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Guinea-Bissau

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Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–8	4
A. Methodology for preparation of the report.....	1–3	4
B. Background information about the country.....	4–8	4
Political system and situation.....	4–8	4
II. Legal and institutional human rights framework.....	9–19	5
A. Legal human rights framework.....	9–11	5
1. National level.....	9	5
2. International level.....	10	5
3. Regional level.....	11	6
B. Institutional framework for human rights and the rule of law.....	12–19	6
1. President of the Republic.....	13	6
2. National People’s Assembly.....	14	6
3. The Government.....	15–16	6
4. The judiciary.....	17	7
5. Organization of the judiciary.....	18	7
6. Civil society organizations.....	19	7
III. Promotion and protection of human rights.....	20–77	7
A. Civil and political rights.....	20–30	7
1. The right to life.....	20–26	7
2. The right to physical integrity.....	27–30	8
(a) Public order police.....	29	9
(b) Prisons.....	30	9
B. Protection of the rights of the child and the rights of women.....	31–40	9
1. Women’s rights.....	32–37	9
(a) Early/forced marriages.....	34–35	10
(b) Female genital mutilation.....	36–37	10
2. Human rights of the child.....	38	11
3. Trafficking in human beings.....	39	11
4. Rights of persons with disabilities.....	40	11
C. Economic, social and cultural rights.....	41–56	12
1. The right to own property.....	42–43	12
2. Protection of workers’ rights.....	44–46	12
3. The rights of the family.....	47–48	13

4.	The right to inherit	49	13
5.	The right to health	50–53	13
6.	The right to education and to culture	54	14
7.	Consumer rights	55–56	14
D.	Freedoms	57–77	15
1.	Freedom of intellectual, artistic and scientific creative effort	58–59	15
2.	Freedom of expression and of information	60–61	15
3.	Freedom of the press (article 55, paragraph. 1, of the Constitution)	62–63	16
4.	Freedom of conscience, religion and worship	64	16
5.	Freedom of movement	65–66	16
6.	Freedom of assembly	67	17
7.	Freedom to strike	68	17
8.	Freedom of association	69–70	17
9.	Constitutional guarantees in Guinea-Bissau	71–75	17
10.	Access to justice	76–77	18
IV.	Raising public awareness of human rights	78–80	19
V.	Cooperation with human rights mechanisms	81–83	19
1.	National level	81	19
2.	Regional level	82	19
3.	International level	83	19
VI.	Achievements	84–85	19
VII.	Good practices	86	20
VIII.	Challenges and priorities	–	20
IX.	Need for capacity-building and technical assistance	87	21
X.	Conclusion	88–89	21

I. Introduction

A. Methodology for preparation of the report

1. The Prime Minister empowered the Minister of Justice to oversee the preparation of the report of Guinea-Bissau to be considered in the universal periodic review process. The Ministry of Justice is the State body responsible for human rights-related matters.

2. To facilitate the task, the Minister of Justice issued Order No. 35 of 4 September 2009, which provided for the establishment of a working group composed of representatives of the Office of the Prime Minister; the Ministry of Justice; the National Human Rights Commission; the Ministry of Foreign Affairs, International Cooperation and Communities; the State Secretariat for Youth, Culture and Sports; the Institute for Women and Children; the Chamber of Commerce, Industry and Agriculture; the Bar Association; and the National Union of Workers of Guinea-Bissau. In accordance with the Order, which is annexed hereto, experts from the United Nations Development Programme (UNDP) and the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS) were also added to the group.

3. Civil society organizations and NGOs working in the field of human rights were actively involved in preparing the report, in addition to the ministries, government departments and other State bodies directly or indirectly involved in human rights issues. A workshop held to discuss and endorse the report at the Ministry of Justice on 22 January 2010 was attended by public- and private-sector institutions, NGOs working in the field of human rights, such as the Human Rights League of Guinea-Bissau and the Human Rights Observatory, trade union organizations, women's organizations and representatives of churches and other organizations, including the United Nations.

B. Background information about the country

Political system and situation

4. Since the start of the national liberation struggle, the Republic of Guinea-Bissau has undertaken to respect the dignity of the human person and the primacy of the Universal Declaration of Human Rights. This undertaking has been enshrined in the various texts of the Constitution of Guinea-Bissau as it has been revised over the years, including the Constitution currently in force. Guinea-Bissau has been a sovereign, secular, unified and independent State since 1973. The sovereignty of the State rests with its people, as established in articles 1 and 2 of the Constitution.

5. The system of government is based on the principle of the separation of powers. The different branches of government are therefore structurally independent, although operationally dependent. The legitimacy of the legislative branch is underpinned by the legislative elections held every four years, in which 100 members of parliament are elected by the country's various constituencies by universal, secret ballot. The Government is bound by the provisions of the Constitution and adheres to the principle of democratic legality. All laws and other legal instruments issued by the central government and local authorities must conform to the Constitution, as stipulated in its article 8. Article 29 of the Constitution provides for the automatic application of fundamental rights and rules of international law.

6. Members of the defence and security forces have no political affiliation and must not engage in political activism or lead political parties, pursuant to article 21, paragraphs 1, 2

and 3, of the Constitution. Unfortunately, despite this constitutional prohibition, in the past 12 years the country has witnessed a pernicious tendency on the part of certain political leaders to use the military as an instrument for furthering their political aims.

7. Under the clear-sighted leadership of the engineer Amílcar Cabral, the country fought for national liberation for 11 years. Independence was declared in 1973, in the forest of Boé, at a constituent assembly chaired by General João Bernardo “Nino” Vieira.

8. Guinea-Bissau has gone through a civil war (the war of 7 June 1998) and several coups d'états and armed uprisings led by members of the military who have held the reins of political power. These conflicts have caused political instability and disruption for the population. The consolidation of peace is essential to the country's development. Its history has been marred by the assassination of several chiefs of staff, the President of the Republic, other political leaders and civilians. March 2009 was a devastating month for the country and a time of great sadness. To date, the perpetrators of these acts have been neither brought to justice nor even identified. It is essential to fight against this culture of impunity in order to instil among the people an awareness of the inviolability of the right to life and of the need to start afresh and work to foster peace, employment and development. Drug trafficking was a serious problem for Guinea-Bissau in 2008 and 2009. In response, the Government has advocated and implemented additional measures to pursue its unflagging efforts to combat this subregional scourge.

