Introduction to the Constitution of the Republic of Guinea-Bissau

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I. Origins and Historical Development of the Constitution

1. General information about the Republic of Guinea-Bissau and an historical note

The Republic of Guinea-Bissau is a state on the Atlantic coast of West Africa. It has borders with Senegal and Guinea (or Guinea-Conakry). The designation of the territory as Guinea-Bissau is relatively recent and began on the occasion of its independence in 1973.[1] The land territory of Guinea-Bissau, which is 36,125 square kilometers in size, comprises a mainland and an archipelago (Bijagós Archipelago) consisting of about eighty islands and islets, of which only about twenty are inhabited. The country has an estimated population of 1,600,000 (1,548,159 inhabitants, of which 755,859 are men and 792,300 are women, according to the census of 2009[2]). Although the community is relatively small, there are currently an estimated twenty to thirty ethnic groups living in their continental and insular territory. The distribution of the population by the major ethnic groups is as follows: Balantas, about thirty per cent of the population; Fulas (Fulani), about twenty per cent; Mandingas (Mandingo), about thirteen per cent; Manjacos, about fourteen per cent; and Papeis, about seven per cent. In religious terms, the population can be divided into three main groups: African traditional beliefs, Muslims, and Christians of various persuasions.

Guinea-Bissau is a former Portuguese colony (Portuguese Guinea), which unilaterally declared its independence on 24 September 1973. On 2 November 1973, the General Assembly of the United Nations took note of the 'recent accession to independence of the people of Guinea-Bissau, by creating the sovereign state which is the Republic of Guinea-Bissau', through a resolution approved with 93 votes in favour, 30 abstentions, and 7 against (Portugal, South Africa, Brazil, Spain, United States, United Kingdom, and Greece). Portugal recognized the independence of Guinea-Bissau on 10 September 1974, through the Algiers Agreement (*Acordo de Argel*) concluded on 26 August 1974. The Republic of Guinea-Bissau was admitted as a member of the United Nations on 17 September 1974.

The Portuguese presence in the region dates back to the fifteenth century, with 1446 considered to be the official date of the first contact with the peoples who inhabited Guinea. The effective occupation of the mainland was completed only with the 'pacification campaigns' that took place from 1913 to 1915. In the Bijagós Archipelago, fighting against

[1] In Resolution 1542 (XV) of 15 December 1960, the General Assembly of the United Nations identified the territory as 'Guinea, called Portuguese Guinea'. Later, in Resolution 3061 (XXVIII) of 2 November 1973 and Resolution 3205 (XXIX) of 17 September 1974, the use of the name 'Republic of Guinea-Bissau' commenced.
[2] In the 1950 census the population of Portuguese Guinea was about half a million inhabitants (99.7% qualified as being 'indigenous').

Portuguese rule lasted until the 1930s, because of the indomitable resistance of its inhabitants.

The Portuguese colonial territory was delimited in the second half of the nineteenth century. Two basic moments in fixing the Portuguese colonial territory should be taken into account: first, the Arbitral Award of United States President Ulysses S Grant, on 21 April 1870, recognizing Portuguese sovereignty over the island of Bolama, to the detriment of British claims; and second, the treaty concluded with France, signed in Paris on 12 May 1886 (the Convention on the Luso-French demarcation of French and Portuguese possessions in West Africa), with a subsequent agreement by the exchange of notes of 6 and 12 July, accepting the results of the demarcation made on the ground.

The maritime border of the Republic of Guinea-Bissau was partially delineated in the 1980s and 1990s. With Guinea (Guinea-Conakry), the division took place through the Arbitral Award of 14 February 1985 (the Case of the Maritime Delimitation of the Boundary between Guinea and Guinea-Bissau). The delimitation of the maritime border with Senegal was partly done through the Arbitral Award of 31 July 1989 (the Case of the Maritime Delimitation of the Border between Guinea-Bissau and Senegal). Delimitation of the exclusive economic zone between the two countries has not been definitively achieved, as a joint exploration area created in the space through the Agreement of Management and Cooperation between the Government of the Republic of Senegal and the Government of the Republic of Guinea-Bissau, signed in Dakar on 14 October 1993 (and later supplemented by the Protocol of Agreement on the Organization and Functioning of the Agency Management and Cooperation, signed on 12 June 1995)[3] is in dispute between the two states. What is still in dispute between the two countries is a final delimitation of the exclusive economic zone and not the agreement as such. The agreement was concluded as a way to overcome that dispute during a first period of twenty years, supplemented by similar additional periods until a future denunciation.

The independence struggle was led by the African Party for the Independence of Guinea and Cape Verde (PAIGC), both in relation to Portuguese Guinea and the Cape Verde Islands. Armed struggle for the liberation of Portuguese Guinea started on 23 January 1963. The explanation for the existence of a single liberation movement for the two Portuguese colonies—Guinea and Cape Verde—can be found in the deep connection that existed for centuries between the two territories. Until 1879, the colony of Guinea depended administratively and militarily on Cape Verde. This dependence ended only after the outcome, which was favourable to Portugal, of the Arbitration of Ulysses S Grant, after which the capital was moved to the Isle of Bolama. The presence of Cape Verdean officials in the colonial administration in Portuguese Guinea kept this close connection alive. Amílcar Cabral (1924–1973), the charismatic leader of the liberation struggle of Guinea-Bissau, despite being born into Guinean territory (in Bafatá), was of Cape Verdean origin.

During the first years of independence, the link between Guinea-Bissau and Cape Verde was to be one of the main principles affecting the politics of Guinea-Bissau. Article 3 of the 1973 Constitution established the principle of unity between Guinea and Cape Verde, defending its

[3] About this question, see Marisa Caetano Ferrão, '*A delimitacão das fronteiras marítimas da República da Guiné-Bissau*' ['The delimitation of the maritime borders of the Republic of Guinea-Bissau'], in Fernando Loureiro Bastos (coordenador), *Estudos Comemorativos dos Vinte Anos da Faculdade de Direito de Bissau*, 1990–2010 [*Studies Commemorating the Twenty Years of the Faculty of Law of Bissau* 1990–2010], vol II (Lisboa-Bissau, 2010) 855–932.

'unification in a State, in accordance with the popular will'. The project of unification between the two states ended in November 1981.

Portuguese is the official language of Guinea-Bissau, but it is currently spoken and used by less than a tenth of the population. The affairs of state, the courts, and the administration are conducted almost exclusively in Portuguese. The legislation is produced exclusively in Portuguese, and published in the official gazette under the name *Boletim Oficial da Republica da Guine-Bissau*, or *Boletim Oficial* (Official Bulletin of the Republic of Guinea-Bissau, or Official Bulletin). The current language of communication for the population is Guinea-Bissau Creole (or *kriol*, *kiriol*, or *kriolu*, and Portuguese-based creole language). The various ethnic groups use their own languages (with local sub-dialects for each of these ethnic languages).

2. The Constitution in force in Guinea-Bissau

The Constitution in force in the Republic of Guinea-Bissau is the result of five amendments made to the text of the Constitution of 16 May 1984,[4] and should be designated as the 1993 Constitution. The initial text of the fundamental law consisted of one hundred and two articles. The text currently in force has one hundred and thirty-three articles, divided into a preamble and five headings: Title I: Fundamental Principles (Articles 1 to 23); Title II: Rights, Freedoms, Guarantees, and Fundamental Duties (Articles 24 to 58), Title III: Organization of Political Power (Articles 59 to 125); Title IV: Guarantee and Revision of the Constitution (Articles 126 to 130); and Title V: Transitional and Final Provisions (Articles 132 and 133).

The Constitution of 16 May 1984 marked the return to constitutional normality after the military coup of 14 November 1980, which was identified in the Preamble of the Basic Law as the 'Readjusting Movement of November 14'. The articles of the new Constitution used the text of the Constitution of 10 November 1980 (which did not come into effect), with some changes. The Constitution of 16 May 1984 replaced, without any reference or other mention, the Constitution of 24 September 1973,[5] which was adopted at the first meeting of the National Assembly in Boé, on the same date as the Proclamation of Independence of the new state.[6]

The Constitution of 16 May 1984 was amended in 1991,[7] 1993,[8] 1995,[9] and 1996 (or 1997).[10] The text of the Constitution was amended for the fifth time by Constitutional Law

[4] Published in the Supplement to the Official Bulletin No 19.
[5] Published in the Official Bulletin No 1, 4 January 1975.
[6] Published in the Official Bulletin No 1, 4 January 1975.
[7] Constitutional Law No 1/91 of 9 May 1991, published in the Supplement to the Official Bulletin No 18 and Constitutional Law No 2/91 of 4 December 1991, published in the Third Supplement to the Official Bulletin No 48.
[8] Constitutional Law No 1/93 of 26 February 1993, published in the Second Supplement to the Official Bulletin No 8. The amended text was republished in the Official Gazette, with the complete renumbering of the articles, now numbering 133 articles. The constitutional text continues to mention that it was approved and promulgated on 16 May 1984, despite the very significant changes that were introduced in the catalogue of fundamental rights and the organization of political power. According to António Duarte Silva, *Invenção e construção da Guiné-Bissau. Administração colonial. Nacionalismo. Constitucionalismo* [Invention and Construction of Guinea-Bissau. Colonial Administration. Nationalism. Constitutionalism] (Coimbra, Almedina, 2010) 205, 'it was, in short, a transition in the strict sense (because resulted in a new material constitution), from the coalition "presidential circle-direction of PAIGC" (although conditioned by external economic dependence) and held per transaction (because it was gradual and negotiated with the democratic opposition)'.
[9] Constitutional Law No 1/95 of 1 December 1995, published in the Supplement to the Official Bulletin No 49.

