



Guinea-Bissau: Review the Framework Law on Political Parties

Summary

The legislation that regulates political parties in Guinea-Bissau dates from 1991. The areas of reform identified aim to strengthen the regulation of political activities, confirm political parties' centrality to the democratic process, promote equitable access for women and men to political positions, specify, organise and control public party funding and make it an effective tool for changing political practices.

Key recommendations

- ▶ Revise the 1991 Framework Law on Political Parties to reinforce the regulation of political activities while confirming political parties' centrality to the democratic process.
- ▶ Ensure women's equitable access to political parties' leadership and candidatures during elections.
- ▶ Consider public funding as an instrument to improve political and democratic practices.
- ▶ Constitutionalise provisions governing the functioning of political parties.
- ▶ Empower a new Constitutional Court with control over the creation and functioning of political parties, as well as the prerogative to sanction them.
- ▶ Create a national public financing commission that will play a greater role in the regulation of political party spending.

This note examines the Framework Law on Political Parties. It recaps the fundamental principles of the legislation on political parties since the democratic transition of 1991, and looks at the activities of the main political parties since the establishment of the multiparty system. It then lists possibilities for strengthening democratic functioning through the regulation of political parties, with particular attention paid to the issue of political financing.

The legal framework that regulates political parties' activities and the realities of the political landscape

The Framework Law on Political Parties of 9 May 1991

Law No. 2/91 was adopted by the National People's Assembly (NPA) pursuant to Article 56 (4) of the Constitution, with the aim of regulating political parties' formation and activities in the new context of the democratic multiparty system. This law has served as a framework for political activities in the country for more than two decades. During this period, Guinea-Bissau experienced coups, a civil war, assassinations of political and military figures, and legislative and presidential elections, which were generally considered to have been well organised.

The May 1991 framework law consists of a preamble, eight chapters and 34 articles. The most important provisions are presented below.

Chapter 1 sets out the definition, role and purpose of political parties, as well as their legal capacity. It sets the minimum number of members at 2 000 and affirms their national character by requiring the presence of at least 100 activists in each region. The text does not distinguish between 'members' and 'militants'. This chapter also defines the principles ruling the internal organisation of parties, including a prohibition on discrimination based on race, religion or gender, and specifies the democratic election of leaders to political parties' bodies.

The Supreme Court can pronounce a dissolution if the verified number of party members is lower than 1 000 or in case of a violation of the Constitution

The rights of opposition parties are detailed in a passage that may be regarded as constitutive of an opposition status, including the right to information on matters of public interest, the right to prior collaboration on the drafting of laws on political parties and elections, broadcasting rights on radio and television, the right to coverage in media owned directly or indirectly by the state, and the right of reply in media belonging directly or indirectly to the state to political statements by the government, as outlined in the press law.

Chapter 2, which deals with the formation, transformation and cessation of political parties, affirms the principle of free party formation, with the obligation to apply for registration at the Supreme Court when the minimum 2 000

members signature requirement has been met. It specifies the conditions of merger, division and dissolution of parties. The Supreme Court can thus pronounce a dissolution if the verified number of party members is lower than 1 000 or in case of a violation of the Constitution with the conclusive criminal conviction of party leaders.

Chapter 3 sets out the conditions for membership of a political party, as well as the principles of freedom of membership, the protection of members' rights and the conditions for joining youth groups within parties (the minimum age is 14). It prohibits members from making oaths and promises of personal loyalty to leaders, and clarifies the principle of party discipline and its limitations.

Chapter 5 specifies that the nomination of candidates for election to the NPA and other public representative bodies is the responsibility of the relevant organs of political parties.

The Framework Law provides for a system whereby the state reimburses part of parties' campaign expenses

Chapter 6 deals with political parties' financing. It lists the authorised sources of funding for political parties, including: a) general contributions or membership fees; (b) special contributions from paid political office holders; (c) revenue deriving from own assets and activities; d) credits; e) donations; f) and the annual funding allocated to political parties with seats in the NPA.

