

THE CANADIAN INTERNATIONAL INSTITUTE OF APPLIED NEGOTIATION

Report to the International Peace and Prosperity Project on Rule of Law Needs Assessment in Guinea Bissau

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The findings of a quick assessment of the understanding of the concept of the “rule of law” in Guinea Bissau as well as the extent to which this concept has been integrated into the social fiber of Guinea Bissau are reported here.

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Goals of the Needs Assessment

The authors of this report were tasked with doing a quick assessment of the understanding of the concept of the “rule of law” in Guinea Bissau as well as the extent to which this concept has been integrated into the social fiber of Guinea Bissau. After some preliminary research on the topic, this assessment was conducted in-country for five days, during which the authors were, for four of those days, also engaged in delivering mediation training to 15 people from the civil society sector.

The Process

A series of interviews were conducted over five days in Guinea Bissau during the period Feb 15 – 19, 2009. All interviewees were interviewed privately except for the four members of the International Peace and Prosperity Project’s (IPPP) Local Advisory Group (LAG), who were interviewed as a group.

Our information gathered, and our recommendations, also include input we received from the members of our mediation class in various group discussions held over the four days of training.

List of Interviewees

Date	Name	Organization/Affiliation
Feb 15/09	Mr. Namuano Dias Gomes	Former Minister of Justice and Lawyer
Feb 17	Mr. Armando Mango	President of the Bar Association
Feb 18	Col. Arsenio Balde	Headquarters Chief of Army
Feb 18	Local Advisory Group: Dr. Cadi Seide, Mr. Jean Barros, Col Ousmane Conate, Mrs. Fatimal Aurora Fonseca	
Feb 18	Ms. Zubaida Rasul	Officer in Charge UNOGBIS
Feb 19	Mr. Mamadu Djalo Pires	Minister of Justice (lawyer)

Feb 19

Mr. Raimundo Pereira

President of the National
Assembly (lawyer)

Definitions of Rule of Law

Researched definition of the Rule of Law

All persons and authorities within the state, whether public or private, are bound by, and entitled to, the benefit of laws that are generally understood, obeyed and publically administered.

The rule of law requires that:

The law must apply equally to everyone, including private citizens and government authorities, unless objective differences justify differentiation (e.g. children, prisoners, and the mentally ill.)

Affordable and timely ways to resolve disputes must be provided with the last resort being the ability to make or defend a case before a fair, public and impartial court.

There must be an independent judiciary to decide cases and an independent legal profession to protect the interests of people advancing or defending claims.

The law must afford adequate protection for human rights.

The state must comply with its obligations in international law.

Our Working Definition of the Rule of Law for Interview Purposes

Working Definition of the Rule of Law

All people and authorities in the country, both public and private, are bound by, and entitled to, laws which are commonly understood, obeyed and publically administered.

The rule of law requires that:

The law must apply equally to everyone, unless they require special protection (e.g. children).

People must have affordable, timely and non-violent ways to resolve disputes. This can include private processes (e. g. mediation and arbitration) and must include public courts where people make and defend their cases before fair, impartial, and independent judges.

There must be an independent legal profession to protect the interests of people advancing or defending claims.

The law must protect human rights as defined in the Universal Declaration of Human Rights.

The country must comply with its obligations under international law.

What we were told in our meetings

Judges and lawyers are trained in Portugal in the Portuguese civil law tradition. Legal books and other resources are expensive and scarce.

There are 90 lawyers in private practice in Guinea Bissau. There are another 50 working in the civil service. There are 63 law students studying at a university in Bissau. The Bar Association has been in existence for 17 years and is well organized. The current President is serving in his second elected term.

Only 1% of the populace was literate at independence so there have been significant advances since 1974. However, during the past 10 years, of the 350,000 children who were eligible for school, 180,000 did not attend, mostly due to lack of educational facilities in many regions.

There is a noticeable lack of older lawyers to act as mentors for younger lawyers entering the profession. Being exposed to senior foreign lawyers would be very beneficial.

There is a lack of the understanding in lawyers and judges of the various traditional practices regarding such issues as land use and ownership and property (both real and personal property) succession.

