

THE OBSERVATORY

for the Protection of Human Rights Defenders

L'OBSERVATOIRE
pour la protection
des défenseurs des droits de l'Homme

EL OBSERVATORIO
para la Protección
de los Defensores de los Derechos Humanos

GUINEA-BISSAU

A Detrimental Environment to the Work of Human Rights Defenders

International fact-finding mission

fidh

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Source: Massachusetts Institute of Technology (http://web.mit.edu/cascon/maps/Guinea-Bissau_sm99.jpg)

Introduction	5
I. Historical and Political context.....	5
II. Legal and Institutional Framework Relevant to Human Rights Activities.....	8
a. International Legal Framework.....	8
b. National Legal Framework	8
III. Obstacles to the Work of Human Rights Defenders.....	13
a. State perception of human rights defenders	14
b. Lack of redress mechanisms	14
c. Lack of resources	14
d. Lack of expertise	14
e. Human rights violations and other challenges faced by defenders	15
i. Harassment of human rights defenders denouncing abuses of power and involvement of military and other States agents in organised crime	
ii. Harassment of human rights leading figures	
iii. Obstacles to freedom of assembly	
iv. Obstacles to the work of lawyers and legal professions	
v. Obstacles to the work of trade unions and their members	
vi. Harassment of human rights defenders working on harmful traditional practices	
IV. Conclusions and Recommendations.....	21
ANNEX 1 – Persons met by the Observatory delegation.....	23

Introduction

The Observatory for the Protection of Human Rights Defenders (here after “the Observatory”), a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), carried out an international fact-finding mission to Guinea-Bissau from January 7 to 17, 2008.

The Observatory’s delegation was composed of Mr. Paulo Comoane, member of the Liga Moçambicana dos Direitos Humanos, and of Ms. Rita Patrício, human rights specialist.

The delegation met with senior officials, including the President of the Parliament, the Prime Minister and the Ministers of Foreign Affairs, Justice and Internal Administration. It further held consultations with the Prosecutor General, the Presidents of the Supreme and Military Courts, police officers and Government representatives in Gabu, Bafatá and Cacheu. In addition, it met with representatives of the United Nations, the European Commission, Portugal and Honorary Consuls of the Netherlands, the United Kingdom and Switzerland.

The delegation further met with various representatives of non-governmental organisations (NGOs) and trade unions, as well as with students, judges, lawyers and journalists. Most human rights defenders in Guinea-Bissau work within NGOs, and are mostly active in the fields of women and children’s rights¹, the fight against abuse of power by state agents and impunity. New initiatives have recently developed, tackling rights of detainees and penal reform issues. Trade unions are in general well organised in the defence of labour rights. The delegation did not have the chance to meet with NGOs working on rural development.

A complete list of the individuals and entities met can be found in Annex 1.

The Observatory would like to thank the very resourceful assistance and cooperation of the Guinean League of Human Rights (*Liga Guineense dos Direitos Humanos* -

LGDH) as well as all the entities and individuals met during the visit.

The objectives of the mission were to assess the situation of human rights defenders in the country, through:

- a panorama of the main actors of civil society operating in the country (both defenders of civil and political rights and of economic, social and cultural rights²);
- the collection of first-hand information and testimonies on the situation of human rights defenders and their working environment, the obstacles and risks they face.

The mission also focused on the rights to freedom of association, freedoms of expression, of peaceful assembly and the right to a fair trial and to effective legal remedies as enjoyed by human rights defenders.

1. Historical and political context

The population of Guinea-Bissau is less than 1,5 million and is composed of about twenty ethnic groups. The major ones are the Balantas (30% of the population), the Fula (20%), the Mandjaques (15%), the Mandingues (13%) and the Pepels (8%).

Independence

Guinea-Bissau was the first Portuguese colony to reach independence. After five centuries of colonial presence and a brutal liberation war, the country became formally independent on September 10, 1974. Mr. Luis de Almeida Cabral then became the country’s first President.

Four years later, Mr. João Bernardo “Nino” Vieira, a member of the African Party for the Independence of Guinea and Cape Verde (*Partido Africano da Independência da Guiné e Cabo Verde* - PAIGC) became Prime Minister.

A period of instability

In 1980, Mr. Nino Vieira led a military coup against Mr. Luis de Almeida Cabral. From November 1980 to May

1. Specifically on the abolition of harmful traditional practices such as forced marriages, female genital mutilation; violence against women and trafficking of children.

2. With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the “operational definition” of human rights defenders adopted by OMCT and FIDH: “Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments”.

1984, the Constitution was suspended and power was held by a provisional Government responsible to a Revolutionary Council headed by Mr. Vieira. In 1984, a single-party assembly was created. It approved a new constitution and elected President Vieira to a new five-year term.

Guinea-Bissau moved towards a multi-party democracy in the early 1990s. In 1991, a multi-party system was instituted, and the first general elections took place in 1994. Mr. Nino Vieira won the elections against Mr. Kumba Yalá, from the Social Renewal Party (*Partido para a Renovação Social* - PRS), and was elected for four years. He was re-elected in 1998.

On June 6, 1998, Mr. Nino Vieira dismissed military Chief of Staff Mr. Ansumane Mané who, in reaction, led a military insurrection against Mr. Nino Vieira, with the help of the Navy Chief Commodore Lamine Sanhá. This plunged the country into a bloody civil war between forces loyal to Mr. Vieira and forces loyal to Mr. Mané, and triggered political instability until presidential elections were held in July 2005.

The civil war ended in May 1999 when Mr. Nino Vieira stepped down. An interim period ensued, until elections were organised on February 17, 2000. The 2000 presidential elections were won by Mr. Kumba Yalá, leader of the PRS. In November 2000, Mr. Ansumane Mané attempted once again to seize power through force, but was killed by forces loyal to Mr. Kumba Yalá. In 2003, Mr. Kumba Yalá was overthrown by a military coup, led by the Chief of the Armed Forces, General Veríssimo Coreia Seabra. In 2004, new legislative elections were organised, in a context of increasing tensions between different factions³. They were won by the PAIGC, which acquired 45 of the 100 seats at the National Assembly. Mr. Carlos Gomes Júnior, President of the PAIGC, was sworn in as Prime Minister. In 2005, Mr. Nino Vieira was once again elected as President.

Legislative elections are scheduled for November 16, 2008, the national day of the armed forces. The next presidential elections should take place in 2010.

2007: growing tensions, increasing difficulties

2007 was a year marked by rising social and political tensions and further economic decline. Trade unions undertook various strikes in the public sector, with

teachers protesting, *inter alia*, against unpaid salaries (which resulted in a two months delay of the academic year) and military veterans demanding the payment of their pensions.

Amid tensions between political and military factions, on January 4, 2007, former Navy Chief Commodore Lamine Sanhá was killed outside his home in Bissau, by men dressed in civilian clothing. Protests against the killing ensued, which were repressed by the police. As a result of this repression, one person was killed, several others injured.

Particularly distressed by this situation, on January 8, 2007, the Secretary-General of the United Nations urged the Government and political leaders to “exercise utmost restraint, and to focus on development and reconciliation”, and encouraged all national stakeholders “to avoid allowing impunity to prevail”⁴.

The 2007 national political stability pact

On March 12, 2007, the three main political parties - the PAIGC, the PRS and the United Social Democratic Party (*Partido Unido Social Democrático* - PUSD) - concluded a national political stability pact. According to the pact, the Prime Minister should be a PAIGC-nominee and ministerial portfolios should be divided with 40 per cent for PAIGC, 40 per cent to PRS, 17 per cent for PUSD, and three per cent for other parties and civil society groups.

The issue of drug-trafficking

The last years have witnessed increased awareness and growing concern over the key role of Guinea-Bissau as a major transit point for drugs on their way to European markets, and the alleged involvement of military officers.

Drug trafficking has been flourishing in an environment of institutional weaknesses and widespread poverty. It threatens to subvert the democratisation process of Guinea-Bissau, entrench organised crime and undermine respect for the rule of law.

Light aircraft are thought to carry cocaine from Latin America, in particular from Brazil to the islands of Guinea-Bissau's Bijagos archipelago. The cocaine then travels on to Europe.

3. In particular, the death of the head of the armed forces in 2004 caused widespread unrest.

4. See Statement attributable to the Spokesperson for the Secretary-General on Guinea-Bissau and Statement of the United Nations Secretary-General, United Nations documents SG/SM/10877, AFR/1502, February 13, 2007.

The delegation heard various testimonies alleging the involvement of the military in drug-trafficking. Such involvement was reportedly denounced by Mr. Haile Menkerios, United Nations Assistant Secretary-General for Political Affairs⁵.

Tribalisation of power?

According to various testimonies, the armed forces of Guinea-Bissau are presently mostly composed of individuals belonging to the Balanta ethnic group. Reportedly, there has been an effort to “tribalise” the State since the regime of President Kumba Yalá, a Balanta who promoted military from his ethnic group to the grade of generals. In 2007, the Minister of Education reportedly replaced school directors with Balantas.

