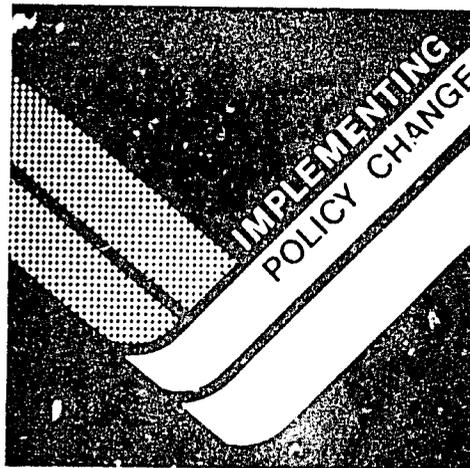

IPC ASSISTANCE FOR JUDICIAL REFORM: Report of IPC Visit to Guinea-Bissau

September/October 1992

Presented to:
USAID/Bissau



Contractor Team:

Management Systems International

(lead contractor)

International Development Management Center

at University of Maryland

Abt Associates Inc.

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United States Agency for International Development
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EXECUTIVE SUMMARY

An Implementing Policy Change (IPC) team visited Guinea Bissau for three weeks during September/October 1992 to begin a project to assist Guineans in their use of strategic management techniques to identify and implement reforms aimed at increasing private sector trade and investment. The team found top Guinean government policy makers and political party leaders currently preoccupied with reaching agreement with new political parties on constitutional changes, an electoral law and on composition of an independent electoral commission. The democratic multiparty elections, tentatively scheduled for November 1992, have been postponed until 1993.

As a consequence, IPC's initial focus will be on strengthening the judiciary's capacity to adjudicate trade and investment (T&I) matters. This strategy recognizes that a functioning judicial system is essential for adjudicating T&I disputes and for providing assurance to potential foreign investors that a rule of law prevails in Guinea Bissau. A constitutional amendment will soon establish an independent judiciary, separating the court system from the executive branch. Both the Minister of Justice and the President of the Supreme Court have been strong advocates of an independent judiciary and eager to work with IPC. Even if changes are made at the top levels, the mid-level officials involved in drafting the necessary reforms will remain.

The judiciary has already increased its responsibilities through its role in registering new political parties and its anticipated role in supervising elections. The inadequacy of its present organization, lack of funding, and the prospect of greatly increased responsibilities once it is separated from the executive branch lend special urgency to the strengthening of the judiciary.

After conducting interviews with Guinean executive and judicial branch officials, judges, and private sector leaders, the IPC team formed a working group composed of executive and judicial officials, members of the lawyers and magistrates associations, political party representatives and private sector leaders. This group worked with IPC to design an action plan for beginning work with the judicial system (see Ch IV and Annex E).

The IPC team together with the working group determined that the major actions/issues involved in 1) creating a functioning, independent judiciary and 2) addressing the needs of expanding trade and investment through the judiciary can be summarized as follows:

1. Constitutional change to create the separation of powers.
2. Legislation that establishes and regulates the judicial system.
3. Improvement of the physical conditions of the judicial system.
4. Improvement of the professional capacity of the magistrates, other court employees, and the legal profession.
5. The financial viability of the judicial system.

6. Compatibility between traditional and formal law.
7. Improvement in the design, application, and adjudication of executive branch regulations with the force of law.
8. Specific technical training in priority areas (e.g., commercial law).
9. Participation by the private sector in the judicial reform process through workshops and seminars. Facilitation of communication on problems between the judiciary and the private sector.
10. Public information on laws, the justice system, what it is and how to use it.
11. Updating the legal codes.

At the same time, IPC will explore with the new Minister of Administrative Reform, Malam Bacai Sanha, the feasibility of establishing an informal group to identify pressing administrative and regulatory reforms that directly affect private sector T&I.

Discussions were held with Guinea Bissau's President and other key officials concerning the eventual formation of a ministerial policy group or Presidential Commission to plan and provide policy guidance for efforts both to remove impediments to private sector growth and to identify those reforms which stimulate trade and investment. Guinean leaders, USAID officials and the IPC team concurred that it would be premature to establish such a policy group at this time. Nevertheless, it was decided that establishment of an informal group to work during the pre-election period would be an appropriate next step. In cooperation with government officials, IPC will begin to identify potential collaborators. Emphasis should be placed on identifying legal reforms which can be proposed after elections and once the new parliament is in place.

Finally, only after progress has been demonstrated and governmental changes have been made should IPC seek establishment of a Presidential commission or other super-ministerial coordinating group.

I. INTRODUCTION

In September/October 1992 an Implementing Policy Change (IPC) team visited Guinea Bissau (GB) to begin IPC support for GB's efforts to improve the environment for private sector trade and investment (T&I). This visit followed up on a January 1992 IPC reconnaissance visit to Guinea Bissau which had determined that GB could benefit greatly from USAID/RD/EID's IPC project by applying strategic management techniques to the planning and implementation of its reform program. During the January visit, the team found both a strong commitment among Government and private sector leaders to the reform program and a willingness among Government of Guinea Bissau (GOGB) leadership to accept as their own a joint GOGB-USAID/IPC investigation into key policy implementation issues. The team identified major reform areas seen to be needed by different sectors of Guinean society, examined the potential effects of specific reforms on various segments of society and identified linkages among priority reforms. Following the January visit, the IPC team proposed that IPC focus on actions and reforms aimed at creating an enabling environment of investment and private sector growth.

In July 1992, USAID approved an overall scope of work for IPC in Guinea Bissau (Annex A). IPC's efforts would support USAID/Bissau's strategy described in its Trade and Investment Program Support (TIPS) project, which was approved by AID/W in May 1992.

The scope of work for the September/October IPC visit to Bissau (Annex B) called for an initial focus on developing a strategic management approach to TIPS target #3: "Adjudication of trade and investment legal and regulatory conflict improved". Specific objectives for the team were to:

1. Assist Guinea Bissau representatives of both the public and private sectors develop an initial strategic plan for judicial reform activities necessary for increased trade and investment (T&I) in the critical growth sectors (CGS).
2. Build on earlier IPC work in Guinea Bissau to continue to explore and direct attention to mechanisms for making decisions to promote a trade and investment improvement agenda in the CGS's in Guinea Bissau.

Two members of the IPC team, Geraldo Fernandes and Dan Gustafson, arrived in Bissau September 28, 1992 and remained for two weeks, departing October 12. John Blacken arrived October 4 and remained until October 19. Ivon Pires, who was in Bissau for all three weeks working on the land law project for the Land Tenure Center, (Dr. Pires has had considerable experience over the past several years in working with the legal system in Guinea-Bissau) provided valuable insight and contributions to the IPC team.

In addition to the material made available to the team in Washington, documents relating to the judicial sector were reviewed in Bissau. A series of interviews were conducted with Guinean government and private sector representatives (listed in Annex C). Based on these interviews, an informal working group was established with representatives from the Supreme Court, Regional Courts, Ministry of Justice, Law School, Chamber of Commerce, Magistrates' Association, Bar Association, Agricultural Growers' Association, and private law practice.

(Working group members are listed in Annex D.) The group met on Monday, October 5 to establish priorities and to assign tasks for preparing an action plan for judicial reform; worked in small groups during the week with the involvement of the IPC team; and met again Thursday, October 8 to present the various components and to reach agreement on next steps. Members of several political parties were represented as well as participants in the multi-party transition commission.

Meetings to discuss policy direction for increasing T&I were held with President Vieira, Justice Minister, President of the Supreme Court, members of the National Constitution Revision Commission, Minister of Agriculture, and Minister of Administrative Reform and Civil Service. The project and the reform program were also discussed with officials of the Ministry of Finance, the President of the Tribunal das Contas (Tax Court), and some representatives of the donor community, including the World Bank representative and the Director of Portuguese Economic Cooperation.

This report of the IPC team's findings, work accomplished and recommendations is organized in four sections covering: (1) efforts to develop a strategic approach to T&I policy reform, (2) initial focus on judicial reform, (3) an action plan for IPC work on judicial reform, and (4) concluding comment.

The IPC team members wish to thank its Guinean counterparts and working group members for their excellent cooperation and vital contributions to the success of the visit. They also appreciate the interviews and time given by top GOGB officials who provided valuable assistance and information to advance the project.

II. DEVELOPING A STRATEGIC APPROACH TO T&I POLICY REFORM

A. Recognition of Need for a Policy Mechanism

The report of the January 1992 IPC reconnaissance team found broad support in Guinea-Bissau for the GOGB's post 1986 economic and political reform program. The economy has grown steadily and significant expansion of private enterprise activity has occurred. Most of GB's population has benefitted, with the main beneficiaries being farmers, private entrepreneurs, and those who have found employment as a result of the expansion in the private sector. Some public sector employees who have lost employment during the reduction of the size of government have been short-term losers in the process.

The strategy for increasing the number of beneficiaries is to ensure that the reform process is fully carried out. This will expand greatly the private sector, create many more jobs for Guineans, and result in an expanded tax base and increased revenues for the Government.

Some Guineans apparently believe that reforms already in place which have removed the prohibitions and tight restrictions on private sector activity that prevailed before 1986 are sufficient to accomplish the task. Probably over time this would happen. However, given

urgency of the economic/financial problems confronting the country, special and immediate attention should be given to providing incentives, policy changes, removal of restrictive, burdensome regulations, complex licensing procedures and other disincentives to private sector growth. Such reforms do not involve expenditures of scarce capital, yet they could contribute to much more rapid economic growth.

While Guinean leaders have taken a general policy stance of placing importance on legal, judicial and administrative reforms that would remove constraints on and encourage expansion of private investment, the general concepts have not yet been specifically focussed by means of policy directives, regulations, legislation and institutional change. Concrete and well articulated policies to orient and set parameters to improve the investment environment are needed. This was the rationale underlying the recommendations in the IPC reconnaissance team's January 1992 report. Among those recommendations was that a high-level policy mechanism, perhaps a Presidential Commission, be established to determine the nature and direction of investment policy change, establish priorities for changes in policy, identify laws that need to be changed or enacted to encourage economic growth, determine strategies for the removal of obstacles to investment, and supervise or monitor implementation of the policy changes made.

This commission, as proposed, would be the principal mechanism for opening dialogue on investment policy to wider participation. One of the first actions of the Commission would be to convene a workshop for key ministers and private sector leaders. The commission would have a technical staff to carry out analytic work and develop specific proposals. Working with technical staff and counterparts designated by the President, IPC would assist in the organization and facilitation of the workshop.

