



## ORAL STATEMENT

Pre-session of the Universal Periodic Review (UPR) on Guinea-Bissau

Geneva, February 18, 2025

Ladies and gentlemen

My name is Luís Vaz Martins, and I represent the Guinea Bissau Bar Association as its President of the Human Rights Commission.

The Portuguese Bar Association was created in 1991. The Bar Association has the legal status of a legal person of public utility by Decree No. 13/94, and its objective is the structuring and organization of the class of lawyers, the defence of fundamental rights, the promotion of the legal order and fair access to law and justice.

My oral presentation aims to share the Bar Association's vision on issues related to the independence of the judiciary, access to law and justice, as well witnessing the environment in which judicial operators work.

During the 3rd cycle of the Universal Periodic Review, 10 recommendations were made regarding the independence of the judiciary and access to justice, however, none of these recommendations have been implemented, in fact, there have been clear signs of setbacks, with records events that restrict the freedom of lawyers and magistrates, condition the freedom of the judiciary and access to justice.

### **1. INDEPENDENCE OF THE JUDICIARY**

The independence of the judiciary is a fundamental principle of the rule law, enshrined in Article 120(4) of the Constitution of the Republic of Guinea Bissau, which guarantees that: *"In the exercise of their judicial function, the courts shall be independent and subject only to the law"*.

As such, this command requires the courts to act impartially, without influence from other powers or external interests.

The Statute of Judicial Magistrates and of the Superior Council of the Judiciary, Law no. 1/99, gave concrete expression not only to the principle of independence and the guarantee of impartiality, but also to the principle of irresponsibility and immovability (cf. articles 5, 6 and 7).

However, if the practical application of these principles has always faced obstacles imposed by political and military power, it is no less true that in the last five years,

the total annihilation of the judiciary was witnessed, through well-defined actions such as:

- Fraudulent election process at the Supreme Court in December 2021, which resulted in the election of the President of the Supreme Court of Justice, José Pedro Sambú, then President of the National Elections Commission-CNE;
- Political instrumentalization of the Superior Council of the Judiciary and its functioning without a quorum;
- On November 3, 2023, a platoon of the presidential guard stormed the headquarters of the Judiciary, followed by the kidnapping of the then President of the Supreme Court of Justice and his subsequent resignation under duress;
- Assumption of the office of President of the STJ by its Vice-President and unlawful deliberation by the Superior Council of the Judiciary, which irregularly granted him powers to remain in office until the end of the ousted President's term, thus contravening Article 8 of the Regulations for the Election of the President and Vice-President of the Supreme Court and of the Superior Council of the Judiciary;
- Illegal appointment of a new Vice-President of the Supreme Court of Justice, despite the fact that the position is elective under Article 34 of the Organic Law of the Judicial Courts, Law 6/2011;

Furthermore, in the last five years, 20 judges have been arbitrarily suspended, retired, sequestered and dismissed from different judicial bodies for having decided cases against the interests of the political and military powers, which calls into question the constitutional principle of the independence of the magistrate, according to which the judge is independent and only owes obedience to the law and his conscience, Article 123 of the Constitution.

Alongside magistrates, lawyers, as key players in the functioning of the judiciary and procedural actors par excellence, both in civil and criminal law, as enshrined in articles 32 et seq. of the Code of Civil Procedure and 72 et seq. of the Code of Criminal Procedure, have also come up against the same obstacles in carrying out their duties.

In 2021, the President of the Republic evicted the headquarters of the Portuguese Bar Association, although the building in question is the private property of the Association. To enforce its rights, the Bar Association went to court and the court ordered the immediate return of the building, a court decision duly notified to the Presidency of the Republic in February 2021, but which has not been complied with to date.

In view of the above, we recommend

1. In the next parliamentary term, reinforce legislative measures that strengthen the autonomy and independence of the judiciary and that criminalize with heavy penalties actions that tend to condition the independence of the judiciary. These measures include increasing the penalties for the crimes contained in articles 227 and 228 of Law 4/1993 (Penal Code) and article 12 of Law 14/1997 (Law on Political Office).
2. Approve legislative and administrative measures in the next legislature to strengthen the protection of judicial operators from acts of violence and coercion that they may be subjected to by political, military and economic powers, as well as organized crime.
3. Immediately return the headquarters of the Bar Association, in compliance with the decision of the Bissau Regional Court in case No. 173/2021.
4. Approve within 6 months the Law on the Legal Profession and on Lawyers' Own Acts, to strengthen the status and independence of lawyers and the prerogatives of the legal profession and citizens.

## **II-ACCESS TO JUSTICE**

Justice is extremely expensive, but in addition to the economic obstacle, the country still has to deal with the lack of courts and other judicial structures throughout the country. The creation of the Legal Information and Consultation Office (GICJU) through Law no. 11/2010, whose Access to Justice Centers have been providing legal aid in its various forms, should be recognized and congratulated.

The constitution states that all citizens are equal before the law and every citizen has the right to appeal to the courts, and justice cannot be denied on the grounds of insufficient financial means, but the realization of the principle of equality before the law and equal access to the law is still a long way off in practice.

Since access to justice remains a mirage, it is recommended:

1. Fighting corruption in the judicial system by institutionalizing within 12 months an independent judicial inspectorate, endowed with administrative and financial autonomy, with powers and competencies to inspect all magistrates of the two magistracies, awarding them the ratings corresponding to their performance and productivity during the judicial year.
2. Convert, for a period of 9 months, the Legal Information and Consultation Office (GICJU), established by Law 11/2011, into the National Institute of Legal Assistance and Public Defender (INDEP), in order to reinforce the status of independence, autonomy, irremovability and stability of the staff operating in the field of promoting access to law and justice, in compliance with the outgoing recommendations.

of the Seminar on Access to Law and Justice, with the support of UNDP, held in September 2017.

3. Review Article 68(p) of the Constitution in order to give the Attorney General a mandate and incorporate a similar rule into the Constitution for the President of the Court of Auditors, to ensure greater autonomy and independence in the exercise of their functions.
4. Allocate more money to the justice sector in the next General State Budget, in order to allow the effective establishment and operation of courts in the interior of the country, as well as taking measures to make the sector more autonomous, with its own budget, which makes it less dependent on the Ministry of Finance.
5. Instituting a program to reform the judicial system over the next 18 months, with a view to making it immune political and economic influences and allowing justice to be accessible to all, this program should also push for the extension of the Courts, the Access to Justice Centers (CAJ) as well as the other judicial infrastructures to all regions of the country.

Thank you for your attention.