Army interference in political affairs

Since its independence, Guinea-Bissau has not yet introduced significant reforms in its armed forces. The coming to power of Mr. Nino Vieira through a military coup in 1980 resulted in the army taking a pivotal role in the administration of the country, a role that it has never given up since then.

Civil society organisations have complained of the intrusion and pressure from the military in the governance of Guinea-Bissau, under the current President of the Republic. Such interference has also been noted by the UN Secretary-General regarding the replacement of the Interior Minister and the Finance Minister by figures close to the President. According to the Secretary-General, “despite a well-orchestrated campaign by his supporters, Mr. Baciro Dabo was dismissed as Minister of the Interior by presidential decree on October 16 [2007]. He was replaced by a member of PRS, Mr. Certório Biote, thus resolving the last major outstanding issue that had hampered the effective implementation of the political stability pact. The dismissal was preceded by reports of growing tensions between the Minister and the Armed Forces Chief of Staff General Baptista Tagma na Waie, amid allegations of military support for the PRS position. Such tensions were denied by a military spokesman on October 16 and by the Chief of Staff himself. The decision of the President reinforced widespread unease over what is perceived as military pressure and interference in politics”⁶.

Amnesty for past politico-military motivated crimes

In December 2007, the Parliament approved a draft amnesty bill granting amnesty to all crimes and infractions perpetrated until October 6, 2004 in Guinea-Bissau and abroad, resulting from “politico-military motivations” (Articles 1 and 2 of draft law). Crimes committed with “politico-military motivations” are defined in Article 3 as “amongst others, those perpetrated against external and internal security of the State”⁷. The proposal does not define the time span of the amnesty, but according to some opinions, it would cover crimes committed as long back as the independence. One of the bill’s objectives would reportedly be to exclude responsibility of high ranking officials, including the President, the Chief of Staff and other officials for political assassinations. The UNOGBIS was involved in the Amnesty Law process, namely through training of MPs.

All 65 parliamentarians present voted in favour of the amnesty law. Many were absent or left just before the vote as they feared military retaliation in case they abstained or voted against. The text was promulgated by the President of the Republic on April 18, 2008.

Growing tensions ahead of the elections

On January 30, 2008, the Armed Forces Chief of Staff General Batista Tagma na Waie stated in relation to the forthcoming legislative and presidential elections that the military would detain in their premises any political candidate or political party that would reject the results of the election⁸.

2007 also witnessed political instability and various threats to political leaders⁹:

- In January 2007, the leader of PAIGC, Member of Parliament and former Prime-Minister Carlos Gomes Júnior escaped a detention attempt by the Rapid Intervention Police and received shelter in the UN Peace-Building Office in Guinea-Bissau (UNOGBIS). Apparently, the arrest warrant had been signed by the Interior Minister and had been issued following declarations of Mr. Gomes Júnior accusing President Vieira of being responsible for the death of Navy Chief Commodore Lamine Sanhá.

- Also in January 2007, the leader of an opposition party, the Democratic Movement of Guinea-Bissau (*Movimento*

5. See Pana Press, May 19, 2008.

6. See Report of the Secretary-General on developments in Guinea-Bissau and on the activities of the United Nations Peacebuilding Support Office in that country (S/2007/576), September 27, 2007.

7. Non-official translation of articles of the draft amnesty law.

8. See PNN Portuguese News Network, “Chefe de Estado Maior General das Forças Armadas-Militar ameaçou de «chicotadas» nas próximas eleições guineenses”, February 7, 2008.

9. See News reports.

Democrático da Guiné-Bissau), Mr. Silvestre Alves, complained to newspapers of physical attacks, and accused Major Baciro Dabo, advisor of the President on information, of being responsible for his aggression¹⁰.

- In early August 2008, President Vieira dismissed the Government and nominated Mr. Carlos Correia as Prime Minister. On August 5, Mr. Carlos Correia presented the new cabinet, and on August 8, 2008, the media reported an attempted military coup¹¹.

II. Legal and institutional framework relevant to human rights activities

a. International legal framework

Guinea-Bissau is a party to only a few international human rights instruments, notably the United Nations (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN Convention for the Elimination of all forms of Discrimination Against Women (CEDAW) and the UN Convention on the Rights of the Child (CRC). However, only one periodic report on human rights was presented before the relevant UN Treaty Bodies¹².

Guinea-Bissau is also party to the African Charter on Human and Peoples' Rights (ACHPR), to the Constitutive Act of the African Union (AU), to the AU Convention Governing the Specific Aspects of Refugee Problems in Africa, and to the Convention for the Elimination of Mercenaries in Africa. Guinea-Bissau has never submitted its initial report before the African Commission on Human and Peoples' Rights, in violation of Article 62 of the African Charter.

Guinea-Bissau has not yet ratified key human rights instruments such as the UN International Covenant for Civil and Political Rights (ICCPR), the UN Convention

against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Charter on the Rights and Welfare of the Child, the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, the African Charter on Democracy, Elections and Governance. The Minister of Foreign Affairs could not inform the delegation of the plans to ratify or accede to international human rights instruments.

=> The Observatory recommends Guinea-Bissau to promptly ratify these instruments, to invite Special Procedures of the United Nations and the African Commission on Human and Peoples' Rights to visit the country and to regularly report before international and regional mechanisms on the human rights situation in Guinea-Bissau.

Although the ICCPR was adopted by Parliament through Resolution 3/89¹³ in 1989, human rights defenders and Government representatives were apparently unaware of such act. Furthermore, the ratification instrument was not deposited to the United Nations since Guinea-Bissau does not appear in the UN database as a party to this treaty¹⁴.

=> The Observatory recommends that Guinea-Bissau promptly ensures the deposit of the ratification instrument of the ICCPR.

According to the information gathered, the Government of Guinea-Bissau deposited the United Nations Convention against Trans-national Organised Crime and its additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as well as the United Nations Convention against Corruption.

b. National legal Framework

The Constitution of Guinea-Bissau¹⁵, amended in 1996, provides for a bill of rights¹⁶. According to the Constitution, the interpretation of the legal provisions on fundamental rights shall be in harmony with the Universal Declaration on Human Rights¹⁷, and fundamental rights

10. See Agência Bissau, "Major Baciro Dabo reage as acusações de Silvestre Alves", December 20, 2006.

11. http://tsf.sapo.pt/PaginalInicial/Internacional/Interior.aspx?content_id=976741.

12. The only report that has been submitted to date by the country is the CRC initial report in 2000, with a delay of eight years. Guinea-Bissau ratified the CEDAW on August 23, 1985, and was due to submit its initial report to the CEDAW Committee by August 1986. However, the latter is expected to be presented in January 2009, with a delay of more than 28 years. Likewise, Guinea-Bissau has still not submitted its initial report to the ICESCR Committee, although it has been a party to this Covenant since July 2, 1992.

13. Published in Boletim Oficial n°9, March 3, 1989.

14. <http://www.unhchr.ch/tbs/doc.nsf/newhvrstatby treaty?OpenView&Start=1&Count=250&Expand=3.2#3.2>.

15. The Constitution defines the Republic of Guinea-Bissau as a "sovereign, democratic, secular and unitary republic" (Article 1), in which "[t]he exercise of political power is vested in the people directly or through the democratically elected organs (Article 2.2).

16. The bill of rights is provided in Title II of the Constitution.

17. Article 28.2.

shall only be restricted or suspended in case of martial law or state of emergency (Article 31). Article 31.1 states that martial law or a state of emergency may be declared “in cases of foreign aggression, grave threat or disturbance of the democratic constitutional order or public calamity”.

However, the precision and the extent of the suspension and restriction of rights vary:

- Article 31.2 provides that martial law cannot affect the right to life, integrity and identity, civil capacity and citizenship, non-retroactivity of penal laws, right to defence of the accused and liberty of conscience and religion.

- Article 31.3 is vague as it provides that “a state of emergency can only result in the partial suspension of rights, liberties and guarantees”, without indicating which rights cannot be suspended.

According to Article 31, the same conditions have to be met to declare either martial law or the state of emergency. But the authorities have a more discretionary powers when declaring the state of emergency.

=> The Constitution and legislation should be amended so that:

- a detailed list of rights that cannot be restricted, as well as a clarification of the procedure (listing the necessary conditions that have to be met for declaring these states of exception) be included in Article 31.3, in conformity with ICCPR dispositions on non derogable rights;

- a difference be made between the conditions to be met to declare the state of emergency or the martial law.

The Constitution establishes the principle of equality before the law for all citizens (Article 24) and guarantees *equality between men and women* in all areas of political, economic, social and cultural life (Article 25). However, it is unclear if equality is formally guaranteed between men and women.

=> The Constitution should be amended so as to guarantee that all peoples shall be equal and that they shall enjoy the same respect and shall have the same rights, in conformity with Article 19 of the ACHPR, to which Guinea-Bissau is bound.