B. GOGB Focus on Constitutional Issues and Elections

Unlike in some countries where political and economic reforms have been forced upon one-party governments by active opposition, the reform process in Guinea-Bissau has been the initiative of the Government, starting first with economic reforms in 1986 and beginning political reforms in 1990. During 1991 constitutional reforms were passed opening the way for a multiparty system, press freedom and democratic elections. By early 1992, the process had gathered momentum. A Constitution Revision Commission, composed of several key Ministers and legal technicians, was preparing additional constitutional amendments, a draft electoral law and a proposal for an independent electoral commission. In January 1992, the GOGB tentatively set elections for November, 1992.

In May 1992, a draft electoral law and a proposal concerning membership on the electoral commission were circulated to all political parties for comment. Several of the parties, however, did not respond to the proposals. They argued that they should participate in a broader dialogue on all pending issues leading to elections. In August, the government decided to accommodate the opposition by forming a multiparty commission to carry out consultation on constitutional and electoral issues.

In forming this commission the government apparently hoped, through dialogue with opposition parties, to achieve consensus on the electoral law and constitutional issues. However, by mid-

September the commission had bogged down over the issue of whether to have presidential and parliamentary elections on the same day or hold the parliamentary elections first and the presidential elections a month later. The recommendation that the two elections be held on the same day was originally made by a team from the International Foundation for Electoral Systems (IFES). The government subsequently embraced this option, as it would cost substantially less than the two elections proposal. The opposition, however, has remained adamant that the elections be held separately. It is now clear that preparations for elections will not be completed until mid or late 1993.

Between now and the elections, it appears that the only legislation that will be sent to the current National Legislative Assembly will be the constitutional amendments and legislation necessary to conduct democratic elections. Moreover, these proposals will be sent to the Assembly only after consensus has been reached in the multiparty commission. In view of this, the IPC team and USAID/Bissau agreed that reforms involving legislation to expand T&I should be addressed later in the context of working with the new parliament.

The team learned after its arrival in Bissau that the President had decided to restructure his cabinet and reduce the number of Ministries. In view of the potential for governmental changes prior to elections and the probability of additional changes after the elections, USAID/Bissau and the IPC team recognized that it would be premature to push for establishing a presidential commission at this time. However, it was agreed that the IPC program and the concept of providing a high-level policy emphasis for actions to improve the climate for private investment would be discussed with the President and other officials.

C. IPC Interim Strategy

The scope of work prepared for the September/October IPC team visit was designed to focus initial IPC attention on the judicial sector. The policy for judiciary reform is essentially in place and is not politically controversial. The decision to establish an independent judiciary through a constitutional amendment and supplementary legislation appears firm. Work could begin immediately.

During the IPC team member's meeting with President Vieira, progress of the reform program was reviewed. The President repeated his commitment to the process of reforms to stimulate and remove impediments to the private sector, including the eventual establishment of a ministerial policy commission to give overall guidance to the process. The President concurred with the plan to start work on reform of the judiciary system first and phase in efforts to support changes in laws later.

Although it may not be practical to establish at this time a formal presidential commission on trade and investment issues, the team recommends that IPC start to immediately to identify and work with individuals in government, the private sector, interest groups and political parties who are interested in working to create better conditions for expansion of the private sector-driven economy. They could form a core group for forming a presidential commission in the future. This effort should also be pursued in the immediate future prior to elections.

Another potential area for IPC support, identified by the IPC team in January 1992, is administrative reform. Some progress has been made since April when the Minister of Administrative Reform convened a government-wide conference, including international donors, to develop proposals and plans for reform and reduction of the number of public employees. Efforts to implement reform proposals are going forward. During two meetings with IPC team members the Minister of Administrative Reform and the Civil Service expressed interest in having IPC involvement in administrative reform. The Minister was particularly desirous of assistance in making a survey of a wide range of private firms as part of an effort to establish a new minimum wage level.

Although this specific request would not fit under IPC, the team believes that since some actions and policies of the bureaucracy and attitudes of officials have an definite impact on private sector activities, the team recommends limited IPC involvement in support of some aspects of administrative reform. The involvement could begin by exploring with the Minister of Administrative Reform the possibility of establishing a small advisory group with the specific task of examining how government bureaucracy impacts on private sector activities and to identify reforms which would remove impediments and help create an "enabling" environment for the private sector. At the same time, care should be taken not to be drawn into areas not having a bearing on T&I. The Minister of Administrative Reform with whom the team discussed the above was replaced as part of the government reorganization of late October. IPC should explore whether the new Minister would be interested in having IPC support for reforms having a positive impact on T&I.

To summarize, IPC's initial strategy, will be to (1) focus on judicial reform, an area where a policy group is already in place and a working group has been formed; (2) seek to engage the Ministry of Administrative Reform in designating a core group, including officials and private sector individuals, which will focus specifically on identifying administrative and regulatory reforms which directly affect private sector T&I; (3) identify government officials and private sector individuals who are prepared to work informally to identify impediments and reforms to remove impediments to private sector growth, with particular emphasis on legal reforms which can be proposed after elections and a new parliament is in place; and (4) when progress has been demonstrated in the forgoing and governmental changes have been completed, press for establishment of a Presidential commission or other super-ministerial coordinating group to give impulse and policy guidance to reforms designed to enable private sector T&I expansion.

III. IPC AND JUDICIAL REFORM

A. Findings

The selection of judicial reform as the first policy reform target of the IPC Guinea-Bissau project has several important advantages and relates to a number of other issues to be addressed in the project. Although the overall policy guidance and priority selection mechanisms are not yet in place, judicial reform, including separation of the judiciary from the executive, is part of the package of priority constitutional amendments which the Government's Constitutional Revision Commission has drafted and submitted to the recently formed Multiparty Commission (composed

of representatives of all political parties). Government officials state that the package, possibly with amendments suggested by the Multiparty Commission, will be submitted to the National Assembly for approval before the end of 1992.

There is broad consensus in Guinea Bissau on the basic objective of creating an independent judiciary. The lack of an impartial justice system is recognized as a serious impediment to trade and investment and there is a desire to move beyond the talking and diagnostic stage and get on with actual implementation of the policy. Finally, judicial reform is an area where participation and ownership can be extended beyond those in the judicial system. Private sector traders and investors, as well as political leaders and the general community, have a stake in shaping an independent and functioning judicial system.

The present institutional weaknesses in the judiciary, however, are so serious that the system's ability to have immediate impact on improving the trade and investment climate of the country is limited. The inadequacy of physical infrastructure and funding for the system, the lack of depth of expertise and training, and the low remuneration at all levels--even by Guinean standards--are extremely serious problems. The judiciary as a functioning institution must be strengthened if it is to have a positive impact on trade and investment. Although there appears to be unanimous agreement on the need for improvement--it is a "motherhood" issue--judicial reform must compete with other priorities such as debt repayment, and the education and health sectors for extremely scarce resources. Partly because of the weaknesses in the judiciary, in the past T&I disputes have frequently been referred to executive branch officials for resolution. Under those conditions it was easy to ignore the judiciary.

This situation is changing. The Supreme Court already has the critical role of registering new parties and will have a role in supervising the upcoming presidential and parliamentary elections. The constitutional amendment separating the judiciary from the executive branch, making it an independent co-equal branch of government, will dramatically increase the importance of the judiciary. Whereas under the previous system of one-party government and the judiciary under control of the executive, the judiciary was not called upon to be an arbiter of disputes between parties or different branches of the government. However, with the new multiparty democratic system, the courts must now assume this important role. No other institution can function as impartial arbiter in the conflicts that will arise once the rules of political and economic games change. Commercial and investment disputes, particularly those involving government and private sector individuals and firms, will be referred to the courts.

The full extent of the responsibilities that will fall upon the judiciary is not yet entirely appreciated, even by the judiciary. Nevertheless, there is clearly an opportunity to capitalize on the increasing importance that will be thrust on the system. The system is not prepared to handle the new demands, and support for the judiciary will be critical, both to improve its capacity and to translate the increased demands placed on it into improved political and financial clout. In this context, the application of IPC strategic management principles in the competition for resources can be a crucial positive factor.

Judicial reform is a necessary element in improving the environment for economic activity. USAID and other donor support of this reform will be essential, given the current low capability

of the system. Most of the anticipated change, however, is generic in the sense of creating a system that supports a host of societal goals (e.g., human rights, trade and investment, fair elections, etc.). Direct impact on trade and investment is only one of the potential areas where the new power of the judiciary will be felt.

Consequently, the reform process that the IPC project supports must pay particular attention to two aspects: 1) improving the overall capacity of the judiciary to carry out its general functions, and 2) improving its performance with regard to resolving private sector trade and investment issues. The second will not occur without progress on the first. It involves both improvements in the judicial system and improving access and awareness in the private sector regarding how to use the system. The latter should involve seminars for private sector participants concerning use of the judicial system and laws to protect private sector interests. It also requires other legal reforms (e.g., revision of the commercial code, training of lawyers) that are related to, but outside of, judicial reform per se.

Improving the judicial system requires attention to management and policy implementation issues, including resource allocation. In addition, it also requires basic investments in physical and human capital necessary to make the system function. This effort is not a mere tinkering around the edges--it represents the re-creation, almost from the ground up, of a new, independent judiciary.

IV. ACTION PLAN FOR JUDICIAL REFORM

A. Working Group Activity

Following a series of interviews with Guinean government and private sector representatives, the IPC team worked with government and judicial officials to establish an informal working group (see Annex D). The group first met on Monday October 5 to establish priorities and to assign tasks for preparing an action plan for judicial reform. Group members prepared the first draft of an action plan. Work continued in small groups during the week with the facilities provided by the IPC team. The working group met again Thursday October 8 to present the various components and to reach agreement on next steps. Members of several political parties were represented as well as participants in the multi-party transition commission. During working group sessions there was a very active exchange of ideas. Participation in preparing the action plan was excellent.

The IPC team and the working group determined that the major actions/issues involved in 1) creating a functioning, independent judiciary and 2) addressing the needs of expanding trade and investment in the context of the judiciary can be summarized as follows:

1. Constitutional change to create the separation of powers.
2. Legislation that establishes and regulates the judicial system.
3. Improvement of the physical conditions of the judicial system.

4. Improvement of the professional capacity of the magistrates, other court employees, and the legal profession.
5. The financial viability of the judicial system.
6. Compatibility between traditional and formal law.
7. Improvement in the design, application, and adjudication of executive branch regulations with the force of law.
8. Specific technical training in priority areas (e.g., commercial law).
9. Participation by the private sector in the judicial reforms through workshops and seminars and facilitation of communication on problems between the judiciary and the private sector.
10. Public information on the justice system, what it is and how to use it.
11. Updating the legal codes.