No 1/96 (or Constitutional Law No 1/97), which was undated,[11] since the text does not appear to have been published in the Official Bulletin.[12]

The designation of the constitutional text in force in Guinea-Bissau as the 1993 Constitution seems to be the most appropriate, making the assumption that the constitutional revision of 1993 corresponded to a constitutional transition.[13] Complete severance from the text of 1984 would definitely have taken place with the approval of the Constitution of 5 April 2001,[14] but it did not enter into force because it was not enacted.

The technique used for the constitutional drafting was influenced by the Portuguese Constitution of 1976, with particular emphasis on the titles dedicated to fundamental rights and the organization of political power. The systematization of the text has some shortcomings, particularly in Title I, which sets out fundamental principles, and Title II, which deals with fundamental rights, as these parts of the Constitution were not subject to any subdivision that would allow a clear distinction between the different constitutional matters that are regulated by their articles.

The interpretation and the application of the 1993 Constitution are strongly influenced by Portuguese constitutional doctrine and literature. Two reasons can be highlighted to justify this. First, the similarity to the Portuguese 1976 Constitution of many of the juridical solutions that have been adopted in the Guinean-Bissau constitutional text must be stressed. Second, the fact that the majority of the jurists have had training according to the academic

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[10] Article 6/1 of the Transition Pact and Political Agreement (*Pacto de Transição e Acordo, Político*), approved by a Resolution of the National Assembly of 29 May 2013, refers to the existence of a Law of Constitution Revision of 28 November 2012, whose objective was the extension of the mandate of the National Assembly until the newly elected Deputies began their functions.

[11]The reference to the Constitutional Law through which the fifth revision of the Constitution of 1984 took place is not consensual: (i) in Emilio Kafft Kosta and Ricardo Henriques da Palma Borges, *Legislação Económica da Guiné-Bissau* [Economic Legislation of Guinea-Bissau] (Almedina, 2005) 19 n1, it appears as Constitutional Law No 1/96, and given the date of 16 December 1996; (ii) in Filipe Falcão de Oliveira, *Direito Público Guineense* [Guinean Public Law] (Almedina, 2005) 124, it appears as Constitutional Law No 1/97 of January 1997, with the following explanation: '[i]n October 1996 the PAIGC submitted a draft revision to abrogate those constitutional provisions. The opposition voted against it, thus preventing the formation of the necessary qualified majority. After the intervention of the Government and of the President, the draft constitutional revision was eventually approved during the next session of the Popular National Assembly in January 1997'; (iii) in Jorge Bacelar Gouveia, *As Constituições dos Estados de Língua Portuguesa* [The Constitutions of the Portuguese-Speaking States] (3rd ed, Almedina, 2012) p 481, it appears as Constitutional Law No 1/96, with the date '27 November 1996'; and (iv) in Duarte Silva, n8, at 206, it appears as Constitutional Law No 1/97, as follows: 'in 1997, a new constitutional amendment would be approved, relating to the "economic constitution" (thus enabling us to speak of a 5th revision of the Constitution of 1984). After a first attempt in November 1996—rejected for not having achieved the two-thirds majority needed—the ANP approved, in January 1997, Constitutional Law No 1/97, by which art. 13, No 2, and subparagraphs d) and e) of Article 86 were revised (by delection)'.

[12] In the *LegisPalop* database, which does not reproduce the text supposedly published by the Official Bulletin, Constitutional Law No 1/96 appears with the date of 16 December 1996, and mentions that it was published in the Official Bulletin No 50. The following information is given on the subject: 'Note: This statute was not in the body of legislation received from Guinea Bissau. For processing, this document was used a version of the official legal text taken from the website of the National Assembly of Guinea-Bissau (http://www.anpguinebissau.org)'.

[13] In this sense, Duarte Silva, n8, at 209, argues that 'considering the scope of these constitutional amendments, the reference, pure and simple, to a *new 1993 Constitution* is justified, since, among the various revisions, Law No. 1/93 culminates and summarizes the constitutional transition, i.e., the transition from one to another material constitution, without rupture'.

[14] The text of the Constitution of 5 April 2001 has its origin in the articles approved on 7 July 1999 (with the changes that were introduced on 3 October that year) that was also not enacted by the acting interim President of the Republic.

system used in Portuguese law schools, the best example being the Faculty of Law of Bissau, which is scientifically and pedagogically organized by the Faculty of Law of the University of Lisbon, must be taken into account.

3. Periods of interruption of constitutional normality during the application of the 1993 Constitution

The application of the 1993 Constitution was interrupted three times as a result of intervention by the military in political life: first, during the political-military conflict triggered by the military coup of 7 June 1998; second, after the military coup that ousted Presidential Koumba Yala on 14 September 2003; and third, after the military coup that took place on 12 April 2012.

The periods of application and suspension are relatively imprecise from a strictly legal point of view, and there is uncertainty about the constitutional provisions that retained their validity and those whose force was suspended. On the one hand, the 'constitutional documents' that were used as alternatives during these periods were not published in the Official Bulletin and, on the other, the provisions of these 'constitutional documents' were not intended expressly to revoke, modify, or replace the 1993 Constitution.[15]

During the first period of the interruption of constitutional normality, from June 1998 until February 2000, the exercise of political power was initially regulated by the *Acordo de Abuja* (Abuja Agreement) of 1 November 1998 and, thereafter, by the *Pacto de Transição Política* (Pact of Political Transition) of 21 May 1999. During the second period of interruption, from September 2003 until October 2005, the exercise of political power was regulated by the *Carta de Transição Política* (Charter of Political Transition) of 28 September 2003, signed by the Military Committee for the Restitution of Constitutional and Democratic Order and almost all the legally constituted political parties (twenty-three of the twenty-four existing parties). The third period of interruption began on 12 April 2012 and it is still the current situation in the country (as at June 2013). The exercise of political power had been controlled, until 29 May 2013, by the Pact of Political Transition signed on 16 May 2012 between the National Assembly (represented by the acting President of the National Assembly, subsequently sworn in as the 'President of the Republic of Transition') and the legally-constituted political parties. On 29 May 2013 a new Pact of Transition and Political Agreement (*Pacto de Transição e Acordo Político*)[16] was approved in the National Assembly, and signed by the National Assembly, the legally-constituted political parties, the military, and representatives of civil society. According to the new Pact, the transitional period will end on 31 December 2013, after elections to the National Assembly which are expected to take place in November 2013.

II. Fundamental Principles of the Constitution

The analysis and understanding of the fundamental principles of the 1993 Constitution is the sum of the articles of Title I, the express material limits on the revision of Article 130, and the proclamations that can be found in the Preamble.

[15] Article 2(a) of the Transition Pact and Political Agreement (*Pacto de Transição e Acordo, Político*), approved by a Resolution of the National Assembly of 29 May 2013, expressly provides that the Constitution still applies in respect of all matters that are not incompatible with it.
[16] Resolution 01/PL/ANP/2013, of the National Assembly, of 29 November 2013.

In accordance with the proclamations of the Preamble, the Constitution of Guinea-Bissau aims at 'building a free, democratic and just society' (or using another formula, 'to construct a pluralistic, just, and free society'); it is the result of a choice for 'legality, right and the enjoyment of fundamental freedoms'; and the constitutional articles are imbued with a 'humanism' that is 'reflected in the rights and freedoms (...) guaranteed to citizens, as irreversible achievements'.

After the constitutional reform of 1993, an unequivocal choice was made for democratic political organization, the rule of law, and the protection of fundamental rights. This option is expressed in various subparagraphs of Article 130, which is dedicated to the material limits of constitutional revision.

The rule of law principle finds its translation in the state's subordination to the Constitution and the prediction of 'democratic legality' (Article 8(1)). The prevalence of the Constitution in the legal order of Guinea-Bissau is crucial in assessing the 'validity of laws and other acts of State and of local government' (Article 8(2)), and the 'courts (cannot) apply rules that contravene the provisions the Constitution or the principles enshrined therein' (Article 126(1)).

Under Article 1, 'Guinea-Bissau is a sovereign, democratic, secular, and unitary Republic'. The 'republican form of the State' is protected by Article 130(a). A secular state is guaranteed by Article 130(b), and a specific reference is made to the 'separation of the State and religious institutions' (Article 6(1)). The unitary structure of the state is protected by Article 130(a), and it is expressly provided that it should be combined with the creation of 'decentralized territorial entities enjoying autonomy' in accordance with the 'principle of the autonomy of local power'.

The state exercises 'sovereignty' over the territory and natural resources that 'are within its territory' under Article 9. The Constitution distinguishes between land territory, presented as the 'land surface contain[ed] within its national borders'; maritime territory, with use of the concepts of the 'interior sea', the 'territorial sea', and an exclusive economic zone; and national airspace, defined as the space overlying the land territory, the interior sea, and the territorial sea. Although a specific reference to the continental shelf is not made in the Constitution,[17] the exercise of powers by Guinea-Bissau over that space raises no doubt, because it is a maritime space inherent to any state regardless of claim or effective occupation.[18]

'National sovereignty' is vested in the people, who can exercise 'political power either directly or through democratically elected organs' (Article 2(2)). The Constitution refers to two mechanisms of participatory democracy: first, the nationwide popular referendum (Article 85(1)(b)); and second, the local referendum (Article 111(2)). The 'effective popular participation in performing, controlling, and directing public activities' (Article 3) usually takes place within a 'democracy of political parties', insofar as they 'contribute to the organization and expression of popular will and political pluralism' (Article 4(2)).

[17] The wording of Article 9(1)(b) is hardly enlightening in this respect, because the reference to the 'bed and its subsoil' seems to refer exclusively to the 'inland sea' and the 'territorial sea' and does not seem to be a specific reference to the international legal concept of the continental shelf.

