



Sintidu di justisa

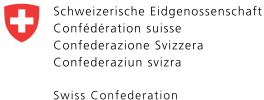
Participatory barometer on the perception and experience of the population: How to improve the governance of justice in Guinea-Bissau

Executive Summary

This work is part of the project "Making the black box transparent: new mechanisms and capabilities for active citizenship in the monitoring, evaluation and advocacy of public policies in the justice sector", and was carried out thanks to European Union funding.



Interpeace's peacebuilding efforts worldwide are possible thanks to the strategic partnership with the governments of the Netherlands, Sweden and Switzerland



Background

The justice sector in Guinea-Bissau is complex and characterised by a plurality of practices, where the formal justice system coexists with informal and traditional structures, which are highly valued by the population. While reform of the justice sector has taken place over the past decade, the process is plagued with recurrent challenges in its implementation. The linkage between the traditional and formal justice is at the core of these reforms.

In this context, Voz di Paz and Interpeace sought, through its joint programme over the past two years, to create new mechanisms and capacities for an active citizenry, empowered to monitor, evaluate and advocate for adequate public policies in the justice sector. An essential part and starting point was establishing a participatory barometer to provide quantitative information on state of the governance of justice in Guinea-Bissau that would form the basis for creating monitoring mechanisms of progress.

The conclusions and recommendations below, were formulated by the participants in the analysis sessions, they are not exhaustive and are meant to be read as guidance.

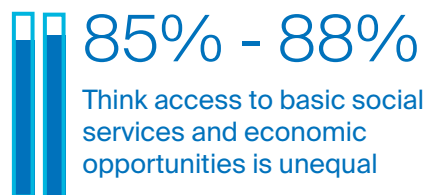
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Main findings

1) Formal justice procedures are neither sufficiently transparent nor egalitarian

The Guinea-Bissau population shows **low levels of trust in the functioning of formal justice system**. The participants highlighted a lack of transparency in the formal justice system that is coupled with a lack of compliance with some legal procedures and requirements. For example, at times no formal documents or registration of testimonials are gathered. Many stated that justice operators¹ do not deal with cases following procedures, and citizens think they do not provide adequate information. The population considers justice to be biased, favouring some over others, and that the basic rights of citizens are not respected. **Social inequality** in the country underlies this perception of an unfair justice system and is also stated as a barrier to access justice, where those with financial means have an advantage. Participants insisted that one cannot speak of justice without speaking of social justice, which is considered a weakness in Guinea-Bissau. Finally, mistrust of the judiciary is also explained by lack of **understanding of the functioning of formal judicial sector** – due to the complex procedures, the heavy bureaucracy, and the use of complex legal terminology. This is particularly prominent in the population with low levels of education, who claim poor access to legal information, and in turn also generates a poor understanding of a person's civic rights and duties.



¹ For the context of this study, the term “justice operators” refers to the different professionals of the justice sector, notably judges, justice officers, and lawyers.

2) Corruption: the main obstacle of justice

Corruption was clearly highlighted as the main impediment to a fully functional justice sector, and it affects, both directly and indirectly, the lives of the entire population. Citizens perceive a high degree of interference in the functioning of the formal justice, and judicial decisions are viewed as heavily influenced by money – where people with economic means generally find favourable outcomes. Aggravating factors are the perceived lack of compliance with laws and a professional code of ethics by justice operators, and lack of effective supervision of their actions. Half of the population considers the costs of formal justice to be high, and most say the main reason is corruption, creating an environment where ‘extra payments’ are made during the different stages of the judicial process. Delays in the proceedings are also perceived to be due to corruption, which blocks the smooth running of the processes if the “requests” are not satisfied. As such, corruption is considered the greatest obstacle to the justice system in Guinea-Bissau.



