



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Initial report submitted by Guinea-Bissau under article 40 of the Covenant, due in 2021<sup>\*</sup>, <sup>\*\*</sup>

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<sup>\*</sup> The present document is being issued without formal editing.  
<sup>\*\*</sup> The present document was submitted pursuant to the simplified reporting procedure. It contains the responses of the State party to the Committee's list of issues prior to reporting (CCPR/C/GNB/QPR/1).



## Index

	<i>Page</i>
I. Geographical, demographic, economic, social and cultural aspects.....	4
Geographical aspects.....	4
Demographic aspects.....	4
Economic, social and cultural aspects .....	5
II. Constitutional and legal framework within which the Pact is implemented (Art. 2).....	7
Legal and constitutional framework.....	7
Legal framework .....	9
The application of the Covenant in the Guinean legal order .....	15
Human rights protection institutions .....	17
Work carried out by the CNDH since its creation.....	18
III. Anti-corruption measures (Arts. 2 and 25).....	18
Anti-corruption measures .....	18
Transparent management of natural resources .....	21
Protected areas .....	25
IV. Non-discrimination and equality between men and women (Arts. 2–3, 23 and 25–26).....	26
Implementing a parity law in the face of gender inequality .....	26
V. Violence against women and children, including domestic violence (Arts. 2-3, 6-7, 24 and 26) .	27
Violence against women and children.....	27
Domestic Violence .....	28
VI. Harmful practices and sexual violence (Arts. 2–3, 6–7 and 26).....	30
Sexual violence .....	30
VII. Maternal and infant mortality and voluntary termination of pregnancy (Arts. 3 and 6–7).....	31
Maternal and child mortality .....	31
VIII. Right to life and excessive use of force (Arts. 3 and 6–7).....	32
Legal standard for the appropriate use of force and firearms by law enforcement officers .....	32
Information on the case of the violation of the right to life.....	33
IX. Prohibition of torture and cruel, inhuman or degrading treatment (Arts. 6–7).....	34
X. Treatment of persons deprived of their liberty (Arts. 6–7 and 10).....	35
XI. The Administration of Justice (Art. 14) .....	37
The judicial system .....	37
XII. People with disabilities (Arts. 2, 7, 9–10 and 26).....	43
XIII. Refugees, asylum seekers and displaced persons (Arts. 7, 12–13, 16 and 26).....	45
XIV. Human trafficking, elimination of slavery and servitude and domestic workers (Arts. 6–8 and 24) .....	46
XV. Freedom of expression and protection of journalists (Arts. 6–7 and 18–19).....	47
The legal and regulatory frameworks governing the right to freedom of expression in the State Party .....	47
XVI. Freedom of assembly and protection of human rights defenders (Arts. 6–7 and 21).....	49

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XVII.	Children’s rights (Arts. 7, 9–10, 14, 23–24 and 26).....	49
XVIII.	Measures to eliminate and prevent child exploitation .....	51
	Implementation of the Labour Code and comprehensive child protection.....	52
XIX.	Participation in public affairs (Arts. 19 and 25).....	53
XX.	Disclosure of information relating to the Pact (Art. 2).....	53

## I. Geographical, demographic, economic, social and cultural aspects

### Geographical aspects

1. The Republic of Guinea-Bissau, a Portuguese-speaking country that has been independent since 1973, is located on the West African coast, bordered by Senegal to the north and east and the Republic of Guinea to the south. To the west, it is bathed by the Atlantic Ocean and has an area of 36,125 square kilometres, including the Bijagós Archipelago, which has more than eight dozen islands and islets.

2. The country has a territorial administrative organisation comprising 8 administrative regions, in addition to the Autonomous Sector of Bissau (SA(B), the capital, namely Bafatá, Biombo, Bolama, Quinara, Cacheu, Gabu, Oio and Tombali, each of which covers several sectors, a total of 37, subdivided into numerous Sections and these into “Tabancas” where the rural population lives. Although the Constitution of the Republic provides in Chapter VI, Article 105 and following, for the existence of Local Authorities, as the organisation of the political power of the state with administrative and financial autonomy, this issue of the decentralisation of power was not realised as local elections haven’t been held so far.

### Demographic aspects

3. The measurement of demographic indices and other statistical values is carried out by an organisation responsible for this purpose. The state of Guinea-Bissau, concerned with social, economic and cultural development, created an official statistical data system to monitor the country’s development. The first law created after independence was Decree-Law 2/1991 of 25 March, which institutionalised the National Statistical Information System (SNIE) and created the National Institute of Statistics and Censuses (INE(C). On 10 September, Law No. 6/2007 created the Bases of the National Statistical System (SEN). INE’s regulations and Organic Statute were created respectively by Decree No. 4/2023, of 31 March, and Decree-Law No. 2/2023, of 31 March.

4. INE has carried out three population and housing censuses, the last one in 2009. For structural reasons, it is only now that the conditions have been met for another census, so the demographic data can be found in the 2009 census, adapting it to existing projections.

5. The Guinean population totalled 1,497,859 inhabitants, 48.6% male and 51.4% female. Of this population, 1,449,230 live in family housing and 4,606 in collective housing. The average annual growth rate (AAR(C) is 2.48 per cent. By 2023, the population is expected to be around 1,781,308<sup>1</sup> inhabitants, with a population density of 40.1 inhabitants per square kilometre in 2009. According to the RGPH-2009, Guinea-Bissau’s population is relatively young, with people under the age of 20 accounting for 54.3 per cent of the total population and only 3.2 per cent aged 65 or over. The child population (0–5 years old) represents around 19 per cent of the country’s total population, with a relatively higher percentage in rural areas (21.3 per cent) than in urban areas (15.7 per cent). While the school-age population (6–12 years old) has the same weight as the child population, it is also higher in rural areas (around 20 per cent) than in urban areas (around 17 per cent). The economically active population (15–64 years old) represents more than half of the total population (54.1%), most of whom live in urban areas and especially in SAB and the Bijagós region. The population aged 65 and over accounts for just 3.2 per cent of the total population, and is more representative in rural than urban areas. It is worth mentioning that 3,283 people did not declare their age, which corresponds to a very low percentage (0.2%). The average age of the population is 21.7 years, 21.2 for men and 22.3 for women. The urban population is slightly more mature (21.8 years) than the rural population (21.7 years). In urban areas, the differences between the sexes are insignificant, while in rural areas, women are almost three years older than men (20.8 years for men and 22.6 years for women).

<sup>1</sup> See the INE Portal at [www.stat-guinebissau.com](http://www.stat-guinebissau.com).

6. The foreign population aggregates 1,933 inhabitants in the 2009 census, corresponding to just 0.1 per cent of the total population. This population is made up of 1,378 men (71.3 per cent) and 555 women (28.7 per cent). The majority of this population is Conakry Guinean (27.7%), Mauritanian (18.7%) and Senegalese (18.3%). The population of Portuguese nationality corresponds to 5.6 per cent.

7. The country has an ethnic diversity of 15 ethnic groups with the following percentages: Fulas (28.5%), Balantas (22.5%), Mandingas (14.7%), Papel (9.1%), Manjaco (8.3%), Beafada (3.5%), Mancanha (3.1%), no ethnicity (2.2%), Bijagós (2.1%), Felupe (1.7%), Mansôanca (1.4%), Balanta Mané (1.0%), Nalu (0.9%), Saracule (0.5%), Sosso (0.4%).

8. Ethnic diversity goes hand in hand with religious diversity. Muslims are in the majority (45.1 per cent), followed by Christians (22.1 per cent) and animists (14.9 per cent).

9. With regard to level of education, it can be seen that the majority of this population has a Unified Basic level (33.2 per cent), 12.6 per cent has a secondary level, 0.5 per cent has a professional level and less than 1 per cent has a college or university level.

### **Economic, social and cultural aspects**

10. The Guinean economy is basically agricultural with a weak industrial sector, sometimes operating without electricity, with almost 89.1% of the housing and road infrastructure precarious. Income from fishing taxes, customs duties, tax contributions, cashew nut and timber exports are, among other things, the main sources of revenue that often do not cover the general state budget. The gastronomic offer presents a variety of local riches. Cereals, particularly rice and maize, form the basis of a Guinean's daily meal. Vegetables, tubers and tropical fruit make up the complementary foods in the Guinean diet. Palm wine and cashew wine are local products of mass consumption, especially among animist and Christian communities. Fish, which at least many have access to regardless of its quality, is due to the country's geographical location on the west coast of Africa, whose coastline is bordered by the Atlantic Ocean, with the main rivers (Geba, Cacheu and Corubal), as well as several streams.

11. Guinea-Bissau's economic and social basis is the market economy, which implies the existence of state, private and co-operative property, all subordinate to political power, with the aim of continuously promoting well-being and suppressing any form of social exploitation of one group by another. The state promotes foreign capital investment as long as it is useful for the country's economic and social development.

12. Guinea-Bissau's economic growth in 2022 is projected to be around 4.7 per cent, driven by the agricultural sector, especially the cashew sector, and public investment. In the primary sector, real growth of 6.1 per cent is expected in 2022, an increase of 0.7 percentage points compared to 2021. The new control system in the process of transporting cashew nuts from the production areas to Bissau reinforces the evidence that national cashew production has hitherto been underestimated. As of the closing date of this report, records from tax offices in all regions point to a declaration of 256,000 tonnes of cashew nuts in the country. Also in this sector, food production continues to grow consistently, and the structuring factors are public agricultural projects. By 2022, subsistence production is expected to grow by 4.1 per cent and cashew production by 11.1 per cent.

13. In the secondary sector, growth is expected to be 4.8 per cent in 2022, 0.8 percentage points below the rate seen in 2021, whose reduction compared to last year is due to the poor performance of the construction sector. The rise in international prices, coupled with the fiscal adjustments that have taken place in the country, have limited the growth of this sector in Guinea-Bissau, despite the existence of several road construction projects and electricity distribution infrastructures that are still underway. Construction is expected to grow by 0.7 per cent and the water, energy and sanitation sub-sector is expected to grow by 10.0 per cent, the latter falling by 2.7 pp compared to 2021.

14. The tertiary sector has reversed its position as the top performer in terms of growth rate to the lowest among all sectors of the economy, despite having the largest share of GDP. For 2022 it should grow by 3.7 per cent, 3.6 pp below its 2021 growth. Communications

should grow by 4.0 per cent and transport, with a rise of 4.5 per cent, will be the sector's key lever. Although public administration is expected to grow by 8.1 per cent, it is not a crucial factor in the development of this sector.

15. In line with GDP growth, the general price level (inflation) will grow by 6.9 per cent in 2022, 3.9 pp above the target of the WAEMU convergence criterion. The conflict between Russia and Ukraine has accentuated the rise in prices that has been taking place since the end of 2020. This is affecting the purchasing power and standard of living of people in Guinea-Bissau. The prices of imported products have risen considerably. To make matters worse, domestic products have also followed these increases, especially food products.

16. As far as public finances are concerned, in 2022 total revenue and donations are expected to fall slightly by 6.8 per cent compared to 2021, due to a 29.8 per cent decrease in donations. The estimates take into account the current context marked by heightened geopolitical tensions and their impact on food and oil prices, which could lead to a loss of revenue due to state intervention to mitigate the negative impact on the population. As for spending, overall current expenditure is expected to stand at 15.6 per cent of GDP in 2022, compared to 16.1 per cent the previous year, due to the authorities' efforts to contain spending.

17. It is estimated that the public debt ratio will stand at 73.9 per cent of GDP in 2022. In 2022, estimates of the balance of payments indicate a surplus of 31.0 billion FCFA, compared to 60.4 billion FCFA in 2021. The positive balance will be in line with the significant increase in capital transfers from central government, mitigated by the deficit in the balance of goods and services and the reduction in net foreign assets. The current account balance will show a deficit of 36.9 billion CFA francs in 2022 compared to a deficit of 5.5 billion CFA francs in 2021, as a result of a sharp increase in the deficit in the balance of goods and services, of 21.3 billion CFA francs, which will stand at 116.0 billion CFA francs.

18. Money supply is expected to increase in 2022, in line with GDP growth, and could stand at 491.3 billion FCFA (44.1 per cent of GDP) compared to 473.1 billion FCFA (47.8 per cent of GDP) in 2021, as a result of the increase in both net foreign assets and domestic credit. Credit availability will increase in 2022 compared to 2021, given the start-up of a new commercial bank in the country and the normal return of economic activities.

19. Overall, the macroeconomic picture shows progress even in a situation of international economic complexity. The results could have been better in this forecast if the maritime transport system for cashew nut exports had been operating efficiently. This good performance is due to the efforts made to control expenditure, increase revenue and gradually make investments.<sup>2</sup>

20. In general, all ethnic groups consider their mother tongue dialect to be their main means of communication. In terms of languages spoken, over 90 per cent of the Guinean population speaks Creole. Less than 1/3 speak Portuguese and around 5% speak French. The majority of Guineans were employed at the time of the census (89.5%) and around 11% were unemployed. Among the working Guinean population, 43.8 per cent were male and 56.2 per cent female. With regard to educational characteristics, it can be seen that around 52% of the Guinean population aged 6 and over is literate, of which 58.2% are men and 41.8% are women. With regard to housing characteristics, according to the material most used in the exterior walls of the dwellings by ethnicity, it was concluded that 5% of the population live in dwellings with exterior walls made of adobe/taipe and 14.5% in dwellings made of reinforced adobe.

<sup>2</sup> See General State Budget for 2022 and 2023, Ministry of Finance.

## II. Constitutional and legal framework within which the Pact is implemented (Art. 2)

### Legal and constitutional framework

21. The Constitutional System had three periods, the first beginning with independence and based on the communist model of a centralised, one-party economy, which lasted until 1984,<sup>3</sup> the second with the approval of a constitutional revision that included a market economy, and in 1991 the third period began, culminating in the changes introduced by five revisions to the text of the Constitution of 16 May 1984 (CRG(B), which gave shape to the current constitution, with 133 articles and which resulted in a qualitative leap towards political pluralism with the introduction of multi-party politics, the last revision of which took place in 1996.

22. The structuring principles of the current Constitution of the Republic are divided into five titles: 1st Title, Fundamental Principles - The nature and foundations of the State - Articles 1 to 23; 2nd Title, Rights, Freedoms, Guarantees and Fundamental Duties - Articles 24 to 58; 3rd Title, Organisation of Political Power - Articles 59 to 125, subdivided into six parts, the 1st of the President of the Republic - Articles 62 to 72, of the Council of State - Articles 73 to 74, of the National People's Assembly - Articles 75 to 95, of the Government - Articles 96 to 104, of Local Government - Articles 105 to 118, of the Judiciary - Articles 119 to 125; 4th Title, Guarantee of Constitutional Revision - Articles 127 to 131; and 5th Title, Final and Transitional Provisions - Articles 132 and 133.

### Fundamental Rights

23. The Republic of Guinea-Bissau is a democratic state governed by the rule of law, based on popular sovereignty, pluralism of expression and democratic political organisation, respect for and guarantees of the realisation of fundamental rights and freedoms and the separation and interdependence of powers, with a view to achieving economic, social and cultural democracy and deepening participatory democracy.

24. It is the fundamental duty of the state to safeguard, by all means, the achievements of the people and, in particular, the constitutionally established democratic order. The defence of the nation must be organised on the basis of the active participation and conscious adherence of the people.<sup>4</sup>

25. The Constitution provides for the equality of citizens in all spheres of life, guaranteeing them the exercise of fundamental rights, freedoms and guarantees, the continuous promotion of the well-being of the people and the elimination of all forms of subjection of the human person to degrading interests for the benefit of individuals, groups or classes.<sup>5</sup>

26. Economic, social and cultural rights are enshrined in a programme.

27. All citizens are guaranteed recourse to the courts if their rights are violated, and justice cannot be denied on the grounds of insufficient financial means.

28. The deprivation of liberty cannot be arbitrary, and the person must be informed of the situation and be able to defend themselves, otherwise the state will be liable for the damage caused, in addition to allowing *habeas corpus proceedings* for unlawful arrest or detention.

29. Laws restricting rights, freedoms and guarantees are general and abstract in nature and must be limited to what is necessary to safeguard other constitutionally protected rights or interests. They may not have retroactive effects or diminish the essential content of rights.<sup>6</sup>

<sup>3</sup> See the preamble to the 1996 CRGB.

<sup>4</sup> Art. 19 CRGB.

<sup>5</sup> Art. 11/2 CRGB.

<sup>6</sup> Art. 30/3 CRGB.

30. The fundamental guarantees against imprisonment without charge lie in the possibility for the person to be brought before the judge immediately for confirmation of the procedural situation within forty-eight hours, guaranteeing their defence and avoiding detention whenever possible, by granting the least severe measures.

31. The criminal process has an accusatory structure and the presumption of innocence, with guarantees of defence and assistance, with the trial hearing and the acts of instruction determined by law being subject to the adversarial principle. Evidence obtained by coercion, torture, offence against the physical or moral integrity of the person, abusive intrusion into private life, home, correspondence or telecommunications is null and void.

32. Extradition or expulsion from the country of a national citizen is inadmissible. For foreign citizens, extradition or expulsion can only be decided by the judicial authority and never for political reasons.

33. The moral and physical integrity of citizens may not be violated, and torture, cruel, inhuman and degrading treatment or punishment, such as forced labour, as well as security measures involving deprivation of liberty of unlimited or indefinite duration are prohibited.

34. The convicted person shall not, as a necessary effect, lose any civil, professional or political rights. Unjustly convicted citizens have the right, under the conditions prescribed by law, to a review of the judgement and to compensation for the damage suffered. Security measures and sentences are decreed by an existing law, under no circumstances will rules created for specific cases be applied.

35. Criminal liability is personal and non-transferable and under no circumstances will there be a death penalty. There will be a life sentence for offences defined by law. However, life imprisonment has never been regulated and under the terms of the CP the abstract penal framework for an accumulation of offences ranges from 10 days to 30 years.<sup>7</sup>

36. Everyone has the right to personal identity, civil capacity, citizenship, good name and reputation, image, speech and privacy of private and family life. Deprivation of citizenship and restrictions on civil capacity may only take place in the cases and under the terms laid down by law, and may not be based on political grounds.

37. The state recognises the right of citizens to the inviolability of their homes, correspondence and other means of private communication. The invasion of privacy against a citizen's will may only be ordered by the courts or carried out in cases expressly provided for by law or in criminal proceedings. Citizens have the right to assemble and demonstrate peacefully in places open to the public, under the terms of the law.

38. Workers are recognised as having freedom of association as a means of promoting unity, defending their rights and protecting their interests. In exercising freedom of association, workers are guaranteed, without any discrimination, the following:

- (a) Freedom of establishment, organisation and internal regulation of associations;
- (b) The right to exercise trade union activity in companies, under the terms laid down by law;
- (c) Trade union associations are independent of the state, employers, religious denominations, parties and other political associations.

39. The law shall ensure that workers' representatives are adequately protected against any form of limitation on the legitimate exercise of their functions. Trade union associations shall be governed by the principles of democratic organisation and management, based on the periodic election of governing bodies by secret ballot, without being subject to any authorisation or approval by the workers, in all areas of trade union activity.

40. Workers have the right to protection, safety and hygiene at work, they can only be dismissed in the cases and under the terms laid down by law, and dismissals for political or ideological reasons and lock-outs are prohibited.

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<sup>7</sup> See Art. 41 No. 2.



