



## Symposium on Military versus Common Criminal Justice

### Introduction

The two-day Symposium on Military versus Common Criminal Justice was inaugurated in Bissau on 16 October 2012, with an attendance including professionals of the Judiciary Police (5), Bar Association (3), Prosecutors' Office (21), magistrates (10) and Military Superior Court (21).

### Background to Symposium

Starting with 2010, UNIOGBIS has organized a series of seminars on the holistic justice-security linkages, including on matters pertaining to the due process of criminal justice, addressing cooperation and information exchange among the various actors of the national criminal justice system. A Report on the series of seminars was published by the then Minister of Justice Mamadu Saliu Jalo Pires and endorsed by the Supreme Court, General Prosecution, Bar Association and Police.

The Report recommended the discussion of those matters in a structured fashion through a National Criminal Justice Forum at a strategic level for policy discussions and follow up on the implementation of recommendations pertaining to improving the effectiveness of the national criminal justice system. That Forum was envisaged to comprise high level officials from Courts, Prosecution, Police, Bar Association, Military Court, and members of Civil Society, including those involved in matters related to legal aid, victim rehabilitation and witness protection.

The first session of the National Criminal Justice Forum took place in November 2011, with a focused discussion on Military laws, which identified the need to update laws related to military prosecution. It was decided that the National Criminal Justice Forum should convene at least once a year and, under its aegis, dedicated sessions i.e. Symposia were to be organized to discuss in-depth priority matters such as Civilian vs. Military Prosecution.

**Therefore, as a follow up to implementing such decisions, a Symposium on Military and Civilian Prosecution was scheduled for 2012.**

### Aim of the Symposium

The event aimed at bringing the Criminal and Military Prosecution and judiciary members on a common platform, so as to discuss the investigation in their respective jurisdictions and advance proposals on harmonizing the criminal and military justice systems, including legal review and capacity-building measures.

## **Methodology of the symposium**

The Symposium was nationally owned, under the patronage of the General Prosecution and the President of the Military Superior Court. UNIOGBIS financially supported the event and assisted on the organizational and managerial aspects. The decision on the selection of the participants was made by the national partners, as well as the list of presenters and moderators, which had followed expertise-based criteria of selection.

The Symposium secretariat acted as rapporteur for the various presentations. The detailed Report would be drafted and issued by the national partners.

## **Themes**

The range of topics included the Crimes essentially military and those pertaining to common criminal justice, military and civilian institutional cooperation in combating crime, military penal law and regulation military discipline, historical evolution of military criminal justice and military judicial police and their relations with other police organs.

**The discussions focused on the need to urgently train and establish a professional Military Judiciary Police, with the support of the civilian Judiciary Police.**

## **Opening Session**

The opening session was attended by Attorney General Mr. Abdu Mane, Chief /SSR, UNIOGBIS Mr. Antero Lopes, representatives from African Union, from the Embassies of Spain and USA, UNDP and UNICEF.

In his opening speech, the Attorney General praised the initiative and emphasized that the Symposium provided an opportune platform to both military and common criminal justice stakeholders to exchange information and share experiences. He added that the event happened at a time when all public actors were committed to enhance the effectiveness and fairness in the Criminal Justice System in Guinea-Bissau. He encouraged an in-depth discussion and exhorted the participants to provide recommendations to improve the criminal justice system in the country. He thanked UNIOGBIS for providing technical support to national partners in facilitating the improved performance by the judicial authorities in the country.

The Symposium was then opened for theme based presentations.

## **THEME I:**

**Ownership of prosecuting crimes in the military justice vs. common justice**

*Speaker: Dr. Eduardo Mancanha*

Dr. Eduardo began by defining the Military Law as a branch of law that provided for a category of State which possesses special rights and prerogatives that are usually not provided to civil servants. He defined the military criminal justice as that which is applied to prosecute offenses essentially military.

He raised certain questions to discuss during the Symposium, including

What are essentially military crimes?

What are the criteria to define scope for essentially military crimes, which is consistent with the Constitution of Guinea-Bissau?

Who owns the prosecution of ordinary crimes and crimes essentially military?

He apprised that the crimes essentially military were not defined in Guinea Legislations namely Law 2/78 of May 18 nor in the Code of Military Justice, 1925.

## **THEME II:**

### **The military and civilian institutional cooperation in combating crime**

*Speaker: Dra. Manuela Lopes Mendes*

Stressing an urgent need to initiate a procedure for cooperation, coordination and exchange of people and experts linked to justice for effective crime fighting, dra. Lopes Mendes highlighted the cascading effects of organized crime on the members of society and on the economy of a nation.

She expressed concern on the existing level of coordination between various organs of Criminal Justice System, exhorting the participants to suggest the ways to enhance the cooperation between various actors of the Criminal Justice System.

