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

PMGB/NV/0391/24

The Permanent Mission of the Republic of Guinea-Bissau to the United Nations presents its best compliments to the Special Procedures Division – United Nations High Commissioner for Human Rights in Geneva, and concerning document Refª AL GNB 1/2024, from the Special Rapporteur on the independence of judges and lawyers, has the honor of conveying the English translation of the communication from the Government of the Republic of Guinea-Bissau, on the above referenced subject matter.

The Permanent Mission of Guinea-Bissau to the United Nations avails itself of this opportunity to renew to the Permanent Mission of the Commonwealth of the Bahamas to the United Nations the assurances of its highest considerat[redacted]

New York, November 20th, 2024

THE
SPECIAL PROCEDURES DIVISION - UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

GENEVA

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O Procurador-Geral da República
[The Attorney General]

In response to Ref. AL GNB 1/2024 of 22 February 2024 from the Special Procedures Section of the Office of the United Nations High Commissioner for Human Rights, the following is clarified:

A- Previous question

i. The definition of a core of acts in a process, particularly criminal, the publicity of which is prohibited or reserved, is provided for in the Penal Code (article 80) and in article 11 of the Criminal Investigation Organisation Act.

ii. Thus, no intervener can make public the content of the acts to which they have access, because the violation of the secrecy of justice constitutes a criminal offence under the terms and for the purposes of Article 237 of the Penal Code, so some of the demands made by the commission will not be met because of our obligation to do so.

B- On allegations in the special procedure

i. We deeply regret the distortion of the purposes of special procedures, as we do not believe that, by virtue of the sovereignty of States to prosecute offenders, as recognised by Articles 4, 8, 9, 11 and 34/1 of the Palermo Convention and Articles 4, 30 and 65/2 of the Mérida Convention, the Human Rights Commission has to interfere in the

realisation of state justice to the point of insinuating the partiality of judicial bodies.

ii. The special procedure does not constitute, and cannot constitute, a body for analysing and reviewing domestic judicial decisions in each state.

iii. It is therefore offensive to claim that the suspects in the *"6 billion FCFA"* case were not informed of the reason for their arrests and that the order ordering their transfer to their cells made no mention of the offences to which they are accused.

iv. For the information of your supposed source, the charge of the crime is made in the order for the suspect to be charged, which is made known to the suspect before he is questioned, which was done under the terms of articles 60/1 and 2, article 63/4 and article 199/3 of the Code of Criminal Procedure (hereinafter CPP), so the claim that they only became aware of the crime they are charged with on 21 December 2023 is false. Furthermore, because they were being assisted by a group of lawyers, they could, if the formalities set out in article 63(4) of the CPP were not complied with, invoke the irregularity under the terms and for the purposes of articles 110 and 111 of the CPP.

v. The order for the constitution of a suspect, in which the crimes for which they are accused are listed, was issued on 28 November 2023 (folios 235-240 of the case file) and notified to the suspects on 30 November 2023 (folio 265 of the case file).

vi. On the other hand, the allegation that the suspects were prevented from contacting their lawyers does not correspond to the truth, since during the interrogation they spoke to their lawyers more than five times and within the framework allowed by Articles 14 § 3, paragraph 2 of the ICCPR and Article 11 § 1 "in fine" of the UDHR. However, we cannot hide a serious fact that made it impossible to contact the lawyers afterwards, which was the removal and subsequent attempted escape of prisoners perpetrated with the help of the National Guard, which is why, for security reasons, between the time of the escape

sponsored by this militarised police force and the recapture of the detainees, we cannot think of the accessibility of lawyers to the detainees.

vii. It's strange to say that the suspects were charged without taking into account the evidence they presented.

viii. The truth of the case shows that during the interrogation, both Suleimane Seidi (see folios 265 of the case file) and António Monteiro (see folios 267 and 268 of the case file) did not submit or request the submission of any evidence, as required by article 130/1 of the CPP. They would only be able to do so through the defence (which procedurally constitutes the second defence guarantee) and the unconstitutionality incident, that is, after the trial date had been set, when they could have done so until 29 December through the first defence guarantee, in this case, the contradictory challenge (article 205 of the CPP).

ix. With regard to the supposed *habeas corpus* for the illegal detention of the suspects, it is strange to note that the rapporteur's informant sources do not know how to calculate time limits, because to say that they were only brought before the investigating judge seven days later is to whitewash the fact that the period during which they were on the run with the National Guard is not computable for the purposes of detention, as they were outside the custody of the capturing organisation.

x. Furthermore, the ***terminus a quo*** of the time limits is calculated in accordance with the rules set out in article 85 of the Code of Criminal Procedure, which states that the "day on which the event occurs" that determines the time limit is not included in the calculation, in this case the date of the arrest, i.e. 28 November (article 85/4 of the Code of Criminal Procedure).