[18] Pursuant to Article 77(3) (Rights of the coastal state over the continental shelf) of the United Nations Convention on the Law of the Sea, under which 'the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or on any express proclamation'.

The exercise of freedom of establishment of political parties (Article 4(2)), which is vital to the functioning of the representative democratic system adopted in the Constitution, requires the fulfillment of the following conditions: (i) the creation of political parties that respect 'national independence and unity, territorial integrity, and pluralistic democracy' (Article 4(3)), which are not aimed at promoting 'racism or tribalism' and which do not 'intend to employ violent means in pursuit of its purposes' (Article 4(4), in conjunction with Article 55(1) and (3)); (ii) the creation of political parties that do not use names that can be 'identified with any portion of the national territory', or that evoke the 'name of [a] person, church, religion, cult, or religious doctrine' (Article 4(5)); (iii) the creation of political parties with a scope of activity that is potentially national, thus banning political parties aiming to develop their activity exclusively in a 'regional or local' area (Article 4(4)); (iv) the application of 'democratic rule' in the organization and internal functioning of political parties (Article 4(3)); and (v) the creation of political parties whose top leaders are 'native citizens' of Guinea-Bissau (Article 4(6)).

The policy action should focus on 'building a free and just society' (Article 3), and continually seek to promote 'the welfare of the people and to eliminate all forms of submission of human beings to harmful interests which benefit individuals, groups, or classes' (Article 11(2)). In accordance with this policy action, those in power should seek to achieve the 'elimination of illiteracy' (Article 16(2)), and 'create and promote conditions favorable to the preservation of national identity, in support of national conscience and national dignity, and as [a] factor to stimulate the harmonious development of society' (Article 17(1)). By highlighting the 'preservation of national identity' and the defence of the 'cultural heritage of the people' (Article 17(1)), in connection with the advancement and protection of 'human dignity', the Constitution establishes an implicit multicultural approach[19] to all options to be taken in relation to these matters and rejects any attempt at cultural assimilation of the different ethnic groups into the behaviour patterns of the numerically most representative ethnic groups.[20]

It follows that Guinea-Bissau's 'national identity' is the result of reconciling the conceptions of life of each and every one of the ethnic groups that are part of the community, just as the 'cultural heritage of the people' is the sum of tangible and intangible cultural expressions of each and every one of the ethnic groups living within the territory of Guinea-Bissau. The 'secular status of the state' further ensures that the multicultural approach cannot be dismissed for religious reasons.[21] The express reference to the respect for 'human dignity' allows for the fact that the catalogue of fundamental rights can be used for the assessment of current behaviour in the community, provided that the cultural specificities of each African

[19] Notwithstanding adopting a Western approach, it is also a constitutional imposition of the respect for diversity that underlies the criteria used in Article 56(3) and (4) concerning the freedom of the press and the media: 'the expression and confrontation the various currents of opinion' and 'ideological pluralism'.

[20] The importance of this limit arises from the relevance that Islamic law has in structuring the Fula and Mandinga customary law.

[21] In addition, the various religions and religious beliefs ('religious belief') should be dealt with by the state in accordance with the principles of equality and non-discrimination, in accordance with Article 24. The importance of religious freedom and the separation of state and religion and religious beliefs can further be demonstrated in other constitutional articles: (i) in Article 5(5), which forbids the creation of political parties that use names that evoke 'church, religion, cult, or religious doctrine'; (ii) in Article 6(2), where there is a generic provision for the respect and protection by the state of religions and religious beliefs; (iii) in Article 32(2), where there is a safeguard of the exercise of 'freedom (...) of religion in the case of declaration of a state of siege or state of emergency'; and (iv) in Article 45(4), which states that unions should be 'independent (...) of religious beliefs'.

ethnic group is taken into account and there is not an uncritical intention to assimilate Western cultural patterns.

This same multicultural perspective should guide the realization of the right to education. Accordingly, the development model underlying the educational choices that are made by the state, particularly in basic education levels, should strike a balance between the cultural identity of each ethnic group, the cultural identity of the Guinean nation considered as a whole, and the Western matrix that underlies the structuring principles of democratic political organization, the rule of law, and the protection of fundamental rights.

The Constitution provides for economic and social organization based on the principles of a 'market economy', the 'subordination of political power to economic power', and the 'co-existence of public, cooperative, and private property' (Article 11(1)). The state can promote 'investment of foreign capital', provided it is 'useful to the economic and social development of the nation' (Article 13(3)). The Constitution defines the concepts of 'property of the State', 'property of cooperatives', and 'private property' in Article 12. The 'property of the State' is the 'common heritage of all the people' and includes 'soil, subsoil, water, mineral resources, the main sources of energy, forest wealth, and social infrastructure'. 'Private property' includes all assets that do not qualify as 'property of the State'. Cooperatives and other natural or legal persons may be granted concession to develop the property of the state (or 'state property'), on the condition that such development serves the 'general interest' and increases 'social wealth' (Article 13).

A significant part of 'public property' consists of 'natural resources'. In accordance with applicable international law, the Constitution distinguishes between two distinct situations: first, 'sovereignty' over 'all natural resources, living and non-living, which are within its territory' (Article 9(2)); and second, 'exclusive authority over the conservation and exploitation of natural resources, living and non-living' within the exclusive economic zone (Article 10).

The defence of the nation is a task for the whole population, which should be pursued on the basis of the 'active participation and unified will of the people' under Article 19. The People's Revolutionary Armed Forces (FARP), the 'primary institution for the defense of the nation', is assigned a set of specific functions in accordance with Article 20(1) and (2): first, to 'defend the independence, sovereignty, and territorial integrity' of the nation; second, to 'work closely with the national security services to guarantee and maintain internal security and public order'; and third, to 'participate actively in the work of National Reconstruction'.

As the FARP is organized for the 'service of the people', it is expressly provided in the Constitution that it is subordinate to political power ('the FARP shall obey the organs of sovereign jurisdiction'), in Article 20(3). Accordingly, the appointment of the Chief of Staff of the Armed Forces is effected by a joint act of the President and the Government (Article 68(o)). Moreover, to ensure that the FARP cannot influence political activity directly or indirectly, provision is made in Article 20(4) that the FARP is 'non-partisan' and that 'active military personal may not perform any political activity'.

There is positive discrimination in favour of the Freedom Fighters of the Homeland in terms of social welfare benefits, and this is the result of the 'eternal gratitude' of the Republic of Guinea-Bissau for their contribution to the 'liberation of the homeland' during the independence process. As a consequence, the state must provide a 'life of dignity' to the Freedom Fighters, particularly to those who are physically unable to raise their own

subsistence (Article 5(2)(a)), 'guarantee education to their orphans' (Article 5(2)(b)), and 'assist parents, children and widows'.

There is no mention of the official language of Guinea-Bissau, although this can be inferred from the language in which the Constitution was written and the fact that no official versions of text in other languages can be obtained (especially in Creole).

The Constitution 'may be revised at any time by the National Assembly', according to the terms of Article 127(1), except 'during a state of siege or a state of emergency' (Article 131). The limits imposed on constitutional revision during the duration of any state of exception cover the submission of a proposal for constitutional revision, its discussion, or approval. The constitutional revision proposals must respect the material limits on revision contained within the ten subparagraphs of Article 130.

The initiative to revise the Constitution is a competence reserved to the Deputies, pursuant to Article 127(2), and this initiative may not be exercised by any other sovereign organ or as a result of popular initiative.[22] The constitutional revision proposals are to be submitted to the National Popular Assembly by at least one-third of the Deputies actively in office (Article 128(2)). The constitutional revision proposals must be approved by a qualified majority of two-thirds of the Deputies constituting the Popular National Assembly.

III. Protection of Fundamental Rights

The catalogue of fundamental rights in the 1993 Constitution is divided between Title I, devoted to 'fundamental principles', and Title II, with the heading 'fundamental rights, freedoms, guarantees, and duties'. The catalogue of constitutional fundamental rights must be conflated, in accordance with Article 29(1), with the 'fundamental rights (...) contained in other laws of the Republic and the applicable rules of international law'.

The scope of the catalogue of fundamental rights that can be found in the Constitution is relatively limited and outdated. The following aspects are worth mentioning: first, the existence of articles dedicated to the general principles of application and interpretation of fundamental rights; second, the existence of a fairly detailed set of fundamental rights related to criminal procedural law and the enforcement of criminal law; third, the absence of express constitutional norms applicable to the rights, freedoms, and guarantees of political participation; fourth, the parsimony with which economic, social, and cultural rights are enshrined; and fifth, the residual allocation of fundamental rights to legal persons.[23]

The Constitution uses the categories commonly employed in this area but, at the same time, it does not provide an adequate systematization for its distinction and autonomy in Title II. Indeed, references to 'fundamental rights' (Article 29), to 'rights, freedoms, and guarantees'

[22] In the initial version of CRGB84, Article 99(2) widened the initiative to revise the Constitution to the Council of State and to the Government.

[23] Three references to the rights of legal persons can be found in the Constitution: (i) in Article 51(3), where the right of reply and rectification is expressly provided for 'legal persons'; (ii) in Article 55(2), the prediction that unions or associations may pursue their ends without interference from public authorities, and the right not to be dissolved by the state or have their activities suspended, except in 'cases provided for by law and by judicial decision' (despite the wording used, this was primarily conceived from the perspective of the members of the associations); and (iii) in Article 57, the right of political parties to airtime on radio and television. The Supreme Court of Justice, in Judgment 4/2006 of 4 April 2006, decided to impose a prison sentence, replaceable by a fine, for the crime of defamation and offence to the reputation of a legal person.