The judicial reform action plan developed by the working group generally follows the outline listed above, with several modifications. The working group preferred to deal only with judicial reform issues, rather than address wider issues of legal reform. There are two reasons for this. First, the working group felt its agenda was heavy with issues involved in judiciary reform. Secondly, legal reform (preparation and passage of new legislation) should be addressed later in the context of developing legislative proposals for the new parliament. Similarly, a decision was taken by the group to limit their attention at this time to the "common" court system rather than to include the "tribunal de contes" (tax/fiscal court). The president of the latter body participated in the working group, and the Tribunal de Contes is considered part of the Guinean judicial system. This body is only now gearing up to audit government accounts, and has not initiated activities in this regard. Eventually, this role will be of primary importance to the proper functioning of government. For the present, however, the judicial reform group focused on the regular judicial system. Similarly, the working group did not address issues relating to conflict resolution within executive branch agencies, such as the "tribunal fiscal" of the Finance Ministry.

B. Action Plan

A preliminary Portuguese version of the judicial reform action plan was submitted to the USAID Mission and is attached as Annex E. A summary of the recommendations and plan follows, with some additional comments pertaining to suggested IPC activities not spelled out in the working group plan:

1. Constitutional Revision. National Legislative Assembly approval of the constitutional amendment creating the judiciary as an independent power is anticipated before the end of the year. Since this article is part of the package of amendments required to allow national elections, the approval of this package appears certain. Those interviewed were

unanimous on this, and no action was thought necessary or advisable by the working group.

2. Legislation to Organize and Regulate the Judiciary. The legislation required to implement the constitutional provision for an independent judiciary includes four basic documents:
 - a) Estatutos da Magistratura Judicial e do Ministerio Publico
 - b) Lei Organica da Magistratura Judicial
 - c) Lei Organica do Ministerio Publico
 - d) Regimento Interno do Supremo Tribunal

Drafts of all four of these statutes had been previously prepared by members of the working group. However, as a result of working group discussions, the original drafters undertook the task of drafting changes to these proposed laws. These documents will be analyzed by Geraldo Fernandes upon his return to Brazil, and his comments will be forwarded to Alberto Lopes, head of the Order of Magistrates.

Once the constitution has been amended, the texts of these draft laws should be reviewed and revised as necessary by members of the working group together with other high government officials before submission to the National Assembly for consideration. To accomplish this review, the group proposed that a one week workshop be held outside of Bissau (where participants would be free from office duties), where the Supreme Court justices and invited outside experts would meet to come up with the final drafts of these laws to be submitted to the legislature for approval. After this, a strategy should be worked out by the working group to work with key stakeholders, including private sector participants, to see that the legislation passes as quickly as possible.

These activities appear to be good candidates for financing through USAID funding either through the IPC project or other mechanisms.

3. Compilation of Existing Laws. One of the first acts of the Guinean Government after independence was to adopt existing Portuguese law, with the exception of those laws in disagreement with the Guinean constitution. Much of this body of law is old (the commercial code for example dates from the 1890's) and much of what existed in Portugal in 1973 has been changed in Portugal but the changes have not been formally adopted in Guinea-Bissau (although at times the recent Portuguese laws have been applied by the courts). Since these codes are not in a reference library in Bissau, magistrates have difficulty referring to them. The lack of access to the existing legal codes has been a serious problem. The objective of this component is to compile and distribute manuals containing these laws.

The law school has been working on this compilation for some time in order to supply the legal texts to its students. Through an agreement with the Law School of the

University of Lisbon, a proposal was received by the working group regarding the cost of supplying 150 copies (enough for all the judges and other members of the legal profession in the country). There are several options for consideration.

- a) Purchase all the manuals from the Lisbon Law School, at a cost of approximately \$17,000.
- b) Purchase those manuals of greatest interest at the moment, e.g., the commercial and civil codes.
- c) Prepare annotated versions of these compilations of the priority codes.

The decision of which course to follow will depend on the amount of effort necessary to develop an annotated version, which can only be estimated once the present state of the manual is known. Geraldo Fernandes obtained copies of the commercial and civil code volumes from the Bissau Law School before departure and will examine them to determine how much work would be involved. Based on this a more precise recommendation can be made of how to proceed. The important point is that the laws must be organized and made available.

Geraldo Fernandes believes that it will be necessary to have the Supreme Court give some type of approval to the texts once they are prepared to acknowledge formally that they indeed represent the law of the land. How this will be done will depend on the form that the documents take: if it is a mere compilation this will be easier, if it is an annotated volume this will be more complex.

In addition to the compilation of the legal codes, the working group proposed that the existing jurisprudence (body of laws) be collected and organized. It was recommended that law school students undertake this task. The law school will prepare a proposal detailing how much this effort would cost and will provide a timetable for completion of the task.

It also will be important to initiate a system for organizing new case law and legislation as it develops. This topic is dealt with below under court administration.

4. Physical Improvements. It is recommended that an inventory be made of existing and required infrastructure for the court system. Priorities for purchase should be 1) generators to allow courts to function during daily electrical outages, 2) office furniture including desks, shelves, and filing cabinets, and 3) a computer for organizing the system.

No list exists of the priority items. An IPC Administrative Assistant has been hired and instructed to follow up on this task with members of the working group, particularly Alberto Lopes of the Supreme Court. Ivon Pires prepared a complete list of material requirements for the Ministry of Justice (not the courts) for the Legal Reform PP. This list could serve as a model for the persons to work from.

5. Judicial Library. Physical infrastructure must include a library for the judiciary. Its importance merits special attention. A space for the library must be identified as part of the infrastructure inventory. A librarian will need to be hired and trained. Bibliographic material needs to be purchased, and an archive system created for the laws, bulletins, and case law (jurisprudence) that will be produced by the new judiciary.

The IPC Administrative Assistant also has been given the task of organizing the list of bibliographic material necessary for the library during the next month. The people most knowledgeable to work with on organizing this information are Armando Procel of the Ministry of Justice, Daniel Ferreira and Alberto Lopes of the Supreme Court, Joaozinho Co of the Law School, and the Justice Minister Cruz Pinto. All of the above mentioned persons have agreed to work with the IPC Administrative Assistant in carrying out this task.

6. Court Administration. The independence of the judiciary will create new administrative responsibilities. These include such things as personnel management, the creation of standardized administrative routines, budget development, etc. The judiciary must organize quickly to assume its new responsibilities as an independent branch of government.

It is recommended that two consultants be hired by USAID, possibly under IPC, for a 30 day period to review the functioning of the system, its new requirements, and to propose what should be done. One would concentrate on organizational structure and the other on administrative routines. Geraldo Fernandes identified Brazilian candidates who have similar functions within the Brazilian judicial system. Counterparts will have to be identified within the new Guinean system.

Although some of this work will have to wait for the approval of the constitutional changes and the organizing laws, much work can be done now in setting up priority administrative structures and routines.

7. Training. Some training is already underway, financed primarily by Portuguese bilateral aid. This includes a two-year magistrates course in Lisbon that several justices have participated in, and a course for court officials (escrivaes) now in progress. Most training activities can count on the support of the law school, which should have a major role in organizing these activities.

Additional recommended training activities include:

- a) Organizing two one-week seminars per year in Bissau for judges and other participants from the legal system on priority topics. The first of these should be on commercial law. The law school would be willing to facilitate and hold this event if financing were available. Outside experts would be brought in to teach the courses.
- b) A visit to Brazil by the Presidents of the Order of Lawyers of Guinea Bissau (OAGB) and the Order of Magistrates of Guinea Bissau (OMGB) to establish

contact with their counterparts and observe the functioning of the courts. Significant potential exists for long-term supportive relationships, including the Brazilian Bar Association, Order of Magistrates, and Magistrates School.

- c) Another possibility is the implementation of distance education for magistrates and other judicial employees, similar to what already exists in Brazil. This training option could be explored during the Brazil visit.
 - d) Training is also highly recommended with regard to regulation and oversight of the justice system. With independence comes responsibility, and measures need to be taken and persons trained in these oversight functions. This is an entirely new area for the judiciary in Guinea-Bissau and must receive attention.
 - e) A seminar for private sector participants on how court systems in democratic countries are used by private sector individuals/firms to protect their legitimate interests and resolve disputes.
8. Financial Viability. The financial situation of the judiciary is extremely precarious, reflecting Guinea Bissau's budgetary difficulties and the low priority and prestige of the current system. The new status and role of the court system should help but correcting this problem will require a long term effort. The problem should be addressed on several fronts:
- a) A special IPC intervention should target the financial situation of the courts, including such things as coalition building, stakeholder analysis, preparing a strategy for increasing its share of the budget, etc. The change in the political equation mentioned above should be taken advantage of in increasing the resources that flow to the judiciary.
 - b) Reform in the procedures for attributing and collecting court fees needs to take place in order to increase self-financing. Geraldo Fernandes is going to review the proposed draft legislation on this topic and prepare a memo outlining how the Brazilian system functions (it appears more advantageous than the Portuguese model) and providing recommendations. This document will be utilized in the IPC collaboration with the working group in coming up with a strategy for improving the financial situation of the system.
 - c) Donor resources will continue to be required and donor coordination will be very important. Part of the IPC activities will also work with the group on this issue, particularly in defining needs and potential sources of support.
9. Public Information. Improvements in the capacity of the judicial system must be accompanied by increased access to its services and awareness by the public of how to utilize the courts. A public information campaign could have immediate impact in this regard at a relatively low cost. Members of the working group thought that the experience of the Chamber of Commerce in this regard is relevant. The Chamber has a

weekly 15 minute program (costing about \$20/week for air time) that could be utilized initially for this purpose. The working group also recommended that radio announcements be prepared informing the population about the judiciary system, what it does, why it is necessary, where it is, how to use it, etc. There should also be special segments addressing commercial aspects and agricultural issues. It is also recommended that a journalist be contracted to prepare the radio spots. Similarly, television programs featuring interviews with judicial officials could be used.

Some additional possibilities not covered during the working group sessions might include:

- a) Publicity regarding the courts' institutional importance in certifying elections and registering political parties. Impartiality and professionalism could be emphasized.
- b) Courts could develop and make widely known the mechanisms they will use to assure accountability regarding impartiality and honest use of judiciary's budget.
- c) Initially, when the judiciary first emerges as an independent arm of government, ways should be sought to enhance the role of the President of the Supreme Tribunal. For example, he might be designated to chair certain public commissions. He could be given special responsibilities which are recognizably non-partisan. Role segregation can be as important as role expansion. For example, judges should avoid responsibilities for supervising the public prosecutor.