41. The state will gradually create a system capable of guaranteeing workers social security in old age, illness or when they are unable to work.
42. Workers are recognised as having the right to strike under the terms of the law, and it is up to them to define the scope of professional interests to be defended, with the law establishing its limitations in essential services and activities, in the best interest of the unavoidable needs of society.
43. The right and duty to education are constitutionally guaranteed and education will never be confessional. The gradual promotion of free education and equal access for all citizens to the various levels of education is the task of the state. The state promotes the creation of private and co-operative schools.
44. All natural and legal persons are guaranteed, on equal and effective terms, the right to freely express and disseminate their thoughts by any means at their disposal, as well as the right to inform and be informed, and the right to reply and rectify, without hindrance or discrimination. These rights cannot be limited or censored, and the injured party has the right to compensation for the damage suffered.
45. Citizens have the right to form associations freely and without any authorisation, provided they are not intended to promote violence and their aims are not contrary to the law. Associations may freely pursue their aims without interference from public authorities and may not be dissolved by the state or their activities suspended except in the cases provided for by law and by court decision. Armed, military, militarised or paramilitary associations are not allowed, nor are organisations that promote racism and tribalism.
46. Freedom of the press is guaranteed to ensure respect for ideological pluralism. Radio and television stations may only be set up by means of a licence to be granted under the terms of the law. The state guarantees a press, radio and television service, independent of economic and political interests, which ensures the expression and confrontation of different currents of opinion.
47. Provision is made for the creation of a National Media Council, an independent body whose composition and operation will be defined by law.
48. A state of siege or state of emergency can only be declared, in all or part of the national territory, in cases of actual or imminent aggression by foreign forces, serious threat to or disturbance of democratic constitutional order or public calamity. Under no circumstances may it affect the rights to life, personal integrity and personal identity, civil capacity and citizenship, the non-retroactivity of criminal law, the right of defence of defendants, freedom of conscience and religion and entail the partial suspension of rights, freedoms and guarantees.

## **Legal framework**

### **The electoral system**

49. The matter of elections and the electoral system is expressed in the CRGB,<sup>8</sup> which has referred to a regulatory law, in this case the Electoral Law.
50. The President of the Republic and the Members of the National People's Assembly are elected by a free, universal, equal, direct, secret and periodic vote of registered voters.<sup>9</sup>
51. All Guinean citizens over the age of 18 have active electoral capacity for the presidential and legislative elections. Passive electoral capacity for the President of the Republic belongs to all Guinean citizens of origin, children of Guinean parents of origin, over 35 years of age in full enjoyment of their civil and political rights, regardless of their place

<sup>8</sup> See Articles 60, 63, 64 and 66 of the CRGB for the election of the President of the Republic and Articles 77 and 79 for the National People's Assembly.

<sup>9</sup> See Constitution of the Republic of Guinea-Bissau, Art. 2 (1); Art. 54; Art. 63-64; Art. 77 and 111. See also International Electoral Observation Law (Law 4/94); Electoral Law for the President of the Republic and the National Assembly (Law 10/2013, 23 April, revised by Law 10/2013 of 25 September); Electoral Registration Law (Law 11/2013, 23 April, revised by Law 11/2013 of 25 September) and the National Electoral Commission Law (Law 12/2013).

of residence, and, for passive legitimacy, all voting citizens over 21 years of age are eligible for the position of deputies to the National People's Assembly.

52. The electoral system for the presidential elections is based on a single constituency, with an absolute majority. If there is not an absolute majority, a second round of voting will be held within 21 days for the two most voted candidates, to exercise power for a five-year term, renewable only once.

53. As for the deputies, the rule is by constituency, with a total of 29, with the diaspora divided into Europe, one deputy, and Africa, one deputy. The d'Hondt method is used to determine the number of seats.

54. Other regulations on the electoral ballot are:

- (a) The Electoral Law for the President of the Republic;<sup>10</sup>
- (b) Electoral Census Law;
- (c) Law on the National Electoral Commission;
- (d) Electoral Observation Law.

55. Despite the legal provision for elections to take place, as a rule, between 23 October and 25 November, except in situations where the President of the Republic is vacant or Parliament is dissolved, in which case the President sets the date for the next elections 90 days in advance, this legally established timetable has never been respected.

56. The right to vote is personal, non-transferable and inalienable, and exercising it is a civic duty, even though the law provides for visually impaired people to be accompanied in exercising this right. Voter registration is an indispensable condition for exercising the right to vote and is unofficial, compulsory, permanent and unique for all elections.

57. Candidates for the presidential and legislative elections cannot be prosecuted and arrested during this period, except in the case of flagrante delicto for offences punishable by a higher penalty. If criminal proceedings are brought against a candidate who is not in pre-trial detention, the proceedings will only continue after the election results have been announced.

58. The electoral process takes place throughout the national territory and abroad where people must vote and implies freedom of propaganda, except for limits imposed by the Electoral Law, and the dissemination of polls is also prohibited.<sup>11</sup>

59. Candidates and their representatives enjoy full freedom of expression and information, without prejudice to civil or criminal liability, under the terms of the law. The media and their agents may not be sanctioned for acts committed during the campaign, without prejudice to civil or criminal liability, which can only be realised at the end of the campaign.

60. Meetings and demonstrations can be held at any time and day, within the limits of the Public Order established for the regular maintenance of traffic and rest for citizens. Candidates' representatives must request the presence of Public Order Police officers at meetings and demonstrations they organise, and the organiser is responsible for maintaining order if they fail to do so. During the electoral campaign period and for electoral purposes, freedom of assembly and demonstrations is governed by the provisions of Law No. 3/92 of 6 April.<sup>12</sup>

61. A number of guarantees are reserved regarding transparency in the use of candidates' Electoral Process Financing, which may consist of state contributions, contributions from similar parties, voluntary contributions from voters, contributions from candidates and political parties themselves, and the proceeds of electoral campaign activity. Direct funding of electoral campaigns by foreign governments and foreign governmental organisations is prohibited. The Electoral Law provides for the itemisation of campaign income and the

<sup>10</sup> Idem.

<sup>11</sup> See articles 32 and 33 of the Electoral Law, Law No. 03/98, of 23 April, revised by Law No. 10/2013, of 25 September.

<sup>12</sup> Law on Freedom of Demonstration and Assembly.

rendering of accounts within thirty days of the official announcement of the election, but this provision has never been applied.

62. The institution in charge of the electoral process is the National Electoral Commission (CNE), which carries out elections and referendums.

63. The CNE is an independent body under the supervision of the People's National Assembly, responsible for overseeing, organising and managing the electoral and referendum process and conducting electoral education. The CNE is made up of an Executive Secretary at central level and nine regional electoral commissions. It is made up of representatives of the Presidency of the Republic, the Government, a representative of each party or candidate contesting the elections and a representative of the National Media Council.

64. The Executive Secretariat is made up of four members from among Guinean citizens of high civic standing, preferably magistrates of the second instance, elected by two-thirds of the Members of the ANP in office, for a non-removable four-year term.

65. Another body with powers to intervene in the electoral process is the Technical Support Office for the Electoral Process (GTAPE),<sup>13</sup> under the supervision of the Ministry of Territorial Administration, which plans, coordinates, develops and ensures that the census is carried out, organises and carries out the annual registration of voters, compiles census statistics, and provides the logistical, financial and administrative support needed to carry out the census. Electoral activities in the diaspora, including voter registration and voting, are the responsibility of the Ministry of Foreign Affairs and Communities. Other institutions, such as the Supreme Court of Justice, are involved in the electoral processes, namely in the verification and certification of candidates and the handling of judicial appeal procedures.

66. The regional court in the area where the irregularity occurs is responsible for guaranteeing the electoral process during the registration phase; in the other phases, the Public Prosecutor's Office and the National Electoral Commission are responsible for challenging them. The Public Prosecutor's Office also monitors the entire process of voting and tabulation of results, signing the minutes of the regional tabulation with all the other parties involved in the process.

67. In order to guarantee greater transparency in the electoral process, the Electoral Observation Law was created,<sup>14</sup> with the aim of allowing foreign and neutral entities to be transparent throughout the process by monitoring the registration phase, the organisation, the conduct of voting acts, the tabulation and validation of the ballot by international observers.

68. International observation, which begins with voter registration and ends 30 days after the elected bodies are sworn in, is made up of observers from the Community of Portuguese-Speaking Countries (CPLP), the African Union (AU), the European Union (EU) and the United Nations (UN).

69. The electoral cycle has not yet been completed, with the local elections still to be held, nor have the legal provisions for these elections been finalised, since the Electoral Law for the President of the Republic and the ANP does not provide for any provisions in this area.

70. The electoral processes have been supported by bilateral and multilateral partners since the political opening in 1994. The main bilateral partners have been Portugal, France, East Timor and Nigeria. The multilateral partner is the United Nations Organisation - with the UNDP at its head. Thanks to financial and technical support from the Republic of Timor-Leste, the country was able to introduce a biometric census system and issue cards of the same type. To support the budget for the process, the government of the ninth legislature created the democracy tax - Law No. 1/2021 of 28 January, the aim of which is to guarantee the holding of democratic elections in Guinea-Bissau, as an act of sovereignty, with tax levied on labour income in cash or in kind, whether it results from subordinate employment relationships, service contracts or the exercise of a self-employed liberal profession. For the first time, the legislative elections of 4 April 2023 received 75% of their funds from this tax.

<sup>13</sup> See Dec-Law No. 02/2005, of 15 May, Art. 1 and 2.

<sup>14</sup> Law No. 04/1994, of 9 March.

## Right of Association

### *Legal framework for implementing political associations*

71. The CRGB<sup>15</sup> states that, in the Republic of Guinea-Bissau, political parties are free to form, whose top leaders must be Guinea-Bissau citizens, for the organisation and expression of popular will and political pluralism, and their organisation and operation must comply with democratic rules.

72. The formation of regional or local parties that evoke the name of a person, church, religion, confession or religious doctrine, or that encourage racism or tribalism, or those that propose to employ violent means in pursuit of their ends, is excluded.

73. In order to achieve their objectives, in addition to contributing in general to the development of political institutions, parties should propose to:

- (a) Contribute to the exercise of citizens' political rights and to the determination of national policy, namely through participation in elections or other means of democratic expression;
- (b) Participate in the activities of state and local authorities;
- (c) Criticise the actions of the government and public administration;
- (d) Study, debate and comment on the problems of national and international life;
- (e) Promote citizens' civic education and political enlightenment.

74. No later than ninety days prior to the legislative elections, the competent Party bodies shall notify the Supreme Court of Justice in writing of the number of militants registered with the Party.

75. Political parties represented in the National People's Assembly that are not part of the government enjoy the right to democratic opposition, under the terms of the constitution and laws.

76. Democratic opposition includes the right to:

- (a) Be informed regularly and directly by the government on the progress of the main issues of public interest and to inform the president of the Council of State and the government of its points of view;
- (b) Participate in all official acts and activities that, by their nature, justify their presence and speak out and intervene publicly by constitutional means on issues of relevant public interest;
- (c) Be consulted in advance by the government regarding the dates of local elections and the general guidelines for foreign policy, national defence and the fundamental options of the State Plan and Budget;
- (d) Collaborate in the preparatory work ordered by the government for the drafting or revision of legislation on political parties and elections;
- (e) Radio and television broadcasting rights, as well as the right to press space belonging directly or indirectly to the state, under the terms of the press law and other specific legislation;
- (f) Right of reply, in the media directly or indirectly belonging to the state, to the government's political statements, under the terms of the Press Law.

77. The formation of any political party does not require authorisation, but only registration in the appropriate register at the Supreme Court of Justice. The application for registration must be signed by at least 2,000 (*two thousand*) members, without distinction as to race, colour, sex, social, intellectual or cultural level, religious belief or philosophical conviction.

<sup>15</sup> Art. 4 CRGB.

78. The application for registration must be accompanied by a document proving the electoral capacity and residence of the applicants, as well as the draft statutes and programmes, name and acronym.

79. The signatures on the application, made on plain paper and exempt from stamp duty, will be attested free of charge by the notary or administrative authority of the applicant's place of residence. If the applicant is unable to sign their name, they will affix their fingerprint before the aforementioned organisations, which will attest to their identity either on personal knowledge or on the testimony of two witnesses.

80. It is the responsibility of the President of the Supreme Court of Justice to assess the application for registration, and his decision, which must be published in the Official Bulletin, may be appealed to the plenary of the same Court, within 5 days of the date of publication. The decision of the President of the Supreme Court must be taken within 8 days. The appeal will be decided within 5 days.

81. Parties are extinguished by dissolution decided by the competent statutory bodies, by a finding by the Supreme Court of Justice that the number of militants is less than one thousand (1,000), or by dissolution decreed by the Supreme Court of Justice, for violation of the Constitution, this law or when the party pursues its activities employing subversive or violent methods or using military or paramilitary structures.

#### *Trade union associations*

82. The country has always had trade unions and organisations representing workers, women and young people within the single party. Trade union organisations with democratic origins took shape with the opening up of multi-party politics.

83. The National Union of Guinean Workers (UNTG) ceased to belong to the PAIGC party and went its own way to represent affiliated workers.

84. With the advent of multi-party politics in 1992, the creation of several workers' and employers' unions was opened up. As far as the civil service is concerned, the exercise of freedom of association will be governed by the Freedom of Association Act until its own laws are created.

85. The Freedom of Association Act<sup>16</sup> guarantees the right to form associations to defend and promote socio-professional and socio-economic rights and interests.

86. In carrying out their activities, workers' and employers' unions are autonomous in relation to each other, and therefore all acts of interference, both direct and indirect, are prohibited.

87. The legality of associations and the actions of their leaders is controlled by the courts.

88. Associations are governed by statutes approved at a general meeting. They are free to organise their management, activities and define action programmes, and their governing bodies must be elected freely and democratically from among the members.

89. In exercising their right to freedom of association, workers may not be discriminated against in their employment or suffer any detriment at work because they are or are not members of a workers' association or withdraw from it according to their free will and choice. Workers also have the right to:

- (a) Only pay membership fees for the associations in which they are registered;
- (b) Participate in the activities of the associations to which they are affiliated, namely by electing or being elected to their governing bodies and attending their general meetings, when in full possession of their associative rights.

90. The defence and promotion of the rights and interests of their members is the responsibility of workers' and employers' associations, namely by:

- (a) Concluding collective labour agreements;

<sup>16</sup> Law No. 8/91, of 3rd October.

- (b) Participating in the prevention and resolution of labour conflicts;
- (c) Creating within their respective associations information and legal assistance services on matters relating to individual and collective labour relations;
- (d) Cooperating with the General Inspectorate of Labour and Social Security in monitoring the application of labour and social security legislation and compliance with the provisions of collective bargaining agreements;
- (e) Promoting trade union training for its members;
- (f) Providing its members, on a non-profit basis, with services of an economic, social or cultural nature; they may promote the creation of institutions for this purpose;
- (g) Performing other duties assigned to them by law or arising for the country from its status as a member state of the International Labour Organisation or other international organisations.

91. Within the framework of national legislation, workers' and employers' associations also have the right to consultation in the following areas of policy-making:

- (a) Employment, training and professional development;
- (b) Hygiene. Safety and the working environment;
- (c) Wages and productivity;
- (d) Labour and social security legislation.

92. In areas relating to labour policy, workers' and employers' associations will have a seat on any tripartite bodies that may be set up.

93. Workers' and employers' associations may not engage in the production or commercialisation of goods or services or in any way intervene in the market or compete with economic agents.

94. These are guarantees for the leaders of workers' associations:

- (a) Not being transferred from their workplace without their agreement;
- (b) Not being dismissed, except for serious disciplinary misconduct;
- (c) Having preference in keeping their job in the event of dismissal for economic reasons;
- (d) Not being discriminated against in terms of pay, career and working conditions because of their job;
- (e) Having time off to carry out their trade union duties;
- (f) The final decision on dismissal can only be taken after a period of 15 days has elapsed following consideration of the opinion issued by the association;
- (g) In order for managers to enjoy the guarantees set out in this article, workers' associations must notify the employer of the capacity in which they are invested, and the managers themselves must give at least one day's notice to company officials whenever they intend to use the five days' time credit.

#### *Associations and NGOs*

95. With independence, the direction taken was that of a corporatist society, based on the communist system,<sup>17</sup> due to structural changes. Particularly at the beginning of the 1980s, the first opening to the market economy took place,<sup>18</sup> with the liberalisation of trade, followed in 1991 by multiparty and social opening, with the adoption of a new constitutional text and the advent of civil society organisations.

<sup>17</sup> CRGB of 24 September 1973, promulgated on 04/01/75, arts. 4, 5 and 6.

<sup>18</sup> CRGB of 1984, 1st Constitutional Revision.

96. It is true that the Portuguese civil code of 1966,<sup>19</sup> in force in Guinea-Bissau, provided for the creation of legal persons, defining them as: associations whose purpose is not the economic profit of their members and foundations of social interest. Notwithstanding these rules, the figure fell out of use after independence and was only revived with the 1991 constitution.

97. In the new constitutional text, freedom of association is enshrined in Article 55, opening up the creation of associations and NGOs.

98. The term Civil Society Organisation (CSO) is not legally enshrined in the Guinean legal system. Its use on the national stage has acquired practical legitimacy insofar as it manages to encompass the different types of organisations that exist, and is therefore the embodiment of a dynamic that aims to promote the inclusion of the different types of organisations operating in the country.<sup>20</sup>

99. In infra-constitutional terms, it is possible to identify a set of dispersed laws that regulate the intervention of CSOs, namely:<sup>21</sup>

- Decree No. 23/92 of 23 March, which regulates the creation and exercise of the activities of national non-governmental organisations in Guinea-Bissau;
- Decree No. 2/93 of 9 March, which establishes 12 February as National NGO Day;
- Law No. 26/93 of 15 March, which regulates the control of customs exemptions for imports made by the entities it mentions, including NGOs;
- Law No. 2/95 of 24 May, which regulates the possible situations in which tax and customs exemptions can be applied;
- A special regime for co-operatives set out in the OHADA Uniform Act on Co-operative Societies;
- Law No. 08/1992, which regulates trade union freedom;
- Law No. 18/2011 (popularly known as the patronage law), which determines that donations granted to beneficiary organisations under the terms of this legislation are considered costs or losses for the year.

## **The application of the Covenant in the Guinean legal order**

100. There is no express constitutional provision on the incorporation or reception of international law into the Guinean legal system. However, with regard to the application of international law, Article 29 of the CRGB states that the fundamental rights enshrined in the Constitution do not exclude any others contained in other laws of the Republic or in the applicable rules of international law, and also states that the constitutional and legal provisions relating to fundamental rights must be interpreted in harmony with the Universal Declaration of Human Rights.

101. From the above text, it can be inferred that the constitutional text of Guinea-Bissau inculcates a clear idea that the legal basis for the adoption of international commitments and for the interpretation of the rules of domestic law by the state consists of the acceptance of the rules of international law as a yardstick or parameter by which domestic rules must be interpreted.

102. Thus, it is established that the commitments made by the country in terms of international law, both at the level of the United Nations and at the level of the African Regional Organisations (AU, ECOWAS, OHADA and UEMOA) have direct applicability

<sup>19</sup> Decree-Law No. 47 344 of 25 November 1966.

<sup>20</sup> See “Quadro legal relativo à intervenção das OSC na Guiné-Bissau: desafios, perspectivas e recomendações para a melhoria” [Legal framework for CSO intervention in Guinea-Bissau: challenges, perspectives and recommendations for improvement] Cleunismar Silva and Melisiana Rodrigues Diasso, project “Tanda guiné djunto” pp. 16, §9.

<sup>21</sup> Ibidem, p. 18.

and immediate effect in the domestic legal order, and revoke any previous or subsequent contrary domestic rule.

103. Guinea-Bissau's domestic law is structured around international law and constitutional norms in the same hierarchical position, laws, produced by the National People's Assembly and decrees for the government in the same hierarchical position, in the competitive sphere, decree-laws.