(Article 30), to 'rights and freedoms guaranteed to citizens' (Article 35), and to 'economic and social rights' (Article 58) are all contained in Title II, even though its rules have not been subdivided according to the divisions currently used by the Portuguese matrix constitutions: 'general principles', 'rights, freedoms, and guarantees', and 'economic, social, and cultural rights and duties'. Article 130(f) provides an additional difficulty as it integrates the 'fundamental rights of workers' within the material limits of constitutional revision, with a status equivalent to the 'rights, freedoms and guarantees of citizens' (Article 130(e)).

The autonomy of the category of 'rights, freedoms and guarantees' within the generic catalogue of fundamental rights is very relevant to the application and the interpretation of constitutional norms, because first, constitutional norms enshrining rights, freedoms, and guarantees are directly applicable and do not require ordinary legislation for their invocation by their potential recipients (Article 30(1)); second, the obligation is imposed on all public and private entities to conduct their activities with respect for the rights, freedoms, and guarantees (Article 30(1)); third, the enforcement of rights, freedoms, and guarantees may be suspended or limited only in the event of siege or state of emergency (Article 30(2)); fourth, restrictive laws applicable to rights, freedoms, and guarantees should have a 'general and abstract nature', 'be limited to that which is necessary to safeguard other constitutionally protected rights or interests', cannot have a 'retroactive effect', and nor can its regulation 'diminish the essential content of rights' (Article 30(3)); fifth, the regime of civil liability of the state[24] and other public entities expressly contemplates its application to situations where there has been a 'violation of rights, freedoms and guarantees' (Article 33); and sixth, 'the prevention of crimes', including crimes against national security, should be undertaken 'with respect for rights, freedoms, and guarantees' (Article 21(3)).

The following principles should be taken into consideration in the catalogue of fundamental rights: (i) the principle of 'human dignity' (Article 17(1)); (ii) the interpretation of fundamental rights in accordance with the Universal Declaration of Human Rights (Article 29(2)); (iii) the principle of equality (Article 24), supplemented by the principle of equality between man and woman in 'all spheres of political, economic, social, and cultural life' (Article 25), and the equality of spouses as to 'civil and political capacity and the maintenance and education of children' (Article 26(3)); (iv) the principle of non-discrimination on the basis of 'race, sex, social, intellectual or cultural level, religious beliefs or philosophical convictions' (Article 24); (v) the direct applicability of constitutional provisions relating to rights, freedoms, and guarantees (Article 30(1)); (vi) access to justice (Article 32); (vii) the right to information and legal protection (Article 34); and (viii) the responsibility of the state and other public entities for 'acts or omissions in the performance of their duties and because of this exercise resulting in violation of rights, freedoms and guarantees or harm to others'(Article 33, Article 39(2), and Article 41(6)).

The state of siege or state of emergency may be declared when there is: (i) 'actual or imminent attack by foreign forces'; (ii) 'serious threat or disturbance of the democratic constitutional order'; or (iii) 'public calamity' (Article 31(1)). The state of siege or state of emergency may be declared to be applied in respect of the whole territory or only part of it. The Constitution does not advance any criteria to distinguish the circumstances under which

[24] Judgment 6/2005 of 7 April 2006 of the Supreme Court of Justice accepted the implementation of state liability.

the option must be made for any one or other of the states of constitutional exception,[25] despite their effects being different: first, the declaration of a state of emergency may in no case 'affect the rights to life, personal integrity, personal identity, civil capacity and citizenship, the non-retroactivity of criminal laws, the right to defend the rights of defendants and freedom of conscience or religion' (Article 31(2)); while second, the declaration of a state of emergency may 'determine the partial suspension of rights, freedoms and guarantees'. The declaration of a state of siege or state of emergency is the virtually exclusive competence of the President, with the intervention of the National Assembly and the State Council limited to a simple 'pronouncement' on the declaration (Article 68(v), Article 75(b), Article 85(1)(j), and Article 95(3)(e)).

The rights and duties of foreigners 'residing or finding themselves in Guinea-Bissau' are the same as those of Guinean citizens, provided there is reciprocity by the state of nationality (Article 28(1)). However, foreigners and stateless persons cannot exercise 'political rights', 'public functions', or 'other rights and duties expressly reserved by law to a citizen'. When an 'international agreement or convention' has been concluded, particularly in the context of international co-operation, the exercise of public functions may be permitted, provided they are 'predominantly technical' (Article 28(2)).[26]

The general regime of the liability of the state provides that the state and other public entities are responsible 'jointly' with the 'officeholders of its entities and organs, employees, or agents' for the acts and omissions in the performance of their duties which, because of this exercise, result in breach of rights, freedoms, and guarantees or in injury to another person (Article 33). There is express provision for indemnification by the state when there has been 'deprivation of liberty against the Constitution and the law' (Article 39(2)) or wrongful conviction (Article 41(6)).

Article 35 provides that 'none of the rights and freedoms guaranteed to citizens' may be exercised against: (i) 'the independence of the Nation'; (ii) its 'territorial integrity'; (iii) its 'national unity'; (iv) 'the institutions of the Republic'; or (v) 'the principles and objectives enshrined in the (...) Constitution'. For a proper understanding of the meaning and scope of these limits, which is respectful of the catalogue of fundamental rights, recourse should be had to the Criminal Code in order to define its contents more precisely.[27]

The Constitution adopts a model of penalties based on custodial sentences, even anticipating the possibility of the application of life imprisonment for some crimes (Article 36(2)).[28] An assessment of the effectiveness of this option in Guinea-Bissau must turn on how the matter is governed by the customary law applied in each of the ethnic groups, taking into account that it is a penalty which is not provided for by customary norms. The wording of Article

[25] Given the similarity between the wording of Article 30(1) and Article 19(3) (Suspension of the exercise of rights) of the Portuguese Constitution of 1976, it is possible to understand that the 'state of emergency is declared when the preconditions referred to (…) are less serious'.

[26] Another interpretation of this provision would be that, as a result of an 'international agreement or convention', there would be no limit to the exercise of public functions, which contradicts the letter and the spirit of paragraph 1 of this Article.

[27] Title VII of the Special Part of the Penal Code, 1993, Crimes against state security, Articles 215 to 224, with emphasis on 'treason' (Article 215), 'service or collaboration with enemy armed forces', and 'alteration of the rule of law regime' (Article 221).

[28] Article 41(1) (Duration of imprisonment) of the Criminal Code of 1993 provides that 'imprisonment lasts for a minimum of 10 days and a maximum of 25 years, without prejudice to what may be established relative to perpetual imprisonment'.

41(5) is not clear about the situations to which penalties involving the loss of 'civil, professional or political rights' may be applied, but we can deduce from the respect for human dignity that it cannot lead to a status of civil, professional, or political disability[29] disproportionate to the crime committed.[30] Similar reasoning should be used in understanding the situations that may be compatible with the Constitution concerning the 'deprivation of citizenship' and 'restrictions on civil status' (Article 44(2)), first of all because these fundamental rights integrate the core of essential rights that cannot be affected by the declaration of a state of siege.[31]

Taking into consideration the situations of political instability and disruption of constitutional normality that have been current features in the political life of Guinea-Bissau, it is noteworthy that, to allow its success, the *habeas corpus* against unlawful arrest or detention may be filed in the Supreme Court (Article 39(4)) or at the 'nearest regional court' (Article 39(5)). Accordingly, the possibility for detainees to request their release under *habeas corpus*, the application of this guarantee by the courts,[32] and respect for the power of the court ruling that determines the position of those illegally arrested is, at every moment, a test of the actual existence of a democratic political organization, the rule of law, and of a catalogue of fundamental rights in Guinea-Bissau.

An effective understanding of the content of the fundamental rights under the 1993 Constitution is relatively limited and restricted mostly to small groups of the more westernized urban population. In the last two decades, elections were held that were generally considered to be free and credible, but the free exercise of political rights was compromised by the interference of the military in political life. The level of achievement of social, economic, and cultural rights is virtually non-existent.[33]

IV. Separation of Powers

1. General framework of political power

The organization of political power is based on the 'separation and interdependence of the organs of sovereignty and (their) subordination' to the Constitution. The organs of

[29] In Article 63(2) it is provided that only Guinean citizens who are in 'full enjoyment of their civil and political rights' can be elected to the office of President of the Republic.

[30] Article 52(3) ('To be fired from public functions') of the Criminal Code of 1993 provides that 'the terminated public employee can be rehabilitated for the exercise of public authority if, within three years after the conviction, he is able to apply and demonstrate appropriate behavior to exercise public functions'.

[31] The constitutionality of this provision, introduced by LC1/93, especially taking into account that it may violate the 'essential content' of those fundamental rights (with the status of rights, freedoms, and guarantees) is arguable. Because LC1/93 was not subject to an assessment of constitutionality, the matter should be treated in the evaluation of the constitutionality of the law approved under Article 44(2) (given that its application will be made 'in cases and in accordance with the law' and is necessarily dependent on the existence of a law to its implementation).

[32] The Supreme Court of Justice has decided *habeas corpus* applications in a considerable number of cases. Judgments 76/2001 and 81/2001 of 12 April 2001 are representative of the granting of the writ of *habeas corpus*. Judgments 5/2004 of 22 December 2004 and 3/2008 of 1 April 2008 are examples of the denial of the writ of *habeas corpus*.

[33] An updated and credible overview of the human rights situation in Guinea-Bissau can be found in the report of the Liga Guineense de Direitos Humanos, *Relatório sobre a situação dos Direitos Humanos na Guiné-Bissau 2010/2012*, covering April 2010 to December 2012 **[http:www.lgdh.org/relatorioLGDH-completo%2015Jan.pdf]**.

sovereignty are the President (Articles 62 to 72); the National Popular Assembly (Articles 76 to 95); the Government (Articles 96 to 104); and the courts (Articles 119 to 125).

