



Which institutional reforms for Guinea-Bissau?

Summary

The institutional reforms put forth in the October 2016 Conakry Agreement have a long history in Guinea-Bissau. They are unavoidable and will have to be implemented sooner or later. In order to facilitate discussions on these reforms among political actors and in civil society, the Institute for Security Studies, at the request of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS), has developed a series of policy briefs on constitutional reform, as well as on reforms to political party legislation, electoral laws, the justice sector, and the defence sector and security. This note discusses the main recommendations.

Key points

- ▶ There is broad consensus on the need to revise the Constitution to prevent political blockages and promote effective institutions. The proposal developed in 2001 can serve as a basis for such efforts.
- ▶ Despite the various reforms already undertaken to the electoral framework, shortfalls need to be corrected to improve the transparency and integrity of elections.
- ▶ The provisions of the Framework Law on Political Parties of 1991 are poorly enforced. It is important to review the law and ensure its applicability.
- ▶ There is an urgent need to restart inclusive discussions on the Justice Reform Programme (2015–2019) in order to remove blockages that prevent its implementation.
- ▶ The creation of a climate of trust among national and international actors around a realistic reform agenda would overcome the persistent stalemate in defence and security sector reform.

Provide the country with a new Constitution to consolidate the rule of law and stability

There is broad consensus among politicians and civil society on the need for amendments to the Constitution (also known as the Basic Law). After the 2014 elections, the National Assembly set up an ad hoc committee on constitutional reform. Little progress had been made before the commission was paralysed, like the whole National Assembly, by the political crisis of 2015. The current Constitution lacks clarity in a number of important areas, starting with the delimitation of the powers and roles of the organs of state (president, government, Parliament, judiciary). The country needs a constitution that is designed to prevent political blockages, promote effective institutions and make the state more efficient and fair in its delivery of services to the people.

Clarify the criteria for appointing the Prime Minister and forming the government. When choosing the Prime Minister, it is necessary to take into account the need for both his government and his agenda to be approved by a majority in the National Assembly.

The notion of a ‘serious crisis impeding the normal functioning of institutions’ should be clarified

Clarify the criteria for the dissolution of the government by the President. The Constitution should specify the criteria for the dissolution of the government by the president, in order to reduce the risk of governmental instability. The notion of a ‘serious crisis impeding the normal functioning of institutions’ should be clarified and its assessment entrusted to a new constitutional jurisdiction.

Assert the authority of the Prime Minister over the Council of Ministers. The Constitution should clarify the ambiguity surrounding the respective powers of the President and the Prime Minister, by entrusting the Prime Minister with the presidency of the Council of Ministers in normal times. The President could preside over the Council of Ministers only in special circumstances and at the invitation of the Head of Government.

Clearly distinguish between the respective powers of the President of the Republic and the government. Specific attention should be paid to the power to make appointments to institutions, and high-level civil and military functions. In semi-presidential regimes comparable to that of Guinea-Bissau (Portugal, Cape Verde), most appointments are made by the president, based on proposals put forward by the government.

Strengthen the Council of State. Even if the advice of the Council of State is not binding on the President of the Republic, the views of other state representatives and general national interests should have an influence on the

ultimate decisions of the President. To enable this, its composition and specific skills should be broadened.

Create a Constitutional Court. It seems essential to ensure the safeguarding of the principles of the Constitution by creating a Constitutional Court dedicated to the protection of the spirit and letter of the Constitution.

Clarify the terms of amendments to the Constitution and provide for a referendum. The National Assembly, as the representative of the people, must remain the source of central sovereignty in any process of constitutional amendment. However, the possibility of holding a referendum on amendments should also be foreseen.

Constitutionalise provisions concerning political parties. Include in the Constitution transparency principles regarding the sources of funding of political activities and the supervision of political parties' public funding, and remove all barriers to the fair representation of women and young people in governing party organs.

Reform electoral laws

Since its adoption of the multiparty system in 1991, Guinea-Bissau has held five legislative and presidential elections. Significant progress was made in improving the electoral legislation before the last parliamentary elections of 2014, but obvious deficiencies still need to be addressed. Reforms of the electoral framework are needed to improve the transparency and integrity of the polls, clarify and strengthen the powers of the National Electoral Commission (NEC), and eliminate inconsistencies between constitutional provisions and electoral legislation. This stage is also a prerequisite for the organisation of local elections, which should give substance to the decentralisation that was envisaged in the Constitution but never implemented.