Several rights relevant to the work of human rights defenders are enshrined in the Constitution and in the legislation as follows:

Access to justice: Article 32 of the Constitution provides access to “jurisdictional bodies” to all citizens in case of violation of their rights as recognised by the Constitution and law. It also secures that justice cannot be denied in case of insufficient economic resources.

Rights of criminal suspects: the criminal law in Guinea-Bissau is based on the principle of non- retroactivity, unless the new law is more favourable to the agent (Article 38.4 of the Constitution and Article 3 of the Penal Code). Provisions on presumption of innocence and procedural rights for criminal “arguidos” (a person suspected but not yet accused) are foreseen in the Constitution, as well as the right to choose defence counsel.

A *habeas corpus* application can be filed in case of illegal detention, according to Articles 39.4 and 39.5 of the Constitution, and of Article 190 of the Criminal Procedure Code. However, whereas the Constitution states that habeas corpus requests should be directed to the Supreme Court (*Supremo Tribunal de Justiça*), or if that is not possible, to the closest Regional Court, the Criminal Procedure Code indicates the judge of the judicial area where the detainee is found (*juiz do círculo judicial*).

=> The legislator should clarify the procedure for habeas corpus and ensure its easy access.

Human rights institutions: The Minister of Justice informed the mission members of the forthcoming creation of a National Human Rights Commission (NHRC) composed of judges and lawyers, but excluding civil society organisations. The mission members recommended the inclusion of human rights NGOs in the composition of the NHRC.

=> The Observatory encourages the State to set, as a priority, a human rights national institution, which composition and mandate are in conformity with the Paris Principles relating to the status of human rights national institutions adopted by General Assembly Resolution 48/134 of December 20, 1993¹⁸.

There is neither a Constitutional Court nor an Ombudsman in Guinea-Bissau. In 2001, President Kumba Yalá barred a project of amendment to the Constitution which aimed to establish an Ombudsman and a constitutionality monitoring body.

18. The Observatory recalls that such recommendation was also made by the African Commission on Human and Peoples' Rights in its 2005 report on its promotional mission to Guinea-Bissau:
http://www.achpr.org/english/Mission_reports/Guinea%20Bissau/Mission%20Report_Guinea-Bissau.pdf

The prohibition of arbitrary detention and the right to presumption of innocence: Articles 38 to 42 of the Constitution provide for protection against arbitrary detentions, for the right to be heard in court, for the right to defend oneself and for the presumption of innocence. However, the right to a fair trial is not formally provided, in what concerns the right to free legal assistance and interpretation, the time and facilities required to prepare defence, the right for everyone to examine the witnesses against him or her and the prohibition of any pressure aiming to force somebody to confess guilt.

Article 7 of the ACHPR, which bounds Guinea-Bissau, provides that: "Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defence, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal".

According to Article 14.3 of the ICCPR, "[i]n the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- (c) To be tried without undue delay;
- (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of

witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt".

=> Therefore, a review of the Constitution and legislation should include an explicit reference to the right to a fair trial, and all the guarantees found in Article 7 of the ACHPR and Article 14.3 of the ICCPR.

Freedom of movement is guaranteed by Article 53 the Constitution, which allows all citizens to move freely in the country.

Some NGOs reported to have access to detention sites, except military premises. The Delegation visited three police stations with occupied detention cells¹⁹.

The Press Law considers Freedom of expression as an instrumental right for democracy²⁰ in which pluralism of ideas is foreseen as a normal way of living of people.

Article 51 of the Constitution reads that "everyone has the right to express and to make his or her thoughts public by any means at his or her disposal, as well as the right to inform, and be informed without obstruction or discrimination" (Article 51.1). Article 51.2 adds that the exercise of this right can not be impeded or limited by any type or form of censorship. The right to response and rectification is protected by Article 51.3²¹.

However, when denouncing alleged crimes and other human rights violations, human rights defenders might face serious and disproportional limitations to their freedom of expression through dispositions of the criminal legislation and of the Press Law.

Under Article 234 of the Criminal Code and Articles 39 and 40 of Law n°4/91 of October 3, 1991, also known as the Press Law²², human rights defenders can face detention for expressing their views. Such provisions can be used to harass human right defenders.

19. 1a Esquadra, Police station, Bissau ; police station of Bafatá and police station of Gabú.

20. See preamble of the Press Law.

21. This right is also secured by Article 21 of the Law on freedom of expression.

22. See section on freedom of expression, supra.

The Press Law contradicts the Constitution in some aspects. Whereas Article 51 of the Constitution prohibits any form of restriction to freedom of expression, Article 3.3 of the Press Law provides that freedom of expression could be restricted by law if necessary, for the purpose of securing national unity, public order, security and public health. In addition, while Article 28 of the Constitution enlarges fundamental rights to foreign citizens, Article 5 of the Press Law provides for a limitation of freedom of expression for foreigners willing to create or bring assets to a news company²³.

The press as an “activity of public interest of the State”

Article 4 of the Press Law defines the press as an “activity of public interest of the State” and lists the priority objectives of the press, including:

- “divulcation of information that contributes to the consolidation of democracy”,
- “creation of a wise public opinion”,
- “diffusion of culture and consolidation of national identity and unity”,
- “mobilisation of the population for its involvement and participation in several fields of activities” and
- “promotion of peace and solidarity among the people”.

The goals listed in Article 4 are not exhaustive. However, it is clear that Article 4 can be used by the authorities to put the press under pressure through allegations of non conformity with the goals listed in the provision. In practice, this limits freedom of the press since journalists are forced to resort to self censorship in order to conform with the provisions of Article 4.

=> The Observatory recommends that the legislator removes any reference to the interest of the State, as such a vague reference is sometimes used to hinder the work of human rights defenders.

The risk of criminal responsibility

Similarly, journalists and other people using the press to express their opinions run the risk of falling under the scope of civil and criminal responsibility, in accordance with Articles 34 to 54 of the Press Law. Some of the crimes therein correspond to the violation of the goals defined in Article 4 of the Law (i.e. the divulcation of information considered against public interest and democracy). As a consequence, NGOs are often afraid to question the authorities or to denounce cases of torture, ill-treatment and even murder of detainees in police

stations. Victims and / or their relatives often denounce abuses to NGOs (such as LGDH), which then make a public statement calling for an investigation and redress of the situation, running the risk of having criminal proceedings started against them.

Article 39.2 al. b9 of the Law considers the expression of an opinion which content is a form of incitation for public disorder or disrespect for military duties as a crime of press. This provision undermines freedom of expression, insofar as a criticism of the public authorities can fall into the scope of this provision. As an example, someone expressing an opinion with no intention to incite to public disorder, but which triggers a spontaneous demonstration against the authorities, could be accused of incitation to violence.

Article 39.2, al. d) also defines the divulcation of military secret information as a crime of press. This provision is also problematic since it provides no definition of military secret information, which means that the authorities enjoy a large margin of appreciation when applying it. Therefore, this provision can, in practice, prevent people from expressing their opinions on military issues.

=> The Observatory considers that the wording of Article 39 is too vague and may be used to prevent human rights defenders from expressing their opinion.

Furthermore, Article 41 states that “anyone expressing any information that could be qualified as defamation of the President can be arrested without any right to defend himself”.

=> Accordingly, the Observatory considers that Article 41 should be abrogated. The Observatory recommends the relevant national authorities to amend the Press Law so as to respect the right of every individual to express and disseminate his/her opinions and comply with Article 19 of the ICCPR and Article 9 of the ACHPR, to which Guinea-Bissau is bound, as well as to Article 6 of the UN Declaration on Human Rights Defenders.

Right to information: Article 51 of the Constitution guarantees the right to information and access to information, and Article 9 of the Press Law provides for the right of journalists to access official sources of information. Article 9 of the Law restricts access to information in cases of justice confidentiality, military or State confidential documents, and other.

23. Article 5 of the Press Law provides that “the creation of news companies is free, but foreign participation in the assets of the company shall not exceed 30%”.

The implementation of the restrictions provided in Article 9 is under the control of the public administration. In practice, the administration can argue on the sensitiveness of some pieces of information in order to deny access to it. Even if exceptions to access to information are acceptable in principle, it is of concern the apparent lack of balance of powers, since the administration can in no way be held responsible before any body or jurisdiction for abuse of power on cases of restriction of the right to information.

=> Article 9 of the Press Law should be amended to include possibilities of appeal against any administrative decision.

Freedom of association: Freedom of association is recognised by both the Constitution (Article 55) and Decree 23/92, known as the NGO Law.

Establishment

The procedure of establishment of an association is provided in Decree 23/92, which regulates the “creation and the exercise of the activities of national NGOs of Guinea-Bissau”²⁴.

Activities

Decree 23/92 also regulates the activities of national NGOs. According to some, the Law is also applied to associations, although the latter are not regulated by the same texts²⁵.

Decree 23/92 raises some issues of concern:

The objectives of NGOs should be, according to Article 2 (2) “to contribute to the improvement of the life conditions of the local communities and the promotion of their participation in the socio-economic development of the country”. This provision could be interpreted as excluding human rights NGOs working on civil and political rights.

