



# Guinea-Bissau: Reform electoral laws

## Summary

Since its transition to a multi-party system in 1991, Guinea-Bissau has held five legislative and presidential elections. Significant progress had been made in improving the electoral legislation before the last parliamentary elections of 2014, but obvious deficiencies still need to be addressed. The electoral framework should be reformed to improve the transparency and integrity of elections, clarify and strengthen the powers of the National Electoral Commission (NEC) and rectify inconsistencies between constitutional provisions and electoral laws. This is also a prerequisite for the organisation of local elections, which should give substance to the decentralisation envisioned in the Constitution but never implemented.

## Key recommendations

- ▶ Strengthen the independence of the NEC by giving it direct access to an annual allocation in the national budget.
- ▶ Consider giving the NEC full responsibility for the electoral census, as well as the necessary means to do so.
- ▶ Strengthen the regional electoral commissions to enable the NEC to better control the electoral process.
- ▶ Revise the electoral division and allocation of seats based on updated demographic data to improve the representativeness of the National People's Assembly.
- ▶ Post detailed election results in each polling station to increase the transparency of the elections.
- ▶ Define, within the framework of inclusive consultations, a model of decentralisation and a type of local governance adapted to the Bissau-Guinean context.

This note focuses on electoral law reform, which must be considered in light of the shortcomings of the electoral legislation and the obstacles encountered during the elections of 2012 and 2014. As for the local elections provided for in the Constitution, these have never been organised. The question of the electoral framework is all the more important and urgent ahead of the nearing 2018 legislative elections.

## Electoral legislation: incomplete consolidation efforts

In addition to the Constitution's provisions, which are not detailed, the legislative framework governing the elections includes:

- The Law on Election to the Republic Presidency and the National People's Assembly (Law No. 10/2013 of 25 September 2013);
- The Law on the National Electoral Commission (Law No. 12/2013 of 27 December 2013);
- The Law on Electoral Registration (Law No. 11/2013 of 25 September 2013);
- The Framework Law on Political Parties (Law No. 2/1991 of 9 May 1991);
- The Law on International Election Observation (Law No. 4/1994 of 9 March 1994); and
- The Penal Code, some of whose provisions provide additional elements related to elections.

Progress has already been made in improving the electoral framework, particularly during the transition period following the coup of 12 April 2012, which occurred between the two rounds of a presidential election. In attempts to fill various gaps, successive amendments were made by Law No. 10/2013 of 25 September 2013 on the election of the President of the Republic and the National People's Assembly (NPA), amending Law No. 3/1998 of 23 April 1998; Law No. 11/2013 of 25 September 2013 on the electoral census; and Law No. 12/2013 of 27 December 2013 on the composition of the NEC.

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The 2013 electoral framework was revised amid pressure to hold legislative and presidential elections to put an end to a controversial transition. These revisions made important changes to the electoral system.

In order to ensure the transparency of the process, the composition of the Executive Secretariat of the NEC has been revised. Previously, its members were elected by the NEC, with the president being chosen by the majority party and the executive secretary by the second-largest legislative party or

grouping. From now on, the NEC Executive Secretariat consists only of magistrates nominated by the Higher Judicial Council, from which the NPA makes its final choice.<sup>1</sup>

As for the census, the 2013 law ended the debate on the adoption of a biometric electoral map or an improved manual system.<sup>2</sup> In August 2013, the NPA unanimously voted in favour of an electoral registration system dubbed 'enhanced manual and digital'. The voter's card is now a plastic card bearing the holder's photograph and fingerprint, as well as a serial number. This is a compromise, as most parties wanted a fully biometric, and thus more secure, system that would have required more funding and a longer registration process.

