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**Promoción y protección de todos los derechos humanos,
civiles, políticos, económicos, sociales y culturales,
incluido el derecho al desarrollo**

Informe del Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, Manfred Nowak

Adición

Misión a Guinea Ecuatorial* **

* Documento presentado con retraso.

** El resumen del informe sobre esta misión se distribuye en todos los idiomas oficiales. El informe propiamente dicho figura en el anexo del resumen y se distribuye solamente en inglés y en español. Los apéndices se distribuyen como se presentaron

Resumen

El Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes realizó una visita a Guinea Ecuatorial del 9 al 18 de noviembre de 2008.

El Relator Especial expresa su agradecimiento por la invitación formulada por el Gobierno, que considera una muestra de la disposición del Gobierno a someter sus centros de detención a un examen independiente por un experto externo y objetivo. El Relator Especial agradece la cooperación del Gobierno, quien le proporcionó cartas de autorización que permitieron acceder a las prisiones y los centros de detención de la policía y la gendarmería.

El Relator Especial toma nota de la aprobación en 2006 de una ley general que prohíbe la tortura y prevé el enjuiciamiento de los torturadores. Sin embargo, tras las conversaciones que mantuvo con funcionarios públicos, jueces, abogados y representantes de la sociedad civil, y sus entrevistas con víctimas de actos de violencia y con personas privadas de libertad, muchas veces respaldadas por pruebas medicoforenses, concluyó que se hacía un uso sistemático de la tortura en el período inmediatamente posterior a la detención y en los interrogatorios. Los métodos utilizados eran colgamientos, fuertes palizas y descargas eléctricas. Se informó al Relator Especial de varios casos de castigos corporales ocurridos en la cárcel de Black Beach de Malabo y en la de Bata. El Relator Especial también observó que no se ponían en práctica ni las garantías contra los malos tratos ni los mecanismos de denuncia, y que no se había enjuiciado a los autores de torturas y malos tratos, salvo en un caso en 2007. Por el contrario, muchas veces, las víctimas de tortura no estaban en absoluto amparadas por la justicia, lo cual, sumado a las consecuencias físicas y psicológicas de los malos tratos y la ausencia de mecanismos de rehabilitación y reparación, era susceptible de causar un sufrimiento constante que podía suponer un trato inhumano.

Si bien las condiciones materiales de reclusión en las prisiones de Black Beach y Evinayong y en la comisaría de Bata eran de un buen nivel, la cárcel de Bata y el resto de los centros de detención de la policía y la gendarmería requerían reformas urgentes para cumplir las normas internacionales mínimas. Asimismo, en la mayoría de las celdas de la policía y la gendarmería no se proporcionaban alimentos (a menos que lo hiciera la familia) y el acceso a los servicios sanitarios estaba sumamente restringido o era inexistente. En opinión del Relator Especial, el encarcelamiento en tales condiciones, en particular por períodos prolongados, supone un trato inhumano. El Relator Especial observa con preocupación que en la cárcel de Black Beach se mantuvo a acusados de delitos políticos en régimen de aislamiento durante períodos prolongados, de hasta cuatro años. Además la mayoría llevaban grilletes sujetos a los tobillos constantemente. El Relator Especial también considera inquietante que en la cárcel Black Beach al parecer se prohíban las visitas de familiares (salvo a unos pocos presos), lo que es contrario al propósito de rehabilitación que impone la normativa internacional.

El Relator Especial lamenta que, en vulneración de las normas internacionales, en los centros de detención de la policía y la gendarmería no se separe a las mujeres y los niños de los varones adultos, dejándolos así expuestos a la violencia sexual y otras formas de malos tratos. Además, a menudo se mantenía a los inmigrantes detenidos pendientes de expulsión en centros policiales durante largos períodos en malas condiciones, con escaso acceso a los alimentos y el agua. También corrían más riesgo de sufrir prácticas discriminatorias y a veces incluso malos tratos físicos por otros presos, con la aprobación tácita de la policía.

A juicio del Relator Especial, para que Guinea Ecuatorial cumpla sus obligaciones de conformidad con la normativa internacional de derechos humanos y de su Constitución para luchar eficazmente contra la tortura, es preciso llevar a cabo una reforma institucional y legal general que establezca órganos de mantenimiento de la ley y el orden basados en el estado de derecho y contar con un poder judicial independiente y con mecanismos efectivos de vigilancia y rendición de cuentas.

Por último, el Relator Especial cree que la comunidad internacional, incluidas las transnacionales, debería tratar de evitar que las prácticas de cooperación y comercio la convirtieran en cómplice de las violaciones de los derechos humanos por las autoridades del Estado.

Anexo

Informe del Relator Especial sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, Manfred Nowak

Misión a Guinea Ecuatorial 9 a 18 de noviembre de 2008

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Introducción

1. El Relator Especial del Consejo de Derechos Humanos sobre la tortura y otros tratos o penas crueles, inhumanos o degradantes, Manfred Nowak, realizó una visita a la República de Guinea Ecuatorial del 9 al 18 de noviembre de 2008, por invitación del Gobierno.
2. La visita tenía por objeto evaluar la situación de la tortura y los malos tratos, incluidas las condiciones de reclusión, en todos los centros de privación de libertad, y prestar asistencia al Gobierno para subsanar las deficiencias de la administración de justicia, incluidos los sectores de la policía y la gendarmería y la administración penitenciaria. El Relator Especial valora que Guinea Ecuatorial lo invitara y confía en que ello sea una muestra de la voluntad del Gobierno de mejorar la situación, basándose en sus observaciones y recomendaciones, para lograr que las condiciones y el trato de las personas privadas de libertad se ajusten a las normas internacionales de derechos humanos. El Relator Especial agradece asimismo al Gobierno sus cartas de autorización que le permitieron acceder a las cárceles y centros de detención de la policía y la gendarmería.
3. Sin embargo, el Relator Especial lamenta que, a pesar de que el Gobierno se había comprometido a permitirle acceder a todos los centros de reclusión, no pudo comprobar las denuncias contra el ejército, porque se le impidió acceder a los centros de reclusión militares. Ello supone una vulneración clara de las Atribuciones otorgadas para las misiones de investigación de relatores especiales y representantes de la Comisión de Derechos Humanos de 1998, que garantizan libertad de investigar, en particular en relación con el acceso a cualquier prisión, centro de detención y lugar de interrogatorio¹.
4. Asimismo, al Relator Especial estima muy preocupante que no se le haya permitido acceder a las principales comisarías de Malabo y Bata donde pretendía hacer visitas de seguimiento, lo que significa que no pudo averiguar si los detenidos que habían prestado testimonio ante él habían sufrido represalias. En este sentido, quiere recordar que la Comisión de Derechos Humanos, en su resolución 2005/9, instó a los gobiernos a que se abstuvieran de todo acto de intimidación o represalia contra quienes trataran de cooperar o hubieran cooperado con representantes de los órganos de defensa de los derechos humanos de las Naciones Unidas, o hubieran prestado testimonio ante ellos o les hubieran proporcionado información². También se remite al párrafo c) de las Atribuciones otorgadas para las misiones de investigación de relatores especiales y representantes de la Comisión de Derechos Humanos de 1998, que prevé seguridades por parte del gobierno de que ninguna persona que por sus funciones oficiales o como particular haya estado en contacto con el relator especial o representante en relación con el mandato será sometida por esa razón a amenazas, intimidación o castigo o a un proceso judicial³. En vista de lo que antecede, de la ausencia de mecanismos de supervisión independientes, y de la impunidad que reina en el país, el Relator Especial considera que no puede excluir la posibilidad de que se ejerzan represalias contra las personas con las que se entrevistó durante su misión. Por consiguiente, ha decidido no seguir su práctica habitual y publicar únicamente los nombres de las personas cuya historia sea ya de dominio público. Se mantiene el carácter confidencial de los nombres de los demás interlocutores.
5. El Relator Especial celebró reuniones con el Viceprimer Ministro Primero Encargado de Derechos Humanos; el Ministro de Asuntos Exteriores, Cooperación

¹ E/CN.4/1998/45.