104. Several training programmes on human rights were given with UNDP support, both at public and private level (Associations, Trade Unions, NGOs). The Project Support for the Rule of Law and Justice 2021 was implemented by the Ministry of Justice and Human Rights and the Court of Auditors, the parties involved were the Supreme Court of Justice, the Attorney General's Office, the Bar Association (OAG(B), GICJU, CNDH, CENFOJ, CENTIF, PJ and CSOs. Another project, entitled "Improving the human rights protection system in Guinea-Bissau", has been underway since 16 December 2021 and will end on 16 December 2024. It consists of large-scale support, budgeted at USD 3,333,349.82, from various UN agencies such as UNDP, UNICEF and OHCHR, UNICEF and OHCHR, providing for various results, including "Transformative and inclusive governance, encompassing respect for the democratic rule of law and peacekeeping", cross-cutting support for the protection of human rights and the implementation of the SDGs. The Ministry of Justice and Human Rights created the Thematic Group for Justice and Human Rights to monitor the reform of the justice sector. CENFOJ runs human rights training courses for GN and POP, and for new entrants to the judiciary a plan has been drawn up with complementary classes for trainees. With regard to the continuing training of magistrates, the institution carries out specific training every year on human rights situations. The OAGB includes the subject of human rights in the initial and ongoing training of lawyers. In 2022 a course was given on Onusian Mechanisms for the Protection of Human Rights, and in 2023 another course is planned on the subject of "Advocacy and Citizenship", which will focus entirely on the protection of human rights. However, more training for judicial and legal actors is still needed.

105. The International Covenant on Civil and Political Rights has always been invoked in the Guinean legal system since its entry into force, although it is not the only legal basis on which the law enforcement bodies have relied to justify their decisions or as a way of protecting the subjective rights of the parties, even when the Court wants to go beyond the limits of the application of the rules. A recent case illustrates the invocation of the International Covenant on Civil and Political Rights<sup>22</sup> for the interested party to assert their subjective right.

#### **Information on customary law**

106. Although the majority of Guinean society is governed by customs, rooted in the more than twenty ethnic groups that make up the country's population structure, positive law prevails in organisational terms, transposed into codes and laws, with only very limited use of customary law in the internal legal order, provided that it does not contradict the laws or the norms of international law, both general and particular.<sup>23</sup>

107. Uses and customs are sources of law,<sup>24</sup> together with the Organic Law on Sector Courts,<sup>25</sup> which aims to resolve conflicts on a community basis and according to the laws in force in the community, based on the criteria of orality, simplicity, informality, procedural economy and speed, seeking conciliation between the parties whenever possible. The court is made up of a judge and two assessors from among individuals with knowledge of the local culture and normally deals with small claims and offences, specifically those whose value is within 1,500,000.00 XOF, which can include claims for payment of debts, rents and

<sup>22</sup> This is the case of the former Prime Minister of the 1st constitutional government of the 9th legislature who brought an action before the ECOWAS court invoking the pact, for violation of his right as a citizen.

<sup>23</sup> Article 3 of the Civil Code.

<sup>24</sup> Idem.

<sup>25</sup> See Decree-Law 6/93 of 13 October, the Organic Law of the Sector Courts and the Statutes of their Judges.



compensation, claims arising from contracts of employment and provision of services, claims for restitution of movable property, and other claims arising from customary law at the request of the parties, in criminal cases, non-maritime transgressions and misdemeanours and crimes that carry a prison sentence of up to 2 years, with or without a fine, or only a fine.

108. The decisions of the sectoral courts can always be appealed without any formalities, it is enough for the losing party to declare that they do not agree with the decision. The appeal can be written or verbal and does not need to be motivated, but is communicated by the court to the opposing party, dictated in the minutes when formulated at the hearing and, when presented outside of the hearing, is reduced to the minutes by the court.

109. The constitutional principle of Art. 24 is practically sacrosanct and in matters that jeopardise equality between men and women it is always applied across the board by the courts, with customary rights being ruled out.

## **Human rights protection institutions**

### **The National Human Rights Commission**

110. The CNDH<sup>26</sup> was created by Decree 6/2009 and is a state body responsible for the protection, promotion, observance and defence of human rights in Guinea-Bissau. It also acts as an advisory body to the government and monitors public policies in this area.

111. The Commission's duties include contributing to the promotion and strengthening of respect for human rights, as well as acting as a body for vigilance, early warning, consultancy, monitoring and investigation in human rights matters, such as: promotion and education, participation in the definition and implementation of public policies, making recommendations regarding national legislation and public policies, drafting and submitting draft laws to the government, providing consultancy to the government, investigating situations that offend human rights and linking international law to domestic norms.

112. Although covering overall expenditure remains one of the objectives, the Commission benefits from its own budget allocated by the Ministry of Finance to cover administrative costs.

### **The tutelage of the National Human Rights Commission**

113. The National Human Rights Commission is under the supervision of the Prime Minister. The President of the Commission is appointed by the Council of Ministers on the proposal of the Minister of Justice for a four (4) year renewable term.

114. The structure and composition of the Commission follows a participatory process involving government departments linked to human rights, representatives of judicial institutions, academics, civil society organisations and religious institutions.

115. The government is working to strengthen the Commission's response capacity and to reinforce its administrative, patrimonial and financial autonomy in order to ensure that its bodies are more independent from other state structures.

116. In order to achieve the objectives described above, the government approved the National Strategy for Human Rights and Citizenship 2022–2026 and the respective Action Plan, always endeavouring to ensure a significant investment of human and financial resources, particularly in efforts to make the work of the National Human Rights Commission accessible to communities.

117. There is a project to amend the current statutes of the National Commission for Human Rights, the aim of which is to reform its autonomy and independence in line with the Paris Principles and thus enable it to be accredited by the Global Alliance of Human Rights Institutions.

<sup>26</sup> National Human Rights Commission, created by Decree No. 6/2009, published in the Official Bulletin on 15 February 2010.

## Work carried out by the CNDH since its creation

118. The functioning of the CNDH<sup>27</sup> throughout its creation has had several setbacks due to a lack of financial means, despite the budget provided for in the General State Budget, in order to fully fulfil its mission. Some efforts have been made, such as paying the rent for the house where it operates and some support from the Ministry of Justice and Human Rights in allocating small amounts of money to run the structure, which although made up of no more than five members, has no defined status, apart from the President who has an effective relationship with the state.

119. Most of the Commission's work is funded by international organisations such as UNICEF, UNDP, UNIOGBIS and the AU, although there has been state support for certain actions such as visits to prison centres and investigations into human rights violations in the regions.

120. The general aim of the Strategy is to enable everyone to enjoy human rights effectively, by strengthening institutional mechanisms and actions to promote, protect and monitor human rights, fostering changes in attitudes and behaviour and inclusive dialogue between all government sectors and civil society, contributing to the consolidation of the democratic rule of law and the sustainable development and stability of the Bissau-Guinean nation. The axes on which the Strategy is based are:

- Axis 1: National Human Rights System;
- Axis 2: Promotion and Culture of Human Rights;
- Axis 3: Participation and Access to Justice;
- Axis 4: Education, Health and Standard of Living;
- Axis 5: Equality, Non-discrimination, Diversity and Inclusion;
- Axis 6: Combating Trafficking in Human Beings.

121. Other relevant actions over the last five years have been chronologically as follows: Training and awareness-raising on the protection of women and girls during confinement; Awareness-raising against witchcraft and popular justice; Awareness-raising and training (*djumbai*) on the Land Law and its Regulations; Workshop on the dissemination of the recommendations of the 3rd cycle of the Universal Periodic Review specifically on the rights of children and girls; Presentation of the periodic report on the human rights situation in Guinea-Bissau; Radio awareness programme on human rights, training on human rights, the right to freedom and the right to demonstrate for security and military forces; Cycle of lectures in educational establishments on human rights and the environment; Visit to regional education offices to find out about the situation of school drop-outs. A meeting was organised with the Minister of Education to discuss the issue of strengthening the education curriculum and teaching human rights.

## III. Anti-corruption measures (Arts. 2 and 25)

### Anti-corruption measures

122. As far as anti-corruption measures are concerned, the constitution of the Republic is practically silent, but it does say the following: "Holders of political office shall be politically, civilly and criminally liable for the acts and omissions they practise in the exercise of their functions".<sup>28</sup>

<sup>27</sup> Report on the activities carried out by the CNDH over the last three years (2020 to 2022).

<sup>28</sup> See Art. 61 of the CRGB.

123. The Penal Code<sup>29</sup> is the repository of the main rules regulating anti-corruption measures and fraud, such as misappropriation of assets, breach of integrity and illegal acts culminating in fraudulent declarations, with penalties ranging from one month to 10 years in prison for cases of corruption on the part of the authorities.

124. The Law on Money Laundering,<sup>30</sup> the Law on Political Office Holders<sup>31</sup> and the Law stipulating the obligation for political and government office holders to declare their income<sup>32</sup> are key in this regard. For example, in March 2020, the Cacheu Regional Court sentenced a number of people for money laundering in the Operation Navarra case.<sup>33</sup>

125. The law on the declaration of income was never taken into account.

126. Guinea-Bissau is a party to several international, regional and sub-regional conventions, treaties and protocols aimed at combating corruption and good governance, including; the United Nations Millennium Declaration (MDG)<sup>34</sup> and Sustainable Development Goals (SDG),<sup>35</sup> the United Nations Convention against Transnational Organised Crime (Palermo Convention), the United Nations Convention against Corruption (Merida Convention), the United Nations Convention against Drug Trafficking, the United Nations and African Union Convention against Terrorism and its Financing, the African Union and ECOWAS Convention against Corruption, the ECOWAS Protocol on Democracy and Good Governance, the WAEMU Directive on Transparency in Public Finance Management, the WAEMU Law on Public Procurement and Delegation of Public Services. Decree-Law 02/2012, Public Procurement Code. Decree-Law 01/2012, Public Procurement Regulation Authority.

127. At an advanced stage of drafting is the Access to Information Law, which is currently being finalised and is expected to be enacted soon.

128. The Access to Information Law lays down the following principles: equality, proportionality, fairness, impartiality, transparency and collaboration with individuals, publicity, speed and gratuity.

129. At the infra-legislative level, in 2022 the government of Guinea-Bissau, concerned about the issue of corruption, drew up the National Strategy to Combat Corruption<sup>36</sup> and the National Integrated Plan to Combat Drugs, Organised Crime and Risk Reduction.<sup>37</sup>

130. At the level of the Public Prosecutor's Office, and through the Office for the Fight against Corruption and Economic Offences (GLCCDE),<sup>38</sup> the "Strategic Plan to Combat Corruption" was drawn up, called "The Public Prosecutor's Office – The Citizen's Eye".

131. In order to materialise the anti-corruption policy, despite the difficulties in its implementation, the government, with financial support from the UNDP<sup>39</sup> created a project to support the Rule of Law and Justice in which substantial support was given to the judicial system in general, the Court of Auditors, CENTIF, Centre for Access to Justice, the Bar Association and Justice Officials in training and capacity building in the fight against corruption, improvement of the legal framework, support and capacity building for Civil

<sup>29</sup> See the Penal Code, Decree-Law No. 4/1993, 6th October 1993, Art. 145 and ss, Art. 148, Art. 170, 171, 174 and ss, 199 and ss and above all the rules of Art. 247, all of the Criminal Code.

<sup>30</sup> Law No. 3/2018, 26 July 2018.

<sup>31</sup> Art. 17 to 21 of Law No. 14/1997, 24 November 1997.

<sup>32</sup> Law No. 7º/99, of 7 September.

<sup>33</sup> Judgement of the Regional Court of Cachéu, Case No. 13\2020, of 31 March 2020, Operation Navarra.

<sup>34</sup> MDGs, Millennium Development Goals. This Declaration was adopted by Guinea-Bissau at the United Nations General Assembly in September 2000. In 2015, the country committed itself to implementing these goals with a focus on the social sectors, namely health and education.

<sup>35</sup> In September 2015, 193 countries, including Guinea-Bissau, adopted the new World Programme for Sustainable Development for the period 2015-2030, called the 2030 Agenda (SDGs).

<sup>36</sup> National Anti-Corruption Strategy (2021 to 2030).

<sup>37</sup> National Integrated Plan to Combat Drugs, Organised Crime and Risk Reduction (2021 to 2017).

<sup>38</sup> The Office for Combating Corruption and Economic Crime was created by Order No. 30 G/GPGR/02 of 10 September 2002. It specialises in combating economic and financial crime.

<sup>39</sup> UNDP Rule of Law and Justice Programme in Guinea-Bissau, 2016 to 2020.

Society Organisations in the fight against corruption with a greater focus on monitoring and reporting cases.

132. Measures at the Court of Auditors include supporting the diagnostic study on the Court of Auditors' capacities in accountability and transparency, reviewing the Court of Auditors' regulatory framework, supporting the implementation of the Court of Auditors' strategic and operational plan, supporting the Audit and Verification capacities, purchasing computer equipment, an internet server and office furniture.

133. The Court of Auditors has never judged public accounts.

134. In both magistracies, the actions include structural support for the implementation of the plan to train and coordinate judicial actors, namely specialised training for the Supreme Judicial Councils in supervisory techniques and procedures.

135. Civil Society Organisations also benefited from support: the Guinea-Bissau Bar Association received important logistical support, a grant agreement was signed with the Guinea-Bissau Association Against Corruption to carry out an awareness campaign on asset declaration and training for news agencies and other CSOs on preventing and reporting corruption.

136. In terms of government policies, the Ministry of Justice and Human Rights drew up the aforementioned National Anti-Corruption Strategy (2021–2030), which was approved in 2022.

137. The Strategy's objectives are: to promote a culture of integrity, transparency and accountability; to promote public awareness of the corrosive nature of corruption; and to increase the effectiveness of institutions for preventing and combating corruption. The state is seeking financial support to continue its implementation.

138. The Ministry is also seeking support to implement various anti-corruption initiatives, such as the Global Pladoyer initiative on "UN Norms and International Standards" in the fight against corruption, Aid Effectiveness, Partnership for Open Government and Support for South-South Co-operation, as well as the exchange of knowledge on the preparation and application of asset declarations.

139. The UNDP has already supported the implementation of some of these initiatives. In addition, the Ministry itself, as part of its sub-regional commitment to the fight against money laundering and illicit financial flows, has already carried out two mutual evaluations (2020 and 2022)<sup>40</sup> which resulted in the National Anti-Corruption Strategy.

140. The Asset Recovery Office, which aims to promote financial investigations in parallel with criminal investigations in order to freeze, confiscate and recover assets of illicit origin in favour of the state, and the Asset Administration Office,<sup>41</sup> which aims to administer assets declared forfeit in favour of the state, were created by regulatory order, which sets out the composition and coordination of the offices and appoints<sup>42</sup> the members of the structures responsible for pursuing financial investigations into illicit financial flows, despite the fact that there are difficulties in the functioning of the structure due to the lack of headquarters and budget allocation for its operation.

141. The commitments to the fight against corruption and its dissemination and to awareness-raising also had the important support of His Excellency the President of the Republic who, on the International Day Against Corruption,<sup>43</sup> 9 December 2022, attended and presided over the event.

142. The government has yet to effectively implement the law and there are indications that state authorities may be linked to corrupt and non-transparent practices with impunity,

<sup>40</sup> 2nd Mutual Evaluation Round 15 February 2022.

<sup>41</sup> Decree No. 9/2018 of 14 December 2018.

<sup>42</sup> Order No. 31/MJ/2020, of 25 August", which defined the competences of the two Offices and established their composition and coordination. This was followed by two Orders (no. 35/MJ/2020 and No. 36/MJ/2020) appointing the individuals who would become part of the Offices.

<sup>43</sup> Ceremony to mark anti-corruption day.

some judicial investigations in this matter have been carried out<sup>44</sup> but, for structural reasons, no case has yet been tried. Furthermore, as is to be expected, investigations and measures to fight corruption are heavily politicised.<sup>45</sup>

143. Despite the existence of the law on public employment,<sup>46</sup> access to public service by competitive examination does not occur very often and when it does, it is highly susceptible to political interference, so choices are made outside the legal criteria.

144. When it comes to judgements on crimes against public property, the state has had some results, such as the case of the Ministry of Health and other state assets and interests.

145. *Transparency International's* Corruption Perception Index 2021 puts Guinea-Bissau in 162nd place, with 21 points.

## Transparent management of natural resources

146. The CRGB says very little<sup>47</sup> about the environment and natural resources;<sup>48</sup> the management and valorisation of the environment and natural resources can be found in infra-constitutional legislation.

147. Most of Guinea-Bissau's population lives in rural areas and their livelihoods depend on the sustainable use of natural resources. Environmental conservation is fundamental to poverty reduction and the enjoyment of human rights. Agricultural and fishing activities account for around 46 per cent of GDP. Guinea-Bissau is a country rich in natural resources, including mineral deposits, rich biodiversity and extensive fishing and forest areas (72 per cent of the land are(a)<sup>49</sup> which constitute enormous potential for sustainable development.

148. The country has approximately two (2) million hectares of forest cover (71 per cent of the national territory). It has good rainfall, varying between 1500 and 2500 mm/year in the coastal zone and between 1000 and 1500 mm/year in the other zones. Its water potential is estimated at 130 km<sup>3</sup> /year in surface water and 45 km<sup>3</sup> /year in groundwater. The natural capital also includes soil, minerals and animals, as well as natural habitats and ecosystems protected in national parks and a continental shelf that harbours rich and diverse fishing resources. Land for agro-pastoral purposes represents an area of 1,110,000 ha, or 32 per cent of the total area. In fact, it has the highest proportion of natural wealth *per capita* in West Africa.

149. The fisheries sector accounts for the second largest share of GDP, the existing biomass shows a total of 723,017 tonnes, broken down into Cephalopods 19,769 (Ton), Crustaceans 10,843 (Ton), Demersal fish 352,405 (Ton) and Pelagic fish 340,000 (Ton).<sup>50</sup> In the field of fisheries, the sector's legal and regulatory framework was updated in 2011, with the publication in the Official Bulletin of the following legislation: (i) Fish Inspection Regulations (Decree-Law No. 9/2011); (ii) General Fisheries Law (Decree-Law No. 10/2011); and (iii) Artisanal Fishing Regulations (Decree No. 24/2011). The Regulations for the operation of the VMS, the National Institute for Fisheries Research and Oceanography

<sup>44</sup> These are the cases of Arroz do Povo [the People's Rice] (a gift from the Chinese government that was embezzled by the Minister of Agriculture), the case of 12 million dollars given by the Angolan government, cases of embezzlement in the Ministry of Finance judged in 2012 (with appeals) and the recent cases of 3 billion XOF embezzled by Ministry of Finance officials, etc.

<sup>45</sup> This is the case with the Corta-Unha and Arroz de Povo operations.

<sup>46</sup> Decree-Law No. 5/2012 of 18 October, Diploma on General Principles in Public Employment.

<sup>47</sup> United Nations Framework for Co-operation on Sustainable Development for Guinea-Bissau 2022-2026.

<sup>48</sup> See Art. 8/1 and 2 and Art. 10 "The Republic of Guinea-Bissau shall exercise its sovereignty over all living natural resources in its territory and EEZ and shall exercise exclusive competence in the conservation and exploitation of living and non-living natural resources".

<sup>49</sup> UNDP, Human Development Report 2013, p. 193.

<sup>50</sup> See data from the research campaigns carried out in 2013 and 2019 by ATLANTINIRO and the Spanish Institute of Oceanography (IEO), respectively in collaboration with the Centre for Applied Fisheries Research (CIPA).

(INIPO), the measures taken against Industrial and Related Fishing Operations, the creation of the National Service for the Inspection and Control of Fishing Activities (FISCAP). The Strategic Fisheries Development Plan (2015 - 2020), approved by the government in 2014, the 2020 fisheries resource management plan, the FAO Code of Conduct for Responsible Fisheries, the Ecosystem Approach to Fisheries Management (EAF), the Convention on Ecological Biodiversity of the World Summit on Sustainable Development.

