

## **Background Paper on Strengthening the Justice Sector**

### **Introduction**

1. Since the end of the single-party system in 1991, the justice sector has made efforts to re-establish its independence. However, due to the lack of resources and the destruction of State infrastructure during the armed conflict of 1998/99, the sector has not been able to properly discharge its functions. In Guinea-Bissau today, the average citizen continues to rely primarily on traditional justice mechanisms to address interpersonal and community disputes.

2. Despite the progress made since 1992, there remain challenges related to the need of a sufficient number of trained judges and personnel; the consolidation of the principle of separation of powers; the strengthening of basic legislation and statutes; the need to ensure financial autonomy; the provision of basic material means and suitable premises; the enhancement of access of the population to Justice; the establishment of constitutional and administrative tribunals; and the development of capacity to prosecute criminals through the construction of prisons.

3. The Government's programme for the reform of the security and defence sector (SSR) - of which the reform of the justice sector is a component - was finalized in October 2006 and presented to the donor community at a round table conference in Geneva in November 2006. Through joint cooperation efforts of the Government and international partners, the SSR Programme was operationalized and officially launched in January this year. The Government of Guinea-Bissau sees the reform of the security, defence and justice sector as interconnected, requiring a comprehensive approach. The Government also considers the reform of these sectors of vital importance and indispensable to the creation of a State based on the rule of law, contributing to the consolidation of political stability and economic and social development. It has been showing its commitment and political will to make all necessary steps to pursue a comprehensive reform in the Justice Sector.

4. Throughout the years the women of Guinea-Bissau have made important contributions to justice, stability and peace. They have served in formal and informal capacities as mediators in situations of conflict. Because of their active role in the War of Independence, women exercise strong leadership roles and occupy positions of power. Currently women are serving in the following key positions in the area of justice: Minister of Justice; President of the Supreme Court; and Director-General of the Judiciary Police. The continuous strengthening of the role of women in the justice sector reform process is critical to the effective protection of women and the promotion of human rights.

### **Analysis of trends**

5. The key priority of the Ministry of Justice is to strengthen the capacity of the justice sector through a credible reform that includes priorities in the short to medium-term, such as:

- Promoting of a sweeping revision of legal frameworks including the Code of Criminal Procedure, the Code of Judicial Costs, the Code of Labour (employment legislation) and the Code of Public Notary Services;

- Enacting and implementing treaties such as that of the Organization for the Promotion of Business Law in Africa (OHADA);
- Strengthening the capacity of judicial institutions to better deal with crime;
- Improving the management of human resources and reform of organizational structures;
- Obtaining logistics and secure suitable premises to conduct duties and deliver services; and
- Regaining the trust of the population through a professional performance of duty.

6. Law enforcement institutions in the justice sector are actively engaged in the fight against general criminality and organized crime, including drug trafficking, despite their very limited capacities to control the land territory, the maritime borders and air space. There have been some successes in this area; local law enforcement agents managed on two occasions in 2006 and 2007 to effect substantial seizures of cocaine and arrest those involved. These commendable efforts have not been followed through as detained persons have subsequently been released without charge and some of the confiscated drugs disappeared without trace. While it is difficult to accurately account for an activity as clandestine as drug trafficking, the measures recently deployed by the Government against drug trafficking activities, although limited, could be a factor behind a reported decrease in the number of potential traffickers in the country. Even a modest increase in capacity could significantly raise the risk for those involved in illicit activities, particularly for the local counterparts of international traffickers. However, owing to resource constraints, the increased attention by law enforcement authorities to the combat against drug trafficking is accounting for the re-allocation of the few available resources away from the combat against general criminality, and in the process is leaving the general population almost unprotected. This situation, coupled with structural problems of the justice sector, is resulting in the trivialization of crime and criminal behaviour, the disrespect for laws, the perception of impunity, mistrust by the population in the State's law enforcement institutions, and the progressive recourse to self-justice by both the population and the law enforcement institutions mandated with enforcing the law.

7. Guinea-Bissau has nine public security forces, all working under very difficult conditions and in need of better training and equipment. Furthermore, existing legal frameworks must be strengthened in order to provide a better delimitation of the roles and responsibilities of these public security forces. This is an issue to be addressed in the context of the justice, security and defense sector (JSSR) plan of action, by means of which all forces are to be restructured into four functional units. UNOGBIS, together with partners, is planning to facilitate a workshop for the main law enforcement institutions (Ministries of Justice; Defense; and Interior; and the Public Prosecutor's Office) to hold consultations on the jurisdictional roles and responsibilities of law enforcement institutions in an attempt to strengthen coordination, cooperation and communication.