² Resolución de la Comisión de Derechos Humanos, E/CN.4/RES/2005/9, párr. 1.

³ E/CN.4/1998/45.

Internacional y Francofonía; el Ministro de Seguridad Nacional; el Ministro de Justicia, Culto e Instituciones Penitenciarias; el Ministro del Interior y Corporaciones Locales; la Ministra de Asuntos Sociales y Promoción de la Mujer; el Viceministro de Defensa Nacional; el Fiscal General de la República de Guinea Ecuatorial; y el Gobernador de la Provincia de Bata-Litoral.

6. Además de celebrar reuniones con el Gobierno, el Relator Especial se reunió con el Presidente del Tribunal de Apelaciones de Malabo y con la Secretaría de la Comisión Nacional de Derechos Humanos. También se entrevistó con representantes de la sociedad civil, personas internadas en centros de reclusión y víctimas de malos tratos. Además, el Relator Especial se reunió también con el equipo de las Naciones Unidas en el país y con la comunidad diplomática. El Relator Especial visitó varias cárceles y centros de detención de la policía y la gendarmería en la isla de Bioko y en el continente (véase el apéndice).

7. El Relator Especial desea expresar su agradecimiento al Equipo de las Naciones Unidas en el País, en particular al Coordinador Residente, y al personal de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por la excelente asistencia que le prestaron tanto antes de la misión como durante esta; al Dr. Derrick Pounder, experto forense; y a la Sra. Isabelle Tschan y la Sra. Johanna Lober del Instituto de Derechos Humanos Ludwig Boltzmann de Viena.

8. El Relator Especial comunicó sus conclusiones preliminares al Gobierno al término de su misión. El 2 de septiembre de 2009, se envió al Gobierno una versión preliminar del informe. El 16 de octubre de 2009, el Gobierno presentó sus observaciones, mismas que se anexan al informe.

I. Marco jurídico

A. Internacional

9. Guinea Ecuatorial es parte en los principales tratados de derechos humanos de las Naciones Unidas que prohíben la tortura y los malos tratos: el Pacto Internacional de Derechos Civiles y Políticos; la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes; la Convención sobre los Derechos del Niño; y la Convención sobre la eliminación de todas las formas de discriminación contra la mujer. Guinea Ecuatorial se ha adherido al Primer Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos y, por consiguiente, ha reconocido la competencia del Comité de Derechos Humanos para examinar denuncias de particulares acerca de violaciones relativas al Pacto; no se ha adherido al Segundo Protocolo Facultativo del Pacto, destinado a abolir la pena de muerte; no ha hecho la declaración de conformidad con el artículo 22 de la Convención contra la Tortura de que reconoce la competencia del Comité contra la Tortura para recibir y examinar las comunicaciones enviadas por personas, o en su nombre, que aleguen ser víctimas de una violación de una o más disposiciones de la Convención; y no ha firmado el Protocolo Facultativo de la Convención.

10. Guinea Ecuatorial ha ratificado los cuatro Convenios de Ginebra de 1949 y los protocolos adicionales I y II, pero no es parte en el Estatuto de Roma de la Corte Penal Internacional.

B. Regional

11. Guinea Ecuatorial también ratificó la Carta Africana de Derechos Humanos y de los Pueblos y la Carta Africana sobre los Derechos y el Bienestar del Niño Africano. Guinea

Ecuatorial ha firmado protocolos relativos a los derechos de la mujer de la Carta Africana de Derechos Humanos y de los Pueblos. Se alienta a Guinea Ecuatorial a que como miembro de la Unión Africana, observe la resolución relativa a las Directrices y medidas de prohibición y prevención de la tortura y penas o tratos crueles, inhumanos o degradantes en África (las Directrices de Robben Island) aprobadas en 2002 por la Comisión Africana de Derechos Humanos y de los Pueblos.

C. Nacional

12. Muchas de las leyes y decretos que constituyen la base del ordenamiento jurídico de Guinea Ecuatorial son anteriores a su independencia, y fueron declarados vigentes por el Decreto N° 4/80 de 3 de abril de 1980. Así pues, siguen vigentes algunos instrumentos legales, como el Código de Justicia Militar de 17 de julio de 1945, la Ley de enjuiciamiento criminal española de 1882, y el Código Penal español de 1965, sin que se haya examinado seriamente su compatibilidad con la actual Constitución y las leyes que se han promulgado después de 1995.

1. La Constitución de Guinea Ecuatorial

13. Con arreglo al artículo 5 de la Constitución de 17 de enero de 1996, los fundamentos de la sociedad ecuatoguineana son, entre otros, el respeto a la persona humana, a su dignidad y libertad y demás derechos fundamentales. El artículo 8 establece que el Estado acata los principios de derecho internacional y reafirma su adhesión a los derechos y obligaciones que emanan de las cartas de las organizaciones y organismos internacionales a los que se ha adherido. El artículo 13 garantiza toda una serie de derechos civiles y políticos y varios derechos económicos, sociales y culturales.

2. Prohibición de la tortura en la legislación nacional

Garantías constitucionales de prohibición de la tortura

14. La Constitución de Guinea Ecuatorial no contiene una prohibición expresa de la tortura sino que establece el derecho de todo ciudadano al respeto a su persona, su vida, su integridad personal y su dignidad física y moral (art. 13 a)). El principio del respeto de la dignidad humana está consagrado en el artículo 5 a) y en el artículo 14 de la Constitución.

Disposiciones que penalizan la tortura y otros tratos o penas crueles, inhumanos o degradantes

15. El 2 de noviembre de 2006 entró en vigor la Ley N° 6/2006 sobre la prevención y sanción de la tortura. En su artículo 3, se dispone que comete tortura el funcionario público que en el ejercicio de su cargo inflige daños o sufrimientos físicos o psíquicos a una persona con el fin de investigar un delito o infracción, de obtener información o una confesión de la persona o de un tercero mediante la intimidación, o para castigar una acción u omisión, cometida real o presuntamente, o como medio coercitivo para obligar a una persona a adoptar o cesar una determinada conducta, o para cualquier otro fin. No se podrá invocar la urgencia de la investigación u otras razones, ni una orden de los superiores o de otras autoridades para justificar el uso de la tortura.

16. El artículo 4 contiene una cláusula sobre las sanciones legales que excluye de la definición de tortura el padecimiento físico o psíquico inherente a las penas legales. Según el mismo artículo, los actos que constituyan tratos o penas crueles, inhumanos o degradantes y no cumplan todos los criterios de la definición de tortura quedan cubiertos por la ley, si son cometidos por un funcionario público o por una persona en el ejercicio de funciones públicas, o a instigación o con el consentimiento o aquiescencia de un

funcionario público. De conformidad con el artículo 5 esos delitos son castigados con penas de prisión de seis meses a seis años, multa de 300.000 francos CFA e inhabilitación por el doble de duración de la pena de prisión. En caso de reincidencia, la inhabilitación será permanente. Se prevé la misma pena en caso de que un funcionario incite, ordene, obligue o autorice a un tercero o se sirva de él para infligir daño o sufrimiento físico o psicológico grave a una persona o no impida que se cause daño o sufrimiento a un detenido. El funcionario que, en el ejercicio de sus funciones, tenga conocimiento de un acto de tortura está obligado a denunciarlo inmediatamente. De lo contrario, podrá imponérsele una pena de prisión de seis meses a seis años y una multa de 300.000 francos CFA. Aunque la definición de tortura que figura en la Ley N° 6/2006 no refleja exactamente la definición de la Convención de las Naciones Unidas contra la Tortura, la cláusula general al final de la definición del artículo cuatro ("o cualquier otro fin") es lo bastante general para abarcar también los actos de tortura cometidos, por ejemplo, por motivos de discriminación.