39%

of those who couldn't solve their problem think the main obstacle to resolution is corruption



73%

Think money is fundamental in judicial decisions



53%

Think formal justice costs are high of which 39% think the main reason is corruption

3) Technical qualification and professionalism are key elements for an effective justice

The population surveyed deemed the qualification and competency of the justice personnel to be a direct factor enhancing the delivery of justice to problems brought to the system. Furthermore, it was mentioned that justice operators that possess high levels of technical competencies and uphold strong work ethics are a key requirement in making fair decisions and ensuring a high-quality judicial provision. Some participants praised the work performed by the Access to Justice Centres (CAJ), working under the tutelage of the Ministry of Justice, whose objective is to facilitate access to information and provide legal guidance to the most vulnerable population. Despite the efforts made by the State to expand the access to judicial services, **the number of competent personnel in service is still insufficient to cover national needs.** Accord-



64%

Had their problem solved in formal justice of which 50% think the main reason is the competent personnel

ing to participants, improving the response of the judicial services requires creating adequate working conditions for personnel, providing its servants with means and resources, and recognizing the value of its justice operators.

4) Politicians, Defence and Security Forces are perceived as actors jeopardizing the independence and effectiveness of the formal justice system

Trust in a fair and equal justice system in Guinea-Bissau is undermined by a common perception that the formal justice system is deeply affected by the interference of influential actors. Expressions like “Guinea-Bissau's justice is applied only to the poor” demonstrate the population's perception of the justice system. According to participants, there is a need for **greater independence of the sector from politics and political appointments**. It was noted that judges should have the courage and determination to denounce those who hinder the good functioning of justice, especially the political elite, and some members of the defence and security forces. Their perceived constant interference is deemed to affect the independence of the formal justice system.



55%

Think there is a lot of interference by influential people



47%

Think influential people have a lot of impunity



51%

Think Defence and Security Forces and politicians interfere the most



It is important to note that despite the police not being a part of the judicial system, most of the population (77%) would go to them first to resolve a problem - arguably because of their proximity to citizens both in the urban and rural areas. However, the police was also identified by participants as interfering in justice processes. As such, the police are an essential actor to include in efforts to improve the justice system in Guinea-Bissau.

5) Lack of law enforcement and application of ethics and deontology principles prevent people from collaborating (denouncing and testifying) with the judicial sector

Half of the population (54%) does not feel safe to report or testify. This is largely due to the absence of confidentiality mechanisms and in the justice operators. In fact, even if their professionalism is mentioned as a key need, **justice operators are perceived to lack respect for professional ethics and deontology and for the law.** This further aggravates citizen's mistrust of the formal justice system and impedes collaboration. However, culturally, collaboration with the justice system is perceived as 'treason to the community'. Collaborators are often frowned upon by their fellow community members, and often risk their lives by collaborating. The discussions among participants revealed that professional ethics and deontology are principles that must guide the professional performance of the judicial sector. This would create the conditions of trust for not only the proper functioning of justice sector, but also to encourage citizens to come forward with information.



54%

Do not feel safe to report and testify crimes



73%

Think justice operators don't respect the law



69%

Think justice operators don't respect professional norms

6) Collaboration with the justice system is conditioned by insecurity

Most Bissau-Guineans are aware that as citizens have a role to play in ensuring an effective and efficient justice system in the country. However, people seem to rarely make complaints in communities or be willing to voluntarily testify in judicial cases. This lack of collaboration is explained by the feeling of insecurity in denouncing and testifying. Women were particularly affected with 40% feeling very unsafe. In addition, more than 50% surveyed in urban areas recorded high levels of insecurity in reporting crimes or injustice. As was stated above, this mistrust comes from the perceived inefficiencies and lack of confidentiality conditions of the judicial system, but also from social norms discouraging collaborators from cooperating as they are deemed as “traitors” in their communities. As such, **citizen’s awareness regarding the importance of their participation in the justice system is not sufficient to overcome this challenge and ensure collaboration.** Ensuring security of witnesses and collaborators would therefore be essential to improve justice in the country.



