degrading treatment or punishment

15. On 2 November 2006, Act No. 6/2006 on the Prevention of and Disciplinary Measures against Torture came into effect. According to its article 3, a public official acting in this capacity commits an act of torture if he or she inflicts physical or psychological pain or suffering on a person, for the purposes of investigating a crime or offence to obtain information or a confession from the person, or from a third person as a means of intimidation, as punishment for an act committed or an omission, or is suspected of having committed, or coercion to make him or her do or stop a certain conduct, or for any other purpose. Neither urgency for investigative or other reasons, nor the order from a superior or any other authority may be invoked as a justification for the use of torture.

16. Article 4 contains a legal sanctions clause by which physical or mental pain inherent in legal punishments do not fall under the definition of torture. According to the same article, acts constituting cruel, inhuman or degrading treatment or punishment that do not meet all the criteria of the definition of torture are covered by the law, if committed by a civil servant or a person acting in official capacity, or at the instigation, with the consent or acquiescence of a civil servant. The punishments for such crimes, according to article 5, are prison terms between six months and six years, a fine of 300.000 CFA and a ban from holding public office for twice the period of imprisonment. In the event of re-offence, the ban becomes permanent. The same punishment is foreseen in case a public servant incites, orders, forces or authorizes a third person or makes use of him or her to inflict serious pain or suffering on a person, whether physical or psychological; or does not prevent such pain

or suffering from being inflicted on a person in custody. A public official, who, in carrying out his duties, becomes aware of an act of torture, is obliged to report it immediately. If he or she fails to do so, prison terms between six months and six years as well as a fine of 300.000 CFA can be imposed. Although the definition of torture contained in Act No. 6/2006 does not exactly mirror the definition of the United Nations Convention against Torture, the catch-all clause at the end of the definition in article 4 ("or for any other purpose") is broad enough to cover also acts of torture that are, e.g., inflicted on the basis of discrimination.

17. The Penal Code, the former Spanish Criminal Code adopted in 1963, does not contain a provision prohibiting torture; however, article 187 provides for suspension from duty for: para. 3. a prison official or any other civil servant who conceals a detainee from the judicial authorities. 4. a prison official who, without order from the judicial authority, takes a detainee or a convicted (sentenciado incommunicado) to a place which is not an official place of detention. 5. a prison official who imposes unnecessary limitations on detainees and treats them with unnecessary severity. The same sanction must be applied to a judicial authority that decides or prolongs unnecessarily the isolation of a detainee (article 188(3)).

3. Safeguards and jurisdictional issues

(a) Safeguards

18. Article 13 of the Constitution provides inter alia that individuals may be deprived of their liberty only by means of a judicial warrant, except in cases established by law or flagrante delicto cases. Every prisoner must be informed of the reasons and grounds for his or her detention. The presumption of innocence is recognized until guilt is proven in judicial proceedings. A sentence can only be pronounced on the basis of a trial. The rights to a defence attorney and to legal assistance at all stages of the proceedings are also guaranteed. In addition, this constitutional provision foresees the right to file complaints and petitions and the writ of habeas corpus and amparo.

19. Article 520 of the Spanish Criminal Procedure Act of 14 September 1882, applied in Equatorial Guinea pursuant to Decree-Law No.4/1980, provides that the treatment of a prisoner, whether convicted or in pre-trial detention, must cause the least possible suffering for the person in question and for his or her reputation. It also defines possible restrictions on freedoms and communications, and article 521 stipulates that prisoners must be separated according to sex, age, education and criminal record. Extraordinary security measures shall only be applied in case of disobedience, violence, rebellion or attempts of escape and only for the time strictly necessary (article 525). Visits by family members, representatives of the detainee's religion, a doctor and other related persons have to be authorized according to the prison regulations ("reglamento de cárceles"). Whereas communication with a defense lawyer cannot be prohibited (article 523), any correspondence and communication other than that of a detainee must be authorized by an investigative judge (article 524).

20. The Criminal Procedure Act states that detention in isolation during pre-trial detention should generally not exceed 5 days, last only for the period absolutely necessary for investigation purposes (article 506), which may be prolonged for another three days by judicial order (article 508). Article 480 of the Penal Code prohibits illegal detention. Law No. 18/1995 stipulates that persons who consider themselves unjustly detained must have access to a judge (first instance or investigative judge), who shall rule without delay on the legality of the detention. Article 3 lists cases of illegal detention, for example when guarantees have not been respected or established procedures have not been followed, when

the person has been illegally held in an unauthorized facility, or when the maximum period of detention has been exceeded without the detainee having access to a judge.

21. A person detained by the police has to be brought before an investigative judge within a maximum of 72 hours. The judge decides on release, pre-trial detention or release on bail (CPA article 497). The investigative judge has sole competence to order pre-trial detention. To facilitate the proper discharge of this duty, Organization Act No. 4/2002 of 20 May 2002 established police courts, which must operate 24 hours per day, 365 days a year. Their decisions may be appealed before the criminal division of the territorial high court (CPA article 518).

(b) *The Code of Military Justice*

22. The Code of Military Justice (adopted in Spain on 17 July 1945) grants jurisdiction to military tribunals over a broad range of civilian offences, disobedience against a military authority, as well as over offences considered to be a “crime against the state”, regardless of whether the defendant is civilian or military. Under the Code of Military Justice, summary trials are conducted, due process is limited (trials are often held in absentia or without proper legal defence) and there is no possibility of appeal. Art. 257 stipulates that non-military offences fall under the Ordinary Criminal Code and must be applied both to members of the military and civilians.

4. Capital punishment

23. Article 13 of the Constitution provides that capital punishment shall only be applied in accordance with the law. In accordance with Penal Code article 405 and 406, the death penalty is to be applied in cases of parricide and of aggravated homicide. Furthermore Law 1/1971 states that the death penalty may also be applied in a number of aggravated crimes including intent to murder, threat to kill the President (art. 1), murder of a member of the Council of Ministers (art. 4), attempt at substituting the Government without popular consent or through illegal means (art. 7), promoting or sustaining a rebellion, or leading a rebel force (art. 9).

II. Assessment of the situation

A. Conditions of detention

Prisons

24. The three prisons in the country were fairly spacious and Black Beach and Evinayong prisons had been completely refurbished, for the most part resulting in sufficient space for the detainees and an acceptable level of hygiene in the sanitary facilities. Most prisoners were allowed to move about freely without any obstacles. However, in all the prisons, the Special Rapporteur received numerous complaints about the quantity and quality of the food, which needed to be complemented by supplies brought by visitors, in case visits were allowed. Although in Black Beach Prison medical doctors were on duty, they could only in some cases treat minor problems and overall access to medical treatment and medicine was severely restricted, and in the Bata and Evinayong Prisons, medical treatment was completely unavailable unless the detainee could afford to pay for it. Consequently, in the majority of cases, even serious illnesses remained untreated. The Special Rapporteur has learned that no statistics are available on the incidence of HIV/AIDS in places of detention and that no HIV/AIDS treatment is available in prisons.

25. Several detainees indicated that violence among prisoners in both Bata and Black Beach Prisons was common and tacitly tolerated by the prison authorities. The Special Rapporteur also received reports about discriminatory practices against foreigners and sometimes against the minority Bubi ethnic group by other detainees and by the prison staff. In addition, he was informed that sexual violence and harassment of women and minors was common.

26. The high-security unit in Black Beach Prison was newly renovated and the physical conditions were of a high standard (the cells measured about 3,5 x 2,5 meters, contained a shower, toilet and sink, which were separated by a low wall, a bed, chair and fan, and all the prisoners were allowed to have some private items). However, some of the persons suspected or convicted of political crimes had been held in solitary confinement for prolonged periods of up to four years. As the Special Rapporteur has observed in his last report to the GA "the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort."⁴ Moreover, with the exception of Simon Mann, who seemed to receive privileged treatment, the high-security prisoners were not allowed the one hour of exercise per day required by the Standard Minimum Rules for the Treatment of Prisoners (paragraph 21) and held in leg irons practically all the time. In the Special Rapporteur's assessment, the permanent use of leg irons amounts to inhuman treatment.

27. Bata Prison laudably applied a very liberal visiting policy: the Special Rapporteur received no allegations about any restrictions on visits during visiting hours. On the other hand, in Black Beach Prison, family visits appeared to be generally forbidden (except for a limited number of privileged prisoners). Many of the interviewed detainees indicated that they suffered from the fact that they could never see their families. Another concern was that no policy seemed to be in place authorizing children, even those of a young age, to see their detained parents. Several women told the Special Rapporteur that they had not seen their children for many months, which they found unbearable. Contact with the outside world is a major component of successful rehabilitation and reintegration of detainees and is required by article 10 of the International Covenant on Civil and Political Rights. Paragraph 37 of the Standard Minimum Rules for the Treatment of Prisoners provide that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

28. Some overcrowding was reported to the Special Rapporteur: for instance, in the wing for petty offenders in Black Beach, there were only 24 mattresses for about 40 detainees who were present during the visit of the Special Rapporteur. In Bata prison, reportedly more than 70 prisoners were at times kept in the cell, so that three persons had to share one bed. Several small, dirty and humid punishment cells, not suitable for detention, were located on one side of the large courtyard. On the day of the visit, two persons were there because they had tried to escape. Iron rings were cemented into the walls at about 25

⁴ See Report of the Special Rapporteur on Torture to the UN General Assembly, 28 July 2008, UN Doc. A/63/175, paras 82-83, where he also stated: "'The weight of accumulated evidence to date points to the serious and adverse health effects of the use of solitary confinement: from insomnia and confusion to hallucinations and mental illness. The key adverse factor of solitary confinement is that socially and psychologically meaningful contact is reduced to the absolute minimum, to a point that is insufficient for most detainees to remain mentally well functioning. [...] In the opinion of the Special Rapporteur, the use of solitary confinement should be kept to a minimum, used in very exceptional cases, for as short a time as possible, and only as a last resort. Regardless of the specific circumstances of its use, effort is required to raise the level of social contacts for prisoners: prisoner-prison staff contact, allowing access to social activities with other prisoners, allowing more visits and providing access to mental health services.'"

cm height, but they were allegedly not used any more. The Special Rapporteur welcomes reports that a new prison has replaced the old one.

29. In Evinayong Prison, a spacious, recently refurbished prison, only six prisoners were detained at the time of the Special Rapporteur's visit, most of them sentenced to long terms of imprisonment. The prison disposed of high standard sanitary facilities and a large clean kitchen in which prisoners cook their own food. During the day, prisoners could freely move around inside the large courtyard, but the cells were locked during the night.

Police custody

30. With the exception of Bata Central Police Station, the police and gendarmerie holding cells were generally in a dilapidated physical state. Most of the cells were extremely dirty, humid and lacked any sanitary or sleeping facilities. Some were completely dark. In several custody facilities, the Special Rapporteur found piles of bottles filled with urine and plastic bags were used to defecate, and the smell was unbearable because of the lack of sanitary facilities. Furthermore, detainees had no possibility to take showers or to exercise. Detainees did also not have access to nurses or medical doctors. In all police and gendarmerie custody facilities without exception, food was only provided by the detainees' families or by fellow detainees and access to water for drinking and washing was severely restricted. Many detainees complained that they could not inform their family of their arrest and detention.

31. In the Special Rapporteur's view, the hygienic conditions and lack of toilets and of other sanitary facilities in almost all police detention cells, as well as severe restrictions on food supply, access to sanitary facilities, medical treatment and medicine show a complete disregard for the dignity of detainees. The fact that many detainees were held in these conditions well beyond the maximum of 72 hours stipulated by law, sometimes up to several months, exacerbated the situation and amounted to inhuman and degrading treatment.

32. Bata Central Police Station is located in a new building. On the ground floor, at the far end, male foreigners were detained in a spacious area that consisted of an open courtyard where the detainees could play football or sit on chairs. During the night, they were locked into one large room that was separated from the yard by an iron grid. The room had several mattresses on the floor and a few beds, tables and chairs, and was clean. The detainees had shaded the electric light on the ceiling with cloth as it was not switched off at night, which hence attracted numerous mosquitoes. The adjacent sanitary facilities were newly built and in very good condition, including running water and electricity. At the time of the visit, about 15 to 20 persons were detained in this area. The detainees came from neighbouring countries. One of them had spent a month at the police station, others several weeks. The physical conditions were good on the first floor as well, where mostly Equatoguinean detainees were held. Cells were equipped with beds and mattresses as well as sanitary facilities. All cells were open so that detainees could walk around. The police did not provide adequate food, and detainees had to rely on family and friends, who were often not allowed into the police building, so that the detainees did not have enough to eat. Despite the acceptable physical conditions, prolonged detention in these cells is problematic since some of them were overcrowded, men and women were not separated and the toilets were open, to be used in front of other detainees, which interferes with their privacy.

33. Malabo Central Police Station, located in the centre of the city, is divided in two wings, one with three small cells and another one with a large cell and a large courtyard. In the latter, there were no toilets and detainees defecated in plastic bags and urinated in plastic bottles, which they then threw over the wall. At the time of the visit, the large cell was extremely overcrowded, and there were clearly not enough beds for everybody.

However, the Special Rapporteur received allegations that, at times, even more persons – sometimes up to several hundred – were detained in the courtyard.

34. Whereas in theory the courtyard wing was reserved for illegal immigrants, several citizens of Equatorial Guinea were held there as well. According to consistent reports, Equatoguinean detainees were at the top of the internal hierarchy, occasionally beating the others and applying discriminatory practices against foreigners. The police did not intervene in cases of inter-prisoner violence or to protect the women even when requested to do so.

35. Although, according to the police, the three small cells (each of about 8 square meters) were reserved for Equatoguinean citizens, the Special Rapporteur found that many among the detainees were foreigners. Conditions in the three cells were in clear violation of international minimum standards. There were no beds or mattresses. The middle cell was severely overcrowded, so that prisoners had to take turns to lay down on the floor and rest. The detainees were confined to their cells for 24 hours and were not allowed to leave the cell to shower, bath or even use the toilet. The toilet opposite the cell was unusable and emitted an unbearable smell.