Moreover, an Institute to regularise NGOs (SOLIDAMI), to which NGOs should report annually, was created pursuant Article 17 of Decree 23/92 published on March 23, 1992. SOLIDAMI was closed in 1993 and it is not clear whether the reporting obligation is still in force and which Ministry presently has that portfolio.

In practice, NGOs do not denounce the restrictive character of the law, nor do they complain of the costs incurred by the creation of an NGO.

In that context, PLACON, a platform of NGOs in Guinea-Bissau, and the United Nations Development Programme (UNDP) advocate for this Decree to be replaced by a proper law on NGOs and for the content of the text to be updated in order

to provide better recognition of NGOs by the State and to provide a clear definition of an NGO and an association.

Trade union freedom is regulated by Law n°8/91 of October 3, 1991 that implements International Labour Organisation Convention 89. Trade union freedom is defined by the Law as a form of association that allows professional unions among employees on one hand, and employers’ unions on the other. The law states that the main objectives of trade unions are the promotion and protection of economic and socio professional interests of their members. Trade unions are governed by the principle of independence and autonomy from the State, and by the principle of democracy. The activities of trade unions can only be controlled by their members (Article 2.2, al b) or by the courts (when they are asked to appreciate the legality of the acts of the trade unions, as defined in Article 7 of the law).

Freedom of assembly and peaceful protest are guaranteed in Article 54 of the Constitution, and regulated by Law 3/92 of April 6, 1992. The preamble of the Law reads that this right must be exercised in a way that does not interfere with and limit the rights of other persons. The Law sets up procedures to assemble or to protest peacefully. Several shortcomings can be identified:

– Article 3 reads that the objectives of the assembly cannot be contrary to “law, moral, rights of individuals and groups of persons, public order and tranquillity”.

– Article 7 also considers that demonstrations are illicit “if their object or goals are contrary to commitments stemming from agreements and international juridical acts”. Such conditions are unclear and vague and can broadly limit freedom of assembly and demonstration.

24. Published in Boletim Oficial 12, March 23, 1992.

25. Associations, or collective persons “which do not seek economic profit” are regulated in the colonial civil code, articles 167-185 (D-L 47.334, November 25, 1966), which is still applicable in Guinea Bissau with some exceptions. Decree 23/92 seems to regulate specifically the “creation and the exercise of the activities of national NGOs of Guinea-Bissau”. Its Article 2.1 reads that “Non Governmental Organisations, NGOs, are collective persons of private law, created freely, not liaised to parties (apartidaria) and non profitable”. Article 2.2 reads “NGOs are voluntary organisations which aim to contribute to the improvement of living conditions of the local communities and to the promotion of their participation in the socio-economic development of the country”.

– Article 6 of the law further obliges the organisers of a meeting or a demonstration to communicate – through a letter – their intent to hold such an event to the Ministry of Internal Affairs and to the police authorities. Such communication shall be given at least four full days prior to the assembly or demonstration²⁶. This time requirement seems to be excessive. In addition, at least four people shall sign the letter of communication, which shall indicate the place or itinerary of the meeting or demonstration.

– Article 8 (2) adds that “in the absence of a communication from the authorities to the organisers of the demonstration within 48 hours following the reception of the announcement of the demonstration, there can no longer be an objection to the demonstration”.

The signatories of the letter usually appear as the leaders of the demonstration or protest, which means that they can easily be targeted by the authorities, as it has been the case with a student leader who received various calls from the Ministry of Interior and the police in November 2007, one day before the demonstration that he had organised took place. The obligation to sign a letter can also be considered as an element of psychological pressure for those willing to organise a demonstration or a peaceful gathering.

- Article 5 of the Law also severely restricts the possibilities to hold demonstrations. It provides that such events shall be organised only:

1. on Sundays, public holidays and on Saturdays, after 1 p.m.
2. on weekdays after 7 p.m.

- Although the Law does not indicate that the Government has the power to cancel a meeting or a demonstration, in practice the Government can invoke the “lack of security” to prevent a demonstration from being held. For instance, in November 2007, a peaceful student demonstration organised to protest against the ongoing crisis in the public education sector was cancelled on the basis of this argument. A certain margin of discretion is given to the Government, although the Law on freedom of assembly and peaceful protest does not require the presence of security forces in all cases²⁷. Acts of repression carried out by security forces during peaceful demonstrations were reported in the past, for instance during a student demonstration.

In practice, the legislation on freedom of assembly and peaceful protest is inconsistent with human rights standards, namely Article 21 of the ICCPR, Article 11 of the African Charter of Human and Peoples’ Rights, Article 20 of the Universal Declaration of Human Rights and Article 5 of the UN Declaration on Human Rights Defenders.

=> The Observatory considers that the legislation should be amended to comply with international and regional human rights provisions.

Right to life, physical and psychological integrity: The Constitution prohibits the death penalty (Article 36) and guarantees the moral and physical integrity of individuals (Article 37).

III. Obstacles to the work of human rights defenders

Many defenders met by the delegation reported improvements of the human rights situation in general since the fall of the regime of President Kumba Yalá, in particular with respect to freedom of expression.

However, the delegation was informed of many testimonies indicating that human rights work can still entail serious risks and that Guinea-Bissau does not yet meet international human rights standards concerning the protection of human right defenders. To that extent, the delegation could notice that most human rights defenders and NGOs operate in extremely difficult circumstances. In a context of clear hostility of Bissau-Guinean authorities towards some organisations and defenders, in a State where redress mechanisms are lacking, the civil society is regularly confronted to acts of harassment and to obstacles to freedoms of association and assembly.

The United Nations Office in Guinea-Bissau (UNOGBIS) has played an important role in providing shelter to various human rights defenders, journalists and politicians at risk²⁸. At the level of the European Union, the EU Guidelines on Human Rights Defenders, and the possibilities therein for their protection, were unknown to the defenders met by the Observatory. The Delegation of the European Commission (EC) prepared an internal

26. Article 6.1 provides for “a minimum of four working days” for the warning to be given “to the Ministry of Interior or the Police and Public Order Command in case the demonstration is organised in the regions”.

27. Article 10 says that authorities shall use security forces if necessary. The interpretation given by the practice of the Government is that assembly and demonstration must be accompanied by security forces because of security reasons.

28. See the case of Mr. Sá Gomes, *infra*.

report on the situation of defenders in Guinea-Bissau at the end of 2006, following a meeting with EU country representatives and some NGOs. However, key human rights NGOs complained of the lack of consultation in the discussion leading to the report.

A UNDP project with focus on human rights and rule of law was due to start in 2008 and may indirectly bring improvement to the situation of defenders. Activities include training of police forces and prison reform, and will last until 2012²⁹.

a. State perception of human rights defenders

The Bissau-Guinean authorities are sensitive to the image of the country and are uncomfortable with criticism and adverse information being discussed outside the country. Some NGOs denounced situations of infiltration of State agents in the NGO boards, in order to steer internal disputes and provoke instability. For instance, LGDH reported being a victim of this strategy³⁰. Some human rights NGOs also complained of the fact that the authorities tarnished the image of the organisations and their members, especially those working on democracy, the rule of law and human rights issues. Nonetheless, some NGO representatives, even from very outspoken NGOs, seem to have very good relations and easy access to Government and judicial authorities.

b. Lack of redress mechanisms

Human rights defenders in Guinea-Bissau seem to operate without the effective protection of the law and in a climate of de facto impunity.

The legal means available to protect human rights defenders are not effective in practice. In the eyes of the public opinion, courts and judicial authorities have little credibility and are frequently accused of bias, lack of independence and passivity. The justice sector, its judges and prosecutors seem to be marred with corruption and inefficiency. A recent UN document on drug trafficking and strengthening of the justice sector in Guinea-Bissau, reads that “[d]espite the best efforts of law enforcement authorities to bring detained persons to justice and secure confiscated drugs and other items, there has been no drug-related prosecution to date”³¹. Moreover, legal proceedings against public authorities are lengthy and remain often inconclusive.

In a context of widespread impunity, none of the defenders met by the Observatory delegation could indicate that any of the threats, physical offences or harassment they had been victims of had been properly investigated, nor the alleged authors identified or prosecuted. In addition, none of the defenders interviewed reported having litigated cases of alleged violations of their human rights in court.

Likewise, the authorities could not give any example of an investigation initiated by the State, alleging that if the victim does not lodge a complaint, the authorities cannot act, even in cases of serious abuses by State agents.