The NEC should be responsible for conducting all phases of the electoral process, including voter registration

Strengthen the skills and independence of the NEC. The NEC should have the necessary authority to adapt and update technical electoral procedures, clarify those aspects not sufficiently addressed by legislation and make any necessary adjustments. It should be responsible for conducting all phases of the electoral process, including voter registration. The NEC's independence could be strengthened by including annual allocations in the national budget.

Strengthen regional electoral commissions (RECs). To enable the NEC to take full responsibility for the electoral process, including the census and the electoral and civic education campaigns in the country, RECs should be provided with permanent teams supporting their presidents.



REVISE THE
CONSTITUTION TO PREVENT
POLITICAL DEADLOCKS

Review the allocation of seats to constituencies. Provide in the electoral law, and possibly in the Constitution, principles to guide the electoral division and allocation of seats, as well as an institution responsible for regularly reviewing this distribution based on the most recent demographic data.

Create a national constituency. The existence of a national list, in addition to lists by constituency, would allow political parties or party coalitions to elect those members best equipped to play a constructive role in legislative duties.

Provide a legal framework for both national and international election observation, by revising the International Observation Law to include national civil society organisations.

Carrying out an in-depth examination of the type of local governance desirable and the relationship between this power and the other levels of official and traditional power

Publish results from each polling station. The law should be amended to allow the NEC to communicate not only the centralised results at the level of each constituency, but also the results from each polling station, after the count for each had been finalised.

Harmonise electoral financing rules for political parties. The provisions on electoral financing (Law on the Election of the President of the Republic and the National People's Assembly) and those governing the financing of political parties (Framework Law on Political Parties) must be brought in line.

End inconsistencies in the timing and scheduling of elections by linking the dates of the legislative and presidential elections to the precise terms of office of deputies (four years) and the president (five years), irrespective of the circumstances leading to the elections.

When the office of the president has been vacated, extend the maximum period for organising new elections from 60 to a minimum of 90 days, or invest the President of the National Assembly as acting President of the Republic until the end of the term.

Define the model of decentralisation and the conditions for organising local elections, carrying out an in-depth examination of the type of local governance desirable and the relationship between this power and the other levels of official and traditional power.

Re-examine the Framework Law on Political Parties

The legislation governing political parties in Guinea-Bissau dates from 1991. The areas of reform identified are aimed at strengthening the regulation of political activities; confirming the centrality of political parties in democratic activities; and promoting the equitable participation of women and men, as well as their access to political functions; in order to define, organise and



REVIEW AND ENSURE
THE APPLICABILITY OF
THE 1991 LAW

control the public financing of parties and make it an effective tool in changing political practices.

Ensure that parties respect constitutional principles.

The new Constitutional Court would register political parties and verify that they uphold the democratic principles, rights and freedoms protected by the Constitution.

Strengthen oversight over the functioning of political parties.

The Constitutional Court would be the only institution entitled to dissolve a party at the request of an organ of state, in the case of a flagrant violation of the fundamental provisions of the Framework Law on Political Parties, including the militarisation of a party, armed violence and/or incitement to hatred, violence or any form of discrimination. Such a dissolution could also be pronounced in the event of a finding of long-term political inactivity, notably a failure to put forward nominations for any national or local election, lack of communication from members of the party's governing organs, or the non-presentation of party accounts.

Confirm political parties' centrality to democratic activities. It should be reaffirmed, in a manner consistent with electoral laws, that only political parties and political coalitions can submit nominations for parliamentary elections, with independent candidatures only allowed for the presidential and local elections.

Party and election campaign funding should be strictly regulated and entrusted to an independent body

Promote equitable access for women and men to political functions, including the introduction of a quota. The statutes of political parties must guarantee the active participation of women in all their activities and prevent any discrimination on the basis of gender in accessing their governing bodies and candidatures for election. The framework law could set a mandatory quota of 30% women representation on the lists presented by parties in legislative and local elections.

Clarify, organise and control public party funding to make it an effective tool in changing political practices. Financing arrangements for political parties should include incentives for parties to ensure their

members' civic education and training, the political participation of women and youth, and financial transparency in order to prevent funds from organised crime from infiltrating the political playing field.

Cap campaign expenses. To avoid excessive resource gaps between parties and election candidates, and to encourage greater transparency regarding funding sources, the new law should set a limit on spending.

Create a national commission for political financing. Party and election campaign funding should be strictly regulated and entrusted to an independent body separate from the National Electoral Commission.