B. Acts of torture and ill-treatment in places of detention

Prisons

36. The Special Rapporteur received consistent allegations that corporal punishment continued to be routinely applied by prison guards in front of other prisoners in Bata and Black Beach prisons as a punishment for having committed disciplinary offenses or for unknown reasons. In both places, prisoners were tied to a pillar or face down to a bench in the courtyard and received a number of strikes with a police truncheon or high voltage cables on their buttocks and other parts of their body, often with several guards or soldiers taking turns. On a positive note, the Special Rapporteur welcomes that corporal punishment seemed not to have been applied any more for the last several months at Evinayong Prison under the new prison director.

37. The Special Rapporteur wishes to stress that corporal punishment is absolutely forbidden under international law, including the United Nations Convention against Torture.⁵

Police custody

38. The Special Rapporteur found that torture is systematically used by the police forces against persons who refuse to “cooperate” – persons suspected of political crimes as well as suspects of common crimes in particular at the Central Police Stations in Bata and Malabo. The gendarmerie appeared to practice torture to a lesser extent. The Special Rapporteur was unable to verify allegations against the military because he was denied access to military detention facilities.

39. Types of abuse reported to him, and corroborated by expert medical analysis and evidence found in the respective police stations, include: beatings on various parts of the body, but often on the soles of the feet and/or the buttocks with police batons, solid “rubberized” cables and wooden bars; electric shocks with starter cables attached to different parts of the body with alligator clips; various forms of suspension with hands and feet tied together, including the so-called “Ethiopian style” for prolonged periods. In these

⁵ See for example the report of the UN Special Rapporteur on Torture, UN Doc. A/60/316.

positions the victims were swung, beaten, or heavy devices such as car batteries were placed on top of their backs. Furthermore, they were sometimes blindfolded or forced to inhale candle smoke. In most instances, the purpose of the torture was to extract confessions or information; sometimes it was intended as punishment, intimidation or for the purpose of extorting money.

40. The Special Rapporteur received information and allegations from a wide range of actors, including lawyers, representatives of civil society and victims themselves, indicating that, in Malabo Central Police Station, torture and ill-treatment took place mainly during arrest and interrogation in the premises of the judicial police: For instance, one person described how he had cables from a car battery attached to his toes with alligator clips and was threatened with electro shocks if he refused to confess. Another man said that he had been injured with a stapler on his toe and finger during interrogation. A number of victims described how their hands and feet had been tied behind the backs and they had been suspended from an iron bar fixed on two chairs so that the face faced the floor; they then were forced to breathe the smoke of a candle held in front of their faces; some were beaten with a high voltage cable while in this position. Another witness described how he was injured on his neck, resulting from violence used during his arrest, when his head had been pushed down violently while he was being pushed in a police car. Another victim complained about pain in his thumb and forefinger as a result of the prolonged tight application of handcuffs. Other alleged victims reported that they had been injured with knives on their face, kicked, slapped, or otherwise beaten during arrest. When the Special Rapporteur visited these premises, he found several of the torture devices that had been described to him by witnesses in the front office situated to the left of the right entrance. These devices included a car battery, a starter cable, several iron bars and a thick black cable.

41. Similarly, the Special Rapporteur received consistent allegations about torture in Bata Central Police Station, applied during interrogation mostly at night in the interrogation room in the basement. Many interviewees explained how they had been hung up on handcuffs, suspended in various ways from a relatively short metal bar between two black tables, including the so-called “Ethiopian style” for prolonged periods; in these positions the victims were swung, or had heavy devices such as car batteries placed on top of their backs. Some described that they were beaten on the soles, the back and sometimes on other parts of the body with police batons, solid “rubberized” cables and wooden bars. Furthermore, they were sometimes blindfolded or forced to inhale candle smoke. Often this treatment was either preceded or followed by lengthy kicking and beatings, sometimes with truncheons, sticks on the buttocks and various other parts of the body while lying on a mattress. Some detainees were blindfolded during the beating. Several witnesses described to the Special Rapporteur how, after having been suspended and beaten, police officers forced them to climb up the stairs from the basement to the first floor on their knees because they were unable to walk. Effects of the various forms of ill-treatment described to the Special Rapporteur were heavy bleeding, the inability to stand, dress, etc, pain in the wrists, ankles, arms, shoulders, numbness in hands and feet, etc. The forensic expert found that, on the whole, these descriptions corroborated the allegations. When, following a lengthy discussion, the Special Rapporteur was allowed to enter the interrogation room in the basement of Bata police station, he found a mattress, two black tables next to each other, a special light of red colour, handcuffs and wooden and metal bars – all objects that numerous witnesses had described to him in much detail.

42. The Special Rapporteur received very serious allegations of severe and prolonged torture of Equatoguinean citizens accused of involvement in attempted overthrows of the political system, such as suspensions for long periods while forced to breathe in smoke, severe beatings with heavy cables and batons, the use of thumbscrews and electroshocks and solitary confinement for long periods. According to credible testimonies, this treatment

– directly ordered by the Government or a Minister - frequently took place at unofficial places of detention.

43. In other police and gendarmerie custody facilities, the Special Rapporteur received only few recent allegations of torture and ill-treatment. Rather, his interlocutors indicated that, in recent years, detainees were normally transferred to the central police stations of Malabo or Bata fairly quickly.

C. Groups made vulnerable in detention

Women

44. In violation of international norms⁶ women in prisons as well as in police and gendarmerie custody were not separated from male adults and were therefore extremely vulnerable to sexual violence and other forms of abuse. Several witnesses reported that female detainees were regularly asked to provide sexual services to officers, guards and male co-detainees, sometimes in exchange for food or other commodities. The Special Rapporteur received consistent allegations of sexual violence and harassment against foreign women in prisons and police custody – officers practically put them “at the disposal” of Equatoguinean men. When the women asked for protection, they were told off.

45. The Special Rapporteur found several women who were pregnant from co-prisoners and learned that since women could freely intermingle with men, it was frequently in the women’s interest to choose one of them for a special relationship in order to be protected from other male prisoners. In the Special Rapporteur’s assessment, no mechanisms to protect women from exploitation were in place. He also received allegations that pregnant women had little, if any, access to medical care.

Children

46. In violation of international norms, in prisons as well as in police and gendarmerie custody, there was no separation of minors from adults. The Special Rapporteur received several allegations of harassment and sexual violence of minors. In one interview, a boy told the Special Rapporteur that he was afraid because some people in the prison were “not good and force me to do things I do not want to do”. In particular he was afraid of the night, when beatings and “bad things” happen.

47. In one case that was brought to the attention of the Special Rapporteur, a group of girls aged between 11 and 14, in absence of a legal basis, had been “sentenced” to public shaving by a judge, which was conducted in front of their parents. In the view of the Special Rapporteur, this constitutes degrading punishment.

48. The Special Rapporteur also was told in several instances (e.g. at Malabo Central Police) that, although the Criminal Code sets 16 as the age of criminal responsibility, young children, the youngest aged 9, had been detained and were released just prior to his arrival.

Foreigners

49. The conditions in which immigrants pending deportation were held in police stations often for very long periods of time were even worse than for Equatoguineans. They had no

⁶ Namely para. 8 of the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

or little access to food and/or water since, in most cases, they had no family members nearby to help them. This frequently rendered them dependent on other detainees for assistance. Moreover, their ability to contact the consular representations of their countries was limited. Many foreign detainees in Malabo Police Station and Bata Police Station had not been allowed to contact their consulates in spite of several requests to that effect.

50. Immigrants in prisons and police detention facilities ran an increased risk of being subjected to discriminatory practices and sometimes even physical abuse by guards, as well as other detainees. The Special Rapporteur is very concerned about repeated allegations that foreign detainees in police custody in Malabo and Bata were frequently subject to beatings, harassment and also sexual violence by Equatoguinean detainees, tacitly tolerated or even encouraged by the police officers.

D. Lack of reparation and re-victimization

51. Article 9 of Law 6/2006, in accordance with the requirements under article 14 of the Convention Against Torture that victims of torture must have access to redress and adequate compensation, holds that a person responsible for an offence “is obliged to provide reparation for the damage and compensate the victim or his/her relatives for the prejudices caused in the following cases: a) loss of life; b) harm to the health; c) loss of liberty; d) loss of revenues; e) incapacity to work; f) loss or harm of property; g) damage to one’s reputation”. Article 10 provides that the State, as a subsidiary, guarantees reparation and the right to just and adequate compensation to any victim of torture or cruel, inhuman and degrading treatment or punishment, including means for rehabilitation as complete as possible. However, the Special Rapporteur did not learn of a single case where reparation/compensation was provided, which is of even greater concern given the scale of the use of torture he observed.

52. On the contrary, since the administration of justice is dysfunctional (see also section III A), many torture victims experience a total lack of justice: perpetrators are practically never prosecuted; those who file complaints against their torturers, become stigmatized, find it difficult to find jobs or return to school and live in constant fear of reprisals by the authorities; those who have been imprisoned for long periods without ever learning why, have the feeling that their lives have been destroyed. In addition, some of the detainees interviewed by the Special Rapporteur suffer from serious physical symptoms as much as seven years after the occurrence of the acts of torture, e.g. one man had not been able to move his arms for one year and continues to feel numbness in his hands, is still unable to wear shoes and has difficulties walking because the tissue of his soles has been destroyed by extremely severe beatings on the soles of his feet and suspension by his arms seven years earlier. A number of victims indicated that they were in urgent need of psychological rehabilitation, which was not available in Equatorial Guinea. Overall, the Special Rapporteur finds that the combination of social exclusion of persons who defended their rights, the total lack of reparation and justice, together with the untreated physical and mental consequences that torture victims experience constitutes a vicious circle of re-victimization, in many cases causing ongoing suffering that might amount to inhuman treatment.

E. Involvement in kidnappings abroad/secret detention

53. Numerous reports indicate that Equatoguinean officials have been involved in, or have committed themselves, kidnapping abroad before transferring the individuals to Equatorial Guinea and holding them in secret and/or incommunicado detention. This was allegedly the case of three persons who are still being held in secret detention probably in

Black Beach Prison, namely Florencio Ela Bibang, Antimo Edu Nchama, and Felipe Esono Ntutumu⁷, who the Special Rapporteur regrettably was not able to meet because he was unable to gain access to the part of the prison where they were reportedly held. Also a number of other cases of prolonged secret detention, most often of persons accused of political crimes, have been brought to his attention.

54. The Special Rapporteur interviewed one individual who had been arrested in Cameroon, where he used to live as a refugee some months prior to the visit. He was then handed over to soldiers of the Equatoguinean Presidential Guard who took him to Malabo. He was detained incommunicado in solitary confinement, handcuffed and in leg-irons. Both were removed shortly before the Special Rapporteur arrived.

III. An environment conducive to torture

A. Non-functioning of the Administration of Justice

55. The context that allows torture to continue unabatedly is characterized by the non-functioning of the administration of justice and, therefore, the absence of the rule of law. In this context, the Special Rapporteur wishes to recall the findings of the Working Group on Arbitrary Detention on their visit in November 2007 (A/HRC/7/4/Add.3), which discussed serious concerns in the following areas: the compatibility of the legal framework with international standards; the lack of independence of the judiciary; the excessive power of the police and the military, and the lack of a registration system. The Special Rapporteur also found that the judiciary did not fulfil its role as an element of protection against torture. Rather it appeared to be effectively controlled by the law-enforcement bodies. According to numerous testimonies, when any victim or his/her lawyer raised torture allegations in court, the judge did not pay any attention. Moreover, only very few of the detainees interviewed by the Special Rapporteur had lawyers. If they did, they generally did not trust them. Law-enforcement was militarized, in practice the various bodies were indistinguishable from each other and lacked any accountability mechanisms. Moreover, "evidence" obtained under torture was commonly used as the basis for convictions, which meant that there was considerable pressure on the police to extract confessions. The police and other law-enforcement bodies clearly also lacked training. According to many detainees, the prison authorities did not take any action when detainees with visible traces of torture arrived. The Prosecutor did not appear to play a major role at all.

B. Impunity

56. Notwithstanding article 14 of Law 6/2006, which contains a victim and witness protection clause and requires the State to ensure that every alleged victim of torture may present a complaint to a judge and that the case be examined promptly and impartially by the competent authorities, in practice no complaints channels exist and detainees cannot file any complaints with State bodies that would entail investigations and prosecutions. Also, many interlocutors of the Special Rapporteur indicated that they were afraid of reprisals, in particular by the police.

57. Whereas the Commission on Human Rights of Equatorial Guinea (CHR), created by Decree Law no. 7/1990 of 27 September 1990⁸, was mandated to receive complaints and

⁷ See also report of the Working Group on Arbitrary Detention A/HRC/7/4/Add.3.

⁸ The Commission has not sought accreditation with the International Coordinating Committee of

tasked with undertaking investigations, in reality the Special Rapporteur was not informed of a single complaint filed with, or investigated by, the Commission.

58. Article 282 of the Criminal Procedure Act puts the judicial police in charge of investigating offences committed on its territory – but, as described above, the Judicial Police is the body that perpetrates most of the ill-treatment, so this is not a credible institutional arrangement. In accordance with article 649 of the Criminal Procedure Act, prosecution functions are exercised by the Public Prosecutor’s Office and the private prosecuting party, but this has been done only with regard to one case: following the enactment of Law 6/2006, an attempt was undertaken, on the basis of strong evidence, to bring to justice some torturers, and a trial by military court was scheduled to take place in Bata in 2007. However, when the victims of torture who were invited to give testimony, arrived at the court, they found two of the key defendants on the judges’ bench instead of being accused. As a result, the latter were not even tried, and only one female police officer was sentenced to seven months of imprisonment for a separate case of torture with lethal consequence: apart from her, no alleged perpetrator of torture has ever been brought to justice. Instead, even officers who are widely known to regularly use torture continue their careers in the police/gendarmerie forces.

59. In the Special Rapporteur’s assessment, the above is in violation of articles 4 to 9 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment requiring criminal investigation aimed at bringing each individual perpetrator to justice. In addition, articles 12 and 13 require that “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” and that “any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.”