17. El Código Penal, que es el antiguo Código Penal español aprobado en 1963, no contiene una prohibición de la tortura; sin embargo, el artículo 187 prevé la suspensión del funcionario de prisiones o de cualquier otro funcionario que oculte a un detenido a las autoridades judiciales; del funcionario de prisiones que, sin orden judicial, conduzca a un preso preventivo o condenado (sentenciado incomunicado) a un lugar que no sea un centro oficial de detención; o del funcionario de prisiones que imponga privaciones indebidas a los presos y los trate con rigor innecesario. La misma sanción se aplica a la autoridad judicial que decida prorrogar innecesariamente el aislamiento de un preso (art. 188 (3)).

3. Salvaguardias y cuestiones jurisdiccionales

a) Salvaguardias

18. El artículo 13 de la Constitución prevé, entre otras cosas, que las personas solo pueden ser privadas de su libertad mediante una orden judicial, salvo en los casos establecidos por ley y en casos de delito flagrante. Todo detenido debe ser notificado de las razones y bases de su detención. Se reconoce la presunción de inocencia hasta que la culpabilidad haya sido judicialmente demostrada. Toda condena requiere de un juicio previo. Se establece también el derecho a un abogado defensor y el derecho a no ser privado de asistencia letrada en ninguna etapa del proceso. Además esta disposición constitucional prevé el derecho de denunciar y formular peticiones y los recursos de hábeas corpus y de amparo.

19. El artículo 520 de la Ley de enjuiciamiento criminal española de 14 de septiembre de 1882, aplicable en Guinea Ecuatorial en virtud del Decreto-ley N° 4/1980, establece que el tratamiento de un detenido, sea este un condenado o un prisionero en situación de detención preventiva, debe ocasionar el menor sufrimiento posible a la persona y a su reputación. Ese artículo establece también las restricciones posibles a las libertades y comunicaciones, y el artículo 521 estipula que los detenidos deben ser separados en razón de su sexo, edad, educación o antecedentes penales. Solo se aplicarán medidas excepcionales de seguridad en caso de desobediencia, violencia, rebelión o intento de fuga y únicamente durante el tiempo estrictamente necesario (art. 525). Las visitas de los familiares, los representantes de la religión del detenido, un médico y otras personas afines estarán autorizadas con arreglo al reglamento de cárceles. Si bien no puede prohibirse la comunicación con un abogado defensor (art. 523), la correspondencia y las comunicaciones que no sean de un detenido como tal deben ser autorizadas por el juez instructor (art. 524).

20. La Ley de enjuiciamiento criminal establece que la aplicación del aislamiento a los presos preventivos no debe superar en general los cinco días, ha de durar únicamente el tiempo absolutamente necesario a efectos de la investigación (art. 506), y sólo puede prorrogarse otros tres días por orden judicial (art. 508). El artículo 480 del Código Penal

prohíbe la detención ilegal. La Ley N° 18/1995 dispone que las personas que se consideren detenidas injustamente deben tener acceso a un juez (de primera instancia o instructor), que determinará sin demora si se trata de una detención ilegal. En el artículo 3 de la ley se establecen los casos de detención ilegal, por ejemplo: cuando no se hayan respetado las garantías o los procedimientos establecidos; en caso de internamiento ilegal en un centro no habilitado; o cuando se haya excedido el plazo máximo de detención sin que el detenido haya sido puesto a disposición de un juez.

21. La persona que haya sido detenida por la policía ha de ser presentada al juez de instrucción en un plazo máximo de 72 horas. El juez ordena su puesta en libertad, la prisión provisional o la liberación bajo fianza (artículo 497 del Código Penal). El juez de instrucción es el único competente para ordenar la prisión provisional. Para facilitar el ejercicio de esta competencia, la Ley N° 4/2002 de 20 de mayo de 2002 estableció los juzgados de guardia, que deben funcionar de manera permanente durante las 24 horas de todos los días del año. Puede apelarse de sus decisiones ante la división penal del tribunal superior territorial (artículo 518 de la Ley de enjuiciamiento penal).

b) *El Código de Justicia Militar*

22. El Código de Justicia Militar (aprobado en España el 17 de julio de 1945) otorga a los tribunales militares competencia sobre toda una serie de infracciones civiles, desobediencia a la autoridad militar y delitos considerados como "delitos contra el Estado", con independencia de que el acusado sea civil o militar. Con arreglo al Código, se celebran juicios sumarios, se limitan las garantías procesales (a menudo los juicios se celebran *in absentia* o sin la debida asistencia letrada) y no hay posibilidad de apelación. El artículo 257 dispone que los delitos que no sean de carácter militar son del ámbito del Código Penal ordinario que se aplica a los militares y los civiles.

4. **La pena capital**

23. El artículo 13 de la Constitución establece que sólo se puede aplicar la pena capital de conformidad con la ley. Con arreglo a los artículos 405 y 406 del Código Penal, se aplicará la pena de muerte en casos de parricidio u asesinato. Además, la Ley N° 1/1971 establece que también es aplicable la pena de muerte por varios delitos graves como el intento de asesinato, amenazas de muerte contra el Presidente (art. 1), asesinato de un miembro del Consejo de Ministros (art. 4) e intento de derrocar al Gobierno contra la voluntad popular o por medios ilícitos (art. 7), promover o apoyar una rebelión, o dirigir una fuerza rebelde (art. 9).

II. Evaluación de la situación

A. Condiciones de detención

Prisiones

24. Las tres prisiones del país eran bastante espaciosas, y las de Black Beach y Evinayong habían sido reformadas completamente, por lo que en general existía suficiente espacio para los detenidos y un nivel de higiene aceptable en las instalaciones sanitarias. Se permitía a la mayoría de prisioneros moverse con libertad sin obstáculo alguno. Sin embargo, en todas las prisiones el Relator Especial recibió numerosas quejas sobre la calidad y la cantidad de los alimentos, que era preciso complementar con otros suministrados por los visitantes, en los casos en que se permitían las visitas. Aunque entre el personal de la prisión de Black Beach había médicos cualificados, solo en algunos casos podían tratar problemas menores y, en general, el acceso a tratamientos médicos y

medicamentos estaba seriamente restringido; y en las penitenciarias de Bata y Evinayong no podía obtenerse tratamiento médico a menos que el recluso pudiera permitirse pagarlo. En consecuencia, en la mayoría de los casos no se recibe tratamiento ni siquiera para enfermedades graves. El Relator Especial supo que no había estadísticas disponibles sobre la incidencia del VIH/SIDA en los establecimientos penitenciarios y que no se disponía de tratamiento alguno para esta afección en las prisiones.

25. Varios detenidos señalaron que en las prisiones de Bata y Black Beach era común la violencia entre prisioneros y que las autoridades penitenciarias la toleraban tácitamente. El Relator Especial recibió también informes sobre prácticas discriminatorias contra extranjeros y, en ocasiones, contra el grupo étnico minoritario bubi, por parte de otros detenidos y por el personal de la prisión. Además, fue informado de que el acoso y la violencia sexual contra las mujeres y los menores eran comunes.

26. La unidad de alta seguridad de la prisión de Black Beach estaba recién renovada y, desde el punto de vista físico, sus condiciones eran de alta calidad (las celdas medían aproximadamente 3,5 x 2,5 m y estaban dotadas de cama, silla y ventilador, así como ducha, inodoro y lavabo, que estaban separados por un muro bajo, y se permitía a todos los internos tener algunos efectos personales). Sin embargo, algunas de las personas sospechosas de delitos políticos o condenadas por ellos eran reclusos en régimen de aislamiento períodos prolongados de hasta cuatro años. El Relator Especial indicó en su reciente informe a la Asamblea General (A/63/175) que el régimen de aislamiento debería utilizarse lo menos posible, en casos muy excepcionales, por un período de tiempo también lo más breve posible, y solo como último recurso.⁴ Además, con la excepción de Simon Mann, que parecía recibir un trato de favor, no se permitía a los presos de alta seguridad la hora diaria de ejercicio que exigen las Reglas mínimas para el tratamiento de los reclusos (párr. 21) y llevaban grilletes en los tobillos prácticamente todo el tiempo. En opinión del Relator Especial, el uso permanente de esos grilletes constituye trato inhumano.