## Major reforms to address the main shortfalls of the electoral framework

### Clarify the roles of the NEC and the GTAPE

In December 2013, the International Organization of the Francophonie (OIF) sent a pre-election information-gathering and assessment mission. According to this mission's report, the main difficulties are 'at the level of the distribution of powers and coordination of efforts in the management of the electoral process, the conduct of voter registration operations and the training of actors taking part in the process'.<sup>3</sup>

The issue of the division of tasks and responsibilities between the NEC and the government through the GTAPE remains a major complication

The report outlines the challenges encountered in the lack of coordination between the NEC, which organises and supervises voting operations, and the Ministry of Territorial Administration, which is responsible for the administrative supervision of the Electoral Process Technical Support Office (GTAPE), in charge of the electoral census. While the GTAPE has a lot of flexibility in conducting the electoral census – a crucial step before any electoral process – the report indicates limited involvement by the NEC, which should be overseeing the process.

The OIF mission also highlights the many problems encountered in conducting the census, foremost among which was abandoning the development of a biometric electoral list in favour of a so-called 'improved manual list'. The technical and operational aspects of the electoral census effectively obscure the fundamental issues in clarifying the GTAPE and NEC's respective roles and the possibility of the NEC's supervising the teams conducting the census, which are currently under government supervision.

One of the mission's recommendations is to 'give the NEC the means so that it can reposition itself in its control and supervision role of the electoral

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### Main institutions involved in the electoral process

#### National Electoral Commission (NEC)

Organises, supervises and manages the electoral and referendum processes

#### Technical Support Office for the Electoral Process (GTAPE)

Organises and manages the registration of voters

#### Regional electoral commissions (RECs)

Provide information on the electoral process and transmit voting results

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process and that it involves [itself] in the administration of the electoral census computer system'. With strong international support on the ground, the 2014 elections were conducted under conditions deemed acceptable and their results were considered credible. Yet the issue of the division of tasks and responsibilities between the NEC and the government through the GTAPE remains a major complication. The European Union (EU) Election Observation Mission final report makes the same observation.

### **Strengthen the NEC and ensure its financial independence**

The EU report praises the NEC's performance, which has gained credibility since the law of 27 December 2013 instituted an Executive Secretariat composed exclusively of magistrates and thus non-partisan in theory. Representatives of political parties had considerable access to information throughout the electoral process by participating in the NEC's plenary meetings. However, the EU report stresses that the NEC is handicapped through its inability to draw up and amend guidelines on technical aspects of the electoral administration.<sup>4</sup>

By controlling the allocation of resources, a parliament or government can render the principle of independence meaningless of the NEC

The document also highlights the NEC's financial dependence on the NPA, which, by freeing resources at its own pace, can influence the work of the NEC. Financial dependence is usually a very strong limitation on the actual independence of institutions. By controlling the allocation of resources, a parliament or government can render the principle of independence meaningless.

Three of the main recommendations of the EU mission call for strengthening the mandate and independence of the NEC:

- Give the NEC the prerogative to adapt and update electoral technical procedures, clarify points omitted by the law and make the necessary adjustments in all aspects of the organisation;
- Strengthen the independence of the NEC by giving it direct access to an annual allocation in the national budget; and
- Better define the NEC's competence in supervising the electoral census, which is the responsibility of the GTAPE, to strengthen the Commission's role and its involvement in the process, thus creating the conditions for greater electoral integrity.

The implementation of these recommendations requires a revision of the laws governing the electoral census and the NEC. Even if the EU mission does not go so far as to propose that the NEC assumes responsibility for all stages of



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the electoral process, this option should be considered from the perspective of a consolidation of electoral legislation.

In political contexts generally marked by a high level of mistrust among parties with regard to public administration, it seems desirable to entrust the entire organisation of elections to an independent authority such as the NEC, and to offer it strong legal guarantees that it will have the necessary resources to fulfil its mandate. In West Africa, some electoral management authorities have very broad powers and could inspire a revision of the law on the NEC and an assessment of the additional human and material resources needed for an extended mandate.