The text states that 'the National People's Assembly shall include in the state budget the amount of annual subsidies to political parties to be distributed according to the number of elected deputies', thus establishing the public funding of parties. It provides for a system whereby the state reimburses part of parties' campaign expenses, 'according to the financial resources of the State and the electoral representation of each party'. This contribution must be granted within three months after the elections, at the request of the parties addressed to the President of the NPA and upon presentation of their campaign expenses.

The text also sets out a list of prohibited sources of party financing: autonomous state bodies, public associations, public institutions and companies, local authorities, legal persons, and foreign natural and legal persons. For the latter, the exception is the 'contributions of brother parties and foundations which do not endanger the public order of Guinea-Bissau, or the independence and autonomy of national parties'. In this case, the party is obliged to declare the donation to the President of the NPA, under penalty of a fine equivalent to double the amount received.

This chapter also affirms political parties' obligation to present their annual accounts, indicating the origin of funds and the allocation of expenses, as

1991

ADOPTION OF THE
FRAMEWORK LAW ON
POLITICAL PARTIES

well as their patrimonial situation. These accounts must be published in the State Gazette and may be examined by accounting experts at the request of the Supreme Court. Finally, the chapter enumerates the benefits to be granted by the state to parties, essentially consisting of tax exemptions on a number of purchases of services and goods necessary for their activities and electoral campaigns.

The accounts of parties must be published in the State Gazette and may be examined by accounting experts at the request of the Supreme Court

Chapter 7, on party activities, recalls parties' obligation to respect the constitutional order and to reject 'any subversive or violent methods'. In particular, religious or military-type activities in parties are prohibited. The chapter affirms the principle of transparency, including the requirement to make public the identity of parties' leaders, their statutes and programmes, as well as the sources of their assets and the uses to which these are put. It also frames the possibility for parties to form coalitions, relations with other entities and affiliations with international democratic organisations.

In instances where the 1991 law has not been amended, subsequent legislation has introduced important provisions for political parties. Before presenting the main provisions affecting parties in the revised 2013 electoral laws, it is useful to examine the evolution of the political landscape over two decades of democratic consolidation.

Number of political parties participating in parliamentary elections, 1994–2014



Source: Graph elaborated based on legislative elections results issued by the NEC between 1994 to 2014.

The evolution of political parties in the democratic context (1991–2017)

The multiparty system has been well established since the entry into force of the 1991 framework law and the organisation of the first parliamentary elections in 1994. Eight political parties participated in this election; in 1999, 13 participated. In 2004, 15 parties competed, 21 in 2008 and 15 in 2014. Given the country's small demographic size and lack of economic resources, this figure is rather high. The fluctuation in the number of parties does not seem to have been particularly influenced by legislation.

The political instability in the country can hardly be attributed to the shortcomings of the legislation governing parties' activities. However, it is clear that weak institutions and parties have aided in the personalisation of leadership and serious abuses in the political, military and economic governance of the country. The laws have, in fact, been poorly enforced and have had little influence on the actions of those in pursuit of power.

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The electoral results from 1994 to 2014 show that only four political parties – the African Party for the Independence of Guinea and Cape Verde (PAIGC), the Party for Social Renewal (PRS), the Party for a New Democracy (PND) and the Union for Change (UM) – were represented at the national level with candidates in all constituencies. Many registered parties have never had the human, material or ideological resources to build a real national base or solid institutions whose powers do not depend on those of their founders.¹

Political party legislation has undergone some significant changes, with the revision of electoral laws before the 2014 legislative and presidential elections.

The 25 September 2013 Law on the Election of the President of the Republic and the National People's Assembly

Law No. 10/2013 of 25 September 2013, which determines the conditions for organising elections for the Presidency of the Republic and the NPA, includes provisions on the conduct and financing of electoral campaigns.

Chapter 3 of Title III specifies the authorised sources of funding for candidates' campaigns (Article 46): (a) state contributions; b) contributions by allied parties; (c) voluntary contributions by voters; d) contributions by candidates and political parties; and e) proceeds from campaign activities.