II. Legal and institutional human rights framework

A. Legal human rights framework

1. National level

9. The Constitution of the Republic, the Criminal Code, the Civil Code, the General Labour Act, the Staff Regulations of the Civil Service and the Jurisdictional Statute on Minors.

2. International level

10. *International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly in its resolution 2200 A (XXI) of 16 December 1966 (resolution 3/89, published in the supplement to issue No. 9 of the *Boletim Oficial*, of 3 March 1989); *International Covenant on Economic, Social and Cultural Rights (resolution 4/89, published in the supplement to issue No. 9 of the *Boletim Oficial*, of 3 March 1989); *Protocol to the Covenant (resolution 3/92, published in the supplement to issue No. 4 of the *Boletim Oficial*, of 29 January 1992); *Convention on the Elimination of All Forms of Discrimination against Women (ratified by the Republic of Guinea-Bissau by resolution 14/85); *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (approved by resolution 24/PL/ANP/07); *Convention on the Rights of the Child (ratified by resolution 6/89, published in the supplement to issue No. 16 of the *Boletim Oficial*, of 16 April 1990); *International Convention against the Taking of Hostages, adopted on 18 December 1979 in New York (resolution 16/87, published in the supplement to issue No. 44 of the *Boletim Oficial*, of 6 November 1987); *Ratification of the protocol on the provisions governing the representation of African networks and African Government members on the International Labour Organization Governing Body (resolution 6/86, published in issue No. 26 of the *Boletim Oficial*, of 28 June 1986); *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (published in issue No. 6 of the *Boletim Oficial*, of 11 February 2002); *ILO Convention No. 81, of March 1977 (published in issue

No. 31 of the *Boletim Oficial*, of 1 August 1990); *ILO Convention No. 138 concerning the Minimum Age for Admission to Employment (ratified by resolution 9/2006 of 30 November 2006; not promulgated).

3. Regional level

11. The African Charter on Human and Peoples' Rights (resolution 20/85, published in the supplement to issue No. 49, of the *Boletim Oficial*, of 7 December 1985); *the African Charter on the Rights and Welfare of the Child (resolution 23/2007 of 19 December 2007); *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (resolution 25/2007 of 19 December 2007, promulgated on 28 February 2008); *the Organization of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa (resolution 20/89, 3, published in the supplement to issue No. 26 of the *Boletim Oficial*, of 27 June 1989, adopted by the Assembly of Heads of State and Government at its regular session on 10 September 1969).

B. Institutional framework for human rights and the rule of law

12. The institutional and constitutional framework established in article 59 of the Constitution plays a pivotal role in the promotion and protection of human rights by the President, the National People's Assembly, the Government and the courts.

1. President of the Republic

13. The President is the Head of State, a symbol of national unity, the guarantor of independence and of the Constitution, and the Commander in Chief of the Army. The President is elected for a term of five years by an absolute majority of votes cast in free, universal elections by secret ballot.

2. National People's Assembly

14. The National People's Assembly is the country's supreme legislative and political oversight body and represents all citizens of Guinea-Bissau. It takes decisions on key issues of domestic and external State policy. Assembly members are elected by the electoral constituencies defined by law in regular, universal, free, fair and direct elections by secret ballot. As a legislative body, the National People's Assembly is responsible for the passage of laws and thus also for the promotion and protection of human rights. It may establish commissions of inquiry to investigate and question the Government on any situation involving human rights violations.

3. The Government

15. The Government is the executive body responsible for setting general State policy in accordance with the programme approved by the National People's Assembly. It is composed of the Prime Minister, ministers and secretaries of State.

16. The Prime Minister is the Head of Government and is appointed by the President to direct and coordinate the Government's actions, ensure the implementation of legislation and exercise the powers conferred upon him or her under the Constitution and other laws. The executive branch is somewhat unusual in that the President has the power to preside over the Council of Ministers when he or she deems fit; thus, the executive branch is subject to a semi-presidential regime which nonetheless incorporates many aspects of a full presidential system. The Prime Minister must report on the Government's activities to Assembly members at regular intervals and whenever these representatives so request. The presentation is followed by a discussion of whatever issues the Assembly members deem

pertinent. The Prime Minister also presents a summary report on the Government's activities to the President. The Government of Guinea-Bissau has a key role to play in the promotion and protection of human rights. This role is performed by various ministries, including the Ministry of Justice, Ministry of Health, Ministry of Agriculture, Ministry of Education, Ministry of the Interior, Ministry of Foreign Affairs and Communities, Ministry for the Civil Service and Modernization, and the Ministry for Women, Families, Social Cohesion and Poverty Reduction. There are also a number of independent administrative institutions and independent mechanisms for the promotion and protection of human rights, including the National Human Rights Commission, the National Press Council, the National Electoral Commission and the Institute for Women and Children.

4. The judiciary

17. The courts are sovereign institutions that have been empowered to administer justice in the name of the people. The Supreme Court of Justice is the highest court in the country. The judges that sit on the Supreme Court are nominated by the Supreme Council of the Judiciary and appointed by the President. The judiciary is composed of the Supreme Court and the other courts established by law. The courts enjoy full autonomy and are bound only by the law. The Supreme Council of the Judiciary is the highest managerial and disciplinary body of the judiciary.

5. Organization of the judiciary

18. The courts of Guinea-Bissau and their operation are regulated by Judicial Organization Act 3/2002 of 19 March, which covers the Supreme Court, the district courts, regional courts, commercial courts, courts of first instance, and the administrative, fiscal and audit courts. Military courts are regulated under another law.

6. Civil society organizations

19. There are a number of civil society organizations working to address human rights issues, including the Human Rights League of Guinea-Bissau, the Human Rights Observatory, the Association of the Friends of Children (Associação dos Amigos das Crianças, or AMIC), the National Network to Combat Sexual Violence (RENLUV), and the Civil Society Movement, which together play an important part in promoting and protecting human rights through prevention, reporting and awareness-raising activities.

