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**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL,
POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS,
INCLUDING THE RIGHT TO DEVELOPMENT**

**Preliminary note of the Special Rapporteur on torture and other cruel,
inhuman or degrading treatment or punishment, Manfred Nowak***

Addendum

MISSION TO EQUATORIAL GUINEA

* This document is distributed in the language of submission and in English only.

I. INTRODUCTION

1. The present document is a preliminary note concerning the mission to Equatorial Guinea, conducted at the invitation of the Government by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, from 9 to 18 November 2008. The final report will be published and submitted at a later stage.
2. The main purposes of the visit were to assess the current situation of torture and other cruel, inhuman or degrading treatment or punishment, including the conditions of detention in pre- and post-trial detention facilities, and to make concrete recommendations to the Government on how to improve the situation.
3. During his visit the Special Rapporteur met with the First Deputy Prime Minister for Human Rights, the Minister for Foreign Affairs, International Cooperation and la Francophonie, the Minister of National Security, the Minister of Justice, Religion and Prison Establishments, the Minister of the Interior and Local Corporations, the Minister for Social Affairs and the Advancement of Women, the Vice-Minister of National Defence, the Attorney-General of the Republic of Equatorial Guinea, the Governor of the Province of Bata - Litoral, and other officials, and visited a number of places of detention on Bioko Island and on the mainland.¹

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- (a) Black Beach Prison, Malabo
- (b) Evinayong Prison
- (c) Bata Prison
- (d) Central Police Station, Malabo (twice: second time access denied)
- (e) Central Gendarmerie Station, Bata
- (f) Central Police Station, Bata (twice: second time access denied)
- (g) Baney District Police Station
- (h) Rebola Municipal Police Station
- (i) Luba Municipal Police Station
- (j) Luba District Gendarmerie Station
- (k) Elan Nguema Municipal Police Station, Malabo
- (l) Niefang District Police Station
- (m) Niefang District Gendarmerie Station
- (n) Evinayong Provincial Police Station
- (o) Evinayong Provincial Gendarmerie Station
- (p) Ngolo Municipal Police Station, Bata
- (q) Mendoc-Asi Police Station, Bata
- (r) Cogo District Police Station (access denied)
- (s) Cogo District Gendarmerie Station (access denied)
- (t) Mbini District Police Station
- (u) Cogo Military Camp (access denied)
- (v) Mané Ela Military Camp, Malabo (access denied)

4. In addition to Government officials, the Special Rapporteur met with the President of the Appeals Court of Malabo and the National Human Rights Commission. He also had discussions with civil society representatives and met with the United Nations country team and the diplomatic community.

5. The Special Rapporteur wishes to extend his thanks to the Government of Equatorial Guinea for its invitation to undertake a mission to the country. He interprets this invitation as a sign of the willingness of the Republic of Equatorial Guinea to open itself up to independent and objective scrutiny of the situation of torture and ill-treatment, practices to which no country in the world is immune. He expresses his gratitude to his governmental and non-governmental interlocutors in Malabo, Bata and elsewhere. He regrets however that, in violation of the terms of reference for fact-finding missions by special rapporteurs (E/CN.4/1998/45), he was not given access to any places of detention under the control of the military, and that, in a number of instances, access to other facilities was delayed or denied. He is also concerned about possible reprisals against detainees who provided testimony to him. The fact that he was denied access to the Central Police Stations in Malabo and Bata during a follow-up visit reinforces these concerns.

6. On the basis of an analysis of the legal system, visits to detention facilities, interviews with detainees, supporting forensic medical evidence and meetings with Government officials, lawyers and representatives of civil society, the Special Rapporteur would like to make the following preliminary comments.

II. TORTURE AND ILL-TREATMENT

A. Police or gendarmerie custody

7. The Special Rapporteur found that torture is used systematically by the police against persons who refuse to “cooperate”, such as persons suspected of political as well as ordinary crimes, in particular at the Central Police Stations in Bata and Malabo. The gendarmerie appears to practise torture to a lesser extent. The Special Rapporteur was unable to verify allegations against the military because he was denied access to military facilities.

8. The types of abuse reported to him and corroborated by expert medical analysis, and evidence found in the respective police stations, include: blows to various parts of the body, although often on the soles of the feet and/or the buttocks, using police batons, rubber-coated cables and wooden sticks; electric shocks delivered by battery cables attached to different parts of the body with alligator clips; various forms of suspension, with hands and feet tied together, including the so-called “Ethiopian style”, for extended periods of time. In these positions the victims were swung around and beaten, or heavy objects, for example car batteries, were placed on their backs. Furthermore, they were sometimes blindfolded or forced to inhale candle smoke. In most instances, the purpose of the torture was to extract information or a confession; sometimes it was intended as punishment or intimidation or a means of extorting money.

B. Prisons

9. The Special Rapporteur received numerous reports that corporal punishment continues to be used routinely by prison guards in full view of other prisoners in Bata and Black Beach prisons. On the other hand, he was encouraged to learn that corporal punishment has not been used in Evinayong prison for several months.

III. CONDITIONS OF DETENTION

A. Police or gendarmerie custody

10. With the exception of the recently built Bata Central Police Station, police and gendarmerie holding cells were generally in a deplorable condition. The cells were dirty and damp and lacked any sanitary or sleeping facilities. Generally speaking, food was only provided by families or fellow prisoners; access to water for drinking and washing was severely restricted; prisoners were often not allowed to use the toilet, and as a result had to resort to using plastic bottles or plastic bags; they had no opportunity to exercise and no access to medical care. The Special Rapporteur was also concerned at reports of violence among detainees, which were allegedly ignored or even tolerated by the authorities.