V. CONCLUDING COMMENTS

Several issues in the scope of work were not dealt with directly by the working group but were addressed by the IPC team. The compatibility of customary and formal law was discussed by the group, but it did not receive as much attention as the other areas relating more directly to reform of the judiciary. The working group recommended that this area continue to be the topic of study by the National Institute for Studies and Research (INEP), and that the group follow closely the results that come out of that ongoing work. In addition, the group believes that the area most directly affected, and where the two systems will collide is land law. The implementation of the new land law, once adopted, appears to be a good candidate for specific IPC attention.

Regarding the issue of administrative adjudication of regulatory disputes outside of the judiciary, the IPC team met with members of the Ministry of Finance and the Ministry of Administrative Reform. Although the team did not advance very far in laying out action plans in this area, it appears that the "tribunal fiscal" or tax dispute section of the Finance Ministry may be a good candidate to examine in more depth. It also appears that the lack of regulations rather than confusion arising from their application is a more serious problem at the moment. As noted earlier, the Ministry of Administrative Reform, in addition to its current program of totally restructuring and reducing the size of the public sector, is engaged in some activities which will directly impact on the private sector. An immediate example is a survey of the private sector to

collect data for use in establishing a new minimum wage. The IPC team believes that the private sector should be more directly involved in this effort, i.e. in the overall question of whether a new minimum wage law is desirable at present and have channels for dialogue on the overall issues involved. At the moment, it appears the private sector's participation is limited to providing answers to poller's questions.

Work in judicial reform has moved to the action phase. To maintain momentum, IPC must follow up on the actions taken and planned during the September/October visit. It is expected that within the next few weeks IPC's Guinean working group counterparts will have carried their tasks as set out in the work plan. At that time the IPC and USAID will be called upon to finance certain aspects of the program such as purchase of some office supplies, legal reference works and compilations of laws. In a country such as Guinea Bissau where funding resources are extremely limited, donors must accompany training and management programs with some funding. For strategic management to be effective, it must have personnel and resources to manage.

Next steps toward development of broader involvement for IPC will be to develop a working group to identify areas in administrative reform which impact upon the private sector and to develop a strategy for implementing enabling actions by government and eliminating impediments to private T&I. Concurrently, action will be taken to identify a core group of officials and private sector individuals who are willing and able to work together or individually to create an improved environment for private sector activity. Together with these individuals IPC should begin strategic planning for legal reform. Once progress is evident in all or some of these areas and the elections are held, conditions will be ripe for creating a formal super-ministerial policy group to identify and implement cross-cutting reforms in several ministerial areas.

ANNEX A

SCOPE OF WORK FOR IPC IN GUINEA-BISSAU

SCOPE OF WORK FOR IPC IN GUINEA BISSAU

BACKGROUND:

USAID/Bissau has been cooperating with public and private sector leaders in Guinea-Bissau regarding means to manage the formulation and implementation of policy changes supportive of private sector trade and investment in critical growth subsectors. The mission strategy for supporting trade and investment is described in their Trade and Investment Program Support (TIPS) project which was approved by AID/W May 1992. The objectives of this plan of work are consistent with the TIPS, and focus especially on the first two targets and sub-targets of USAID's TIPS objective tree which are:

Target #1: Technical analytical base for planning a trade and investment (T&I) policy, legal and regulatory reform and for providing direct T&I support to the private sector is improved in critical growth sub-sectors.

Target #2: Policy, legal and regulatory environment for increased private T&I in the critical growth sub-sectors is improved.

In addition to being consistent with TIPS, this work is part of a larger program of activities consisting of two training programs (HRDA and ATLAS) a non-project assistance program planned for FY93 and program development and support. R&D/EID's Implementing Policy Change (IPC) project has been cooperating with USAID/Bissau in working with local counterparts in the development and implementation of a program to assist Guinea Bissau in formulating and implementing policy changes supportive of private trade and investment growth subsectors. This work builds on that effort.

OBJECTIVES:

1. Work in close cooperation with public and private sector leaders to develop appropriate and effective mechanisms to manage the formulation and implementation of policies, laws and regulations supportive of private trade and investment in the critical growth sub-sectors of rice, cashews, fruits, vegetables, and forest and fisheries products.
2. Gain the support and involvement of public and private counterparts in this management process.
3. Produce sufficient concrete results (e.g., preparing a new commercial code) to justify the continuation of activities.
4. Begin to develop the basic data, information, reports, policy formulation and management skills, and research capabilities among

counterparts so they will be able on their own to continue the management process hereby assisted by the contractor.

OVERALL APPROACH:

To achieve these objectives, it is expected that the contractor will work with an ad hoc group of counterparts (hopefully designated by the President of the Republic.)

All products are to be of immediate use to the GOGB.

The kinds of activities the contractor will support GOGB managers in accomplishing include:

- Coordinating the change process and promoting broad participation and ownership of it.
- Guiding research and policy design so that they are sensitive to implementation issues.
- Assessing specific policies in terms of implementation options and constraints
- Assisting in planning and carrying out implementation of specific policy changes.

ACTIVITIES:

1. Objective: The contractor will work with public and private entities and individuals to identify, develop and strengthen an organizational mechanism that will be responsible, with contractor's technical assistance, to develop a list of priority areas for policy attention in the critical growth subsectors targeted in USAID's program logframe. This mechanism may be a unit in an organization or an agreed upon process for carrying out collaborative work.

Steps leading to an agreed upon mechanism include:

- a. Through interviews and analysis, clarify the objective of establishing an organization or process. Identify key activities to be carried out: what needs to be done, what types of decisions and recommendations are needed by whom to bring about policy change? Decide what issues will be explored or examined? To what depth?
- b. Identify key groups and individuals who have a stake in actions to be taken regarding trade and investment promotion and agree on how they should be involved in the planning process. What is the appropriate mix of private and public sector representatives? What are incentives

- and disincentives for their collaboration?
- c. Determine strengths and weaknesses of present structures, processes, procedures and personnel for performing the required functions.
 - d. Identify strengthes and weaknesses of alternate approaches and frameworks for meeting the objective(s) agreed to above.
 - e. Facilitate a decision on a plan for coordinating T&I promotion activities which is organizationally sound and which takes resource constraints, political costs and cultural norms into account. The plan should specify objectives, responsibilities, authorities and relationships. An organizational location should be specified. The decision process should be facilitated in such a way that ownership of the decision is fostered. Commitment to provide needed manpower and other resources should be obtained.

PRODUCT: A report is prepared that documents the agreed upon plan. Outcomes from steps a through e will be described. A draft will be reviewed by GOGB representatives and USAID. Comments will be incorporated into a final report. Five copies of the final report will be delivered to GOGB, two copies to USAID and two to R&D/EID.

2. Objective: The plan approved in 1 above is initiated and the unit becomes operational. Policies for trade and investment promotion are prioritized and initial strategies for their implementation are developed.

Steps include:

- a. Assist GOGB develop job descriptions, screen candidates and assign personnel. Specify training needs and develop plans to meet them.
- b. Assist GOGB develop and test procedures for obtaining, monitoring and accounting for resources (e.g., operating funds, personnel, materials, equipment, space), information sharing (internal and external) and decision making, report writing and distribution, monitoring progress against plans and adjusting plans.
- c. Assist GOGB develop a workplan for the upcoming year including establishing priorities and identifying critical activities, relationships to be fostered, timelines and a budget.
- d. Assist GOGB in communicating the "organization:" its objectives and procedures.

PRODUCT: A workplan is prepared and approved by GOGB that incorporates a-d above. The unit/mechanism is operating and public and private organizations are aware of its existence.

3. Objective: Assist GOGB to establish and manage priority implementation strategies.

The contractor's contribution in working with the organizational unit and mechanisms established through 1 and 2 above will typically follow a five-stage sequence of steps required to understand and then promote private trade and investment in the critical growth sectors. These five stages are:

1. Current status of production/processing/marketing (PPM) determined.
2. Potential for increased PPM determined.
3. Constraints to increased PPM determined.
4. Action plans/strategies/budgets in place for policy, legal regulatory reform.
5. Action plans/strategies/budgets in place for direct T&I support to private sector.

For priority policies, the contractor will assist their counterparts in designing appropriate research for other contractors or for this contractor to undertake to more closely define objectives and identify constraints to implementation, develop implementation strategies, and establish mechanisms to gain private sector input and build acceptance and support for the changes contemplated. Implementation strategies should include identification of training needs.

To meet some of the training needs which will be identified, the contractor will provide six study tours to the U.S. and/or third countries and six short courses in the U.S. or third countries.

In addition, three workshops for approximately 30-40 people for 2-4 days will be held in Guinea-Bissau to develop consensus on important issues, build understanding and acceptance by public and private sector representatives of policies and procedures formulated, and at collaboratively develop implementation plans and procedures for implementation of critical policies. A facilitator/trainer and a specialist on the workshop topic will collaborate with GOGB personnel on design and delivery of each workshop. Two of three subject areas that may be covered include land tenure and judicial reform. The decisions on workshop topics and training will be made jointly by GOGB, USAID, R&D/EID and the contractor based on priorities identified during the planning process above.

Steps 1 and 2 will be completed within 3 months after arrival in Guinea Bissau. After three months of arrival in Guinea Bissau,

the contractor will prepare a plan that specifies its schedule of work through December 31, 1993 and describes how the contractor will monitor and evaluate its progress in performing the tasks specified in this scope. The workplan will be updated and then approved by USAID every following three months, or at such other intervals as USAID shall decide.

The contractor's field staff will meet, with Washington support personnel as appropriate, with USAID management at least biweekly to review the contractor's progress achieved to date, problems encountered and proposals to address these problems.

The contractor will coordinate closely with USAID's other contractors and, as appropriate, draw on and use their resources.

Six months prior to the end of this scope of work, the contractor working with GOCB, shall prepare a plan for continuing the work initiated hereunder.

Level of Effort:

Senior Policy Change Experts with the following specialties for 800 person days (300 of which is for Bissau administrative support).

- Management Specialists
- Trade & Investment/Private Sector Specialists
- Legal/regulatory/judicial specialists
- Economist
- Facilitator/Trainer
- Home Office Support (Bissau)
- Home Office Support (US)

The contractor will submit a technical proposal for the mix of skills appropriate to accomplish the scope of work.