C. Lack of inspection/monitoring mechanisms

60. Article 2 of the Convention Against Torture stipulates that “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”, and the Committee against torture has provided further guidance on what this means in practice in its General Comment 2, including in terms of “the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement” (para. 13).

61. Although article 526 of the Criminal Procedure Code of Equatorial Guinea provides that the investigative judge, accompanied by a representative of the office of the Public Prosecutor, is to conduct weekly unannounced visits to prisons to check the situation of detainees and to adopt measures to correct any abuses, the overwhelming majority of the detainees interviewed by the Special Rapporteur had not seen any judges or prosecutors during their detention.

62. The Commission on Human Rights of Equatorial Guinea indicated that visits to all places of detention had been undertaken prior to the Special Rapporteur’s mission (each of their visits needed to be authorized by the Ministry of National Security), that it had not found a single case of torture or ill-treatment and that, on the contrary, the conditions were steadily improving. The CHR stated that many of its earlier recommendations had been implemented, e.g. conditions in Malabo Police Station improved, women and children were

National Human Rights Institutions.

held separately from male detainees. All these assertions are in stark contrast to the Special Rapporteur's own observations.

D. Corruption

63. According to many interlocutors of the Special Rapporteur, corruption is deeply ingrained in Equatorial Guinea⁹, in particular at all stages of the criminal justice system. Many detainees indicated that they had been offered release in exchange for the payment of a certain sum of money; some were even tortured with the aim of extorting money. Others said that they were asked to pay for visits, etc. As a result of the endemic corruption, the criminal justice system discriminates against the poor and the arbitrariness of the system is exacerbated. In the opinion of the Special Rapporteur, the widespread corruption in the administration of justice is a consequence of a generally non-functional and non-independent judicial system.

E. Insufficient State action to protect persons from privately inflicted harm

64. The Committee against torture, in paragraph 18 of its General Comment 2 states, "Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking."

65. In Equatoguinean law, there are no clear provisions prohibiting corporal punishment of children. Whereas the Government has signed some relevant memoranda, paragraph 4 of art. 420 of the Penal Code establishes that, if a father causes injuries to his child, in "exceeding himself" in correcting him/her, it would not be considered a crime. The latter provision is in clear contravention of international law. Moreover, the Special Rapporteur has also not learned about any active measures taken to ensure that children are not subjected to corporal punishments by their parents, at schools, etc, such as the creation of accessible complaints mechanisms, an appropriate institutional framework to protect and support victims and/or awareness raising campaigns.

66. Violence against women in the private sphere appears to receive little attention as well: The Penal Code does not criminalize domestic violence, although it prohibits harm, including beatings and ill-treatment. Its article 429 holds that the rape of a woman is to be punished by "reclusión menor" (medium-term imprisonment), but spousal rape seems not to be covered by this law. A mediation procedure has been set up within the Dispute Settlement Division of the Ministry of Social Action and the Promotion of Women to act as facilitator between parties in regard to complaints against physical, psychological and economic violence with the aim of reaching a friendly settlement, but no details about the results of its work were available. Whereas reportedly some initiatives seem underway to combat violence against women, such as training programmes for the police to deal with complaints co-funded by the United States and awareness raising-programmes, the Prosecutor General indicated that no cases of violence against women have been brought before the courts. There is also no shelter in the country. According to the Minister for

⁹ See also the Corruption Perception Index 2008 issued by Transparency International, which ranks Equatorial Guinea 171st out of 180.

Social Action and the Promotion of Women, a draft law on violence against women is currently pending in the Parliament.

IV. Conclusions and recommendations

A. Conclusions

67. The Special Rapporteur expresses his gratitude for the invitation extended by the Government, which he interprets as a sign of the Government's preparedness to subject its places of detention to independent scrutiny by an external, objective expert. He further notes the existence of a comprehensive law prohibiting torture and providing for the prosecution of torturers adopted in 2006 and the improvements in the physical conditions of prisons.

68. On the basis of discussions with public officials, judges, lawyers and representatives of civil society, interviews with victims of violence and with persons deprived of their liberty, most often corroborated by forensic medical evidence, the Special Rapporteur concludes that torture is systematically used by the police, in particular at the Central Police Stations in Bata and Malabo. The types of abuse reported and corroborated by expert medical analysis and evidence found in the respective police stations, includes severe beatings on various parts of the body, electroshocks, various forms of suspension with hands and feet tied together, including the so-called "Ethiopian style" for prolonged periods. Furthermore, the victims were sometimes blindfolded or forced to inhale candle smoke.

69. The Special Rapporteur received consistent allegations that corporal punishment continued to be routinely applied by prison guards in front of other prisoners in Bata and Black Beach prisons. However, he was encouraged to learn that corporal punishment seemed not to have been applied any more for the last several months at Evinayong Prison.

70. Whereas the physical conditions in penitentiary institutions have improved over recent years, the Special Rapporteur observed some overcrowding and heavy restrictions on the detainees (in terms of restraints such as the permanent wearing of leg irons and solitary confinement). Furthermore, the Special Rapporteur is concerned about the severe limitations on contacts with the outside world.

71. With the exception of the newly built Bata Central Police Station, police and gendarmerie holding cells were generally in a dilapidated physical state with food provided only by the detainees' families or by fellow detainees, access to water for drinking and washing was severely restricted; detainees were usually not allowed to use the toilet, and as a result had to resort to using plastic bottles or plastic bags; they had no possibility to exercise and no access to medical care. Overall the conditions showed complete disregard for the dignity of the detainees and contravened international standards.

72. The Special Rapporteur received credible reports that immigrants run an increased risk of being subjected to discriminatory practices and sometimes even physical abuse by other detainees with the tacit approval of the police.

73. In prisons as well as in police and gendarmerie custody, women and children are not separated from male adults and are therefore extremely vulnerable to sexual violence and other forms of abuse by guards as well as by co-prisoners. Intra-prisoner violence, including sexual harassment and rape may amount to torture/ill-treatment, if the authorities consent or acquiesce.

74. The Special Rapporteur finds impunity to be practically total. Except for one case, no alleged perpetrator of torture has been brought to justice. In this context, fear of reprisals expressed by many interlocutors, is of grave concern. Moreover, no preventive mechanisms exist, safeguards are totally ineffective, and no compensation and/or rehabilitation is provided in practice.

B. Recommendations

75. In order for Equatorial Guinea to comply with its obligations under both international human rights law and its Constitution, the Special Rapporteur considers it indispensable to undertake a comprehensive institutional and legal overhaul establishing law enforcement bodies based on the rule of law, an independent judiciary, and effective monitoring and accountability mechanisms; only if these steps are taken, Law 6/2006, which, in principle, provides a good basis for preventing and combating torture effectively, can be implemented.

76. In addition to the above, a number of steps should be taken in the immediate future to address the most urgent human rights concerns:

(a) Implement the recommendations contained in the report on the 2007 visit of the Working Group on Arbitrary Detention (WGAD) to Equatorial Guinea (A/HRC/7/4/Add.3, para. 100), notably the Government should urgently end secret detention; revise the national criminal law framework with a view to implementing international minimum standards, including introducing effective habeas corpus proceedings; reform the judiciary with a view to rendering it independent; and allow civil society organizations to function independently;

(b) Strictly separate women from adult men in all places of detention;

(c) Bearing in mind the WGAD's recommendation (m), introduce a juvenile justice system and ensure the strict separation of minors from adults;

(d) Introduce proper registration in police detention (to some extent the gendarmerie registers can serve as an example) and establish proper registers in prisons;

(e) Issue a transparent set of rules allowing for regular family visits in all places of detention;

(f) Minimize the use of solitary confinement (see also A/63/175, paras 77-85 and annex) and refrain from using leg irons and other restraints;

(g) Improve conditions in police and gendarmerie custody facilities; notably provide food and drinking water and ensure that detainees have access to medical care as well as toilets and sanitary facilities;

(h) Regarding foreigners, the Special Rapporteur wishes to reinforce the recommendation of the WGAD (l) to avoid the detention of foreigners, where possible and to fully afford detained immigrants all the rights recognized by international instruments to persons deprived of liberty, including their right to contact their consular representations;

(i) Refrain from using secret detention and abductions in neighbouring countries;

(j) Abolish the death penalty.

77. With regard to the international community, the Special Rapporteur notes that, as a result of the discovery of considerable oil reserves on Equatorial Guinean

territory, many trans-national corporations are operating in the country. Also, a number of bilateral and multilateral donors run technical assistance programmes including in the areas of law-enforcement and administration of justice. The Special Rapporteur invites the international actors present in the country, including trans-national corporations, to take note of his assessment that torture is systematically practiced by the police, and to ensure that, in their joint undertakings and initiatives, they are not complicit in violations of the prohibition of torture and ill-treatment¹⁰.

¹⁰ On the question of complicity see e.g. the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises A/HRC/8/5, in particular paras 73-81.

Appendix I

Central Police Station - Malabo

Visited on 11 November 2008

The following accounts are based on the Special Rapporteur's visit and on allegations by detainees he received during private interviews. As mentioned in the main report, the Special Rapporteur feels that he cannot exclude that there might be reprisals against individuals he interviewed during his mission. He has therefore decided to depart from usual practice and to publish only the names of the persons whose story is already known in the public domain. The names of all other detainees are kept confidential. If detainees requested total confidentiality, their allegations are not contained in the present appendix.

General information: The Central Police Station is located in the centre of Malabo. The Special Rapporteur was received by Sebastian Belope (Commissario Alférez). The detention facility was divided in two wings, one with three small cells and another one with a large cell and a large courtyard.

The Special Rapporteur was informed that the courtyard wing was reserved for illegal immigrants. However, several citizens of Equatorial Guinea were held there as well. Men and women were detained together, the large cell was completely overcrowded, and there were not enough beds for everybody. There were no toilets and detainees defecated in plastic bags and urinated in plastic bottles, which they then threw over the wall of the building.

The Special Rapporteur received allegations that, at times, up to several hundred persons were detained in the courtyard. The police reportedly did not intervene in cases of inter-prisoner violence or to protect the women from harassment by male detainees. There was an internal disciplinary system allegedly run by Equatoguinean prisoners who occasionally beat foreign detainees and applied discriminatory practices against them. According to some allegations, the foreigners were moved into the closed cell over night and the persons held in the three small cells were brought in the courtyard for sleeping. The Special Rapporteur received consistent allegations of beatings, especially of minors. The foreign detainees did not receive any food or water.

Although, according to the police, the three small cells (each of about 8 square meters) were reserved for Equatoguinean citizens, the Special Rapporteur found that many among the 18 detainees were foreigners, e.g. from Nigeria, Cameroon, Chad. Some of the detainees had already spent up to 26 days in police custody. The youngest was 15 years old. The Special Rapporteur was also told that some seven children between 10 and 11 years old had been held in one of the cells for three days, but had been released on the morning of the Special Rapporteur's visit. Similarly, four women had allegedly been detained in the cell for four or five days and had just been released on that day. The three cells were in an appalling state. There were no beds or mattresses. The middle cell where 12 detainees were held was severely overcrowded, so that prisoners had to take turns to lay down on the floor and rest. The detainees were confined to their cells for 24 hours and were not allowed to leave the cell to shower, bath or even use the toilet. The toilet opposite the cell was surrounded by a wall and smelled horrible. The detainees had to urinate into plastic bottles, which were piled up in front of the cells and to defecate into plastic bags which they threw outside the cells. The detainees said they had not showered since their arrival. They had enough water, but complained that they were not provided with food. Food was provided exclusively by families.

None of the detainees in the cells reported that he/she had been subjected to beatings or other ill-treatment since they had been put into the cell. However, the Special Rapporteur received several allegations of ill-treatment during arrest and interrogation: One detainee said he had been injured with a knife on his right cheek by a gendarmerie officer prior to this transfer to the police station. Another detainee said he had been injured with a paper stapler on his toe and finger during the first interrogation in the section of the Judicial Police. Another detainee said he had cables of a car battery attached to his toes by members of the Judicial Police, who threatened him with electro shocks if he refused to confess. Another detainee complained about pain in his thumb and forefinger as a result of the tight application of handcuffs. Another person said he was suffering from injuries on his neck, which he had obtained during his arrest. His head had been pushed down violently when he was pushed into the police car by the police officers who arrested him. The foreigners among the detainees had not been able to contact their consular representatives, although they had requested to do so. Many of the allegations were corroborated by medical evidence.

In Black Beach Prison the Special Rapporteur received consistent allegations from prisoners who had been tortured during interrogation in the premises of the Judicial Police. When the Special Rapporteur visited, he found several torture devices in the front office situated to the left of the right entrance that had been described to him by the detainees. These devices included a car battery, a starter cable, several iron bars and a thick black cable.

Male detainee, foreigner, had been arrested in October 2008 because he could not produce valid documents. He had paid a considerable sum of money to one of the police officers in charge at the police station, who had promised to release him, but was subsequently asked for more. He was afraid of reprisals for speaking with the Special Rapporteur. According to him, foreign detainees were frequently subject to violence by the Equatoguinean detainees, which was tacitly tolerated by the police officers.

Female detainee, aged 24, foreigner with Equatoguinean mother. She grew up in Nigeria and came to Equatorial Guinea to see her mother. In Equatorial Guinea she requested an Equatoguinean passport and consequently planned to travel with this passport to Spain. She was arrested by two police officers at Malabo airport in early November 2008, who slapped her and took her to the Central Police Station, where she was detained in the wing for foreigners together with about 40 men and one other woman. She reported that at night some male detainees had tried to rape her and one Equatoguinean man in particular kept harassing her, but so far she could defend herself. She could see her boyfriend once through the barred window of the police station. Since her arrest, she had not received food from the police but another female detainee had given her some food.

Male detainee, foreigner, arrived in Equatorial Guinea in early November 2008 and was arrested three days later. He was reportedly beaten and kicked by three police officers all over his body. His allegations were corroborated by medical evidence; as a consequence of the ill-treatment, he had a fractured right meta carpal bone between knuckles and wrists and his hand was severely swollen. According to the forensic expert, this is a typical defensive injury which occurs when a person tries to protect his or her face from beatings and kicks.