There is a gap between the application of laws developed during colonial times and the traditional practices of the populace, particularly in civil law, in areas such as those noted above.

Lawyers in Guinea Bissau have a tradition of doing pro bono work, especially in the area of criminal law.

The general population does not understand the law, or their legal rights. This leaves them open to abuse and exploitation (e.g. paying illegal tariffs or “tolls” for passage of livestock over land).

Judges generally have legal training but lawyers see some of the judges as weak. Lawyers will respect the judges for their position but the poor training received by judges has resulted in competency issues.

A top priority is to build a national prison. The judges are afraid to render decisions because they may meet the sentenced person the next day on the street (due to prison break from a poorly guarded detention facility or not being incarcerated in the first place due to lack of space).

There is a need to develop the legislative military code, which is the criminal code for military personnel, as opposed to a disciplinary code. This is important because of the key role of the military in the country. Most military codes around the world are similar, so an experienced military lawyer from any country would be of great assistance in developing such a code.

There is also a need to train the military in mediation for internal use in the military because there is destructive friction between freedom fighters who are now in the military and those in the military who were not previously freedom fighters.

If rule of law is to be generally respected, people must be sensitized to it. This requires that they be educated as to what the law is and what its benefits are for everyone. One interviewee said, “If there are two classes, both classes must respect each other or else there is no rule of law”.

There are reportedly well-drafted laws in Guinea Bissau but people are using them in political ways. Many laws have been copied from other countries and don’t apply in the Guinean context.

There is one inadequate detention centre in the country and no prisons. This severely impedes the ability of the court to mete out appropriate consequences for law-breaking behaviors. This, in turn, means that there is no effective justice system to “receive” or activate a robust rule of law.

The creation of a human rights library in Guinea Bissau would be a worthwhile project.

The Minister of Justice reported that a goal of the government is to build mediation teams around the country. The government wants to reduce violence throughout the country. Many of the disputes are land disputes. They clog the courts (e.g. it will soon be cashew season and every cashew season there are many disputes). Disputes that are settled by court judgment will re-occur over and over again despite the judgments. Mediation training for traditional leaders who help in resolving disputes would be very welcome. Mediation should also be used by businesses since this is much more cost effective than the courts. The Ministry of Justice realizes it needs to work with the Bar Association and the judiciary and it is willing to do so.

The most important thing is to let the people know what the law is – to teach them their rights and obligations. Many people cannot read or write. The best method is to educate the people by use of radio programs because this is a medium that is popular and available to all regardless of their literacy levels.

One must use common language when working with members of the National Assembly. For example, it would be difficult to work with members of the National Assembly and judges or lawyers together in a workshop because of the superior understanding of the law on the part of judges and lawyers. Mediation training for members of the National Assembly would be welcome.

Needs Identified

Public education

The most important aspect of the advancement of the rule of law is public education. Almost all interviewees emphasized the need for a public campaign to, in plain language, teach people about existing laws, including their legal rights and obligations.

The mode for this effort most frequently recommended was radio because the majority of Guineans have access to this medium and literacy rates are low.

Mediation training

There is a need to continue to develop mediation skills and overall capacity in the country in all sectors. This is seen as an effective way to better manage conflict and reduce violence across the country. In addition to advancing such capacity in civil society, involving the military in mediation training was cited by many as a task of immediate importance.

Mediation Association

Graduates of the IPPP's training program are already champions of the mediation process. Additionally there is a strong desire to form an association of mediators and advocates of mediation for mutual support and to advance the development of mediation in Guinea Bissau.

This may be facilitated by, or most likely occur in conjunction with, a proposed mediation centre that is currently under consideration for financial support by the United Kingdom.ⁱ

Assistance for the Military (military code drafting and mediation training)

The issue of impunity of the military and the police has been raised as vital. This is especially true given the importance of the military in Guinea Bissau. At this time, there is no effective military code for the prosecution of criminal offences by the military. The National Assembly is responsible for passing any such military code and it is reportedly ineffective to deal with this aspect of its mandate.

A senior military official (a lawyer by training and a former prosecutor) has signaled a need for military code specialists to work with Guinean military leaders to assist them in this regard.