Logistics and Timing:

The contractor will begin preparation for this work September 25, 1992 and complete the work by July 30, 1994. The first field TDY will be Oct/Nov, 1992. Nineteen TDY's are planned most of which will be two weeks. Four of these trips will be by one senior policy implementation specialist who will spend a month in Guinea Bissau every four months to oversee progress of the total effort. Thirteen months of local administrative/logistic, secretarial support will be necessary. Home office administrative support will be provided.

The contractor will rent office space in Bissau for the local administrative person and TDYers and will cover the office expenses of utilities and the phone. The contractor will procure office

furniture and computers to support its teams. Included are 2 386 desk computers, 1 386 portable computer, 1 laser printer and 2 stabilizers/ops.

Translation of documents into Portuguese will be necessary.

Rental of meeting space for workshops will be necessary.

Six day work weeks are authorized in the field.

All travel will be approved by USAID.

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ANNEX B

SCOPE OF WORK FOR IPC BISSAU TDY, SEPTEMBER 1992

DRAFT SCOPE OF WORK FOR GUINEA BISSAU TDY
SEPTEMBER 1992

BACKGROUND:

USAID/Bissau has been cooperating with public and private sector leaders in Guinea-Bissau regarding means to manage the formulation and implementation of policy changes supportive of private sector trade and investment (T&I) in critical growth subsectors (CGS). The mission strategy for supporting trade and investment is described in their Trade and Investment Program Support (TIPS) project which was approved by AID/W May 1992. The objectives of this plan of work are consistent with the TIPS, and focus a strategic management approach to TIPS target #3: Adjudication of trade and investment legal and regulatory conflict is improved.

Issues to be addressed include:

1. Identification of problems in adjudicating present laws and regulations relating to T&I in CGS's.
2. Identification of gaps in laws and regulations which the court sees as limiting its ability to encourage T&I.
3. Assessment of performance and needs of both formal and informal judicial systems in successfully resolving legal and regulatory conflict regarding T&I in CGS's.
4. Assessment of capability and needs of key ministries in establishing administrative tribunals that can impartially, fairly and successfully process trade and regulatory issues that fall within the purview of the ministries.

OBJECTIVES:

1. Assist Guinea Bissau representatives of both the public and private sectors develop an initial strategic plan for judicial reform activities necessary for increased trade and investment (T&I) in the critical growth subsectors (CGS).
2. Build on earlier IPC work in Guinea Bissau to continue to explore and direct attention to mechanisms for making decisions to promote a trade and investment improvement agenda in the CGS's in Guinea Bissau.

STEPS:

1. Review judicial and other reform studies to be recommended by the Mission.
2. Interview public and private sector representatives concerned

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with judicial reform for increased T&I. Set expectations for participating in a one day workshop to develop a judicial reform action plan.

Suggested interviewees include:

- Representatives of the highest policy level in government
 - Chamber of Commerce and individual businessmen
 - Members of the formal judiciary and administrative tribunals
 - Reps/indivs responsible for adjudicating conflict in customary law
 - Members of the bar associatio.
 - Representatives of the different political parties in Guinea Bissau
 - Other donors, members of the banking community and individual experts.
3. Survey two ministries with regard to their establishing and operating administrative tribunals regarding trade & investment issues for which the ministries are responsible.
 4. Design and conduct a one day workshop on strategic planning for judicial reform. Identify local experts to assist in the design and facilitation of the workshop. Assist in forming an informal judicial reform working group to move workshop recommendations forward.
 4. Collaborate with a newly formed working group and USAID to follow-up on workshop recommendations.

OUTPUTS:

1. Prepare a 10-20 page report (in English and Portuguese) which presents prioritized objectives and activities for judicial reform in Guinea Bissau to support T&I in the CGS's. Include roles and responsibilities to carry out activities, estimated resource requirements, a schedule, and commodity and training needs. Deliver a draft of the report to the informal judicial reform working group and USAID before departing the country. A final report will be delivered to GOGB, USAID/Bissau and R&D/EID within 30 days after departure from Guinea Bissau.
2. Prepare a 5-10 page report in English and Portuguese which describes who is currently in favor of what types of decision making mechanisms for promoting T&I. Taking the timing of the election into consideration, the report will include recommendations for timing and type of IPC assistance in developing a plan for Guinea Bissau coordination of T&I promotion activities in the CGS's. A draft of this report will be reviewed with the mission before the team's departure.

CONSULTANT ROLES:

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Blacken: lead in contacting the President, Prime Minister, Administrator for Administrative Reform and others to follow-up on current attitudes regarding a Presidential Commission/alternate mechanism for promoting T&D improvements in the CGS's. Support in interviews and developing an action plan for judicial reform. Brings knowledge of context, key actors, political environment and culture.

Gustafson: Lead in the strategic management and process approach to planning for judicial reform. Promotes focus on judicial reforms key to promoting T&I in the CGS's. Support Blacken in follow-on planning regarding decision making mechanisms for promoting T&I in the CGS's.

Isman: Lead in design and facilitation of the workshop. Support in the strategic management and process approach to planning for judicial reform and in follow-on planning regarding decision making mechanisms for promoting T&I in the CGS's.

Judicial Expert: Technical lead in assisting the Guineans in considering alternatives as they develop an action plan for judicial reform key to increased T&I in the CGS's.

ANNEX C

LIST OF PERSONS INTERVIEWED

Name	Title
Alberto Batista Lopes	Supreme Court Order of Magistrates
Almeida Machado	Director, Portuguese Cooperation Embassy of Portugal
Antonio Morais dos Santos	Director General, Contributions and Taxes Ministry of Finance
Armando Procel	Ministry of Justice
Arlindo Cruz	Private Lawyer
Arturo da Silva	Agricultural Procedures Association
Caetana N'Tchama	Regional Court of Bissau
Domingos Sa	Agriculture Producers Association
Enrique Rosas	Director, Lloyds of London, Bissau Office
Francisco Medina	Supreme Court Justice
Ives Tencalla	Resident Director, World Bank
Ivo Djalo	Law School of Bissau
Joao Bernardo Vieira	President, Council of State, Guinea Bissau Secretary General of PAIGC
Jaoa Cruz Pinto	Ministry of Justice
Joaozinho Vieira co	Law School of Bissau
Nicandro Barreto	Procurador Geral of the Republic
Malal Sane	Ministry of Fisheries Bar Association of Guinea-Bissau
Malam Bacau Sanha	Minister of Information and Communications, Chairman of Constitution Revision Commission
Manuel Alipo da Silva	Chamber of Commerce
Marciano Valentim Dama	Tribunal de Contas
Mario Filomeno Pereira	Supreme Court

Name	Title
Paulo de Sousa Mendes	Law School of Bissau
Pedro Godinho Gomes	Minister of Administrative Reform and Civil Service

ANNEX D

LIST OF PARTICIPANTS IN THE JUDICIAL REFORM WORKING GROUP

Name	Institution
Alberto Batista Lopez	Supreme Court, Order of Magistrates
Armando Procel	Ministry of Justice
Arlindo Cruz	Private Lawyer
Arturo da Silva	Agricultural Producers Association
Caetana N'Tchama	Regional Court of Bissau
Domingos Sa	Agriculture Producers Association
Ivo Djalo	Law School of Bissau
Joaozinho Vieira Co	Law School of Bissau
Malal Sane	Ministry of Fisheries Bar Association of Guinea-Bissau
Manuel Alipo da Silva	Chamber of Commerce
Marciano Valentim Dama	Tribunal de Contas
Mario Filomeno Pereira	Supreme Court
Paulo de Sousa Mendes	Law School of Bissau

ANNEX E

PORTUGUESE LANGUAGE JUDICIAL REFORM ACTION PLAN

PLANO DE AÇÃO DE
REFORMA DO JUDICIÁRIO
DA GUINÉ-BISSAU

28 DE OUTUBRO DE 1992

I. Introdução

O País atravessa hoje, um momento histórico de transição política e econômica, cujos resultados influenciarão o desenvolvimento do povo guineense por muitos anos. Dentro do elenco de mudanças profundas na expressão política e nas relações econômicas, o sistema judiciário tem uma importância fundamental. A situação atual do Judiciário, porém, inibe a sua atuação à altura das necessidades do País.

A vinculação direta do Poder Judiciário da Guiné-Bissau ao Poder Executivo constitui-se, no momento, fonte de entrave para garantir aos cidadãos, a certeza de uma decisão imune a interferências externas. A dependência do Judiciário ao Poder Executivo pode ser observada sob vários aspectos. No campo administrativo, por exemplo, cabe ao Poder Executivo nomear e demitir os juizes e funcionários, e exercer fiscalização sobre os relatórios que são enviados pelos magistrados de 1ª Instância diretamente ao Ministério da Justiça. No campo financeiro, cabe ao Executivo manipular a parcela do orçamento do Poder Judiciário, através do Ministério das Finanças.

Além da dependência, as carências do Judiciário são muitas e bem conhecidas: há um desestímulo à carreira na magistratura, em face da atração por outras atividades, que remuneram melhor; a estrutura física é precária; não há viabilidade financeira que garanta o bom funcionamento do sistema; faz-se mister adotar medidas de valorização dos quadros da magistratura e dos auxiliares do Poder Judiciário, remunerando condignamente e aperfeiçoando os magistrados e oficiais de Justiça, instituindo quadros de carreira; etc.

Entretanto, toda a comunidade jurídica guineense é unânime em considerar que o País caminha inexoravelmente para a autonomia daquele Poder. Por outro lado, há crescente conscientização da necessidade de investir no Judiciário para que possa exercer o seu papel devido.

Com o intuito de avançar neste sentido e dar início à implementação concreta do fortalecimento do Judiciário, reuniu-se em Bissau entre 05 e 09 de outubro de 1992, um grupo de trabalho para traçar as linhas gerais de um plano de ação da reforma. Os participantes do grupo são indicados no Anexo A deste documento.

No primeiro dia de trabalho os membros identificaram os componentes principais da reforma, e as ações prioritárias, necessárias para conseguir o objetivo maior de um Judiciário independente e soberano, capaz de dar cumprimento ao seu dever para com o povo guineense. Logo após esta identificação, o grupo subdividiu-se em pequenos grupos de trabalho, cada um com responsabilidade de abordar um dos componentes e elaborar os pontos principais das ações requeridas. O presente documento representa o resumo destes trabalhos.

II. Componentes do Plano de Reforma Judiciária

1. Estudo e Implementação da Legislação Infra-constitucional Referente ao Poder Judiciário Autônomo e Independente

Objetivo: Após a reforma constitucional que irá conferir novo papel ao Poder Judiciário, será necessário dotá-lo de instrumentos legais que ajustem o perfil da nova correlação entre Poderes, ao passo que permita regulamentar administrativamente o Judiciário.