After the constitutional transition of 1993, the Constitution adopted a semi-presidential system of government, with the aim of overcoming the previous excessive concentration of power in the President of the Council of State. This goal was not fully achieved, since the allocation of powers to the President to dissolve the National Assembly (Article 69(1)(a)) and dismiss the Government (Article 69(1)(b)) have been used by its holders as a means of influencing the exercise of governmental activity.

The distribution model of the distribution of powers has its origin in the Portuguese Constitution of 1976 (after the revision of 1982), but the actual allocation of powers to the various organs of power is the result of the constraints of political and constitutional history of Guinea-Bissau. In essence and in the abstract, by using the semi-presidential model, the constituent legislator tried to limit the leading position of President and institutionalize the 'separation and interdependence of the organs of sovereignty'. In practice, taking into account the tension and confrontation that has characterized the relations between the relevant political actors, the possibility of constructing a semi-presidential system was distorted by the powers that continued to be expressly granted to the President, highlighting Article 68(j) and (m).

The balance of the system of government in Guinea-Bissau has been called into question, firstly by the constitutional provision that allows the President of the Republic to 'preside [over] the Council of Ministers, whenever he chooses' (Article 68(m)) and, secondly, the power to 'create and dissolve Ministries and Secretaries of State' (Article 68(j)). Moreover, in some situations, the constitutional provision that 'the President represents the Republic of Guinea-Bissau' (Article 62(2) and Article 68(a)) has been used as a constitutional authorization for the creation of a counter-power, or even a 'parallel government', by the circle of the supporters of Presidents of the Republic.

Accordingly, the 1993 Constitution continues to assign a central political role to the President, despite the institutionalization of the government as a sovereign independent body and not dependent on the President. Attempts to reduce these powers, notably through the Constitutions of 1999 and 2001, have resulted in failure and their non-enactment, because they were perceived as a (personal) attack on the presidential powers to be exercised by the holder of the office in the future.

Introducing 'the Government' as an essential part of the system of government is based on the assumption that the intervention of the President of the Republic in active political life will be limited to the resolution of crisis situations. Indeed, despite the President being featured as the 'Head of State, symbol of unity, guarantor of national independence and the Constitution and Supreme Commander of the Armed Forces', and the express statement that he 'represents the Republic of Guinea Bissau' (Article 62), the understanding of his powers must be the result of the harmonization of the role of the President with the constitutional status given to the Government in Articles 96 to 104. The Government, described as the 'executive and administrative body of the Republic of Guinea-Bissau' (Article 96(1)) with the competence to conduct the 'general policy of the country according to its program approved by the National Assembly' (Article 96(2)), was not designed to be in the functional dependence of the President of the Republic. But, according to a loyal collaboration between the sovereign political bodies, and according to the principle of inter-dependence between the

organs of sovereignty, the Prime Minister should 'inform the President on matters relating to the conduct of domestic and foreign policy of the country' (Article 97(3)).

The semi-presidential system that is enshrined in the Constitution assigns political responsibility of the Government to the President of the Republic and to the National Assembly. The way the powers are endowed by the Constitution to the two bodies, and political circumstances, have contributed to the erasure of parliamentary intervention and the strengthening of the presidential role in this field.

The National Assembly is described in Article 76 as 'the supreme legislative body and supervisory policy representative of all Guinean citizens', and decides 'on the key issues of domestic and foreign policy of the State'. The capacity for performance of the National Assembly, however, is limited because it meets in regular session only four times a year. The exercise of supervisory powers is also not pursued by the Standing Committee, despite its power 'to monitor the activities of the Government and the administration' (Article 95(3)(a)) to the extent that such competence is understood as residual for the remaining tasks of the representative body.

To this situation is added the fact that the exercise of supervisory powers by the National Assembly is dependent on the nature of the relationship between the Government and the various parliamentary groups. Practice has shown that political supervision is irrelevant when there is a parliamentary majority supporting the government. The permanent temptation to change political power through undemocratic means has, at the same time, undermined the potential of the 'right of democratic opposition' that underlies the option for democratic political organization.[34]

The institutionalization of the rule of law, according to a Western model and the separation of powers, has been hampered by cultural issues of an African nature and personal conflicts between members of the Guinean-Bissau political elite. Indeed, discussion on the adoption of a presidential system of government has shown that the inadequacies of the constitutional text are not the main reason for the malfunctioning of the political system of Guinea-Bissau. It is not, therefore, expected that the conditions of the governability of the system will improve, even if the Constitution is revised in the medium term. In any case, the introduction of a second chamber, representative of the different ethnic groups, would be an improvement and would allow for a more adequate representation of the various interests that exist in the multicultural society of Guinea-Bissau.

2. Appointment, powers, and removal from office of political bodies

i) President of the Republic

The President of the Republic is 'elected by the free, universal, equal, direct, and periodic suffrage of citizens who are registered voters', under Article 63(1). The presidential candidates, in accordance with Article 63(2), must fulfill four requirements: they must be (i) 'elector citizens of Guinean origin'; (ii) 'children of parents of Guinean origin'; (iii) more than '35 years of age'; and (iv) have 'full enjoyment of civil and political rights'. The election as President of the Republic requires an absolute majority of valid votes cast. If such

[34] In this sense, the manner in which the various political parties, particularly those not represented in the National Popular Assembly, have legitimized the interruptions of democratic normality through the signing of documents aimed at its restoration deserves particular attention.

a majority is not obtained in the first round, a second round must be organized 'within 21 days', in which only 'the two leading candidates' compete. The presidential term is five years, and a President may not serve more than two consecutive terms. Candidature for new mandates is possible after a minimum period of five years has passed from the previous exercise of presidential functions. The President may resign, in which case he 'cannot run for immediate election' nor for those elections that will be run during the following period of five years.

The powers of the President are set out in Articles 68 and 69. The exercise of the fundamental core of presidential powers is exclusively reserved for an elected President of the Republic (Article 71(4) and (5)). The political and constitutional history of Guinea-Bissau, notably with the assassination and the death of two Presidents between 2009 and 2012, demonstrates the importance of this distinction. The repetition and extension of these periods has been one of the factors that have contributed to the low legislative output recorded since the beginning of the millennium, taking into consideration that an Acting President cannot promulgate legislative acts.

The replacement of the President of the Republic by the President of the National Popular Assembly (or substitute) is provided for in two situations: first, in 'the absence abroad or temporary impairment', and second, in the 'event of death or permanent impairment' of the former.

The Acting President of the Republic cannot 'under any circumstances' (i) set the election dates, with the exception of the presidential election, so that a democratically-elected new President of the Republic can be elected (Article 71(5))[35]; (ii) 'appoint and dismiss the Prime Minister'; (iii) 'appoint and dismiss the remaining members of the Government'; (iv) 'preside over the Council of Ministers'; (iv) 'swear in the judges of the Supreme Court'; (v) 'appoint and remove (...) the Chief of the General Staff of the Armed Forces'; (vi) 'enact laws, decree-laws and decrees' or 'exercise the right of veto' regarding any decree sent for promulgation; (vii) 'declare a state of siege or of emergency'; (viii) 'grant honorary titles and decorations of the State'; (ix) 'dissolve the National Assembly'; or (x) 'dismiss the Government'.

With the constitutional revision of 1993, the designation 'Council of the State' is now used to denote the 'political body that advises the President of the Republic' (Article 73). Its composition is broad[36] and includes (i) the President of the National Assembly; (ii) the Prime Minister; (iii) the President of the Supreme Court; (iv) the representatives of political parties with seats in Parliament; and (v) five citizens appointed by the President. Consultation with the Council of State by the President of the Republic is not compulsory, except in the cases of 'pronouncement' as provided in Article 75: 'dissolution of the National Assembly'; 'declaration of a state of siege or emergency'; and 'declaration of war and the establishment of peace'.

[35] Article 71(3) provides that 'the new President will be elected within 60 days'. The circumstances of Guinea-Bissau have demonstrated the inability to meet this deadline. On the issue, see Fernando Loureiro Bastos, '*Os poderes do Presidente da República interino na República da Guiné-Bissau: a marcação de eleições presidenciais*' ['The powers of the acting President in the Republic of Guinea-Bissau: setting the date of presidential elections'], in Fernando Loureiro Bastos (Coordenador), *Estudos Comemorativos dos Vinte Anos da Faculdade de Direito de Bissau*, 1990–2010 ['Studies Commemorating the Twenty Years of the Faculty of Law of Bissau', 1990–2010], vol II (Lisboa-Bissau, 2010) 609–667.

[36] The non-inclusion of former Presidents of the Republic in the composition of the Council of State must be stressed.

ii) National Popular Assembly

The 1993 Constitution provides for the existence of a single chamber with designation as the National Popular Assembly. Members of the National Popular Assembly, with the title 'Deputies', shall be elected 'by universal, free, equal, direct, secret and periodical suffrage' (Article 77). Although the number of Deputies provided for in the electoral law is 102, the number of Deputies to be elected is usually only 100.[37] The legislatures of the National Assembly have tenures of four years (Article 79).

It is expressly provided that Members should 'keep close contact with their constituents' and provide them with 'regular accounts of their activities', despite being 'representatives of the all the people and not just the constituencies for which they were elected' (Article 78(2) and (3)). The office of Deputy is incompatible with that of member of the Government (Article 84 (4)). Although the status of Deputies was provided for by the ordinary law (Article 83(1)), the Constitution explicitly safeguards the fundamental core of parliamentary immunity. The Deputy cannot be 'harassed, persecuted, detained, arrested, tried or convicted [in consequence of] votes and opinions that issue in the exercise of his mandate' (Article 82(1)), and cannot be detained or arrested for criminal or disciplinary matters except in cases of 'flagrant crime that is punishable with a penalty of two or more years' or when there is 'prior consent of the National Popular Assembly'.