### **Transitional provisions and permanent regional electoral commissions**

The NEC should have the power to conduct the electoral census, even if it mobilises for this purpose human and material resources normally assigned to other institutions. The NEC could, without any ambiguity, be the only authority in charge of elections, including the census and the compilation of electoral lists. However, the current system should be maintained during a transitional period that would end after the legislative elections planned for 2018, with the proviso of the immediate subordination of the GTAPE to the NEC. The latter would have the latitude to adopt measures to verify voter's lists.

To help extend its powers, the law on the NEC should also provide for modifications to regional electoral commissions (RECs) (Law No. 12/2013, Chapter II). These regional commissions are composed of a president, chosen by the members of the NEC Executive Secretariat, and representatives of political parties or coalitions of parties participating in the elections and, possibly, representatives of independent candidates.

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The only permanent members of the RECs are their presidents, who have the same four-year renewable term of office as members of the NEC Executive Secretariat. The other members – the representatives of parties and candidates – only form part of it for the duration of the election period. Invested 90 days before the election, their duties cease upon publication of the final election report by the NEC; that is, within 15 days of the announcement of the final results.<sup>5</sup>

In order for the NEC to take full responsibility for the electoral process, including the census and electoral and civic education campaigns throughout the country, it should be able to rely on the RECs, which should consist of a small permanent team supporting the president. Following the same pattern as the NEC plenary, the RECs would also include representatives of political parties and candidates during election periods.



THE RECS SHOULD CONSIST  
OF A PERMANENT TEAM

## Distribution of MPs by electoral district

Districts	Regions	Administrative sectors	Number of electors registered	Number of MPs
1	TOMBALI	CATIÓ	17 775	3
2		BEDANDA / CACINE / QUEBO	27 866	4
3	QUÍNARA	BUBA / EMPADA	18 118	3
4		FULACUNDA / TITE	13 506	3
5	OIO	BISSORÃ	32 398	5
6		FARIM	23 383	4
7		MANSABA	21 398	3
8		MANSOA / NHACRA	36 736	4
9	BIOMBO	QUINHAMEL	19 892	3
10		SAFIM / PRÁBIS	30 518	3
11	BOLAMA	BOLAMA / BIJAGÓS	17 052	3
12	BAFATÁ	BAFATÁ / GALOMARO	40 118	6
13		BAMBADINCA / XITOLE	26 889	3
14		CONTUBOEL / GANADU	30 247	5
15	GABÚ	BOÉ / PITCHÉ	25 650	4
16		GABÚ	37 845	4
17		PIRADA	13 111	3
18		SONACO	16 606	3
19	CACHEU	BIGENE / BULA	42 340	5
20		CAIÓ / CANCHUNGO	29 827	5
21		CACHEU / SÃO DOMINGOS	25 824	4
22	AFRICA	AFRICA	14 282	1
23	EUROPE	EUROPE	8 030	1
24	BISSAU	BISSAU	18 929	3
25		BISSAU	37 908	4
26		BISSAU	23 400	3
27		BISSAU	28 596	4
28		BISSAU	40 082	3
29		BISSAU	57 182	3
TOTAL			775 508	102

Source: Relatório Final das Eleições Gerais de 13 a 18 de Abril de 2014 da CNE – COMISSÃO NACIONAL DE ELEIÇÕES.

## Review electoral divisions and consider creating a national constituency

One of the shortfalls of the current electoral framework, despite the improvements since 2013, is the determination of the number of parliamentary seats assigned to each constituency, and the division of the latter. The distribution of seats by constituency is currently presented in an appendix to the law (Law No. 10/2013, Article 115). The table determining this distribution therefore seems to be fixed, even though it is not based on updated data on the population of each constituency.

As reported in the EU mission report, the current breakdown does not respect the principle of equal representation, since the ratio can vary between one deputy seat for 4 370 voters in Gabu to one seat for 19 061 voters in the autonomous sector of Bissau, the capital. A distribution of seats that does not take better account of demographic realities has important political implications. Established parties in constituencies that have a greater number of seats in relation to their population have an advantage over others.