27. La prisión de Bata aplicaba una loable política de visitas muy permisiva; el Relator Especial no recibió denuncia alguna sobre restricciones a las visitas dentro del horario previsto. Por otra parte, en la prisión de Black Beach las visitas familiares parecían estar en general prohibidas (excepto para un escaso número de presos privilegiados). Muchos de los detenidos entrevistados afirmaron que sufrían por no poder ver nunca a su familia. Otra causa de inquietud era que al parecer no se permitía que los detenidos recibiesen visitas de sus hijos menores de edad, ni siquiera si eran niños pequeños. Varias mujeres dijeron al Relator Especial que no habían visto a sus hijos desde hacía muchos meses, lo que les resultaba insoportable. El contacto con el mundo exterior es un componente muy destacado del éxito de la rehabilitación y la reintegración de los detenidos, y el artículo 10 del Pacto Internacional de Derechos Civiles y Políticos lo considera obligatorio. El párrafo 37 de las Reglas mínimas para el tratamiento de los reclusos dispone que los internos "estarán

⁴ Véase también el Informe del Relator Especial sobre la cuestión de la tortura y otros tratos o penas crueles, inhumanos o degradantes, 28 de julio de 2008, A/63/175, párrs. 82 - 83: "La información acumulada hasta la fecha apunta a la gravedad de los efectos negativos sobre la salud de la reclusión en régimen de aislamiento: desde insomnio y confusión hasta alucinaciones y enfermedades mentales. El factor negativo clave del aislamiento es la reducción al mínimo absoluto del contacto social y psicológicamente positivo, hasta el punto de ser insuficiente para que la mayoría de los reclusos puedan seguir funcionando mentalmente bien. [...] En opinión del Relator Especial, el régimen de aislamiento debería utilizarse lo menos posible, en casos muy excepcionales, por un período de tiempo también lo más breve posible y sólo como último recurso. Con independencia de las circunstancias concretas de su aplicación, es preciso intentar aumentar los contactos sociales de los reclusos: contacto entre los reclusos y el personal de prisiones, actividades sociales con otros presos, mayor número de visitas y acceso a servicios de salud mental."

autorizados para comunicarse periódicamente, bajo la debida vigilancia, con su familia y con amigos de buena reputación, tanto por correspondencia como mediante visitas".

28. El Relator Especial recibió algunas alegaciones de hacinamiento: por ejemplo, en la galería para delincuentes menores de Black Beach había solo 24 colchones para los aproximadamente 40 detenidos que se encontraban allí durante la visita del Relator Especial. Según se informa, en la prisión de Bata, a veces se encerraba a más de 70 prisioneros en la celda, de modo que las camas habían de ser compartidas por tres personas. A un lado de un patio grande había varias celdas de castigo sucias y húmedas, no aptas para la reclusión. El día de la visita había en ellas dos personas porque habían intentado escapar. Había anillos de hierro sujetos a la pared con cemento a una altura de unos 25 cm, pero supuestamente ya no se utilizaban. El Relator Especial celebra las noticias de que este viejo centro penitenciario ha sido sustituido por otro nuevo.

29. En la prisión de Evinayong, un centro espacioso y reformado recientemente, en el momento de la visita del Relator Especial sólo había seis reclusos, la mayoría de los cuales habían sido condenados a largas penas de privación de libertad. La prisión disponía de instalaciones sanitarias de alta calidad y de una cocina grande y limpia en la que los reclusos cocinaban sus propios alimentos. Durante el día, los presos podían moverse con libertad por el patio, de gran tamaño, pero durante la noche las celdas se cerraban.

Custodia policial

30. Con la excepción de la Comisaría de Policía Central de Bata, las celdas de detención de la policía y la gendarmería se encontraban en general en un estado deplorable. La mayoría de las celdas estaban extremadamente sucias y húmedas, y carecían de instalaciones sanitarias o para dormir. Algunas estaban en una oscuridad total. En varios lugares de detención el Relator Especial encontró pilas de botellas llenas de orina y bolsas de plástico que se utilizaban para recoger heces, y el hedor era insoportable a causa de la falta de instalaciones sanitarias. Además, los detenidos no tenían posibilidad alguna de ducharse o hacer ejercicio. Los detenidos tampoco tenían acceso a médicos ni a enfermeros. En todas las instalaciones de policía y gendarmería para detenidos, sin excepción, los únicos alimentos que llegaban a los reclusos eran los que les proporcionaban sus familiares u otros reclusos, y el acceso a agua para beber y lavarse estaba muy restringido. Muchos detenidos se quejaron de que no podían comunicar a su familia su arresto y reclusión.

31. Las condiciones higiénicas y la carencia de inodoros y demás instalaciones sanitarias en casi todas las celdas de la policía, así como las graves restricciones en el suministro de alimentos, el acceso a instalaciones sanitarias, a tratamiento médico y a medicamentos, revelan un desprecio absoluto por la dignidad de los detenidos. El hecho de que muchos de ellos estuviesen reclusos en estas condiciones mucho más allá del plazo máximo de 72 horas estipulado por la ley, en algunos casos durante varios meses, agravaba la situación y constituía un trato inhumano y degradante.

32. La Comisaría Central de Policía de Bata se halla en un edificio nuevo. En la parte trasera de la planta baja estaban detenidos los hombres extranjeros en un área espaciosa compuesta por un patio abierto en el que los detenidos podían jugar fútbol o sentarse en sillas. Durante la noche quedaban encerrados en una habitación grande separada del patio por una reja de hierro. En la sala, que estaba limpia, había varios colchones sobre el suelo y algunas camas, mesas y sillas. Los detenidos habían tapado la lámpara eléctrica del techo con una tela, ya que por la noche no se apagaba y atraía a un gran número de mosquitos. Las instalaciones sanitarias adyacentes eran de construcción nueva y se encontraban en muy buenas condiciones, incluido el suministro de agua corriente y electricidad. En el momento de la visita, había alrededor de 15 ó 20 personas detenidas en esta área. Los reclusos procedían de países vecinos. Uno de ellos llevaba un mes en la comisaría y otros,

varias semanas. Las condiciones materiales también eran buenas en el primer piso, donde los detenidos eran mayoritariamente ecuatoguineanos. Las celdas disponían de camas y colchones, además de instalaciones sanitarias. Todas las celdas estaban abiertas para que los detenidos pudieran deambular. La policía no proporcionaba alimentación adecuada y los reclusos tenían que recurrir a parientes y amigos, a los que a menudo se denegaba el acceso a las dependencias policiales, de forma que los detenidos no recibían alimentación suficiente. A pesar de que las condiciones materiales eran aceptables, la detención prolongada en estas celdas era problemática porque algunas de ellas estaban atestadas de reclusos, los hombres y las mujeres no estaban separados y los inodoros, que estaban abiertos, debían utilizarse a la vista de los demás detenidos, lo que atentaba contra su intimidad.

33. La Comisaría Central de Policía de Malabo, ubicada en el centro de la ciudad, está dividida en dos alas, una con tres celdas pequeñas y otra con una celda grande y un patio también grande. En esta última no había inodoros, y los detenidos defecaban en bolsas de plástico y orinaban en botellas de plástico, que después tiraban por encima del muro. En el momento de la visita, la celda grande estaba abarrotada de detenidos y, claramente, no había camas para todos. No obstante, el Relator Especial recibió denuncias de que, en ocasiones, en el patio había una cantidad aún mayor de detenidos, a veces varios centenares.

34. Si bien en teoría el ala del patio estaba reservada a los inmigrantes ilegales, también estaban reclusos allí varios ciudadanos de Guinea Ecuatorial. Según repetidas informaciones, los detenidos ecuatoguineanos encabezaban la jerarquía interna y ocasionalmente propinaban palizas a los demás y aplicaban prácticas discriminatorias contra ellos. La policía no intervenía en casos de violencia entre presos y no protegía a las mujeres ni siquiera cuando se lo pedían.