Deputies have the 'right to raise questions to the Government, orally or in writing' under Article 81. The Government's response must be given either during the session in which the question was put, or within the 'maximum period of fifteen days, in writing, if there is need for investigation'.

The President of the Republic may dissolve the National Popular Assembly in 'case of serious political crisis'. This is a political decision, the legality of which is dependent on the fulfillment of three conditions: first, a formal requirement—consultation with the 'President of the National Popular Assembly' and the 'political parties' represented in the National Assembly (Article 69(1)(a)); second, a requirement relating to time—the dissolution cannot take place in the 'twelve months following his election' or during the 'last semester of office of the President of the Republic' (Article 94(1)); and third, a circumstantial requirement—the dissolution cannot be held 'during a state of siege or state of emergency' (Article 94(1)).

The competence of the National Popular Assembly is provided for in Article 85. In accordance with the interdependence between the organs of sovereignty, the National Popular Assembly is required to: (i) 'approve the government program'; (ii) 'vote motions of trust and confidence in the Government'; (iii) 'approve the State Budget and the National Development Plan'; (iv) 'pronounce on the declaration of a state of siege and emergency'; (v) 'examine the accounts of the State for each fiscal year'; and (vi) 'consider the acts of Government and Administration'. It is solely for the national Parliament 'to revise the Constitution' and 'set dates for referendums'.

The National Popular Assembly has a Bureau composed of the 'President, a First Vice-President, a Second Vice-President, and a First and a Second Secretary, elected by the entire legislature' (Article 84). The Standing Committee, the importance of which stems from its

[37]There have normally been no elections for the two positions corresponding to the Deputies to be elected by the circles outside the national territory.

work in between the plenary sessions of the parliamentary body, is composed of the President of the National Assembly, a Vice-President, and the representatives of the parties in Parliament (Article 95(2)). In accordance with Article 88, the National Popular Assembly may create 'specialized committees' and can also 'establish committees to deal with certain issues'.

iii) Government

The Government consists of the Prime Minister, the Ministers, and the Secretaries of State. The Prime Minister is the Head of Government and 'shall be responsible for directing and coordinating the action' of this sovereign body (Article 97(2)). Members of the Government 'can take a seat and speak in the plenary meetings of the National Popular Assembly' (Article 90), although they cannot be members of the parliamentary body.

The Prime Minister is appointed by the President of the Republic, 'in view of the election results and consultation with political parties represented in the National Popular Assembly' (Article 98(1)). The Ministers and Secretaries of State are appointed by the President of the Republic on the proposal of the Prime Minister. The Council of Ministers comprises the Prime Minister, who presides, and the Ministers. Specialized Councils of Ministers can be created.

The Constitution, in Article 104, provides for a set of situations from which the dismissal of the Government may result: (i) the 'beginning of a new legislature'; (ii) the 'non-approval for the second consecutive time of the program of the Government'; (iii) the 'acceptance by the President of the Republic of the resignation of the Prime Minister'; (iv) the 'approval of a motion of no confidence' by a majority of the Deputies in office (Article 85(5));[38] (v) the 'non-approval of a vote of confidence'[39] by a majority of the Deputies in office (Article 85(1)(d) and (5)); and (vi) the 'death or prolonged physical incapacity of the Prime Minister'.

The President may also dismiss the Government in the event 'of severe political crisis that undermines the normal functioning of the institutions of the Republic' (Article 69(1)(b) and Article 104(2)). This is a political decision, the legality of which is dependent only on the completion of a formal requirement: hearing the 'Council of State' and 'political parties represented in the National Assembly'. The 'serious political crisis' that is invoked by the President to justify his decision should be particularly serious, since the constitutional demand for a situation that might call 'into question the normal functioning of the institutions of the Republic' was not used by the Constitution regarding the dissolution of the National Assembly (Article 69(1)(a)).

3. Legislative competence and legislative procedure

The National Popular Assembly and the Government have legislative competence. The National Popular Assembly can be considered the ultimate legislative body, but the area of concurrent legislative competence of the Government is virtually identical to the legislative competence of the parliamentary body.

[38] The Constitution provides for the significant majority of a 'third of the Deputes in active duty' for the filing of a motion of censure, in Article 85(4), in order to ensure that the instrument be used only when there is a serious likelihood of the majority required for approval being gathered.

[39] The motions of confidence are presented by the Prime Minister in accordance with the resolution passed by the Council of Ministers (Article 85(3)).

Four distinct zones within the legislative competence can be distinguished: (i) the exclusive legislative competence of the National Popular Assembly; (ii) the (exclusive) legislative competence of the National Popular Assembly where a legislative authorization to the Government is possible, or delegated legislative power; (iii) the exclusive legislative competence of the Government; and (iv) the concurrent legislative competence between the National Popular Assembly and the Government.

The exclusive legislative competence of the National Popular Assembly is provided for in Article 86. The matters correspond to the issuing of laws on the matters listed in the ten subparagraphs of the article in force.[40] These are laws about the fundamental areas of the organization of the state and society, whose legislative options are, in most cases, safeguarded by the material limits of constitutional revision.

The (exclusive) legislative competence of the National Popular Assembly, where a legislative authorization to the Government, or delegated legislative power, is possible, is provided for and regulated in Articles 87 and 92. The law of legislative authorization granted by the National Popular Assembly to the Government 'should establish its subject, its extent and duration' (Article 91(1)). The legislative authorizations expire at the 'end of the legislature'; when there is a 'change of government'; and with the term of the legislative authorization. The Constitution provides that the authorized decree-laws of the Government should be submitted to the National Popular Assembly for 'ratification' (Article 92(3) and Article 85(1)(l)). The National Popular Assembly shall have a period of thirty days for assessment of the authorized decree-law, 'after which the act will be considered ratified'.[41]

The exclusive legislative powers of the Government are provided for in Article 100(1)(d). The matters correspond to the issuing of decree-laws and decrees by the Government on 'matters relating to its organization and functioning'. The delimitation of the matters that may be included in this area of legislative competence is relatively imprecise and should be interpreted in connection with the competence of the National Popular Assembly to issue laws on the 'organization of central and local government' (Article 87(a)), and the powers of the President of the Republic to 'create and dissolve Ministries and Secretaries of State' (Article 68(j)).

The concurrent legislative competence between the National Popular Assembly and the Government is provided for in Article 100(1)(d). This competence corresponds to 'matters not reserved to the National Assembly' and covers all matters which may be subject to acts of a legislative nature that are not contained in Articles 86 and 87, or included in the 'organization and functioning' of the Government.

Although there is no constitutional typology of normative acts,[42] the Constitution makes reference to the following acts: (i) constitutional laws approved by the National Popular

[40] Subparagraphs (d) 'tax and tax system' and (e) 'monetary system' were repealed by Constitutional Law No 1/96 (or Constitutional Law No 1/97).

[41] The thirty-day period provided for in Article 92(3) should be interpreted in conjunction with the existence of only four regular sessions a year (Article 89(1)), so it should start only at the beginning of the first meeting following the remission of authorized decree-law to the National Popular Assembly.

[42] In terms that distort the logic of the division of powers between the organs of sovereignty, presidential decrees rendered by the President of the Republic under Article 68(j) may also be of a normative nature, since they are intended to 'create and extinguish Ministries and Secretaries of State'.

Assembly under Article 129; (ii) laws approved by the National Popular Assembly in accordance with Article 85(1)(c) and Articles 86 and 87; and (iii) decree-laws and decrees passed by the Government under Article 100(1)(d) and Article 102. The Constitution does not specifically state what types of normative acts should be used by direct and indirect administration but nevertheless explicitly provides, in Article 112 (1), that 'within the limits of the Constitution and laws, local authorities have their own regulatory power'.

The legislative initiative lies with the Deputies and the Government. The approval of laws is a competence of the National Popular Assembly, without any type of specific majority for this purpose being provided. The President of the Republic can promulgate laws or 'exercise the right of veto within 30 days after receiving' the act (Article 69(1)(c)). The vetoing of the President of the Republic in relation to laws 'can be overcome by the affirmative vote of a two-thirds majority of the Deputies in office' (Article 69(2)).

Concerning decree-laws and decrees, their approval is a responsibility of the Government, meeting within the Council of Ministers. The President of the Republic can enact the acts of the Government or 'exercise the right of veto within 30 days after receiving' them (Article 69(1)(c)). The veto of the President in relation to the decree-laws and decrees is final, and the Government can try to overcome this position only indirectly, by submitting a bill to the National Popular Assembly.

4. Courts

The courts exercise the 'judicial function', and they are the organs of sovereignty 'with the power to administer justice on behalf of the people'. Article 120(4) expressly provides that the 'courts are independent and subject only to the law'.

The structure of the courts under the Constitution includes: (i) the Supreme Court, as the 'supreme judicial instance of the Republic'; (ii) courts with general jurisdiction; (iii) the Military Courts ('prosecution of crimes essentially military as defined by law') and the Administrative, Fiscal, and Audit Courts, as courts with specific jurisdiction; and (iv) the 'people's courts' designed to hear 'social disputes, whether civil or criminal'.