III. Promotion and protection of human rights

A. Civil and political rights

1. The right to life

20. In the legal order of Guinea-Bissau, the right to life is at the top of the hierarchy of legally protected rights and constitutes both the cornerstone and the apex of this legal order. Accordingly, the human person is a central focus of the Criminal Code. All other rights are meaningless if the right to life is not respected. The right to life is protected even during the most difficult times; as stipulated in article 31, paragraph 2, of the Constitution, the legislative provisions establishing the right to life remain in full force even during states of siege or emergency. Guinea-Bissau has abolished the death penalty in order to protect the right to life. However, despite this legal protection, given the current state of affairs in the country, there is an incongruity between the legal provisions and the reality on the ground in terms of respect for life.

21. In 2009, the country witnessed horrendous scenes of gratuitous killing during a wave of assassinations of prominent politicians and citizens. A number of murders were committed by individuals in different parts of the country. However, although offences of this kind have been reported to the Public Order Police, the Judicial Police and the Public Prosecutor's Office for investigation and trial on a fairly frequent basis, in most instances no conviction is handed down owing either to the slow pace at which the courts operate or to the mishandling of the case.

22. In March 2009, the Army Chief of Staff and Major General was assassinated by what is presumed to have been a bomb planted in his offices. After his assassination, the Army was in disarray and, in the absence of a successor able to keep order in the military ranks, a group of unidentified, armed persons attacked the official residence of the then President of the Republic and beat him to death. These tragic events shocked the national and international communities and revealed the extent of disrespect for the rule of law in the country.

23. Two commissions were established to carry out inquiries in the aftermath of the two assassinations of March 2009. The Government set up a national commission of inquiry composed of five politicians, three military officers and three judges to identify those responsible for the assassinations and the reasons underlying their actions. In addition, the Army set up a commission composed entirely of military officers to investigate the circumstances behind the death of the former Chief of Staff, since the assassination took place at his headquarters. Five military officers, including a former chief of staff of the Air Force, were subsequently arrested on suspicion of direct or indirect involvement in planning and executing the assassination. Upon concluding its investigation, the commission produced a final report and handed the suspects over to the Public Prosecutor's Office.

24. The work of the national commission of inquiry was hampered by a lack of technical resources to support the investigation process. This situation posed a sizeable obstacle to its effective progress and was the main reason behind the delay in the inquiry's conclusion. Concerns have been widely expressed about these constraints on the commission's work. The weakness of national institutions, in terms of the technical resources that they require in order to efficiently perform their work, has pointed up the need for international assistance in the inquiry process. The current Government has a particular interest in the case and has undertaken to ensure that those responsible for this atrocity may be brought to justice. To this end, it has requested international assistance in the investigation.

25. On 5 June, the former Minister of National Defence and the former Minister of Territorial Administration, who was also one of the presidential candidates, were reportedly killed by officers of the defence and security forces for resisting arrest after an alleged coup attempt. These killings were vehemently condemned by the Prime Minister, who, speaking on behalf of the Government, has demanded an accounting from the leaders of the defence and security forces, stating that: "Our citizens can no longer endure this gratuitous loss of life; we must end this circle of violence."

26. The Government is aware of the weaknesses of the public security system. It has therefore focused its efforts on capacity-building in the judicial police and reforming the defence and security sector in order to instil an operational dynamic in these institutions that will allow citizens to live in peace.

2. The right to physical integrity

27. The right to physical integrity is enshrined in articles 37 and 38 of the Constitution and in articles 114 to 121 of the Criminal Code.

28. Violations of the right to physical integrity are punishable under the aforementioned legal instruments. However, these provisions have not prevented repeated failures to respect this right on the part of some public authorities, who continue to commit such violations in the discharge of their duties, or on the part of certain individuals, who frequently engage in physical violence and inflict bodily harm. Acts of torture and ill-treatment of public figures and private citizens have been committed in 2009. These acts constitute violations of citizens' rights. However, domestic legislation remains insufficient to effectively regulate all, or even most, of the situations that could be considered to be violations of the right to physical integrity.

(a) Public order police

29. Given its inadequate technical and operational capacity, the national police force has a tendency to resort to violence — in most cases, disproportionate violence — to suppress conflict situations. The country lacks a modern police force staffed with officers who have a thorough knowledge and understanding of the fundamental rights that they are required to respect in the discharge of their duties. To address these multiple needs, the executive branch has embarked on a reform of the defence and security sector aimed at constructing a defence and security force that meets modern standards. As part of this process, a police academy has been established to serve as a focal point for changing officers' behaviours and attitudes.

(b) Prisons

30. Another contributing factor is the increase in cases of physical violence and criminal activity in general is the insufficient number of secure, adequate prisons for the detention of tried and convicted criminals. Guinea-Bissau used to have a number of well-maintained prisons, but conditions have deteriorated with the passage of time owing to an insufficient allocation of funds for their repair.

B. Protection of the rights of the child and the rights of women

31. Women and children hold rights as individuals, but they are often dependent upon persons potentially in a position to violate those rights. As a result, the framework for the protection of women and children in countries such as Guinea-Bissau can be effective only once the voluntary cooperation of such persons has been fostered and secured. Such cooperation is necessary in the case of female genital mutilation, medical aid and the supply of medicines, early marriages, trafficking in children, etc. The system established for the protection of women's and children's rights cannot be considered a success unless it is supported by a far-reaching education and sensitization programme capable of raising the awareness of all the potential violators of those rights.

1. Women's rights

32. The rights of women in Guinea-Bissau are underpinned by the principle of gender equality, which is enshrined in article 24 of the Constitution. The Institute for Women and Children, established in 2000, is the government department responsible for safeguarding and protecting children and for promoting the advancement of women. The Reproductive Health and Family Planning Act was approved by the National People's Assembly in 2009. A bill on domestic violence has been submitted to the Round Table of the National People's Assembly for approval. Statistics on gender-based violence in Guinea-Bissau provided by the Institute for Women and Children, the National Network to Combat Gender-Based Violence and the Public Order Police Commission indicate that 4,631 cases of physical

violence, 368 cases of sexual violence and 9,613 cases of psychological violence were recorded in 2006–2007.