150. The guarantee of sustainable development is anchored in various public policies for the conservation of biodiversity<sup>51</sup> through the creation of natural parks for nature conservation<sup>52</sup> for the benefit of local communities, a moratorium on tree felling, although recently lifted, the imposition of a biological rest period,<sup>53</sup> the ban on monofilament fishing nets, the reinforcement of surveillance in the EEZ, particularly in the coastal zone (inland waters), the maintenance of the annual assessment of the biomass of demersal and pelagic species as an indicator of the state of the stock, the adoption of minimum mesh sizes for fishing nets (70 mm for fish fishing; 70 mm for cephalopod fishing; and 50 mm for crustacean fishing), a ban on catching endangered species (sea turtles, manatees, sawfish, sharks, rays, dolphins and birds), the installation of a 30,000 tonne floating tanker and a 2,000 tonne floating tanker to sell fuel. The construction of a ship chandler was another pertinent measure in the conservation of fish stocks, allowing fishing vessels to be supplied in a controlled manner and also enabling taxes to be collected. The zone reserved for artisanal fishing is inland waters and the territorial sea, while industrial fishing is beyond 12 miles from the baseline, in accordance with the General Fisheries Law.<sup>54</sup> Acquisition of three *vedetas* [coastal patrol vessels] - pneumatic speedboats of at least 42 metres in length and of compatible capacity for monitoring fishing activities in waters under national sovereignty and jurisdiction. Acquisition of four small boats for inspection in the outposts - regions of the country.

151. Other sources of transparent management of natural resources are the environmental impact assessment law,<sup>55</sup> the regulation of the Land Law,<sup>56</sup> the Land Law,<sup>57</sup> which are fundamental to land management, spatial planning and environmental governance in Guinea-Bissau. These instruments have three objectives for land use and management, such as: guaranteeing land to local communities to the extent that they can use it economically; incorporating the customary land regime into positive law, as well as the institutions that represent them; stimulating investment in land by creating a market value for land.<sup>58</sup>

152. Therefore, soil protection is of general interest and forms part of environmental protection and sustainable development policies; Soil is a common heritage and a non-renewable natural resource of vital importance for present and future humanity; The use of soil will take into account the multiplicity of its ecological functions and its consideration as a limited resource; Soil protection should be taken into account in the definition of agricultural, forestry, industrial, transport, town and country planning policies; Soil protection policy should be accompanied by a process of information and citizen participation.

153. The state recognises resident populations' right to community management and exploitation of land, forests and other natural resources, in accordance with local customs and practices. Local communities shall exercise management powers in accordance with their respective customs and practices, over the entire area situated within their historical and territorial boundaries, including inhabited, cultivated and fallow areas, areas of common use, pastures, water and maritime resources, sacred forests or those destined for other social, cultural and economic purposes, and the Land Law shall apply where it does not.

<sup>51</sup> The country has 26 per cent of its territory as a protected area.

<sup>52</sup> 26% of the territory is occupied by protected areas.

<sup>53</sup> Operationalisation of the biological rest period - Decree 2/2022 of 14 January.

<sup>54</sup> See Ministry of Fisheries, Fisheries Resource Management Plan for 2020 Bissau, December 2019, Centre for Applied Fisheries Research (CIPA).

<sup>55</sup> Law No. 10/2010, of 24 September.

<sup>56</sup> Decree No. 06/2018 of 27 November.

<sup>57</sup> Law No. 5/98, of 23 April. Land Law.

<sup>58</sup> See State Budget 2023.

154. On land subject to customary use, used and managed in accordance with traditional practices, the rational and balanced management of natural resources and the fulfilment of people's basic needs shall always be sought. Traditional rules and practices for the defence against the use and exploitation of natural resources and aimed at guaranteeing a balance between these activities and their conservation must be applied to both resident and non-resident populations, unless otherwise provided by law.

155. Guinea-Bissau has an Environmental Impact Assessment Law<sup>59</sup> which requires consultations with the population prior to any activity that could affect their rights. In addition, there is a regulation on public participation in the environmental assessment process.<sup>60</sup> Public participation is promoted in the following ways: (a) making information available through means that ensure its wide dissemination and understanding; (b) communication through the local language; (c) public consultation with affected and interested parties; (d) public hearing; (e) mediation and negotiation.

156. The Forestry Law<sup>61</sup> aims to "promote the sustainable management of the resources that make up the forestry domain; optimise their contribution to socio-economic and cultural development and environmental protection; improve the quality of life of the people." The principles of sustainable development are therefore an integral part of the country's forestry policy. Revenues from the forestry fund must be allocated, among other things, to monitoring operations, regeneration, restocking and any other interventions aimed at recovering, conserving or expanding the national forest."

157. Although the law provides for the creation of a national Forest Master Plan and a Regional Forest Plan for each region to promote and ensure the sustainable management of Guinea-Bissau's forest resources, the responsible Land Commission has not yet been set up. Planning exploitation according to the state of forest resources is a guarantee of sustainable exploitation.

158. In order to sign any forest management and exploitation contract with the aim of obtaining concessions,<sup>62</sup> a management plan for the area to be exploited and an environmental licence are required along with the specifications". This provision stipulates that an environmental impact assessment must be carried out in order to obtain a forestry concession, guaranteeing its sustainable exploitation. Even so, no environmental assessment has been carried out for forest management and exploitation contracts since the new Forestry Law came into force in 2011.

159. The Mines and Minerals Law adopted in 2000 is still in force because the new Mines and Quarries Law of 2014 needs an implementing regulation to come into force properly. The Mines and Minerals Law aims to regulate the use and exploitation of mineral resources and creates mechanisms for their enforcement as well as the preservation of the environment. Several articles refer to responsible mining practices and the need to mitigate social and environmental impacts.

160. A key advance in the development of the legal framework relating to the environment was the drafting and adoption of the Basic Environmental Law<sup>63</sup> and Law No. 1/2021 of 28 January, which created and approved the Sustainable Urban Development Tax. It is a basic law that advocates that everyone has the right to access information related to the management of the country's environment, without prejudice to the legally protected rights of third parties.

161. It specifies the need for responsible use of natural resources to ensure good environmental governance: "It is the duty of everyone to use natural resources responsibly and sustainably, regardless of the purpose for which they are used, and to collaborate in the progressive improvement of the quality of life.

<sup>59</sup> Law No. 10/2010 of 24 September.

<sup>60</sup> Decree No. 5/2017 of June.

<sup>61</sup> See Decree-Law No. 5/2011 of 22 February.

<sup>62</sup> Although the 2011 Forestry Law refers to forestry concessions, these elements are not specifically defined.

<sup>63</sup> Law No. 1/2011, of 2 March, Approving the Basic Law on the Environment.

162. The Law on Environmental Assessment<sup>64</sup> establishes the rules for environmental and social studies and assessment of projects with the aim of promoting sustainable development based on the balanced management of natural resources, ensuring better protection of the quality of the environment and contributing to the fulfilment of the quality of human life.

163. This law specifies that all projects must be subject to prior examination by the Competent Environmental Assessment Authority (i.e. CAIA in the current context) for their categorisation and subject to eventual environmental licensing. The Environmental Assessment Law defines the procedures for environmental assessment and for obtaining a certificate of environmental compliance, allowing the developer to start implementing their project.

164. In July 2013, Parliament passed two important environmental laws:

(a) Law on GMOs which aims to regulate the use of modern biotechnology, the circulation, commercialisation, release into the environment and use of genetically modified organisms;

(b) Law on plastic bags aimed at banning the manufacture, import, commercialisation or distribution of plastic bags.

165. The Petroleum Law adopted in 2014 regulates the conditions for prospecting, exploration, production and transport of petroleum resources in the national territory. Several articles address the principles of responsible exploitation and mitigation of environmental impacts.

166. Among other instruments, there is also a large set of international documents on natural resource management to which the country is a party and which are binding on it. These are the following:

<i>Convention and international protocol</i>	<i>Ratification statute</i>
Ramsar Convention on Wetlands	Signed on 14/05/1990
International Convention on Trade in Endangered Species - CITES	Accession on 16/05/1990
United Nations Framework Convention on Climate Change	Signed on 12/06/1992 Ratified on 27 October 1995
Convention on Biological Diversity	Signed on 12/06/1992 Ratified on 27 October 1995
Convention on Migratory Species - Bonn Convention	Signed on 01/09/1995
Convention to Combat Desertification	Ratified on 27 October 1995
Montreal Protocol on substances that deplete the ozone layer	Ratified on 12/11/2002
Basle Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal	Accession on 09/02/2005
Kyoto Protocol on the reduction of greenhouse gas emissions under the Convention on Climate Change	Ratified on 18/11/2005
Rotterdam Convention on trade in dangerous chemicals and pesticides	Ratified on 12/06/2008
Stockholm Convention on Persistent Organic Pollutants (POPs)	Ratified on 06/08/2008
Cartagena Protocol on the prevention of biotechnological risks (GMOs) to the Convention on Biological Diversity	Signed on 19/05/2010

<sup>64</sup> Law No.



<i>Convention and international protocol</i>	<i>Ratification statute</i>
Convention for Co-operation in the Protection and Development of the Maritime and Coastal Environment of the West and Central African Region - Abidjan Convention	Ratified on 02/03/2011
Nagoya Protocol on Access to Genetic Resources and the Fair Sharing of Benefits Arising from the Convention on Biological Diversity	Ratified on 24/09/2013
Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters	Ratified on 02/03/2005
Espoo Convention on Transboundary Environmental Impact Assessment.	Ratified on 02/03/2005

## Protected areas

167. Guinea-Bissau, a small, low-lying coastal country with an island zone, is very vulnerable to climate change and rising sea levels. The country's geographical location between the tropics is its greatest asset, as it has a humid tropical climate with two seasons, a rainy season from May to October and a dry season from November to April, with dense forests of many different plants and animals.<sup>65</sup>

168. From an environmental point of view, Guinea-Bissau acts as a climatic buffer and represents a barrier to the expansion of Sahelian desertification towards the countries of the sub-region located to the south. The different biomes are represented in Guinea-Bissau: coastal ecosystems, forests and wetlands of national and international importance. The habitats are home to a variety of rare, vulnerable and/or endangered species on a national and global scale. The savannahs and forests are home to emblematic species such as chimpanzees and various species of monkeys, and in some areas, there are still elephants that travel between Guinea-Bissau and the Republic of Guinea.

169. The intertidal zone of the Bijagós Archipelago, particularly the sandbanks discovered at low tide, feeds around 1,000,000 wintering waders every year. This island area is considered to be the second most important migratory bird area on the West African coast.

170. Most of Guinea-Bissau's wetlands are associated mainly with coastal ecosystems. However, inland there are temporarily or permanently flooded freshwater wetlands, known as lagoons or "lala". The latter are mainly used for rice production (freshwater "bolanha").

171. The exploitation of natural resources forms the basis of the country's economy. Guinea-Bissau's economy depends heavily on exports of agricultural and forestry products such as cashew nuts and timber, as well as fisheries products. Various studies have shown that the natural resource base is not only limited, but is being progressively devastated, while the needs of (mostly poor) population groups are increasing (PAN/LCD, 2006).

172. The studies emphasise that threats to the environment are increasingly being felt mainly due to anthropogenic activities, namely: deforestation and uncontrolled burning for agricultural production, industrial and clandestine logging, extensive monocultures of some crops, cutting of forest essences for charcoal and firewood production, cutting of "tarrafe" for smoking fish, proliferation of pointers and pressure on highland lands with seasonal and permanent immigration, abusive fishing, among others. These activities, carried out using inefficient and environmentally incorrect practices, and more acutely outside Protected Areas, are one of the causes of the degradation of renewable natural resources in Guinea-Bissau, a situation that remains worrying due to the lack of criminalisation of environmental crimes.

<sup>65</sup> See Guinea-Bissau's report on the implementation of the small island developing states strategy, Mauritius + 10, July 2013, article 157 et seq.

173. Concern for the management of natural resources, both renewable and non-renewable, biotic and abiotic, and above all for the sustainable management of ecosystems - to better safeguard vulnerable resources and guarantee biological balances in order to be aligned with the Sustainable Development Goals (SDGs), has led to the creation of various legal instruments for the preservation of terrestrial and marine ecosystems. The Protected Areas Framework Law was revised<sup>66</sup> and several protected areas such as: the Tarrafes do Rio Cacheu Natural Park,<sup>67</sup> the Cufada Lagoons Natural Park,<sup>68</sup> the João Vieira-Poilão National Marine Park,<sup>69</sup> the Orango Islands National Park,<sup>70</sup> the Cantanhez National Park, the Urok Islands Marine Protected Area<sup>71</sup> and the Bolama-Bijagós Archipelago Biosphere Reserve.<sup>72</sup> The PAs currently cover 26 per cent of the national territory.

#### **IV. Non-discrimination and equality between men and women (Arts. 2–3, 23 and 25–26)**

##### **Implementing a parity law in the face of gender inequality**

174. The principle of equality and non-discrimination is enshrined in Article 25 of the Constitution of the Republic of Guinea-Bissau and states that: “*men and women are equal before the law in all areas of political, economic, social and cultural life*”.

175. The CC contained some discriminatory provisions regarding sex, filiation, etc. Law No. 4/76 of 4 May 1974 abolishes any discrimination based on birth and sex.

176. The Labour Code Law No. 7/2022 of 29 July and various pieces of legislation have been adopted to materialise the right to equality in the public and private spheres, as well as in decision-making. These are:

- (a) The Law on Women’s Participation in Politics;<sup>73</sup>
- (b) The parity law,<sup>74</sup> which provides for a minimum representation of 36 per cent of women on the list for elective positions;
- (c) The National Gender Equality and Equity Policy (PNIEG II) 2017;
- (d) Law against trafficking in persons, especially women and children;<sup>75</sup>
- (e) Law to combat female genital mutilation;
- (f) Law against domestic violence;
- (g) Education policy charter (with a focus on promoting IEG);
- (h) Strategic plan for the development of the education sector;
- (i) National youth policy;
- (j) Canchungo Declaration.<sup>76</sup>

<sup>66</sup> Decree-Law No. 5-A/2011, of 1 March, Approving the Revision of the Protected Areas Framework Law.

<sup>67</sup> Created by Decree No. 12/2000 December.

<sup>68</sup> Created by Decree No. 13/2000 December.

<sup>69</sup> Created by Decree No. 6-A/2000, of August.

<sup>70</sup> Created by Decree No. 11/2000 December.

<sup>71</sup> Created in July 2005 by decree No. 8/2005.

<sup>72</sup> The Bolama-Bijagós Archipelago Biosphere Reserve was created in April 1996 by UNESCO.

<sup>73</sup> Law No. 4/2018, of 4 December, Parity Law for the Participation of Women in Politics and in Decision-Making Art. 4 No. 1.

<sup>74</sup> Parity law law No. 4/2018, of 4 December.

<sup>75</sup> Law No. 12/2011 of 6 July 2011.

<sup>76</sup> Law against human trafficking; Law No. 14/2011 of 6 July 2011 - law to combat female genital mutilation; Law No. 06/2013 of 18 July 2013 - law against domestic violence; Framework law on political parties; Civil Service operating statute (proposal to change maternity leave - from 2 to 3

177. A number of international conventions at regional, continental and international level have been ratified by the country to promote gender equality.<sup>77</sup>

178. These international and regional provisions end up being reflected in the state's legal documents and encourage the creation of important domestic legislation, as a sign of the Guinean state's commitment to issues of Gender Equality and Equity.

179. The results are not what was hoped for, as the representation of women is, so to speak, a mirage if we take into account the most recent elections in 2019 and 2023 (of the 102 deputies who make up the Guinean parliament, we have 11 women against 91 men, i.e. a female representation of 10.7 per cent). From a legal point of view, the minimum quota requirement of 36 per cent was not met. At the time of the deposition of candidates for the legislative elections on 4 June 2023, the Supreme Court of Justice limited itself to showing the lists of constituencies that did not comply with the Parity Law, without any sanction.

180. In fact, there are cultural situations in general in which women's right to vote is largely conditioned by community and/or family solidarity.

181. From the point of view of economic life, inequality between women and men is very marked, especially in terms of access to the labour market and land ownership. In the first case, there is a predominance of men occupying 69 per cent of positions in public administration and key ministries, while women represent 14 per cent of administrative positions in agriculture and 26 per cent in education.<sup>78</sup>

182. Women's access to land and economic resources is also very limited. Although they are the main users of the land as farmers and producers, and the Land Law (Law No. 5/98, Article 4(1)) confirms gender equality, in practice women do not have secure land tenure. Instead, they are restricted to secondary land rights, whereby their land use rights are only obtained through their husbands or other male family members.<sup>79</sup>

183. From these debates, voices have emerged calling for the abolition of the Ministry of Women's Affairs, because it makes no sense to talk about gender equality and have a ministry that is exclusively dedicated to women's affairs, leaving men aside. The realisation of this call is plausible from the conceptual point of view of equality, and so it was decided to create a ministry that covers both men's and women's concerns: the Ministry of Family and Social Solidarity and the Fight against Poverty.

## **V. Violence against women and children, including domestic violence** **(Arts. 2–3, 6–7, 24 and 26)**

### **Violence against women and children**

184. The CRGB provides for the inviolability of physical and moral integrity.<sup>80</sup> The Criminal Code punishes various offences against people's physical and mental integrity. Other national and international legislation calls for perpetrators to be held criminally responsible for crimes against people. Despite all this, the problem of gender-based violence is widespread in the country. Despite the fact that the perpetrators of these crimes are heavily penalised with between 2 and 12 years in prison, the crime remains active.

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months); Education policy charter (with a focus on promoting IEG); Strategic plan for the development of the education sector; National youth policy; Canchungo Declaration.

<sup>77</sup> See CEDAW - Convention on the Elimination of All Forms of Discrimination against Women, CEDAW-OP - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, Maputo Protocol, the National Gender Equality and Equity Policy (PNIEG II) 2017.

<sup>78</sup> Voluntary National Examination, 2022, p. 71.

<sup>79</sup> Report of the Special Rapporteur on extreme poverty and human rights (Magdalena Sepúlveda Carmona), 2014, p. 13.

<sup>80</sup> Ibid. Art. 37/1 CRGB.

185. In a society where the practice of gender-based violence takes on cultural and religious contours based on the patriarchal model of almost all African countries, the traditional attitudes of societies towards situations of violence are seen as normal, requiring time and awareness to eradicate. The main forms of gender-based violence are female genital mutilation, forced and/or early marriage, and domestic violence. Men are centres of power and force women into submission, tending to keep them strictly in the role of mother and wife, with men being the main decision-makers in the family and community.

186. Female genital mutilation is one of the forms of violence which cause great concern on the part of the state, as it affects 50% of women throughout the country and may not be eradicated in the near future. Early pregnancy and marriage affect 30 per cent of teenagers between the ages of 15 and 19 in the first case, and 20 per cent in the second.

187. In addition to the laws mentioned above, civil society, with organisations such as the Human Rights League and RENLUV, are raising awareness about gender-based violence in all regions of the country. This includes female genital mutilation and early pregnancy. In addition, the National Committee on Harmful Practices against Female Genital Mutilation also works throughout the country to put an end to these practices.

## Domestic Violence

188. The Domestic Violence Law<sup>81</sup> was adopted as a public crime with *sui generis* characteristics<sup>82</sup> and following extensive dialogue with women's organisations, human rights defenders, civil society organisations and United Nations partners, the Transitional Government approved the National Plan to End Gender Violence (2014–2016).<sup>83</sup>

189. The punitive scope of the domestic violence law ranges from 3 to 9 years in prison for cases of serious physical violence, psychological violence of up to 2 years, sexual violence of 3 to 12 years, property offences of up to 2 years, restriction of liberty of up to 4 years.

190. In terms of victim support, one of the most important measures under the law is the benefit of free medical care and examination or any other intervention, including legal aid and legal representation, psychological and psychiatric support and the placement of the victim in a Reception Centre.

191. Violence against women and children in the country is not at all encouraging, as a result of various socio-cultural factors rooted within communities against international standards of human protection and dignity. Despite legislative and other efforts to guarantee effective protection against violence, such as the adoption of the domestic violence law in 2014 and the National Plan to End Gender-Based Violence (2014/2016), in 2022 there is still information to conclude that legislative efforts have failed to cover and intimidate the perpetrators of these evils, all because the justice system is becoming increasingly ineffective at deterring them.

