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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Consideration of reports submitted by States parties under article 19 of the Convention

Initial reports of States parties due in 1990

Guinea*

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* The present document is being issued without formal editing.

Contents

Introduction

1. By ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Guinea has reiterated its commitment to building a society based on the rule of law. It has thereby stated that human dignity is sacred, that all human beings have the right to the development of their personalities and that all persons living in Guinean territory have the right to life and to physical and mental integrity, regardless of their political and religious opinions and their social, ethnic and racial background.

2. Guinea, by endorsing the provisions of the Convention, has reaffirmed its support for the ideals and principles underpinning the rights and duties established in the Charter of the United Nations, the Universal Declaration of Human Rights of 1948, the international conventions and covenants on human rights, the Constitutive Act of the African Union, the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa, and the revised Treaty of the Economic Community of West African States (ECOWAS) and its Protocol on Democracy and Good Governance.

3. The present report is submitted under article 19, paragraph 1, of the Convention against Torture and has been prepared in accordance with the guidelines on the form and content of initial reports, with which States parties must comply.

4. The following legislative instruments govern issues relating to torture and other cruel, inhuman or degrading treatment or punishment in Guinea:

- The Labour Code of 1988;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified on 10 October 1989;
- The Public Health Code of 1997;
- The Criminal Code of 1998;
- The Code of Criminal Procedure of 1998;
- The Civil Code of 1998;
- The Code of Civil Procedure of 1998;
- The Children's Code of 19 August 2008;
- The Constitution of Guinea of 10 May 2010 (arts. 6 and 151);
- The Code of Military Justice of 17 January 2012;
- The Code of Conduct for members of the military and the security forces of November 2012.

5. After the death of the country's first president, Ahmed Sékou Touré, and the collapse of his regime in 1984, Guinea experienced its first military transition, which led to a process of general and sectoral political change in the country.

6. The ratification of the Convention against Torture in 1989 is an excellent example of this policy of change, under which human rights were foregrounded.

7. In the same vein, the Guinean Government in 1990 initiated the development of laws and regulations for the establishment of a constitutional democratic order and set up the Interim Committee for National Recovery.

8. The Committee prepared a draft constitution, which was adopted by referendum in 1991.

9. That constitution, in its article 5, prohibited torture and other cruel, inhuman or degrading treatment or punishment and, in its article 80, enshrined the principle of the separation of powers to better safeguard rights and freedoms.

10. In 1993, the first presidential elections took place, giving Guinea a democratically elected president.

11. The first legislative elections, held in 1995, led to the establishment of the National Assembly.

12. Guinea had two constitutions prior to the adoption of the constitution of 1990. Each contained a section on "judicial authority".

13. Only with the constitution of 1990 did the term "judicial power" come into use, enshrining the separation of powers.

14. The history of the organization of the courts also reflects these different constitutional regimes.

15. During the period of the first two constitutions, various laws and decrees were enacted altering the structure of the courts in numerous ways.

16. When the country became independent, the judicial hierarchy consisted of magistrate's courts in certain regions, courts of first instance in others, an appeal court and a court of cassation in Conakry.

17. The 26 customary courts were integrated into the system of courts of general jurisdiction and were abolished in 1960.

18. Legislation enacted in 1973 formalized the primacy of "people's justice" by placing the judiciary under the authority of the single governing party.

19. The legislature of the Second Republic, in implementing the recommendations of the National Conference of Judicial Officials, ordered the abolition of local and district revolutionary courts and "people's courts".

20. The current structure of the courts, which is now being reviewed, dates from legislation enacted in 1995 and amended in 1998 and from a decree issued in 2001.

21. The situation of legal professionals such as lawyers and court officials has also evolved over time.

22. Having been independent professionals at the time of the country's independence, in 1964 they were integrated into the civil service, before regaining their previous independent status in 1986.

23. During the revolutionary period, the training of judges was carried out, with mixed success, by the school of administration of the University of Conakry.

24. From 1986, some judges received training abroad, and the Legal Training and Documentation Centre was opened in 1992.

25. The Centre has recruited and trained 130 law students and 60 court officials.

26. The prison administration, established after some delay, was initially placed under the aegis of the Ministry of the Interior and Security. On 10 August 1984, its staff members, except for security personnel, were transferred to the Ministry of Justice.

27. Several events made it necessary to review the text concerning the organization of the prison system and the special status of prison staff.

28. Subsequently, Guinea has initiated several rounds of State reform in order to better protect human rights and freedoms, including the following:

The abolition of the National Militia

29. The National Militia, which had been the armed branch of the one-party regime (under the Democratic Party of Guinea – the Guinean branch of the African Democratic Union), could no longer exist once the regime's constitution had been repealed. With the establishment of the military regime (on 3 April 1984), the National Militia was disbanded on the grounds that its practices were not in keeping with human rights principles. Its members were often accused of inflicting torture and other cruel and degrading treatment on Guinean citizens who might or might not be in conflict with the law. It was replaced by regular security forces: the police and the gendarmerie.

The abolition of the Republican Guard

30. The Republican Guard, a public armed force tasked with protecting the prison administration and public institutions and establishments, was highly politicized and was led in accordance with the ideals and principles of the Guinean socialist revolution. It discredited itself by using methods and practices contrary to the principles of the Convention against Torture.

31. Against this background, President Lansana Conté in his policy speech of 22 December 1985 provided strategic direction for the new system of government.

32. As part of the implementation of the policies outlined in the speech, in 1993 the Republican Guard was abolished and its members integrated into the Guinean armed forces.

The adoption of laws governing the status of judges and the Supreme Council of Justice

33. The Government of the Second Republic had committed itself to putting in place a justice system that would be independent, fair, professional, reassuring for investors and capable of being a strong pillar for the protection of human rights.

34. It had also undertaken to ensure the judiciary's independence by establishing the Supreme Council of Justice, redefining judges' status so as to improve their salaries, and extending and increasing the oversight of the judicial system by the Inspectorate-General of Judicial Services.

35. However, for all these reform-minded intentions, no concrete measures were implemented with a real impact on the promotion and protection of human rights in general and the outlawing of torture and other degrading acts in particular in the country.

36. Ultimately, between 1989 and 2008, few steps (legal or political) were taken to combat serious violations of human rights in Guinea, including the practice of torture and other cruel, inhuman or degrading conduct. Even today, this symbolically and culturally burdensome legacy continues to affect the perception of human rights issues in Guinea, especially among the military and the security forces.

37. The following are examples:

- The events of 2 and 3 February 1996 in connection with an army mutiny that led to an attempted coup resulting in many cases of death and torture;
- The student protests of 12 June 2006, which were put down by the army;
- The nationwide popular uprising of January–February 2007, which was put down by the military and the security forces;
- Daily instances of human rights violations.

38. To this day, the State has not taken any legal action regarding these various events, which were marked by cases of torture and cruel, inhuman or degrading treatment.

The removal of the armed forces from the scope of the General Civil Service Regulations Act

39. The state of the security sector, notably the disorganization of the military and the security forces, the absence of civilian oversight, the high degree of politicization and the dysfunctional judicial system, led the Government to consider reforming the sector.

40. Given the alarming situation stemming from the weakness of State institutions and the cumulative effects of several decades of poor governance, such reform was urgently needed in order to preserve social tranquillity and peace in the country.

41. In this context, an assessment of the security sector took place during the first quarter of 2010, with the support of subregional, regional and international organizations and bilateral and multilateral partners of Guinea.

42. The assessment made it possible to evaluate and provide recommendations for each part of the sector, taking into account the cross-cutting issues relevant for any security sector reform, including respect for human rights and the combating of violence against women.

43. In 2008, Guinea experienced a military change of regime, with the establishment of the National Transition Council, the formation of a transitional government of national unity and the organization in 2013 of presidential and legislative elections, which marked the country's return to a system of constitutional government.

44. Today, Guinea is reforming its security and justice sectors with a view, inter alia, to strengthening democratic and civilian oversight of the military and the security forces.

45. The present report describes the events between 1989 and 2014.

I. Articles 1 to 10

Article 1 on the definition of torture

46. Torture is not expressly defined in Act No. 98/036 of 31 December 1998 establishing the Criminal Code of Guinea. However, part II of the Act, in articles 295 to 305, specifies, and establishes penalties for, several offences related to torture and other cruel, inhuman or degrading treatment or punishment.