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The absence of a calculation rule for the distribution of seats and an electoral division that is neutral and fair creates doubt about the representativeness of the NPA. The recommendation of the EU mission therefore corresponds to the need to give, as far as possible, equal weight to the vote of each voter. The mission recommends 'review[ing] the distribution of seats by constituency in order to promote an equality of votes reflecting the distribution of the population with a similar number of voters to elected representatives throughout the country'. In its 2014 report the NEC also recommends that the allocation of constituency seats be reviewed to ensure greater electoral justice.<sup>6</sup>

Title VI of the Election Law on Parliamentary Elections should be reviewed, including articles 114 and 115 on electoral constituencies and the number and distribution of seats. Since this distribution should reflect the demographic dynamics of regions and the diaspora, one option would be to list in the electoral law, and possibly in the Constitution, those principles guiding electoral divisions and the allocation of seats, as well as the institution responsible for regularly reviewing this distribution according to the most recent census data.

This role could be devolved to the Executive Secretariat of the NEC, which has a priori the greatest guarantee of political neutrality. Another option would be to have a commission dedicated to this issue within the NPA, but it is important to avoid the risk of politicising an exercise that should be technical.



THE CREATION OF A  
NATIONAL LIST COULD  
BE CONSIDERED

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Many political actors and members of civil society feel that a review of the allocation of seats to constituencies must be accompanied by a review of the method of allocating seats.<sup>7</sup>

Electoral divisions and the allocation of constituency seats are closely linked to the voting system. Guinea-Bissau has adopted the proportional representation system, with the 'D'Hondt method' the formula for allocating parliamentary seats. Nominations are submitted in multi-member and closed lists proposed by political parties or party coalitions, in which candidates appear in order of registration.

When citizens relocate from one constituency to another, it may affect the results of the parliamentary elections

For these actors, this system not only tends to favour the main parties but also does not allow parties to elect to the NPA those of their members best equipped to play a constructive role in legislative duties. It is in the interests of all parties to choose their candidates solely on the basis of their ability to obtain votes at the local level.

The creation of a national list, to which parties or coalitions could nominate their most competent candidates to stand as MPs, could be considered. Here one encounters the dilemma between the need for citizens' democratic representation and the quality requirement in terms of the NPA's legislative duties.

## Reforms to improve the transparency and integrity of elections

### Confirmation of identity by witnesses during the electoral census

To improve the integrity of electoral processes and to combat one of the alleged sources of fraud cited by many political actors and members of civil society in Guinea-Bissau, the conditions for voter registration during the electoral census should be reconsidered. When citizens do not have a national identity card, one way in which they can prove their identity is through the testimony of registered voters (Electoral Registration Act, Article 22).

While this provision has the merit of allowing citizens from isolated rural areas who do not have official identity documents to vote, it also opens the door to fraudulent practices and anomalies in electoral lists. When citizens relocate from one constituency to another, it may affect the results of the parliamentary elections. It would be advisable to introduce a minimum number of testimonies (three, for example) and to exclude the same person from testifying to the identity of several other people.

To avoid tensions related to this practice, it is necessary to set up a functioning civil registry system capable of issuing those documents essential

### Chronology of presidential and legislative elections since 1994

- **Presidential elections:** 1994, 1999, 2005, 2009, 2012, 2014
- **Legislative elections:** 1994, 1999, 2004, 2008, 2014



for registering for the electoral list. This involves strengthening the capacity of the administration and more specifically of the justice sector. The last general census dates back to 2009, which indicates a rather limited knowledge of reliable demographic and marital status data.

### **Provide a legal framework for national election observation**

The presence of independent observers during all or part of the electoral process improves the transparency and integrity of elections. International election observation missions have long been deployed in Guinea-Bissau. For example, the EU sent them in 2005, 2006, 2008, 2009 and 2014. ECOWAS and the African Union (AU) also frequently send missions.