### **Ongoing efforts between Government and Partners**

8. Following consultations with other international partners, UNODC and the Government of Guinea-Bissau worked together in November 2007 to develop an Antinarcotics Operational Plan for 2001-2010. The plan was presented to partners at the Lisbon International Conference on drug trafficking in December 2007, and led to pledges of funding totalling US\$ 6.7 million and in-kind assistance. One of the major components of

this operational plan is the reform and strengthening of the justice sector through the rehabilitation of key infrastructure and the provision of training to the judicial police, prosecutors, judges and other law-enforcement officers. The priorities outlined by the Ministry of Justice include improvement of existing infrastructure, bringing the quality of its services up to international standards, and pursuing cooperation with bilateral and multilateral partners.

9. UNDP/BCPR (Bureau for Crisis Prevention and Recovery) recently provided expertise to the United Nations Country team in Guinea-Bissau to prepare a justice and security sector reform project, with financial assistance valued at US\$ 8 million. The project document was discussed and approved by the Government and donors on the occasion of a local project assessment committee (LPAC) meeting on 19 May this year. This UNDP program was designed in consultation with bilateral and multilateral donors, the Government, including justice, military and public security institutions and the civil society. It is designed to complement other ongoing initiatives in this sector. The program forms part of the wider framework of the Government's SSR Programme, launched in January this year. If implemented, this project will help foster national ownership of the SSR process in Guinea-Bissau, promote stability and enhance civil governance of the security sector, improve the rule of law and access to justice, foster greater public security and promote the effective reintegration of ex-combatants into civilian life.

10. Other multilateral and bilateral donors are providing support for justice sector reform in Guinea-Bissau, within the general framework of SSR, including the EU, ECOWAS, Angola, Brazil, South Africa and Spain. The Government and its international partners acknowledge that one challenge to resource mobilization for a successful implementation of SSR in Guinea-Bissau relates to the need for coordination of assistance by partners to avoid duplication, create synergies and ensure complementarities. As part of efforts to help address this challenge, a resource-mapping exercise on current and planned donor support to Guinea-Bissau SSR was organized in New York on 22 and 23 May by the United Nations Department of Political Affairs through UNOGBIS, with the support of the Department of Peacekeeping Operations (DPKO) and the Peacebuilding Support Office (PBSO).

### **The potential contribution of the Peacebuilding Commission (PBC)**

11. The main challenges in the Justice sector are related to the need to provide human and financial resources, as well as equipment and facilities – so as to allow for the provision of services to the population, maintain stability and strengthen trust and confidence in the administration of justice. In order to ensure due process and rule of law, Guinea-Bissau needs to build a judiciary which is independent, impartial and empowered to adjudicate and equipped with the institutional capacity to make policies and manage the effective administration of justice, including a properly managed human resources system for the personnel in the justice sector. The Peacebuilding Commission can contribute to mobilize funds and bring attention to the problems faced by Guinea-Bissau in this area to a broader community of donors.

12. Appropriate facilities, such as prisons, are also necessary for the judicial authorities to effectively address the problems of drug trafficking and organized crime and allow for a reduction in criminality and impunity. As an example of the extent of the problem, the

Judiciary police has still not been able to move into their new facilities because these facilities have not yet been readapted to their future function. UNODC is assisting the Judiciary Police in this regard. This move could allow for the old premises to be readapted and enlarged into a fully-equipped prison facility.

13. Following the approval of the Interim Priority Plan under the Peacebuilding Fund for Guinea-Bissau in early April, the Secretary-General allocated a funding package of US\$6 million for four short-term projects, one of which focuses on the rehabilitation of a prison in Bissau and the provision of equipment to the Judiciary Police within the framework of the Government's Antinarcotics Operational Plan. The National Steering Committee will meet on 29 May to approve this project so that funding can be made available for implementation.

14. Guinea-Bissau's severe law enforcement constraints in the justice sector make the country particularly vulnerable to trans-national organized crime, including drug-trafficking, human trafficking and illegal migration, terrorism and trafficking in small arms and light weapons. Those issues need to be tackled nationally as well as at a regional and sub-regional level. A regional conference on combating drug-trafficking is expected to be held later this year under the auspices of ECOWAS. The Peacebuilding Commission could be instrumental in bringing greater attention to these issues and promoting the search for both national and sub-regional solutions.