Justificativa: Presentemente, o sistema judiciário continua sem qualquer quadro legal. É imprescindível a definição de um regime legal de enquadramento de todo o sistema judiciário. Tem havido movimento neste sentido, mas sem a aprovação devida dos dispositivos legais.

Tais diplomas são:

- a) Estatuto da Magistratura Judicial e do Ministério Público;
- b) Lei Orgânica do Ministério Público;
- c) Regimento do Supremo Tribunal de Justiça;
- d) Lei Orgânica dos Tribunais Judiciais.

Ações Propostas: Existem, há cerca de quatro anos, projetos versando sobre tais matérias.

É opinião geral que estes projectos satisfazem e estão aptos a seguir para aprovação, salvo a Lei Orgânica dos Tribunais Judiciais, que merecerá consideração infra. Quer o Estatuto das Magistraturas Judicial e do Ministério Público quer a Lei Orgânica do Ministério Público dão resposta cabal às necessidades actuais, sendo que eventuais modificações carecem da revisão constitucional, nomeadamente no tocante à garantia de independência, irresponsabilidade e inamovibilidade da magistratura judicial. Entendemos que estes projectos devem, sem mais demoras, seguir para aprovação imediata.

O Regimento do Supremo Tribunal de Justiça também da resposta às necessidades actuais. Sem embargo, para a sua aprovação não carece da solenidade de lei em sentido formal. Bastar-lhe-á, porque de um regimento interno se trata, ser aprovado pelo próprio órgão. Entendemos que isso deve fazer-se de imediato.

A proposta de reforma judiciária contida no Projecto de Lei Orgânica dos Tribunais Judiciais merece uma consideração especial. Propõe-se a aprovação imediata de uma LOTJ,

na qual venha contemplado o sistema judiciário actualmente em funcionamento, visando-se dar-lhe cobertura legal. Assim, garantir-se-á também uma independência funcional da magistratura judicial, como preparação para a independência plena, inclusive no processo de nomeação dos juízes conselheiros. Esta é a solução de curto prazo.

Não se pretende, por esta via, perenizar um sistema que, segundo é consensual na comunidade jurídica, não convém em termos de futuro. Não obstante, a reforma judiciária de fundo terá de ser preparada, desde já, podendo ser feita no prazo de um ano. Basta, para tal, constituir uma equipa de técnicos jurídicos. As linhas gerais da reforma necessária estão já delineadas, na sua essência: coerência, eficiência, viabilidade prática dentro da simplicidade, unidade orgânica do poder judicial (unidade de jurisdição, integração dos órgãos judiciais, duplo grau de jurisdição).

Vale destacar que as minutas de projetos estão desatualizadas, uma vez que elaboradas segundo a ótica de um Poder Judiciário não soberano. Por outro lado, o esforço do grupo estimulou um trabalho de agilização das propostas de reforma, notadamente no que tange ao Código de Organização Judiciária e Estatuto dos Magistrados, que deverão ser encaminhadas, ainda em outubro, para apreciação e aprovação do Governo.

Esclareca-se, de logo, que se trata de um trabalho ainda carente de revalidação face às reformas políticas que o País irá experimentar. Assim, exigirá um estudo mais acurado, no ano vindouro, caso se concretize sua imediata aprovação.

Sugere-se que tão logo a reforma constitucional seja concluída, inicie-se um processo, em caráter definitivo, de fechamento de uma proposta de reforma dos referidos textos.

O processo deverá ser dividido em três etapas:

1. Inicialmente, há que ser constituída uma comissão de juristas para que, no prazo de três meses, examine os projetos;
2. Encerrada aquela etapa, a Comissão deverá se reunir com os integrantes da Suprema Corte de Justiça e Procurador da República para que, num Workshop de, no máximo duas semanas, consolide as propostas e ofereça a versão final daquelas Leis. Em face da necessidade de que tal Encontro seja realizado sob regime de full-time - que se verifica impossível em Bissau - sugere-se que seja realizado fora da cidade. Como o recesso do Poder Judiciário ocorre entre os meses de agosto/setembro, este será o melhor período para o trabalho, uma vez que os magistrados estarão disponíveis. E interessante que haja uma remuneração como forma de exigir-se a contra-prestação do produto final.
3. Realização de um trabalho de convencimento do Poder Legislativo no sentido de aprovar os textos concebidos, bem como do Executivo para que as leis sejam sancionadas, tão logo definidas pelo Grupo acima. Todo o processo deverá estar concluído no prazo de 12 meses.

2. Edição e Divulgação da Legislação em Vigor

Objetivo: Promover o fácil acesso dos magistrados e outros profissionais à legislação em vigor.

Justificativa: A falta de acesso aos códigos constitui dificuldade intransponível para a segurança da aplicação imparcial do Direito. A ausência de recursos financeiros, aliada à escassez de recursos humanos, tem gerado dificuldades para a correta aplicação do Direito Positivo no que concerne aos aspectos de lei civil, processual civil e comercial.

Cumprir acrescentar que a República da Guiné-Bissau adota uma legislação com base no Direito Português, por vezes, já revogada naquele País e que sobrepõe o Direito Formal com modificações socialistas ao Consuetudinário. Na falta do texto legal vigente para consulta, tem havido casos em que foram aplicados dispositivos de códigos que simplesmente não integram o sistema de leis nacional.

Ações Propostas: Há diversas alternativas de como providenciar estes textos, de acordo com o grau de aprimoramento possível. Como parte do trabalho do sub-grupo responsável por este item, houve comunicação com a Faculdade de Direito da Universidade de Lisboa sobre a edição e divulgação da legislação portuguesa atualmente em vigor na Guiné-Bissau, por força da Lei 1/73 (além de parte da legislação guineense mais relevante após 1973). Aquela Faculdade forneceu uma projeção de custos relativa a esta documentação, tomando como referência um número de 150 exemplares. O custo estimado para oito volumes (Código Civil, Código Comercial e legislação complementar, Código de Processo Civil, Código de Registro Civil, Código de Registro Predial, Código Penal, Código de Processo Penal, e legislação administrativa) é de 2.100.000 escudos.

Outra possibilidade é a de preparar uma edição anotada de alguns dos códigos. Ainda outra alternativa levantada pelo grupo e a compilação simultânea da jurisprudência guineense que poderá complementar uma edição anotada de um ou mais dos códigos. Obviamente, quanto mais completo este trabalho, mais elevado será o seu custo e mais demorado o resultado final de divulgação.

A Faculdade de Direito de Bissau concordou em preparar uma proposta de levantamento da jurisprudência existente, utilizando alunos da Faculdade sob orientação do corpo docente.

A equipa de consultoria da USAID ficou incumbida de analisar as várias alternativas e apresentar recomendações à USAID para possível financiamento, e ao grupo de trabalho.

Independente da alternativa escolhida, sugere que os textos sejam submetidos a uma homologação pela Presidência do Supremo Tribunal.

Depois disto, haverá publicação de 150 exemplares de cada Código acima mencionado. Justifica-se este número porque há aproximadamente 75 profissionais do Direito no País, sendo razoável manter-se uma reserva de 100 por cento, ante as dificuldades de edição.

Posteriormente será providenciada a distribuição das Leis a todos os integrantes do Poder Judiciário e advogados do País. Esta meta poderá ser desenvolvida e encerrada no prazo máximo de 6 meses. Pode-se, igualmente, limitar a distribuição aos magistrados e comercializar as demais edições como forma de reduzir custos.³

3. Equipamento e Modernização

Objetivo: Aparelhar o Poder Judiciário com condições mínimas para o seu funcionamento.

Justificativa: Não obstante os dezenove anos de independência, a prática mostranos que os tribunais continuam a debater-se com graves problemas que afectam a vida quotidiana dos mesmos, nomeadamente:

Inadequação das instalações, sobretudo nos tribunais do interior;

Inexistência de bibliotecas próprias e adequadas;

Carência de materiais de expediente (v.g. papéis, capas de processo, máquinas de escrever, etc.) e equipamentos (v.g. secretárias, cadeiras, armários, estantes para processos, etc.);

Face à dignidade que o PJ deverá revestir-se, cumpre aparelhá-lo.

Ações Propostas:

1. Formar uma comissão integrada por um membro do Poder Judiciário e outras pessoas a serem identificadas para, no prazo de 30 dias, promover um levantamento das necessidades mais imediatas, envolvendo geradores, móveis, utensílios e máquinas. Tal levantamento não deverá se limitar ao exame das prioridades do Supremo Tribunal de Justiça, mas, na medida do possível, estender-se aos Tribunais Regionais.

2. Adquirir os bens acima descritos mediante processo de licitação, preferentemente. no próprio País.

3. Identificar as necessidades mínimas de informática para o Judiciário, principalmente para o Supremo Tribunal.

4. A médio prazo, promover o levantamento das necessidades de construção de prédios para adequadas instalações físicas dos Tribunais existentes no País, a começar pelo Supremo Tribunal de Justiça, cujo projeto arquitetônico pode incluir, desde logo, o Tribunal Regional de Bissau, além de cartórios.

4. Instalação de uma Biblioteca Jurídica no Supremo Tribunal

Objetivo: Instalar uma biblioteca no Supremo Tribunal com uma adequada coleção bibliográfica e o acervo da jurisprudência guineense.

Justificativa: Atualmente, não há uma biblioteca que sirva ao Judiciário, que constitui um dos requisitos mínimos para o funcionamento do sistema. Há necessidade de um acervo bibliográfico do Tribunais, eis que a ausência de livros de Direito é uma queixa unânime entre os magistrados. Com tal providência, haverá maior qualidade nas decisões judiciais. Pela natureza da medida apontada neste item, pode ser, de logo implementada.

Ações Propostas:

1. Identificar o espaço físico onde a biblioteca será instalada. Esta identificação ficará a cargo da Associação de Magistrados.
2. Preparar uma listagem do material bibliográfico imprescindível para a biblioteca, e procurar financiamento junto às agências financeiras para a sua aquisição.
3. Treinar uma pessoa nas funções de bibliotecário para o Supremo Tribunal.
4. Instalar um sistema de arquivos para a legislação, boletins pertinentes e jurisprudência.

5. Estruturação Organizacional

Objetivo: Criar a estrutura organizacional e rotinas administrativas necessárias para o cumprimento das novas responsabilidades do Judiciário independente.