The provisions governing the announcement of results at the constituency level could be modified to increase transparency

But while there has been a law since 1994 regulating international election observation, national observation is still not the subject of legislation. This did not prevent civil society organisations (CSOs) from engaging in election observation. In 2014 the Group of Civil Society Organizations for Elections (GCSOE) played a significant role. It is nevertheless necessary,<sup>9</sup> as recommended by the NEC, to amend the law on international observation to include national CSOs. The current law explicitly recognises as international observers only representatives of the United Nations, the AU, the EU and ‘personalities invited’ by the NEC.

### **Publish the results of each polling station**

The provisions governing the announcement of results at the constituency level (Electoral Law, Article 84) could be modified to increase transparency. As recommended by the 2014 EU mission, the NEC could communicate, in addition to the results centralised at the level of each constituency, those of each polling station, with the details of the count in each office. This good practice allows voters and party representatives to carry out the necessary verification themselves, which reinforces the credibility of the results centralised by the RECs and the NEC.

### **Harmonise the rules on election financing with those on political party financing**

The legislative provisions on electoral financing, outlined in Chapter III of the Law on Elections to the Presidency of the Republic and the National People’s Assembly, should be harmonised with those regulating political party funding in the Framework Law on Political Parties. Electoral financing would then be clearly identified as a component of political financing that must be the subject of an elaborate framework. The note on the Framework Law on Political Parties proposes options to regulate the public financing of political



PLACE BOTH NATIONAL  
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OBSERVATION IN A  
LEGAL FRAMEWORK

activities, including electoral campaigns. It is imperative to ensure that the articles on funding in the Framework Law on Political Parties and in the electoral law are consistent.

### **Put an end to inconsistencies in the timing and scheduling of elections**

Electoral and constitutional reforms must make it possible to correct widely acknowledged issues in the case of an exceptional power vacancy by reason of the President's death while in office. The time allowed by the Constitution (Article 71) to hold an early presidential election – 60 days after the declaration of vacancy – is far too short, as the electoral system, including the census, is not immediately operational.

In addition, the electoral law sets the period between 23 October and 25 November of the year corresponding to the end of the legislature and the presidential term of office for the holding of legislative and presidential elections. Although it does not apply in the event of the dissolution of the NPA or the vacancy of the Presidency (Article 3), this provision may create unnecessary political difficulties. It seems more appropriate to tie the date of the legislative and presidential elections to the duration of the deputies' (four years) and the President's (five years) respective mandates, whatever the circumstances prompting the elections.

With regard to the exceptional situation resulting from the Office of the Presidency's becoming vacant, one option would be to extend the maximum period mandated by the Constitution for the organisation of a new election from 60 to at least 90 days. Another solution, which would bypass the need for expensive elections in a country with huge socio-economic needs, would be to provide for another state figure, such as the NPA's president, to hold the office until the end of the current term. This option would be feasible since the president is not meant to play a leading role in the political regime of Guinea-Bissau. This provision would be in line with the general line advocated in the context of the drafting of a new Constitution.

### **Local elections in question**

The Constitution has provided for local elections since 1994. However, no local elections have been held in Guinea-Bissau to date. Instead, local authorities are appointed by the Ministry of Territorial Administration and

Local Government. This situation places obvious limits on the effectiveness of local democracy.

In 2015 the government attempted to table a bill before the NPA, which was unable to meet because of the prevailing political crisis. This text, submitted by the Ministry of Territorial Administration and Local Government, is considered by some parliamentary actors, who do not agree on the proposed number of municipalities, as being out of step with the socio-political reality of the country. In addition, the organisation of local elections in the current context may further divide the country through the localised multiplication of centres of – and therefore struggles for – of power. At the same time, local elections could also ameliorate political conflict by offering political actors new options at the local level.

The identification of the appropriate system should be based on a transparent and inclusive consultative process

The failure to hold local elections for more than 20 years is often presented as the result of a lack of political will. A pragmatic analysis of this issue reveals other reasons: the difficulty of starting a process of decentralisation when the central state itself is weak and unstable; the existence of influential traditional local authorities worried about being marginalised by newly elected authorities; and the lack of sufficient financial resources and competent human resources to implement decentralisation.