33. Various laws to protect the rights of children and women have been adopted in Guinea-Bissau, and a number of international legal instruments have been ratified. However, the rights of children continue to be violated. In addition, women's participation in political and public life is still fairly limited. In terms of representation at the highest decision-making level, the ratio between men and women remains unsatisfactory, with women holding just 10 per cent of parliamentary seats. School enrolment rates are low, with just 58 per cent of boys and 55.9 per cent of girls in the primary education system, according to the Human Development Index. The illiteracy rate is 76.2 per cent for women, compared with 47.4 per cent for men, and a large proportion of women (53.5 per cent) live below the poverty line, compared with 38.7 per cent of men. The 60 days of maternity leave provided for under the General Labour Act are insufficient and must be increased. Rural women face difficulties in gaining access to land ownership, literacy instruction, health care, vocational training, credit, information, technology, justice, etc.

(a) Early/forced marriages

34. This is a traditional, customary practice whereby girls are forced to marry before reaching legal majority or physical maturity.

35. According to research carried out by the National Survey and Research Institute (INEP), the north of the country has proportionately the highest number of married women aged under 15 (10 per cent of all married women), followed in second place by the autonomous sector of Bissau (5.8 per cent of all married women), the east in third place (5.7 per cent of all married women) and, lastly, the south (4.8 per cent). These data cast doubt upon the traditional perception that women marry earlier in the east of the country. The implications of the survey findings should not be underestimated, given the potential consequences of such practices for many aspects of a child's life. Foremost among these consequences is the fact that children may be forced to abandon their education earlier than usual, thereby failing to receive enough education to find employment and secure economic independence. Another potential consequence is that children may be forced to become sexually active earlier than they otherwise would, as marriage involves a sexual relationship with the spouse, which could in turn lead to early pregnancy. When girls are not sufficiently mature, childbirth can have serious repercussions for their health and physical well-being.

(b) Female genital mutilation

36. "Female genital mutilation" is a generic term that encompasses all practices involving the excision of the external genitals of young girls or women and any other form of mutilation that is motivated by socio-cultural or any other non-therapeutic consideration. Since it came into being, the Ministry for Women has been spearheading a campaign to prohibit practices that are harmful to the health of women and children, with particular emphasis on female genital mutilation. The Universal Declaration of Human Rights of 1948, a key instrument for the protection of human rights, establishes, in its article 5, that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". This principle has also been set forth in various other instruments and documents adopted at the many conferences at which this issue have been directly addressed within the context of gender-based violence.

37. With regard to international law, the 1979 Convention on the Elimination of All Forms of Discrimination against Women, sometimes referred to as the "charter of the fundamental rights of women", urges State members to engineer a change in standards of socio-cultural behaviour that will put an end to practices and customs that may endanger human life or create other related problems. According to the Multiple Indicator Cluster

Survey (MICS) for 2006, 44.5 per cent of the women of Guinea-Bissau aged between 15 and 40 have been circumcised, although the prevalence of this practice varies from one region to another. It is particularly common in the east of the country (Bafata and Gabu regions), followed by the Oio and Quinara regions, where Islamic groups constitute a majority of the population (Mandinka, Fula, Biaffada, Oinka, Sarakula and others). Young girls in Guinea-Bissau used to undergo excision after turning the age of 7, but more recently it has become difficult to monitor the age at which the ritual is performed; aware that the practice is widely condemned, many families are now opting to have their children circumcised immediately after birth. This practice constitutes a serious violation of the rights of the child.

2. Human rights of the child

38. Guinea-Bissau has included provisions to protect the rights of the child in a number of domestic laws, including the Constitution, the Civil Code, the General Labour Act and the Jurisdictional Statute on Minors. To support the implementation of the country's international undertakings in respect of the child, the Institute for Women and Children has established the National Children's Parliament, which serves as the youth forum par excellence for the deliberation of issues affecting the lives of the children and adolescents of Guinea-Bissau. The Government has also signed a cooperation agreement with UNICEF to improve the rate of birth registration. A special section of the Civil Chamber of the Regional Court has been created to deal specifically with families and minors. However, despite all the administrative and legislative measures adopted by the Government, the rights of the child continue to be violated, as evidenced by the incidence of sexual violence, trafficking in minors, female genital mutilation, deficient medical assistance, decrepit health and educational infrastructure, the educational shortfall, early marriages and the high infant mortality rate (65 per cent).

3. Trafficking in human beings

39. Trafficking in persons, as defined in article 3 of the Palermo Protocol, has reached alarming levels in recent decades. Urgent action by the Government, as the driver and sponsor of social development, is called for in order to put an end to this scourge. The Millennium Development Goals cannot be achieved until the ills afflicting our society, which include trafficking in persons, have been eradicated. It was with this in mind that the Government established the Committee on Trafficking in Human Beings in Guinea-Bissau by Order No. 05/08, which was issued by the Ministry for Women, Families, Social Cohesion and Poverty Reduction. Some of the more serious motives for trafficking in minors, including sexual exploitation and organ extraction, are not covered by this order owing to their infrequency. However, offences of this kind are covered within the general legal framework for the criminalization of trafficking in and the abuse and sexual exploitation of human beings, and specifically in articles 134 and 135 of the Criminal Code. The Institute for Women and Children, the Association of the Friends of Children (AMIC) and SOS Talibé Children (SOS Crianças Talibés), which monitor trafficking in human beings, and specifically trafficking in women and children, have released the following figures concerning the number of talibé children involved: 43 cases were recorded in 2006–2007, 60 in 2008 and 79 in 2009.

4. Rights of persons with disabilities

40. Persons with disabilities merit special attention. The Government, through the intermediary of the Ministry for Women, Families, Social Cohesion and Poverty Reduction, provides stipends and assistance in covering the cost of medical care and medicines to a significant number of persons with disabilities. Despite these special allowances, the majority of persons with disabilities are impoverished, vulnerable and in need of support. A

special school for deaf and dumb children has been established by the Bengala Branca NGO, with considerable support from the Government through the Ministry of Education.

C. Economic, social and cultural rights

41. The economic and social organization of the Republic of Guinea-Bissau is based on the principles of a market economy and the coexistence of public, cooperative and private property (article 11, paragraph 1, of the Constitution).

1. The right to own property

42. In Guinea-Bissau, the right to own property is guaranteed by law. The following types of property are recognized (art. 12, para. 1):

- (a) State property, the shared heritage of all citizens;
- (b) Cooperative property;
- (c) Private property, which concerns goods other than those belonging to the State;
- (d) The State can give cooperatives and other legal persons the right to make use of State property by means of concessions if it is in the common interest and will increase social wealth.