Justificativa: A nova feição do Judiciário implicará em novas obrigações, tais como organizar-se para receber a burocracia referente à administração do seu pessoal, estabelecer rotinas administrativas, e instituir formulários para acompanhamento das atividades judiciárias.

A simples transferência de atribuições, obviamente, não é garantia de maior eficiência. Ao contrário, se o Poder Judiciário não se organizar, a crítica à sua atuação aumentará, pois que maiores serão as suas responsabilidades.

Ações Propostas:

1. Contratar dois consultores na área de Organização e Métodos, uma das quais especialista na área de estrutura organizacional judiciária e uma especialista na área de rotinas administrativas para o Judiciário. No período máximo de 30 dias, após definida a autonomia do Judiciário, deverão realizar um diagnóstico da situação e propor medidas realistas para o Judiciário guineense.
2. Posteriormente, este trabalho deverá ser repassado a técnico local, se houver profissional da área, ou estabelecer convênio para preparação de pessoal no exterior.
3. No prazo de um ano, obter uma padronização das rotinas de serviço do Poder Judiciário, otimizando recursos e instituindo instrumentos de gerenciamento.

6. Treinamento

Objetivo: Melhorar a capacidade profissional dos magistrados e oficiais do Judiciário.

Justificativa: O aperfeiçoamento da magistratura é ponto crucial na tentativa de adequá-la às responsabilidades decorrentes do incremento das atividades privadas. Acresce, de maneira dramática, as dificuldades dos juízes e integrantes do Ministério Público, além de advogados, para terem acesso à boa literatura jurídica, como já referido acima.

Persiste ainda a insuficiência de recursos humanos nos tribunais
Tal manifesta-se, desde logo, quanto aos próprios magistrados judiciais, insuficientes em número para garantir a formação dos colectivos na 1ª instância. A solução de recurso encontrada, até ao presente, foi a inclusão de assessores populares nos tribunais judiciais, sem formação jurídica e, por vezes, sem formação literária. Tais assessores não foram nem são, ao contrário do que possa parecer a um observador menos conhecedor da realidade judiciária, garantia duma participação popular na administração da justiça, à maneira do sistema de jurados, mas tão-só o recurso possível para conseguir a colegialidade nas decisões judiciais. A extinção da assessoria popular nos tribunais judiciais está garantida.

Necessário é, pois, em primeira linha, garantir aos magistrados de carreira vencimentos condignos, capazes de sustentarem a exigência de um desempenho profissional competente e com carácter de exclusividade. Necessário é também recrutar maior número de magistrados, mesmo no quadro dos tribunais actualmente existentes, de molde a poderem ser formados os colectivos, nos termos da lei processual vigente.

Embora existam, em todos os tribunais, delegados do Procurador-Geral da República, aqueles carecem de formação adequada e definição de carreiras. Sem isso, não é possível imprimir celeridade e eficiência na instrução dos processos.

Finalmente, carecem os tribunais de oficiais de justiça (escrivão de Direito, ajudante do escrivão e oficial de diligências) em número suficiente e, quando estes existem, não possuem formação adequada.

Ações Propostas: Há uma série de atividades de treinamento já em andamento, a maioria das quais financiada pela Cooperação Portuguesa. Entretanto, ainda há muito a fazer. O grupo recomenda as seguintes ações:

1. No curto prazo, e conveniente e possível a realização de cursos de aperfeiçoamento, quer para magistrados quer para oficiais de justiça, em moldes a estudar por um grupo de trabalho composto de magistrados e docentes da FDB. Há condições para a realização, já no ano de 1993, desses cursos.

Como parte destas atividades, sugere-se, a realização de dois seminários anuais sobre Direito Comparado para Magistrados, os primeiros no âmbito do Direito Civil e Comercial, abrangendo os aspectos mais importantes para o incremento da atividade privada. Embora realizados na Faculdade de Direito de Bissau, os seminários poderão ser patrocinados por outras instituições.

Dentro das prioridades do programa de apoio ao desenvolvimento do setor privado da USAID, por exemplo, temas possíveis incluem matérias sobre títulos de crédito, contratos, defesa do consumidor, e processo de execução. O programa deve ser antecipadamente debatido com os integrantes do Judiciário para que identifiquem suas principais dificuldades.

Para o Seminário seriam trazidos profissionais do Brasil, Portugal, demais países de língua portuguesa e locais. Cada encontro poderá ter a duração de uma semana, mediante agenda previamente elaborada.

2. Convém, igualmente, patrocinar a realização de concursos sobre temas de Direito vinculados aos objetivos do programa, mediante premiação em dinheiro aos melhores colocados e publicação dos trabalhos. De início, o concurso deverá envolver todos os profissionais de Direito do País.

Tal programa deverá começar logo no segundo trimestre de 1993, quando, acredita-se, o Poder Judiciário já terá se desincumbido do seu papel referente às próximas eleições. Igualmente, deverão ser promovidos programas de bolsas de estudos para magistrados da GB com outros países como Portugal - com o qual já existe um convênio formal - e o Brasil visando a reciclagem dos juizes.

3. Idéntica providéncia deverá ser tomada em relação aos oficiais de justiça, envolvendo reciclagem do pessoal. No momento, o Ministério da Justiça enviou três desses profissionais a Portugal, onde estão sendo treinados.

O programa poderá criar mecanismos de financiamentos da passagem entre Guiné-Bissau e Portugal, vez que o curso é oferecido pelo Centro de Estudos Judiciários sem custos. Sugere-se, igualmente, que numa segunda etapa, os oficiais de justiça treinados no exterior possam repassar a experiência aos colegas guineenses, mediante cursos padronizados.

4. Outra linha de ação seria a montagem de cursos à distância, mediante a elaboração de cadernos didáticos sobre a prática de atos do ofício, mediante convênio com a Faculdade de Direito ou similar. Tal providéncia implicaria num custo inicial mais elevado. Contudo, a médio prazo, permitiria treinar uniformemente todos os integrantes da classe profissional, basiando, apenas, a existência de um monitor, que poderá ser identificado entre juízes guineenses.

O Brasil já conta com este tipo de programa, como também com uma série de programas de vídeo sobre vários aspectos de treinamento jurídico. O Dr. Geraldo Fernandes concordou em pesquisar a possibilidade de conseguir este material para a Guiné. Adicionalmente, é recomendável que um ou mais guineenses viajem ao Brasil para estabelecer contatos neste sentido e averiguar as possibilidades de outros programas de treinamento para o Judiciário guineense.

7. Simplificação da Tramitação Processual

Objetivo: Simplificar a tramitação processual para melhorar a eficiência e eficácia do sistema.

Justificativa: É necessária a compatibilização da reforma judiciária com a lei processual do sistema jurídico estadual. A longo prazo, preve-se a revisão do Código de Processo Civil (no qual estão incluídos os processos de cunho comercial), cuja tónica será a simplificação processual e respectiva redução da tramitação, com salvaguarda dos direitos e garantias processuais das partes.

Tal revisão implica o conhecimento das condições de aplicação da legislação processual vigente, procurando detectar-se quer os casos em que não tem aplicação efectiva quer aqueles em que tem provado não ser adequado. Para além disso, é necessário o conhecimento das modernas tendências do direito processual, numa perspectiva de direito comparado.

Ações Propostas: Essencial é, pois, a criação de um grupo de trabalho, com coordenação permanente a cargo de uma entidade a determinar, o qual seria, necessariamente, composto

de magistrados de 1ª instância e do Supremo, advogados designados pela respectiva Ordem e juristas académicos. Num prazo máximo de um ano, o grupo de trabalho apresentará um diagnóstico das carências e ineficiências do sistema da lei processual, designadamente em atenção ao momento da sua aplicação efectiva. Numa segunda fase, estimada em mais dois anos sobre a apresentação do referido diagnóstico, o grupo de trabalho apresentará um projecto de reforma da legislação processual.

Os trabalhos, nesta segunda fase, terão de incidir sobre vários aspectos da tramitação processual, nomeadamente articulados e respectivo número; fase do julgamento da matéria de facto pelo tribunal colectivo; recursos e graus de jurisdição.

8. Implementação da Autonomia Financeira do Poder Judiciário

Objetivo: Assegurar a autonomia financeira do Poder Judiciário no que diz respeito a recursos próprios e do orçamento do Estado.

Justificativa: Em todos os aspectos, a situação financeira do Judiciário é precária. A importância do Judiciário não é refletida na proporção atual dos recursos do Estado que recebe, nem do apoio das agências financeiras internacionais. Actualmente, é pacífica a convicção de que apenas uma reforma judiciária poderá dar o início de uma resposta consistente a um vasto conjunto de desafios que, neste domínio, se colocam à sociedade civil. Com as demandas crescentes que incidirão sobre o Judiciário, os recursos financeiros terão que crescer também, ou gerados pelo próprio sistema, ou oriundos do orçamento do Estado.

Ações Propostas: Algumas providências deverão ser tomadas no sentido de permitir maior autonomia financeira ao setor, destacando-se:

1. Instituir um grupo de juristas para reexame da Lei de Custas nacional, sob a supervisão do presidente do Supremo Tribunal de Justiça. Sabe-se que ela segue modelo português tradicional, que estabelece uma rotina que pode ser agilizada, quanto à percepção das custas, em benefício do agente arrecadador. Sugere-se também modificar o sistema de selos ainda vigente, adotando como parâmetro para o recolhimento da receita, o modelo brasileiro, que instituiu documento de arrecadação pela rede bancária.

Informações prestadas pelo Ministério da Justiça indicam que os valores das custas estão inteiramente desatualizados, carecendo de um tratamento mais realista. A Lei deverá estabelecer igualmente que a receita gerada pelo Judiciário será integralmente revertida para aquele Poder. Dr. Geraldo Fernandes concordou em revisar o projeto da Lei de Custas e oferecer comentários a respeito para posterior apreciação do grupo de trabalho.

A nova proposta deverá estar pronta no prazo de três meses.

2. O segundo passo será estabelecer negociação com o poder competente para a aprovação da proposta que, em última análise, reduz receita do Executivo, mas o liberará de investir mais recursos no Poder Judiciário, vez que este teria mais uma fonte de rendas.

3. Dentro do Projeto da USAID sobre a implementação de reformas políticas e econômicas, uma missão específica deverá apoiar o grupo de trabalho em identificar estratégias que visem melhorar o poder de barganha do Judiciário nas negociações com o Governo e com os doadores, através da demonstração de resultados e reconhecimento da importância crescente do sistema.

9. Programa de Informação Pública

Objetivo: Informar ao público da importância do Judiciário, o que é, e como utilizá-lo.