Male detainee, had been told he would be held for five days but had been detained for several months by the time of the Special Rapporteur's visit; he complained that there was almost no water and that detainees had to pay for drinking water; food was not provided and there was no protection against mosquitoes; for the first month he had been held in a cell within the building; he could see his girlfriend through the window.

Male detainee, foreigner; had been detained for five weeks; he complained that the conditions were very poor and many people were sick; he had never seen a doctor, and had never been brought before a prosecutor or judge.

Black Beach Prison - Malabo

Visited on 12 November 2008

General information: Black Beach Prison is located within a military base, where soldiers and families are housed. The Special Rapporteur had to negotiate for almost one hour before he was granted access. He was not allowed to bring camera equipment. The Special Rapporteur spoke with Baltazar Esono Abeso, Jefe de Central Penitenciaria.

The actual prison is a complex of two buildings with a courtyard in between. Prisoners could move around freely in the building and the courtyard with the exception of the detainees held in solitary confinement. In the courtyard, a small wooden shack spent shade to a small number of detainees, the rest of the yard was without shelter. The prison guards within the complex were heavily armed.

To the right of the courtyard, petty offenders (so-called “bandits”) were held in a large hall where at the time of the visit some 40 detainees were present although there were only 24 mattresses and one dirty toilet. The prison kitchen was also located in this building.

The building on the left-hand side was used for prisoners convicted of “political” crimes, women and children and prisoners with a higher level of education (according to national legislation and to the Sergeant in charge, prisoners were separated depending on their level of education). The second floor of this building, which was separated by a horizontal net and accessible via stairs protected by a barred gate, housed the “high security” section consisting of single cells. These were used for solitary confinement of high security prisoners (Simon Mann, Nick du Toit, Cipriano Nguema Mba and others) and as punishment for disciplinary offences for periods up to one month. All the high security prisoners held there, except Simon Mann, were permanently in leg-irons, which were removed shortly before the arrival of the Special Rapporteur. The cells had a small window to the outside, about two meters from the floor, which provided some daylight; electric light was available in every cell, and each cell had video surveillance equipment. The cells measured about 3,5 x 2,5 meters, contained a shower, toilet and sink, which were separated by a low wall. Items in the cells included a bed with mosquito net, chair, fan and bathing utensils.

Some detainees convicted of “political” crimes were held on the ground floor together with persons convicted of common crimes. Women slept in separate cells, but could mingle freely with the male detainees during the day. One woman was four months pregnant from a co-prisoner. Juveniles were not separated from adults even during the night. The Special Rapporteur received consistent allegations regarding sexual abuse of minors. Many detainees also reported that corporal punishment was regularly applied close to the portal where all detainees could watch.

The prisoners were provided with two meals per day (bread and milk in the morning and rice with some meat in the afternoon). Most of the detainees reported that they suffered from the quasi-total prohibition of visits. Access to medical treatment was restricted and dependent on whether the prisoners were able to cover the related costs themselves.

Within the prison complex, an additional building comprised a hall resembling a “court room” (was allegedly used for interrogations) and several rooms, some of which were used as special cells for three military prisoners and two female detainees. The conditions were decent – a room of about 16 sqm with air-conditioning with two mattresses and no

restrictions on the use of toilets and water; the food was the same as in the main prison. The Special Rapporteur interviewed one person who had been in the room for seven months; he was held there on the basis of an administrative decision taken by a judge; the only complaint he had concerned the fact that he had no idea for how long he had to stay.

The pharmacy and office of the medical doctor were located in the back of the building. One room was locked, and the Special Rapporteur was denied access since, according to the officers on duty, they were not in possession of the key. He had been told by other detainees that these facilities were used to hide certain political prisoners.

Female detainee had been at Black Beach Prison for several months. She had been arrested in Bata and stayed at the police post for about 70 days before she was transferred to Malabo Central Police Station, where she stayed for another two months in a cell together with men. At the Bata police station she was beaten on the buttocks and soles of her feet to extort a confession; she complained that at Black Beach Prison the food and the water were bad; she had no contact with her family outside the prison; she told the Special Rapporteur that she had not experienced violence from co-prisoners and that she could lock the cell door from the inside during the night.

Male detainee had been arrested in December 2003 in Bata, where he had been kept in a calabozo (military cell) of 1 x 2 meters for three months; the conditions were poor since he could not go to the toilet or wash; he was sentenced to ten years of imprisonment for committing a crime against the State after a closed trial by a military tribunal; he was then transferred to Black Beach Prison where he was held in solitary confinement for more than one year; he complained that not long before the visit, the food he had been allowed to receive earlier from relatives had been blocked; the food provided by the prison authorities was insufficient; he had not been allowed to receive any visits for the past year.

Male detainee, was brought to the solitary confinement cell directly after his arrest in 2008; two days later, he was taken to Malabo Central Police Station, where seven persons (policemen as well as security agents) beat him with high-voltage cables and batons. They kicked and beat him all over the body until he confessed. A pistol, meant as a threat, was put on the table next to him while he was subjected to ill-treatment. Following the torture, he had lesions and bruises all over his body, but was never allowed access to a doctor. The Director General of Security and the Secretary of State for Security were reportedly present during the ill-treatment. During his trial, he was represented by a lawyer, but could only meet him one day prior to the trial. The fact that he had been tortured was raised by the lawyer, but no judge asked any questions about it. In prison, he suffered most from the prohibition of any contacts with his family.

Male detainee: in early 2008, his wife was arrested, handcuffed and beaten to force her to disclose his whereabouts to the security forces. He therefore had to go to the Central Police Station to have his wife released, which happened. Subsequently he was brought to the office of the Commissioner, where the Director General of Security and the Secretary of State for Security were present. His fingers were put between thumbscrews which were tightened. After about 25 minutes he started crying and shortly after the thumbscrews were removed. As a result he could not move the fingers for a week. He was taken back to the cell, where he stayed for two days, while the questioning continued. His hands were tied behind the back and his feet were tied as well. In this position, he was suspended from an iron bar between two chairs, so that his face faced the floor. They then brought a candle and put it in front of his nose, so that he had to breathe the smoke. They also put a big heavy car battery on his back for one hour. The pain this caused was unbearable. They stopped the torture when he signed a confession. He was detained in the cell for two months. Sometimes he was allowed to shower very quickly. His family could visit and bring food. He was subsequently tried in a closed trial, where all the allegations of torture were ignored and taken to Black Beach Prison.

Male detainee, was arrested in early 2008, when he reported to the police. He was taken to the “interpol cell”, where the General Director of Security was present. The police incorrectly recorded his statement. When he protested, his hands were tied behind his back with a metal cable with tissue underneath. The police put him on a metal bar fixed between two chairs with his face down. They put a candle in front of his face so that he had to breathe the smoke, which made him dizzy (the dizziness lasted for two weeks). In addition, eight persons were beating him with a high voltage cable. On the following two days he could not move his legs and arms, and others had to help him to go to the toilet and to eat and drink. His whole body was in pain. He could also not walk for a while. During the trial, when he raised the allegations of torture, he was interrupted. He was then sentenced to six years of imprisonment. He had not seen his family since his transfer to Black Beach Prison in the first half 2008. He was not allowed to send or receive letters.

Male detainee, arrested in Bata in late 2005 by the Minister of Territorial Administration. Immediately after his arrest he was taken to a private house outside Bata, where he was blindfolded, and his elbows and ankles were tied with ropes. The officers then suspended him between two beds for about one hour. He was then taken to the main police station for four or five days and subsequently to the gendarmerie, where he stayed for four or five days. Then he was detained in Bata Prison for four months and was transferred to Black Beach Prison afterwards. As a consequence of the torture he was subjected to, for eight months his body was extremely weak and he could hardly move his arms and hands. He needed help even for getting dressed or undressed. There was no reaction when he tried to raise allegations during the trial. He had not had any visits since 2006.

Male detainee had been in the prison for about 18 months; after his arrest he was detained at Malabo Central Police Station for one month in a situation of terrible overcrowding, during which he received no food; he told the Special Rapporteur that a soldier named Marcus Ekua beat him on his buttocks at his office for about 30 minutes for two subsequent nights. He did not have a lawyer and had not had a trial; he was not allowed any visits; at Black Beach Prison he had to share a bed with up to three other men; he said he did small jobs for richer prisoners to get some food in exchange; he also reported that detainees who smoked were punished by the prison guards with beatings or solitary confinement for up to one month, sometimes even in shackles.

Male detainee had spent more than one year at Black Beach Prison; before that he had been held in a police cell for six weeks; there he was hooded; several policemen tied his feet with a rope and handcuffed him; in this position, he was beaten with an elastic plastic baton on his soles and kidneys; they also placed a metal apparatus on his feet, which was too tight – according to the forensic expert the wound was still visible. As a result he could not walk for four days, but he did not confess; on the first day the beating lasted very long; he needed to be carried back to the cell; his feet and hands were numb – he could not feel any pain; he felt pain in the legs, not in the feet; he also reported that during that period he was not provided with any food. According to him, local prisoners at Black Beach Prison discriminated against foreign prisoners.

Simon Mann, aged 56, British citizen, he had been extradited on 2 February 2008 from Zimbabwe to Equatorial Guinea to stand trial in relation to his role as mercenary and leading figure in the attempted coup to overthrow President Obiang in March 2004. At Malabo airport he was met by the Minister of National Security, General Mba, and the Director of Black Beach Prison. He said he was welcomed and politely treated. From the airport he was immediately brought to Black Beach Prison and put in a single cell in the high security section. During the first two days at Black Beach Prison, he was interviewed by General Mba for two hours each day during which he offered to cooperate. He said he was very well treated by the prison authorities, no threats or violence were used against him. He attributed his good treatment to the fact that he had agreed to cooperate with the

authorities from the very beginning. He said that the South African prisoners, who had also been convicted in relation to the attempted coup, were held in much worse conditions, because they had refused to cooperate. He said that he enjoyed a special status at Black Beach Prison and that he had developed a friendly relationship with General Mba, with whom he had lunch during the days of his interrogations. For example, the General had provided him with a stepper to exercise in his cell and allowed him to use his cell phone to speak to his wife and sister in the UK. He received special food, which was directly brought from the Hotel Paraiso in Malabo every day, which he believed was to protect him from being poisoned as he had heard of several death threats against him.

Until about four days prior to the Special Rapporteur's visit, he had been allowed to leave his cell to have lunch in the court room. The short walk from his cell to the building in which the court room was located, had been his only possibility to spend time outside in the open air. He did not know why the guards had stopped to take him to the court room for lunch. For the rest of the day, he was confined to his cell in solitary confinement. Apart from the lack of exercise and fresh air, he said he had no complaints. He said that he had everything he needed and that the prison guards carried out minor shopping for him if he gave them the money to do so.

During the first months of his detention, he had been shackled and handcuffed, except for taking a shower once a day. He said the handcuffs and chains had not been too tight. His handcuffs were removed in June 2008, and his leg irons in August 2008, which he said was due to a direct order by President Obiang. On 11 August 2008 he was taken to a private hospital in Malabo, where he had a surgery. The operation was paid for by the government. After three days in hospital he was taken back to prison, where he was in pain for about a week, without receiving any treatment. He continues to suffer from weak health. Since his detention in Black Beach Prison he has received four visits from the United Kingdom Consulate, representatives of which were also present during his trial. He was also visited by the United States Ambassador on his second day of detention. His sister and brother also visited him in the presence of General Mba and an interpreter. He was also visited by several press and TV agencies, including Channel 4, Mail on Sunday, the Telegraph, etc.

Male detainee, South African citizen was arrested in March 2004 in Malabo together with a group of other South Africans and Armenians in connection with the attempted coup in March 2004 at his home by the Minister of National Security and a group of soldiers. The Minister in civilian clothes together with heavily armed members of the security forces entered his house and arrested him. He was accused of being one of the leading organizers of the coup and brought directly to Black Beach Prison.

On the morning following their arrest, the group was taken to Malabo Central Police Station to have their statements taken. According to him, Angolan and Zimbabwean intelligence officials were present at the police station. He was directly threatened by the Minister of National Security that he would be tortured on that day. When he was unable to write down his statement, he was beaten. After the rest of the group had been taken back to Black Beach Prison, he remained behind. Security forces that he identified as bodyguards of the Minister of National Security took him to the "torture chamber" in the basement of the Central Police Station in Malabo, where he was forced to lie flat on the floor, face down. His legs were chained together and then tied to his handcuffed arms behind his back. In this position he was suspended from the ceiling on thick nylon ropes and beaten for 45-50 minutes by several police officers, while being interrogated. He was also electrocuted on his feet with open cables.

During the first week of his imprisonment at Black Beach Prison, the prisoners linked to the attempted coup were separated from the other prisoners several times and heavily beaten by a group of soldiers or prison guards who seemed to be on a "special shift" to undertake the beatings. They did not receive medical treatment for their injuries. After the first week in

prison, a South African Commission visited the prisoners and the physical abuse subsequently stopped. During the first months in prison, he had been handcuffed behind his back so that he needed help to go to the toilet. He had marks on both his wrists and said that the handcuffs had been so tight that they had cut through his flesh to the bone. He had also been forced to bath naked outside of the prison building where women and children would come to collect water. Sometimes he was left for a month without the opportunity to bath or was forced to bath with his clothes on.

For the past four years he has been forced to wear chains 24 hours a day (allowing to stretch his feet only about 30 cm apart), which have left marks on his ankles, and he complained about swollen feet. According to the forensic expert, this description was confirmed by the medical evidence. He said that, with the tacit agreement of the prison guards, the prisoners in the high security section were now able to loosen their handcuffs or even take them off.