=> The Observatory recommends national authorities to take all necessary measures to ensure the independence of the judicial system so as to enable individuals to exercise their right to a free and fair access to justice. It further encourages the State to ensure the investigation of human rights violations allegedly committed by State agents.

c. Lack of resources

Many NGOs do not have an office, and have no access to Internet. This results from a lack of resources as donors have not been supportive to human rights NGOs' activities in Guinea-Bissau. NGOs complained of receiving no support from the Delegation of the European Commission for human rights activities.

d. Lack of expertise

In addition, only a few defenders have sufficient knowledge of international human rights law or relevant national legislation. Very few have the necessary human rights advocacy skills. Most NGOs were not aware of relevant legislation, e.g. regulating freedom of assembly and the creation of NGOs. When confronted with a possible violation of rights, some defenders prefer to make allegations through the mass media, notably the radio. Due to the lack of trust in the judicial authorities, defenders do not always encourage victims' to file a complaint to the judicial authorities. The role of the radio is considerable in a society where poverty is endemic, the literacy rate amounts to 36,8% and where television and internet have a limited reach, not least due to the inexistence of a general electric power system. Often the

29. See “Programme de pays pour la Guinée-Bissau (2008-2012)”, on www.undp.org/africa/programmedocs/Guinea%20Bissau%20CPD%20-%202008-2012%20_French.pdf (in French) and “Plan cadre des Nations unies pour l'aide au développement - Guinée-Bissau” on www.undg.org/docs/8456/UNDAF-FR-SIGNE.pdf (in French).

30. See section on Freedom of Association, *supra*.

31. See United Nations Peacebuilding Commission Country-Specific Configuration on Guinea-Bissau, Thematic Discussion on Drug Trafficking in Guinea-Bissau and Strengthening of the Justice Sector, May 28, 2008.

media work as a mediator and reportedly some conflicts are solved following a radio broadcasting of programmes dedicated to denouncing alleged human rights violations.

However, reliance on the media and its mediating effects has the effect of discouraging defenders from resorting to legal judicial mechanisms and seeking effective redress. Further, the widespread use of radio and press bears the risk that some defenders might be accused of libel, defamation or “crime simulation” by civilians or public authorities (*See infra*).

e. Human rights violations and other challenges faced by defenders

Civil society organisations and journalists complained of pressure and intimidation relating to freedom of the press and freedom of expression in connection with their reports on drug trafficking but also on abuses of power and impunity of state agents, military interference in governmental affairs, corruption and misuse of environmental resources such as exploitation of phosphates.

Many journalists in Guinea-Bissau can be considered to be human rights defenders, as through their work, investigation and reporting, they seek to promote and protect human rights. Too often, their denunciations, findings and criticism are followed by severe repression.

Although arbitrary arrests of defenders seem to have decreased since the end of Mr. Kumba Yalá’s regime in 1994 (at the time of the visit of the Observatory mission, no defender was reported to be detained), many defenders complained of threats and physical assaults they had been subjected to because of their human rights work. In particular, defenders who denounce abuses of power and impunity of State agents, military interference in governmental issues, drug trafficking, and corruption are privileged targets for intimidation and retaliation.

In addition, several defenders reported to be subjected to court proceedings, as a means to deter or impede the continuation of their work.

Threats via anonymous phone calls were also common and various defenders met by the delegation reported physical

assaults, notably by State security forces, community leaders and other actors³².

Another practice used to intimidate defenders consists of summoning them to Government premises in order that they explain certain activities or statements. Some, such as journalist Mr. Albert Dabo, have complained of spending long hours in such meetings, receiving insults and being prevented from leaving (*See infra*).

i. Harassment of human rights defenders denouncing abuses of power and involvement of military and other State agents in organised crime

Judicial harassment of Mr. Mário Sá Gomes as a reaction to his activities related to the fight against impunity and denouncing involvement of State agents in drug trafficking

Mr. **Mário Sá Gomes** is the President of the Guinean Association of Solidarity with the Victims of Judicial Error (*Associação Guineense de Solidariedade para com as Vítimas de Erro Judicial - AGSVEJ*). Through the radio, he used to regularly complain of threats and harassment from security agents and members of the armed forces. In 2007, he was summoned at least 14 times by judicial bodies and in particular by the Office of the Prosecutor-General. Mr. Sá Gomes claims that he has been persecuted due to AGSVEJ activities, especially those urging the authorities to properly investigate drug trafficking and prosecute its authors, regardless of their position or ranking, and into what seemed to be politically motivated murders and other suspicious deaths, as well as its efforts in combating impunity of State security agents.

In particular, Mr Sá Gomes’ statements regarding the death of Navy Commander Mohamed Lamine Sanha in January 2007 and the subsequent riots seem to have put him at risk³³. Mr. Sá Gomes issued public statements expressing his concerns about deficiencies in the investigation into Mr. Sanha’s death and other murders of Guinea-Bissau’s political leaders. Following a call for justice to the General-Prosecutor by Mr. Mário Sá Gomes, in which he expressed his views on the events, the General-Prosecutor filed a complaint against Mr. Sá Gomes for false accusations (crime of “simulation of crime”, Article 234§1 of the Criminal Code)³⁴, and crimes of press (Article 39.1 and 39§2.b of the Press Law)³⁵. On July

32. It should be noted that anonymous death threats are common in Guinea-Bissau and their targets, according to news reports, are also the Minister of Justice, judges, the former Minister of Interior and others.

33. According to Mr. Sá Gomes, following these riots, armed men in uniforms killed two men and wounded others in the neighbourhood where Mr. Sanha lived.

34. Article 234 (1) of the Criminal Code reads: “Anyone who, without accusing a certain person, denounces to the competent authority a crime or contributes to the creation of the suspicion of its practice, knowing that it did not take place, shall be punished with a prison sentence of up to two years or with a fine”. (Non-official translation).

35. Article 39 of the Press Law n°4/91 of 13 October reads: (1). “Crimes of press are, in general, all the acts or behaviours harmful to interests or values protected by the penal law that are perpetrated through the press”. Article 39 (2) (b) adds as a crime of press “the dissemination of texts or images which contain incitement or provocation to disobedience to the authorities or disrespect for military duties” (Non-official translation).

2, 2007, a coercive measure was taken by the Public Ministry against Mr. Sá Gomes in accordance to Article 154 of the Code of Criminal Procedure, which obliges him to appear weekly before a judicial authority.

On July 11, 2007, Mr. Sá Gomes was interviewed on the radio. He made comments on the issue of drug-trafficking, and stressed the need to reform the military commands and the judicial sector. He reportedly said that halting drug trafficking via Guinea-Bissau would require the dismissal of the Army Chief, General Batista Tagm Na Wai³⁶. Soon after the interview, an arrest warrant was issued against him by the Prosecutor-General, and military and security agents from the Ministry of Interior and Judiciary Police allegedly went to his house³⁷. Mr. Sá Gomes went into hiding, and was given shelter at the UNOGBIS premises from August 9 to 23, 2007. Following UNOGBIS mediation with the national authorities and civil society organisations, the UN Representative in Guinea-Bissau obtained guarantees from the Minister of Internal Administration on behalf of the Government that Mr. Sá Gomes would not be harmed or arrested and would be offered protection by the Government. Mr. Sá Gomes accepted the proposal of UNOGBIS to provide him with two bodyguards, one of whom later allegedly received threats and had to be replaced.

At the time of the mission, the arrest warrant issued against Mr. Mário Sá Gomes on July 11, 2007 was still valid, despite requests from his lawyer to withdraw it, thus preventing him from travelling abroad. Mr. Sá Gomes, who continued to feel threatened, had difficulties in pursuing his activities and work at AGSVEJ. Furthermore, the presence of bodyguards prevented him from collecting sensitive information on human rights violations.

Harassment of Mr. Albert Dabo following a report on the issue of drug trafficking

On various occasions in 2007, the International Federation of Journalists (IFJ) called upon the Government and officials of the armed forces to guarantee the security and freedom of journalists reporting on drug trafficking, in particular of journalists Mr. **Albert Dabo** and Mr. **Allen Yero Emballo**³⁸.

On July 1, 2007, Mr. Albert Dabo, a reporter working with "Reuters" and radio station "Bombolom", sent a report to "Reuters" containing a statement of the Interior Minister, in which the latter admitted that drug-trafficking had become a serious issue in Guinea-Bissau. The report also included a statement from the President of the LGDH saying that, according to the UN, military chiefs were involved in drug trafficking. The Portuguese Television Network *RTP Africa* apparently misinterpreted the Reuters report and attributed the statement made by the President of LGDH to the Minister of Interior. Mr. Dabo was later summoned to appear before the Minister of Interior. During the three hours' meeting, Mr. Dabo was accused of lying and threatened with imprisonment. The latter clarified afterwards with *RTP Africa* that there had been a misinterpretation³⁹.

In another incident, Mr. Albert Dabo acted as an interpreter for Rear Admiral Jose Américo Bubo Na Tchuto in an interview for *ITN News* on July 13, 2007. On July 16, the Admiral called Mr. Dabo at 8.30 am, urging him to immediately go to his office for a meeting. Fearing for his safety, Mr. Dabo refused and went to *Radio Bombolom* instead. After being informed that 20 marines had been ordered to search him, he then sought refuge at the UNOGBIS premises. Again, the Admiral called him but Mr. Dabo declined to meet. The Admiral summoned him because of an article in the Portuguese newspaper *Diário de Notícias* quoting a *Time* magazine report in which Admiral Tchuto apparently admitted the implication of senior military officers in drug-trafficking. Since Mr. Dabo had been the interpreter of Admiral Tchuto for the *ITN* interview, the Admiral presumed that Mr. Dabo was behind the quote. However, the *Time* article had been published months before the *ITN* interview, which clearly showed the disconnection between the two events⁴⁰.