11. The fact that many detainees were held in these conditions well beyond the 72 hours stipulated by law, sometimes up to several months, exacerbates the situation and amounts to inhuman and degrading treatment.

B. Prisons

12. Generally speaking the prisons are fairly spacious, although the Special Rapporteur was told that during periods of peak demand prisoners in one wing of Black Beach Prison had to share beds. One of the Special Rapporteur's main concerns with regard to Black Beach Prison is that family visits seem to be prohibited, except for certain prisoners. The Special Rapporteur stresses that contact with the outside world is an important factor for the successful rehabilitation and reintegration of detainees, as stipulated in article 10 of the International Covenant on Civil and Political Rights.

13. In all the prisons the Special Rapporteur received numerous complaints about the food, which is insufficient if not supplemented by family members. Although in Black Beach Prison medical doctors are on duty and can treat minor problems, access to medical treatment and medicine is severely restricted and completely unavailable in Bata and Evinayong Prisons. The most serious cases generally go untreated if the detainee cannot afford to pay for treatment.

14. Another major problem identified by the Special Rapporteur was the allegation that some persons suspected of political crimes had been held in solitary confinement in Black Beach Prison for up to four years, without being allowed the one hour of exercise per day required by the Standard Minimum Rules for the Treatment of Prisoners. Moreover, they were said to have

been held in leg irons practically all the time. Prolonged solitary confinement and the permanent use of leg irons amount to inhuman treatment. In addition, the Special Rapporteur received allegations from various sources about persons held incommunicado and in secret detention, which he could not verify because of lack of access.

C. Vulnerable groups

15. Despite the lack of any legal basis for the detention of immigrants awaiting deportation, they are frequently held for long periods in police detention in poor conditions, without access to water and/or food since they have no family members nearby to help them. Their ability to contact the consular representatives of their countries is limited. The Special Rapporteur also received credible reports that immigrants are at increased risk of being subjected to discriminatory practices and even physical abuse by other detainees, with the tacit approval of the police.

16. Women and children are not separated from male adults in prisons or in police and gendarmerie custody and are therefore extremely vulnerable to sexual violence and other forms of abuse. This is a clear violation of international norms.

IV. DYSFUNCTIONAL JUSTICE SYSTEM

17. The non-existence of a properly functioning justice system, and the resulting absence of the rule of law, encourage a situation where torture can continue unabated. Factors contributing to this situation are:

- (a) The lack of an independent judicial system;
- (b) Endemic corruption;
- (c) Routine use of arbitrary detention and ineffectiveness of habeas corpus guarantees in practice;
- (d) Lack of any clear distinction between the various State security bodies, which are militarized and effectively control the judicial system;
- (e) “Evidence” obtained under torture is commonly used as the basis for convictions, which means that there is considerable pressure on the police to extract confessions;
- (f) Notwithstanding Act No. 6/2006 on the Prevention and Punishment of Torture, there is near total impunity. With the exception of one female police officer who was sentenced to seven months in prison for a case of torture causing death, no alleged perpetrator of torture has been brought to justice. On the contrary, certain officers known to use torture regularly continue working in the police and gendarmerie.

(g) The Special Rapporteur notes with particular concern that, in many cases, victims of torture fall into a vicious circle of re-victimization. Contrary to what is required by international standards, they experience a total lack of justice, which, combined with the physical and psychological consequences of ill-treatment and the lack of any rehabilitation or compensation mechanism, causes ongoing suffering that can amount to inhuman treatment.

V. RECOMMENDATIONS TO THE GOVERNMENT AND THE INTERNATIONAL COMMUNITY

18. In order for Equatorial Guinea to comply with its obligations under both international human rights law and its Constitution, it must undertake a comprehensive reform of its institutions and judicial system, involving the establishment of law enforcement bodies based on the rule of law, an independent judiciary and effective mechanisms for monitoring and ensuring transparency.

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

(a) Implement the recommendations contained in the report on the 2007 visit of the Working Group on Arbitrary Detention (WGAD) to Equatorial Guinea (A/HRC/7/4/Add.3, para. 100), notably that the Government should: put an immediate end to the practice of secret detentions; revise the national criminal law framework, including with regard to making guarantees of habeas corpus effective; reform the judiciary with a view to complying with the international instruments to which Equatorial Guinea is a State party; and allow civil society organizations to function independently;

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

(c) Introduce proper registers in police detention facilities (to some extent the gendarmerie registers can serve as an example) and maintain proper registers in prisons; issue a transparent set of rules allowing for regular family visits in all places of detention; make minimal use of solitary confinement (see also A/63/175, paras. 77-85 and annex) and refrain from using leg irons;

(d) Improve conditions in police and gendarmerie detention facilities; in particular by providing food and drinking water and ensuring that detainees have access to medical care as well as toilets and sanitary facilities;

(e) With regard to foreigners, the Special Rapporteur underscores the recommendation of the Working Group on Arbitrary Detention to avoid their detention where possible, and to guarantee them all the rights recognized to persons deprived of liberty by international instruments, including the right to communicate with their respective consulates.

20. As for the international community, the Special Rapporteur notes that, as a result of the discovery of considerable oil reserves on Equatorial Guinean territory, many transnational corporations are operating in the country. In addition, a number of bilateral and multilateral donors have technical assistance programmes under way, including in the areas of law enforcement and the administration of justice. The Special Rapporteur calls on all the international actors present in the country, including transnational corporations, to take note of his assessment that torture is systematically practised by the police, and to ensure that, in their projects and initiatives, they do not become accomplices to violations of the prohibition of torture and ill-treatment.²

² On the question of complicity see for example the report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises A/HRC/8/5, in particular paragraphs 73-81.