Since November 2005, he has been detained in the newly built high security section in strict solitary confinement and without being allowed to leave his cell. He complained about a general stiffness of his body due to the lack of physical exercise. He added that the years of solitary confinement had distressing effects on him, and that there were times when he didn't know anymore what to do. He said he was provided with insufficient medical treatment even in cases of serious illness and usually had to wait for several days to see a doctor. According to him, the South African embassy had promised him to provide medication but there was no one to inform the embassy in case the prisoners fall ill. With respect to the prison food, he said the general meals included four pieces of bread and a cup of milk for breakfast, and a main meal at around 3 p.m., including rice and meat, but no vegetables, and tap water for drinking. He reported that he was not allowed to receive family visits and has not been in contact with his wife for two years. He was last visited by the South African embassy in May 2008, when he was delivered the copies of letters by his wife that dated back to 2005 and 2006. He said he was not allowed to make phone calls.

Mohamed Salam, a Lebanese businessman resident in Equatorial Guinea, arrested on 29 March 2008, convicted for the same offences as Simon Mann and sentenced to 18 years in prison, had been detained at Black Beach Prison since April 2008. He was held together with other detainees on the ground floor of the left building and reported that in general he received a special treatment: he explained that he received special food from a restaurant, free anti-malaria medication and was allowed to receive visits every week. In general, he reported that more medication was a question of money. Detainees were reportedly allowed to be in the courtyard all day. Alcohol and drugs were prohibited. Disciplinary measures used included beatings with plastic pipes and detention in disciplinary single cells for one week. Prior to his detention in Black Beach he was held in police custody at the Central Police Station where he also benefited from a special treatment and was accommodated in the office of the Deputy Commissioner equipped with a couch and air conditioner. His driver brought him food every day. He witnessed lots of beatings in waiting room and cells and said most of the ill-treatment was fuelled by alcohol.

Nick du Toit, aged 52, South African citizen and former army officer was arrested on 9 March 2004 and convicted on 26 November 2004 to 34 years of imprisonment in relation to the attempted coup in March 2008 together with Simon Mann and other South Africans. Nick du Toit alleged that he made his confession under torture.

During the first six weeks of his detention at Black Beach Prison he was handcuffed the hands behind his back. Subsequently, he was detained for four months in the old complex of Black Beach Prison in a very small cell with his feet and hands tied together so that he could not move at all. The leg irons were only removed when he had to go to the toilet. Although the leg irons were taken off after four months, he remained handcuffed for about one year, while detained in a bigger cell with more space, and together with other people.

At this time, a drunken soldier used to come in the cell with a pistol and put it at the detainees' heads saying "We are going to kill you". Since his conviction he had been detained in solitary confinement in a single cell, and he was forced to wear leg irons the whole day which had been taken off shortly before the Special Rapporteur arrived. The solitary confinement was not based on a court judgment. He was never allowed to go out of the cell and was not allowed to exercise in his cell. He was only able to communicate with other prisoners by shouting to other cells. He reported electricity cuts and said that the food provided (generally milk and bread and rice and chicken) lacked vitamins which, combined with the lack of fresh air and exercise, seriously affected his health since he had spent more than four years in detention. He had been receiving visits once every four months. He was suffering a lot from the almost non-existing contact with his family. Their letters did not arrive at all or were delayed for up to one year. His wife used to come to Equatorial Guinea once in a while, but she was allowed to visit her husband for one hour only, and sometimes the permission to visit was only given on the day of her departure. He reported that the Prosecutor or the President himself authorized the visits. The medical treatment was very poor, and no medicine was provided, although a doctor paid visits to the detainees every two or three weeks. He reported that he had had malaria and received treatment.

Lieutenant Colonel Cipriano Nguema Mba Mitoho, aged 43, had been arrested on 8 October 2008 in Cameroon, where he had been living as a refugee (he had been accused in 2003 of plotting against the government and was tried in absentia to 30 years in prison after his flight to Cameroon), allegedly for smuggling weapons, by a Cameroonian Gendarme, Lucien Mba and other persons vested in civil cloths. He was handed over to soldiers of the Equatoguinean Presidential Guard who took him to Malabo. At Black Beach Prison he was detained incommunicado in solitary confinement with his hands permanently handcuffed and his legs permanently chained. Both had been removed shortly before the Special Rapporteur arrived. He reported that he received special food which was sent by the President. The Minister of National Security reportedly visited him. Four of his relatives had reportedly died in prison (three in Bata Prison and one in Black Beach). Other relatives were also detained at Black Beach Prison on the ground floor of the left building. He did not report any ill-treatment.

Female detainee had been detained for two months at Black Beach Prison. After her arrest she was taken to Malabo Central Police Station where she was detained –permanently handcuffed - for two days. At Black Beach Prison she was detained together with men. She reported that the food was of low quality and she was suffering from very serious acne and would have to pay for the treatment, but had no money.

Male detainee had been detained for eight months at Black Beach Prison. Before, he had been held in police custody at a gendarmerie post for four days. During the interrogation there he was forced to undress and was beaten with police truncheons by three gendarmes on his buttocks for one hour in order to extract a confession. He had no lawyer and was not in contact with his family since visits were prohibited.

Male detainee was arrested in mid-2008 and taken to the Central Police Station in Malabo where he was beaten by two police officers with police truncheons on his head and his body from 4 – 6 p.m., for two subsequent days. The torture took place in the offices of the Judicial Police. Afterwards he was presented to a judge; however he was not allowed to speak and was eventually transferred to Black Beach Prison. He reported that in Black Beach Prison minors and young adults were abused by other detainees and were forced to provide other services to older detainees, such as washing cloths and dishes or cleaning the cells. Furthermore, the prison management had prohibited the minors to play games. Visits were also prohibited.

Male detainee had been detained for five months at Black Beach Prison. Prior to this he had spent two weeks in police custody at the Central Police Station in Malabo. He reported

that he was handcuffed during one entire day and was beaten with police truncheons all over his body. He indicated that he did not receive any food during these two weeks.

Male detainee had been held in police custody at the Central Police Station in Malabo for two months. During the interrogation his feet and hands were tight together and he was suspended, face down, for 45 minutes. In this position he was beaten with police truncheons on the soles of his feet (phalaca) and on his haunches, where he had undergone surgery because of a hernia only shortly before arrest. As a result of the beatings he was unable to walk for two weeks. After two months he was transferred to Black Beach Prison, where he has since been detained for nine months. During that period, he could not communicate with his family and friends, since visits were prohibited and there was no possibility to receive or send letters. If a prisoner was released, he was checked by the wards before leaving the prison and, in case he carried letters from other detainees, they were taken away. As a result of the beatings, his hernia deteriorated and he was in need of surgery, but had no access to medical treatment.

Male detainee had been held at Malabo Central Police Station for over two months between March and May 2008 and was subsequently held incommunicado in Black Beach Prison. At the police station, he was brought to the office of the Secretary of State for Security, a place which was allegedly “equipped” with all the torture instruments. The police asked him to produce his election registration card which he did not have with him. He was forced to strip completely naked. His hands and feet were handcuffed behind his back and tied together and he was suspended face down from an iron bar fixed between two chairs. In this position, he was beaten with police truncheons on the soles of his feet and starter cables of a car battery (which he felt was weighing 30 kilograms) were fixed to his testicles. Furthermore, he was forced – with his head pushed down by the boot of a police officer in his neck – to hold his head during two hours over a lighted candle and to inhale the smoke. This resulted in a complete dizziness and was reportedly “the worst he had ever experienced”. In addition, as a consequence of the ill-treatment he could not urinate for four days and was urinating blood after this period. The torture was used in order to extract a confession and information and lasted from 8 p.m. to 5 a.m. During the two months at Malabo Central Police Station, he was kept in a cell of approximately 6 sqm, together with eleven other persons. There were no sanitary facilities, and the detainees had to urinate in plastic bottles and to defecate in plastic bags. He further reported that he was not allowed to speak during the trial. Although his lawyer mentioned that he had been tortured during interrogation, the judges did not react to this information. The trial lasted only 10 minutes, and he was sentenced to six years of imprisonment and a fine. In Black Beach Prison he was held under a very strict regime; visits were not allowed and he had no possibility to communicate with the outside world. He had no access to medical treatment.

Male detainee, foreigner, student of science and technology, was arrested at the end of February 2008 and brought to the Central Police Station in Malabo. During the interrogation he was not mistreated because he said he was under the protection of an Equatoguinean woman he had been staying with. Although he denied having been involved in the theft he was accused of, he was told that foreigners would be automatically detained at Black Beach Prison. He had spent five days at the Central Police Station without being provided any food, so that he depended on the food given to him by other detainees. At the beginning of March 2008, he was transferred to Black Beach Prison. He reported that the foreigners among the prisoners were discriminated against and often experienced inter-prisoner violence. He also reported that prisoners were frequently beaten by police officers inside the prison in front of everyone.

Male detainee arrived at Black Beach Prison at the end of August 2008. One week earlier, he had been picked up by two police officers at his house, who said his name was on a list at the police station. Upon arrest he was handcuffed behind his back and slapped in the face.

He said he had previously had problems with the military, and, upon arrival at the police station, he was identified by one soldier as a known “bandit”. The soldier threatened him with imprisonment if he did not confess. He was not beaten at the police station. He subsequently appeared on television together with another young man, where they were described by soldiers as widely known thieves that lived at the “crossroad of death”. For one week he was detained at Malabo Central Police Station in a cell with 35 other persons. During this period he could not shower or leave the cell to go to the toilet, but had to use plastic bags, which he said were thrown out of the window. He indicated that he did not receive any water or food from the police, but had to rely on food and water provided by his family.

Male detainee, foreigner, had been working in Equatorial Guinea for 18 months, when he came into conflict with his employer because the latter denied to pay him the full promised salary. In late July 2008, he was arrested by two police officers at his home and brought to the Judicial Police at Malabo Central Police Station; inside the Judicial Police section he was tied to a pole in the middle of one of the offices, and flogged 20 times on his back and buttock with a thick black cable. When he complained about the salary, he was beaten again by five police officers. He was also suspended for 65 minutes on a stick, which was hanging on two ropes from the ceiling, with his hands cuffed and his legs tied in front. For the entire time he was swinging in the suspended position and beaten with the black cable. The abuse was conducted under the supervision or order of Commissario Fabian, who was the chief in charge of the crime section. He also said that in Commissario Fabian’s office (which he described as the office on the right side of the Judicial Police building) he was electrocuted with car cables tied to his feet and neck to extract a confession. According to the forensic expert, he carried scars on his right foot that stemmed from open wounds that had healed without medical treatment.

The detainee also reported that detainees at the Central Police Station could bribe the officers in charge to receive visits or be allowed outside to get some fresh air. From the Central Police Station he was transferred to Black Beach Prison, where he had been detained for the last 4 months. He said he had to share a mattress with four other people. He reported that he was punished by the Sergeant of Black Beach Prison with 50 strokes on his back using a police truncheon for trading food for a bar of soap. In addition, he was punished with two weeks solitary confinement.

The Special Rapporteur recommends that all detainees should be allowed family contact in accordance with international standards, and the persons held in solitary confinement should be granted at least one hour per day to exercise outdoors. Furthermore, the Special Rapporteur urges the Government to remove the leg irons, which cannot be justified by security concerns.

He also suggested that the prison administration should appoint someone who would inform the consular representations in Malabo in case one of the foreign prisoners would fall ill so that they could provide them with medical treatment.

Luba Police Station/Gendarmerie Post

Visited on 13 November 2008

General information: The police station and gendarmerie post were located in the same building. The Special Rapporteur was received by Florencio Bengobeyi, (Adjunto Judicial de la Gendarmería) and Pergentino Nsomboso Ndong (Alférez, Lieutenant) as well as Antonio Ovón Mwe (Commissario Policía). Both disposed of one holding cell. Whereas the cell of the police was empty, one person was detained in the cell of the gendarmerie. When the Special Rapporteur arrived, the officers initially attempted to hide the detainee. The

police cell was dark and dirty. A very dirty toilet was located not far from the cell. Both, the police and the gendarmerie did not have separate registers for detainees.

Male detainee, foreigner, had been arrested the day before in the evening. He indicated that he had been slapped during the arrest. The officers claimed that he had resisted the arrest. The forensic expert accompanying the Special Rapporteur found no traces of violence. Since his arrest he had not been allowed to go to the toilet and had not received any food.

Police Station - Rebola

Visited on 13 November 2008

General information: The Special Rapporteur was received by Brigadier Manuel Esono. The police station disposed of one very dirty cell, which was empty. The door of the cell had allegedly been broken by the last detainee. The officer in charge explained that the cell was only used to keep persons while their cases were registered, following which they were transferred to the instruction judge. Persons to be held in custody were directly transferred to the police station in Baney. However, he did not know the location of the holding cells in Baney. The police kept a registry in which entries and exits of detainees supposedly were registered. However, the book was not properly kept and the officer in charge could neither tell the number of detainees during the preceding month nor the duration of their detention.

Police Station (District) - Baney

Visited on 13 November 2008

General information: The Special Rapporteur was received by Moises Mba Asún (Lieutenant). He informed the Special Rapporteur, that the police station did not have any detention facility. All arrested persons were directly transferred to Malabo. This statement contradicted the information the Special Rapporteur received in Rebola. The police kept a complaints register.

Ela Nguema Police Station

Visited on 13 November 2008

General information: The Special Rapporteur was received by several police officers.

In the left wing of the building, a corridor led to several offices and one detention cell, which was empty on the day of the visit. No register was kept. When the Special Rapporteur arrived, two persons were tied to a bench to the right of the main desk, with their hands cuffed behind their backs. Both of them had allegedly been involved in a fight and were bleeding. When officers on duty realized that the delegation was coming to inspect the place, the two persons were hastily untied and pushed into an office, and the Special Rapporteur was first denied access to them. After some negotiations he was allowed to speak to both persons.

Male detainee said he had been arrested about an hour earlier at the place of the fight together with Jose Antonio. He was handcuffed and taken to the police station.

Male detainee had been arrested an hour earlier following a fight with another person. In the process, he was kicked, pushed and handcuffed. The arresting police officers accused him of being a killer.

Military Camp Mane Ela - Malabo

Visited on 13 November 2008

General information: The Special Rapporteur was denied access to the Military Camp, and the soldiers posted at the entrance threatened the two drivers accompanying the delegation. The tensions eased somewhat when Admiral Eyo Olomo and Micha Nguema, the Commander of Mane Ela, arrived, but the Special Rapporteur was asked to leave the military premises.