47. The main such offences include:

- Assassination;
- Murder;
- Intentional bodily harm and acts of violence;
- Abuse;
- Threats;
- Castration;
- Rape.

48. When these acts are committed by public officials, such officials are subject to the penalties set out in article 307, paragraphs 1 and 2, of the Criminal Code.

49. In the bill on the revision of the Criminal Code, torture is defined in accordance with article 1 of the Convention against Torture.

50. Institutional and legal reforms are being implemented, and Guinean legislation is being improved through a revision of the Code of Criminal Procedure, the Criminal Code and the Code of Military Justice intended to incorporate in those texts the international legal instruments to which Guinea is a party and to reflect the constitutional principle of the primacy of human rights.

51. Article 5 of the 2010 Constitution provides that:

> "Human beings and human dignity are inviolable. The State has a duty to respect and protect them.
>
> The rights and freedoms listed below are inviolable, inalienable and imprescriptible.
>
> They are the foundations of all human society and guarantee peace and justice in the world."

52. Article 6 of the 2010 Constitution provides that:

> "Human beings have the right to the free development of their personalities.
>
> They have the right to life and to physical and mental integrity. No person may be subjected to torture or to cruel, inhuman or degrading punishment or treatment.
>
> No one shall be obliged to carry out a manifestly unlawful order.
>
> The manifest unlawfulness of the order shall be determined by law.
>
> No one may invoke an order or instruction to justify acts of torture, abuse or cruel, inhuman or degrading treatment committed in the exercise of his or her duties or while on duty.
>
> No exceptional situation or emergency shall justify human rights violations."

53. Article 151 of the 2010 Constitution provides that:

> "On publication, duly approved and ratified treaties and agreements shall take precedence over statutes, subject to reciprocity."

54. Article 7 of the 2010 Constitution provides that:

> "All persons are free to believe, think and profess their religious faith and political and philosophical opinions.
>
> They are free to express, display and disseminate their ideas and opinions through speech, writing and images.
>
> They are free to educate and inform themselves from sources that are accessible to everyone.
>
> Freedom of the press is guaranteed and protected. Newspapers or media outlets dealing with political, economic, social, cultural, sports, leisure or scientific information may be freely established.
>
> The right of access to public information is guaranteed to all citizens.
>
> The conditions for exercising these rights, and the procedures and conditions for establishing press and media outlets, shall be defined by law."

55. Article 8 of the 2010 Constitution provides that:

"All human beings are equal before the law.

Men and women have the same rights.

No one shall be afforded privileges or suffer disadvantage on account of his or her sex, birth, race, ethnic origin, language, or political, philosophical or religious beliefs and opinions."

56. Under article 9 of the 2010 Constitution:

"No one may be arrested, detained or convicted other than under a law promulgated prior to the commission of the acts of which he or she is accused, and for the reasons and in accordance with the procedures prescribed by law.

All persons have the indefeasible right to appear before a judge in order to assert their rights against the State and its representatives.

All persons accused of a crime shall be presumed innocent until proved guilty according to law in a lawfully conducted procedure.

All persons have the right to a just and fair trial in which their right to defend themselves is guaranteed.

The right to legal counsel shall be recognized from the moment of arrest or detention.

The law shall establish penalties that are necessary and proportionate to the offences for which they may be imposed."

57. Under article 10 of the 2010 Constitution:

"All citizens have the right to participate in demonstrations or processions.

The right of petition is recognized for all groups of citizens.

All citizens have the right to form associations and unions to collectively exercise their rights and carry out activities in the political, economic, social and cultural domains.

All citizens have the right to establish residence and to travel throughout the territory of the Republic and to enter and leave it freely."

58. Under article 20 of the 2010 Constitution:

"All persons have the right to work. The States shall create the necessary conditions for the exercise of this right.

No one may be discriminated against in the workplace on account of his or her sex, race, ethnic origin, opinions or on any other basis."

59. Under article 23 of the 2010 Constitution:

"The State shall promote the well-being of its citizens, and protect and defend human rights and human rights defenders.

It shall ensure pluralism of opinion and of information sources.

It shall attend to the security of all persons and the maintenance of public order."

60. Under article 107 of the 2010 Constitution:

"The judicial branch shall be independent of the executive and legislative branches.

Judicial power shall be exercised exclusively by the courts and tribunals."

61. The judicial system is defined in article 108:

> "Judicial power shall be exercised by the Supreme Court, the Court of Audit, and the courts and tribunals, whose final decisions shall apply to the concerned parties, the public authorities, all administrative and legal authorities, the military and the security forces."

62. Article 109 of the Constitution provides that:

> "In the performance of their functions, judges shall be subject only to the law.
>
> Judges shall enjoy security of tenure, in accordance with the conditions prescribed by law.
>
> Judges, prosecutors and officials of the central justice administration shall be appointed and assigned by the President of the Republic, on a proposal from the Minister of Justice, with the approval of the Supreme Council of Justice.
>
> The appointment or assignment of a judge without the approval of the Supreme Council of Justice shall be null and void."

63. All these legal provisions help to protect human rights in general and to combat torture and other cruel, inhuman or degrading treatment or punishment in particular.

64. The Guinean Government experiences difficulties in implementing these texts, mainly owing to:

- Lack of knowledge of the texts on the part of law enforcement officials;
- Insufficient training of judges and judicial personnel;
- Lack of basic and in-service training for prison staff;
- Poor infrastructure and logistics;
- Limited dissemination of the legislation;
- Chronic and worsening shortages of police officers, civil protection personnel, prison staff and gendarmes;
- The non-conformity of the Convention with national criminal legislation.

65. However, the Government is making efforts to address these problems through its programme to reform the security and justice sectors.

Article 2 on effective legislative, administrative, judicial and other measures to prevent acts of torture

66. The Guinean State has taken effective legislative, administrative and judicial measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment from being committed in Guinean territory.

Legislative level

67. Under article 65, paragraph 2, of the Code of Criminal Procedure:

> "If criminal investigation officers commit acts of abuse in connection with the application of custodial measures, the public prosecutor shall inform the Prosecutor-General, who shall refer the matter to the indictment chamber. In accordance with its powers under articles 227, 230 and 231 [of the Code of Criminal Procedure], the indictment chamber may either temporarily or permanently remove the perpetrator

of the abuse from his or her post or refer the case to the Prosecutor-General for the opening of legal proceedings if it is established that a criminal offence has been committed."

68. Under article 230 of the Code of Criminal Procedure:

"The indictment chamber may, without prejudice to any disciplinary action that may be taken against the criminal investigation officer by his or her superiors, address observations to the officer or decide that the officer may no longer discharge, either temporarily or permanently, the functions of criminal investigation officer or representative of the investigating judge anywhere in the territory. If the indictment chamber deems that the criminal investigation officer has committed a criminal offence, it shall refer the case to the Prosecutor-General for appropriate action. At the request of the Prosecutor-General, any decisions taken by the indictment chamber with respect to criminal investigation officers shall be notified to their supervisory authorities."

Administrative level

69. Article 127 of the Constitution of 10 May 2010 provides that:

"The National Ombudsman shall serve as a non-contentious, independent mediator between the authorities and the general public.

The National Ombudsman shall receive, in accordance with the conditions prescribed by law, complaints from members of the public concerning their dealings with central, district or local government authorities, public institutions and any other public service bodies or entities to which public service functions have been attributed by law."

70. Article 128 of the May 2010 Constitution provides that:

"In the performance of his or her duties, the National Ombudsman shall not be subject to instructions from, or control by, any other person or authority."

71. Article 129 of the May 2010 Constitution provides that:

"The National Ombudsman shall be appointed by the President of the Republic, by decree of the Council of Ministers, from among senior officials — retired or otherwise — with at least thirty years' service, for a non-renewable seven-year term. The Ombudsman may only be removed from office if he or she is permanently unable to perform his or her duties or is guilty of serious misconduct, as certified by the Supreme Court."

72. Article 130 of the May 2010 Constitution provides that:

"The National Ombudsman shall not be subject to prosecution, arrest, detention or trial for any opinions expressed or acts carried out in the exercise of his or her functions."