64%

Think people can contribute to the good functioning of justice



46%

Think people never report crimes in the communities



47%

Think people never volunteer to testify

7) Traditional justice could strengthen the formal justice reconciliation capacity

Both the formal and traditional justice systems have coexisted for many years, where traditional justice is enforced by traditional leaders, and formal justice exercised and institutionalized by the State. With no alternative dispute resolution mechanisms yet institutionalized, the formal justice system is the only instance with effective and sovereign decision-making power. This is recognized by the population, with legality and compliance with laws weighing among the most relevant factors for most those who prefer to resolve their disputes through formal justice. However, the vast majority of the population believes that some conflicts are best resolved through traditional justice, which – despite its lacunae regarding vulnerable groups such as women and youth – is considered by most of the population to be the best form of conflict resolution. The nature of traditional justice being geared towards reconciliation and the use of local knowledge explains why this system is preferred. As a result, the majority of the population insists that the formal justice system must find ways to collaborate with the traditional justice system in conflict resolution. Therefore, the results of the barometer do not point to a dichotomy or a dispute between formal and traditional justice. On the contrary, they signal the **urgent need for collaborative and coordinated work between both systems**, in the search for justice and social peace.



38%

Think formal justice is the best way of conflict resolution 64% of which because of its legality and obedience to the laws



91%

Think there are conflicts better resolved in traditional justice



61%

Think traditional justice is the best way of conflict resolution 30% of which because of its reconciliation capacity 20 % of which because of its knowledge of reality



66%

Think formal justice should always ask for traditional justice's collaboration

Access to Justice

Cross-checking the access-related data between demographic variables, access to justice seems in fact to be mainly dependent on social factors. People with higher education tend to use the justice mechanisms available more than those with no schooling. Women tend to also make much less use of courts and police than men (20% less). The difference in terms of gender can be explained through socio-cultural factors.² At the geographical level, there are four regions with lower levels of access than the national average (Quinara, Bafatá, Gabú and Oio). The absence or distance of state infrastructures, and the sociocultural importance of keeping the peace in the community were identified nationally as the main impediments to access formal justice. Finally, the costs of justice are considered high by most of the population and in all the regions.

² For further analysis on the constraints to women's participation in Guinea-Bissau, see the report *The Voices of Women* (2018) available at https://www.interpeace.org/wp-content/uploads/2018/10/2018-Guinea-Bissau_Fala_di_Mindjer-Eng-Web.pdf and the summary of the report on women's experience with traditional justice, *Nô Obi Mindjer ku Mininu* (2019) available at https://www.interpeace.org/wp-content/uploads/2019/12/2019-Traditional_Justice_Exe_Sum_EN.pdf.

8) The performance of justice operators is essential to guarantee the population's trust in the judicial system

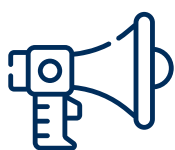
Many factors were raised by the population with regard to the performance of justice operations. According to the vast majority of respondents, greater control over justice operators and officials is needed. Many have indicated that operators do not respect the laws or rules in place, nor do they respect the minimal professional standards and ethics required by the sector. Failure to respect professional ethics and de-

ontology, particularly in matters of confidentiality, translates into citizens' insecurity and hinders civic participation. **Transforming the sector will only take place if greater attention is put on adhering to professional standards required of the sector.** Failing to do so will only further deepen the mistrust in the judicial system.

Recommendations for the way forward

1) Strengthen awareness of the legal frameworks and mechanisms that protect citizens' rights

Related to conclusion 1



Disseminate the content of the Constitution of the Republic and the sub constitutional norms through accessible means such as radio, using language that is accessible and easy to understand. The use of local languages is also critical to this recommendation.



Raise awareness of the population and justice operators regarding citizens' fundamental rights and the functioning of the judicial system, strengthening citizens' knowledge and fostering operators' compliance with the principles of justice provision.



Enhance civic education in schools, including a specific subject for the systematic study of themes related to citizenship and justice.

2) Improve the working conditions and capacity of judicial bodies



Related to conclusions 2 & 3



Ensure fair pay and wages and grant benefits consistent with professional careers of the sector, valuing the justice operators' important role, as well as defining criteria to monitor their performance.