Bata Prison

Visited on 14 November 2008

General information: The Special Rapporteur was received by Miguel Nsang (Sergeant Administrator of the Prison) and Malua Damaso (Chief of the penitentiary institutions on the mainland). On the day of the visit, the total number of prisoners was 83 out of which 5 were women, and 30 prisoners were convicted. Several women, one of them pregnant, and minors (one aged 13) had been released three days prior to the visit of the Special Rapporteur. Some of the convicted prisoners had been convicted by a military court, and were detained in Bata prison because Bata had no military detention facility. The two officers in charge were unable to indicate how many prisoners were juveniles, as they found it difficult to establish their age. Some prisoners were on a regime requiring them to work outside, in the service of local government officials. One prisoner was listed as on death row, but, according to prison staff, he was not under a special regime. Since the prison director had taken office, he remembered one official execution. When asked about the method of execution, he referred to firing squad.

The prison consisted of two big dormitories for male detainees and one big dormitory for female detainees, as well as ten small cells and a church, which were located around a large courtyard. The small cells, humid and dirty, were used for disciplinary punishment. On the day of the visit, two persons were confined to these cells because they had tried to escape. In addition, a detained former military officer who enjoyed special treatment occupied two cells. One of the big dormitories for male detainees was 6m x 22m and equipped with 29 beds, some with mosquito nets. Whereas on the day of the visit the dormitory was not overcrowded, there were reports that sometimes more than 70 prisoners were kept in the cell, so that three persons had to share one bed. A new prison (next to the old one) was under construction. Although the women were accommodated in a separate cell, male and female detainees could intermingle during the day and men could easily access the women's dormitory. The Special Rapporteur was informed by the prison authorities that from 7 p.m. to 7 a.m. doors to the dormitories were locked and prisoners had to stay inside. However, he received allegations that female detainees were regularly asked to provide sexual services to men and were offered food or other goods in exchange. Minors were not separated from adults. The prison applied a very liberal visiting policy: Visiting hours were daily from 7-9 a.m. and 3.30 – 5 p.m. No restrictions were imposed.

As for food, the detainees were provided with 5 bags of rice, 3 tins of sardines and some oil once a month. However, this was not sufficient to cover the alimentary needs. Therefore, detainees were dependent on additional food from their families, friends and/or other prison inmates. For water supply, the detainees relied on their families since the well in the courtyard regularly dried out when there had been no rain for a while. Medical treatment was only available if a detainee could cover the costs him/herself. In serious cases, sick detainees were brought to the hospital of Bata. Although the prison authorities strongly denied that corporal punishment was practiced, the Special Rapporteur received consistent

allegations that detainees who had violated the prison rules were handcuffed to a pillar/column at the portal and flogged by soldiers or prison guards on their buttocks, but sometimes also all over their body. All the other prisoners could watch the scene. Furthermore, the Special Rapporteur was informed of discriminative practices against foreigners. Reportedly, not long before the visit, when a foreigner escaped from the prison, all other foreign detainees were beaten up to (collectively) punish them.

Male detainee, minor, had spent four weeks in Bata Prison. During the arrest he was punched in his face and on his testicles. As a result of the beatings in his face and head he still could not hear well. He was detained for two weeks at a police post and then transferred to Bata Central Police Station with instructions to torture him. Soon after his arrival, he was taken to the underground investigation room, where his hands and feet were tied together (handcuffs and leg-irons) and he was suspended from a bar fixed to a special structure. He was beaten on his feet while hanging for two hours. Then he was taken back to the upper cells. He needed to be supported as he could not walk because his feet were bleeding. After two weeks at the police which he spent mostly on his own, he was transferred to Bata Prison. At none of the police stations he received any food and just very little water; he could not wash himself or go to the toilet and had to defecate and urinate in plastic bags and bottles.

Female detainee was arrested in 2007. She was held for two weeks at a gendarmerie post in Bata in a cell together with other male and female detainees. She was not beaten. The Gendarmerie did not provide them with food or water, but her family regularly brought what she needed. She was then transferred to Bata Prison. She has some money to buy food and water.

Female detainee was arrested in spring 2008 and was held for two weeks at Bata Central Police Station, before being transferred to Bata Prison. At the police station she received water, but no food. She reportedly was very sick at that time and asked for medical treatment, but did not see a doctor and was neither brought to a hospital. She reported that her situation in the prison was better since her family would bring her food every day.

Female detainee was arrested in spring 2006 and taken to Bata Central Police Station, where she was detained for one week in a cell together with men. Since in the prison, she had no support from outside, since her house had been put on fire by the family of the victim and her children consequently were taken care of by a church. She received food from her cell mates.

Male detainee had been in detention in Bata prison for about six weeks. Prior to this, he was held in police custody for two weeks at Bata Central Police Station. He reportedly was blindfolded and brought to the interrogation room in the basement, where he was stripped naked with only his underpants left, and handcuffed behind his back. In this situation he was – for two hours - kicked with boots and beaten with police truncheons by two police officers all over his body and in his face in order to extract a confession. As a result of the torture his whole face was swollen and his eyes were bloodshot so that he was not able to see any more. Immediately after the “interrogation” he was brought into a single cell without light where he was held during two days without receiving any food or water. Thereafter he was held in a cell together with other detainees (out of which many reportedly had also been subjected to torture by the police). Since he had no visitors, his cell-mates looked after him and, with the help of their relatives, provided him with medicine to treat his wounds resulting from the torture. When he was transferred to Bata Prison two weeks later, none of the prison staff made a remark concerning his wounds although the injuries in his face were still very well visible. He further reported that the food provided by the prison authorities was insufficient, but he had no visitors bringing him food from outside the prison.

Male detainee had been detained in Bata Prison since spring 2008. Prior to that, he had been kept in custody at the Central Police Station in Bata for two weeks. The first day, he was brought to the interrogation room in the basement of the building at 9 p. m. In this dark room, where only a red light was blinking, he was handcuffed and suspended upside down, wearing only his underpants, and beaten 54 times with a truncheon on the soles of his feet (phalaca) as well as on his head in order to extract a confession. He however did not confess to any crime. Thereafter he was held in a single cell for one week. No visits from outside the police were allowed but other detainees could come to see him. He reported that, since he had been in prison, his family visited him, but they could not bring him food since they had no money. He had been subjected to corporal punishment in summer 2008. He reported that his hands and arms were handcuffed around a column and he was beaten with a police truncheon 15 times on his buttocks.

Male detainee was arrested in summer 2007 by the police in a small town and was taken to the police station where he was held in custody for two days. In the cell his hands were handcuffed behind his back and he was forced to lie on the floor. In this position, he was beaten repeatedly with a police truncheon and once with a cable by a Police Commissioner and an Inspector. He had scars on his body, and his eye was injured from the beatings with the cable. When he arrived at Bata Prison, his injuries were still visible, but the prison authorities did not say anything. He reported that, if detainees needed to see a doctor, they had to pay a certain amount of money to the prison staff.

Male detainee was arrested in a small town in spring 2008 and was directly taken to Bata Prison, where he had since been imprisoned. He had been brought before a judge three times but had not been convicted of a crime so far. He said he had not been beaten or ill-treated himself, but he said that there were cases of corporal punishment in Bata Prison, for example when a prisoner was caught drunk. According to him, the flogging and beating took place in the courtyard of the prison and was carried out by the prison chief with a stick, mostly on the soles, and lower legs and buttocks. He further reported that there was a rule that if the detainee moved away from the strokes, the beating would be extended to the entire body.

Male detainee arrived in Bata Prison in late 2006. He had been picked up at his home four days earlier by soldiers, put into a car and brought to the gendarmerie in Bata. During the first night at the gendarmerie post he was taken to an empty office and beaten by three or more soldiers. The beatings continued for three successive nights. He said that the beating during the third night was less severe as he was already badly injured. The soldiers used an iron crow bar for the beating. On the fourth day, his family came to the gendarmerie post and requested that he be taken to the hospital. According to him, the family had to pay for the transfer. Two gendarmerie officers accompanied him to the hospital, where he was treated for about an hour. He said that his left leg was fractured above the ankle, with an exposed bone. He was x-rayed in the hospital - the wound was enlarged and disinfected, then bandaged without stitching. The scars from the wound on his left ankle were still visible. He also had marks and scars on his right ankle; on his back he had three bands of horizontal scars, which he said stemmed from the 2006 beating. From the hospital he was taken directly to the judge and then to Bata Prison. In Bata Prison he reported that he had been beaten with a rubber stick about one month earlier. From this beating he had marks on his left arm and on his back. He had not filed any complaints. According to the forensic expert, the medical evidence on his left and right leg and ankle, as well as on his back and left arm corroborated his account.

Male detainee was arrested in the last week of September 2008 in relation to a case of robbery and taken to the gendarmerie in Bata, where he was detained for three weeks. He reported that he was beaten during the interrogation: he was taken to an office by a senior officer during the night and told to sit down with his hands cuffed behind his back. He had

to stay in that position until the next morning, when the senior officer ordered several soldiers to beat him with police truncheons while he was questioned. During the beating he was handcuffed and ordered to sit on the ground with stretched legs. The soldier, who conducted the beating stood in front of him and hit his lower legs while the interrogation continued for about 15 minutes. When he was told to stand up he was not able to do so. His soles were very swollen, and he had to move back to the cell on his knees as he was still handcuffed. He could not stand on his feet for the next two days and at the time of the Special Rapporteur's visit he still suffered from pain in his legs. According to the forensic expert, his account of the beating and the symptoms corroborated the events. He was later interviewed about the beatings, and the interview was broadcasted on television. After three weeks at the gendarmerie, he was transferred to Bata Prison, although the person who had committed the robbery had in the meantime been arrested. At the time of the visit he had spent about six weeks in Bata Prison.

In early November 2008, he was accused by another detainee of having been drinking (drinks were reportedly brought into the prison and the detainees could buy them). On that same evening, a soldier came to him and threatened that he would be punished the next morning. On the following morning soldiers took him out into the courtyard and beat him all over his body, including his back and his arms and his legs for 10 minutes with a police truncheon. The beating and kicking took place in front of other detainees. He was not handcuffed because the soldiers could not find the key, so he had to stretch out his arms in front of him and embrace a pole. The beating left marks on his left knee, right sole and left elbow. His left wrist was injured. He also said that he felt pain in his testicles. According to the forensic expert, his injuries seemed to be the result of the corporal punishment in the courtyard.

Male detainee, had been deprived of his liberty for more than four years. In 2004, he was detained abroad together with many others, despite the fact that he was carrying valid documents. The detainees were hooded, handcuffed and forced to enter a plane. In the plane, they had to lie down on the floor, face down, and had their feet chained together. They were flown to Malabo and brought to Black Beach Prison. He was held incommunicado for the first 12 months. The first month he spent in solitary confinement, in a very small cell measuring about 1,45m x 1,45m, after which he was taken to another cell measuring 2 x 2 m, which he shared with another detainee. After 12 months he was allowed to leave the cell, the handcuffs were only taken off after 18 months. He said that for two years he could not speak to his family or be in contact with his lawyer. After about three years, he was transferred to Bata and tried before a judge, who sentenced him to a long prison term and a fine. He said his family was trying to raise the money, but he feared he would not be able to pay the full fine, in which case he said he would continue to be detained indefinitely.

He reported that he suffered from health problems, which he said were a result of the confinement in very small cells in Black Beach Prison. Whereas he had received some treatment, for which his family paid, he thought that it had been insufficient.

Central Police Station Bata

Visited on 14 and 17 November 2008

General information (first visit): The Central Police Station had been moved from Bomudi area into a new building constructed by the French company Bouygues one year earlier. The detention facilities were located in a two story building annexed to the back of the main building hosting the offices. At the end of his visit, the Special Rapporteur was received by Bienvenido Esono Engonga, Director of Bata Police (Commissario Jefe Superior). After lengthy negotiations the Special Rapporteur was granted access to the

interrogation room in the basement. He found a mattress, two black tables next to each other, a special red lamp, handcuffs and wooden and metal bars. The room and its equipment matched the description the Special Rapporteur had received prior to his visit to Bata Police Station from alleged victims.

On the ground floor, at the far end, male foreigners were detained in a spacious area that consisted of an open courtyard where the detainees could play football or sit on chairs. During the night, the detainees were locked into one large room that was separated from the yard with an iron grid but no walls. The room had several mattresses, a few beds, tables and chairs on the floor and was generally clean. The lights on the ceiling had been shaded with cloths by the detainees as they said the lights were not switched off at night. The adjacent sanitary facilities were newly built and in very good condition, including running water and electricity. At the time of the visit, about 15 to 20 persons were detained in this area. The detainees all came from neighboring countries, such as Congo Brazzaville, Gabon, Cameroon, Benin, Burkina Faso, Mali, Niger, Nigeria and Democratic Republic of Congo.

The detainees informed the Special Rapporteur that they were detained because they could not produce visa documents or because they were accused of having false documents. One of the detainees had spent one month in detention, others had been held for a week or several days. Some complained that they had been beaten upon arrest and most of them said the police had taken away their possessions, in particular the money they had in their pockets and their cell phones. According to the detainees, in the morning of the day of the Special Rapporteur's visit, four persons who showed clear physical signs of ill-treatment and abuse on their buttocks and backs had been released.

According to the detainees, the police did not provide them with adequate food, and they had to rely on family and friends, who were often not allowed into the police building, so that the detainees did not have enough to eat. With respect to the physical conditions of the area, the detainees said they were not protected from the mosquitoes that came through the open grid at night, attracted by the burning light.

On the first floor, there were two separate wings. Most of the cells to the right were reserved for soldiers. On the left side, Equatoguineans and two foreign women were held in police custody in seven cells equipped with beds and mattresses as well as sanitary facilities. In general, detainees were allowed to receive visitors who brought food and water. All cells were open so that detainees could walk around. The Special Rapporteur received consistent allegations of torture applied during the interrogation at night in the interrogation room in the basement. These allegations were corroborated by the medical evidence taken by the forensic expert.