73. Mention should be made of the establishment of the Ministry of Human Rights and Public Liberties pursuant to Decree No. D/109/PRG/SGG of 5 October 2012, which concerned a partial government reshuffle, and Decree No. D/2012/130/PRG/SGG of 4 December 2012 on the responsibilities and structure of the Ministry of Human Rights and Public Liberties.

74. Its responsibilities include the following:

- Ensuring the implementation and follow-up of government policies regarding human rights and public liberties;

- Liaising with the various ministerial departments concerned, responsible for promoting, protecting and defending human rights;
- Designing, planning and carrying out human rights education and training programmes;
- Implementing and monitoring human rights laws and regulations;
- Participating in the promotion of good governance and the fight against impunity;
- Preparing reports under international human rights instruments;
- Establishing and supervising a steering committee for a national action plan on human rights, freedom and citizenship;
- Ensuring the technical supervision and monitoring of human rights associations and organizations.

75. In fulfilment of its responsibilities, the Ministry of Human Rights and Public Liberties has drawn up a priority annual action plan for 2014 focused on the promotion and protection of human rights.

76. In order to raise awareness, in 2013 the Ministry organized several training sessions for criminal investigation officers and prison staff regarding the fight against torture.

77. Concerning the protection of human rights, the Ministry monitors places of detention throughout the country and is establishing additional mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment through an observatory.

78. These actions will continue this year with the support of technical and financial partners.

79. The Ministry also has a dynamic partnership with human rights defence organizations through its follow-up of torture cases involving the security forces and the military.

Judicial level

80. In 2012, the Guinean Government set up a pool of judges to investigate the massacre of 28 September 2009. In the same year, the Inspectorate-General of Judicial Services was reorganized to improve oversight of prosecutors and courts.

81. The Ministry of Human Rights and Public Liberties is engaged in the process of national reconciliation and transitional justice through its participation in the implementation of the national consultation project to promote reconciliation, which enjoys the support of the United Nations Peacebuilding Fund. Under the project, the events that occurred will be acknowledged, the perpetrators will be brought to justice and reparation will be provided for the victims.

Sociocultural level

82. It should be recognized that Guinean culture and traditions play an important role in helping to promote and protect human rights. However, they also constitute significant obstacles to the implementation of certain public policies on human rights in general and the fight against torture in particular in Guinea.

83. By way of example, the practice of female circumcision currently poses a genuine problem in Guinean communities for whom substantive law runs counter to social norms. Given the various consequences of female circumcision, numerous measures have been taken in Guinea to strengthen awareness-raising campaigns for the complete elimination of

the practice. Female circumcision is thus prohibited under Act No. L/10/AN/2000 on reproductive health, which protects the physical integrity of women and establishes penalties for those who contravene its provisions.

84. The same prohibitions are contained in article 405 et seq. of the Guinean Children's Code, and severe penalties are imposed on persons, and their accomplices, who carry out female circumcision on girls under 18 years of age.

85. Despite all these efforts, the practice continues, thus endangering the lives of many women by compromising their sexual and reproductive health.

86. Regarding the operation of the criminal justice system, it is often the case that complainants bring pressure to bear on criminal investigation officers during inquiries in an effort to take justice into their own hands, thereby provoking the officers to extract confessions through torture or detain suspects for periods exceeding the legal time limits on police custody.

87. The persistence of this practice is due to influence peddling, corruption, inadequate training for criminal investigation personnel, a lack of lawyers, the opposition of certain criminal investigation officers to the presence of legal counsel during preliminary investigations and to the fact that the majority of citizens in conflict with the law cannot afford the services of a lawyer.

88. In addition, operations to maintain or restore public order are often marked by violence between law enforcement officers and demonstrators. This situation is attributable to several factors, including:

- The use of violence by demonstrators as the primary means of asserting their rights;
- A lack of professionalism on the part of law enforcement officers;
- The inadequacy of the conventional equipment employed by response units;
- The disproportionate use of force by officers during operations;
- The persistence of a culture of impunity on both sides.

89. The Guinean Government, within the framework of the security sector reform, envisages strengthening the capacity of the security forces and the Inspectorate-General of the National Police, notably by:

- Reintroducing periodic inspections of police custody facilities;
- Applying disciplinary measures;
- Promoting basic and in-service training as part of the relaunch of the National Police Academy;
- Providing conventional equipment to police and gendarmerie response units;
- Broadcasting radio and television programmes to educate the public about the need to respect human dignity and refrain from committing acts that violate physical or mental integrity.

Article 3 on expulsion and extradition

90. Under article 11 of the 2010 Constitution:

> "Anyone persecuted because of his or her political, philosophical or religious opinions, his or her race, ethnicity or intellectual, scientific or cultural activities, or

for the defence of freedom, shall have the right to asylum in the Republic [of Guinea]."

91. The Guinean Government protects all foreigners residing in its territory who have committed or are being prosecuted for an offence and may be subject to torture or other cruel, inhuman or degrading treatment or punishment in their country of origin. Nationals also receive the same protection.

92. The case of the Chadian blogger Makaïla can be cited by way of example. After his expulsion by the Senegalese Government from its territory on account of his writings criticizing the Congolese Government's ill-treatment of Chadian nationals in the Republic of the Congo, in violation of the rules of the Economic and Monetary Community of Central Africa (CEMAC), Makaïla was received by Guinea, where he was granted exile in France by decision of the French Government, transmitted through the Embassy of France in Guinea.

Articles 4 and 5 on complicity and participation in torture

93. The Guinean Criminal Code, established by Act No. 98/036 of 31 December 1998, does not specifically criminalize torture or ill-treatment. In accordance with the Criminal Code, public officials must be held answerable for infringements of freedom (art. 128 et seq.) and acts of violence against the person committed in the performance of their duties, as well as for denial of justice (art. 198 et seq.). Torture is considered solely as a circumstance aggravating other offences.

94. Articles 287 and 335 of the Criminal Code set out the penalties for perpetrators of torture. Article 287 of the 1998 Criminal Code concerns perpetrators of torture who are not part of the State apparatus: "Any offender who uses torture or commits acts of barbarity in the execution of his or her crimes shall also be liable to the death penalty."

95. Article 335 sets out the penalties for public officials who commit acts of torture: "The offence shall be punishable by life imprisonment if the persons arrested, detained or held against their will were subjected to physical torture." Several provisions of the Criminal Code (arts. 128, 198, 199, 200, 201 and 295) are not in line with the Convention against Torture.

96. The Guinean Government is making strenuous efforts to combat impunity by criminalizing the conduct of certain public officials who use torture as the sole means of extracting confessions or information during questioning and interrogations.

97. The case of the 33 young persons from Taouyah transferred to Soronkoni can be cited by way of example:

- The Minister of Human Rights and Public Liberties intervened in October 2013 in the case of the 33 young persons who had been sent to the Soronkoni military camp. After the case was brought to his attention by the families of the young detainees, he acted quickly to secure their release. On 4 October 2013, after 11 days of arbitrary detention, the 33 young persons were freed;
- On 18 October, at the request of the Minister, the young persons were granted an audience with the President of the Republic. This meeting enabled the Head of State to hear first-hand the accounts of citizens who had been victims of violence committed by law enforcement officers. The President presented the victims with a sum of 50 million Guinean francs, or around 6,000 euros. This gesture served as an act of recognition on the part of the State. The judicial investigation opened by the public prosecutor's office at the Court of First Instance in Dixinn, in response to the

report submitted by the Ministry of Human Rights to the Minister of Justice, is, however, still ongoing.

Articles 6, 7, 8 and 9 on preliminary inquiries and mutual judicial assistance in respect of extradition

98. Under article 653 of the Code of Criminal Procedure:

"Where no relevant treaty applies, the conditions, procedures for and consequences of extradition, as well as any other aspects not expressly regulated by any such treaties, shall be determined by the provisions of the present law."

99. Under article 654 of the Code:

"No person may be handed over to a foreign Government unless he or she has been charged with or convicted of an offence under the present Code."

100. Under article 655:

"The Guinean Government may hand over to a foreign Government, at the latter's request, any non-Guinean person present in the territory of the Republic who is being prosecuted in the requesting State or has been convicted by a court of that State and whose sentence has become enforceable, subject to reciprocity."

101. Under article 656:

"The following acts may give rise to extradition, whether for the purposes of requesting or granting extradition:

1 – Any act subject to criminal penalties under the law of the requesting State.