Create an independent justice system that protects the people

During the past four decades the country has experienced a series of settlements in favour of political and military elites. Justice has rarely, if ever, been rendered to victims, promoting revenge and feeding the cycle of violence. In everyday life the absence of formal justice also favours individual settlements, or even conflict resolution methods implemented by traditional authorities that are highly influential and respected. A new and ambitious Justice Reform Programme (2015–2019) has been prepared, but has been blocked by the political crisis. It is crucial to find consensus on the implementation of this indispensable reform.

Strengthen the independence of the Attorney General of the Republic, by determining a term of office during which he cannot be removed, except in exceptional circumstances specified in the Constitution.

Strengthen the Court of Auditors by setting a term of office for its president. This institution must be able to play a major role in the fight against corruption and mismanagement of public resources. The court should also have significant financial autonomy with direct access to an allocation in the state's annual budget.

Create a Constitutional Court. This would ensure that the letter and spirit of the Constitution prevails with a moral and practical authority superior to that of the Supreme Court, which would retain all its powers in the judicial field.

Re-launch defence and security sector reform

Defence and security sector reform (DSSR) in Guinea-Bissau has been a recurring topic for nearly two decades. Despite the different directions taken by reforms and the engagement of regional and international actors, obstacles – and fatigue – persist. It is essential to analyse the real reasons for the blockages before proposing technical solutions that will not solve fundamental political, economic and social problems.

Make room for defence and security forces to restart dialogue on reform. The Military Staff, the Ministry of Defence and the Reform Unit must together make the necessary clarifications on the continuation of the process and take into account international concerns. They must then build consensus by engaging in dialogue with civil society, the National Assembly and political parties.

The steering committee for Security Sector Reform must resume regular activities to allow transparency and coordination

Encourage open discussions on the desirable and realistic size of the armed forces. The structure of the future army must be specified, and it must be reasonable and in line with the nature of the country's external threats and other priorities, including people's access to basic services.

Gradually build real defence and security institutions. This implies the improvement of military conditions within a formalised framework; career organisation; rapprochement with those states with which Guinea-Bissau shares a history and that are of interest to it; and the rejection of the deliberate ethnic rebalancing of the army, which may have formed part, often implicitly, of some SSR attempts.

Rethink the commitment of partners. International actors must reconfirm their readiness to support reasonable reform. The steering committee for Security Sector Reform (SSR) must resume regular activities to allow transparency and coordination. Both short-term and long-term mobilisation, including of international and regional organisations that can overcome certain resource thresholds, should be set out in countries that have a history with Guinea-Bissau and that wish and have the means to be strategic partners over time.

Conclusion

Deliberations on institutional reforms must emphasise the creation of political conditions conducive to a constructive dialogue on the profound changes needed in the relations between various centres of power: between leaders and the people, between political power and public administration, between political power and the defence and security forces, and between formal



RE-LAUNCH DIALOGUE ON
DEFENCE AND SECURITY
SECTOR REFORM

institutions and the informal institutions rooted in tradition and that largely guide the behaviour of citizens.

The coherence of the institutional structure of Guinea-Bissau lies in the alignment between the fundamental principles of the electoral laws, the Framework Law on Political Parties, the rules on the functioning of justice and the defence and security forces, and a constitution envisaged as a social pact between citizens.

It is for this reason that the process of revising the Constitution should not be limited to a formal exercise dominated by a technical and legal approach. Instead it should be an opportunity for social forces in the country to draw on the main lessons of Guinea-Bissau's evolution since independence and to place at its heart concerns over the future of the youth, who pay dearly for political and institutional instability. The proposed approach to reforms must be ambitious in order to generate real interest from all of the country's social forces, in all regions and in all communities.

The proposed approach to reforms must be ambitious in order to generate real interest

If the collective will of citizens is to build a stable democratic system, based on a balance of power, the rule of law and the representation of the cultural, economic and social diversity of the people, reforms must aim at institution building. They should also clarify as far as possible the capacity, responsibilities and limitations of each of these institutions. The laws must make it possible to build institutions that are distinct from the people who run them. This is the intention behind proposals to strengthen the electoral management body, consolidate political parties as key actors in the political arena and clarify electoral provisions wherever there are obvious ambiguities.

For Guinea-Bissau, the challenge of reform is vital: it is to create an institutional framework that can provide the conditions for political stability so essential to the maintenance of peace, security and economic and social progress. But a new Constitution, even if well thought out and democratically adopted, will not automatically bring an end to the long cycle of instability and political crisis in the country.

National capacity to turn the difficult moment of crisis into a historic opportunity to regenerate institutions will depend on the mobilisation of the country's vital forces and the steadfast support of its international partners. Needless to say, the stabilisation of Guinea-Bissau is also one of the conditions for strengthening stability and security in West Africa.

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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