At night, the male detainees reportedly approached the foreign women and tried to touch and rape them. In addition, a police officer repeatedly asked one of them to become his wife, threatening to beat her if she refused.

Second visit: Although the Special Rapporteur had an appointment with Commissioner Bienvenido Esono Eugonga on 17 November, he and his team were insulted and threatened with a machine gun when they were about to enter the building of the Central Police Station. Only with some delay the Special Rapporteur was admitted to the building and the office of the Commissioner. While the Commissioner apologized for the incident, the Special Rapporteur was denied access to the detainees to continue his fact-finding.

Male detainee, foreigner, had been arrested two weeks earlier by five members of the Judicial Police because he was unable to produce valid papers. He said that he was slapped in the face by the police officers. Since he arrived at Bata Police Station, he was not physically abused. However, he said that he had seen other detainees being beaten in the station, mostly upon arrival.

Two female detainees, foreigners, were arrested in November 2008 because they had crossed the border with false passports. Since that day, they had been held in police custody in a cell together with three men in a wing hosting about 20 male detainees. Some cell-mates reportedly shared their food with the two women and one of the police officers had reportedly bought them some food.

Male detainee had been arrested some weeks earlier by two police officers and was brought to the police station. In the office of the interrogation officer, he was handcuffed behind his back and interrogated. When he refused to answer the questions, he was beaten with a police truncheon on his buttocks, his back and his legs, but he still kept silent. In the middle of the following night he was taken to the interrogation room in the basement. Wearing shorts only, he had his arms and legs tied behind his back, and was suspended face down from an iron bar between two black tables for 15 minutes. Five police officers and the Commissioner were present. He was beaten on his back and the soles of his feet. The next day at midnight, he was again taken to the interrogation room, stripped naked and handcuffed again with his hands and feet tied behind his back. In this position, he was first left on the floor during 5 minutes and then suspended again for 5 minutes in order to extract a confession. Eight police officers were present. Two days later, he signed a declaration and paid a fine.

Male detainee had been arrested some weeks earlier. He was taken to Bata Central Police Station and handcuffed. In the interrogation room in the basement, he had to lie down on a mattress and was beaten on the buttocks with a rubber baton. Then his feet were tied as well and, with extra handcuffs, his hands and feet were tied together behind his back. He was suspended from an iron bar between two black tables with his face down for 15 minutes, during which he was swinging. Since the time of the torture his wrists and ankles were hurting and he felt pain in the spine, but overall it was getting better. However, he still could not stand for longer periods. After the ill-treatment he was asked to walk upstairs, which he hardly could. He reported that detainees were provided neither with food nor water; but his family provided him with some products. He had not seen any judge or prosecutor since his arrest and had no idea why he was detained.

Male detainee had been in police detention for about three months. Four days after his arrival at Bata Central Police Station he was taken to the interrogation room in the basement. There he was suspended between two black tables face-down and beaten on his soles with batons for 30 minutes. As a result, he made a false confession, but said that at least they stopped the torture. He was heavily bleeding on his hands and feet. He was forced to walk up the stairs, but it was almost impossible, since he could not walk and was on his knees most of the time. During the torture session two victims and six policemen were present. At the time of the Special Rapporteur's visit, he did still not feel his hand-balms. At the police he was not provided with any food or water, but said sometimes the other detainees would help him. He has not seen a judge, a prosecutor or medical doctor.

Police Station/Gendarmerie Post Niefang

Visited on 15 November 2008

General information: The police station and the gendarmerie post were located in the same building, on the ground floor and first floor respectively. The Special Rapporteur was received by Etobari Sergeant Primero (Secundo Abogado Commissario), Juan Sima, (Sub-Inspector of the Police) and Diego Oba Ndong, (Captain/Commissario of the Police), as well as Simeon Ondo Engono (Lt. teniente jefe de la Brigada Gendarmeria). Whereas the police reported that the last time a person had been detained in their premises was 30 October 2008, the gendarmerie held one person on the day of the Special Rapporteur's visit.

The person was detained on the first floor in a room of about 2,5 sqm which was used as a cell. The gendarmerie had a very well kept register, which, according to the Chief of the Gendarmerie was provided as part of gendarmerie training by the French authorities. In addition to the register, the gendarmerie used a complaint register to record any complaints made.

The hygienic conditions in the room used as cell were very poor. The detainee, who had been arrested some weeks earlier, had not been allowed to leave the cell to go to the toilet, but had to urinate into plastic bottles and defecate into plastic bags. To sleep, he had to lie on the floor on a dirty mattress. The windows were barred with wooden planks, but some light came in, where the planks were broken.

The Special Rapporteur was told by the gendarmerie that the detainee was allowed to leave the cell to go to the toilet. With respect to the physical conditions of the place, in particular the room used to detain people, the officials said they felt the place was not appropriate and explained that a new building was under construction.

Police Station Evinayong

Visited on 15 November 2008

The police station was small with a stone tower next to it used as holding cell. The tower was dark with one very small window. Apart from one wooden stool, it was empty. No register was kept.

Male detainee, foreigner, had been arrested a few hours earlier because he had no papers. He had been treated correctly, but not received any water.

Evinayong Prison

Visited on 15 November 2008

General information: Evinayong Prison had been completely refurbished. Only six prisoners were detained in the prison at the time of the Special Rapporteur's visit. Most of them were sentenced to long term imprisonment because of murder. The prison consisted of six small single cells, a larger multi-occupancy cell as well as one big dormitory with about 30 bunk beds. Three persons were accommodated in the dormitory. The dormitory was reportedly locked at night and the windows permanently closed with iron shutters. Since there was no electric light, the prisoners reportedly had to spend the whole evening and night in complete darkness. The other multi-occupancy cell (2 or 3 bunk beds) was occupied by one person. The prison also disposed of high standard sanitary facilities and a large clean kitchen in which prisoners cooked their own food. During the day, prisoners could freely move around inside the large courtyard, but the cells were locked between 6 p.m. and 6 a.m. One person with a mental disability was detained at the prison. It was reported that corporal punishment had ceased since the new prison director took office in September 2008. However, about one year earlier, a prisoner, Salvador Ndong Nguema, had been so heavily beaten by two soldiers (Cabo Primero Diosdado and "Florencio"), had not received any medical treatment and only been taken to the hospital in Bata when a member of his family came to see him in Evinayong; he later died in Bata Hospital. At that time, all detainees had been held at the gendarmerie premises of the gendarmerie because the prison was being renovated. All prisoners watched when the two soldiers kicked Salvador Ndong Nguema with their boots and were beating him with rubber truncheons.

Male detainee had been arrested in early 2001, and spent one month in the Police Station of Ebebiyin before being transferred to Bata Prison where he was held for four years. Since

April 2005, he had been held in Evinayong Prison. He reported that he was sentenced to 30 years imprisonment for murder. In none of the detention places, he was ever subjected to torture or ill-treatment. He informed the Special Rapporteur that since the present Director of the Prison Evinayong took office at the end of September 2008, the prison conditions improved significantly. The Director was friendly with the detainees and treated them properly. The detainees received once per month sufficient food ingredients for the whole month, and they could themselves prepare the food in the kitchen. In the cell, he had light and a radio. Between 6.30 a.m. and 7.30 a.m. he could (voluntarily) work outside the prison by cutting plants with a machete and could earn some money. Prisoners were allowed to receive visitors, but he had nobody to visit him. As long as the Red Cross visited the prison, detainees were provided with games (cards etc.), but since these visits ceased, they had no longer any games.

Male detainee had been in detention for about eight years. After his arrest, he was first held in custody at a gendarmerie post in Bata. On the first day, at midnight, he was brought in the “torture room” where he was ordered to stand on a chair completely naked. His arms were attached to a bar with cords; then the chair was removed so that he was hanging in the air. The gendarmerie left him suspended in this position for 30 minutes, and for 10 minutes he was beaten with a police truncheon on the soles of his feet. The police officer only stopped when he was defecating and sweating very strongly due to the pain. He could not walk anymore and was carried back to the cell. One day later, at 1 am, he was taken out of the cell, stripped naked and his elbows and feet were both tied together with cords behind his back; a bar was glided under the cords and fixed between two chairs. In this position he was suspended for 10 minutes in order to extract payment of a large sum and a confession. As a result of the torture he was unable to walk for two months. At the time of the Special Rapporteur’s visit, more than seven years later, he still felt strong pain in the feet, especially on the soles and he had difficulties to wear shoes and to walk distances of more than 100 meters. According to the examination by the forensic expert of the team of the Special Rapporteur, parts of the tissue on the soles of his feet had been permanently destroyed. Furthermore, the detainee could not move his arms and hands for one year after the torture so that he was dependent on help of co-detainees in order to eat and to do his basic needs etc. He reported that his hands sometimes still felt “cold” or “dead” and he had to move them in order to get rid of the numbness. His arms and hands were weaker than before the torture and he had difficulties when carrying out manual work. After one and a half months in custody at the gendarmerie post, he was transferred to Bata Prison, where he stayed about two and a half years before being transferred to Evinayong Prison. He reported that he had no complaints regarding the treatment in Bata Prison. His brother, his wife and his two children used to visit him in Bata. He did not know why he was transferred to Evinayong Prison since he had no family members living in this region. His brother died and he was not allowed to attend the funeral in Bata. Regarding the treatment in Evinayong Prison he reported that the money from the authorities for the food of the detainees did not reach Evinayong so that the prisoners were short of food and depending on external help. However, the new Director of the prison gave detainees money (out of his own pocket) for food. He reported that the ill-treatment including corporal punishment had stopped since the arrival of the new Prison Director.

Male detainee had been arrested in September 2008 by the gendarmerie. He was detained for approximately one month in a small room used as a cell, which had no bed or mattress. In November 2008 he was brought before a judge, who ordered his immediate transfer to Evinayong Prison to await trial. However, his transfer to the prison was delayed because he was doing construction work for an official, which the latter wanted him to finish before his transfer. Since his arrival at Evinayong Prison, he had not seen or spoken to a judge. According to him, the prison authorities provided the prisoners with adequate food and cooking oil to cook their own meals in the prison kitchen. The only complaints he had were

the lack of sufficient medicine and the fact that he had to sit in the dark without electric light in the big dormitory after 7 p.m. when the doors were locked.

Male detainee had been transferred to Evinayong Prison in 2004; before that, he had been held in Bata Prison starting from 1997. He had no major complaints about the prison. He found the food insufficient and indicated that, while detainees could see a doctor if needed, they were not provided with medicine. When he was arrested, the police tied his hands and feet together behind his back and beat him all over his body for about two hours. He was also suspended, which left deep wounds. He had two lawyers, but they did not do their job. When he made allegations of torture during the trial, the judge did not react. At the beginning he had been held at a small gendarmerie post.

Gendarmerie Post Evinayong

Visited on 15 November 2008

General information: The officer in charge, Corporal Lucas Ntutum, said he had been working at the gendarmerie post since 2005; he had been officer in charge after his superior had left one month earlier. Upon request, he provided the Special Rapporteur with the register, which showed one undated entry for 2008. The officer in charge made contradictory statements with regard to the existence of detention cells and the date of the last person held in custody. The Special Rapporteur found a cell which was in a ruinous state.

Police station Ngolo - Bata

Visited on 15 November 2008

General information: The Special Rapporteur was received by Sub-Inspector Fermin Osa Ndong and Marino Mba Ntschania (Inspector de Tercera de Policia Nacional). At the time of the visit, four detainees were held in one cell of about 9 sqm, which was very dark as the only window was barred with wooden planks. There were no beds but only some very dirty mats on the floor. Detainees had no protection against mosquitoes, were not provided with any food, and access to the toilet was sometimes restricted.

Gendarmerie Post/Police Station Cogo

Visited on 16 November 2008

General information: The Police and the Gendarmerie were located in the same run-down building which did not dispose of detention facilities. At the gendarmerie the Special Rapporteur was received by Luis Ndong (Brigadier) and Egulocio Ndong (Teniente, Chief of Brigade). A register was kept in the same clear manner as in other gendarmerie posts. It showed no entry for 2008. The Special Rapporteur was however told that, if a person was arrested, he/she would be detained at the military camp across the road.

At the police station the Special Rapporteur spoke to the Juan Engongo (Comisionado Divisional, serving in this function since June 2008). According to Juan Engono, in cases of serious crimes, persons would be detained in the military barracks, since there were no cells available at the police station. However, at the time of the visit no one was held there as far as he knew. The last serious case was a couple of days prior to the visit of the Special Rapporteur and concerned a road accident involving casualties. According to the police chief, the person responsible for that accident had been sent to a judge in Bata, as there was

no investigation judge in Cogo. In general, he said the maximum period of detention before transfer to a judge would be three days. With respect to illegal immigrants that were arrested in the area of Cogo, they would also be transferred to Bata Central Police Station.

The Special Rapporteur requested to see the cells used by the police in the military camp. However he was denied access by the police and the military.

Police Station Mbini

Visited on 16 November 2008

General information: At Mbini Police Station, the Special Rapporteur was told by the officer in charge that the police station did not have a place to detain people. However, at the back of the building, the Special Rapporteur found a separate stonewalled room that showed several signs indicating that one or more persons had recently been held there, including several plastic bottles filled with urine. When the Special Rapporteur asked to speak to the Chief of Police in Mbini, he was told that the Police Chief was not in town, and that he had to speak to the Government Delegate of Mbini first. At the Government Delegate's residence, the Special Residence and his delegation were warmly received. However, the Delegate did not comment on the detention facilities since he had not received any instructions from the Minister of Interior.

Central Gendarmerie Post Bomudi - Bata

Visited on 17 November 2008

General information: The post consisted of a two story building. A spacious cell of about 20 sqm, with electric light and some mosquito coils on the floor, was located on the ground floor. The Special Rapporteur was received by Crispin Ntutumu Bibang (Captain) and Jesus Edu Moto (Jefe de cuerpo, highest chief of the Gendarmerie at national level) who was present only for a very short time. Crispin Nututumu provided the Special Rapporteur with a list of detainees which included the day, reason of arrest, age and residence. It contained entries in relation to six detainees; four of whom were in the cell, while, according to the officials, two were working outside during the day. Detainees were not allowed to leave the cells when visited by family members, but had to communicate through a tiny opening separating the window covered with a metal shield.