## **THEME III:**

### **The Military Penal Law and Regulation Military discipline**

*Speaker: Dr. Augusto Bicodá*

Dr Bicodá's presentation was focused on the Military Penal Law, defined "as a set of legal rules designed to ensure the achievement of the purposes of military institutions, whose main element is the armed defense of the homeland." He sighted some of the crimes essentially crime in the ambit of offences that were function specific and peculiar to profession of a soldier, including crimes of desertion, abandonment of post, contempt of superior, riot etc. The ordinary crimes acquire the feature of becoming military crimes because of elements such as the place where it was committed, the time etc. Thus, receiving stolen military weapons is a military crime is due to the nature of the well protected, part of military heritage.

## **THEME IV:**

### **Historical evolution of military criminal justice**

*Speaker: Dr. Julius Embana*

Explaining the historical evolution of military criminal justice, Dr. Embana said that the military criminal law as a branch of armed forces legislation had its origin in Roman law, which was used to maintain the discipline in the troops of the Roman regime. It was also called as the law applied in the camps of the Roman army. He said the law began to

reveal its importance with the arrival of the Portuguese royal family to Brazil in 1808, where the royal family created the first military tribunal of the nation, the military council and justice, which later became the supreme military court. This special law aroused people's interest because of catering for a category of public officials who were regarded as special, entitled to prerogatives that mostly are not provided to civil servants. But at the same time, these special rights presuppose duties differentiated, such as the sacrifice of their lives in fulfilling the constitutional mission, which is called the tribute of blood or 'tributus sanguinis'. Because of these peculiarities, the original constituent legislator assured the military the right to be prosecuted and tried before a military justice expert.

## **THEME V:**

### **The Military Judicial Police and the relationship with other Police organs**

*Speaker: Dr. Braima Muammar Baldé*

The military judiciary police investigate and prevent crimes of the military. Their jurisdictions are exclusively military and have the competence to assist the authorities in research, development and promotion of investigation in its jurisdiction on military crimes, or to undertake cases as devolved by the competent judicial authorities. On the use of the firearm, Dr. Muammar said, just as criminal police authorities, the criminal investigation personnel, technical personnel who perform police functions within the scope of services are entitled to the use and possession of weapon; so are the military judicial police allowed to use firearms of any caliber and model.

After the presentations the participants were divided in groups to discuss the themes and the questions raised during the presentation and to make recommendations thereof:

#### **Recommendations**

1. Take steps to enhance capacity building for strengthening institutional cooperation in military and civilian combat crime. Promote training seminars for exchange of experiences between the magistrates operating within the military justice and the common criminal courts;
2. Organize regular training seminars and training of agents of various organs of criminal justice, particularly police-investigative arms, led by national government and supported by UNIOGBIS, other international partners and civil society;
3. Promote awareness campaigns for the civil and military entities linked to justice, on the necessity and importance of institutional cooperation in combating crime;
4. Undertake a review of all laws applicable to military justice in order to suit them to the current reality and conforms them to the Constitution Repeal of Law No. 2/78 of 18 May and creation of more laws whose absence is still felt in the field of judicial cooperation for effective and fair implementation of criminal justice;
5. Awareness of the Code of Military Justice and making the code available to all operators of justice;
6. Clarification of the concepts of crimes essentially military;

7. Conduct training for Military Judicial Police on military legislations, their area of duties and responsibilities;
8. Promote more brainstorming meetings regarding the establishment of the Military Judiciary Police;
9. Education and training of staff responsible for administering the Military Criminal Justice and improve establishment of the related infrastructure.

### **Closing Session**

The closing session was held in the presence of President of the Tribunal for Military Superior Court, Major General Eduardo Costa, and was attended by the representatives from the US Embassy, UNIOGBIS and members of media.

Major General Costa in his closing address expressed his satisfaction on participation in the symposium, pointing that this was the first time that the Military Justice System had come face to face with their counterparts in the common criminal justice system on the issue of holistic understanding of judicial reforms, which he considered a significant step towards rule of law in Guinea Bissau. He insisted that the culture of exclusion does not help any system and complemented UNIOGBIS for its technical assistance to national partners in this symposium. He sought similar and continued support from UNIOGBIS on various capacity building programs for the various components of security sector in Guinea Bissau.

### **Conclusion**

The recommendations from the Symposium would be taken up by the yearly National Criminal Justice Forum in its next session which is proposed for 27-29 November 2012.

The National Criminal Justice Forum is the prime agency to give a report with consolidated recommendations to the partners of the criminal justice system, both civilian and military, as well as to the political echelons, after a thorough discussion with various criminal justice actors as well as civil society members.

The next session of the National Criminal Justice Forum will address the recommendations emerging from the ongoing Symposium as well as other recommendations, and will also focus on forward-looking subjects.

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