192. The progress made in terms of legislation has not kept pace with practice. It is important to note that there are still traditional practices and understandings about violence against women that are intrinsically rooted in the consciousness of a considerable number of women, due to a lack of information and academic education. According to FEC<sup>84</sup> (2021), one in three Bissau-Guinean women have already been victims of more than one type of violence by men and 80% of the violence originates within the family, with the father being the main aggressor. In the same vein, the organisation reveals that although domestic violence is considered a public crime in the country, the majority of cases are not brought to justice for fear of reporting the aggressor. For example, 36.4 per cent of women aged between 15 and 49 consider it justified for a husband to hit his wife for the following reasons: if she leaves the house without her husband's permission; if she neglects to look after the children;

<sup>81</sup> Law No. 6/2014 of 4 February.

<sup>82</sup> Art. 7/1 provides for intervention with the victim on their behalf and continuation of the action on the victim's behalf if the sentence is less than 4 years in prison Art. 38.

<sup>83</sup> Report of the Special Rapporteur on extreme poverty and human rights (Magdalena Sepúlveda Carmona), 2014.

<sup>84</sup> Fundação Fé e Cooperação [Faith and Co-operation Foundation], Portuguese NGO.

if she fights with her husband; if she refuses to have sex with her husband; if she burns the food.<sup>85</sup> This is one of the reasons why many cases, even if they are reported, don't reach the competent authorities, and the few that do usually don't receive a judgement.<sup>86</sup>

193. Aware of these situations and the gaps in the law on whistleblower protection, recently the Ministry of Justice and Human Rights in institutional collaboration with the Judicial Police launched the SOS 121 line to report all practices linked to domestic violence, sexual violation and sexual harassment. This is a healthy way of at least reducing all forms of domestic violence and ensuring the integrity and anonymity of the victim and/or the whistleblower.

194. In Bissau, next to the judicial police, there is a brigade for the protection of women and minors, the only one that functions as a structure with this competence, since the Judicial Police still only exists in the capital. This is not the case in the Regions, where protection is the responsibility of the Public Order Police and the National Guard Services and, as they are not sufficiently prepared, they end up following the consensus reached by the village chiefs and religious leaders on this issue.

195. Early and forced marriages were also one of the most frequent forms of denial of women's rights, with a rate of 25.7 per cent at national level for those under 18.<sup>87</sup>

196. There has also been excellent work carried out by reception centres for victims of all types of domestic violence, which, due to their importance in terms of deterring and combating practices that are harmful to the lives of women and children (articles 42–46), provide support of all kinds, even without state funding, as the law provides for the services they provide to victims.

197. In Bissau, the Public Prosecutor's Office has a police station for the protection of victims of crime and a Social Assistance Service at its disposal, prosecuting cases and referring them for judgement. In the interior, both the judiciary and the Public Prosecutor's Office have general jurisdiction, which means that the same magistrates investigate, prosecute, promote contradictory challenges when there are any and judge the case, with the exception that the court that participates in one act does not participate in another in order to preserve its impartiality.

198. Given the fragility of the institutions, despite the law providing for courts in all regions and sectors, the current coverage of the courts is confined to strategic areas with a high level of social conflict.

199. As part of the crackdown on violence against women, a number of cases have been charged and tried in the country's courts (Gabú, Bafatá and Bissau), as shown in the attached table.

Types of violence	2019		2020		2021		2022		2023	
	Accused	Sentenced	Accused	Sentenced	Accused	Sentenced	Accused	Sentenced	Accused	Sentenced
Domestic violence	1	X	X	X	3	X	1	X	1	X
Sexual assault/rape	4	4	1	7	5	9	3	14	4	X
Excision	X	X	X	X	x	X	X	X	X	X
Sexual abuse	3	1	12	7	4	1	9	1	5	X

Source: data provided by the bailiffs in charge of the registry offices.

200. Over the last five years, in the regional courts of Gabú, Bafatá and Bissau, there have been 6 cases of domestic violence charged and awaiting judgement, 34 cases of sexual violence and rape tried and 17 cases charged, zero cases of female excision and 10 cases of sexual abuse sentenced and 33 cases awaiting judgement.

<sup>85</sup> MICS 6, 2018–201, page.

<sup>86</sup> Voluntary National Examination, 2022. page.

<sup>87</sup> Idem MICS 6, p. 51.

## VI. Harmful practices and sexual violence (Arts. 2–3, 6–7 and 26)

### Sexual violence

201. Sexual violence is a concern for all countries where traditional and religious practices are strongly rooted within the population. In Guinea-Bissau, the prevalence of this practice is linked to poverty, as performing excisions may be the only source of income for some women.<sup>88</sup>

202. One form of violence against women's health is female genital mutilation (FGM), which consists of partial or total amputation, incision or ablation of a female's external genital organs, creating traumatic situations with immediate complications, including unbearable pain, shock, urine retention, genital ulceration and adjacent tissue damage. Other complications include sepsis, infertility, obstructed labour and even death.

203. The first major measure adopted by the state of Guinea-Bissau was the creation of a structure to combat harmful practices in the country called National Committee for the Abandonment of Traditional Practices Harmful to the Health of Women and Children (CNAPN).<sup>89</sup> The Committee is operational and because of its work, many communities have already made public declarations about abandoning these practices.

### Female genital mutilation and other harmful practices

204. The legislative measure adopted was the creation of a law that prevents, punishes and criminalises the practice of female genital mutilation throughout the country.<sup>90</sup> The offence in question is public, as it does not depend on a complaint, and aims to punish anyone who commits this act with a sentence of 2 to 6 years in prison and, in the case of minors between the ages of 3 and 9, with the possibility of aggravation due to the physical sequelae and death of the victim, to a sentence of 4 to 10 years.

205. Despite the fact that the law provides for support for victims, through the inclusion of funds in the state budget for information actions, raising awareness among communities about the consequences of excision, support for victim reintegration and psychosocial activities, there has been no support from successive governments, only support from NGOs.

206. Two strategies and action plans for the abandonment of female genital mutilation (FGM/(C) in the country were drawn up, the first covering the period 2010–2015 and the second covering the period 2018–2022.

207. In Guinea-Bissau, the practice of FGM is usually carried out on girls between the ages of 4 and 14; but it is also now being carried out on babies, women who are about to get married and sometimes on women who are pregnant with their first child or who have just given birth. It is usually carried out by traditional practitioners, without anaesthetic, using scissors, razor blades or broken glass.

208. Women and girls are particularly vulnerable to violence, abuse, discrimination and injustice because the justice system lacks the capacity to guarantee the application of gender-sensitive protection measures and women are poorly represented in the traditional local justice system. Some ethnic groups discourage girls from going to school, force them to drop out of school due to early marriage and pregnancy. They practise FGM and restrict the participation of women and girls in household and community decision-making and political life.<sup>91</sup> According to the 2018-2019 Multiple Indicator Cluster Survey (MICS6), 27 per cent of girls become pregnant before the age of 18. The prevalence of FGM is 52.1 per cent among women and girls aged 15 to 49 and 29.7 per cent among girls aged 0 to

<sup>88</sup> Report of the Special Rapporteur on extreme poverty and human rights, (Magdalena Sepúlveda Carmona), 2014, Page 11.

<sup>89</sup> Decree No. 28/2011, published in Official Bulletin No. 35, of 30th August.

<sup>90</sup> Law 14/2011, published on 25 August.

<sup>91</sup> Voluntary National Examination, 2022, page 71.

14. These mutilations are particularly widespread in the Gabu region, where 95.8 per cent of women and 73.2 per cent of girls have undergone them.

209. The marriageable age for both sexes is set at 18,<sup>92</sup> but for the purposes of marriage, minors are emancipated to marry at the age of 16. Among boys, the percentage of marriages before the age of 18 is 2.2%.<sup>93</sup> Underway and in the process of being approved is the Code for the Comprehensive Protection of Children, which in the near future will allow child protection actions to materialise, since the Code is in line with all international conventions on child protection. The Code will set the minimum age for marriage (for both boys and girls) at 18.

## VII. Maternal and infant mortality and voluntary termination of pregnancy (Arts. 3 and 6–7)

### Maternal and child mortality

210. Following the data collected in the Multiple Indicator Cluster Survey,<sup>94</sup> maternal and infant mortality was divided into different phases:

- (a) Neonatal mortality (NM): probability of death in the first month of life;
- (b) Post-neonatal mortality (PNN): the difference between the infant mortality rate and the neonatal mortality rate;
- (c) Infant mortality (1q0): probability of dying between birth and the first year of life;
- (d) Juvenile mortality (4q1): probability of dying between the first and fifth birthday;
- (e) Child and adolescent mortality (5q0): probability of dying between birth and the fifth birthday.

211. Neonatal, infant and child mortality rates are expressed as deaths per 1,000 live births. Infant mortality is expressed as deaths per 1,000 children who survive to the first year of life. Post-neonatal mortality is calculated as the difference between the infant and neonatal mortality rates.

212. The table below describes the prevalence of mortality among children in the periods described.

### Early childhood mortality rate

#### Neonatal, post-neonatal, infant, juvenile and childhood in the five-year periods prior to the survey, MICS6, Guinea-Bissau

<i>Years prior to the survey</i>	<i>Neonatal mortality rate (1)</i>	<i>Post-neonatal mortality rate (2)</i>	<i>Infant mortality rate (3)</i>	<i>Youth mortality rate (4)</i>	<i>Child and adolescent mortality rate (5)</i>
0–6	22	14	35	16	51
5–9	22	15	36	28	63
10–14	26	30	55	30	84

213. Based on different diagnoses of access to the health system, the government of Guinea-Bissau has been carrying out five-year health development plans, known as the

<sup>92</sup> See Law No. 5/76 of 3 May (published in the 1st Supplement to the Official Bulletin No. 18 of 4 May 1976).

<sup>93</sup> Idem MICS-6 period (2018 /2019) published in October 2020.

<sup>94</sup> MICS-6 period (2018 /2019) published in October 2020.

National Health Development Plan, now in its third phase covering the period from 2018 to 2022.<sup>95</sup>

214. A National Strategic Plan for Community Health<sup>96</sup> was also adopted, which allowed for national coverage of Community Health Agents (CHAs) who work in community and hard-to-reach areas. CHAs are involved in providing various health services, mobilising families to seek treatment or women to attend antenatal appointments, raising awareness and providing information on healthy sexual reproductive health behaviour. CHAs are key in raising awareness about hand washing, hygiene practices, vaccinations, healthy nutrition and malaria prevention. They test and treat malaria, treat simple forms of pneumonia, and refer patients to health centres.

215. Other measures adopted by the government as a target are the advanced strategy, which involves teams leaving the Health Centre on pre-determined routes to provide a minimum package of activities (Minimum Package of Activity - PM(A) to populations living between 5 km (1 hour's drive) and 20 km from the Health Centre of the respective Health Area.

216. Called mobile teams, they involve teams leaving the Health Centres on pre-determined routes to provide PMA to populations more than 20 km from the Health Centre of the respective Health Area, with the need to stay overnight in the communities visited. Little attention has been paid to the implementation of mobile teams.

217. The government has taken care to guarantee free medicines for TB, AIDS and mental health patients.

218. More recently, with the support of the partners, this has been extended to the pregnant women's group - which includes caesarean section, all surgeries, examination and treatment and medication for malaria, for children under 5 and for the elderly (aged 60 and over).

#### **Voluntary termination of pregnancy**

219. With regard to the voluntary termination of pregnancy, the legislation in force is the penal code.<sup>97</sup> This law allows any form of abortion as long as it is carried out with the woman's consent by a qualified professional and in appropriate clinical facilities.

### **VIII. Right to life and excessive use of force (Arts. 3 and 6–7)**

#### **Legal standard for the appropriate use of force and firearms by law enforcement officers**

220. Guinea-Bissau has constitutionally guaranteed that the use of force by the People's Revolutionary Armed Forces (FARP),<sup>98</sup> aims to defend independence, sovereignty and territorial integrity and to collaborate closely with national and specific services in guaranteeing and maintaining internal security and public order. It is the fundamental duty of the state to safeguard, in every way, the achievements of the people and, in particular, the constitutionally established democratic order.

221. As far as the defence and security forces are concerned, the Magna Carta is clear about their actions, stating that the security forces have the function of defending democratic legality and guaranteeing internal security and citizens' rights, and that they are non-partisan and that their active members may not engage in any political activity.

222. Police measures are only those provided for by law and should not be used beyond what is strictly necessary. Crime prevention, including crimes against state security, can only

<sup>95</sup> PNDS III.

<sup>96</sup> PEN 2016-2020.

<sup>97</sup> Art. 112 CP, Law No. 04/1993.

<sup>98</sup> Arts. 19 ss CRGB.



be carried out in compliance with the rules laid down by law and with respect for citizens' rights, freedoms and guarantees.

223. It has already been mentioned that the right to life is a fundamental right that can never be called into question, even in a situation where a state of siege is declared, while the rights to personal integrity and identity, civil capacity and citizenship, the non-retroactivity of criminal law, the right of defence of defendants and freedom of conscience and religion are also safeguarded.

224. In addition to these standards, the country has also signed up to various international conventions on decent treatment, the right to life and the proportional use of force, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, and the Second Optional Protocol to the International Covenant on Civil and Political Rights aimed at abolishing the death penalty.

225. At an infra-constitutional level, the Penal Code<sup>99</sup> has an important general rule on the use of force and the right to life, which prohibits and holds anyone responsible, including police and National Guard officers, if they use force disproportionately or criminally, saying that the duty of hierarchical obedience ceases when it leads to the commission of a crime.

226. The Statute of the Judicial Police<sup>100</sup> prescribes that the use of firearms by PJ officials is only permitted as an extreme measure of coercion and provided that it is proportionate to the circumstances, namely: (a) Against imminent aggression or aggression in progress, directed at themselves or third parties; (b) To apprehend or prevent the escape of a specific individual who is strongly suspected of having committed a serious crime, namely with the use of firearms, grenades or explosives; (c) To apprehend an individual who has escaped or who is the subject of an order or arrest warrant for the commission of a crime that carries a prison sentence of more than three years, or to prevent the escape of any individual who is regularly arrested or detained; d) To free hostages; e) To prevent a serious and imminent attack on socially useful facilities whose destruction would cause significant damage.

227. The use of firearms is prohibited whenever there is a danger to third parties other than the target or targets, except in cases of legitimate defence or a state of necessity.

228. The use of a firearm must be preceded by a clearly perceptible warning, whenever the nature of the service and the circumstances allow it. The warning may consist of a shot in the air, provided that it is assumed that no one will be hit and that the intimidation or prior warning cannot be clearly and immediately perceived. A PJ official who has used a firearm is obliged to report this fact in writing to his or her superiors as soon as possible, even if no harm has resulted from its use.

229. The Organic Law of the Public Order Police<sup>101</sup> and the Organic Law of the National Guard<sup>102</sup> both on the use of force and the right to life prescribe that, within the scope of their powers, the National Guard and the Public Order Police use the police measures legally provided for and under the conditions and terms of the Constitution and the national security law, and may not impose restrictions or use means of coercion beyond what is strictly necessary.

230. Anyone who fails to obey a lawful order or warrant, duly communicated and issued by a police authority or National Guard officer, shall be punished with the penalty laid down by law for qualified disobedience.

### **Information on the case of the violation of the right to life**

231. The country has been experiencing a period of political instability for a long time, starting in 1998 with the civil war of 7 June, and the right to life has been called into question

<sup>99</sup> Decree-Law No. 4/1993, Penal Code.

<sup>100</sup> Decree-law No. 14/2010, Judicial Police statute.

<sup>101</sup> Law No. 9/2010, of 22 June, Organic Law of the Public Order Police.

<sup>102</sup> Law No. 8/2010 of 22 June, Organic Law of the National Guard.

throughout this period of instability, reaching its peak with the assassination of the President of the Republic (João Bernardo Vieira) and the Chief of Staff of the Armed Forces (Tagne na Wai), in addition to a sequence of other political assassinations<sup>103</sup> (which never had a final outcome) without any accountability or punishment for the perpetrators or those who ordered them, despite the fact that the case of the death of the Chief of Staff of the Armed Forces has been finalised and charged. In the case of the President of the Republic, there are no defendants.

232. In 2011, the Amnesty Law and a National Commission for National Reconciliation were set up under the aegis of parliament, with the participation of all the nation's living forces, traditional power and religious organisations supported by UNIOGBIS, which had no impact on its actions. The Commission's objectives were: to analyse the reasons for the political instability in the country, to listen to different sections of society on conflict issues, to hold a national conference on peace and to create a commitment to political stability.

233. Excessive use of force and arbitrary detentions mostly occur in situations where the perpetrators of crimes of opinion are relevant to social life (politicians, military personnel, activists, journalists and commentators), but justice has always worked, albeit in a pinched way, when it comes to ordinary citizens.

234. Over the last five years (2018 to 2023) there have been kidnappings and beatings by unknown perpetrators and members of the public security forces of various figures and private property as a result of their public interventions in the field of politics,<sup>104</sup> without the ability to hold the perpetrators of these evils accountable.

## **IX. Prohibition of torture and cruel, inhuman or degrading treatment (Arts. 6–7)**

235. The CRGB prohibits any act of torture, cruel, inhuman or degrading treatment, including corporal punishment or confinement in dark cells. It states that the moral and physical integrity of citizens is inviolable, and no one may be subjected to torture or cruel, inhuman or degrading treatment or punishment. Under no circumstances shall there be forced labour or security measures involving deprivation of liberty of unlimited or indefinite duration.

236. The definition of torture can only be found in the Criminal Code and in international legislation to which the country is a party. It is defined as an act that consists of inflicting acute physical suffering (producing a serious offence to physical integrity) or psychological suffering, severe physical or psychological fatigue or the use of chemicals, drugs or other means, whether natural or artificial, with the intention of disturbing the victim's capacity for self-determination or free expression of will.

237. In Guinea-Bissau's penal code, the matter is regulated under the heading of crimes against peace, freedom and humanity and begins by punishing any person whose function is to prevent, investigate, decide on any type of offence, execute the respective sanctions or protect, guard or supervise detained or imprisoned persons: (a) to torture or treat in a cruel, degrading or inhuman manner; (b) to punish for an act committed or alleged to have been committed by him or her or by another person; (c) to intimidate or in order to intimidate another person; or (d) to obtain from him or her or from another person a confession, statement, declaration or information.

238. By material reception of the norms of international law on fundamental rights to which the Guinean state is a party, the definition of torture contained in Article 21 of the Standard Minimum Rules for the Treatment of Prisoners<sup>105</sup> is an integral part of the definition of torture in our penal code, when it says that: "corporal punishment, confinement in a dark cell,

<sup>103</sup> These are the cases of Roberto Ferreira Cacheu, Iaia Dabó.

<sup>104</sup> These are the cases of Marciano Indi (MP); two MADEM-G15 party activists (Queba Sané, the death of a PRS activist (Demba Baldé); Armando Correia Dias, a PAIGC activist.

<sup>105</sup> Decree No. 12/2011.

collective sanctions, as well as all cruel, inhuman, degrading punishment and any form of torture are prohibited as disciplinary sanctions”.

239. Particularly serious means or methods of torture are beatings, electroshock, mock executions, hallucinatory substances, sexual abuse or threats against family members. It is considered aggravating if the act is aimed at preventing or hindering the free exercise of constitutionally enshrined political or trade union rights.

240. The country signed the International Convention against Torture, Cruel and Inhuman or Degrading Treatment or Punishment on 12 September 2000 and acceded to it on 24 September 2013, making it an integral part of its legal system. On 24 September 2013, it signed the Protocol to the Convention against Torture, Cruel and Inhuman or Degrading Treatment or Punishment, which is expected to be ratified.