2 – Acts punishable by correctional penalties involving imprisonment under the law of the requesting State, when the minimum penalty under the law is at least 2 years, or, in the case of a convicted person, when the penalty imposed by the court in the requesting State is equal to, or greater than, 2 months' imprisonment.

In no circumstances will the Guinean Government grant extradition if the acts concerned are not punishable by a criminal or correctional penalty under Guinean law.

Acts constituting attempted commission of or complicity in an offence are subject to the above rules provided that they are punishable under the legislation of the requesting State and of the Republic.

If the request relates to several offences committed by the person sought and for which he or she has not yet been tried, extradition shall be granted only if the maximum aggregate penalty under the law of the requesting State for the offences is equal to, or greater than, 2 years' imprisonment.

If the person sought has previously been convicted in any country and finally sentenced to 2 months' imprisonment or more for an offence under ordinary law, extradition shall be granted in accordance with the above rules, that is, only for serious or ordinary offences, but without regard to the severity of the sentence applicable or imposed for the most recent offence.

The above provisions shall apply to offences committed by members of the military, the navy or similar bodies when they are punishable under Guinean law as offences under ordinary law.

The practices governing the handing over of sailors who have deserted shall remain unchanged."

102. The Guinean Government, with a view to affording the greatest measure of mutual judicial assistance in connection with criminal proceedings brought in respect of offences referred to in articles 4, 5, 6, 7, 8, and 9 of the Convention against Torture, has assigned the Interpol division of the criminal investigation police to track down, arrest and hand over persons suspected of an offence under criminal law to the competent courts.

Article 10 on education and information regarding the prohibition against torture

103. Article 25 of the 2010 Constitution provides that:

"The State has a duty to ensure the dissemination and teaching of the Constitution, the 1948 Universal Declaration of Human Rights, the 1981 African Charter on Human and Peoples' Rights and all duly ratified international human rights instruments.

The State has an obligation to incorporate human rights in literacy and teaching curricula at all levels in schools and universities and in all training programmes for the Armed Forces, the public security services and similar categories.

The State must also ensure the dissemination and teaching of human rights in the national languages through all mass media, and particularly by radio and television."

104. Article 5 of the Code of Conduct for members of the military and the security forces of 28 November 2011 provides that:

"Military personnel shall receive specific training on human rights, international humanitarian law and standards, conventions and commitments in respect of armed conflict."

105. Article 6 of the Code of Conduct provides that:

"In the performance of their duties, military personnel must respect domestic law, international humanitarian law and human rights."

106. The Guinean Government has established a human rights training programme for judicial, prison and military and security force personnel within the framework of its security and justice sector reform policy. The institutional arrangements for the holistic, collaborative and inclusive security sector reform process will involve all stakeholders in the country, including civil society.

107. One example of such training is the session on human rights and international humanitarian law provided to the commando battalion of the standby forces at Samoreya camp, under the first military region, with a view to guaranteeing respect for human dignity in the conduct of peacekeeping operations.

108. For decades, the Guinean Armed Forces have been taught international humanitarian law in infantry training centres and military schools for recruits of all levels.

109. An international humanitarian law office has been established within the organizational structures of the General Staff of the Armed Forces, the Ministry of Security and the High Command of the National Gendarmerie in order to develop and teach international humanitarian law. The judicial system is one of the key pillars for the promotion of the rule of law.

110. The recommendations contained in the final report of the national consultation on justice are contributing to the reform of the security sector through their advocacy of a judicial system that meets rule of law standards and brings justice closer to the people. The establishment of such a system will involve:

- Reviewing the geographical organization of the courts;
- Training specialized judges;
- Consolidating the capacity of public prosecutor's offices and the prison administration to uphold human rights;
- Strengthening the impartiality and independence of the judiciary;
- Increasing judges' salaries.

II. Articles 11 to 16

Articles 11 to 14 on the systematic review of rules, instructions, methods and practices in respect of the interrogation and custody of persons subjected to arrest, detention or imprisonment

111. The Code of Criminal Procedure of Guinea provides for the systematic review of interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment. The aim is to prevent all acts of torture and other cruel, inhuman or degrading treatment or punishment. The relevant provisions are as follows:

- **Article 116**: When an accused person first appears in court, the investigating judge shall verify his or her identity, inform the accused of each of the charges brought against him or her and notify him or her of the right to remain silent. Mention of this notification shall be made in the record of the proceedings.

  If the accused wishes to speak, his or her statement shall be taken immediately by the investigating judge. The judge shall notify the accused of his or her right to choose counsel from among the lawyers who are members of the Bar or hold probationary appointments. Mention of this notification shall be made in the record.

  The assistance of a defence lawyer shall be mandatory when the accused person has an impairment that could adversely affect his or her defence. In such cases, if the accused has not chosen a defence lawyer, the judge shall appoint one automatically.

  Parties who have brought criminal indemnification proceedings in the manner provided for shall also be entitled to legal assistance as from the first hearing.

  During the first court appearance, the judge shall notify the accused that he or she must inform the court in advance of any change of address and that he or she may also stipulate an address for service within the court's territorial jurisdiction.

- **Article 117**: The provisions of the preceding article notwithstanding, the investigating judge may proceed immediately with questioning and confrontation of witnesses in an emergency, that is when the life of a witness or co-accused is in danger or when evidence exists that is about to disappear, or in the case provided for in the last paragraph of article 70. The record must mention the nature of the emergency.

- **Article 118**: Accused persons who are in detention may communicate freely with counsel immediately after their first appearance in court. When an investigating

judge deems it necessary to prohibit communication by an accused person, the prohibition may be imposed for no more than 10 days. In no case may the prohibition apply to the accused's counsel.

- **Article 119**: At any stage of the investigation, the accused and the party claiming criminal indemnification may notify the investigating judge of the names of the counsel they have chosen, to whom summonses and notifications will be sent.
- **Article 120**: Unless they explicitly waive this right, the accused and the party claiming criminal indemnification may be heard or confront one another only in the presence of their counsel, or once counsel has been duly summoned. Mention of this waiver must be made in the heading of the record of the proceedings. If he or she resides in the area where the investigation is taking place, counsel shall be summoned at least two days beforehand by registered letter or by legal notice, both with an acknowledgement of receipt. When counsel resides outside the area, this period shall be increased to eight days. On each occasion, the case file must be made available to defence counsel at the latest 24 hours before questioning or confrontation of witnesses. It must also be made available to counsel for the party claiming criminal indemnification no later than 24 hours before the examination of that party.
- **Article 121**: Nonetheless, in an emergency, that is when the life of a witness or co-accused is in danger or when evidence exists that is about to disappear, the investigating judge may proceed with questioning and confrontation of witnesses without observing the formalities provided for in the preceding article. The record must mention the nature of the emergency.
- **Article 122**: The public prosecutor may be present while the accused is questioned or confronted and during the examination of the party claiming criminal indemnification and of the witnesses. Whenever the public prosecutor notifies the investigating judge that he or she plans to attend a hearing, the court clerk must notify him or her in writing at least two days in advance. Failure to do so shall result in a fine of 5,000 Guinean francs imposed by the president of the indictments chamber.
- **Article 123**: The public prosecutor and counsel for the accused and the party claiming criminal indemnification may speak only to ask questions, after having been authorized to do so by the investigating judge. If authorization is refused, mention of the incident shall be made in the record, and the questions shall be reproduced in or attached to it.
- **Article 124**: Records of the questioning and confrontation of witnesses shall be drawn up in the manner provided for in articles 109 and 110. If an interpreter is used, the provisions of article 106 shall apply.
- **Article 132**: Any accused person taken into custody under an arrest warrant who has been held for more than 24 hours without being heard shall be deemed to be arbitrarily detained. Any judge or official who orders or knowingly tolerates such arbitrary detention shall be liable to the penalties specified in articles 132 and 133 of the Criminal Code.
- **Article 133**: If an accused person for whom an arrest warrant has been issued is found outside the jurisdiction of the investigating judge who issued the warrant, he or she shall be brought before the public prosecutor of the place of arrest. This official shall establish the accused's identity, take his or her statement after having informed him or her of the right to remain silent and ask whether he or she consents to being transferred or prefers for the arrest warrant to be extended while he or she

awaits, in the current location, the decision of the investigating judge to whom the case has been referred. If the accused states that he or she opposes the transfer, he or she shall be taken into custody, and the competent investigating judge shall be immediately informed thereof. The record of the appearance, including the accused's full personal particulars, shall be transmitted without delay to the investigating judge, along with all the information necessary to facilitate confirmation of the accused's identity. The record must mention that the accused has been informed of his or her right to remain silent.