43. The realization of economic, social and cultural rights is dependent upon State funding. In order to achieve the Millennium Development Goals, Guinea-Bissau must have quite strong economic growth and appropriate economic policies. Poverty and recurring political instability are obstacles to the realization of the Goals. In order for the Millennium Development Goals to become a reality in Guinea-Bissau, reforms must be carried out in the agricultural sector, public policies on basic social services must be adopted, a policy of good governance must be implemented, democracy and the rule of law must be strengthened, gender equality must be respected, and power must be decentralized at the local level or regional elections organized as a precondition for regional development and the promotion and protection of human rights.

2. Protection of workers' rights

44. Workers have the right to protection, security and hygiene in their place of work. A worker cannot be dismissed except under the terms stipulated by law. The General Labour Act governs employment contracts and workers' rights and obligations. International law is also taken into consideration, namely the Universal Declaration of Human Rights, the International Labour Organization (ILO) Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value (Convention No. 100), the ILO Convention concerning Employment Policy (Convention No. 122), the ILO Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries (Convention No. 131) and the ILO Convention concerning Minimum Age for Admission to Employment (Convention No. 138).

45. The General Labour Act needs to be adapted to market requirements, and a draft revision is currently being prepared. The Public Administration Personnel Statute governs the operation of the civil service in Guinea-Bissau. Pay equity is guaranteed by both the aforementioned statute and the General Labour Act, in accordance with the requirements set forth in international legal instruments. The right of workers to strike is provided for in article 45 of the Constitution and the Freedom to Strike Act. A system has also been established to guarantee social security benefits to workers following an illness or disability

(article 45 of the Constitution). To that effect, there is a social security institute and a law on workers' insurance and social security.

46. Legally, workers have the right to protection, security and hygiene in their place of work. In practice, however, they are faced with violations of their rights; employment without a contract; the inclusion of a trial period in the employment contract, at the end of which they are dismissed; the performance of risky jobs without any kind of protection; or being left to their own fate in the case of illness. Decree No. 24-A90 of 1 August 1990, published in issue No. 31 of the *Boletim Oficial*, governs the general labour inspection and social security systems.

3. The rights of the family

47. The family is an essential element of human life and development. Article 16 of the Universal Declaration of Human Rights and article 10 of the Constitution recognize the importance of the family and ensure its protection, as does article 1577 of the Civil Code on marriage.

48. Husbands and wives have the same rights and obligations with regard to both their civil and political capacity and to the raising and education of their children. Article 26 of the Constitution establishes the equality of children before the law, regardless of their parents' civil status.

4. The right to inherit

49. The right to inherit is recognized by the Constitution (art. 14) and by the Civil Code, which regulates the form of inheritance and the hierarchy of heirs. This right is often violated, because when a woman's husband dies, in many cases she is deprived of her inheritance by her husband's close relatives. This is due to the strong influence of customary law, on the one hand, and, on the other, women's lack of recourse to justice because of insufficient financial means.

5. The right to health

50. The right to health follows from the right to life. A failure to protect health implies a violation of the right to life. It is therefore the duty of the State to protect the health of its citizens. Protecting the right to health requires the establishment of health-care infrastructure that is fully equipped and accessible to all, but that in itself is not enough. Devoted medical specialists who are sensitive to human rights are also needed, and, in order to have specialists, a country must first have hospitals in good condition and a medical school. In Guinea-Bissau, the right to health has not yet been established.

51. The right to health and the protection of that right are provided for in article 15 of the Constitution, which states that the goal is to promote people's physical and psychological well-being and to help them play an appropriate role within their social environment. The focus should be on prevention and on the progressive socialization of medicine and pharmaceutical services. In order to guarantee improved health services and better medical and medication-related assistance, the Ministry of Health has issued the following documents:

52. The National Health-Care Development Plan; the National Strategic Plan to Combat AIDS; the National Policy on Medicines; the National Road Map to Reduce Maternal and Neonatal Mortality; the National Strategic Plan to Combat Malaria; and the National Strategic Plan to Combat Tuberculosis. It has also adopted several policies under the Bamako Initiative. Medical conditions responsible for infant mortality include malaria, diarrhoea and acute respiratory failure. These three diseases or conditions cause 65 per cent of infant deaths, broken down as follows: malaria, 35 per cent; diarrhoea, 15 per cent; and

acute respiratory failure, 15 per cent (source: Multiple Indicator Cluster Survey, 2000). According to data compiled for the year 2000 by the Simão Mendes National Hospital, the maternal mortality rate was around 1,300 per 100,000 live births, while there were 68 stillbirths per 1000 live births and about 102 caesarean sections per 1,000 deliveries in the year 2000. The rate had increased by 2 per cent compared to 1999 (source: Human Development Index).

53. Under the policy adopted in line with the Bamako Initiative, users are to make co-payments for medical assistance and for drugs dispensed by the country's health centres and are also supposed to help fund the replenishment of drug stocks. This policy has not been as successful as was hoped, however, because, since its introduction, the Ministry of Health has not managed to establish the system of reasonable co-payments for medical assistance and drugs called for by this policy in the various health districts of the country. The implementing regulations for this policy are set forth in Decree No. 12/97 of 26 May 1997, which appears in issue No. 21 of the *Boletim Oficial*.

6. The right to education and to culture

54. In Guinea-Bissau, the right to education is provided for in article 16 of the Constitution. Every citizen has the right to education and the duty to pursue an education (art. 49, para. 1). The State is to work towards guaranteeing free and equal access for all citizens to the various levels of education, and public education is non-denominational (art. 49). Combating illiteracy is a fundamental mission of the State. The right to establish private and cooperative schools is guaranteed, and primary education is free and mandatory. The Constitution guarantees the freedom of intellectual, artistic and scientific creative effort, provided that it does not conflict with the promotion of social progress (art. 50). This includes the right to create, produce and disseminate scientific, literary or artistic works. Copyrights are also protected by law. Education for young girls is promoted, although there is no legal document pertaining to that issue. A policy statement on education, written in May 2000, outlines policies designed to promote quality primary education and the introduction of new materials in secondary education oriented towards increased occupational diversity. The State takes the following measures to foster the preservation of cultural identity: promoting national awareness and dignity with a view to encouraging the harmonious development of society; preserving and defending the people's cultural heritage as a means of promoting progress and safeguarding human dignity; and encouraging the dissemination of physical education (art. 17/1). According to the statistics used in compiling the Human Development Index, in 2003/2007 the school enrolment rate was 58 per cent for boys and 55.9 per cent for girls. This shows that, despite the legal measures adopted to improve school enrolment among young girls, their enrolment rate is still low compared to the rate for boys.