The constitutional status of judges is appropriate to the exercise of the judicial function: (i) the judge shall exercise the judicial function 'with complete fidelity to the fundamental principles and objectives of the (...) Constitution' (Article 123(1)); (ii) the 'judge is independent and should be obedient to only the law and his conscience' (Article 123(2)); (iii) the 'judge is not responsible for his judgments and decisions' (Article 123(3)); and (iv) the 'appointment, dismissal, placement, promotion and transfer of judges of the courts of law and the exercise of disciplinary actions are matters for the Supreme Judicial Council' (Article 123(4)).[43]

The judges of the Supreme Court are appointed by the Supreme Judicial Council and sworn in by the President of the Republic. Article 123(3) provides, however, that 'in cases specified by law', a judge may 'be subject, by reason of the exercise of its functions, to civil, criminal and disciplinary responsibility'. The application and interpretation of this provision shall be

[43] The Supreme Court of Justice, in Judgment 1/2007 of 28 June 2007, decided to nullify a decision of the Supreme Judicial Council regarding the transfer of a judge because it understood that 'the interest of the judiciary should not crush the law and the will of the judge'.

made in accordance with 'the independence of the courts', to the extent that this is one of the structural principles of the 1993 Constitution (Article 130(j)).

The Public Prosecutors' Office is responsible for 'defending legality', 'representing the public and social interests', and the exercise of 'criminal prosecution'. The Public Prosecutors' Office is organized according to a 'hierarchical structure under the direction of the Attorney-General of the Republic' (Article 125(2)). The Attorney-General is appointed and dismissed by the President of the Republic after consultation with the Government (Article 68(p) and Article 125(3)).

V. Federalism/Decentralization

Guinea-Bissau has a unitary structure (Article 1 and Article 130(a)), suitable for the small size of its territory, and it is expressly provided for in Article 7 that this should be combined with the creation of 'decentralized territorial entities enjoying autonomy' in accordance with 'the principle of local autonomy' (Article 109).

The constitutional revision of 1995 replaced all the articles in Chapter V of Title III (Articles 105 to 118), but by 2013 the system of local government provided for had not been institutionalized, and nor were local elections held. Accordingly, a distinction should be made between the present and the future structure of territorial organization under the 1993 Constitution.

In accordance with the 1993 Constitution, the territory of Guinea-Bissau is divided into administrative regions, subdivided into sectors and sections (Article 107(1)).[44] When an organization based on territorial local authorities is created, with administrative and financial autonomy, administrative regions will come within the framework of 'municipalities', 'municipal sections', and 'local boards' (Article 106(1))[45]. The Constitution also provides for the establishment of 'other forms of subdivisions in communities whose specificity requires it' (Article 107(1)), and 'other forms of territorial organization of local government, as well as other administrative autonomous subdivisions' in 'large urban areas and islands' and 'according to their specific conditions' (Article 107(3)). How the administrative regions and local authorities are to articulate their powers is not constitutionally provided for.

The coordination between the existing territorial division and the one to be created should be such that 'the municipalities will operate in the sectors, municipal sections will work in the administrative sections, and local boards will function in the joints of residents', under Article 106(2).

The 'organization and functioning of administrative regions' are determined by ordinary law (Article 107(2)), the Constitution providing only that the 'appointment and removal of regional governors' is a competence of 'the Government on the proposal of the Minister responsible' (Article 108(1)). For sectors, the only constitutional reference available is that

[44] Article 106(2) also refers to 'neighbourhood boards', deducing from the combination of the wording of Article 106(2) and of Article 107(1) that they will be a subdivision of the administrative sections.
[45] From the reading of Article 114(1), which states that the 'administrators sectors (have) a seat in the municipal assembly, without voting rights', it is possible to deduce that the sectors can also be maintained, which obviously is not congruent with the creation of local authorities.

sector administrators 'will be provided in accordance with the provisions of the framework law' (paragraph 3 of Article 108).

The Constitution defines local authorities, in Article 105(2), as 'territorial legal entities, with representative bodies, for the pursuit of specific interests of local communities within the unitary structure of the State'. In accordance with the Articles introduced in 1995, but not yet implemented, local authorities will enjoy 'administrative and financial autonomy', and will have 'their own assets and finances'.

A local authority shall have, in accordance with Article 111(1), 'an assembly with powers of deliberation, elected by universal, direct and secret suffrage of the resident citizens, according to the system of proportional representation', and a 'collegial executive body' that responds to the assembly.

The representative bodies of local authorities shall be, in accordance with Article 113: (i) in the municipalities, the municipal assembly (with a seat allocated to sector administrators, without voting rights (Article 114(1)) and the city hall (the 'governing body of the municipality elected by the voters residing in their area, and the president being the first candidate on the most voted list' (Article 114(2)); (ii) in the municipal sections, the assembly section and the committee section; and (iii) in the local boards, the assembly of residents and the steering committee of residents.

The power to 'dissolve the organs of local authorities in the event of acts or omissions contrary to law' (Article 116) was conferred on the National Popular Assembly, after consultation with the Government.

VI. Constitutional Adjudication

Article 126 of the Constitution provides for review on the constitutionality of 'rules that contravene the Constitution or the principles enshrined therein' only in cases before the court, notwithstanding the fact that the final decision on the matter is a competence reserved for the Supreme Court of Justice. Accordingly, questions of constitutionality can be raised in all courts, whatever their jurisdiction or position in the judicial hierarchy, but a decision on the subject can be taken only by the highest court.

The standing to raise a 'question of unconstitutionality' is limited to the participants in the process, given that they can only 'be raised *ex officio* by the court, the prosecutor or by any of the parties'. The Supreme Court of Justice may accept or reject the consideration of the question of unconstitutionality, to the extent that the wording of Article 126(3) states that the court's decision is conditional upon admission. The decision of the Supreme Court of Justice shall be taken 'on plenary of the court', with the issue of unconstitutionality constituting a 'procedural incident'. The 'decisions regarding unconstitutionality' have 'binding force' and must be published in the Official Bulletin.

The Constitution does not advance any definition of 'norm' that can be used in the comprehension of the acts likely to be subject to review of constitutionality. Taking into account Article 8, which states that 'the validity of laws and other acts of state and local government depends on their conformity with the Constitution', it is possible to understand that the drafters of the Constitution opted for a broad concept of 'norm'. Accordingly, the Supreme Court of Justice is not confined to assessing the constitutionality of provisions

inserted into legislation, since the very comprehensive term used is 'other acts of state and local government'.[46] Much more complex, and with no clear response in the constitutional text, is the understanding of the concept of 'norm' in respect of acts of an international nature. The possibility of including international obligations, especially bilateral treaties and agreements, in the concept of norms should not raise any doubt, notwithstanding the effects of the decision of the Supreme Court of Justice that they should be assessed from both a constitutional and an international perspective. Less clear is the position that should be taken in relation to acts of international organizations of regional integration, if they are to comply with the legal principles that underlie the creation of these entities.

Review of constitutionality in the Republic of Guinea-Bissau is incidental and concrete, with the decision concentrated in a single court, and there is no provision for any constitutional oversight mechanism of abstract review of constitutionality or prior review of constitutionality. The glaring inadequacy of the system of review of constitutionality currently in force is so notorious that it has led to an attempt at its reformulation through unconstitutional laws. On the one hand, this was foreseen in the Rules of Procedure of the Popular National Assembly, which in Article 15(m) stated that it was within the power of the Deputies to 'ask the Supreme Court of Justice for a declaration of unconstitutionality or illegality of rules for the purposes of Article 126 of the Constitution'.[47] On the other hand, in 2002, through the Organic Law of Courts, some paragraphs of Article 25[48] provided that it would be within the jurisdiction of the Supreme Court of Justice, acting in plenary session, to make 'prior review of constitutionality of any provision of a treaty or agreement submitted to international ratification of the competent national authorities, at the request of these authorities' to 'adjudicate the unconstitutionality and illegality of any rules or resolutions of normative material content or of individual and concrete content', and to 'judge incidents of unconstitutionality raised by other courts'.

The position of the Supreme Court of Justice has been contradictory on this issue. In Judgment 7/2000 of 5 December 2000, the Supreme Court of Justice stated that 'our Constitution enshrines a concrete and incidental system of constitutional review in article 126'. In Judgment 1/2010 of 3 November 2010, the Supreme Court of Justice emphatically asserted that 'the only model of review of constitutionality predicted in the Constitution of the Republic of Guinea-Bissau is successive, concrete, incidental, and concentrated'. In Judgment 1/2006 of 25 January 2006, however, the Supreme Court of Justice ruled that it had jurisdiction to review the constitutionality of a decree of the President of the Republic at the request of the Deputies without discussing the question of the constitutionality of Article 15(m) of the Rules of Procedure of the Popular National Assembly. Similarly, in Judgment 4/2008 of 7 July 2008, the Supreme Court of Justice also agreed to pronounce the abstract unconstitutionality of a law of atypical nature ('*Lei Constitucional, Excepcional e Transitória*') at the request of a group of Deputies, according to Article 15(m) of the Rules of Procedure of the Popular National Assembly.

[46] In a very broad interpretation of the concept of 'norm', the Supreme Court of Justice decided, in Judgment 17/2005 of December 2005, about the content of an article of the *Carta de Transição Política* (Charter of Political Transition) of 28 September 2003, notwithstanding that this had led to the suspension of constitutional legality. Similarly, in Judgment 2/2008 of 26 February 2008, the Supreme Court of Justice ruled in accordance with the rules of the *Pacto de Transição Política* (Political Transition Pact) of 21 May 1999, which also suspended the 1993 Constitution.

[47] Subparagraph (m) of Article 15 was revoked by Law 1/2010 of 25 May 2010.

[48] Now Article 27, after the revision of the Organic Law of Courts, introduced by Law 6/2011 of 4 May 2011.