241. There are situations of mistreatment inside prisons. Even though no cases have been brought against the state for inhumane treatment of prisoners, the overcrowding at the Bandim Detention Centre and the poor conditions at the 2nd Police Station detention centre under the aegis of the Ministry of the Interior are clear. The Guinean Human Rights League and the National Human Rights Commission have filed complaints about the poor conditions in prisons and, in the case of the latter, have called for the closure of some detention centres because they lack decent conditions for incarceration.

## **X. Treatment of persons deprived of their liberty (Art. 6–7 and 10)**

242. The principle of human dignity enshrined in the CRGB aims to protect citizens against arbitrary and illegal intrusion into their legal sphere, as well as allowing the sentence to serve as a mechanism for re-socialising the convict through the principle of the humanity of sentences.

243. The ministerial department that deals with prisons is the Ministry of Justice and Human Rights through the General Directorate of Prison Services and Social Reintegration.

244. The General Directorate of Prison Services and Social Reintegration has its own organisational structure and includes prison establishments and detention centres. It is an organisational unit of the Public Administration that has administrative autonomy and is responsible for executing custodial sentences and preventive detention measures.<sup>106</sup>

245. A Prison Guard Statute<sup>107</sup> and Detention Centre Regulations<sup>108</sup> and the Prison Establishment Organic Law<sup>109</sup> were created as legal instruments for the functioning of the structures created.

246. The country has two prisons, one in Mansôa, in the north of the country, and the other in Bafatá, in the east of the country, the former with a capacity of 26 inmates and the latter with a capacity of 56 inmates. It also has a detention centre in Bissau for detainees and pre-trial detainees under investigation, with a capacity of 57 and the only one that remains overcrowded, with up to 90 inmates in cells without the minimum material conditions.

247. Outside the prison system, the Public Order Police operate a detention centre in the 2nd Police Station, while two of the seven police stations in Bissau have cells: the Military Quarter Model Police Station and the 7th Police Station.

248. It should be noted, however, that in the regions and sectors, the courts are forced to keep people in improvised sheds next to police stations without the minimum conditions required for the treatment of prisoners.

249. The numbers of prisoners per prison and detention centre in Guinea-Bissau are as follows:

<sup>107</sup> Law No. 3/2011.

<sup>108</sup> Law No. 10/2010.

<sup>109</sup> Dec.-L No. 13/2011, of 31 January.

### Distribution of prisoners by prison in Mansôa and Bafatá

Number of inmates per prison in Mansôa and Bafatá in the last 4 years

Number of prisoners								Type of crime	Sex/Gender				
Mansôa				Bafatá					Male		Female		Total
2019	2020	2021	2022	2019	2020	2021	2022		M	B	M	B	
15	12	16	13	39	29	31	32	Homicide	15	39	1	X	55
2	2	2	1	10	7	6	6	Theft	2	7	0	X	9
3	3	4	1	X	2	3	7	Bodily harm	4	7	1	X	12
2	X	3	X	6	8	9	9	Sexual violence	3	9	0	X	12
3	1	4	1	8	1	1	1	Armed robbery	4	8	0	X	12
2	X	4	2	X	X	2	3	Theft	4	3	0	X	7
1	X	3	2	X	X	4	5	Drug trafficking	0	5	0	X	5
X	X	x	X	2	X	3	3	Scam	0	3	0	X	3
X	X	x	X	x	1	X	X	Disobedience	0	1	0	X	1
X	X	x	X	1	X	X	X	Drug trafficking	0	1	0	X	1
X	X	x	X	x	X	1	1	Kidnapping	0	1	0	X	1
X	X	x	X	X	X	X	1	Forgery	0	1	0	X	1
28	X	36	20	66	48	60	68		32	85	2	x	119

Source: data collected directly from the Mansôa and Bafatá Prison Directors.

250. In the last four years, 2019 to 2022, 119 people have been imprisoned in these two prisons. The prison population has remained practically the same over this period due to the sentences they are given, with few exits or entries. According to the data collected, the female prison population has not existed in Bafatá since 2013 and in Mansôa it is tending to disappear since only two women are in prison.

251. A military prison exists in Bissau, next to the Air Base Barracks, whose jurisdiction, management and administration are under the tutelage of the Military Court, with slightly better conditions.

252. In principle, the Mansôa prison<sup>110</sup> was intended for remand prisoners, but it ended up covering the serving of sentences. The same is true of the Bandim Detention Centre and the Bafatá prison, the former for people under investigation and the latter for people serving sentences. Now everything is mixed together, although there is a differentiation between male and female cells, which is not the case with children.

253. The penal system prescribes the existence of alternative measures to imprisonment.<sup>111</sup> Convictions handed down by the court with sentences of no more than three years usually result in suspended sentences. There have been few cases of sentences of community service or admonishment. Prison bail is another unusual measure in the penal system, despite its existence.

254. The coronavirus problem has not had an impact on the prison services and detention centres; there has only been one case in the Bissau detention centre. Once it became known, the prisoner was removed from his cell.

255. The National Human Rights Commission (CNDH)<sup>112</sup> is the public body par excellence for monitoring human rights situations, as stated in its own statute. The Parliamentary

<sup>110</sup> Strategic Document for the Prison Sector 2021/2025, drawn up with the financial support of UNDP.

<sup>111</sup> Art. 39 (criminal sanctions). This Code provides for the following penalties: a) Principal penalties: imprisonment, fine, social work and admonition; b) Security measures: confinement in a hospital, banning from the profession and expulsion of foreigners; c) Accessory penalties: temporary suspension from the profession, dismissal and expulsion of foreigners.

<sup>112</sup> Ibidem, Statute of the National Human Rights Commission.

Commissions on Human Rights also monitor this issue. A wide range of civil society organisations (CSOs) monitor human rights situations in prisons and detention centres, as does the International Red Cross. Due to the lack of legal information and access to the law, prisoners are accommodated and there have never been any cases of complaints against the state for failing to fulfil its obligation to respect the commitments made in terms of dignified treatment of prisoners.

256. The government's efforts to raise the standard of treatment and provide decent conditions for inmates can be seen in the allocation of funds that allow for a healthy diet<sup>113</sup> and prevent inmates from receiving food from the outside, and an improvement in health conditions with the inauguration of medical posts at the Bandim detention centre in Bissau, at the Mansôa prison and the completion of another at the Bafatá prison.

257. With a view to adapting and improving prison services in line with the norms contained in international law, there have been substantial improvements in legal terms. The strategic document for the prison sector, the acquisition of land for the construction of a large-capacity reference prison in Ilondé, the acquisition of land in the south to set up another prison centre, the adoption of a training programme for prison officers in different subjects through the Strategic Cooperation Programme with Portugal<sup>114</sup> are all measures that should be highlighted.

258. Despite the efforts made by the government to improve the social conditions of prisoners, there is still a lack of logistical and other conditions to fully comply with the minimum rules for the treatment of prisoners, as the current detention centres and prisons are former buildings used by Portuguese colonialism to repress rebels and which have been rehabilitated and adapted to current conditions. As a result, the prison spaces are small, unsuitable for the country's prison conditions and the current population, so the implementation of the rule of separating prisoners by crime and age, the implementation of a policy of social reintegration through training and empowerment of prisoners, the lack of social workers and psychologists in prisons and the absence of a specific rule for the operation of each detention centre make it difficult to comply with this right.

259. There is no mental health centre for the treatment of prisoners. On the outskirts of Bissau, there is a Mental Health Centre run by the Ministry of Health, but it operates without resources. In the Biombo region, in Bôr and Quinhamel, there are also private centres for psychological treatment and detoxification that lack significant support from the state.

## **XI. The Administration of Justice (Art. 14)**

### **The judicial system**

260. The Guinean judicial system finds its constitutional foundation in Chapter VII of the Constitution, with seven articles.

261. The constitutional guarantees tell us that the courts are independent sovereign bodies with the power to administer justice on behalf of the people.<sup>115</sup> In the administration of justice they are subject to the law, ensure the defence of citizens' legally protected rights and interests, repress violations of democratic legality and settle conflicts of public and private interests.

262. The existence of courts exclusively for the trial of certain categories of offences is prohibited, with the exception of military, administrative, tax and audit courts.

<sup>113</sup> The government provides each Detention Centre and Prison under the aegis of the Ministry of Justice and Human Rights with a monthly sum of 17,000,000.00 XOF (25,000 US) to feed 178 inmates spread over three Prison Centres.

<sup>114</sup> Strategic Cooperation Programme (2021 to 2025).

<sup>115</sup> Art. 119 CRGB.

263. Court rulings are binding on all public and private organisations and take precedence over those of any other authority.

264. In the performance of their duties, judges are independent and owe obedience only to the law and their conscience, and are not responsible for their judgements and decisions. They may only be subject to civil, criminal or disciplinary liability as a result of the performance of their duties in cases specifically provided for by law.

265. Pre-trial proceedings are the responsibility of the judge, who may, under the terms of the law, delegate to other bodies the performance of pre-trial acts that are not directly related to fundamental rights.<sup>116</sup>

266. The Public Prosecutor's Office is the State body responsible for monitoring legality and representing the public and social interest before the courts, and is the holder of the criminal action. The Public Prosecutor's Office is organised as a hierarchical structure under the direction of the Attorney General of the Republic. The Attorney General is appointed by the President of the Republic, after consulting the government.

### **The Judiciary's Magistracy**

#### *(a) The Structure of the Judiciary*

267. The organisation and functioning of the courts are regulated by their own law. There are two magistracies:<sup>117</sup> the judiciary - called judges, and the prosecution service - called magistrates.

268. The judicial magistracy has as its apex the Supreme Court<sup>118</sup> of Justice, it has the Court of 2nd Instance and 1st Instance and the courts of the Sectors. The territory is divided into judicial circles, regions and sectors.

269. The Supreme Court of Justice is assisted by a Superior Council of the Judiciary,<sup>119</sup> the highest decision-making body in the life of the judiciary, whose composition includes members of the legislature and the Superior Inspectorate of the Judiciary.

270. The powers of the Superior Council of the Judiciary are set out in article 71 of the EMJCSM, which is to appoint, post, transfer, promote, dismiss, assess professional merit, exercise disciplinary action; propose legislative measures to the Ministry of Justice with a view to the efficiency and improvement of judicial institutions; draw up the annual inspection plan; order inspections, enquiries and investigations into judicial services.

271. There are small claims courts (sector courts), courts of first instance (regional courts) - the judges are called judges of law; courts of second instance (circle courts) - judges of the bench and the Supreme Court of Justice (counsellors).

272. The Supreme Court of Justice is based in Bissau and is the only court for the entire national territory. Although the law provides for the existence of a Circuit Court for each geographical area, the reality is that there is only one Circuit Court with its seat in Bissau and as for the Regional Courts that should also comprise the eight regions and one in the Autonomous Sector of Bissau, there are five Regional Courts in operation - in Bissau covering the Biombo Region, in the Cacheu Region - also operating in Bissorã, in the Oio Region - operating in Mansôa, in the Bafatá Region, in Gabú, in Buba - covering the Quinara, Tombali and Bolama/Bijagós Regions. The Sector Courts also do not correspond to the provisions of the legislation, and are currently operating in 14 Sectors, out of a total of 38. In

<sup>116</sup> The STJ's ruling with general binding force No. 01/2017 in Case No. 05/2016 (unconstitutionality) removed the Public Prosecutor's Office's power to apply coercive measures other than the term of identity and residence, thus complying with constitutional rules on the protection of fundamental rights.

<sup>117</sup> Organic Law of the Courts, Law No. 3/2002, of 20 November 2002, Revised by Law 6/2011.

<sup>118</sup> Ibid.

<sup>119</sup> Created by law No. 1/99, of 27 September, Statute of Judicial Magistrates and of the Superior Council of the Judiciary. This law was supplemented by the creation of the Internal Regulations of the Superior Council of the Judiciary - Supplement to the Official Bulletin No. 36, of 9 September 1997 and the Regulations on Judicial Inspections - Official Bulletin No. 11, of 13 March 2000.

Bissau, of the six Sector Court judgeships in existence, three are operating and the rest are closed for reasons of rent arrears, lack of judges<sup>120</sup> and working conditions. With their own specific characteristics (courts with free jurisdiction by law and freedom from formalities), the sector courts lack everything, including technical, material and logistical conditions, to the point of making them more expensive for users than the regional courts.

273. For the entire national territory, the jurisdiction of the courts is divided into generic or common and specialised, and, depending on the territory, according to the geographical areas in which they are located. The structure is collective when three or more judges sit in judgement and singular when only one judge sits. In the collective court, decisions are taken by means of a judgement and in the individual court by means of a sentence.

274. In Bissau, the courts have specialised jurisdiction and are divided into courts and sections. To this end, we have civil courts, criminal courts, family and juvenile courts (a family section and a juvenile section), a labour court, a court for the execution of sentences, a transgression court, a criminal investigation court, a civil execution court and the sector courts.

275. There is only one Regional Commercial Court in Bissau with jurisdiction over commercial matters.

276. The administrative court is in charge of the Common Courts as long as no administrative courts are created, despite the existence of legislation on the matter.

277. The maritime court also does not have its own regulations, being left to the regional courts.

278. On the other hand, we have the Regional Courts with common competences, which deal with all disputes in their respective areas of jurisdiction.

279. The Constitutional Court is in charge of the Supreme Court of Justice until its structures are created.

(b) *The budget of the judicial system (Supreme Court of Justice and the Public Prosecutor's Office)*

280. The funds allocated in the State Budget<sup>121</sup> to the two magistracies as a whole correspond to a percentage of 1.7 per cent, with the Public Prosecutor's Office having more of the budget, as described below.

281. The operating costs of the Supreme Court of Justice for 2023 stand at FCFA 988 million,<sup>122</sup> the same amount as the previous year. The Supreme Court's operating costs account for 0.7 per cent of total current expenditure.

282. For the current year, the operating costs of the Attorney General's Office (Ministério Público) stand at XOF 1,519 million. The institution's total expenditure is down 15.1 per cent on 2022. Operating costs amount to 1.0 per cent of total current expenditure.

(c) *The competences of the judiciary*

283. The administration of justice is dealt with in the constitution, which states that the courts are sovereign bodies with the power to administer justice on behalf of the people.<sup>123</sup>

284. The Supreme Court of Justice is the supreme judicial body of the Republic with the power to exercise the judicial function with other lesser bodies of the judiciary, and in this exercise the courts are independent and subject only to the law.

<sup>120</sup> It can be noted that judges sit on two or more Sector Court benches.

<sup>121</sup> See GSB 2022 and proposed GSB 2023.

<sup>122</sup> See The convertibility of the CFA to the Euro is done at the fixed parity of 650 CFA to 1 euro.

<sup>123</sup> See Chapter VII, arts. 119 et seq. of the CRGB.

285. The Judicial Courts are responsible for ensuring the defence of legally protected rights and interests, repressing violations of democratic legality and settling public and private conflicts of interest.<sup>124</sup>

286. Judicial court rulings are binding on all public and private entities and take precedence over those of any other authorities.

287. It is the function of the judiciary to administer justice in accordance with the sources to which, according to the law, it must have recourse and to enforce its decisions, and to this end judges may not refrain from passing judgement on the grounds that the law is lacking, obscure or ambiguous or that there is insurmountable doubt about the case in dispute, provided that it must be legally regulated.

### **The Public Prosecutor's Office**

#### *(a) The Structure of the Public Prosecutor's Office*

288. The Public Prosecutor's Office is a magistracy alongside the judiciary, independent, characterised by being a hierarchical magistracy presided over by an Attorney General, appointed by the President of the Republic, after hearing the Government.<sup>125</sup>

289. The organs of the Public Prosecutor's Office structure are the Attorney General's Office; the Superior Council of the Judiciary of the Public Prosecutor's Office; the Deputy Attorney General's Offices; the Attorney General's Offices; the public prosecutor's delegates and the State Attorney's Office.

290. The Office of the Attorney General shall be headed by an Attorney General who shall be assisted and replaced in his duties by a Deputy Attorney General, appointed by the Attorney General in consultation with the Superior Council of the Judiciary of the Public Prosecutor's Office from among the magistrates on the basis of recognised merit.

291. The deputy attorneys-general represent the Public Prosecutor's Office before the Supreme Court of Justice, the Administrative Court and the Court of Auditors. The Public Prosecutors represent the Public Prosecutor's Office before the Circuit Court, while the Public Prosecutor's Deputies represent the Public Prosecutor's Office before the Regional and Sector Courts.

292. The State Attorney's Office has legal auditing functions.

#### *(b) The competences of the Public Prosecutor's Office*

293. The competences of the Public Prosecutor's Office include monitoring legality, representing the public and social interest and it is the sole holder of criminal action before the courts.

294. The Public Prosecutor's Office is also responsible for promoting the defence of democratic legality; representing the state, persons and entities to which the state owes protection; ensuring that the judicial function is exercised in accordance with the Constitution and the laws; promoting the execution of court decisions; exercising criminal prosecution and presiding over criminal investigations; promoting and coordinating crime prevention actions; intervening in actions concerning the status and capacity of persons, as well as in bankruptcy and insolvency proceedings and exercising advisory functions under the terms of the law.

295. The State Attorney's Office is a branch of the Public Prosecutor's Office headed by State Attorneys and it is their responsibility to give opinions on legal queries requested to the Attorney General's Office by members of the Government or heads of other public bodies in the public interest of which they are managers; judicial representatives of Ministries or departments equivalent to them if the Attorney General's Office is duly requested to do so.

<sup>124</sup> Article 2 of the Organic Law of the Courts, Law No. 3/2002, of 20th November, Revised by Law No. 6/2011.

<sup>125</sup> Art. 125/1 and 2 CRGB and Art. 2/1 of the Organic Law of the Ministry of the Interior, Law No. 7/95 of 25 June.



(c) *Access to the judicial system*

296. The CRGB deals with access to justice in this way: Everyone has the right to information and legal protection, under the terms of the law, and every citizen has the right to appeal to the courts against acts that violate their rights recognised by the Constitution and the law, and justice may not be denied on the grounds of insufficient economic means.<sup>126</sup>

297. The Organic Law of the Courts<sup>127</sup> in its heading “Access to justice” states that: Everyone is guaranteed access to the judicial courts as a means of defending their legally protected rights and interests, and justice may not be denied on the grounds of insufficient financial means. A separate law regulates access to the courts in the event of insufficient financial means.

298. In order to effectively materialise the right of access to justice, the government has created mechanisms for citizens to access the law and justice.<sup>128</sup> A legal aid programme has been made available to the Guinea-Bissau Bar Association (OAG(B)) by the UNDP, which consists of unofficially sponsoring people who are in financial need to pursue legal proceedings.

299. These mechanisms include legal aid, in any of its forms, which is granted for specific or realisable legal issues or cases, which deal with rights that have been directly harmed or threatened with harm and provided that the applicant demonstrates a personal interest.

300. Assistance can be requested in any jurisdiction, regardless of the procedural position and whether it has already been granted to one of the parties, as long as they can demonstrate an economic situation that does not allow them to bear, in whole or in part, the normal costs of the case. Assistance is also granted so that you are aware of your rights and duties in relation to a specific situation in your legal sphere.

301. Legal assistance includes legal advice and may also include carrying out extrajudicial steps or acts of mediation or conciliation, in accordance with the internal regulations governing the operation of the Legal Advice Centres.

302. This was followed by the creation of the Legal Information and Consultation Office (GICJU),<sup>129</sup> bringing together several Access to Justice Centres (CAJs), to deal with situations of people in need and unable to afford legal costs, operating two in Bissau, one in Mansôa, Canchungo, Bafatá, Gabú, and in Buba, covering the entire national territory through justice caravans set up for legal information and mediation.

303. Between 2017 and 2022, the CAJ received 15,085 complaints about access to justice. Of these, 12,782 were resolved. Some of these cases (3,806) were resolved through the CAJ technicians themselves. Others (2,101) were resolved through mediation.