xi. Likewise, the ***terminus ad quem of*** the deadline ends 24 hours after the last day that corresponds to the date, i.e. 24 hours on 30 November (art. 85/4 CPP).

xii. However, before this date (30 November 2023), the suspect was helped to flee by the National Guard, a fact that was regrettably ignored in the special procedure, as it resulted in the death of the

protagonists and, since human life is the most valuable asset for a human being, which is proclaimed both in the Universal Declaration of Human Rights (art. 3) and in the International Covenant on Civil and Political Rights (art. 6/1), this episode should merit the special attention of the Commission and its rapporteur.

xiii. With this occurrence (the removal of prisoners through a pure act of force on the part of the executive, confirming its hostility towards the judiciary), the right to perform acts by virtue of a just impediment is extinguished (art. 145/3 and 146 of the CPC by reference to art. 2 of the CPP). In other words, the hours spent in detention and the period of the escape during which they were protected by the National Guard are not counted for the purposes of 48 hours, as the suspects were not physically in the custody of the capturing organisation.

xiv. If the escape undertaken with the help of the National Guard only ended on 1 December, a Friday, the count resumes under the terms of art. 85/4 and the *terminus a quo* begins on 2 December 2023, so the presentation of the suspects to the JIC on 4 December 2023 falls within the constitutional time limit of art. 40/1 CRGB, taking into account the provisions of art. 85/3 CPP.

xv. For your information, there is no legal time limit within which the judge is obliged to decide on pre-trial detention, as Article 40/1 CRGB refers to the suspect being submitted to the judge within 48 hours, for the purposes of assessing the assumptions of pre-trial detention and ensuring the adversarial process (Article 160/3 CPP). This understanding is corroborated by the doctrine of [redacted] when he states that *"the 48-hour deadline constitutes a time limit for the start of judicial questioning of the detainee" (in: Constituição da República da Guiné Bissau, anotada, 2019) p. 101).* On the other hand, *this time limit has been understood by case law as the maximum limit for presentation to the judge and not for the judge's decision* (habeas corpus), *nor even to conclude the interrogation (Ruling no. 78/ 200 1, STJ, 12-05-2001).*

xvi Since there is no legal time limit for the decision on pre-trial detention, the ordinary time limit set out in article 83/1 of the CPP is

used, so stating that the pre-trial detention was ordered two days later, i.e. on 8 December 2023, shows that, in the end, the decision falls perfectly within the time limit set out in article 83/1 of the CPP, since the suspects were submitted to it on 4 December 2023 and it decided on pre-trial detention on 8 December (four days later).

xvii. With regard to the date of the provisional indictment, it should be clarified that, with the decree of pre-trial detention on 8 December 2023, the duration of this coercive measure was increased to a further 20 days (art. 161/1 al. a) CPP), so the *habeas corpus* requested on 21 December is innocuous to produce the intended effects, as demonstrated by Ruling no. 01/2024 of the Supreme Court of Justice.

xviii. Furthermore, the suspects were duly notified of the provisional indictment on 21 December 2023, as can be seen on page 193 of the case file.

xix. The rapporteur's assertions that the Supreme Court of Justice ruled on the *habeas corpus* after the 48-hour legal deadline come as a surprise. This is not entirely odd, as there is a misunderstanding here regarding the time limit for deciding ***habeas corpus for unlawful detention*** and the time limit for deciding ***habeas corpus for unlawful imprisonment***.

xx. For your information, the deadline for a decision on *habeas corpus* for unlawful detention is laid down in Article 173 of the Criminal Procedure Code, which reads: *"Within **seven days** of receipt of the application, once the necessary steps have been taken, a decision on the application shall be preferred."*

xxi. In view of this procedural truth, it is strange to invoke 48 hours for the *habeas corpus* decision, since the suspects never applied for *habeas corpus* on the grounds of unlawful detention and the application

decided on 25 January 2024 was a decision on *habeas corpus* for unlawful detention and not on *habeas corpus* regulated in article 191/2 of the CPP.

xxii. On the other hand, it is symptomatic that the real intention of the special procedure is to collage this investigation with political struggles, and this has become all too evident when there is talk of *the executive interfering in judicial affairs, in a context in which political demonstrations are prohibited, and the supposed resignation of the President of the Supreme Court of Justice,* the latter situation exhaustively explained in the previous reply sent to the special rapporteur.

xxiii. This attempt at collage is belied by the fact that the government of which the two suspects were members remained in office until 20 December 2023. If this is the case, how is it possible for the government to manipulate the judiciary against the two in the same period, if they are in fact from the same party?

xxiv. On the other hand, the Rapporteur wants to substitute himself for the duties of the suspects' lawyers when he claims that there have been procedural irregularities, because, in our system, before the new act has finished or within the five days following it, the interested parties must argue the irregularities, under penalty of estoppel (art. 110/1 by reference to art. 108/1 CPP).