Article 46 prohibits 'direct funding of the election campaign by foreign governments and foreign governmental organizations'. Article 47 provides that the state shall determine 'in accordance with availability' a financial amount to support candidates' campaigns, which is to be made available

AUTHORISED SOURCES OF FUNDING FOR POLITICAL PARTIES



- GENERAL CONTRIBUTIONS OR MEMBERSHIP FEES
- SPECIAL CONTRIBUTIONS FROM PAID POLITICAL OFFICE HOLDERS
- REVENUES FROM OWN ASSETS AND ACTIVITIES
- CREDITS
- DONATIONS
- ANNUAL FUNDING ALLOCATED TO POLITICAL PARTIES WITH SEATS IN THE NPA

Source: Art. 46 of Law No. 10/2013 of 25 September 2013 on Election to the Presidency of the Republic and to the National Assembly.

15 days before the start of the campaign to the parties or coalitions of parties that have submitted nominations, or to the presidential candidates.

The article defines the rule of distribution of the funds granted by the state. For the legislative elections, the amount is proportional to the number of candidates from each party or coalition on the lists published by the Supreme Court. For the presidential elections, this allocation is equitably distributed among all the candidates duly approved by the Supreme Court.

It is necessary to draw lessons from actions of political parties and behaviour of political actors in order to propose provisions for oversight of political activities

Articles 48 and 49 require that candidates submit detailed campaign accounts to the National Electoral Commission (NEC) within 30 days (for the presidential election) or 60 days (for legislative elections) of the proclamation of the results. The accounts must specify the sources of assets and the purposes of expenditures. The NEC is mandated to assess these accounts' veracity.

Article 175 provides for heavy penalties for failure to submit regular campaign accounts, including: (a) ceasing all subsidies and state support; (b) prohibiting members of the leadership of the parties concerned from creating or merging with other political parties; c) prohibiting such members from standing in any future election.

These legal provisions demonstrate the desire to support and supervise the financing of election campaigns. Public funding of parties is therefore not only provided for by the 1991 law but also reaffirmed by the specific support for electoral campaigns provided by the 2013 law. It is a tool that theoretically allows candidates from parties with few resources to win campaigns.

In reality, parties and candidates have not received public funding for a long time. According to the law, the state provides financial support 'only according to availability'. The elaborate legal mechanism described above has not allowed transparency and fairness in electoral competitions. Here again, the main problem is not the lack of laws but institutions' incapacity to implement them.

Strengthen oversight of political activities

Create a Constitutional Court to protect fundamental principles

It is necessary to draw lessons from the actions of political parties and the behaviour of political actors since the 1990s, in order to propose provisions for the oversight of political activities that would have a real chance of being applied to assist in the consolidation of democracy, as well as ensure peace and equity in the political representation of all categories of the population.

PROHIBITED SOURCES OF FINANCING OF POLITICAL PARTIES



- AUTONOMOUS STATE BODIES
- PUBLIC ASSOCIATIONS
- INSTITUTIONS AND PUBLIC ENTERPRISES
- LOCAL AUTHORITIES
- LEGAL PERSONS
- FOREIGN NATURAL AND LEGAL PERSONS

Source: Art. 24 of Law No. 2/91 of 9 May 1991 on the Framework Law on Political Parties.

The review of the general provisions of the framework law, excluding political financing, should focus on the following points:

- *The authority responsible for registering political parties*

In the event of the creation of a Constitutional Court, it would be logical to entrust it with the registration of political parties and the verification of their statutes' conformity with the Constitution. The court should also be notified of the creation of coalitions by parties, which could help to ensure the stability of coalitions, even if there is no constraint on the length of free-party coalitions.

- *The dissolution of political parties*

The Constitutional Court would be the only institution entitled to pronounce the suspension or dissolution of a party in case of a flagrant violation of the fundamental provisions of the Framework Law on Political Parties, including the use of armed violence, hate speech, violence or any form of discrimination. The dissolution could also be pronounced in case of political inactivity for a period to be specified, including the failure to submit nominations for national or local elections, lack of communication from the party's governing bodies, or the failure to submit party accounts.