35. Aunque, según la policía, las tres celdas pequeñas (de unos 8 m² cada una) estaban reservadas a los ciudadanos ecuatoguineanos, el Relator Especial constató que muchos de los detenidos eran extranjeros. En estas tres celdas las condiciones violaban claramente las normas mínimas internacionales. No había camas ni colchones y el hacinamiento en la celda del medio era tal que los prisioneros tenían que turnarse para tenderse en el suelo y descansar. Los detenidos estaban confinados en sus celdas durante 24 horas y no se les permitía salir para ducharse, bañarse, ni siquiera utilizar el inodoro. El inodoro que había frente a la celda estaba inutilizado y desprendía un hedor insoportable.

B. Actos de tortura y malos tratos en lugares de detención

Prisiones

36. El Relator Especial recibió repetidas denuncias de que los funcionarios de prisiones infligían habitualmente castigos corporales delante de los demás presos en las prisiones de Bata y Black Beach para castigar faltas disciplinarias o por motivos desconocidos. En los dos centros citados, se ataba a prisioneros a una columna o boca abajo en un banco del patio y se les asestaban golpes con una porra o se les aplicaban cables de alto voltaje en las nalgas u otras partes del cuerpo, tarea que en la que a menudo se turnaban varios guardianes o soldados. Como dato positivo, el Relator Especial celebra el hecho de que, bajo el mando del nuevo alcaide, parecía ser que en la prisión de Evinayong no se habían infligido castigos corporales durante los últimos meses.

37. El Relator Especial desea destacar que el castigo físico está totalmente prohibido por el derecho internacional, en particular por la Convención contra la Tortura de las Naciones Unidas⁵.

Custodia policial

38. El Relator Especial constató que las fuerzas de policía practicaban de forma sistemática la tortura contra personas que se negaban a "cooperar", tanto sospechosos de delitos políticos como de delitos comunes, en particular en las comisarías de policía centrales de Bata y Malabo. La gendarmería parecía practicar la tortura en menor medida. El Relator Especial no pudo verificar denuncias contra los militares porque le fue negado el acceso a sus instalaciones.

39. Los tipos de malos tratos notificados al Relator Especial y corroborados por análisis medicoforense y por pruebas halladas en las comisarías policiales respectivas son, entre otros, apaleamientos en distintas partes del cuerpo, aunque a menudo en la planta de los pies y/o en las nalgas, con porras, cables gruesos recubiertos de goma y palos; descargas eléctricas con cables de batería de automóvil fijados en distintas partes del cuerpo con pinzas de cocodrilo; y distintas formas de suspensión con las manos y los pies atados juntos, incluido el llamado "estilo etíope", durante períodos de tiempo prolongados. En estas posiciones se balanceaba a las víctimas, se las golpeaba o se les cargaban a las espaldas objetos pesados, como baterías de automóvil. Además, en ocasiones se les vendaban los ojos o se los forzaba a respirar humo de velas. En la mayoría de los casos el objetivo de la tortura era extraer información o confesiones; otras veces se practicaba para castigar, intimidar o extorsionar económicamente a las víctimas.

40. El Relator Especial recibió información y denuncias de una amplia gama de fuentes, entre ellas abogados, representantes de la sociedad civil y víctimas, según las cuales en la Comisaría Central de Policía de Malabo las torturas y los malos tratos tenían lugar principalmente durante el arresto y el interrogatorio en los locales de la policía judicial. Por ejemplo, una persona dijo que le conectaron cables de batería de automóvil a los dedos de los pies con pinzas de cocodrilo y lo amenazaron con aplicarle descargas eléctricas si se negaba a confesar. Otro hombre dijo que durante su interrogatorio le habían herido con una grapadora en un dedo del pie y uno de la mano. Varias víctimas explicaron que les habían atado las manos y los pies a la espalda y los habían suspendido boca abajo de una barra de hierro fijada sobre dos sillas; luego los obligaron a inhalar el humo de una vela que les ponían ante el rostro. Algunos fueron azotados con un cable de alta tensión mientras se hallaban en dicha posición. Otro testigo contó que había sufrido una lesión en el cuello a causa de los golpes recibidos durante su arresto, porque le impulsaron violentamente la cabeza hacia abajo mientras lo introducían a empellones en un automóvil de policía. Otra víctima sufría dolores en los dedos pulgar e índice causados por las esposas que llevó apretadas durante un tiempo prolongado. Otras presuntas víctimas dijeron haber recibido heridas de cuchillo en la cara, patadas, bofetadas y todo tipo de golpes durante el arresto. Cuando el Relator Especial visitó estas instalaciones, encontró en el despacho situado a la izquierda de la entrada derecha varios de los instrumentos de tortura que los testigos le habían descrito. Estos instrumentos eran una batería de automóvil, un cable eléctrico para batería, varias barras de hierro y un cable negro grueso.

41. Asimismo, el Relator Especial recibió repetidas denuncias de torturas practicadas en la Comisaría Central de Policía de Bata durante los interrogatorios, sobre todo por la noche, en la sala de interrogatorios del sótano. Muchos entrevistados dijeron que los habían suspendido, esposados, de distintas formas de una barra metálica relativamente corta entre

⁵ Véase, por ejemplo, A/60/316.

dos mesas negras, en particular al "estilo etíope" durante períodos prolongados; en estas posiciones, las víctimas eran balanceadas o se les cargaba sobre la espalda objetos pesados, como baterías de automóvil. Algunos dijeron que les golpearon las plantas de los pies, la espalda y a veces otras partes del cuerpo con porras, cables gruesos forrados de goma y palos. Además, en ocasiones se les vendaban los ojos o se los forzaba a respirar el humo de velas. Con frecuencia este tratamiento venía precedido o seguido de muchas patadas y palizas, a veces con porras o palos, en las nalgas y otras partes del cuerpo mientras la víctima estaba tendida sobre un colchón. Durante los apaleamientos se vendaba los ojos a algunos detenidos. Varios testigos explicaron al Relator Especial que, después de estar colgados y recibir palizas, los agentes de policía los obligaron a subir las escaleras del sótano al piso superior de rodillas porque no podían caminar. Entre los efectos de las distintas formas de malos tratos descritos al Relator Especial cabe destacar hemorragias graves, incapacidad para tenerse en pie o para vestirse, dolores en las muñecas, tobillos, brazos y hombros, y entumecimiento en las manos y los pies. El experto forense constató que, en general, esas descripciones encajaban con las alegaciones. Cuando, tras una prolongada discusión, se permitió al Relator Especial entrar en la sala de interrogatorios del sótano de la comisaría de policía de Bata, vio allí un colchón, dos mesas negras juntas, una luz especial de color rojo, esposas, palos y barras metálicas; objetos, todos ellos, que numerosos testigos le habían descrito con detalle.

42. El Relator Especial recibió acusaciones muy serias de torturas graves y prolongadas de ciudadanos ecuatoguineanos acusados de participar en intentos de derrocamiento del sistema político, como colgamientos prolongados al tiempo que se obligaba a la víctima a inhalar humo; brutales palizas con porras y cables gruesos, el uso de empulgueras y descargas eléctricas, y la reclusión en aislamiento durante períodos prolongados. Según testimonios dignos de crédito, este trato -ordenado directamente por el Gobierno o por un ministro- solía aplicarse en lugares de detención no oficiales.

43. En otros locales de custodia de la policía y la gendarmería, el Relator Especial recibió únicamente unas pocas alegaciones de torturas y malos tratos. Sus interlocutores indicaron que, durante los últimos años, normalmente se transfería a los detenidos a las comisarías centrales de policía de Malabo o Bata con bastante rapidez.

C. Grupos puestos en situación de vulnerabilidad durante la detención

Mujeres

44. En violación de la normativa internacional⁶, las mujeres no estaban separadas de los hombres adultos en las prisiones ni en los lugares de detención de la policía y la gendarmería, por lo que se hallaban en una posición extremadamente vulnerable a la violencia sexual y a otras formas de abusos. Diversos testigos dijeron que se pedía regularmente a las detenidas que prestaran servicios sexuales a guardias, agentes y detenidos, a veces a cambio de alimentos o para poder satisfacer otras necesidades básicas. El Relator Especial recibió repetidas alegaciones de violencia sexual y acoso contra mujeres extranjeras en prisiones y en custodia policial; los agentes prácticamente las ponían "a disposición" de los hombres ecuatoguineanos. Cuando las mujeres pedían protección, eran reprendidas.

