



**PERMANENT MISSION OF THE REPUBLIC OF GUINEA-BISSAU
TO THE UNITED NATIONS**

PMGB/LTR/004/24

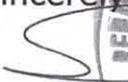
New York, February 8th, 2024

Dear Madam Balbin,

Thank you for your letter, **Ref. AL GNB 1/2023**, dated 6 December 2024, regarding the communication received from the Special Procedures Division – United Nations High Commissioner for Human Rights in Geneva. I have the honor of conveying the response of the Government of the Republic of Guinea-Bissau on the said communication in the attached document.

Please accept the assurances of my highest consideration.

Sincerely,



Samba Sané
Ambassador/Permanent Representative

Madam Beatriz Balbin
Head Special Procedures Division - United Nations
High Commissioner for Human Rights

GENEVA



Verbal Note

Our Ref. ¹⁴⁷_____MNECIC/GM/lmd/2024

Bissau, 05 February 2024.

The Ministry of Foreign Affairs, International Cooperation and Communities – Minister's Office presents its warmest regards to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva, and hereby has the honour of forwarding the communication of the reply from the Attorney General's Office of the Republic of Guinea-Bissau, regarding letter Ref: AL GNB 1/2023 petition N°010/2023.

The Ministry of Foreign Affairs, International Cooperation and Communities - Minister's Office takes this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva the assurance of its high and cordial consideration. [illegible handwritten insertion]

Copies of the documents are attached:

To the
Office of the High Commissioner for Human
Rights (OHCHR)

GENEVA/SWITZERLAND





VERY URGENT

*AO Vice para
opracão dos
trabalhos*

Gabinete de Sua Excelência
1.ª República
Hon. Procurador-Geral da Rep

BISSAU

N/Refª 099 /MNECIC/GM/eqe/2024

To the Office of His Excellency the Attorney General of the Republic
BISSAU

Bissau, 26th January 2024

Subject: Document transmission

The Ministry of Foreign Affairs, International Cooperation and Communities - Minister's Office, presents its best wishes to the Office of His Excellency the Attorney General of the Republic and has the honour to attach the note received under Ref. AL GNB 1/2023, dated 6 December 2023, from the Office of the High Commissioner for Human Rights (OHCHR), requesting an urgent response from the Ministry so that it can be forwarded **before 6 February 2024**, failing which the document will be made public, with all the problems that this entails.

The Ministry of Foreign Affairs, International Cooperation and Communities - Minister's Office, takes this opportunity to renew to the Office of His Excellency, the Attorney General of the Republic, the assurance of its high and cordial consideration.

The Head of Office

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MUITO
URGENTE

REPUBLIC OF GUINEA-BISSAU
PUBLIC PROSECUTOR'S OFFICE
ATTORNEY GENERAL'S OFFICE
THE ATTORNEY GENERAL

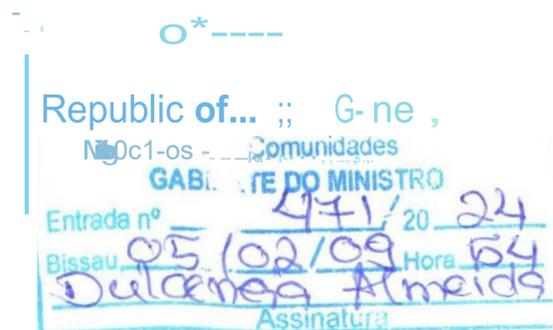
To the Office of the Minister for Foreign Affairs,
International Cooperation and the Communities

Bissau

Bissau, 02 February -

Ref. no. 67/GPGR/2024.

**Subject: Institutional
communication**



Excellence,

The Directorate of the Attorney General's Office presents its best wishes.

In response to your letter **Ref. No. 099/MNECIC/GM/eqe/2024**, of 26 January, on the note Ref: AL GNB 1/2023, of 6 December, from the Office of the High Commissioner for Human Rights (OHCHR), in which it requests this Ministry, as a matter of urgency, to transmit it before 6 February this year, we are sending the attached document within the established deadline.

Without further ado, we reiterate our most effusive institutional greetings.