The Director of *Radio Bombolom* attempted to mediate by explaining the course of the events to the Admiral. He also suggested that the Admiral file a judicial complaint instead of summoning and threatening journalists. On August 24, 2007, Mr. Albert Dabo was charged with libel, violation of State secrets, libellous denunciation, abuse of press freedom and collusion with foreign journalists⁴¹. At the time of the mission, in January 2008, Mr. Dabo was still awaiting the dates of the trial.

36. See PANA press report, "Sociedade Civil insta Nino Vieira a demitir chefe das Forças Armadas", July 11, 2007.

37. See report of Channel 4, available at :

http://www.channel4.com/news/articles/society/law_order/africas+drugs+gateway+to+europe/611152

38. <http://www.ifj.org>.

39. Interview of Mr. Albert Dabo by the mission, January 9, 2008.

40. <http://www.rsf.org>.

41. *Ibid*.

As reported to the delegation, Mr. Dabo continued to receive anonymous death threats by phone, starting from July 2007.

Cases of other journalists investigating on drug-trafficking

Other journalists have also experienced problems when investigating into drug-trafficking in Guinea-Bissau.

The journalist Mr. **Fernando Jorge Pereira**, news correspondent for the Portuguese newspaper *Expresso*, was apprehended by the police on May 20, 2007 while taking pictures of planes allegedly carrying drugs and landing on an island. He was briefly detained and threatened with imprisonment by state security forces, and his films were seized.

Another journalist, Mr. **Allen Yeró Emballo**, a Bissau-Guinean correspondent with *Radio France International* and the news agency *Agence France Presse*, was forced to seek exile in Paris, where he filed an application for asylum. He fled Guinea-Bissau due to the harassment he was facing for investigating into drug-trafficking. Mr. Emballo had been reporting on airplanes dropping packages containing drugs over in the archipelago of Bijagos. On June 24, 2007, armed men entered his home and frightened his wife, children and brother. After searching the house, they took his computer away, together with his camera, photos and notebooks. One of the armed men said to Mr. Emballo's brother: "This time we are taking his things. Next time we will take his head." Mr. Emballo filed a complaint to the police headquarters, which did not lead to any investigation⁴².

ii. Harassment of human rights leading figures

Several human rights defenders and organisations seem to be on the frontline of repression as a reaction to their activities and to the impact of their actions.

Intimidation and threats against Mr. Luis Vaz Martins

The current President of the LGDH, Mr. **Luis Vas Martins**, complained of having received five anonymous threatening phone calls and anonymous knocks on his door in 2007. He could not identify their authors. He claims that these acts of harassment are linked to his

actions of promotion and protection of human rights.

Harassment of the Students' Confederation

The Confederation of Students' Associations of Guinea-Bissau (*Confederação das Associações Estudantis da Guiné-Bissau* - CAEGB) is well known in the country, and the demonstrations it organises usually trigger the mobilisation of several thousands of students and education personnel, thus catching the attention of the press, including foreign media.

Since 2006, the members of the Confederation have witnessed attempts to undermine the activities of the organisation. The office of the CAEGB was raided in September 2006, in December 2006 and again in September 2007. Amongst the items taken away were the archives, a computer, a printer and a power supplier. The judiciary police started an investigation, but no concrete results had been obtained in January 2008.

Judicial harassment of the Movement of Civil Society

The Movement of Civil Society (*Movimento da Sociedade Civil* - MSC) gathers 124 Bissau-Guinean organisations, including socio-professional entities, trade unions and NGOs. As a reaction to an open letter written by the MSC on November 29, 2007, which accused the Armed Forces Chief of Staff of interferences in the political sphere⁴³, the Chief of Staff filed a complaint against the MSC for defamation. As of September 2008, an agreement seems to have been reached and the proceedings dropped.

iii. Obstacles to freedom of assembly

In 2007, three demonstrations were disrupted following the intervention of State security forces which resorted to tear gas. Physical assaults against civilians, including one journalist, were reported⁴⁴. Another one was called off as a result of pressure from the authorities.

January demonstration of the Students' Confederation called off

On January 11, 2007, a demonstration was organised by the CAEGB against the absence of education services since the beginning of the academic year⁴⁵. This

42. For more, see Reporters Without Borders, *Guinée Bissau - Cocaine et coup d'Etat, fantômes d'une nation baillonnée*, 2007 and www.ifj.org

43. The letter can be found at www.lgdh.org:

<http://www.lgdh.org/CARTAABERTADASOCIEDADECIVILAOCHFEDOESTADOMAIORDASFORCASARMADAS.htm>

44. When asked by the Observatory delegation, the Minister of Justice stated to that she was not aware of any criminal investigation into the cases of alleged abuse of force against civilians and journalists in demonstrations disrupted with violence during 2007.

45. Teachers decided to freeze the schooling schedule as a protest, inter alia, against unpaid salaries, which resulted in a two months delay of the school year.

demonstration had been communicated by the organisers five days ahead to the Interior Minister. However, the event was called off, at the request of the authorities⁴⁶. In the end, after negotiations between the Government and the Teachers' Union, the classes began and the plan for a demonstration was abandoned.

January demonstration on crime rate and insecurity halted by the authorities

On January 13, 2007, the Minister of Interior prohibited, at the last minute, a demonstration organised by LGDH, the Observatory for Human Rights (*Observatório dos Direitos Humanos*), the MSC and PLACON to express concern over the increasing crime rate and increasing insecurity. According to the MSC, after the beginning of the parade, the force of the rapid intervention police informed the organisers that the Interior Minister had not authorised the demonstration, although the demonstration had been organised within the legal requirements and time limits. As the police was armed with firearms and tear gas, the organisers decided to halt the demonstration and continue the protest in the form of a public gathering instead. According to MSC, the police used tear gas, which affected a few persons only as most demonstrators had left. MSC did not lodge a complaint for the alleged abuses⁴⁷.

November demonstration of the Students' Confederation repressed by the police

On November 23, 2007, the Interior Ministry repressed another demonstration organised by the Students' Confederation, which had been convened in accordance with the law. Allegedly, tear gas was used. A radio journalist covering the event, Mr. Malam Djafuno, was assaulted by three police officers (*Polícia de Ordem Pública*), as reportedly were four demonstrators, including one teacher. The journalist was summoned the following day to the Office of the Prime Minister, who allegedly offered him 50,000 CFA francs in damages for the injuries sustained, which he refused but which were accepted by the radio station he worked for. The journalist did not file any legal complaint⁴⁸. According to the Students' Confederation, there had no judicial investigation underway as of January 2008.

Mr. **Degol Mendes**, the President of the Students' Confederation and organiser of the November 23 march, as well as other student activists, complained of police harassment a few days ahead of the demonstration. On the eve of the demonstration, at 10.00 p.m., Mr. Mendes was called by the Police Chief Officer (*Comissário de Polícia*) on three occasions for an immediate meeting with the Interior Minister to "discuss the details of the demonstration and to be informed of the position of the police about this event". The day after, several armed individuals approached Mr. Mendes' home, which he had left for a few hours. He eventually met with the Interior Minister, accompanied by Mr. Luis Vaz Martins, LGDH President. The Minister explained that no authorisation had been given for this event, which could not be held. A communiqué of non-authorisation of the demonstration was issued a few hours later. Mr. Mendes deemed it contrary to the law on freedom of assembly, which reads that if the authorities do not react within 48 hours after the reception of the announcement of the demonstration, the event cannot be cancelled.

The Interior Minister explained to the delegation that the demonstration had caused unrest in the streets, which had resulted in the interruption of circulation on the main road of Bissau. This, according to him, justified the intervention of security forces in order to protect public order. The Minister argued that on that same day of the demonstration, the programme of the Government was to be discussed in Parliament, that all the security forces were to be deployed there, and that consequently the security of the demonstration could not be ensured. The Interior Minister added that the letter of the Students' Confederation had come too late to his knowledge, i.e. less than 24 hours before the beginning of the demonstration and that he had made clear that the Students' Confederation had to hold the demonstration on another day. The Minister denied that a journalist had been assaulted, and claimed the lack of evidence. He said that he would have open a disciplinary procedure had he been aware of such facts⁴⁹.

According to the Prosecutor, the organisers of the demonstration had breached the law on demonstrations (although he could not precisely indicate which law he meant). According to him, the law requires an authorisation from the Ministry of Interior and in this case no such authorisation had been given.

46. At the end of 2006, a teachers strike paralysed the education sector. The school calendar which should have initiated in early October 2006 only started in January 2007. In order to protest against the lack of classes, and to show their discontent, students organised various demonstrations in 2007.