Justificativa: Além do melhoramento da capacidade do Judiciário, é necessário que o povo guineense tenha conhecimento do seu funcionamento e acesso a seus serviços. O alto índice de analfabetismo, além das práticas de Direito Consuetudinário em pequenas comunidades, ensejam o desconhecimento das reais funções do Poder Judiciário por boa parte da população. Somente uma pequena parcela dos jurisdicionados buscam resolver seus conflitos através da Justiça formalmente constituída. Há, por consequência, necessidade de aproximar a Justiça do povo através de projeto de radiodifusão educativa.

Por outro lado, a privatização das atividades comerciais e agrícolas, com o recente episódio da constituição de associações de classe, também conduzem a uma necessária atividade de divulgação das novas práticas no País.

Ações Propostas: Através de uma agência de publicidade, ou entidade similar, deve-se criar peças de propaganda para inserção na rádio, em que se mostrará:

- a) os mecanismos institucionais para resolver os conflitos na atividade privada;
- b) como se proceder para procurar os Tribunais;
- c) o papel do advogado na resolução dos conflitos;
- d) que tipo de resposta a Justiça poderá oferecer nas demandas;
- e) as vantagens das entidades associativas para a proteção dos direitos individuais e coletivos;

Paralelamente, deve-se estimular programas de rádio e televisão por meio de entrevistas com profissionais do Direito, tais como juízes e advogados, abordando temas do interesse da sociedade civil, com especial enfoque aos aspectos comerciais. Embora o uso da televisão seja interessante, a ênfase ao rádio deve ser considerada pois é o meio de comunicação mais acessível ao povo.

A Câmara de Comércio, Agricultura e Indústria iniciou um programa semanal de rádio que poderá servir como modelo. O grupo de trabalho determinou que dentro do primeiro ano, deverá produzir peças de propaganda gerais, e dois programas específicos abordando assuntos legais ligados à agricultura e ao comércio. Dr. Manuel Alipio da Silva concordou em ser o ponto de contato com a Câmara de Comércio para o aproveitamento do espaço de radiodifusão daquela associação.

O programa de divulgação institucional deverá ter a supervisão de um integrante do Poder Judiciário. A agência responsável pela elaboração do Projeto deverá apresentar um plano de mídia a ser cumprido no prazo de um ano. Considere-se também que as informações deverão ser veiculadas em português, crioulo e em dialetos locais.

10. Articulação entre o direito estadual e o direito consuetudinário

O grupo de trabalho encomendou este item aos membros representantes da Faculdade de Direito de Bissau, que apresentaram as linhas gerais de um projecto de investigação, incluído neste documento como Anexo B.

Anexo A

Lista de Participantes do Grupo de Trabalho Sobre Reforma do Judiciário da Guiné-Bissau

<u>Nome</u>	<u>Instituição</u>
Alberto Batista Lopes	Supremo Tribunal Ordem de Magistrados da Guiné-Bissau
Armando Procel	Ministério da Justiça
Arlindo Cruz	Advogado
Arturo da Silva	Associação dos Agricultores
Caetano N'Tchama	Tribunal Regional de Bissau
Domingos Sa	Associação dos Agricultores
Ivo Djalo	Faculdade de Direito
Joaozinho Vieira Có	Faculdade de Direito
Malal Sane	Ministério das Pescas Ordem de Advogados da Guiné-Bissau
Manuel Alípio da Silva	Câmara de Comércio
Marciano Valentim Dama	Tribunal de Contas
Mario Filomeno Pereira	Supremo Tribunal
Paulo de Sousa Mendes	Faculdade de Direito



ANEXO B

REPÚBLICA DA GUINÉ-BISSAU
FACULDADE DE DIREITO DE BISSAU
TEL. 21 34 72 - BISSAU

Articulação entre o direito estadual e o direito consuetudinário

Linhas gerais de um projecto de investigação

I.- Contrastes étnico-culturais

A dimensão reduzida do território da Guiné-Bissau, acentuada pela imensidão do continente africano, não obsta a que, no seu âmago, coexistam os mais díspares grupos étnicos.

São, em listagem apenas sugestiva, Balantas, Bijagós, Felupes, Fulas, Mancanhas, Mandingas, Manjacos, Nalús, Papéis... Ao todo, mais de trinta grupos étnicos, constituindo uma singular Babel, de resto em convívio há muito pacífico.

Diferentes nas próprias línguas, muitas das quais complexas na gramática (o crioulo é apenas veículo de comunicação inter-étnica), díspares nos sistemas de crenças, embora subsumíveis em dois grandes tipos (animistas e islamizados), diversos nos modos de organização social (sociedades segmentárias, super-hierarquizadas mesmo, ou sociedades horizontais) e, por fim, também distintos nos proto-ordenamentos jurídicos consuetudinários, são a expressão de um património cultural multissecular, que sempre mostrou ser mais sólido que as repetidas e infrutíferas tentativas exteriores, por vezes agressivas, de mudança.

II.- Objecto de estudo

Em vários domínios, o(s) costume(s) das comunidades locais apresenta(m)-se como sendo de extrema riqueza. Todavia, o destaque vai, por um lado, para as instituições familiares, sucessórias e de domínio da terra, por outro lado, para as instituições criminais.

III.- Utilidade prática do estudo

É um facto, não necessariamente negativo, que existe, na generalidade dos países africanos, uma dualidade entre o direito consuetudinário e o direito estadual, este de inspiração ocidental, trazido do período colonial mas reconhecido pelos novos Estados Africanos.

Os processos independentistas suscitaram problemas novos. Por um lado, manifesta-se, muito naturalmente, a tendência para reabilitar o costume ou, no mínimo, acentuar o valor moral de certos princípios do direito consuetudinário. Por outro, adversativamente, considera-se como sendo intolerável a contraposição entre o direito consuetudinário, de formação espontânea e propenso à consolidação das tradições comunitárias, e o direito estadual, de produção voluntária e apostado na modernização do tecido económico-social.

Contudo, é difícil, para não dizer impossível, a fusão desses géneros diversos de ordens normativas.

Um considerável movimento de reforma do Direito foi determinado, em muitos países africanos, pela vontade de lutar contra o subdesenvolvimento e também pela preocupação de realizar a unificação do Direito no plano nacional.

Se se pretender unificar o Direito no quadro de uma nação, então ter-se-á de realizar uma renovação no seio dos costumes.

Se se pretender, verdadeiramente, respeitar e perpetuar a tradição africana, então será necessário salvaguardar os métodos flexíveis de aplicação e evolução próprios do direito consuetudinário. Tomar-se-á necessário admitir uma concepção pluralista da sociedade e, portanto, os grupos que tenham desenvolvido um costume devem continuar a administrar esse costume. O Estado não pode, sem destruir o costume, substituir-se aos agrupamentos originários para definir o costume ou formular uma política consuetudinária.

Será que o Direito novo pode ser estabelecido em articulação com os costumes?

Os Direitos modernos de África podem aceitar certos elementos fornecidos pela tradição ou, respeitados certos parâmetros, prever regras de conflitos, segundo as quais seja possível aplicar os costumes em função do estatuto pessoal das partes.

O Direito moderno não pode ser produto de processos de aculturação, nem tão-pouco, na mira de uma coesão nacional mal assegurada ou artificial, fazer prevalecer os princípios de uma comunidade sobre as outras.

IV.- Entidades vocacionadas para a prossecução do estudo

Na Guiné-Bissau, existem apenas duas instituições com competência para levar por diante tais investigações, nas quais estão há muito empenhadas, a saber: a **Faculdade de Direito de Bissau** e o **Instituto Nacional de Estudos e Pesquisa**.

Não são instituições rivais, antes **complementares**, atenta a diversa formação científica dos respectivos investigadores. É que, dum lado, abundam juristas e, doutro, aglutinam-se economistas, sociólogos e antropólogos, todos garantindo a multidisciplinaridade que sempre deve presidir aos estudos desta natureza.

Cientes da reunião das condições ideais para uma colaboração com vantagens científicas mútuas, as duas instituições, à parte os planos próprios de trabalhos, encetaram um estudo sistemático sobre o **estatuto da terra** na Guiné-Bissau, mediante a celebração de um protocolo de colaboração. Estão, pois, em curso dois projectos: um sobre o «Uso da Terra», a decorrer sob a responsabilidade do INEP, e outro sobre o «Estatuto da Terra no Direito Tradicional Guineense», conduzido pela FDB e subsidiado pela Fundação Calouste Gulbenkian.

Daquele protocolo resultou já a realização em comum, em Abril de 1992, do «I Encontro de Investigadores do INEP e da FDB», em tema de «O Estatuto da Terra na Guiné-Bissau e em Portugal» (*em anexo, junta-se o programa dos trabalhos*).

Em fase de preparação, com realização prevista para o ano de 1993, encontra-se já o «II Encontro de Investigadores do INEP e da FDB».

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Decorre ainda, sob a égide da FDB e também com financiamento da Fundação Calouste Gulbenkian, um «Projecto de Investigação sobre o Direito Criminal Tradicional Guineense (Etnias Mancanha, Manjaca e Papel)», cujo trabalho de campo se encontra, praticamente, concluído, aguardando-se relatório final para publicação.

Inaugurada, pois, a colaboração pontual entre ambas as instituições, resta apenas esperar a sua natural continuação no futuro, crendo na possibilidade de a inscrever numa concertação estratégica, porventura com reflexos na planificação mais ampla das actividades de cada instituição.

V.- Meios necessários

Presentemente, no tocante à FDB, os meios disponíveis afiguram-se suficientes.

É certo que houve condicionantes, mais logísticas do que financeiras, a justificarem a escolha de universos de estudo, dentre os grupos étnicos inscritos no território da Guiné-Bissau, próximos da capital.

Enfim, quando todo o trabalho está por fazer, se descontarmos os muito meritórios estudos do passado -que seria fastidioso nomear-, podemos dar-nos ao luxo de fazer escolhas arbitrárias. Contudo, inevitavelmente, terá de começar-se o estudo de outras etnias, galgando maiores distâncias. Então, só então, justificar-se-á ponderar acerca da viabilidade dos meios ora disponíveis.

A seriedade das investigações, somente compatível com a sua prossecução em toda a extensão geográfica do território, justificará, desde já, a calendarização das etapas e a previsão dos meios.

Eventualmente, a realização de iniciativas concretas, quais os «Encontros entre Investigadores do INEP e da FDB», carecerá de patrocínios financeiros, que não faltaram no passado.

Ao INEP caberá pronunciar-se sobre necessidades próprias.