xxv. Now, since the interested parties have not argued against the alleged irregularity, given the principle of *"dormientibus non succurrit jus",* there is no other remedy to save them from the alleged omission and neither can the Commission's report replace the subjective right of procedural interveners.

xxvi. On the subject of irregularities, it is good to clarify that with regard to the alleged lack of functional powers of the Public Prosecutor's Office to issue an arrest warrant out of flagrante delicto, it is once again clear that the source of the information has either failed to tell the truth or has no knowledge of the Guinean procedural legal system, since he is blatantly and selectively ignorant of the content of Article 186/1 of the CPP, which reads: *"Except for magistrates and lawyers, any other*

procedural actor may be detained by order of the judge or public prosecutor (...)"

xxvii. Ignoring this rule discredits all of the informant's information, since the facts he has reported and passed on to the rapporteur are based on statements made by political *"carteleros"*, dressed up as commentators, who circulate on Guinea-Bissau's radio stations.

xxviii. This is why we regret the fact that such a serious organisation as the United Nations High Commissioner for Human Rights orders the opening of a special procedure based on speculation and opinions taken from political party communiqués, to the point of confusing the judicial function with political functions.

xxix. However, it is common knowledge that corruption, as a category of transnational crime, is censured by the United Nations under the terms of articles 4, 8, 9, 11 and 34/1 of the Palermo Convention and articles 4, 30 and 65/2 of the Mérida Convention.

xxx. Objecting to their investigation on the basis of political speeches not only embarrasses the organs of the United Nations, but also indicates discrimination on the basis of the social origin of the suspects, as it contravenes the provisions of Article 26 of the ICCPR. In the ***"100 million FCFA"*** case involving the former Minister of Health (a member of the APU-PDG party), who was summoned and arrested on the same day, the same petulance was not observed as in the present case, since no one notified Guinea-Bissau to explain the reasons for opening the enquiry and why he had been arrested out of flagrante delicto; in the same way that, in the ***"People's Rice"*** case, which involved the former Minister of Agriculture (a PRS activist) and who, accompanied by the Guinean Human Rights League, the judicial police tried to arrest in his work office and out of flagrante delicto, the matter went unnoticed by the special rapporteur's informant, because these are ***living beings*** and those (Suleimane

Seidi and António Monteiro), are ***human beings,*** in other words, to paraphrase Frantz Fanon, Guinea-Bissau is *"inhabited* by *different species",* one made up of ***feudatories*** **and** ***pre-fabricated bourgeoisie*** (elite indigenate) for whom the law must be lenient, and the other made up of the ***gentiles,*** for whom *dura lex sed lex.*

xxxi. In these circumstances, who is impartial? The special rapporteur's informant or the Public Prosecutor's Office, which investigates all politically exposed people regardless of their political and social background?

C- Conclusion

In view of the above, it is our conviction that:

a) The State of **Guinea-Bissau**, through the rules of criminal procedure, guaranteed the suspects the broad guarantee of defence proclaimed in art. 42/1 CRGB, art. 7/1 al. c) of the Banjul Charter, art. 14 § 3, paragraphs 1 and 2 of the ICCPR and art. 11/1 of the UDHR. These guarantees were brought to the attention of the suspects on the day of the first interrogation, so much so that, although they waived the first guarantee (contradictory challenge), they implemented not only the challenge under the terms of article 216 of the CPP, but also the remedy contained in article 126 of the Constitution of the Republic;

b) When they applied for a writ of *habeas corpus* under the terms of article 171 of the PPC, they were aware that its decree depends on the fulfilment of certain conditions, without which the writ would be rejected, and so the rejection cannot be interpreted as a violation of the provisions of article 9 of the ICCPR, and even less so of article 14 of the same law;

c) The entire process took into account both the substantive and adjective aspects of this type of investigation.

d) With regard to the minimum rules on the treatment of prisoners, suspects are held in the same conditions as other suspects, taking into account the principle of equality of citizens (Art. 24 CRGB),

by reference to art. 6 and art. 57 of Decree no. 12/2011, of 3 February.

e) To claim that the criminal proceedings against suspects Suleimane Seidi and António Monteiro are politically motivated is to ignore the legal nature of the crimes of political office holders, since, according to the preamble to Law 14/97 of 2 December 1997, *"Crimes committed by political office holders in the exercise of their functions constitute the infringement of goods or particular values relevant to the constitutional order, the promotion and defence of which constitute the functional duty of political office holders. Therefore, there is a connection between this criminal responsibility and political responsibility, transforming criminal censure into political censure, with the necessary consequences in relation to the performance of the office"*, hence the possibility of being suspended from office under the terms and for the purposes of article 35/1 of Law 14/97.

The Deputy Public Prosecutor,

Juscelino De Gaulle Cunha Pereira