According to the detainees, they were not allowed to leave the cell to go to the toilet, but had to use plastic bottles and bags. Detainees also said they were not allowed to contact their families to inform them of their arrest. When the Special Rapporteur asked one of the officers to call the relatives of one of the detainees to inform them about the arrest, the officer first said that that was too expensive and that the telephone did not work. However, he later tried to reach the family of the detainee, to no avail.

Crispin Nututumu, the Captain and officer in charge, had served with the Gendarmerie in France for five years, where he underwent some training. He explained that in Equatorial Guinea he participated in a human rights course given by the Ministry of Justice where he learned that ill-treatment of detainees was prohibited. Consequently, the gendarmerie ceased to use electroshocks that had been used earlier during interrogation. He explained that persons suspected of having committed small offences would be treated well; however he admitted that suspected criminals were threatened with some violence in order to intimidate them. Detainees were sometimes threatened with being thrown in the sea. He explained that often mere threats of torture would help to make detainees more "cooperative".

Male detainee had been held in custody since the early morning of the previous day. During these 14 hours in detention he did receive neither food nor water and had no access to toilets. In addition he was forced to work.

Male detainee had been arrested the day before at 7 p.m. by the gendarmerie and brought to the gendarmerie post. He was reportedly threatened with beatings “if he refused to tell the truth”. Furthermore, he had to drink water from a plastic bottle which was before used by detainees for their urine. He asked the Gendarmerie if he could call his family to inform them of his detention, but was not permitted to do so.

Male detainee, had been arrested three days earlier by officers of the Gendarmerie, but no report was taken. According to him, the arresting officer took away all his money and he had to rely on friends for the provision of food. He said he was not allowed to call his family despite several request.

Male detainee had been arrested not long before the visit by three uniformed gendarmes, including Captain Crispin Nututumu. They handcuffed him and brought him by car to the Bomudi Gendarmerie Post. He had not received any food or water. He was threatened with torture by suspension if he did not confess. Out of fear, he could not sleep. The duty officer, Crispin Nututumu, confirmed that he participated in the arrest.

Police Station Mondoasi (Mendoc-Asi) - Bata

Visited on 17 November 2008

General information: The station was located in the middle of the Mondoasi market. The small building consisted of two offices and a very dark, dirty and hot cell of about 3 sqm in which four persons were detained on the day of the visit of the Special Rapporteur. No toilets were available. Thus, detainees had to urinate in plastic bottles and defecate in front of the other detainees in the cell. Not all of the detainees’ names had been entered in the register. The Special Rapporteur spoke to Chief of Brigade Adolfo Obama Obama.

Male detainee had been transferred to the police station the day prior to the visit of the Special Rapporteur. He did not receive any food or water and had no access to toilets. He therefore had to urinate in a plastic bottle. He could not inform his family of his detention.

Male detainee had been held in police custody for two days. He was not informed of the reason of his arrest and was provided neither with water nor with food. He had no access to toilets or showers. He reported that other detainees were beaten with police truncheons when they were arrested.

Male detainee was arrested not long before the visit. He spent the night in the small and dark cell together with five other detainees. One of them left in the morning. In the morning of the day of the Special Rapporteur’s visit, he was taken to his workplace to confirm whether or not he actually worked there. He could not inform his family of his arrest, and consequently had not received any food or water. Upon arrival at the police station, the police officers grabbed his hands from behind and pushed him against the wall. Apart from this, no physical force was used against him.

Male detainee had been picked up by a soldier a few days earlier. He went with the soldier, no force was used. Upon arrival at Mandoasi Police Station, he was arrested and put into a cell. He complained that he had to buy his own food and water and had to use a plastic bottle to urinate. He also said there was no ventilation in the cell, which was very hot and at times had accommodated five other persons.

Male detainee had been arrested not long before the visit together with his sister by a police officer in civilian clothes. He had no idea of the reasons of the arrest.

Appendix II

Informe replica de Guinea Ecuatorial al informe del Relator Especial contra la tortura, el Señor Manfred Nowak

El súbito y repentino deterioro de la situación política producido en el País a partir de los acontecimientos del 5 de marzo de 1969 agravó aún más el ya de por sí pésimo panorama de los derechos humanos heredado del régimen colonial, dos de cuyas principales notas características eran la residenciación en la autoridad gubernativa de la capacidad de decidir sobre la privación de libertad, y la negación a los detenidos y presos de la condición de personas.

La voluntad de superación del descrito panorama constituye una de las principales causas que inspiraron la acción del golpe de libertad, consumada el 3 de Agosto del año 1979. Desde entonces, la protección y promoción de los derechos humanos y libertades públicas constituye uno de los principales vertebradores de la actuación de los Poderes Públicos de Guinea Ecuatorial. A tal efecto, el Gobierno concibió, diseñó y puso en marcha un Programa que incluía las siguientes acciones básicas:

- a) Reconocimiento Jurídico de los derechos fundamentales y libertades públicas.
- b) Adopción de disposiciones represoras de actos de violación de los derechos fundamentales y libertades públicas legalmente reconocidos a las personas.
- c) Institucionalización de un Poder Judicial técnicamente solvente y políticamente independiente.
- d) Construcción de infraestructuras de acogida adecuadas para que los privados de libertad se desenvuelvan con comodidad, seguridad e intimidad.
- e) Humanización del régimen de tratamiento a los detenidos y presos.
- f) Difusión social de la cultura del respeto a los derechos humanos.

Tres décadas después de la adopción y puesta en marcha del referido Programa, el gobierno se propuso llevar a cabo una amplia y profunda evaluación de la situación, al objeto de determinar tanto los logros alcanzados como las deficiencias persistentes. A tal efecto, estimó necesario implicar a las Naciones Unidas, para lo cual cursó invitación a su Relator Especial contra la tortura, don Manfred Nowak.

El sentido de la invitación formulada era contar con la colaboración de un especialista que asistiera al Gobierno en las tareas de evaluación, ayudando a determinar los logros y deficiencias, y prestando asesoramiento en cuanto a las acciones que conviene seguir acometiendo.

El señor Nowak estuvo en nuestro País y realizó su misión durante el mes de noviembre del año 2008. Para sorpresa e indignación del Gobierno, el Relator Especial optó por proceder sin contar con las autoridades nacionales habilitadas para suministrarle datos e informaciones, moviéndose al dictado y bajo la orientación de grupos políticos social e institucionalmente marginales.

Contra esa actitud protestó el Gobierno mediante Nota enviada a las Naciones Unidas inmediatamente después de que, finalizada su estancia, el señor Nowak abandonara nuestro País. En concreto, el Gobierno expresaba sus dudas de que el señor Relator Especial hubiere podido informarse sobre la verdadera situación del País en materia de derechos humanos y, en consecuencia, que sea capaz de emitir un Informe Objetivo y útil.

Desgraciadamente, consideramos confirmadas nuestras dudas, a la vista del contenido del Informe Preliminar que nos ha sido remitido.

Para general conocimiento, el Gobierno de Guinea Ecuatorial considera necesario y oportuno hacer las siguientes puntualizaciones, tanto con relación a la misión misma, como con relación al referido Informe Preliminar:

1°. El señor Manfred Nowak vino a Guinea Ecuatorial por invitación expresa y voluntaria del Gobierno; y durante su estancia dispuso de todos los medios y disfrutó de todas las facilidades y comodidades que requirió a las autoridades para el cumplimiento de su misión.

En particular, destacar que visitó diversos Centros Penitenciarios y de Detención; e incluso tuvo acceso al Corrigiendo del Campamento Militar “ACACIO MAÑE ELA”, pese a ser conocido que instalaciones como esta no suelen ser accesibles en misiones de su naturaleza.

2°. Tal y como parece reconocerlo en su Informe, han sido progresivamente incorporados al Ordenamiento Jurídico de Guinea Ecuatorial tanto las normas que reconocen los derechos fundamentales y libertades públicas, como las que reprimen los supuestos de violación de tales derechos y libertades.

Hablamos de la Ley Fundamental, de las Disposiciones adoptadas en su desarrollo y de los múltiples Tratados y Convenios Internacionales oportunamente ratificados por nuestro Estado.

Es de destacar que son frecuentes las campañas de difusión social de ese sistema normativo, llevadas a cabo tanto por el Gobierno mismo como por Organismos Internacionales, y destinadas a fomentar la conciencia sobre la obligación de respeto de los derechos de los demás y la necesidad de denunciar las violaciones sufridas.

3°. El Gobierno es consciente de que lo que queda por hacer para llegar al escenario de una Administración de Justicia eficaz es mucho; pero también estima, y preocupa que no lo reconozca así el señor Relator Especial, que lo hasta ahora realizado es considerable.

Medidas como la reforma de la Ley que regula la organización y funcionamiento del Poder Judicial, el impulso de la actividad codificadora o la definitiva puesta en marcha del Instituto de Formación del personal afecto a dicho Poder del Estado han hecho posible que el funcionamiento del Sistema Judicial ecuatoguineano haya mejorado sustancialmente en los últimos años; hasta extremos y niveles que resulta hoy inadmisibles, por injusto, referirse a él como inoperante.

Con todos los matices que se quiera y se pueda hacer, Guinea Ecuatorial es hoy un Estado de Derecho, y la garantía última de tal reside, precisamente, en el Poder Judicial, que esta cumpliendo cabalmente su cometido.

4°. Dentro del deseo de que los detenidos y presos vivan y se desenvuelvan con la mayor comodidad y seguridad posibles, el Gobierno ha adoptado y está implementando un ambicioso Programa de construcción de Comisarías de Policía y centros Penitenciarios modernos. Ello está permitiendo ir dejando paulatinamente las dependencias hasta ahora disponibles, que forman parte de la herencia del régimen colonial y que nunca reunieron condiciones para la habitabilidad humana.

En el marco del desarrollo de ese Programa, han sido reformadas las Cárceles Públicas de Malabo, Bata y Evinayong; y se han construido nuevos Centros de Detención en Malabo y Bata. El diseño de todas esas instalaciones, que ya son operativas, tiene muy en cuenta ha tenido muy en cuenta la necesidad que tienen los internos tanto de espacios de intimidad como de espacios comunales o de recreo.

Es de destacar que con respecto de las relacionadas instalaciones esta prevista la separación entre hombres y mujeres, por lo que resulta totalmente falsa la afirmación hecha por el señor Relator Especial sobre el particular en sentido contrario.

El Gobierno desconoce la fuente de que se ha servido el señor Relator Especial para hablar de niños al referirse a la población reclusa, pues hasta tanto no sea aprobada la todavía en proceso de elaboración Ley del Menor, dicha categoría de personas no puede ni ha sido nunca ingresada en nuestras prisiones.

Por lo demás, no hay más que apreciar el clima de seguridad con el que se desarrolla la vida social en Guinea Ecuatorial para calificar de inverosímil la afirmación o insinuación hecha por el señor Relator Especial, según la cual la vida en nuestras Cárceles se desarrolla en un clima de violencia generalizada y descontrolada, que enfrenta a unos presos con otros.

5°. Tal y como recuerda el señor Relator Especial en su Informe, el 2 de noviembre del año 2006 fue adoptada la Ley n° 6/2006, sobre la prevención y sanción de la tortura. Hasta entonces, la represión de actos de esa naturaleza se venía haciendo bajo la cobertura legal del Código Penal, que el propio Gobierno acabó juzgando insuficiente.

Desde la entrada en vigor de esa Ley, todos los casos denunciados ante las autoridades competentes han sido debida y oportunamente investigados y, de constatarse la existencia de fundamentos suficientes, juzgados. De haberlo requerido, el Gobierno habría facilitado al señor Relator casos concretos de responsables de actos de tortura que se hallan cumpliendo condena en virtud de sentencias judiciales firmes.

Precisamente por eso desconcierta leer en el Informe Preliminar que nos ha sido remitido afirmaciones como que la tortura constituye una práctica sistemática en las Comisarías y Centros Penitenciarios de Guinea Ecuatorial, y que su perpetración es impune.

Por otra parte, señalar que en los casos constatados y judicialmente declarados, la sentencia condenatoria ha conllevado siempre la imposición al culpable del deber de indemnizar a la víctima. Tiene razón el señor Relator Especial al afirmar que no recuerda un sólo caso en que el Estado haya satisfecho esa indemnización; pues nunca hasta la fecha ha habido necesidad de ello al resultar siempre suficiente el patrimonio de los mismos culpables.

6°. Todas las personas privadas de libertad en Guinea Ecuatorial, sin que importe la nacionalidad o causa por la que accedieron a esa situación, disfrutan de asistencia alimenticia, sanitaria y farmacológica. La voluntad de garantizar y mejorar la prestación de esa asistencia explica que el Gobierno haya incrementado la correspondiente partida presupuestaria en casi un 700% para el próximo ejercicio, pasando de 3.000.000 a 20.000.000 de Francos Cefas.

Ahora bien, nada impide que el interno que lo desee y cuya familia pueda permitírsele se alimente de víveres suministrados desde el exterior del Centro. Ello es posible, entre otras razones, por la existencia de un régimen flexible de visitas que permite el contacto del interno con sus familiares y amistades varias veces a la semana.

Señalar, en contra de la aseveración recogida en el Informe preliminar, que las personas privadas de libertad en Guinea Ecuatorial también son potenciales beneficiarias del Programa Nacional de Lucha contra el VIH/SIDA, cuya eficacia sería bien nula si no estuviere destinado a todos los residentes en el territorio nacional.

7°. El Gobierno asume como recomendación positiva el llamamiento del señor Relator Especial a que el Estado redoble esfuerzos para la persecución y represión eficaz de los casos de torturas protagonizados por particulares.

8°. Por último, el Gobierno reafirma su determinación de seguir profundizando en la política de promoción y protección de los derechos fundamentales y libertades dimanantes

de la dignidad humana de las personas; y el deseo de continuar implicando a los Organismos Internacionales especializados, a efectos de recibir los asesoramientos y asistencias técnicas necesarias.

Malabo, octubre de 2009
El Gobierno