47. See Press Release of MSC, January 15, 2007, on <http://www.lgdh.org/COMUNICADO%20DE%20IMPrensa%20DE%2015012007MNSC.htm>

48. See interviews with Mr. Dengol Mendes and journalist Mr. Malam Djafuno.

49. Interview with Minister of Internal Affairs, January 15, 2008.

When disrupting a demonstration, the authorities seem to rely on the argument that no prior authorisation had been given. However, Law 3/92 on the right to assembly and demonstrate, indicates in its Article 8 (2), that “in the absence of a communication from the authorities to the organisers of the demonstration within 48 hours following the reception of the announcement of the demonstration, there can no longer be an objection to the demonstration”.

iv. Obstacles to the work of lawyers and legal professions

The President of the Lawyers’ Bar Association, Mr. **Armando Mango**, reported various attacks by the military under the regime of President Kumba Yalá, such as physical assault, including torture, assault of a relative, and offences to his property. However, Mr. Armando Mango noted an improvement as physical attacks ceased in the last years. Still, lawyers continue to receive threats through anonymous phone calls once they take up cases against public authorities. Lawyers also risk retaliation from non-State actors for cases they take up. Considering that there is no prison in Guinea-Bissau, but only a few cells in police stations, and that many sentenced prisoners are usually released after a few months, lawyers fear that prisoners who were sentenced as a result of their action and subsequently freed may return and threaten them⁵⁰.

Some judges and prosecutors are in a similar situation. The trade union representing public prosecutors (*Sindicato de Magistrados do Ministério Público*) reported intimidation of some public magistrates by the police and the military, as well as obstructions in criminal investigations, as in the case of Commodore Mohamed Lamine Sanha, and the case of members of the military caught in *flagrante delicto* of drug-trafficking. Ms. **Telma Maria**, a public magistrate who is also a board member of LGDH, was threatened in 2007 by a military officer, and the response of the authorities was deemed not effective.

In a country where allegations of political and military interference in judicial cases delaing with drug trafficking appears to be blatant, many prosecutors are afraid of carrying out investigations into such issues and judges fear to work on such cases. Lack of security for the legal professions and insufficient salaries can hamper judicial independence and freedom and may lead to reluctance in seeking justice and ensuring the effectiveness of human rights, even when violations are obvious.

v. Obstacles to the work of trade unions and their members

ILO 87 Convention on trade union freedom was apparently introduced in Law 8/91 of October 3, 1991, even though the convention has not yet been acceded to by Guinea-Bissau.

According to the National Union of Guinea-Bissau Workers (*União Nacional dos Trabalhadores da Guiné-Bissau – UNTG*), most of the problems faced by trade unions have been overcome with the new Government. UNTG reported that the previous Government used to object to the legalisation of some trade unions and used coercive means such as civil requisition. According to another main trade union, the General Confederation of Independent Trade Unions (*Confederação Geral dos Sindicatos Independentes - CGSI*), trade unionists are not particularly at risk.

However, CGSI admitted that some trade unionists have received threats aiming at deterring them from organising strikes or making statements criticising the government and its policies.

Moreover, in October 2007, the President of the UNTG, Mr. Desejado Lima da Costa, denounced the dismissal of trade unionists in 2006, including the leader of the Union of the Company of Water and Electricity Supply of Guinea Bissau (*Empresa de Electricidade e Água da Guiné-Bissau – EAGB*), Mr. **Martinho da Silva**⁵¹, due to involvement in organising strikes.

The delegation was further informed that the Minister of Justice, Dr. Namoano Dias, played in 2006 a role in hindering the creation of the Democratic Trade Union of Teachers (*Sindicato Democrático dos Professores - SINDEPROF*), which was legalised after more than one year.

vi. Harassment of human rights defenders working on harmful traditional practices

A particularly vulnerable group of human rights defenders are those working for the abolition of harmful traditional practices, such as female genital mutilation of young girls (“fanado”) and forced marriages, including of underage children (13-14 years old). Most of the defenders working on such topics are women.

50. The prison system is totally ineffective as there is not one proper prison in Guinea-Bissau; inmates are detained in police facilities. The number of persons held in such facilities is according to unofficial data, 180 persons, mostly men (source: ACRESOR, an NGO working with prisoners). The conditions of the cells visited by the delegation in Bissau, Bafatá and Gabú are inhumane, without natural or artificial light and without ventilation. Families give prisoners’ food but migrants have to depend on the good will of charity groups. There is no separation of detainees with contagious diseases, such as tuberculozes, and according to some records, women and children may in some cases share cells with men. Usually, detainees pay off their release.

51. See PANA press, “Sindicato denuncia violação de direitos humanos na Guiné-Bissau”, October 23, 2007.

According to the National Network of Fight against Violence (*Rede Nacional de Luta contra a Violência* - RENLUV), their activities are not well seen by the Government and there is no institutional support to raise awareness on the dangers and on the necessity to put an end to such practices. Defenders working on these issues face constant threats, including physical assaults, from representatives of the communities, traditional leaders and - in the case of women human rights defenders - from relatives (in particular from husbands). Reportedly, in 2005, four defenders were forcibly removed from sites where genital mutilation were taking place. Similar incidents were reported in 2006. Requests for police protection were generally ignored⁵².

In February 2008, the press reported that evangelic missionaries in the village of Bissasma, in the southern sector of Tite, were aggressed by the population and that their leader was kidnapped for some hours. The medical centre of Bissasma and a school were damaged. The population apparently accused the Evangelical Church of damaging tradition by teaching the young that they had to reject traditional practices and sacred rituals as forced marriages and female genital excision. Reportedly, some of the young people who resisted these traditional practices were tortured by members of their ethnic group. The church was accused of protecting traitors because of the shelter it offered to these young persons⁵³.

A bill regarding forced marriages and female genital mutilation (FGM) was rejected twice and will be re-submitted to Parliament at a later session. It had still not been re-considered as of September 2008. If adopted, this text might raise awareness on the negative effects of forced marriages and FGM and might therefore have positive repercussions on the work of human rights defenders fighting against these issues.

52. Interview with Mr. Tonecas, RENLUV.

53. See PNN Portuguese News Network, "Missionários espancados pelos populares de Bissasma", February 7, 2008, and statement by LGDH: <http://www.lgdh.org/NOTADEIMPRESADE07012008.htm>

V. Conclusions and recommendations

The Observatory notes that even though the working environment of human rights defenders has improved since the fall of the Kumba Yalá's regime in 2003, continuing violations of their rights remain commonplace.

This report shows how the environment in which human rights defenders operate might be detrimental to their activities and, in particular, how the legal framework impacting on their activities (notably the rights to freedom of expression, freedom of opinion and freedom of assembly, as well as the right to effective remedies) is often contradictory to the rights provided in the international and regional human rights instruments ratified by Guinea-Bissau or can be restrictively interpreted against human rights defenders. National authorities make often use of these legal tools to undermine the work of human rights defenders, especially when they are denouncing human rights violations committed by State officials. This is of particular concern as no independent remedies seem to exist to challenge such acts.

The Observatory, considering notably the particular context of the next legislative elections, which are due to take place in November 2008, urges the national authorities to fully respect the rights of human rights defenders in the country and makes in that regard the following recommendations.

The Observatory recommends :

a. To relevant national authorities :

I. to guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Guinea-Bissau.

II. to put an end to all acts of harassment, including at the judicial level, against all human rights defenders in Guinea-Bissau.

III. to amend the Constitution in order to comply with

international and regional human rights instruments by
- including an explicit reference to the right to a fair trial, in accordance with Article 14.3 of the International Covenant on Civil and Political Rights.

- amending its Article 32 so that:

+ a detailed list of underogable rights (that cannot be affected under any circumstances) be included in Article 32.3.

+ a difference be made between the conditions to be met to declare the state of emergency or the martial law, in order to avoid discretionary power.

- amending its Article 25 to include gender equality for civil rights.

IV. to "adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the [UN Declaration on Human Rights Defenders] are effectively guaranteed"⁵⁴, notably by:

- amending the restrictions provided in Law n°4/91 of 3 October 1991, also known as the Press Law.

- amending the Decree 23/92 to lift the restrictions on the objectives of NGOs.

- amending the Law on Freedom of Assembly.

+ to define its restrictions in accordance with ICCPR.

+ to shorten the time limit necessary to declare a demonstration.

+ to lift the requirement of four signatures.

- clearly defining the procedure of habeas corpus allowing individuals to lodge a complain in case of illegal detention.

- outlawing harmful traditional practices such as forced marriages and female genital mutilation.

V. to adopt "such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice"⁵⁵, notably by:

- ensuring the participation of civil society, in particular of human rights NGOs, in the composition of the National Commission on Human Rights and ensure that it obeys to the Paris Principles on National Human Rights Institutions.

- ensuring the creation and implementation of complaints mechanisms for abuses committed by the police and armed forces to ensure an independent monitoring on the conduct of their officers.

- thoroughly investigating, prosecuting and trying, as appropriate, State security officers, regardless of their

54. In accordance with Article 1.3 of the UN Declaration on Human Rights Defenders.

55. In accordance with Article 1.2 of the UN Declaration on Human Rights Defenders.

ranking, for abuse of power, arbitrary arrests, ill-treatment, torture, and other crimes, according to law.