7. Consumer rights

55. Consumer goods must be properly handled, as foodstuffs sold in the street are highly exposed to bacterial contamination because they are not protected from dust or bacteria. In accordance with article 5 of Decree No. 62-E/92 of 30 December 1992, published in issue No. 52 of the *Boletim Oficial*, products sold in stores are to be monitored by such bodies as the National Public Health Laboratory, the General Directorate of Livestock Farming, the Plant Protection Service, the General Directorate of Customs, and the Department of Hygiene and Sanitation. In order to protect consumers, the production and marketing of foodstuffs are to be authorized beforehand by the relevant ministries in order to ensure appropriate monitoring, particularly in matters regarding livestock farming, agricultural produce, sanitary conditions and the interests of consumers. This legal requirement is not fully enforced, however, since the products sold in markets and in stores do not always conform to the regulations on hygiene and storage governing the sale of foodstuffs.

56. The lack of drinking water remains a serious concern, as women are obliged to travel great distances to draw water. The water company should strive to provide water to the entire population. There is a consumers' association that is working to protect consumer rights. Efforts to uphold quality standards for goods and services produced in Guinea-Bissau and within the West African Economic and Monetary Union (WAEMU) and the Economic Community of West African States (ECOWAS) are being made under a subregional monitoring programme to promote foreign trade and protect consumers.

D. Freedoms

57. The recognition of freedom as a right is the most fundamental basis of a democratic, law-based State. The freedoms guaranteed by the Constitution and the various laws in Guinea-Bissau are a great source of pride for the country. Every individual has the freedom of intellectual, artistic and scientific creative effort: freedom of expression and of information; freedom of the press; freedom of conscience, religion and worship; freedom of association; freedom of movement; freedom of assembly; and other freedoms. The exercise of these freedoms, however, has proven difficult for many people under certain circumstances. The protection of the right to freedom requires not only good will on the part of the State of Guinea-Bissau, but also an economic effort to build infrastructure where it is needed or to allocate subsidies in order to lower the cost involved in realizing some of these rights. Article 38 of the Constitution prohibits the total or partial deprivation of fundamental freedoms.

1. Freedom of intellectual, artistic and scientific creative effort

58. As provided for in article 50 of the Constitution, individuals and groups of individuals have the right to create, produce and disseminate scientific, literary or artistic works, provided that they do not conflict with the promotion of social progress. This legal provision notwithstanding, the successive Governments that have decided the fate of the country since its independence have done almost nothing to promote or encourage intellectual, artistic or scientific production.

59. Currently, the country does not have an art and exhibition centre worthy of the name. Its citizens do not have a music school where they can develop their artistic abilities, and there are millions of pirated copies of artistic, literary and scientific works on the domestic market which bring in millions of CFA francs at zero cost, to the detriment of the authors of those works. The current Government, aware of its budgetary constraints in an economy devastated by war and cyclical instability in which everything has high priority, is trying to take some corrective measures to stimulate intellectual, artistic and scientific activity. Those measures include restoring the music school, organizing a book fair and building public libraries. However, the country still lacks printing houses, publishing companies, exhibition centres, testing laboratories, rehearsal and exhibitions halls, etc.

2. Freedom of expression and of information

60. As provided for in article 51, paragraph 1, of the Constitution, this freedom is the basis for any democracy and consists of the right of all individuals to express themselves and to freely disseminate their opinions by any means at their disposal, as well as the right to inform others, inform themselves and be informed without any prohibition or discrimination.

61. Freedom of expression is the foundation of democracy, and the Government is taking steps to ensure the effective enjoyment of this right, while leaving it up to the courts to convict those who abuse this freedom. In recent years there have, however, been some

cases in which this right has been violated. These have been isolated cases that took place during the period of instability and political and military uncertainty that arose in 2009.

3. Freedom of the press (article 55, paragraph 1, of the Constitution)

62. With the advent of greater political openness in Guinea-Bissau, the influence of the press has grown. This has been reflected in the appearance of a considerable number of radio stations and newspapers for a country that has only 1.5 million inhabitants. This attests to the fact that the Government of Guinea-Bissau State respects the law. At times, there may be a discontinuity between practice and what is provided for by law, however. The freedom of the press is the freedom that is most often flouted, as individuals who spread information that is not appreciated by certain people are persecuted in an attempt to silence them. This is done by means of arbitrary detention, without any regard for the relevant legal provisions or without recourse to the National Press Council, which is the body in charge of resolving conflicts involving the press. Human rights are not respected in such cases, in which the relevant legal provisions are not observed and an individual's freedom is thus violated. The other side of the coin is that, in some cases, this freedom is not exercised within the limits of ethical standards and thus infringes on the honour and dignity of a third party. Journalists should therefore be better equipped to inform people in order to better educate them.

63. As a result of their exercise of the freedom of expression and of the press, some members of the Government, former leaders and journalists have been the victims of forced entry into their homes, beatings and injuries, and detention by the police. The Constitution and other laws provide that no one may be totally or partially deprived of liberty unless a court decision has been made to that effect. Unfortunately, certain sorts of illegal actions have been taking place for a long time. The current Government is determined to combat this unlawfulness, and the Prime Minister has shown his determination to combat all civil rights violations. In order for this freedom to be effective, the press must be free and economically independent, on the one hand, and, on the other, media professionals must be technically competent.

4. Freedom of conscience, religion and worship

64. Article 52, paragraph 2, of the Constitution recognizes the freedom of worship, which is reflected in the principle of secularism provided for in article 1 in fine of the Constitution and in the prohibition of violations of any of the fundamental principles guaranteed by the Constitution. This calls for proper regulations and a spirit of tolerance towards other religions.

5. Freedom of movement

65. This right is the right of citizens to move freely throughout the entire national territory (article 53 of the Constitution) and outside the country.