Dr Braima Seidi

O Diretor de Gabinete do Procurador – Geral da República

The Director of the Attorney General's office





REPUBLIC OF GUINEA-BISSAU
PUBLIC PROSECUTOR'S OFFICE
ATTORNEY GENERAL'S OFFICE
THE ATTORNEY GENERAL

On 29 January 2024, the Public Prosecutor's Office was notified to respond, by 6 February 2024, to the questions raised in the special case brought under Ref. AL GNB 1/2023 by the Office of the High Commissioner for Human Rights (OHCHR).

In response to various questions raised, the Public Prosecutor's Office says the following:

I. Detention on military installations

The military, by virtue of their constitutional assignment, form a special category of civil servants (Article 20 of the Constitution of the Republic of Guinea-Bissau).

In view of the functional nature of the military (art. 4 of Law no. 11/2011, of 28 June 2011), the legal regime for measures restricting the fundamental rights of ordinary citizens is being amended in relation to these special civil servants.

Military status is distinguished, first and foremost, by the permanent readiness to fight in defence of the homeland, if necessary, with the sacrifice of one's own life (art. 9 of Decree-Law no. 5/2009, of 7 December) and by the duty of readiness to which they are subject, so even in the event of the commission of common crimes they must remain available and at the order of the military hierarchy.

For this reason, article 23 of Decree-Law no. 5/2009, of 7 December (Statute of the Armed Forces Military) states the following:

1. (...)
2. *Military detainees or prisoners on remand shall remain in military detention on the order of the competent court or authority, under the terms of the applicable criminal procedural legislation”.*
3. *Military personnel arrested in flagrante delicto shall be immediately handed over to the military authorities and shall remain in the situation indicated in the previous paragraph”*

It is clear from this that there is no illegality in the transfer of the soldiers involved in the 1 February case to the different military prisons in Bissau, not least because the notification to appear is requested from the commanders (art. 125/1 of the Code of Military Justice by reference to art. 96/6 of the Code of Criminal Procedure) and this rule would only be useful if they were available at the military installations.

II. Conflict of competences

When the Public Prosecutor's Office closed the enquiry and referred the case for trial, the judge of the Bissau Regional Court declared himself incompetent on grounds of jurisdiction, based on the criterion *ratione personae*, i.e. the military status of the perpetrators of the crime.



For its part, the military prosecutor's office questioned the legitimacy of the Military Court to hear these crimes, on the grounds that they were not essentially military offences (criterion *ratione loci*).

Once the negative conflict of competences was launched (art. 32 of the Code of Criminal Procedure), the case was referred to the Court of Appeal, under the terms of art. 40(d) of the Organic Law of the Judicial Courts and art. 11(e) and art. 34 of the Code of Criminal Procedure.

However, when the case was referred to the Court of Appeal, the latter was irregularly constituted, as a result of compliance with the recommendations of the Bretton Woods institutions, which prevented the promotion and entry of new magistrates.

The Court of Appeal is made up of three chambers (Art 38/1 LOTJ) and is made up of at least two thirds of judges (Art 38/2 of the Organic Law of the Judicial Courts [LOTJ]), but at the time of the facts there was an insufficient number of judges for the conflict of competences to be heard, which led to a delay in its being heard.

The effect of the conflict of jurisdiction incident (preliminary question) is to stay the criminal proceedings and, consequently, suspend the procedural deadlines (article 7/2 and 3 of the Code of Criminal Procedure).

However, due to the need to safeguard the fundamental rights of the detainees, the Supreme Court of Justice (STJ) decided to assign the Counsellor Judges of that Court to the Court of Appeal, contrary to Article 3/3 of the Statute of Judicial Magistrates.



It was thanks to this legal engineering that the negative conflict of competences was decided and the Court of Appeal confirmed the competence of the Military Courts to judge the "1 February" case.

III. Suspension of the functions of public prosecutors

Once the negative conflict of competences had been resolved, the case was referred to the Military Court for judgement.

Unexpectedly, the military prosecutors refused to comply with the Judgement of the Conflict of Jurisdictions, ordering the case files to be returned to the Criminal Court of the Bissau Regional Court.

In Guinea-Bissau, there is a duty for the lower courts to abide by the decisions of the High Courts and its violation constitutes a breach of the duty of obedience imposed on the magistrates of the Military Court (art.^o 107/2 of the Code of Military Justice).