⁶ A saber, el párrafo 8 de las Reglas mínimas para el tratamiento de los reclusos aprobadas por el Primer Congreso de las Naciones Unidas sobre Prevención del Delito y Tratamiento del Delincuente, celebrado en Ginebra en 1955 y aprobado por el Consejo Económico y Social en sus resoluciones Nos. 663 C (XXIV) de 31 de julio de 1957 y 2076 (LXII) de 13 de mayo de 1977.

45. El Relator Especial encontró a varias mujeres que estaban embarazadas de otros prisioneros y supo que, como las mujeres podían mezclarse libremente con los hombres, con frecuencia les interesaba mantener una relación especial con uno de ellos para que las protegiera de los otros detenidos. Al juicio del Relator Especial, no existía mecanismo alguno para proteger a las mujeres de la explotación. También recibió alegaciones de que las mujeres embarazadas contaban con acceso escaso o nulo a atención médica.

Niños

46. En violación de la normativa internacional, en las prisiones y los lugares de detención de la policía y la gendarmería no había separación alguna entre adultos y menores de edad. El Relator Especial recibió varias denuncias de acoso y violencia sexual de menores de edad. En una entrevista, un niño aseguró al Relator Especial que tenía miedo porque algunas personas de la prisión "no eran buenas" y lo forzaban a hacer cosas contra su voluntad. En particular, temía la noche, porque entonces tenían lugar las palizas y las "cosas malas".

47. En un caso que fue señalado al Relator Especial, un grupo de niñas de entre 11 y 14 años de edad, en ausencia de base jurídica, fueron "condenadas" por un juez a ser rapadas en público, condena que se ejecutó en presencia de sus padres. En la opinión del Relator Especial, ello constituye una pena degradante.

48. Se indicó también al Relator Especial en varios casos (por ejemplo, en la Comisaría Central de Policía de Malabo) que, aunque en el Código Penal se establece la edad de responsabilidad penal en 16 años, se había detenido a niños jóvenes, el menor de ellos de 9 años de edad, y se los había puesto en libertad justo antes de su llegada.

Ciudadanos extranjeros

49. Las condiciones en que permanecían en comisarías policiales los inmigrantes pendientes de deportación, a veces durante períodos muy prolongados, eran aún peores que las de los ecuatoguineanos. Los inmigrantes tenían poco o ningún acceso a los alimentos y el agua, ya que, en la mayoría de los casos, no tenían cerca parientes que los ayudasen. Por esa razón con frecuencia dependían de la ayuda de otros detenidos. Además, sus posibilidades para establecer contacto con los representantes consulares de sus países eran limitadas. En la Comisaría de Policía de Malabo y en la Comisaría de Policía de Bata, no se había permitido a muchos extranjeros detenidos que se pusieran en contacto con sus consulados, a pesar de haberlo solicitado en varias ocasiones.

50. En las prisiones e instalaciones de detención policiales los inmigrantes corrían un riesgo especial de sufrir prácticas discriminatorias y, en ocasiones, incluso abusos físicos por parte de los guardias y otros detenidos. El Relator Especial siente una honda preocupación por las reiteradas alegaciones de que los extranjeros detenidos en las instalaciones policiales de Malabo y Bata eran con frecuencia objeto de palizas, acoso y violencia sexual por parte de detenidos ecuatoguineanos, con la aprobación tácita o incluso a incitación de los agentes de policía.

D. Falta de reparación y revictimización

51. De conformidad con lo dispuesto en el artículo 14 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, que prevé que las víctimas de tortura deben tener acceso a reparación y una indemnización adecuada, el artículo 9 de la Ley N° 6/2006 señala que la persona responsable de un delito está obligada a proporcionar reparación por los daños e indemnizar a la víctima o sus familiares por los perjuicios causados en los casos de: a) muerte; b) daño a la salud; c) pérdida de la

libertad; d) pérdida de ingresos; e) incapacidad para trabajar; f) pérdida o daño a la propiedad; o g) daño a la reputación. El artículo 10 dispone que el Estado garantiza en forma subsidiaria la reparación y el derecho a una indemnización justa y adecuada a las víctimas de tortura o tratos o penas crueles inhumanos o degradantes, así como medios para una rehabilitación lo más completa posible. Sin embargo, el Relator Especial no supo de un solo caso en el que se hubiera proporcionado reparación o indemnización, lo que resulta aún más preocupante dada la incidencia de la tortura que constató.

52. Por el contrario, dado que la administración de justicia es disfuncional (véase el párrafo 55) muchas víctimas de la tortura sufren una total falta de justicia. Los autores prácticamente nunca son enjuiciados; quienes presentan denuncias contra sus torturadores son estigmatizados, tienen dificultades para encontrar trabajo o retomar la educación y viven con el constante temor a las represalias de las autoridades. Quienes han estado detenidos por largos períodos sin saber nunca la causa sienten que sus vidas han sido destruidas. Además, algunos de los detenidos con los que se entrevistó el Relator sufrían síntomas físicos graves hasta siete años después de sucedidos los actos de tortura; por ejemplo, un hombre no había podido mover un brazo durante un año y seguía sintiendo adormecimientos de las manos, todavía no podía usar calzado y tenía dificultades para caminar debido a que el tejido de las plantas de sus pies había sido destruido por los golpes recibidos y a que había sido colgado de los brazos siete años antes. Varias víctimas dijeron que necesitaban urgentemente rehabilitación psicológica, que no existía en Guinea Ecuatorial. En general, el Relator Especial concluye que la combinación de la exclusión social de las personas que defienden sus derechos, la falta total de reparación y justicia, junto con la desatención de las consecuencias físicas y mentales de las víctimas de la tortura dan lugar a un círculo vicioso de revictimización, que en muchos casos prolonga el sufrimiento, lo que puede constituir trato inhumano.

E. Participación en secuestros en el extranjero y detenciones en secreto

53. En varios informes se señala que funcionarios de Guinea Ecuatorial han estado involucrados o han llevado a cabo secuestros en el extranjero con objeto de trasladar a algunas personas a Guinea Ecuatorial y mantenerlas detenidas en secreto y/o incomunicadas. Este era presuntamente el caso de tres personas que todavía se encontraban en detención secreta, probablemente en la prisión de Black Beach, a saber Florencio Ela Bibang, Antimo Edu Nchama, y Felipe Esono Ntutumu⁷, con los que el Relator Especial no se había podido reunir porque no había conseguido acceder a la parte de la prisión en la que supuestamente estaban detenidos. Asimismo, se mencionaron al Relator Especial, otros casos de detención secreta prolongada, en su mayoría de personas acusadas de delitos políticos.

54. El Relator Especial entrevistó a un hombre que había sido arrestado en el Camerún, donde vivía como refugiado algunos meses antes de la visita. Luego había sido entregado a la Guardia Presidencial de Guinea Ecuatorial, que lo había llevado a Malabo donde permaneció recluido en régimen de aislamiento, esposado y con grilletes en los pies, que le retiraron poco antes de la llegada del Relator Especial.

⁷ Véase también A/HRC/7/4/Add.3.

III. Entorno propicio a la tortura

A. Inoperancia de la administración de justicia

55. El entorno que permite la constante perpetuación de la tortura se caracteriza por la inoperancia de la administración de justicia y, por consiguiente, la ausencia de un estado de derecho. En este contexto, el Relator Especial desea recordar las conclusiones del Grupo de Trabajo sobre la Detención Arbitraria sobre su visita de noviembre de 2007 (A/HRC/7/4/Add.3), que se referían a graves preocupaciones sobre los siguientes aspectos: compatibilidad del marco jurídico con las normas internacionales; falta de independencia de la judicatura; excesivo poder de la policía; y ausencia de un sistema de registro. El Relator Especial también concluyó que la judicatura no cumplía su función de protección contra la tortura, sino que parecía estar controlada por las fuerzas del orden. Según numerosos testimonios, cuando las víctimas o sus abogados denunciaban la tortura ante los tribunales, el juez no les prestaba ninguna atención. Es más, muy pocos de los detenidos entrevistados por el Relator Especial tenían abogados y, en general, quienes los tenían no confiaban en ellos. Las fuerzas del orden estaban militarizadas; en la práctica, los diferentes cuerpos eran indistinguibles entre sí y no tenían mecanismos de rendición de cuentas. Asimismo, las "pruebas" obtenidas bajo tortura servían habitualmente como base para las condenas, lo que suponía una considerable presión sobre la policía para extraer confesiones. También era evidente que los funcionarios de la policía y el resto de las fuerzas del orden no habían sido debidamente formados. Según muchos detenidos, las autoridades penitenciarias no tomaban medidas ante la llegada de detenidos con signos visibles de tortura. La fiscalía no parecía desempeñar ningún papel relevante.