Confirm political parties' centrality to the democratic process

The Framework Law on Political Parties could reaffirm, in line with the electoral laws, that only parties and party coalitions can nominate candidates for the parliamentary elections, with independent candidacies allowed for the presidential and local elections. The stabilisation of the political field in a semi-presidential regime requires measures to promote the emergence and consolidation of structured parties, financed in a stable and transparent manner, democratic and capable of preparing their leadership for the highest political positions. The principle of collegiality and the obligation to compromise, imposed on the membership of a party, appear to be vital to the functioning of a political system based on the interdependence of state organs.

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Promote equitable access for women and men to political positions

The framework law could underscore the need for political parties to guarantee the active participation of women in all activities and the absence of discrimination based on gender in nominations to party leadership positions and as electoral candidates. The experiences of several countries show that it is often essential to introduce specific measures for women to

PENALTIES FOR IRREGULARITIES IN CAMPAIGN ACCOUNTS



- CESSATION OF ALL STATE SUBSIDIES AND LEGAL SUPPORT
- PROHIBITION AGAINST PARTY LEADERSHIP'S CREATING OR MERGING WITH OTHER POLITICAL PARTIES
- PROHIBITION AGAINST STANDING IN ANY FUTURE ELECTION

Source: Article 175 of Law No. 10/2013 of 25 September 2013 on Election to the Presidency of the Republic and the National Assembly.

counterbalance the many factors that largely favour men in gaining access to political office.

The framework law could impose a quota of 30% women on the lists presented by parties in the legislative and local elections. This obligation could be reinforced by incentives to promote women's political participation through public party funding. This issue is discussed in the next section.

Specify, organise and control public funding of parties

Public funding of political parties, when it is well thought out, organised and controlled, is an appropriate way in which to strengthen parties and enable them to contribute to the consolidation of a young and fragile democracy. In a country where the economic and social needs of the population are immense, public funding must be strictly limited to parties that contribute effectively to political activities, in order to discourage the proliferation of actors primarily interested in gaining access to public resources.

There are two important rules that must be established to determine parties' eligibility for the public subsidy and to specify its distribution.

Public funding must also aim to reduce corruption in the electoral process and encourage political actors to behave with integrity

Access to public funding could be limited to parties with at least one representative in Parliament or with a minimum percentage of votes at the national level. The setting of a threshold (5%, for example) could, however, greatly reduce the number of contenders, or even reserve the entire envelope for the biggest parties.

The amounts allocated to the various eligible parties should then be defined. Half of the funding could be allocated according to the percentage of votes won in the last legislative election, and the other half according to the number of seats obtained. These two criteria would make it possible to take into account both the popularity of parties at the national level and their electoral performance.

Public funding can be used for more than supporting party campaigns to ensure the people's representation in democratic institutions. It must also aim to reduce corruption in the electoral process and encourage political actors to behave with integrity. Any party that has already benefited from this funding should be obliged to provide its annual accounts in order for the funding to be renewed. The objective of regulating political financing is also to encourage transparency and preventing funds from organising crime from infiltrating the political field.



POLITICAL PARTIES DO NOT RECEIVE PUBLIC FUNDING DESPITE THE EXISTENCE OF PROVISIONS TO THIS EFFECT

In a more innovative approach, the rules on accessing public funding could also introduce incentives for political parties to promote civic education, the training of their members and the participation of women and youth.

Several options are possible. One would be to reserve a portion of the envelope for those who fulfil three criteria: presenting their complete and certified annual accounts, carrying out verifiable civic education activities, and ensuring a minimum number of women are represented in the party's leadership and parliamentary candidates (30%, for example).

Framing campaign expenses

The two relevant laws in force, the Framework Law on Political Parties and the NPA and Presidency Elections Act, are poorly framed to regulate campaign expenses. There is no ceiling on donations from natural persons and/or candidates, nor a cap on expenses. To avoid excessive resource gaps between parties and candidates, and to encourage greater transparency of funding sources, the new law should set reasonable limits. Capping campaign expenditures for parliamentary elections will have to take into account the population of electoral constituencies.