304. Other infra-constitutional laws have been created to strengthen the promotion and protection of human rights, such as:

- Social dialogue council;
- Media Council;
- National Judicial Coordination Council.<sup>130</sup>

### **The issue of the independence, impartiality and transparency of the judiciary**

305. The CRGB and the Statute of the Judiciary<sup>131</sup> deal with the independence, impartiality and transparency of the judiciary. The rules state that judges judge only according to the law and their conscience and are not subject to orders or instructions, except in the matter of appeals, where they can follow the decisions of higher courts. The duty to obey the law

<sup>126</sup> Articles 32 and 34 of the CRGB.

<sup>127</sup> Art. 4 of Law No. 3/2002 of 20 November 2002, revised by Law No. 6/2011.

<sup>128</sup> Decree-Law No. 11/2010 of 14 June on citizens’ access to law and justice.

<sup>129</sup> Decree No. 11/2011, of 3 February, creates the Legal Information and Consultation Office.

<sup>130</sup> Decree-law No. 4/2009 national council for judicial coordination.

<sup>131</sup> Law No. 9/1995, of 7 August, Statute of Judicial Magistrates, see Art. 5 et seq.

includes the duty to respect legal judgements, even if it is a question of resolving a hypothesis not provided for in the law.

306. The constitutional and legal guarantees of independence have not prevented judges from suffering external and undue interference, pressure, intimidation and threats, particularly from members of the government, the armed forces or other senior state officials, often linked to organised crime. However, despite the fact that physical security is an essential condition for judges to carry out their duties independently and impartially, there is no institutionalised protection mechanism.

307. Impartiality means that judges cannot act in courts where they have previously served as public prosecutors, or in courts or tribunals where they serve magistrates to whom they are related by marriage, kinship or affinity in any degree of the straight line or up to the second degree of the collateral line.

308. In 2013,<sup>132</sup> the Association of Magistrates of Guinea-Bissau (ASMAGUI) adopted a charter of ethics for judges in Guinea-Bissau in accordance with the *Bangalore principles* of judicial independence. Although it is proclaimed, its application is not seen in practice and it is not widely publicised.

309. On the other hand, there are the constitutional and legal rules that deal with the autonomy of the Public Prosecutor's Office.<sup>133</sup> It can be seen that this autonomy lies in the appointment of prosecutors through a public competition by the Superior Council of the Judiciary of the Public Prosecutor's Office, which is also responsible for transfers, disciplinary measures and the general administration of the career of the Public Prosecutor's Office. Two important new requirements for entering the profession were introduced in 2012, i.e. to have a law degree and to have successfully completed the training course for prosecutors, taught at CENFOJ.

310. A major issue affecting the independence and effectiveness of the prosecution service is the instability surrounding the position of Prosecutor General. The mandate of the Attorney General is not fixed by law, nor are there objective criteria for his dismissal. Therefore, the President of the Republic can appoint and dismiss attorneys general at any time and without providing any justification, leaving them particularly vulnerable to political interference.

311. A strong interference with judicial activity has to do with the violation of the principle of the irremovability of judges, who are left with a general uncertainty about the criteria for transfers and the length of their stay in a court. Sometimes the transfer is a punitive measure for the flagrant violation of duties and even situations of corruption practised by judges and magistrates.

312. Procedural deadlines are not complied with by any of the magistracies, especially when it comes to the violation of citizens' fundamental rights in terms of deprivation of liberty. It is common to see judges and magistrates failing to meet deadlines for detention, pre-trial detention and the abusive application of various procedural mechanisms and measures of coercion and patrimonial guarantee.

313. The Inspection Services, with few interventions in terms of verifying the actions of the courts, make the judiciary very fragile to external interference and the eviction of citizen confidence. Furthermore, the corporatism of magistrates is not insignificant, even in situations where there is a clear violation of functional duties.

### **Judicial Support Body**

#### *Bailiffs*

314. The Judicial Officers,<sup>134</sup> like the administrative staff of court registries and the private offices of the Public Prosecutor's Office, have never been the subject of regulation, although

<sup>132</sup> The Judges' Ethics Charter, published on 25 May 2013.

<sup>133</sup> CRGB and Organic Law of the Public Prosecutor's Office.

<sup>134</sup> Decree-Law No. 1/2017, Statutes of Judicial Officers.

there have been some references in the statute for judicial magistrates and in broader legislation regulating the organisation of the courts and the Public Prosecutor's Office.

315. Under the aforementioned legislation, court clerks had no autonomy and were integrated into the judiciary without obeying the criteria and rules specific to their career. As a result of various reforms undertaken by the Ministry of Justice, regulations were created for the activities of court administrative staff, access to the profession and careers, providing them with functional autonomy in the exercise of their duties, which are only subject to the law and strict compliance with judicial decisions.

316. With the new regulations, the bailiffs are under the functional dependence of the Ministry of Justice, specifically the General Directorate for the Administration of Justice, and have a Council of Bailiffs, elected by ballot, to take decisions on their respective matters.

317. Entry to the career of judicial officers is by public competition, as laid down in the diploma on General Principles in Public Employment,<sup>135</sup> promotion and progression are made according to the rules on performance evaluation in the Public Administration, through the other body created in the Statute, the Inspection Services, which is not yet in operation.

318. Despite the government's legislative efforts to realise the principle of access to the law, there are economic barriers to fully satisfying this right. However, in the last four years, five (5) courts have been built from scratch,<sup>136</sup> and the Northern Regional Court in Bissorã has been split into two courts, in Oio and Cacheu. The Access to Justice Centres have also been extended to Gabú and Buba to provide assistance and advice to citizens.

319. In a report produced on the independence of judges and lawyers, it is stated that: "Judges and prosecutors also do not have adequate salaries."<sup>137</sup> Concerned about this situation, the remuneration framework for judges and prosecutors was revised<sup>138</sup> to bring it into line with today's requirements, with advantages and incentives for the dignity of the job, such as: a basic salary in which the percentage differences between the judges at the top of the career and the other judges are classified, plus isolation allowances, fuel allowance, 20 per cent of the basic salary, representation expenses, subsistence allowances, transfer allowances and risk allowances. Despite the expectations created by the approval of the law, at a glance its immediate application is not foreseeable due to the structural conditions aggravated by the COVID-19 outbreak impacting fragile economies and their development.

320. The appointment and security of office of judges is guaranteed by the Organic Law of the Courts,<sup>139</sup> which includes full autonomy in relation to administrative, financial and disciplinary matters. A Superior Council of the Judiciary is responsible for the administration of judges' careers, including appointments, transfers and promotions, and their discipline.

321. The appointment of judges and magistrates is preceded by an open competition process for all law graduates and followed by preparatory training at CENFOJ.<sup>140</sup>

## **XII. People with disabilities (Arts. 2, 7, 9-10 and 26)**

322. The issue of disability cuts across society and is the main reason for the poverty and marginalisation of human beings. The constitutional principles of equality and human dignity are the normative framework for the situation of people with disabilities. The economic, social and cultural integration of people with disabilities is still far from being achieved.

323. In order to better protect the rights of people with disabilities, the country ratified the Rules on Equal Opportunities for Persons with Disabilities and the International Convention

<sup>135</sup> Decree-Law No. 05/2012, of 18th October.

<sup>136</sup> Court of Canchungo, Mansoa, Ingoré, Gabu and Buba.

<sup>137</sup> Report of the Special Rapporteur on the independence of judges and lawyers, April 2016.

<sup>138</sup> See Law No. 05/2018, of 7th November, which replaced Decree No. 21/95, of 25th December.

<sup>139</sup> Exvi in the Statutes of Judicial Magistrates and Public Prosecutors.

<sup>140</sup> CENFOJ - National Judicial Training Centre.

on the Rights of Persons with Disabilities.<sup>141</sup> Despite these ratifications, the instruments have not yet been widely publicised. There is also other national legislation that directly or indirectly affects issues related to people with disabilities, such as the Penal Code, the Decree-Law on the Social Security System,<sup>142</sup> the Basic Law on the Education System,<sup>143</sup> the Electoral Law for the President of the Republic and the National People's Assembly.<sup>144</sup> The Basic Law on the Education System provides for the adoption of an inclusive education system for special education, with curricula, programmes and assessment systems adapted to each type and degree of disability and the learning pace of the student.

324. Guinea-Bissau's commitment to people with disabilities has extended to the African level. With the aim of promoting measures for prevention, rehabilitation and full participation and equality in the development process, the Pan-African Conference of 2002 adopted a preliminary Programme of Action by Decision CM/Dec.676, aimed at defining the ways and means of implementing a social inclusion action plan for African countries. In this context, the country must endeavour to enable the drafting of an Action Plan for People with Disabilities, based on the UN Convention on the Rights of Persons with Disabilities, and guarantee its implementation.

325. The results were the government's recent drafting of the National Strategy for the Inclusion of People with Disabilities, which is awaiting promulgation. A first concern with the situation of people with disabilities was to find out the types and numbers of people in the country, an item being included in the 2009 general population census. The data collected shows that out of a total population of 1,449,230 people, 13,590 people with disabilities were registered, or 0.94 per cent of the resident population in the Republic of Guinea-Bissau. The gender structure of this population shows that 53.9 per cent of people affected by disability are men and 46.1 per cent are women.

326. There is a lack of a dynamic and up-to-date global and sectoral statistical system, geared towards understanding the number, classification and socio-economic status of people with disabilities.

327. As Guinea-Bissau is a very poor country (absolute poverty affects two out of every three Guineans) and has a very high unemployment rate, people with disabilities face greater problems and have many difficulties integrating, for reasons that are both subjective (employer prejudice that confuses physical disability with professional disability, exclusion and marginalisation) and objective reasons (lack of jobs, a physical environment full of barriers, inadequate and difficult access on public roads, buildings with poor accessibility and mobility conditions, lack of adapted public transport, lack of compensatory devices or auxiliary equipment, such as wheelchairs, crutches, hearing aids, walking sticks, etc.).

328. Despite the marginalisation and discrimination of people with disabilities in the education system, some progress has been made in this area. In 2016 the first edition of the sign dictionary was launched, updated and relaunched in 2017 by the Association of the Deaf of Guinea-Bissau, a curriculum plan for initial teacher training in inclusive education is underway - INDE 2017, an inclusive education programme was launched by *Humanity&Inclusion* integrating 26 schools between Bissau and the Oio Region. On the other hand, Guinean public education has shown little capacity for innovation in the sense of integration, of a formal inclusion approach, either through curricular subjects or through lesson plans that favour the dual approach of gender and inclusion of people with disabilities. Physical education classes do not have any equipment adapted for people with disabilities<sup>145</sup> despite the fact that physical education and sports teachers are trained in inclusion.

329. Despite the weaknesses noted, the government, through the Ministry of National Education and Higher Education, issues an annual Order on the exemption of school fees for

<sup>141</sup> On 24 September 2013 and its Optional Protocol a year later. The NPA approved this ratification through its Resolution No. 24/PL/VIII/2013 and promulgated by the President of the Republic through Decree No. 24/2014 of 7 March, having been incorporated into the Guinean legal order.

<sup>142</sup> Decree-Law No. 05/86, of 29 March, Art. 73, No. 1.

<sup>143</sup> Law No. 4/2009, of 29 March, arts. 33–34.

<sup>144</sup> Law No. 03/98, Art. 75 No. 1.

<sup>145</sup> Ibid. page 83.

PwDs<sup>146</sup> and there are initiatives from CSOs (NGOs, DPOs, religious organisations, community radios) that manage to provide some assistance and answers to the most urgent needs. This outcome is the result of the contribution made by the Associations of People with Disabilities and other associations that promote these rights, namely AGRICE,<sup>147</sup> AS-GB<sup>148</sup> and the Federation of Sports for the Disabled, but also the social intervention of religious organisations, especially Catholic and evangelical missions.

330. With regard to violence against people with disabilities, especially children, 82 per cent of the cases of abandonment of children in the various shelters by parents and/or relatives occurred because of their disability. The behaviour of those “responsible” for the children is preceded by religious rituals that bring direct suffering to the children, who are then taken away from their families and abandoned on the banks of rivers or beaches. Those in charge of the centres where these children are sheltered are unanimous in stating that, in 80% of cases, it is difficult to regain links with the family of origin, and the shelters become their place of residence and interaction with the community.<sup>149</sup> The Bissau Regional Criminal Court tried and convicted two cases of abandonment offences (2022/2023), one case of infanticide and corpse desecration.

331. Children with intellectual disabilities suffer all forms of violence, especially those with a double disability - intellectual and hearing. Such as the isolation in the classroom to which they are subjected by their peers, and the lack of pedagogical support.

332. With regard to the electoral ballot, Article 9 of the Electoral Law states that the following do not enjoy active electoral capacity: (a) Those who are interdicted by virtue of a mental anomaly, by a final judgement; (b) Those who are notoriously recognised as demented, even if they are not interdicted by judgement when they are interned in a psychiatric establishment or declared as such by a medical board that may consist of only two doctors.

### **XIII. Refugees, asylum seekers and displaced persons (Arts. 7, 12–13, 16 and 26)**

333. The CRGB has a single article dealing with statelessness, without however dealing with refugees and internally displaced persons, and in which it states that: “Foreigners, on the basis of reciprocity, and stateless persons, who reside or are in Guinea-Bissau, shall enjoy the same rights and be subject to the same duties as Guinean citizens, except with regard to political rights, the exercise of public functions and other rights and duties expressly reserved by law to national citizens.”

334. Refugees are protected through the rules of international law on the subject, and the customary rules of the people, who have always been welcoming, not least because we are one of the countries with a long period of instability, marked by a national liberation war that lasted 11 years and a civil war, followed by permanent instability that led many diasporans to neighbouring countries and Europe.

335. The country has taken in thousands of long-term refugees, as well as people from the Casamance region of Senegal seeking asylum. Many residents maintain ethnic and family ties on both sides of the poorly demarcated borders with Casamance in the north of the country, making the nationality of many people in the region unclear.

336. Abuse of Migrants, Refugees and Stateless Persons: The government cooperated with the Office of the United Nations High Commissioner for Refugees (UNHCR) and other humanitarian organisations in providing protection and assistance to internally displaced persons, refugees, asylum seekers, stateless persons and other persons in situations of concern.

<sup>146</sup> Order No. 076/GM/MENES/2021, of 13 November.

<sup>147</sup> Guinean Association for the Rehabilitation and Integration of the Blind.

<sup>148</sup> Association of the Deaf/Mute of Guinea-Bissau.

<sup>149</sup> *Humanité Inclusion*, Studies on violence against children with disabilities in Guinea-Bissau (São Domingos, Bafatá, Buba and Bissau), 2019, p. 32.

337. Access to Asylum: The law provides for the granting of asylum or refugee status. The government did not grant refugee or asylee status during the year and there were no reports of any applications. The UNHCR office in Bissau facilitated the issuing of refugee cards.

338. Durable Solutions: In December 2018, President José Mário Vaz granted citizenship to more than 7,000 linguistically and culturally assimilated refugees who have been living in the country for more than 25 years. The decree is in line with international agreements on migration and asylum. By the end of the year, the government had issued official identification to more than 5,000 of these people. Many of these refugees were originally from the Casamance region of Senegal, as well as minorities from Liberia and Sierra Leone.

#### **XIV. Human trafficking, elimination of slavery and servitude and domestic workers (Arts. 6–8 and 24)**

339. Much reference was made to the Constitutional norm against inhuman treatment and slavery. The Universal Declaration of Human Rights, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, the African Charter on Human and Peoples' Rights, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, the African Charter on the Rights and Welfare of the Child Guinea-Bissau, signed on 08/03/2005, ratified on 19/06/2008 and deposited on 14/10/2008, the Convention on the Rights of the Child, adopted by the United Nations General Assembly on 20 November 1989, have been ratified by the State of Guinea-Bissau. Other conventions, treaties and international legislation to which our country is a party have added to the set of rules regulating trafficking in persons, especially women and children.

340. The Economic Community of West African States (ECOWAS), in its action plan on human trafficking, recommends that member states adopt internal regulatory instruments capable of preventing and discouraging these practices.

341. The Anti-Trafficking Law<sup>150</sup> came about as a way of combating the evils of human dignity, namely: the recruitment or harbouring of persons by means of threat, moral or physical coercion, abduction, fraud, deception, forced marriage, abuse of authority or by taking advantage of the victim's vulnerability or natural or accidental physical disability or mental abnormality, or the giving or receiving of payments or benefits to obtain the consent of the person having authority over the victim, for the purpose of sexual exploitation, forced marriage, removal of human organs, labour, slavery or similar practices, as well as servitude.

342. On a bilateral level, the country has signed judicial cooperation with Brazil, Senegal, Gambia, Portugal, the Kingdom of Morocco and Italy on criminal matters, including mutual legal assistance, the transfer of sentenced persons, preventing and combating crime, including transnational organised crime and economic and financial crime, in particular money laundering, corruption, cybercrime, counterfeiting of medical products, trafficking in human beings, arms and psychotropic substances, as well as crimes against the environment.

343. The law also bans child pornography and criminalises the commercial sexual exploitation of children and prescribes sentences of three to fifteen years in prison and the confiscation of any proceeds from the crime. Bilateral cooperation with the Republic of Senegal has resulted in 158 children sent to Koranic schools in Senegal and begging being returned to their country. However, the people involved in these rights violations have rarely been punished.<sup>151</sup>

<sup>150</sup> Law No. 12/2011, of 6th July, the law to prevent and combat trafficking in persons, in particular women and children.

<sup>151</sup> See Human Rights Report on physical violence in Guinea-Bissau, p. 14.

## **XV. Freedom of expression and protection of journalists (Arts. 6–7 and 18–19)**

344. The right to information and freedom of expression are the foundations of a free and open society and to guarantee them the CRGB<sup>152</sup> states that: “freedom of the press shall be guaranteed; radio and television stations may only be created by means of a licence to be granted under the terms of the law; the state shall guarantee a press, radio and television service, independent of economic and political interests, which ensures the expression and confrontation of the various currents of opinion; in order to guarantee the provisions of the previous paragraph and ensure respect for ideological pluralism, a National Media Council shall be created, an independent body whose composition and functioning shall be defined by law”.

### **The legal and regulatory frameworks governing the right to freedom of expression in the State Party**

345. Various pieces of legislation have been adopted, such as:

#### **General bases of the legal regime applicable to the written press and news agencies<sup>153</sup>**

346. This law states that the essential functions of the press, press publishers and news agencies are the free expression of ideas and thought, information, dissemination of news and information, civic education of citizens and promotion of the values of freedom, equality, pluralism and the democratic order.

347. Organisations operating in the field of the press, publishing or the dissemination of press or news must act transparently and issue information that is not misleading or could lead to unfair competition, and are obliged to monitor print runs in accordance with the law.

348. Access to the written press, publishing and news agency business is free, without prejudice to the administrative formalities required for the exercise of any commercial or industrial activity. This activity can be carried out by any natural or legal entity, public or private, national or foreign, as long as it is registered. Foreign publications, as well as their distribution, circulation or sale, shall be free, without prejudice to the registration to which they are subject with the relevant entities, and may only be banned by court decision when they violate sovereignty and the law, public order and security.

349. The same law states that the press has a function in the public interest, provided that it aims in particular to:

- (a) The dissemination of information and knowledge that contributes to deepening democracy and social progress;
- (b) The formation of an informed and enlightened public opinion;
- (c) Spreading culture and striving for national identity and unity;
- (d) Promoting dialogue between public authorities and the population;
- (e) Mobilising popular initiative and participation in the various areas of activity;
- (f) The defence of peace, human rights, friendship between peoples and solidarity.

350. To ensure that the various currents of opinion can be confronted, the state shall organise a system of non-discriminatory incentives to support the press, based on general and objective criteria, to be determined by special law.<sup>154</sup>

351. As far as news agencies are concerned, the law provides for the right of reply for natural or legal persons and even their heirs or surviving spouse who feel they have been

<sup>152</sup> Art. 56 CRGB.

<sup>153</sup> Law No. 01/2013, of 25th June.