112. The Criminal Code penalizes these acts:

- **Article 132**: Public officials responsible for policing or criminal investigation who refuse or neglect to respond to a lawful request to report illegal or arbitrary detention, either in a custodial facility or elsewhere, and who fail to prove that they have informed their superiors thereof shall be liable to 1 to 5 years' imprisonment and damages and interest, which shall be calculated as provided for in article 130.
- **Article 133**: Prison directors and chief wardens who admit a prisoner without a warrant or judicial decision, or, in the case of an expulsion or extradition, without a provisional order from the Head of State, those who detain a prisoner or refuse to present him or her to a court, a police officer or a person bearing orders, without an injunction from a public prosecutor or a judge, and those who refuse to show custody registers to a police officer shall be deemed guilty of arbitrary detention and liable to a prison term of between 6 months and 2 years and a fine of between 50,000 and 100,000 Guinean francs.

113. After the consideration by the Committee on the Rights of the Child of the initial report of Guinea on implementation of the Convention on the Rights of the Child in 1999, the Guinean Government drew up and adopted the Children's Code, thus bringing together in a single document the entire set of provisions protecting children, in keeping with the country's international commitments.

114. The Children's Code Act of 19 August 2008 accords special protection to children at risk and children in conflict with the law, in the following articles:

- **Article 287**: The following shall be considered adverse circumstances that put children's health, development and physical or mental integrity at risk:

  (1) Loss of parents and consequent loss of family support;

  (2) Status as a placed or abandoned child or as a foundling;

  (3) Exposure to neglect or vagrancy;

  (4) Recognized and continuing lack of education and protection;

  (5) Habitual ill-treatment;

  (6) Sexual exploitation, of both boys and girls;

  (7) Exposure to sexual abuse;

  (8) Exposure to begging and economic exploitation;

  (9) Exploitation in organized crime;

  (10) Exposure to or exploitation in armed conflict;

  (11) Exposure to practices that are harmful to health;

  (12) Inability on the part of the parents or those responsible for the child to ensure his or her protection and education;

(13) Trafficking of children;

(14) Physical or mental disabilities.

- **Article 288**: The endangerment of the mental, psychological or physical integrity of a child through abandonment by his or her parents, without good reason, in a public or private institution, through abandonment of the family home by the parents for a prolonged period without the provision of the necessary conveniences for the child, through the refusal of the parents to take the child in after a court ruling on his or her custody, through the refusal of the parents to care for the child and ensure that he or she is well treated or through serious and/or ongoing emotional rejection of the child by his or her parents shall be considered neglect.
- **Article 289**: A "placed child" shall mean a child in whom the parents, guardians or other person having custody have plainly lost interest for more than one year and who has been taken in by a public or private institution or by an individual. Such a child may be declared abandoned by a juvenile court judge, unless one of the parents has, within that year, submitted an application for custody and the judge has deemed that application to be in accordance with the best interests of the child.
- **Article 290**: A "foundling" shall mean a newborn who is taken in by an individual or by a public or private institution and whose parents cannot be identified.
- **Article 291**: The situation of vagrant children left without supervision or schooling as a result of the refusal of the person responsible for their education or care to enrol them in an institution recognized by the education system or in a training establishment, or to place them in a protective or rehabilitative educational institution, shall be regarded as requiring intervention.
- **Article 292**: Habitually leaving children without supervision and failing to advise and guide or watch over them, as in the case of street children and children on the street, shall be deemed a recognized lack of education and protection requiring intervention.
- **Article 293**: Any minors residing in an urban area who spend all of their time on the street, whether working or not, and who maintain few or no ties with their parents, guardian or other person responsible for their care or protection shall be considered "street children". The street is the sole and permanent setting for the lives of such children as well as their source of livelihood. The "street" shall mean any place other than a foster family or children's home, such as public or private structures including buildings, courtyards and pavements.
- **Article 294**: Any minors residing in an urban area who spend the bulk of their time on the streets, whether working or not, and who maintain ties with their parents, guardian or other person responsible for their care or protection shall be considered "children on the street".
- **Article 295**: Subjecting children to torture or to repeated violations of their physical integrity, detaining them, repeatedly depriving them of food or committing any act of brutality likely to affect their emotional, psychological or physical well-being shall be considered habitual ill-treatment requiring intervention.
- **Article 296**: Subjecting boys or girls to acts of prostitution or to indecent assault, pornography or paedophilia, whether in exchange for remuneration or not, shall be considered sexual exploitation requiring intervention.
- **Article 297**: Sexual abuse requiring intervention shall refer to the subjecting of children to sexual contact by any person in a position of authority or trust, or by any person on whom the child is dependent.

- **Article 298**: Exposing children to begging or trafficking, or placing them in work likely to keep them from attending school or be detrimental to their health, development or physical or mental integrity, or using them for purposes and/or in conditions inconsistent with the present Code, shall be considered economic exploitation requiring intervention.
- **Article 299**: Changes in a child's behaviour that are intended to thwart vigilance and supervision, the habitual departure of the child from the family home without notice or consultation, the child's unexplained absence or the premature abandonment of his or her schooling without reason shall be deemed to evidence inability on the part of the parents or those responsible for the child to ensure his or her protection and education, requiring intervention.
- **Article 300**: Any child whose capacity to take part in one or more fundamental activities of daily life is limited by a physical, sensory or mental impairment of congenital or acquired origin shall be considered a child with a disability.
- **Article 301**: For the purposes of the present Code, "protective and rehabilitative educational institutions" shall refer to children's homes, institutions that provide listening, counselling and/or housing services for children, and correctional education institutions.
- **Article 302**: A commissioner responsible for children's affairs shall be appointed by the minister responsible for children's affairs in each prefecture.
- **Article 303**: Before taking up their duties, commissioners for children's affairs shall take the following oath before the competent court of first instance or magistrate's court: "I swear to perform the duties that have been entrusted to me with honour and loyalty and to uphold the law and observe professional confidentiality."
- **Article 304**: The mission of the commissioners for children's affairs shall be to intervene in all cases in which a child's health or his or her physical or mental integrity is put at risk or endangered as a result of the environment in which he or she lives, the activities in which he or she engages or ill-treatment to which he or she is subjected, and in particular the adverse circumstances described in article 287 of the present Code.
- **Article 305**: All persons, including those bound by professional confidentiality, shall be required to report to the relevant commissioner for children's affairs any situation that is likely to constitute a danger to a child's health or to his or her physical or mental integrity, as defined in article 287, paragraphs 4 and 5, of the present Code. All persons may report to the commissioner for children's affairs any situation that appears to pose a danger to a child's health or to his or her physical or mental integrity, as defined in the other paragraphs of article 287. The adverse circumstances defined in article 287 must be reported to the commissioner for children's affairs if the person who observes them is among those whose duties involve protecting and helping children, such as educators, doctors, social workers and any other individuals with special responsibilities for child safety and for protecting children from any situation likely to put their health and their physical or mental integrity at risk.
- **Article 306**: All adults shall be obliged to help a child who turns to them for the purpose of making a report to the commissioner for children's affairs or informing him or her of adverse circumstances that pose a danger to the child himself or herself, to his or her siblings or to any other child, as described in article 287 of the present Code.