- taking all necessary measures to ensure the independence of the judiciary.

- preventing legal harassment of defenders through fake charges against them, and dropping such charges that are pending.

- thoroughly investigating abuses regarding the demonstrations held in 2007 and hold accountable, through criminal, civil and disciplinary proceedings, those responsible for offences and misconduct, notably:

- a. The disproportionality of the use of tear gas.

- b. The legality or illegality of the ban on the demonstrations.

- c. The violent repression of the peaceful gatherings.

- investigating the cases of harassment and threats to journalists.

- granting human rights defenders access to all detention places, both civil and military.

- more generally, and in conformity with the 1998 UN Declaration on Human Rights Defenders, ensuring an enabling environment for human rights defenders to pursue their work in safety and freedom regardless of their field of work, and particularly those investigating organised crime such as drug trafficking, trafficking of children, corruption, interference of military in political affairs, guarantee them the right to collect information on human rights activities, and provide them with the information they require.

- more generally, respecting the international and regional human rights instruments ratified by Guinea-Bissau, notably with regard to the right to freedom of expression, freedom of opinion, freedom of assembly, and the right to a fair trial.

VI. to ratify the following instruments:

- the Second Protocol to the ICCPR, that Guinea-Bissau signed in 2000.

- the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

- the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

- the African Charter on the Rights and Welfare of the Child.

- the African Charter on Democracy, Elections and Governance.

- the Rome Statute creating the International Criminal Court.

- the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, making the declaration under its Article 34.6 authorizing direct access to NGOs and individuals to the Court.

VII. to deposit the instrument of ratification of the International Covenant on Civil and Political Rights.

VIII. to issue a standing invitation to the Special Rapporteurs of the ACHPR and of the UN on the situation of human rights defenders so that they visit the country.

IX. to enable the UN Working Group on Arbitrary Detention, which has requested to visit Guinea-Bissau, to undertake such a visit in the shortest delays and according to its own terms of reference.

X. to report to the ACHPR on the implementation of the African Charter for Human and Peoples' Rights, according to its Article 62.

b. To the UN Member-States taking part in the Universal Periodic Review

XI. to assess Guinea-Bissau's compliance with the recommendations set forth in the present report.

c. To the EU Member-States and the European Commission

XII. to raise the concerns set out in this report with the Bissau-Guinean authorities on the basis of the EU Guidelines on Human Rights Defenders.

XIII. to raise individual cases of human rights defenders in the framework of the "Article 8 dialogue" provided by the Cotonou Agreement.

d. To the international community at large

XIV. to support the human rights NGOs' monitoring of the forthcoming elections and other electoral related activities

Annex I

Persons met by the delegation

Authorities

1. Prime-Minister, Mr. Martinho Dafa Cabi;
2. President of the Parliament, Mr. Francisco Benante;
3. Minister of Justice, Ms. Carmelita M. Barbosa Pires;
4. Minister of Foreign Affairs, Ms. Maria da Conceição Nobre Cabral;
5. Minister of Internal Administration, Mr. Certorio Biote;
6. President of the Supreme Court of Justice;
7. President of the Supreme Military Court;
8. Prosecutor-General, Mr. Fernando Jorge Ribeiro;
9. Police station in Bissau, 1ª esquadra;
10. Bafatá:
 - a. Governor of Bafatá;
 - b. Chief of Police;
11. Gabú:
 - a. Secretary of the Governor;
 - b. Chief of police;
 - c. Gabú police station;
12. Cacheu:
 - a. Military compound;
 - b. Representative of local government;
13. Mr. Fernando Gomes, Member of Parliament;

Civil Society

14. Guinean League for Human Rights (*Liga Guineense dos Direitos Humanos* – LGDH);
15. National Civil Society Movement for Peace, Democracy and Development (*Movimento Nacional da Sociedade Civil para a Paz, Democracia e Desenvolvimento*), Mr. Jorge Gomes, President;
16. West Africa Network for Peacebuilding – Guinea-Bissau (WANEP-GB): Mr. Ioba Embaló, President and Human Rights Officer in UNOGBIS;
17. Guinean Association for Solidarity with Victims of Judicial Miscarriage (*Associação Guineense de Solidariedade para as Vitimas do Erro Judicial*), Mr. Mário Sá Gomes and Mr. Balde (Bafatá);
18. Action for the Social Reinsertion of Prisoners (*Ação para Reintegração Social dos Reclusos* – ACRESOR), President Mr. Celestino Tupan;
19. Observatory for Human Rights, Democracy and Citizenship (*Observatório dos Direitos Humanos, Democracia e Cidadania*), Mr. João Vaz Mané;
20. Platform of Concertation of National and International NGOs in Guinea-Bissau (*Plataforma de Concertação das ONG's Nacionais e Internacionais na Guiné-Bissau* – PLACON-GB), Mr. João S. Handem Jr., Executive Secretary;
21. Marquês Valle Flôr Foundation (*Fundação Marquês Valle Flôr*);

22. Sinemira;
23. National Network for the Struggle against Gender Violence and Violence against Children (*Rede Nacional de Luta contra a Violência no Gênero e na Criança* – RENLUV), Mr. Toneca Sila;
24. National Confederation of Student Associations of Guinea-Bissau (*Confederação Nacional das Associações Estudantis da Guiné-Bissau*), Mr. Degol Mendes;
25. General Confederation of Independent Trade Unions (*Confederação Geral dos Sindicatos Independentes*), Mr. Alberto Pinto Cabral;
26. Trade Union of Journalists (*Sindicato dos Jornalistas*);
27. National Teachers' Union (*Sindicato Nacional dos Professores*);
28. National Union of Bissau-Guinean Workers (*União Nacional dos Trabalhadores da Guiné-Bissau*), Secretary General Mr. Desejado Lima Costa;
29. Network of Journalists Defending Human Rights (*Rede de Jornalistas Defensora dos Direitos Humanos*);
30. Mr. Albert Dabo, journalist, correspondent at Reuters and Radio Bombolom;
31. Mr. Malam Djafuno, journalist;
32. Magistrates' Union (*Associação dos Magistrados – Asmagui*);
33. Lawyers' Bar of Guinea-Bissau (*Ordem dos Advogados da Guiné-Bissau*), Dr. Armando Mango, President;
34. Mission for Justice and Peace (*Missão Justiça e Paz*);
- 35.
36. Mr. Sila, publisher and writer; Mr. Fafali Koudawo, Director of the newspaper Kansare;
37. World Union for Nature (*União Mundial para a Natureza* - UICN), Mr. Nelson Gomes Dias;
38. Civil society in Gabú, Bafatá and Canchungo, including:
 39. LGDH-Canchungo section;
 40. LGDH-Bafatá section;
 41. LGDH-Gabú section;

International Organisations

42. UNOGBIS, Ambassador Shola Omoregie, Representative of the UN Secretary General, Ms. Aida Gomes da Silva, Political Affairs Officer; and Mr. Ioba Embaló, national human rights expert.
43. European Commission Delegation to Guinea-Bissau, Ambassador Franco Nulli and Mr. Romain Boitard, Human rights focal point;

Diplomatic Representations

44. Embassy of Portugal, Mr. Frederico Silva, Counsellor;
45. Honorary Consul of The Netherlands and of the United Kingdom Mr. Jan Van Maanen;
46. Honorary Consul of Switzerland, Mr. Nelson Gomes Dias.

THE OBSERVATORY

For the Protection of Human Rights Defenders

L'OBSERVATOIRE

pour la protection
des défenseurs des droits de l'Homme

EL OBSERVATORIO

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de los Defensores de los Derechos Humanos

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Activities of the Observatory

The Observatory is an action programme, based on the conviction that strengthened cooperation and solidarity among defenders and their organisations will contribute to break the isolation of the victims of violations. It is also based on the necessity to establish a systematic response from NGOs and the international community to the repression against defenders.

With this aim, the priorities of the Observatory are:

- a) a system of systematic alert on violations of rights and freedoms of human rights defenders, particularly when they require an urgent intervention;
- b) the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- c) personalised and direct assistance, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- d) the preparation, publication and diffusion of a world-wide level of reports on violations of human rights and of individuals, or their organisations, that work for human rights around the world;
- e) sustained lobby with different regional and international intergovernmental institutions, particularly the United Nations, the Organisation of American States, the African Union, the Council of Europe, the European Union, the Organisation for Security and Cooperation in Europe (OSCE), the International Organisation of the Francophonie, the Commonwealth and the International Labour Organisation (ILO).

The activities of the Observatory are based on the consultation and the cooperation with national, regional and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by OMCT and FIDH: "*Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his compromise exercised individually or in association with others, in conformity with international instruments of protection of human rights, in favour of the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by several international instruments*".

An FIDH and OMCT venture - Un programme de la FIDH et de l'OMCT - Un programa de la FIDH y de la OMCT

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