66. However, some cases of flagrant obstruction of the freedom of movement have been committed by the traffic police, who constantly carry out document inspections on a 24-hour basis, especially for public transport vehicles, without regard for the urgent need of passengers to reach their destinations. Police officers, who are not authorized by any regulation to do so, also detain citizens who do not have their identity cards with them. Most of the time, these operations are carried out early in the morning or during rush hour, when people are on their way to work, and citizens are questioned in an inappropriate manner. In order to ensure that this freedom can be fully exercised, suitable roads and highways, means of transport, regulatory provisions and properly trained traffic police officers are all needed.

6. Freedom of assembly

67. Freedom of assembly is the right of citizens to gather peacefully in public places under the conditions set forth by law (article 54, paragraph 1, of the Constitution). A corollary to the freedom of assembly is the freedom to form political parties. Ever since the country's political system began to open up, numerous political organizations have been formed in Guinea-Bissau that have promoted freedom of expression and freedom to oppose the political party in power without hindrance. There are 36 political parties in the country, and every four years they exercise their right to free expression and to participate in elections, to be elected and to hold political office. Often, however, they are not able to remain in office for the full term due to coups d'état and political upheavals that result in the fall of the Government and, in their aftermath, a political breakdown. When this occurs, the country has to organize new elections with the help of the international community. In order to carry out these elections, places are needed where people can gather without disturbing others.

7. Freedom to strike

68. There is a law in place that regulates the exercise of the freedom to strike. In Guinea-Bissau, this freedom is exercised without any intervention from the State. Trade unions use and abuse this freedom. They strike whenever they please and sometimes do not ensure minimal service, thus doing harm to individuals and institutions for which they take no responsibility.

8. Freedom of association

69. Article 55, paragraph 1, of the Constitution provides for the freedom of association, while prohibiting, *inter alia*, forms of association that encourage tribalism. The freedom to form an association is regulated by the Civil Code.

70. In the exercise of this right as guaranteed by the Constitution, there are many private associations, including: the National Union of Workers of Guinea-Bissau (UNTG), the National Confederation of Independent Trade Unions, the Chamber of Commerce, Industry and Crafts (CCIA), the Bar Association (OAGB), the Medical Association, the National Teachers Union, the Democratic Teachers Union, the National Sailors Union, the Union of Magistrates, etc.

9. Constitutional guarantees in Guinea-Bissau

71. Government agencies are under an obligation, whether positive or negative, to uphold the constitutional guarantees of fundamental rights. The conduct of such bodies is therefore regulated in order to ensure the respect, or, in case of a violation, the reinstatement of fundamental rights.

72. Firstly, there are the general constitutional guarantees that underpin any form of government that fully respects all human beings and prohibits arbitrary action. Secondly, there are individual constitutional guarantees that protect fundamental rights and provide means, techniques, instruments or procedures that rights holders can use to demand the respect, enforcement, effectiveness and exercise of their guaranteed rights.

73. Consequently, constitutional guarantees endow citizens with the right and with the procedural means to demand that the Government protect their rights. Many of them concern criminal matters, criminal procedure and the civil responsibility of the Administration (article 33 of the Constitution). The democratic nature of the State is manifested in the Constitution through the establishment of provisions to protect the fundamental rights of citizens in criminal matters and criminal procedure. In line with the

parameters laid out in the Constitution of 1984, lawmakers then introduce further constitutional provisions and principles.

74. In order to defend the right to life and to the integrity of the person, the Constitution prohibits the death penalty (art. 36), torture, cruel, inhuman or degrading treatment or punishment, forced labour, and detention orders of an unlimited or undefined duration (art. 37). It also regulates the terms of police custody and pretrial detention and establishes the right to habeas corpus (articles 39 and 40). Furthermore, it lays down the principles and norms for the application of criminal law and establishes the associated procedural guarantees (arts. 38–43).

75. Criminal procedure, which ensures the guarantees of defence for the suspect, is based on the principle of non-retroactive application of criminal law unless it is in the interest of the suspect (art. 38, para. 4); the principle of *nullum crimen sine lege, nulla poena sine lege*, which prohibits a criminal conviction when there is no prior law criminalizing the act (article 41, paragraphs 1 and 2); the principle of *non bis in idem*, according to which no one may be tried or punished more than once for the same criminal act (art. 41, para. 4); the principle of the presumption of innocence until proven guilty (art. 42, para. 2); and the right to choose and be defended by counsel (art. 42, para. 3). The role of the investigating judge is also established (art. 42, para. 4). The system of criminal procedure is of an adversarial nature; in the course of the trial and investigation, the parties have the right to comment (art. 42, para. 5), and evidence is considered null and void if it has been obtained by means of torture, duress, a violation of the suspect's physical or psychological integrity, invasion of privacy, violation of the home, or violation of the privacy of correspondence or of means of telecommunication (art. 42, para. 6).

10. Access to justice

76. The population's access to justice is insufficient owing to the dearth of regional courts. In fact, in all eight regions of Guinea-Bissau, there are only five regional courts, which obviously cannot meet all the needs of the people in terms of access to justice, given the distance between the courts and people's places of residence. Another difficulty is the lack of financial means to pay high legal costs and counsel's fees. In order to remedy this situation, more regional courts need to be established and the scope of the existing courts needs to be broadened. Article 32 of the Constitution establishes that all citizens have the right to recourse to the courts and that justice cannot be denied on the basis of a lack of financial means. It is therefore necessary to provide some sort of subsidy, particularly for women.

77. The reform of the justice sector, which is currently being undertaken by the Ministry of Justice, has the following objectives: establishing and amending laws against genital mutilation, against human trafficking, on the protection of minors, and on the organization of the public prosecutor's office, as well as the staff regulations governing justice officials and employees of the public prosecutor's office; renovating and building prisons; building a court of auditors and regional courts to cover all regions in the country; training prison directors, officials and guards; training new judges and providing additional training to sitting judges; and training justice officials. The Ministry of Justice is working in partnership with the United Nations Development Programme (UNDP) and the Support Programme for Sovereign Bodies and the Rule of Law (PAOSED) to realize these objectives.

IV. Raising public awareness of human rights

78. Many human rights workers organize training sessions to spread awareness about existing national and international legal instruments for the promotion and protection of human rights.