<sup>154</sup> Although the law provides for incentives for public and private media organisations, to date there has been no special law, so there are no incentives.

harmful by editions that contain inverted and erroneous elements that could manifestly affect their good name and reputation.

### **Freedom of the press law<sup>155</sup>**

352. The law regulates freedom of expression, of thought through the written press, radio and television broadcasting and any form of reproduction of writings, sounds or images intended for public dissemination.

353. Invoking the CRGB, the law states that: “every citizen has the right to freely express and disseminate his thoughts through the press, and the exercise of this right may not be subject to any form of censorship, authorisation, security or prior authorisation”.

354. No citizen may be harmed in their private, social or labour life as a result of the legitimate exercise of the right to freedom of thought through the press. It is lawful to discuss and criticise political, philosophical, social and religious doctrines, as well as the acts of the organs of power of the State and the Public Administration, within the limits of this law.

355. This freedom includes: “the recognition of the fundamental rights and freedoms of journalists, the right to freely print and circulate publications, without anyone being able to oppose this by any means not provided for by law.”

356. Freedom of the press also includes the right of citizens to be informed through measures that prevent levels of concentration that are harmful to the pluralism of information, the publication of the editorial status of news publications, the recognition of the rights of reply and rectification, the identification and veracity of advertising, access to the National Media Council to safeguard the impartiality and rigour of information, and respect for ethical standards in the exercise of journalistic activity.

357. Professionals are guaranteed access to the sources of information necessary to exercise the citizen’s right to information and journalists are not obliged to reveal sources of information, and their silence may not be penalised directly or indirectly. This right extends to refusing to give evidence in court, unless it is considered indispensable for weighty reasons of public interest by the competent court.

358. This freedom only has its limits when it is to safeguard the rigour and objectivity of the information, to guarantee the rights to a good name, the privacy of private life, the image and the word of citizens and to defend the public interest and the democratic order, or to facts and documents classified by the competent authorities as military secrets or state secrets, or which are secret by legal imposition.

### **Television law<sup>156</sup>**

359. Freedom of and access to the television service depend on the licence granted by the competent authority through a public tender for the granting of licences for its exercise, suspension, cancellation, as well as the period of validity thereof, except for the existence of the public television service, which does not require a licence.

360. These services generally aim to contribute to impartial and objective information for the public, guaranteeing citizens the right to inform, to search information and to be informed, without hindrance or discrimination, to contribute to the political and cultural education of the public, promoting the debate of ideas, the exercise of critical freedom and stimulating the creation and dissemination of cultural values that express the national identity, defending and promoting the Portuguese and Creole languages, national dialects and Guinean culture, with a view to strengthening unity and solidarity among Guineans, both inside and outside the country, favouring the creation of habits of civic coexistence typical of a democratic state.

361. Freedom of information and programming is guaranteed and is part of citizens’ fundamental right to free and plural information, which is essential to democratic practice, the defence of peace and the social and cultural progress of the country, and those entities that carry out television activity are independent in terms of information and programming,

<sup>155</sup> Law No. 2/2013, of 25th June.

<sup>156</sup> Law No. 3/2013, of 25th June.



and no sovereign body or public administration may prevent or impose the broadcasting of any programmes or news, except in the cases expressly provided for by law.

362. Restrictions on the freedom of information and programming are based on respect for the dignity of the human person, the rights and the free formation of the personality of children and adolescents, and may target broadcasts of pornographic or obscene programmes, programmes or messages that incite violence, hatred, tribalism, racism, xenophobia or contravene criminal law, or broadcasts of programmes likely to have a negative influence on the formation of children or adolescents, or to impress viewers particularly by showing violent or shocking scenes.

363. Important budgetary support for public press organisations was adopted with the Audiovisual Contribution law, approved by Law No. 1/2021 of 28 January, while private organisations do not receive the same treatment, violating the principle of equality contained in the General Bases for the Written Press and News Agencies.

364. The country has not adopted a system of independent public press organisations, all the existing legislation does not create a written or audiovisual press system with a mandate for its organs, so the press management is at the mercy of political vicissitudes and instabilities, the blocking and censorship of information on the activities of opposition political parties has been constant at different times and their officials with different ideologies have been sidelined.

365. There have been attacks on journalists and private press organisations, as well as attempts to restrict information rights. Cases in point are the vandalism of Rádio Capital twice, which now broadcasts *online*, the beating of journalists and social media activists, threats to the exercise of press freedom, which are practically common in this period, the dismissal of the director of Rádio África FM, were other cases in which the perpetrators have not been brought to justice or concrete measures taken to prevent or protect press agents and their assets.

## **XVI. Freedom of assembly and protection of human rights defenders (Arts. 6–7 and 21)**

366. Freedom of assembly and demonstration is constitutionally guaranteed under the terms of Article 54 of the CRGB, which states that: “Citizens have the right to assemble peacefully in places open to the public, under the terms of the law. All citizens are recognised as having the right to demonstrate, under the terms of the law.”

367. The Freedom of Assembly and Demonstration Act<sup>157</sup> states that all citizens are guaranteed freedom of peaceful assembly and demonstration.

368. It defines a meeting as a temporary, organised and non-institutionalised gathering of people for the purpose of exchanging ideas on political, social or public interest matters or for any other lawful purpose.

369. On the other hand, it defines a demonstration as a parade, procession or rally aimed at the public expression of a will on political, social, public interest or other matters.

370. Ordinance 2/GMAT/2016 issued by the Ministry of Territorial Administration in 2016 is no longer applied.

## **XVII. Children’s rights (Arts. 7, 9–10, 14, 23–24 and 26)**

371. The Constitution of the Republic of Guinea-Bissau is silent, as we have already described, on a number of issues dealt with here. The reason for this is its very slow evolution,

<sup>157</sup> Law No. 3/92, of 6th April, Law on Freedom of Assembly and Demonstration.

characterised by minor amendments to the 1984 constitutional law, which lasted until 1996, the date of the last amendments.

372. In terms of children's rights, the situation is the same, so the general constitutional provisions must be applied to the case, and in this case, to the aforementioned articles 24, 26 and 37, all of the CRGB.<sup>158</sup>

373. Meanwhile, at international level, Guinea-Bissau has ratified and adopted several legal instruments: the UDHR, UN Convention on the Rights of the Child (CRC; 1989), African Charter on the Rights and Welfare of the Child (CADBEC; 2008), ILO Convention No. 138 concerning the Minimum Age for Admission to Employment, ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Convention on the Rights of Persons with Disabilities, Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (2004), Optional Protocol to the Convention on the Rights of the Child on the sale, prostitution and child pornography (of children), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000).

374. At the infra-constitutional level, the most noteworthy are the Penal and Criminal Procedure Code, the Civil Code (repealed by Law No. 04/76, of 03 May - in matters of minors), the Statute of Jurisdictional Assistance for Minors in Overseas Territories (Decree No.º 417/71 of 29 September), the Law aimed at preventing, combating and repressing female excision - female genital mutilation - (Law nº14/2011 of 06 June), the Domestic Violence Law (Law nº6/2014 of 4 February), the Law on Preventing and Combating Trafficking in Persons, in particular Women and Children, Decree-Law nº 2-B/1993 on Narcotics, the Organic Law of the Judicial Courts Law No. 03/2002 revised by Law No. 06/2011, which creates the jurisdiction of minors and the scope of action of the respective jurisdictions, the Licensing and Supervision Regime for Reception Centres and the Temporary Reception Family Law, the Regulation of Reception Homes.

375. The most recent legal instrument in terms of child protection is the Labour Code Law No. 7 of 2022, and in the very advanced stages of legislative creation will come the Code for the Integral Protection of Children (a document awaiting promulgation during the 11th Legislature) and the revisions of the major Codes (Criminal and Criminal Procedure, Civil and Civil Procedure) that will conclude the cycle of creating norms, combining and compiling all the norms of international law on child protection with the socio-cultural reality of the Guinean people for the protection of children's rights, a new document at the service of children's well-being and that effectively guarantees the idea of the supreme interests of the child.

376. At the infra-legislative level, child protection instruments have been adopted, both at a general level and at a sectoral level, such as: the Excellence Scholarship Programme for the insertion and reinsertion of girls who are victims of violence, the National Plan for the prevention and fight against trafficking in human beings, the Law on the prevention, treatment and control of HIV/AIDS, the National Strategy for the Inclusion of People with Disabilities.

377. A number of structures have been set up to protect children's rights, including: the National People's Assembly's Specialised Committee for Women's and Children's Affairs. The Domestic Abuse and Violence Protection Office (Ministry of the Interior). The Institute for Women and Children - IMC. The National Children's Parliament - PNI. The Family and Minors Court (Curator of Minors). The Access to Justice Centre - CAJ. The National Committee for Preventing and Combating Trafficking in Human Beings. The National Committee for the Abandonment of Harmful Traditional Practices - CNAPTN. The Brigade for the Protection of Women and Minors - Judicial Police and Decree-Law 8/2010 Regulation of Court Fees.<sup>159</sup>

<sup>158</sup> Art. 37 CRGB.

<sup>159</sup> Article 3/1(g) and Article 4(a) and (b) of these regulations exempt all civil cases in which minors have jurisdiction.

378. As a result of information and complaints of mistreatment of children adopted by foreigners in Guinea-Bissau, the government decided to ban international adoption at the Council of Ministers on 15 October 2020 in order to better regulate the situation.

379. A very important measure in the fight against ill-treatment was the adoption of an Order banning the use of corporal punishment of children in schools.

380. In terms of the judiciary, Guinea-Bissau has adopted judicial structures to protect children's rights, including the Organic Law of the Judicial Courts,<sup>160</sup> whereby juvenile courts have been created in the Public Prosecutor's Office and in the Judicial Courts - such as the Curatorship of the Family and Minors Court and the Family and Minors Court, although there are still no special courts for criminal cases.<sup>161</sup>

381. It should also be emphasised that the Statute of Jurisdictional Assistance for Minors in Overseas Territories, still in force, states that: "In no case is it permitted to use violent or degrading punishments or those that could in any way affect the physical or psychological health of minors."<sup>162</sup>

382. The Overseas Juvenile Jurisdictional Assistance Statute provides for the creation of juvenile courts as autonomous institutions. Also, according to the statute, the juvenile court process must cover criminal prevention proceedings and civil proceedings. The Court is responsible for adoption proceedings, regulating the exercise of parental authority, actions for maintenance owed to minors, judicial surrender of minors, disqualification from parental authority, and unofficial enquiries into maternity or paternity.<sup>163</sup>

383. The court is given powers to apply the criminal prevention measures set out in the statutes, including civil measures.<sup>164</sup> It also provides for the creation of a Criminal Prevention Establishment, whose purpose is the social rehabilitation of minors, observation and the implementation of preventive measures. It establishes the creation and operation of the following preventive establishments - Medical-Psychological Institutes, Educational or Re-education Institutes and Patronage Homes.<sup>165</sup>

384. The Criminal Police Agencies (OPCs) also intervene to protect children's rights against punishment and ill-treatment. The Judicial Police has a Juvenile Brigade, as do the National Guards and the Public Order Police.

385. At the level of Detention Centres and Prison Services, no structure has yet been created to promote the social reintegration of children in conflict with the law, nor socio-educational measures aimed at their re-socialisation that promote the social recovery of minors subject to internment measures, through adequate education, schooling and learning a trade, so the country lacks a prison system that can differentiate and separate children from adults.

386. With regard to human resources in this area, namely judges and juvenile prosecutors, social workers, psychologists and other care professionals, there are huge shortages in terms of both quantity and the need for greater training in human rights and the CRC.

## **XVIII. Measures to eliminate and prevent child exploitation**

387. In terms of child exploitation, Guinea-Bissau has created or adopted several laws to prevent and eliminate all acts that jeopardise the present and future health and well-being of children.

<sup>160</sup> Law No. 3/2002 revised by Law No. 6/2011.

<sup>161</sup> The Code for the Integral Protection of Children provides for Part VI to deal with children in conflict with the law, using a procedural diversion mechanism and placing children under 12 in the protection system if they have committed an offence.

<sup>162</sup> See Art. 159/2 of Decree No. 417/71, of 29 September, Statute of Jurisdictional Assistance for Overseas Minors.

<sup>163</sup> See Art. 84 to 125 of the EAJM.

<sup>164</sup> Art. 15 to 33 and 34 and 35 EAMJ.

<sup>165</sup> See Art. 127 EAMJ.

388. This refers to the international conventions to which it is a party, the Anti-Trafficking Law, which criminalises sex trafficking and labour trafficking and prescribes penalties of 3 to 15 years in prison and the seizure of any proceeds of crime.

389. The government carried out investigations into child trafficking, and the report concluded with 34 cases of trafficking, 8 cases of forced begging and 26 cases of sex trafficking.

390. An important measure was the government's identification and referral for care of 75 child victims of forced begging and 24 child victims of forced marriage, including potential victims of trafficking.<sup>166</sup>

391. Despite these actions, at the judicial level there has been no conviction or judicial proceedings against those involved in order to discourage such practices, and the government body responsible for assisting victims and coordinating services between various entities, the Institute for Women and Children (IM(C)), does not have an operational budget or vehicles. The government does not have a specific fund to support victims; this service relies on international organisations and local NGOs that provide almost all services to victims; these NGOs subsequently depend on international donors for funding. The government does not provide financial or in-kind assistance to NGOs that assist victims of trafficking.

### **Implementation of the Labour Code and comprehensive child protection**

392. The General Labour Law in force since 1985 was recently repealed by the Labour Code, which came into force on 17 July 2022. In this new law, the subject is dealt with in Book II, Chapter I, Section VII, under the heading Labour of Minors, articles 346 to 358, in addition to the other regulations scattered throughout the Code.

393. The Code does not define what a minor is, but under the heading of capacity,<sup>167</sup> it lists the subjects of the legal labour relationship, including minors who have reached the age of 16. Article 40 says: "In addition to people who have full capacity to exercise their rights under the general terms of the law, minors who have completed compulsory schooling and have adequate physical and mental capacity for the job may validly enter into a labour contract, and for whom the following requirements are met: Minors who have reached the age of 16 and who, with the permission of their parents or guardian, live independently."

394. In terms of domestic work, the Code states that, with regard to the minimum age for domestic work, minors must be 16 years old.

395. The rights and duties of underage workers are guaranteed in the Code and impose maximum limits on normal working hours, which correspond to 8 hours a day and 40 hours a week.

396. The law prohibits workers under the age of 18 from being assigned by their employer to overtime work, night work, work that, due to its nature and potential risks, or the conditions in which it is carried out, is harmful to their physical and mental development, such as in theatres, cinemas, cabarets, discos and similar establishments, as well as activities such as selling or advertising pharmaceutical products, alcoholic beverages and tobacco.

397. The code is silent on the subject of agricultural labour by minors, and only deals with the work of adults.

398. For minors to be employed, the contract must be formalised, and the code is exhaustive when it states that: "Under penalty of nullity, the employment contract entered into with a minor must be reduced to writing, and the minor must provide proof that he or she has reached the age of admission to work, by showing the Identity Card, a copy of which is attached to the contract itself. The minor's enrolment in the insurance scheme is compulsory."

<sup>166</sup> Report on drug trafficking in Guinea-Bissau.

<sup>167</sup> See Art. 40 C.T.GB.

## **XIX. Participation in public affairs (Arts. 19 and 25)**

399. According to the law, voter registration is carried out only once and the electoral roll must be updated annually in January and February within the national territory, and abroad between February and March. All Bissau-Guinean citizens over the age of 18 living in the country or outside it must register.

400. The measures taken to organise free, credible and transparent elections are set out in the Electoral Registration Law.<sup>168</sup> The duly constituted political parties are responsible for supervising the registration process by appointing inspectors at the registration table. Publicising voter registration<sup>169</sup> is another measure - it consists of announcing the registration period in national media/information, and by means of notices to be fixed in specific public places, thirty days before it begins. The voter's card is given to the registered citizen on the spot. A copy of the results is displayed and communicated at the door of the place where the census commissions operate within fifteen days of the end of the process for the purpose of complaints from interested parties. The electoral roll remains unchanged for thirty days prior to each election. There is the possibility of a complaint and appeal to the competent court by the citizen voter or party who feels that their right is being violated by the registration commission.<sup>170</sup>

401. Due to the lack of funds for these updates, the government tried to seek a broad consensus with parties with and without parliamentary seats to update the 2014 electoral roll instead of carrying out a census from scratch. A technical support team for the electoral process came from East Timor and offered a data server and financial support from partners to ensure a free, fair and transparent electoral process.

402. The elections scheduled under Presidential Decree No. 20/2018 of 16 April, which set the date of 18 November 2018 for the legislative elections, did not take place for reasons relating to political-constitutional constraints. It was not possible to mobilise the technical, logistical and financial resources in time to hold the elections on the set date. For this reason, it was not possible to carry out the electoral registration of potential voters in good time, as a fundamental prerequisite for the electoral act to take place.

403. It was concluded that the date previously set should be renewed and set for 10 March 2019, the date on which the vote did take place.

404. The last elections took place on 4 June 2023 for the legislative elections and the swearing in of the new members of parliament took place on 27 July 2023. On 15 August 2023, the new government took office.

## **XX. Disclosure of information relating to the Pact (Art. 2)**

405. Guinea-Bissau signed the International Covenant on Civil and Political Rights on 12 September 2000. Almost 10 years later, on 1 November 2010, it acceded to and consequently ratified this instrument, having deposited it with the Secretary of the Treaty Bodies, with the document becoming directly binding on it in accordance with the rules laid down in Article 29 of the CRGB.

406. As in all developing countries, the mechanisms for publicising both domestically produced standards and those of conventions are always deficient.

407. The first form of dissemination was the publication of the ratification in the Official Gazette of Guinea-Bissau, although this mechanism is not widely used by target audiences due to the high monetary cost of this means of publication.

<sup>168</sup> See Law No. 2/98 of 28 April.

<sup>169</sup> See art.

<sup>170</sup> See articles 17 to 35 of the Voter Registration Law.

408. The United Nations System, through the now defunct UNIOGBIS, was a vehicle for publicising this instrument, promoting seminars to publicise and raise awareness among judicial actors, the Bar Association, OPCs, civil society actors and NGOs, in academic circles, having produced a book on Fundamental Rights that was offered to the different fringes of Guinean society, public and private institutions, the Bar Association, the Courts, Universities, etc.

409. Twelve years on, the country still hasn't produced its first report, although it was obliged to do so two years after ratification.

410. Therefore, by Order No. 021/PM/2022 of 19 April, the government set up an Interministerial Committee to draw up the Report on the implementation of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In the future, and in a draft decree that has already been finalised, the intention is to create an Interministerial Standing Committee for the Preparation of all Guinea-Bissau's Reports to the Treaty Bodies of the United Nations and the African Union.

411. The Commission is made up of the Ministry of Justice and Human Rights, which presides, and experts from the Ministries of Foreign Affairs, Cooperation and Communities and the National Commission for Human Rights with two experts: Foreign Affairs, Cooperation and Communities and the National Commission for Human Rights with two experts; Economy, Planning and Regional Integration, Finance, Public Health, National Education, Higher Education, Women, Family and Social Solidarity, Public Administration, Labour Employment and Social Security, Environment and Biodiversity, Media, Agriculture and Rural Development, Interior and Public Order, Energy and Natural Resources, Youth Culture and Sport, National Defence, Public Works, Construction and Urbanism, Territorial Administration and Local Power, all with one expert. Before work began on the production of the two pacts, the Ministry of Justice and Human Rights promoted, with the technical and financial support of the United Nations High Commissioner for Human Rights (OHCHR), a retreat at Hotel Uaque, Mansôa Sector, from 13 to 15 September 2022, with the aim of training the technicians involved in preparing this report. The retreat had the technical support of two senior United Nations experts who provided a form containing questions to guide the drafting of the report.

412. The Commission did not involve civil society and non-governmental organisations in the design phase. However, they were involved in the discussion and validation, in which they made a valuable contribution.

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