- **Article 307**: No one may be prosecuted for having carried out in good faith the mandatory reporting stipulated in the above provisions. No one may divulge the identity of a person responsible for making such a report, except with the permission of that person and in the cases provided for by law.
- **Article 308**: Commissioners for children's affairs shall be legally empowered to:

  (1) Speak to children and their parents about cases that are reported to them;

  (2) Proceed with investigations and take appropriate steps on children's behalf;

  (3) Take preventive measures on children's behalf, on the basis of social inquiry reports;

  (4) Draw up reports on activities they observe targeting children and submit them to a juvenile court judge;

  (5) Monitor the situation of children in prison, together with the judicial authorities.
- **Article 309**: Commissioners for children's affairs shall enjoy, solely for the performance of their duties, the powers of law enforcement officers. Their law enforcement powers shall be exercised in the conditions and within the limits defined in the present Code.
- **Article 310**: Legal protection for children shall be afforded by the juvenile justice authorities, which are as follows:

  (1) The juvenile court judge;

  (2) The juvenile court;

  (3) The juvenile chamber of the appeal court;

  (4) The juvenile assize court.
- **Article 311**: In courts of first instance and in magistrate's courts that have two magistrates or more, juvenile judges shall be appointed by order of the president of the court or by the justice of the peace on the basis of their abilities and their interest in children's issues. In [other] magistrate's courts, the justice of the peace shall sit as juvenile judge.
- **Article 312**: The competence of juvenile judges and proceedings before these judges are governed by articles 710 to 717 of the Code of Criminal Procedure. Flagrante delicto and direct referral procedures shall not be applied in the case of children in conflict with the law. An investigation is compulsory at all stages of proceedings.
- **Article 313**: A juvenile court shall be composed of a juvenile judge, a president and two other judges. The non-presiding judges and the alternates shall be appointed for four years by order of the Minister of Justice. They shall be chosen from among men and women aged over 30 who are citizens of Guinea and are known for their interest in children's issues and for their competence. Before taking office, the non-presiding judges and the alternates shall take an oath to perform their duties in a proper and loyal manner and to keep their deliberations strictly confidential. The functions of a court clerk shall be carried out by the chief clerk of the court of first instance or of the magistrate's court or by one of his or her clerks.
- **Article 314**: The jurisdiction of juvenile courts and proceedings before these courts are governed by articles 721 to 730 of the Code of Criminal Procedure.

- **Article 315**: The first president of the appeal court shall designate a judge responsible for children's affairs from among the appeal court judges. The judge so designated shall preside over the special chamber responsible for hearing appeals in cases concerning children. He or she shall sit as a member of the indictment chamber when minors are involved. The judge responsible for children's affairs shall be assisted by two appeal court judges. The court clerk shall be chosen from among the clerks of the appeal court. The functions of the public prosecutor shall be carried out by the Prosecutor-General, the Advocate-General or one of their deputies.
- **Article 316**: The special juvenile chamber of the appeal court shall hear appeals of juvenile court decisions.
- **Article 317**: Appeals of juvenile court decisions shall be heard by the special juvenile chamber of the appeal court within two months of receipt of the case file.
- **Article 318**: The procedure shall be the same as that before the juvenile court.
- **Article 319**: The following decisions are subject to appeal, in the manner and within the period prescribed by the Code of Criminal Procedure:
    - Orders of juvenile court judges, before the indictment chamber;
    - Decisions of juvenile courts, before the special juvenile chamber of the appeal court.
- **Article 320**: The following decisions are subject to appeal in cassation, in the manner and within the period prescribed by the Code of Criminal Procedure:
    - Orders of the indictment chamber;
    - Judgements of the special juvenile chamber;
    - Judgements of the juvenile assize courts.
- **Article 321**: Remedies may be sought by minors, their legal representatives, their counsel or the public prosecutor's office.
- **Article 322**: Minors aged 16 years or over who are accused of a criminal offence shall be tried by the juvenile assize court. This court shall sit when the assize court is in session. It shall be composed of a president, two judges and six jurors. The president of the juvenile assize court shall be appointed and replaced, as appropriate, in accordance with the conditions stipulated for the president of the assize court in articles 241 to 244 of the Code of Criminal Procedure. The two judges shall be chosen, if at all possible, from among the juvenile judges within the assize court's jurisdiction and shall be appointed in the manner provided for in articles 245 to 249 of the Code of Criminal Procedure. The six jurors shall be those chosen by lot for the assize court session. The functions of the prosecutor at the juvenile assize court shall be performed by staff of the public prosecutor's office attached to the appeal court. The clerk of the appeal court shall act as clerk of the juvenile assize court.
- **Article 323**: The president of the juvenile assize court and the juvenile assize court shall exercise the functions attributed to them by the Code of Criminal Procedure.
- **Article 324**: Proceedings before this court are governed by articles 718 to 720 of the Code of Criminal Procedure. The juvenile assize court shall, however, sit four times a year.
- **Article 325**: All serious offences, except those involving the death of a person, may be tried as ordinary offences bearing in mind the nature of the offence, its gravity, the interests harmed and the circumstances of the case.

- **Article 326**: Minors aged 13 to 18 years who are accused of minor, ordinary or serious offences shall not be brought before ordinary criminal courts. They may be tried only before juvenile judges, juvenile courts or the juvenile assize court.
- **Article 327**: The territorial jurisdiction of the court that is to deal with a case shall be established on the basis of the habitual place of residence of the child, his or her parents or legal guardian, by the scene of the offence or by the location where the child was found or where he or she has been placed, whether on a temporary or permanent basis. The court in which proceedings are pending may relinquish jurisdiction in favour of another court of the same order, where the interests of the child so require.
- **Article 328**: Mediation is a mechanism that is intended to reconcile children who have committed offences, or their legal representatives, and the victims of the offences, or their legal representatives or next of kin. The aim of mediation is to avoid the negative effects of criminal proceedings, ensure reparation for the injury done to the victim, put an end to the distress caused by the offence and contribute to the rehabilitation of the perpetrator. Mediation may result in one or more of the following measures:
    - Compensation;
    - Remedy *in rem*;
    - Return of stolen property;
    - Community service;
    - An explicit apology offered to the victim orally or in writing.
- **Article 329**: Custodial sentences for minors that do not exceed 3 years may be served in the form of community service. One day of deprivation of liberty shall be equivalent to four hours of community service. As a rule, a convicted minor shall perform at least 10 hours' community service per week.
- **Article 330**: Applications to serve a custodial sentence in the form of community service shall be made in writing to the sentence enforcement judge, who shall choose the location for the community service, set the date on which it will begin and specify how long it will last and the length of a day's work.
- **Article 331**: Community service shall not be remunerated. It shall be done for the benefit of an organization with a social or public-service mission, a government agency or persons in need of assistance. The replacement of a custodial sentence with community service presupposes:
    - The agreement of the convicted minor;
    - The existence of an appropriate occupation in the public interest;
    - The willingness and ability of the convicted minor to perform the community service and the assumption that the convicted minor is equal to the demands of the alternative sentence enforcement arrangements and will not breach the trust that has been placed in him or her.
- **Article 332**: Convicted minors must comply with the instructions given to them by the sentence enforcement judge. If a convicted minor should be absent from community service, the missing hours shall be made up, even if the absence was excused. Convicted minors shall be required to inform the sentence enforcement judge of any change of address over the period of the community service.

- **Article 333**: The decision to resort to mediation shall be made by the public prosecutor and the juvenile judge. Mediation may be requested by the child concerned or the victim, or their respective legal representatives. In the event of a joint request, mediation may not be refused. Mediation shall not be permitted if the child is being prosecuted for a sexual offence.
- **Article 334**: Petitions for mediation shall be submitted to the public prosecutor or the juvenile judge by the child or his or her legal representative.
- **Article 335**: A children's mediator shall be appointed for each prefecture by decree of the minister responsible for children's affairs. Mediators shall be chosen from among the ministerial officials, taking into account their interest in children's issues and their competence. Before taking office, children's mediators shall take the following oath before a court of first instance or a magistrate's court: "I swear to carry out my mission faithfully, with honour, probity and neutrality, and in all circumstances to keep the cases that have been submitted to me confidential."
- **Article 336**: The mission of the children's mediators shall be to help the parties to disputes to reach a settlement, which must not violate public order or morality. If necessary, mediators for children shall verify that any commitments made are met. Any attempted criminal mediation must take place within 30 days of a referral to a mediator. The record confirming the settlement, as well as the report drafted by the mediator for that purpose, shall be sent without delay to the public prosecutor or justice of the peace, who shall submit them to the court for approval with all due haste. If criminal mediation should fail, mediators shall send their reports to the public prosecutor, who shall take the final decision on the advisability of pressing charges.
- **Article 337**: The mediation instrument, binding on all parties, shall be exempt from registration and stamp fees.
- **Article 338**: The age of criminal responsibility shall be set at 18 years. A child's age shall be deemed to be that on the date of commission of the offence alleged. It shall also be ascertained from birth certificates, judgements establishing the date of birth or any other documents corroborated by a medical assessment. If the date of birth is challenged, the court to which the matter is referred shall make the final determination as to the age of the offender. If a birth certificate specifies only the year of birth, the birth shall be deemed to have taken place on 31 December of the year specified. If the month is specified, the birth shall be deemed to have taken place on the last day of the month.
- **Article 339**: Children who have been charged with ordinary or serious offences shall not be brought before ordinary criminal courts. Children shall be tried only in juvenile courts. Acts committed by a minor aged 10 years cannot be categorized or prosecuted as crimes. Minors aged 13 years, if found guilty, shall automatically be entitled to exculpation on grounds of minority. Minors aged 10 to 13 years cannot be subject to any measures other than those of protection, assistance, supervision and education as provided for by law. Minority as an extenuating or exculpating factor shall benefit minors aged 16 to 18 years under the conditions prescribed by the Code of Criminal Procedure. In respect of serious and ordinary offences, minority as grounds for extenuation shall produce the effects prescribed by article 48 of the Criminal Code.
- **Article 340**: As soon as a child is apprehended, the criminal investigation officer shall immediately notify the child's parents or guardian or the individual or institution in whose care the child has been placed. Officers may not question child suspects or initiate any proceedings against them until the competent public