The context calls for an in-depth examination of the type of governance that should be put in place at the local level, and the distinction between this power and other levels of formal and traditional power. The identification of the appropriate system should be based on a transparent and inclusive consultative process. The necessity, in the long term, of organising local elections is not in doubt. But in the absence of a national consensus on how to introduce local governance, and given the instability and political tensions that prevail in the country, it remains difficult to imagine the organisation of both local and parliamentary elections in 2018.

Firstly, it is important to focus on the necessary legislative reforms in the run-up to the 2018 and 2019 legislative

and presidential elections. Secondly, the type of local governance to be put in place should be subject to wide consultation.

The introduction of a local mode of governance is not initially an electoral issue. It is a political organisation choice whose modalities must be based on the reality of the Bissau-Guinean context and on a broader preliminary reflection on decentralisation and the de-concentration of power. Translating the modality of the chosen form of local governance and the organisation of local elections into an electoral law should only be a third step.

## Conclusion

A reading of the different electoral laws and the identification of possible shortcomings, inconsistencies and improvements underline the need to revise these laws and the Constitution simultaneously. Legal formulations and electoral technicalities should be supported by clear choices regarding the organisation of political power and the regulation of society, drawing lessons from the country's history.

In order to build a stable democratic system, based on the balance of power, the rule of law and the representation of cultural, economic and social diversity, reforms must aim at strengthening institutions. They should also specify, as far as possible, the skills, responsibilities and limitations of each of these. The laws need to enable the establishment of institutions that are not confused with the people who run them. This is the intention of the proposals to strengthen the electoral management body and political parties as leaders in the political arena, as well as of the clarification of electoral provisions wherever there are obvious ambiguities.

## Notes

- 1 Law No. 12/2013 of 27 December regarding the NEC, Article 3.
- 2 Law No. 11/2013 of 11 September regarding the electoral census, Article 24.
- 3 Report of the Francophone Information and Pre-Election Assessment Mission, December 2013.
- 4 EU Election Observation Mission report, 2014, 17.
- 5 Law No. 12/2013 of 27 December concerning the CNE, Article 20.
- 6 NEC, Final Report of general elections of 2014, 87.
- 7 Interviews with political actors and members of civil society, Bissau, March–June 2017.
- 8 NEC, Final Report of general elections of 2014, 87.

### Methodological note

This note is part of a series of six analytical notes on the reforms that Guinea-Bissau needs in order to return to stability, and which are also proposed in the October 2016 Conakry Agreement. The first notes are respectively about the reform of the Constitution, the reform of the electoral law, the reform of the Framework Law on Political Parties, the reform of the defence and security sector and the reform of the judiciary. The sixth and final note summarises the main recommendations presented in the notes as a whole. These publications are the result of field research and analysis conducted from March 2017 to January 2018 by a team of researchers from the Dakar office of the Institute for Security Studies, with the support of experts from Guinea-Bissau, the region and internationally. They were developed at the request of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) to facilitate discussions on these reforms among the forces of political and civil society in Guinea-Bissau.

## About UNIOGBIS

The United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) was established in 2009 by Security Council resolution 1876, of 26 June 2009. The current mandate of UNIOGBIS, as specified in resolution 2404 of 28 February 2018, focus on the following priorities: i) supporting the implementation of the Conakry Agreement and facilitating an inclusive political dialogue and national reconciliation process; ii) supporting, through good offices, the electoral process to ensure inclusive, free and credible legislative elections in 2018; and iii) supporting national authorities in expediting and complementing the review of the Constitution. The Mission is also mandated to assist, coordinate and lead international efforts to strengthen democratic institutions and enhance the capacity of state organs, promote and protect human rights, support the combat against drug trafficking and transnational organized crime, mainstream gender in peacebuilding efforts, and mobilize, harmonize and coordinate international assistance with view to upcoming elections.

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