B. La impunidad

56. A pesar del artículo 14 de la Ley N° 6/2006, que incluye una cláusula de protección de las víctimas y los testigos y exige al Estado que vele por que todas las presuntas víctimas de la tortura puedan presentar una denuncia ante un juez, y por que su caso sea examinado de manera pronta e imparcial por las autoridades competentes, en la práctica no existen mecanismos de denuncia, y los detenidos no pueden presentar denuncias ante órganos del Estado que den lugar a investigaciones y enjuiciamientos. Además, muchos interlocutores del Relator Especial indicaron que temían sufrir represalias, en particular de la policía.

57. Aunque el mandato de la Comisión de Derechos Humanos de Guinea Ecuatorial, creada por el Decreto-ley N° 7/1990 de 27 de septiembre de 1990⁸, comprendía la recepción de las denuncias y su investigación, el Relator Especial no tuvo noticia de que se hubiera presentado ninguna denuncia a la Comisión ni de que esta hubiera investigado denuncia alguna.

58. El artículo 282 de la Ley de enjuiciamiento criminal encarga a la policía judicial la investigación de los delitos cometidos en su territorio pero, como se ha descrito, la policía judicial es el órgano que comete la mayor parte de los malos tratos, de modo que este no es un marco institucional válido. De conformidad con el artículo 649 de la Ley de enjuiciamiento criminal, la acusación está a cargo del ministerio público y de la acusación particular, pero esto solo se ha cumplido en un caso. Tras la promulgación de la Ley N° 6/2006, se hizo un intento, sobre la base de sólidas pruebas, de llevar ante la justicia a

⁸ La Comisión no ha solicitado la acreditación del Comité Internacional de Coordinación de Instituciones Nacionales para la Promoción y Protección de los Derechos Humanos.

algunos torturadores, y se inició un juicio ante un tribunal militar en Bata en 2007. Sin embargo, cuando las víctimas de la tortura comparecieron a testificar ante el tribunal, dos de los acusados principales estaban entre los magistrados y no entre los acusados. Por consiguiente, estos no fueron juzgados y solo una agente de la policía fue condenada a siete meses de prisión por otro caso de tortura con consecuencias letales. Aparte de esa funcionaria, no se ha juzgado a ningún presunto autor de actos de tortura. Incluso agentes cuyo empleo habitual de la tortura es bien conocido siguen formando parte de las fuerzas de la policía y la gendarmería.

59. El Relator Especial considera que el caso expuesto viola los artículos 4 a 9 de la Convención contra la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, y exige investigaciones penales para enjuiciar a todos los culpables. Asimismo, los artículos 12 y 13 requieren que siempre que haya motivos razonables para creer que dentro de su jurisdicción se ha cometido un acto de tortura, las autoridades competentes procedan a una investigación pronta e imparcial y que toda persona que alegue haber sido sometida a tortura en cualquier territorio bajo su jurisdicción tenga derecho a presentar una queja y a que su caso sea pronto e imparcialmente examinado por sus autoridades competentes.

C. Falta de mecanismos de inspección y seguimiento

60. El artículo 2 de la Convención contra la Tortura estipula que los Estados partes tomarán medidas legislativas, administrativas, judiciales o de otra índole eficaces para impedir los actos de tortura en todo territorio que esté bajo su jurisdicción. En su Observación general N° 2, el Comité contra la Tortura ha proporcionado más orientación sobre las consecuencias prácticas del artículo, por lo que hace a la necesidad de establecer mecanismos imparciales para inspeccionar y visitar los lugares de detención y de encarcelamiento (párr. 13).

61. Aunque el artículo 526 del Código de Enjuiciamiento Criminal de Guinea Ecuatorial dispone que el juez de instrucción, junto con un representante de la fiscalía, debe hacer visitas semanales sin previo aviso a las prisiones para controlar la situación de los detenidos y adoptar medidas para corregir los posibles malos tratos, la inmensa mayoría de los detenidos entrevistados por el Relator Especial no habían visto a ningún juez ni fiscal durante su detención.

62. La Comisión de Derechos Humanos de Guinea Ecuatorial dijo que, antes de la misión del Relator Especial se habían visitado todos los lugares de detención (cada visita debía ser autorizada por el Ministerio de Seguridad Nacional), que no había encontrado ningún caso de tortura o malos tratos y que, por el contrario, las condiciones estaban mejorando constantemente. La Comisión señaló que muchas de sus anteriores recomendaciones se habían puesto en práctica; las condiciones en la comisaría de policía de Malabo habían mejorado, y las mujeres y niños habían sido separados de los hombres. Todas estas afirmaciones contrastan marcadamente con las observaciones del Relator Especial.

D. Corrupción

63. Según muchos interlocutores del Relator Especial, la corrupción está profundamente arraigada en Guinea Ecuatorial⁹, en particular en todas las instancias del sistema de justicia

⁹ Véase también el Índice de percepción de la corrupción de 2008 de Transparency International, que asigna a Guinea Ecuatorial el lugar 171 en una lista de 180 países.

penal. Muchos detenidos indicaron que se les había ofrecido la libertad a cambio del pago de una determinada suma de dinero; algunos incluso habían sido torturados para obtener dinero. Otros dijeron que se les había exigido que pagaran para recibir visitas. Como consecuencia de la corrupción endémica, el sistema de justicia discrimina contra los pobres y su arbitrariedad se ve exacerbada. Según el Relator Especial, la omnipresente corrupción en la administración de justicia es consecuencia del incorrecto funcionamiento y la falta de independencia generales del sistema judicial.

E. Insuficiencia de las medidas del Estado para proteger a las personas de los daños causados por particulares

64. En el párrafo 18 de su Observación general N° 2, el Comité contra la Tortura dice que la negligencia del Estado a la hora de intervenir para poner fin a esos actos, sancionar a los autores y ofrecer reparación a las víctimas de la tortura facilita y hace posible que los agentes no estatales cometan impunemente actos prohibidos por la Convención, por lo que la indiferencia o inacción del Estado constituye una forma de incitación y/o de autorización de hecho. El Comité ha aplicado este principio a los casos en que los Estados partes no han impedido actos de violencia de género, como la violación, la violencia en el hogar, la mutilación genital femenina o la trata, o no han protegido a las víctimas.

65. En el derecho de Guinea Ecuatorial no hay disposiciones claras que prohíban los castigos corporales a los niños. Aunque el Gobierno ha suscrito algunos importantes memorandos, el párrafo 4 del artículo 420 del Código Penal establece que no se considerará un delito que un padre cause lesiones a su hijo por "excederse" al corregirlo. Esta disposición contraviene claramente el derecho internacional. Es más, el Relator Especial no ha sabido de ninguna medida activa adoptada para garantizar que los niños no sufran castigos corporales infligidos por sus padres ni en las escuelas, como la creación de mecanismos de denuncia accesibles, el establecimiento de un marco institucional adecuado para proteger y ayudar a las víctimas o la realización de campañas de sensibilización.