prosecutor or the juvenile judge have been informed. In all cases, children may be questioned by officers only when they are accompanied by their parents or guardian or a lawyer. Children must be directly informed, with all due haste, of the charges against them and of their right to be assisted by counsel and to be accompanied by a parent or guardian. All children charged with a criminal offence must be assisted by a lawyer free of charge. If the child or his or her legal representatives do not choose a lawyer, the public prosecutor, the justice of the peace, the juvenile judge or the investigating judge shall have the President of the Bar appoint one.

- **Article 341**: Minors aged 13 to 18 years may be detained before trial by the investigating judge only as a last resort and only if the judge considers all other measures impossible. In this case, children shall be held separately from adults and for a period not to exceed 4 months if charged with an ordinary offence or 6 months if charged with a serious offence.

- **Article 342**: The children of incarcerated mothers shall enjoy special treatment. The mothers must be held in environments that are harmful neither to their own health nor to that of their children. They must be treated with dignity and compassion. Pregnant women and mothers of nursing infants and young children who have been charged with or convicted of criminal offences must not be imprisoned with their children.

- **Article 343**: When the preliminary investigation has concluded, the investigating judge shall, if appropriate, refer the case to a juvenile court. The court shall give its judgement in private after having heard the child, the witnesses and the parents or guardians, as well as the public prosecutor and the defence counsel. If the charges are substantiated, the court shall take one of the following measures:

  (1) Hand the child over to his or her parents;

  (2) Place the child until the age of 18 with a trustworthy person, in a charitable institution or in an appropriate rehabilitation centre.

  In the latter case, the placement order shall be reviewed by the juvenile judge every three months. The judge must monitor the decisions handed down concerning the child with the assistance of the departments concerned, make visits to the child to observe his or her condition and the degree to which he or she has accepted the measure imposed, and order any necessary medical or psychological examinations or social inquiries. The judge may, of his or her own motion, at the behest of the public prosecutor's office, the child, or his or her parents or guardian, or on the basis of a probation officer's report, rule immediately on difficulties in respect of the application of the measure and on all unforeseen incidents.

- **Article 344**: When a minor aged 13 to 18 years is convicted of an ordinary offence:

  - If it is determined that he or she acted without due discernment, the minor shall be discharged, but, depending on the circumstances, he or she may be handed over to his or her parents, to another individual or to a charitable institution or, as a last resort, to an appropriate rehabilitation centre for the number of years set out in the judgement, which period shall not, however, extend beyond the minor's eighteenth birthday;

  - If it is determined that he or she acted with due discernment, the penalty handed down may not be more than half that to which the minor could have been sentenced had he or she been 18. The juvenile court may still impose an educational measure or community service.

- **Article 345**: Under no circumstances may children who were less than 18 years of age at the time of commission of an offence be sentenced to death or to life imprisonment without the possibility of parole. If a minor over 13 and under 16 years of age is convicted of a serious offence and it is determined that he or she acted with due discernment, the following penalties shall apply:
    - 5 to 7 years in prison for offences punishable by the death penalty or life imprisonment;
    - 2 to 5 years in prison for offences punishable by long-term rigorous imprisonment or by penal detention;
    - 1 to 3 years in prison for offences punishable by loss of civic rights.
- **Article 346**: If a minor aged 16 to 18 years is convicted of a serious offence, the following penalties shall apply:
    - 5 to 10 years in prison for offences punishable by the death penalty or life imprisonment;
    - Imprisonment for a term equal to, at most, half the term to which he or she could have been sentenced for offences punishable by rigorous imprisonment or penal detention for terms of from 10 to 20 years or from 5 to 10 years;
    - 2 to 5 years in prison for offences punishable by loss of civic rights.

  In all cases, for 5 years at least and 10 at most, he or she may be forbidden to visit certain places, from which he or she will receive a banning order.
- **Article 365**: In the event that a child is arrested, detained or abducted with a view to facilitating the commission of a crime, aiding the escape or ensuring the impunity of the perpetrators of or accessories to a crime, or demanding payment of a ransom or ensuring that an order is carried out or a condition met, the perpetrator shall receive the death penalty. Nevertheless, the sentence shall be commuted to rigorous imprisonment for a term of from 10 to 20 years if the child is released voluntarily, without an order having been carried out or a condition met, by the end of the fifth day following the arrest, detention or abduction. The benefit of such extenuating circumstances cannot be accorded to defendants found guilty of the crime indicated in the first paragraph if the abduction results in the death of any person or that of the person abducted, regardless of whether the death occurs while the person is in the hands of his or her captors or as a consequence of injuries or violence inflicted during his or her abduction.
- **Article 366**: No Guinean child aged under 18 years may leave the country without a special authorization issued by the authorities of his or her place of residence and bearing the consent of the parents, guardian or other person having custody of the child. The transfer or non-return of a child shall be considered unlawful:
    - When it takes place in breach of a right to custody accorded to an individual, institution or any other body, solely or jointly, by the law of the State in which the child had his or her habitual residence immediately prior to the transfer or non-return;
    - When this right was effectively exercised, solely or jointly, at the time of the transfer or non-return, or when it would have been had the transfer or non-return not taken place.
- **Article 367**: A sentence of rigorous imprisonment for a term of from 5 to 10 years and a fine of from 250,000 to 1.5 million Guinean francs shall be imposed on all persons found guilty of:

(1) Abducting or concealing a child, or concealing its birth;

(2) Substituting one child for another;

(3) Attributing a real or imaginary child to a woman who did not give birth to the child.

- **Article 368**: A sentence of imprisonment for a term of from 16 days to 3 months and a fine of from 50,000 to 200,000 Guinean francs, or one of the two penalties, shall apply to any person who:
  - Having been present at a birth, fails to register the birth, as required by the rules governing civil registration;
  - Having found a newborn, fails to turn the child over to the registrar's office.

  This provision shall not apply to anyone who has agreed to take responsibility for the child and to that end has registered the child with the administrative authorities of the place in which the child was found.
- **Article 369**: Those who endanger or cause to be endangered, or abandon or cause to be abandoned, a child or a person unable to protect himself or herself as a result of his or her physical or mental state shall be liable to imprisonment for between 1 and 3 years and a fine of between 50,000 and 200,000 Guinean francs. The penalty shall be imprisonment for between 2 and 5 years and a fine of between 50,000 and 500,000 Guinean francs if the perpetrators are relatives in the ascending line or any other persons having authority over or custody of the victim.

115. In the above provisions, the Children's Code places particular emphasis on specialization of criminal justice and custodial personnel, of applicable legal procedure and of treatment of minors deprived of their liberty.