The financing of parties and electoral campaigns must be strictly regulated and entrusted to an independent body of the NPA, separate from the NEC: a national political financing commission. It would review and validate or reject the campaign accounts of parties. While remaining legal, contributions by foreign foundations and 'fraternal parties' should be declared to this commission under penalty of a dissuasive fine. The commission would verify whether these contributions are in conformity with the public policy of Guinea-Bissau and whether they are likely to undermine the independence and autonomy of national parties.

Capping campaign expenditures for parliamentary elections will have to take into account the population of electoral constituencies

The 1991 Framework Law on Political Parties incorporates all the principles needed for properly functioning political parties that respect the Constitution, the fundamental values of democracy and the rule of law. One deficiency of this framework law is that it does not create the conditions for its application. In terms of political financing, this situation is encountered across the world. In most African countries, and in other parts of the world, such laws, even the most elaborate ones, are rarely respected, mainly because the institutions responsible for their implementation cannot afford to do so.²

All the frameworks for political financing, including the principle of public party financing, are based on having access to a minimum amount of information on party accounts during and outside election periods. Limiting campaign expenses only makes sense if there is also an obligation to verify campaign



THE FRAMEWORK LAW
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accounts, and a real possibility of doing so. It is for this reason that the creation of an institution dedicated to this task is essential.

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Conclusion

The review of the Framework Law on Political Parties must be closely linked to that of the Constitution. It must set ambitious goals to introduce institutional reforms that correspond to the real need to correct serious weaknesses in the legislation setting the framework for competition for political power. It is the nature of the political system that determines the role played by parties and the importance of giving a framework to their activities. Another reform that has a clear link to political parties is the electoral law. The coherence of the institutional structure of Guinea-Bissau lies in the alignment of the electoral law, the Framework Law on Political Parties and a constitution intended as a new social compact between the citizens of the country.

Notes

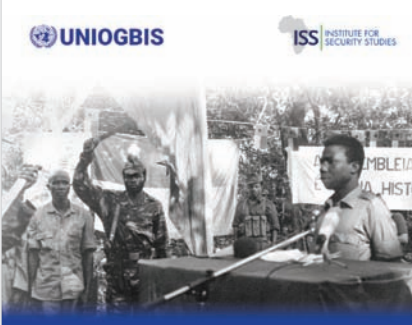
- 1 After the last elections in 2014, three new political parties emerged: the People's United Party - Democratic Party of Guinea-Bissau (PUP-DPGB) chaired by Nuno Nabian, the Democratic Party for Development (DPD) of Policiano Gomes, and the Party for Justice, Reconciliation and Labour (PJRL-FD) of Malam Nanco. Several political parties in the last five to 10 years have gradually disappeared from the scene or are no longer able to continue their activities.
- 2 International IDEA, *Funding of Political Parties and Election Campaigns, A Handbook on Political Finance*, 2014; Magnus Ohman, *The state of political finance regulations in Africa*, International IDEA, Discussion Paper 16/2016.

Methodological note

This note is part of a series of six analytical notes on the reforms that Guinea-Bissau needs in order to return to stability, and which are also proposed in the October 2016 Conakry Agreement. The first notes are respectively about the reform of the Constitution, the reform of the electoral law, the reform of the Framework Law on Political Parties, the reform of the defence and security sector and the reform of the judiciary. The sixth and final note summarises the main recommendations presented in the notes as a whole. These publications are the result of field

research and analysis conducted from March 2017 to January 2018 by a team of researchers from the Dakar office of the Institute for Security Studies, with the support of experts from Guinea-Bissau, the region and internationally. They were developed at the request of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) to facilitate discussions on these reforms among the forces of political and civil society in Guinea-Bissau.


The policy briefs below were developed to inform discussions on institutional reforms in Guinea-Bissau



Provide Guinea-Bissau with a new constitution to strengthen the rule of law and stability

Summary
After the 2014 elections, the National People's Assembly (NPA) set up an ad hoc committee on constitutional reform. Little progress had been made before the commission found itself paralysed, like the whole NPA, by the 2015 political crisis. The current Basic Law lacks clarity and precision in a number of important areas, starting with the delineation of the powers and clarification of competences of the organs of state. The country needs a constitution that is designed to prevent political deadlocks, promote effective institutions and make the state more efficient and fair in its delivery of services to the people.