Restructure judicial establishments in the country, modernizing courts, police stations, prisons, and other facilities. This is needed to ensure the necessary working conditions for justice operators, enabling quality justice provision.



Expand CAJ's (Access to Justice Centres) skills and geographical coverage to cover the entire national territory and accompany users throughout the entire judicial process and ensuring better access to justice to vulnerable groups.

3) Reinforce supervision over the selection and performance of justice operators

Related to conclusions 1, 2, 5 & 8



Apply a careful and rigorous selection of justice operators, by launching public tenders for some positions, making the public selection of justice operators competency-based, and promoting equality of opportunities. This would nurture law and procedural compliance through transparency and accountability and limit external interferences, thus fostering trust by the population in the judicial instances and decision-making.



Ensure a functional mechanism for inspection of the justice operators' performance, to break the culture of impunity and interference and strengthen anti-corruption practices. This would include **supervising judicial revenues** to ensure they are invested in useful purposes that contribute to improve the functioning of the system.

4) Improve the proximity and access to justice institutions

Related to conclusion 3



Expand the geographic coverage of courts according to the territory, ensuring access to justice at the local level by diminishing physical distance to justice institutions and thus increasing access possibility for all, including the more vulnerable groups.



Strengthen the sectoral courts, to fulfil its original role of providing judicial services at the local level, ensuring greater decision-making autonomy and increased proximity with the population.



Reduce the economic costs of access to justice which constitute an obstacle for the sustaining of judicial processes by citizens, especially for vulnerable groups who have less economic means. This is particularly essential for rural communities, women, and youth.



Raise public awareness and reinforce the reconciling role of formal justice, to tackle social pressures and stigma at the community level obstructing access to the formal justice system in the country and undermining trust.

5) Implement protection measures for complainants and witnesses of crime

Related to conclusions 5 & 6



Submit for approval by the National Assembly the draft project for protection of witnesses and complainants that is currently being developed and is considered key to ensure citizens protection in the framework of their contribution with justice institutions.



Create a safe phone line for anonymous complaints, which could improve the functioning of the system and, by allowing complainants to keep their physical and moral integrity, could increase collaboration in the communities.



Implement regulations and a framework for witnesses' protection in judicial cases, to ensure their safety and well-being and enabling the smooth cooperation between citizens and institutions.



Raise the awareness of the population on the collaborative role witnesses have in the reinforcement of well-being and security in communities, and thus break the social barriers deterring witness participation.

6) Strengthen collaboration between formal and traditional

Related to conclusion 7



Collect and include traditional leaders' opinions in the formal judicial processes, and particularly in matters of inheritance and land tenure rendering decision making closer to communities' reality and more easily accepted by them.



Judicial homologation of some of the decisions of traditional justice, thus granting them recognition by the State and establishing rights and obligations between litigant parties. This would allow formal justice to increase its proximity with communities ensuring fair resolution of conflicts at the community level.



Advocate with competent authorities, such as the Ministry of Justice and Public Prosecution, to foster this collaboration and structure it in a sustainable and locally owned way.

7) Strengthen the traditional mechanisms of conflict resolution with Human Rights perspectives

Related to conclusion 7



Build the capacity of traditional leaders on human rights and mechanisms for the peaceful resolution of conflicts to align their practices with the precepts of the democratic rule of law, especially the dignity of the human person and gender equality, and prepare them for the new social, political and legal configuration of Guinea-Bissau.

8) Strengthen social control over justice operators' performance

Related to all conclusions



Enhance citizens participation mechanisms aiming at an effective local governance of justice which guarantees its fairness and fosters vertical social cohesion. This would respond to the identified need of greater supervision and ensuring trust in the justice system by the population. Some possible pathways could be, for example, the work of an observatory, investment in electronic governance instruments, and the establishment of spaces for citizen intervention.

9) Continue monitoring progress using the barometer

Related to all conclusions



Using the Justice Barometer regularly, every three or five years, would enable the sector to monitor its progress on the various issues raised above. This would also allow to build greater trust in the population and assess how perceptions evolve over time.



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