Since these were military prosecutors, they were not only failing to comply with a court decision, but they were also denying justice to the suspects in the "1 February" case, thus failing to comply with the legal oath taken when they took office, and therefore disobeying a military duty (art. 12 of Decree-Law no. 5/2009 and art. 107/2 of the Code of Military Justice).

Breaches of military duty are punishable under the terms of the Armed Forces Military Statute (art 17/1 of Decree-Law no. 5/2009), the Military Discipline Regulations and the Code of Military Justice.



As a result of their failure to comply with their military duty, *in particular* their disobedience of a decision by the High Court, they were preventively suspended under Article 107(b) and Article 108 of Law No 4/2015 of 3 November (RDM/MDR).

IV. Non-Promotion of magistrate

As for the allegation that the holder of the case at the Bissau Regional Court was not promoted because of his position in relation to the “1 February” case, this is not true, because

The promotion of magistrates is a process and begins with a decision by the Superior Council of the Judiciary (Article 71/1 e) of the Statute of Judicial Magistrates) ordering one of its sub-organs, in this case the Judicial Inspectorate (Articles 81 and 82 of the Statute of Judicial Magistrates), to carry out performance assessments of magistrates.

In the case under discussion, the inspections took place even before the events of 1 February and, [REDACTED]

[REDACTED]

[REDACTED]

Promotion is an exclusive act of the Superior Council of the Judiciary (art. 71 a) of the Statute of Judicial Magistrates .



Given that this is an appropriate body with a multidisciplinary composition (Article 61 of the Statute of Judicial Magistrates), to claim that the promotion it has made is to persecute a disaffected person is an affront to this management body of the judiciary.

V. Persecution of lawyers

The draft report also insinuates that the lawyer has been persecuted as a result of his legal representation of the suspects in the "*1 February*" case.

The lawyer in question only represents four suspects involved in the case and has never been prevented from carrying out his duties throughout the process, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Throughout the investigation and when the case was referred to trial, the lawyer in question was never harassed by the judicial authorities, much less was he constrained in the exercise of his functions.



In criminal proceedings, lawyers perform their duties within the framework of articles 71/3 of the Code of Criminal Procedure and articles 43(d), (e), (f), (l), (o) and (q) of the Statutes of the Portuguese Bar Association, meaning that any activity performed outside these frameworks does not constitute legal representation

The mention of the persecution of the lawyer in question and the attempt to link it to the "1 February" case constitutes a *continuum* in the discourse of the detractors of the attempted coup d'état process and was intended to discredit both the process and the Guinean magistrates and courts in general.

VI. Resignation of the president of the STJ

At the Private Office of the Public Prosecutor at the Supreme Court of Justice (STJ), [REDACTED]

The crime under investigation is that contained in Law no. 14/97, of 2 December 1997, [REDACTED]

[REDACTED] pursuant to Article 15(m) of the Statute of Judicial Magistrates, the Superior Council of the Judiciary was asked to notify the suspect that he would be questioned in those proceedings.



To everyone's amazement, the lawyers in question have never used these mechanisms and are simply pushing the responsibility onto third parties.

Article 171 of the Code of Criminal Procedure states: "Any person who is unlawfully imprisoned may apply to the Supreme Court of Justice, by himself or by any citizen enjoying his political rights, for the writ of habeas corpus to be granted."

And Article 190 of the Code of Criminal Procedure states that "Any detainee may request the judge of the judicial district in the area where he is to order his immediate judicial presentation."

In other words, both habeas corpus for lawful detention and habeas corpus for unlawful detention can only be applied for by the people referred to in the two articles, as they are not known by the judicial authorities of their own motion.

The same guarantee of individual freedom is offered in military courts, as can be seen in Article 11(c) of the Code of Military Justice. Since the free exercise of a right is at stake, it is not at all legitimate to impute such illegality to the national authorities, all the more so knowing that under the terms of Article 7(2) and (3) the proceedings had been suspended for the purposes of understanding the negative conflict of competences.

The Attorney General and President of the Superior Council of the Public Prosecutor's Office


Bacar Biai