66. La violencia contra la mujer en la esfera privada parece recibir escasa atención. El Código Penal no penaliza la violencia doméstica, aunque prohíbe los daños, incluidos los golpes y los malos tratos. En el artículo 429 del Código se dispone que la violación de una mujer se castigará con reclusión menor, pero la violación marital parece no estar contemplada en la ley. En la División de Arreglos de Controversias del Ministerio de Asuntos Sociales y Condición de la Mujer se había establecido un procedimiento de mediación entre las partes en casos de denuncias de violencia física, psicológica y económica, con miras a lograr un arreglo amistoso, pero no se disponía de datos sobre los resultados de su labor. Aunque, según se informó, se estaban preparando algunas iniciativas para combatir la violencia contra la mujer -como programas de formación para tratar las denuncias destinados a la policía y cofinanciados por los Estados Unidos- el Fiscal General indicó que no se habían llevado a los tribunales casos de violencia contra la mujer. Tampoco había refugios en el país. Según el Ministerio de Asuntos Sociales y Condición de la Mujer, actualmente se encontraba en el Parlamento un proyecto de ley para combatir la violencia contra la mujer.

IV. Conclusiones y recomendaciones

A. Conclusiones

67. El Relator Especial expresa su agradecimiento por la invitación formulada por el Gobierno, que interpreta como una muestra de la disposición de este a someter a

sus lugares de detención al examen independiente de un experto externo y objetivo. Observa también la existencia de una ley general promulgada en 2006, que prohíbe la tortura y dispone el enjuiciamiento de los torturadores, y las mejoras en las condiciones materiales en las prisiones.

68. Basándose en las conversaciones mantenidas con funcionarios públicos, jueces, abogados y representantes de la sociedad civil, así como en entrevistas con víctimas de violencia y personas privadas de libertad -la mayor parte de las veces corroboradas por pruebas médicas forenses-, el Relator Especial concluye que la policía recurre en forma sistemática a la tortura, en particular en las comisarías centrales de la policía de Bata y Malabo. Los tipos de malos tratos denunciados y corroborados por análisis médicos de expertos y las pruebas halladas en las respectivas comisarías incluían fuertes golpes en varias partes del cuerpo, descargas eléctricas y diferentes tipos de suspensión con las manos y pies atados, -incluido el llamado "estilo etíope"- durante períodos prolongados. Además en ocasiones se vendaban los ojos a las víctimas o se las forzaba a respirar el humo de velas.

69. El Relator Especial recibió denuncias concordantes de que los guardias de prisiones aplicaban en forma habitual castigos corporales en presencia de otros presos en las cárceles de Bata y Black Beach. No obstante, consideró alentadoras las informaciones de que, al parecer, habían dejado de aplicarse castigos corporales en la prisión de Evinayong.

70. Aunque las condiciones materiales en las instituciones penitenciarias han mejorado en los últimos años, el Relator Especial constató un cierto hacinamiento y duras restricciones a los detenidos (como el uso permanente de grilletes y la reclusión en régimen de aislamiento). Asimismo, preocupa al Relator Especial la rígida limitación de los contactos con el mundo exterior.

71. Salvo en la Comisaría Central de Bata, de construcción reciente, las celdas de detención estaban generalmente en un estado deplorable; en general, los alimentos provenían de las familias o de otros detenidos. El acceso a agua potable y para lavarse estaba fuertemente restringido; con frecuencia se impedía a los presos usar el inodoro por lo que se veían obligados a utilizar botellas o bolsas de plástico. No tenían la posibilidad de ejercitarse ni acceso a la atención médica. En general, las condiciones reflejaban un total desinterés por la dignidad de los detenidos, e infringían las normas internacionales.

72. El Relator Especial recibió información fidedigna según la cual los inmigrantes corrían un mayor riesgo de ser sometidos a prácticas discriminatorias e incluso a abusos físicos por parte de otros detenidos, con el consentimiento tácito de la policía.

73. En las prisiones y los centros de detención de la policía y la gendarmería, los niños y las mujeres no estaban separados de los varones adultos y eran sumamente vulnerables a la violencia sexual y a otros tipos de malos tratos por parte de los guardias y los demás presos. La violencia entre presos, incluido el acoso sexual y las violaciones, pueden constituir tortura o malos tratos cuando son consentidos o tolerados por las autoridades.

74. El Relator Especial observa que la impunidad es casi total. Salvo en un caso, no se ha llevado a la justicia a ningún presunto autor de actos de tortura. En este contexto, resulta extremadamente preocupante que muchos interlocutores expresaran su temor a las represalias. Asimismo, no existe ningún mecanismo preventivo, las salvaguardias son completamente ineficaces y, en la práctica, no se proporciona indemnización ni rehabilitación alguna.

B. Recomendaciones

75. El Relator Especial considera que para que Guinea Ecuatorial cumpla sus obligaciones en virtud del derecho internacional y su Constitución es indispensable realizar una amplia reforma institucional y legal para crear órganos de aplicación de la ley basados en el estado de derecho, una judicatura independiente y mecanismos eficaces de supervisión y rendición de cuentas. Solo si se adoptan estas medidas podrá aplicarse la Ley N° 6/2006 que, en principio, constituye una buena base para prevenir y luchar eficazmente contra la tortura.

76. Además de lo que precede, debería adoptarse una serie de medidas en el futuro inmediato para atender a los problemas más urgentes de derechos humanos. Por consiguiente, el Relator Especial invita al Estado a:

a) Aplicar las recomendaciones que figuran en el informe del Grupo de Trabajo sobre la Detención Arbitraria sobre su visita a Guinea Ecuatorial (A/HRC/7/4/Add.3, párr. 100). En particular, el Gobierno debería, con carácter urgente, poner fin a la detención en secreto; revisar el marco legal penal del país, con miras a aplicar las normas mínimas internacionales, incluida la introducción de un procedimiento eficaz de hábeas corpus; reformar la judicatura para hacerla independiente; y permitir el funcionamiento independiente de las organizaciones de la sociedad civil.

b) Separar a las mujeres de los hombres en todos los lugares de detención.

c) Tener en cuenta la recomendación m) del Grupo de Trabajo de que introduzca un sistema de justicia juvenil y asegure la estricta separación entre menores y adultos.

d) Introducir un sistema de registro adecuado de las detenciones policiales (en cierto modo, los registros de la gendarmería pueden servir de ejemplo) y establecer un sistema de registro adecuado en las prisiones.

e) Formular un reglamento transparente que permita visitas familiares regulares en todos los lugares de detención.

f) Reducir al mínimo la utilización del régimen de aislamiento¹⁰ y se abstenga de usar grilletes y demás medios de limitación de los movimientos.

g) Mejorar las condiciones de los centros de detención de la policía y la gendarmería, en particular proporcionando comida y agua potable, y asegurando que los detenidos tengan acceso a atención médica, inodoros e instalaciones sanitarias.

h) De conformidad con las conclusiones del Grupo de Trabajo evitar, cuando sea posible, detener a los extranjeros y otorgue a los inmigrantes detenidos todos los derechos de las personas privadas de libertad reconocidos en los instrumentos internacionales, incluido el derecho a ponerse en contacto con sus representaciones consulares.

i) Abstenerse de practicar la detención en secreto y los secuestros en los países vecinos.

j) Abolir la pena de muerte.

77. Por lo que hace a la comunidad internacional, el Relator Especial observa que, a raíz del descubrimiento de reservas considerables de petróleo en el territorio de

¹⁰ Véase también A/63/175, párrs. 77 a 85 y anexo.

Guinea Ecuatorial, muchas empresas transnacionales están operando en el país. Asimismo, varios donantes bilaterales y multilaterales están ejecutando programas de asistencia técnica, también en las esferas del mantenimiento del orden y la administración de justicia. El Relator Especial invita a los actores de la comunidad internacional presentes en el país a que tengan en cuenta que el Relator Especial ha constatado que la policía practica la tortura sistemáticamente, y velen por que, en sus actividades e iniciativas conjuntas, no sean cómplices de violaciones de la prohibición de la tortura y los malos tratos¹¹.

¹¹ Sobre la cuestión de la complicidad, véase el informe del Representante Especial del Secretario General para la cuestión de los derechos humanos y las empresas transnacionales y otras empresas (A/HRC/8/5), en particular los párrafos 73 a 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 Engongo, 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 está 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