VII. International Law and Regional Integration

Guinea-Bissau is a founding member the Community of Portuguese Speaking Countries (CPLP), an international organization consisting of states that have adopted Portuguese as their official language. A special mention should be made of the participation of Guinea-Bissau in three international organizations of regional integration in Africa: the Economic Community of West African States (ECOWAS or CEDEAO), the West African Economic and Monetary Union (WAEMU or UEMOA), and the Organization for the Harmonization of Business Law in Africa (OHBLA or OHADA).

The 1993 Constitution completely ignores the way in which the incorporation of international law into national law should be done. In the same way, the text of the Constitution is completely silent about how the sources of international law should produce their effects in the internal legal order[49] or what the hierarchy of the sources of international law would be in relation to the other sources of law. Thus there are no rules, in general terms, about the effects of customary international law, conventional agreements, and acts of international organizations, and, in more specific terms, about acts of regional economic, political, and legal integration organizations, because of the participation of Guinea-Bissau in ECOWAS, WAEMU (UEMOA), and OHBLA (OHADA).

The issue is particularly relevant with regard to the participation of Guinea-Bissau in ECOWAS, WAEMU (UEMOA),[50] and OHBLA (OHADA)[51] insofar as their legal systems were based on the principles of primacy and the direct applicability of some of the rules enacted by those regional integration legal systems. The understanding of the specificity of regional integration law cannot be reduced to the principles of constitutional law, despite the fact that it would state in the Constitution that the political power and the Bissau-Guinean legal community should find the legal basis for the adoption of binding international commitments by the state.

The Constitution does not regulate the treaty-making process adequately enough, and nor does it regulate the distribution of powers between the various organs of sovereignty in respect of the conduct of foreign policy and the assumption of international commitments. From the text of some of the constitutional provisions it is possible to conclude that: (i) negotiation is a responsibility of the Government, owing to the combination of Article 100(1)(f) with Article 96(2) ('lead the general policy of the country') and Article 97(3) ('it is for the Prime Minister to inform the President on matters relating to the conduct of domestic and foreign policy of the country'); (ii) the signing of international commitments should also be a competence of the Government, to the extent that in Article 100(1)(f) the term 'conclude' is used; and (iii) the internal confirmation of the manifestation of the state's

[49] The Supreme Court of Justice, in Judgment 21/2005 of October 2005, concerning the application of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, dealt with that matter without clarifying the terms in which international treaties produce effects in the Guinea-Bissau legal order legal.

[50] About the relationship between 'freedom of circulation of peoples in the territory of the WAEMU member states and the constitutional guarantees of expulsion of aliens', see Judgment 5/2007 of 13 March 2007 of the Supreme Court of Justice, which states that the expulsion of aliens can take place only 'after a fair trial' in Guinea-Bissau.

[51] On the enforcement of OHADA law in the legal order of Guinea-Bissau, see the Judgments 28/2007 of 14 August 2007 and 9/2008 of 18 March 2008. In the first of these judgments, the Supreme Court of Justice declares the superiority of OHADA law in relation to domestic law, taking into consideration its 'supranational' features.

consent to be bound by international treaties is a competence of the President of the Republic, in accordance with Article 68(e).

The practice in these matters shows, however, that the proposed interpretation of the constitutional provisions cited is not clear, because, on various occasions, the practice has been the subject of dispute between the President and the Prime Minister, who was the organ constitutionally assigned to conduct foreign policy and to assume international commitments.

In strictly legal terms, there are also difficulties relative to the division of competence of the internal approval of international commitments. The power of approval of the Popular National Assembly, in accordance with Article 85(1)(h), appears to be exclusively confined to treaties that involve the participation of Guinea-Bissau in international organizations, treaties of peace, defence, rectification of frontiers, and also any other matters that the Government refers to it. It follows that the remaining treaties and all other international agreements fall within the competence of the Government, which seems to violate the logic of the legislative powers reserved to the Popular National Assembly, pursuant to Articles 86 and 87.

As a result of the membership of WAEMU since 1997, the currency of Guinea-Bissau is the CFA franc.[52] It is a common currency in the states of the sub-region members of WAEMU: Benin, Burkina Faso, Ivory Coast, Guinea-Bissau, Mali, Niger, Senegal, and Togo. The CFA franc is issued by the BCEAO (*Banque Centrale des Etats de l'Afrique de l'Ouest*, or the Central Bank of West African States), based in Dakar, Senegal, and it has a fixed parity with the Euro (1 Euro = 655,957 or XOF CFA).

VIII. Conclusion: Constraints upon the functioning of the rule of law in the Republic of Guinea-Bissau

By way of conclusion, it is possible to suggest that the constraints upon an effective functioning of the rule of law in Guinea-Bissau are both political and legal. The constitutional and political history of the Republic of Guinea-Bissau has been plagued by recurrent instability and difficulty in achieving stable and effective political organization. The reason for this troubled history can be found, firstly, in how the exercise of power is seen by the political and military elite. Political life in Guinea-Bissau has been conditioned by the image of the efficiency of a power centred on a leading political actor, without any political, religious, or ethnic group being able to offer an alternative form of social organization. After the transition to multi-party democracy, this persistent image contributed to the nearly ubiquitous role in politics that was played by João Bernardo 'Nino' Vieira (or Nino Vieira) (1939–2009), during the final stage of the liberation struggle, from 1980 to 1999 and, again, from 2005 to 2009, when he was assassinated.

The political polarization and the religious and ethnic diversity in the Guinea-Bissau community have been accompanied by an extraordinarily disturbing factor relative to the institutionalization of a stable civil political power: namely, the inability to achieve an effective subordination of the military to political power.

[52] The CFA Franc, or the West African CFA franc; the acronym CFA stands for *Communauté Financière d'Afrique* (Financial Community of Africa) or *Communauté Finacière Africaine* (African Financial Community).

The persistence of the factors of instability may also be understood, from another perspective, by recognizing the mindsets of action of the ruling political and military elite which were formed and consolidated within a framework of the undemocratic exercise of power during the liberation struggle and for two decades after independence. It follows that the transition from a concentrated power structure, organized according to a Soviet matrix, to a democratic model of effective separation and interdependence of the organs of political power, has not been successfully completed.

The political history of Guinea-Bissau has been similarly characterized by a confrontation between the legitimacy of armed struggle and democratic legitimacy based on elections. The military coup of 14 November 1980 represented the beginning of the intervention of the military in the political life of Guinea-Bissau and, since then, the military leaders have influenced the exercise of political power, despite elections that have been deemed free and democratic by the international community. Clashes between different military factions for access to military power have normally been confined to the death of their leaders, but the military rebellion of 7 June 1998 led to a political and military conflict, lasting eleven months, which resulted in 2,000 people being killed and nearly 350,000 displaced.

The situation of political and military instability in Guinea-Bissau has been continuously monitored by the United Nations since April 1999, when the Security Council approved the creation of the United Nations Peace-building Support Office in Guinea-Bissau (UNOGBIS). Since 1 January 2010 its presence has been strengthened through the establishment[53] of a United Nations Integrated Office for Peace-building in Guinea-Bissau (UNIOGBIS).[54]

Despite the continuity of the Constitution since 1984, with major changes in 1993, the legal force of the Constitution is hampered because trying to reconcile the various written sources of law in Guinea-Bissau is particularly complex, in addition to the obvious inadequacy of many of the ordinary rules that are applicable to the lives of the majority of the population of Guinea-Bissau. It is important to stress that the written law produced after independence is relatively scarce,[55] and this is a phenomenon that has deepened since the political-military conflict of 1998–1999.[56] This limited legislative activity after independence has allowed for a significant volume of colonial legislation to continue to be in force, even when the letter and spirit of its rules are manifestly unsuited to regulating an African community.[57] Moreover, participation in international organizations of regional integration has led to the existence of norms with 'supranational effects' in the legal order of Guinea-Bissau which are not adequately known, applied, or interpreted by the members of the legal community.

The functioning of the rule of law in Guinea-Bissau is ultimately conditioned by the existence of two parallel legalities. On the one hand, there is the legality of written law, which has the Constitution at the top of its hierarchy of legal sources. On the other hand is the legality of the customary law of each of the ethnic groups, applied to regulate of the lives of the majority of the population in family matters, inheritance, in the access to and the use of property, and

[53] Resolution 1876 (2009) of 26 June 2009 of the Security Council of the United Nations.
[54] The Reports of the Secretary-General of the United Nations on the situation in Guinea-Bissau can be found at **[http://uniogbis.unmissions.org].**
[55] The database *LegisPalop* has fewer than two thousand documents integrating the legal system of Guinea-Bissau for a period of almost four decades.
[56] The database *LegisPalop* has fewer than five hundred documents integrating the legal system of Guinea-Bissau since 1998.
[57] Accordingly, in relation to the registration of traditional housing, Judgment 2/2007 of 15 February 2007 of the Supreme Court of Justice refers to the need for the adoption of 'another form of declaration and publicity of rights adapted to the socio-cultural reality of our populations or drastically reduce charges on registration'.

the punishment of criminal behaviour. It is here that the majority of the population finds the mechanisms which are effectively used in the resolution of conflicts.

From a legal perspective, the constraints to the functioning of the rule of law in Guinea-Bissau imply the necessity of an analysis of issues related to the inter-relationship between the various sources of written law, the legal framework of the international commitments undertaken by the state, and the appreciation of the compatibility between a legality based mainly on Western values and a number of legalities based on customary law. The understanding of the values and conceptions of life which are the basis of the norms of customary law of each of the ethnic groups can also, from a political point of view, help us to understand the real meaning that is given by the political actors of Guinea-Bissau to the Western concepts of political participation, democracy, the separation of powers, and the interdependence of the organs of political power.

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