

Background Paper on Rule of Law in Guinea-Bissau

Introduction

1. Strengthening the rule of law is a necessary condition for ensuring peace, democracy, respect for human rights, combating impunity and corruption and promoting the well-being of the population. Notwithstanding the government of Guinea-Bissau's best efforts and those of the international community to make improvements in this fundamental aspect for peace consolidation and stability, there are still many challenges related to all levels of the State's administrative machinery, including the security, defence and justice sectors.

Analysis of the situation regarding rule of law in Guinea-Bissau

2. The challenge of the rule of law in Guinea-Bissau is related to the need to ensure effective and proper functioning of the institutions and sovereign organs of State, promote human rights, provide an efficient judiciary system, and combat impunity and general criminality. At present, the State administrative apparatus does not have the capacity to overcome these challenges without external support.

3. The State security forces entrusted with enforcing rule of law include numerous and overlapping services with conflicting missions. For example, there currently exist the Public Order Police; the Judiciary Police; the Border Guards; Immigration Services; Maritime Police Services; Economic Crimes Squad; and State Security and Information Services. The lack of appropriate legal and regulatory framework and specific laws determining competencies and jurisdictions fuels institutional conflicts, particularly in matters of criminal investigation and procedure. Furthermore, the State security forces are marked by poor distribution of personnel across the country and staffed by persons advanced in age. There are no structures in place for periodic recruitment of personnel and no training institutions.

4. The Justice sector must be provided with adequate and proper infrastructure for a proper functioning of the courts, which are currently constrained to work from rented private residential homes. There is no properly constituted State ombudsman service, an important institution which could provide regulatory oversight of State officials and offer advice to the Government and Parliament on proposed legislation, including on strengthening the rule of law and justice. Also, legislative codes in important areas of the justice system must be updated, including the Code of Criminal Procedure, Criminal Code, Code of Judicial Costs, Code of Labour Procedure, and Notarial Code.

5. There is currently only one magistrate court for adjudicating criminal cases for the entire country – a situation that hampers the observation of deadlines for preventive detention of arrested persons and suspects. Guinea-Bissau does not have a functioning prison administration system, nor prisons or detention facilities compliant with

international standards. The country also stands in need of administrative, social welfare, family and youth courts or tribunal facilities.

6. The Office of the Prosecutor-General, guarantor of due legal process and repository of State prosecution powers encounters difficulties to carry out its ascribed duties and responsibilities owing to a lack of adequate material and human resources and political interference. Many criminal cases submitted to the Office have not yet been prosecuted owing to this situation, which also affects the Judiciary Police responsible for criminal investigation and referral of cases to the Office of the Prosecutor-General. There is a lack of motivation on the part of officials of the Office of the Prosecutor-General and on the part of judges, most of who refuse to be posted outside of Bissau, where conditions of service and support are worse or inexistent.

7. In conclusion, there is an urgent need to address the serious structural, institutional and staffing deficiencies in the justice system in Guinea-Bissau.

Efforts of Government and international partners to strengthen the rule of law

8. Efforts are being undertaken both at bilateral and multilateral levels to support Guinea-Bissau in carrying out a reform of the security and defence sector, with projects that will have a direct positive impact on improving and strengthening the rule of law. At the level of the State security forces, projects are underway for the rehabilitation and building of prisons or detention centres across the country; for the strengthening of the administration of justice and the penitentiary system; training for the State's law enforcement and criminal justice system; and sensitization campaigns and workshops to explain criminal prosecution or civil litigation procedure and defining competencies and jurisdictions for personnel of the various law enforcement institutions. Bilateral and international partners are working together to provide the above-mentioned assistance and other levels of assistance within the framework of bilateral cooperation agreements or as part of projects conceived in national programmes such as the Government's ongoing SSR Programme; the Antinarcotics Operational Plan, the PRSP, among others. Assistance in this regard is being provided among others by Angola, Brazil, China, France, Germany, Japan, Portugal, Spain, ECOWAS, EU and the United Nations system in Guinea-Bissau.

9. The Government has been carrying out considerable efforts on its part to address the challenge of strengthening the rule of law. Throughout 2007 and in 2008, it has worked closely with international partners to design and start the implementation of important reforms in the security and defence sector (the Government SSR Programme 2007-2012) and to lead the combat against drug trafficking and organized crime (Government Antinarcotics Operational Plan 2007-2010). A number of institutional structures have been set up, composed of Government representatives, national stakeholders and international partners, to operationalize these important national programmes, including the SSR Inter-ministerial Committee, SSR Steering Committee, SSR Technical Coordination Committee, and the Board of Administration for the Implementation of the Antinarcotics Operational Plan. The Government has also recently

ratified important international treaties, including the UN Convention against Corruption and the UN Convention against Transnational Organized Crime.

Expectations from the Peacebuilding Commission (PBC)

10. One of Guinea-Bissau's peacebuilding priorities presented to the Peacebuilding Commission is the consolidation of the rule of law as a vital factor for fighting corruption, impunity and instability. Addressing these challenges is fundamental for peace consolidation, defence and promotion of human rights and the prevention of conflict. In this connection, these issues should be addressed through the adoption of urgent measures to guarantee, among others, the independence of the Judiciary system, of the Office of the Prosecutor-General and lead to a proper administration of the penitentiary system.

11. Strengthening the institutional capacity of the Judiciary and of the Ministry of Justice is indispensable for a proper application of the rule of law and combating corruption, impunity and general criminality. Capacity-building, including training and creation of appropriate working conditions, is required for personnel of the law-enforcement institutions. The Government needs to be supported in its efforts to address social problems, including the worsening living and working conditions of personnel in the security and defence services whose contribution to a consolidation of the rule of law is vital. The proposed strategic framework for peacebuilding in Guinea-Bissau should recommend practical measures for addressing the challenge of strengthening the rule of law, human rights, promotion and protection of social groups such as women and children, all of which are also linked to SSR.