79. The National Human Rights Commission was established as an institution for the promotion and protection of human rights on 28 October 2008, and its mandate was confirmed by the current Government in February 2009. The Commission works to provide training and raise awareness about human rights and the need for further engagement in the promotion of human rights at all levels.

80. UNDP, the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS), UNICEF, the United Nations Population Fund (UNFPA), the United Nations Development Fund for Women (UNIFEM), the European Union, the Economic Community of West African States (ECOWAS), the African Union and other partners are engaged in building national capacity in the area of human rights.

V. Cooperation with human rights mechanisms

1. National level

81. The National Human Rights Commission and other civil society organizations are involved in rights protection. Civil society organizations having a particular focus on defending human rights include: Associação dos Amigos da Criança (Friends of Children Association) (AMIC), Rede Nacional de Luta contra a Violência (National Network to Combat Sexual Violence) (RENLUV), the Guinea-Bissau Human Rights League and the Human Rights Observatory.

2. Regional level

82. Guinea-Bissau participated in the forty-fourth session of the African Commission on Human and Peoples' Rights, which was held in the Gambia in June 2009. It also participated in the conference of the African Assembly for the Defence of Human Rights (RADDHO) and in setting up the network of ECOWAS countries, of which it is a member.

3. International level

83. Guinea-Bissau has already submitted its initial to sixth periodic reports to the Committee on the Elimination of Discrimination against Women. In May and September, it will submit its national report to the United Nations Human Rights Council for the universal periodic review.

VI. Achievements

84. Since its political system was opened up in 1984, Guinea-Bissau has achieved progress in the promotion and protection of human rights.

85. Those achievements include the following: the political will to consolidate peace and democracy and to promote and protect human rights has consistently been demonstrated; the normative framework is conducive to the protection of human rights; democratic, free and transparent elections are regularly organized; very liberal legislation is in place regarding the establishment of associations and political parties, and this has led to the existence of a considerable number of political parties in the country; freedom of the

press and of expression is exercised; freedom of movement; freedom of association; reform of the justice sector; reform of the defence and security sector; a policy on increasing school enrolment among children, in general, and, in particular, the abolition of the death penalty; preparation of the law on AIDS; legislation on civil society organizations and non-governmental organizations; the creation of the National Human Rights Commission; and the signature and ratification of several international conventions.

VII. Good practices

86. The following are some examples of good practices in the country: the celebration of Human Rights Day; the celebration of World AIDS Day; constructive dialogue with human rights partners; human rights training for legal professionals, including prosecutors, judges, lawyers and justice officials; training for judicial police inspectors in combating organized crime and drug trafficking; vocational training for young people; promotion of youth employment; agricultural development projects; projects to support women in agriculture; projects to promote the recovery of the private sector through incentives, training and payment of domestic debt; and on-time payment of wages.

VIII. Challenges and priorities

<i>Challenges</i>	<i>Priorities</i>
Female genital mutilation	Combating the practice and adopting legislation and a national strategy in accordance with the recommendations of the Committee on the Elimination of Discrimination against Women
Political instability	Consolidation of peace and development
Child trafficking	Combating the practice and establishing legislation
Drug trafficking and organized crime	Combating the practice and training officers
High rate of illiteracy (76.2%) among women	Enrolling young girls and women in school
Persistent corruption	Combating the practice and bringing perpetrators before the courts
Lack of access to justice	Strengthening financial resources and training female judges and lawyers, etc.
Failure to disseminate information on laws and conventions	Promoting dissemination and awareness-raising; creating a mechanism for the adoption/ratification of conventions between the Ministry of Justice and the National People's Assembly
Lack of financial means	Appealing to cooperation partners
Insufficient number of courts	Renovating and building courts

<i>Challenges</i>	<i>Priorities</i>
Violence against women	Combating impunity and violence; national strategy
Outdated laws	Revising and updating
Conventions not aligned vice versa. Legislation not aligned	Aligning conventions with domestic legislation and aligning conventions
Gender equality policy insufficient, yet finalized and adopted	Strengthening gender equality and legislation
Maternal and infant mortality	Combating maternal and infant mortality
Deterioration of education and sanitation infrastructure	Renovation and construction
Insufficient prisons	Renovation and construction
Insufficient means for the operation of the National Human Rights Commission	Strengthening institutional support and training

IX. Need for capacity-building and technical assistance

87. The following are needed in Guinea-Bissau: aligning national legislation with international human rights instruments; capacity-building in the preparation of national human rights reports; institutional and operational capacity-building in the justice system; training judges and court officials; improving prison conditions; awareness-raising with regard to the culture of peace, democracy and citizenship; introducing the human rights programme in formal and informal education; supporting development projects; supporting the various ministries that promote and protect human rights; creating a national human rights plan.

X. Conclusion

88. The Government is firmly determined to meet this new challenge as it works to make more rapid legislative progress, to incorporate practices that will build confidence both domestically and abroad, and to create an enabling environment for efforts to move the country forward to a new set of values that can underpin the creation of a new development pole. The Government reaffirms its commitment to promoting respect for the dignity of the human person and it will therefore work to reduce the number of situations that threaten the human rights paradigm. The Government, proud to belong to the group of countries that safeguard respect for human rights and that seek to strengthen democracy and good governance, will emphasize socio-political stability as an essential factor in creating synergies conducive to economic and financial development.

89. The Government of Guinea-Bissau is conscious that, on the one hand, respect for human rights is an essential condition for effectively guaranteeing legal certainty for its citizens and that, on the other hand, the impunity of those who violate human rights must be combated. In that knowledge, the Government reaffirms its approach in terms of human rights objectives. It seeks to promote, protect and establish legal and judicial instruments to guarantee respect for the principles set forth in the Universal Declaration of Human Rights,

the Constitution of the Republic, and the relevant conventions and treaties signed by States parties. The Government has recently established the National Human Rights Commission, which is a multisector institution that combines the efforts of public and private agencies, non-governmental organizations and civil society institutions to promote and protect human rights in Guinea-Bissau. It is a responsible, impartial, autonomous and independent institution established in accordance with the Paris Principles. Although it was established by decree, as is the practice in other countries, upon completion of the legal formalities, it can be reconsidered with a view to its conversion into a law. Safeguarding the protection of human rights is a civic duty, while protecting human rights is the duty of the State and of those who are in power in whatever capacity.