This official also sees tremendous benefit in mediation training for all ranks of military personnel. Mediation skills would assist in managing serious but non-criminal offences and in the management of other conflicts within the military, such as continuing issues between former freedom fighters in the military and those who joined the military later.

Skills training for legislators

Many individual legislators lack the necessary literacy skills to conduct their business adequately. This is one reason that the legislature is seen as very weak by representatives from other sectors. Examples of training that might be beneficial for law makers include: mediation (for use by individual members both in their dealings with one another and with constituents in their individual ridings), legislative drafting, and general rule of law and legislative capacity building.

Prison facility

The lack of a properly functioning prison is a significant barrier to the development of the rule of law in Guinea Bissau. Law breakers cannot be punished. Justice sector professionals (judges, lawmakers, police, army members etc.) cannot be protected. Respect for the law, and confidence in public safety and security is difficult to promote without a proper prison.

Drafting culturally appropriate laws

A public consultation and engagement process is needed to begin to reshape the laws to reflect the needs and aspirations of the Guinean populace. This would include eliminating culturally inappropriate, unresponsive colonial aspects of the law. Assistance in legislative drafting is needed for this purpose.

Recommendations

1. Further investigation

This brief report is based on limited research and preliminary findings compiled from ten interviewees. Although we are confident that our recommendations are based on solid evidence, further efforts ought to be made to obtain information on what others are doing with regard to developing rule of law in Guinea Bissau to insure co-ordination and avoid duplication of other, similar initiatives.

2. Public Education about Legal Rights and Obligations

The most commonly reiterated recommendation received from interviewees (as well as the IPPP's in-country coordinator) was that of public education about rule of law. Most citizens do not have knowledge about existing laws, and are therefore vulnerable to abuse and exploitation. The radio is seen as the most effective way to communicate information because it avoids barriers presented by illiteracy and lack of paper for printed materials (as per recent internet news article) and it is commonly listened to by many people in the general population.

Guineans will require assistance to “package” the information they want to disseminate, and also to consider the potential implications of the responses they may receive. For example, if more

people come forward with claims of disputes that have caused harm (or are still causing harm) who will decide which process should followed in pursuit of reconciliation or restitution? What rules will serve to guide the decision-makers?

Further, if more people become aware of their options before the law, significant resources will be required to meet the increased demands for processing the claims made. Severe deprivation of resources already exists, and increased demand for services will place inordinate strain on systems that are clearly stressed and remarkably inadequate.

3. Mediation Capacity Building

Further mediation training, including “train the trainers” was requested by our training graduates. We endorse this direction. Further training should be designed to involve people from a broader cross-section of Guinean society and to expand capacity for Guineans to take their new mediation skills and train others throughout the country.

For whom: Mediation training for selected traditional leaders, the military, lawyers (from both private practice and public service) and members of the National Assembly. This should be done in conjunction with a short orientation session for members of the judiciary and the Bar Association about alternate dispute resolution. Such orientation sessions would engender support from judges and lawyers for the advancement of collaborative dispute resolution, particularly mediation, in Guinea Bissau. This support is crucial for the long term advancement and institutionalization of nonviolent ways of resolving disputes in Guinea Bissau.

By whom: Experienced CIAN trainers and perhaps others. For example, among many possibilities, IPPP could partner with military conflict resolution specialists or with civil society representatives to train civil society mediators.

How: A training that builds capacity by a “train-the-trainer” program should occur during the first week of a future mission. The newly trained trainers would then assist in training others under the supervision of CIAN trainers (perhaps supplemented with others as noted above).

Many of the IPPP graduates support this recommendation (in fact, this idea was raised by them). They emphasized how important it is to spread the training around Guinea Bissau so as to transfer skills and share knowledge as part of a national approach to violence reduction. Additionally, short orientation sessions (perhaps two-three hours per session) would be conducted to educate others in the community about mediation.

The media would also be contacted and educated by recently trained trainers about mediation so as to begin the public education campaign to explain the benefits of non-violent and collaborative conflict resolution approaches.

ⁱ CIAN along with a local organization in Guinea-Bissau, the Citizens’ Good Will Task Force (CGWTF), has prepared a joint proposal for the establishment of new mediation centre in Bissau.