POLICY BRIEF 1 | MAY 2018



Guinea-Bissau: Reform electoral laws

Summary
Since its transition to a multi-party system in 1991, Guinea-Bissau has held five legislative and presidential elections. Significant progress had been made in improving the electoral legislation before the last parliamentary elections of 2014, but obvious deficiencies still need to be addressed. The electoral framework should be reformed to improve the transparency and integrity of elections, clarify and strengthen the powers of the National Electoral Commission (NEC) and rectify inconsistencies between constitutional provisions and electoral laws. This is also a prerequisite for the organisation of local elections, which should give substance to the decentralisation envisioned in the Constitution but never implemented.


POLICY BRIEF 2 | MAY 2018



Guinea-Bissau: Review the Framework Law on Political Parties

Summary
The legislation that regulates political parties in Guinea-Bissau dates from 1991. The areas of reform identified aim to strengthen the regulation of political activities, ensure political parties' centrality to the democratic process, promote equitable access for women and men to political positions, specify, organise and control public party funding and make it an effective tool for changing political practices.

POLICY BRIEF 3 | MAY 2018



Guinea-Bissau: Pursue the construction of an independent justice system that is of use to the population

Summary
During the past four decades, the country has experienced time and again the settling of scores among political and military elites. Justice has rarely, if ever, been rendered to victims, promoting revenge and feeding the cycle of violence. In everyday life, the absence of formal justice mechanisms favours individual settlements or even conflict resolution methods implemented by traditional authorities that have remained highly influential and respected. An ambitious new Justice Reform Programme (2015-2019) has been prepared but has been blocked by the political crisis and differences between the government (Ministry of Justice) and the judicial power (Supreme Court of Justice). It is crucial to create consensus on the implementation of the essential reforms.

POLICY BRIEF 4 | MAY 2018



Relaunching defence and security sector reforms in Guinea-Bissau

Summary
Defence and security sector reforms (DSSR) in Guinea-Bissau have been a recurring topic for nearly two decades. Despite the different decisions taken by the reforms and the engagement of regional and international actors alongside the state, obstacles remain and fatigue is perceptible. It is essential to analyse the root causes of these obstacles before proposing technical solutions that will not address fundamental political, economic and social problems.

POLICY BRIEF 5 | MAY 2018



Which institutional reforms for Guinea-Bissau?

Summary
The institutional reforms put forth in the October 2016 Conley Agreement have a long history in Guinea-Bissau. They are unavoidable and will have to be implemented sooner or later. In order to facilitate discussions on these reforms among political actors and in civil society, the Institute for Security Studies, at the request of the United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS), has developed a series of policy briefs on constitutional reform, as well as on reforms to political party legislation, electoral laws, the justice sector, and the defence sector and security. This note discusses the main recommendations.

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The United Nations Integrated Peacebuilding Office in Guinea-Bissau (UNIOGBIS) was established in 2009 by Security Council resolution 1876, of 26 June 2009. The current mandate of UNIOGBIS, as specified in resolution 2404 of 28 February 2018, focus on the following priorities: i) supporting the implementation of the Conakry Agreement and facilitating an inclusive political dialogue and national reconciliation process; ii) supporting, through good offices, the electoral process to ensure inclusive, free and credible legislative elections in 2018; and iii) supporting national authorities in expediting and complementing the review of the Constitution. The Mission is also mandated to assist, coordinate and lead international efforts to strengthen democratic institutions and enhance the capacity of state organs, promote and protect human rights, support the combat against drug trafficking and transnational organized crime, mainstream gender in peacebuilding efforts, and mobilize, harmonize and coordinate international assistance with view to upcoming elections.

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Acknowledgements

The ISS thanks UNIOGBIS for its trust, collaboration and support in this work. The project implementation team also expresses its gratitude to all those who contributed to the development of these notes, as researchers, consultants or interviewees, and whose names have been withheld in order to preserve their anonymity.