Article 15 on the prohibition on invoking in any proceedings evidence obtained as a result of torture

116. The Code of Criminal Procedure of Guinea provides guarantees for all accused persons brought before an investigating judge for questioning and confrontation of witnesses. These guarantees are defined in the following articles of the Code:

- **Article 116**: When an accused person first appears in court, the investigating judge shall verify his or her identity, inform the accused of each of the charges brought against him or her and notify him or her of the right to remain silent. Mention of this notification shall be made in the record of the proceedings. If the accused wishes to speak, his or her statement shall be taken immediately by the investigating judge. The judge shall notify the accused of his or her right to choose counsel from among the lawyers who are members of the Bar or hold probationary appointments. Mention of this notification shall be made in the record. The assistance of a defence lawyer shall be mandatory when the accused person has an impairment that could adversely affect his or her defence. In such cases, if the accused has not chosen a defence lawyer, the judge shall appoint one automatically. Parties who have brought criminal indemnification proceedings in the manner provided for shall also be entitled to legal assistance as from the first hearing. During the first court appearance, the judge shall notify the accused that he or she must inform the court in advance of any change of address and that he or she may also stipulate an address for service within the court's territorial jurisdiction.

- **Article 120**: Unless they explicitly waive this right, the accused and the party claiming criminal indemnification may be heard or confront one another only in the presence of their counsel, or once counsel has been duly summoned. Mention of this waiver must be made in the heading of the record of the proceedings. If he or she resides in the area where the investigation is taking place, counsel shall be summoned at least two days beforehand by registered letter or by legal notice, both with an acknowledgement of receipt. When counsel resides outside the area, this period shall be increased to eight days. On each occasion, the case file must be made available to defence counsel at least 24 hours before questioning or confrontation of witnesses. It must also be made available to counsel for the party claiming criminal indemnification no later than 24 hours before the examination of that party.

The case concerning the attack on the private residence of the Head of State: numerous allegations of torture in July 2011

117. According to the authorities, on the night of 18/19 July 2011, the private residence of the Head of State, Mr. Alpha Condé, was attacked by an armed commando intent on assassinating the President of the Republic. The following day, under the leadership of Lieutenant-Colonel Claude Pivi and Colonel Moussa Thiegboro Camara, search operations were carried out in an attempt to arrest those responsible for the attack. Very quickly, at least 25 soldiers were arrested, the majority by means of force and without respect for the relevant legal procedures. Commanders Sidiki Camara and Alpha Oumar Boffa Diallo in particular were subjected to violence at the time of their arrest. Civilians were also arrested in the days that followed. Most of the arrests took place outside any legal framework and the persons arrested were taken to illegal places of detention. Several civilians were tortured while in detention. At least one civilian died in unknown circumstances in the battalion headquarters of the Almamy Samory Touré camp.

118. Following the launch of a judicial investigation by the public prosecutor's office at the Court of First Instance in Dixinn (Conakry II), the public prosecutor brought proceedings against Commanders Alpha Oumar Boffa Diallo and Sidiki Camara and their accomplices and they were convicted by Conakry Assize Court at its December 2012 session.

119. As to the acts of torture recorded during the arrest and extrajudicial detention of the defendants, defence counsel requested the public prosecutor to open an inquiry into the cases of torture and the homicide during the proceedings. Regrettably, however, the allegations of torture made at trial were not followed up, contrary to article 6 of the Guinean Constitution of May 2010 and article 2 of the Convention against Torture.

Article 16 on offences related to torture

120. Articles 11 and 12 of the Code of Conduct for members of the military and the security forces provide that:

> "In the exercise of command, no order may be given or carried out that runs counter to domestic law, international humanitarian law or human rights.
>
> No exceptional circumstances or emergency may justify human rights violations.
>
> The political authorities must ensure that the military and security operations they authorize, including in the context of maintaining public order and peace, are carried out in accordance with the relevant provisions of the present Code of Conduct, domestic law, international law and international humanitarian law.

Military personnel shall bear individual responsibility for actions that violate domestic law, international humanitarian law or human rights.

Under no circumstances may the political authorities call on the military or the security forces to restrict the peaceful, legitimate and lawful exercise of the individual and collective rights conferred on citizens by the Constitution.

The military and the security forces must respect, protect and assist all civilians and, in particular, vulnerable persons and groups, especially in times of armed conflict.

The leadership of the military and the security forces must ensure that relations between their personnel and the civilian population are harmonious and underpinned by mutual trust.

In their relations with the civilian population, military and security forces personnel must avoid any act or conduct, such as torture, looting or vandalism, which could serve to undermine the credibility and honour of their institution. Civilian and democratic monitoring of the military and the security forces by the State and public institutions must be carried out in a transparent and responsible manner."

121. Articles 27, 28, 29, 30 and 31 of the Code of Conduct oblige the military and the security forces to:

- "Build their capacity to respond to new challenges in the area of human rights;
- Hold commanders and subordinates accountable for their actions;
- Protect and assist all persons in need;
- Respect human rights and international humanitarian law, even in emergencies or exceptional circumstances."

III. Accomplishments and future prospects

A. Accomplishments

Institutional framework

122. The establishment of the National Commission to Combat HIV/AIDS in 2000 and the adoption of Ordinance No. 056/2009/PRG/SGG of 29 October 2009 on preventing, dealing with and monitoring HIV/AIDS in Guinea attest to the strong will of the Guinean Government to protect the victims of the pandemic from stigmatization and marginalization.

123. The following articles of the 2003 law against female genital mutilation and its implementing regulations and the 2008 Children's Code provide for the punishment of perpetrators of such offences:

- **Article 403**: Any person found guilty of physically or psychologically abusing or voluntarily depriving children of care or food, whether in a family, school, institutional or other setting, shall incur a prison sentence of between 1 and 2 years and a fine of between 100,000 and 250,000 Guinean francs or only one of these penalties.
- **Article 404**: If the acts committed result in loss of blood, injury or illness, the perpetrator shall incur a prison sentence of between 1 and 3 years and a fine of between 100,000 and 500,000 Guinean francs. If the child dies, the guilty party shall incur a life sentence.

- **Article 405**: Female genital mutilation shall mean the partial or total removal of the external genital organs of young and adolescent girls and women and/or any other operation involving these organs.
- **Article 406**: All forms of female genital mutilation carried out by any person, regardless of his or her vocation, shall be prohibited in Guinea.
- **Article 407**: Any person who carries out, participates in or encourages female genital mutilation by traditional or modern methods shall be guilty of intentional violence against the female in question. The perpetrators of any such act shall incur a prison sentence of between 3 months and 2 years and a fine of between 300,000 and 1 million Guinean francs or only one of these penalties. Relatives in the ascending line or any other persons having authority over or custody of the child who authorize female genital mutilation shall incur the same penalties as the perpetrators.
- **Article 408**: If the act of female genital mutilation causes incapacity, the perpetrators shall incur a prison sentence of between 5 and 10 years and a fine of between 1 million and 3 million Guinean francs.
- **Article 409**: If the child dies, the perpetrators shall incur a sentence of rigorous imprisonment for between 5 and 20 years.
- **Article 410**: Those in charge of public and private health-care establishments shall be required to ensure that the victims of female genital mutilation admitted to such centres and establishments receive the most appropriate care. The competent public authorities shall be informed without delay to enable them to monitor the situation of the victim and to institute the proceedings referred to in the preceding provisions.

124. Female genital mutilation is a traditional practice that is deeply rooted in the customs and traditions of African societies in general and Guinean society in particular. It constitutes a form of violence against women and girls, the serious physical and psychological consequences of which have a devastating impact on their health.

125. In Guinea, female circumcision is practised in all regions irrespective of their level of socioeconomic development.

126. The results of the Demographic and Health Survey (EDSIII) show that 96 per cent of women and young girls have undergone the practice, including nearly all women of childbearing age. Women and girls in the following age groups undergo female genital mutilation or female circumcision: early childhood (34 per cent); ages 5–9 (32 per cent); ages 10–14 (27 per cent); and young girls and women aged 15 and over (3 per cent).

127. In spite of the awareness-raising campaigns launched over the last few years, a large number of people still support this practice, as it is considered a binding rite of passage. For a long time, female circumcision was viewed as a socialization process whereby girls were taught about community life and respect for the social hierarchy. However, it must be noted that, today, the rites associated with the practice are merely surgical procedures.

Dates and landmark achievements

128. Since the 1990s, the political will of the Guinean Government in this regard has been affirmed and translated into action through:

- The adoption of the Declaration of the Military Committee of National Recovery prohibiting female genital mutilation in 1985;
- The adoption of Act No. L/010/2000 of 10 July 2000 on reproductive health in Guinea, which criminalizes acts of violence against women and children, including

female genital mutilation, the exploitation of prostitution, harmful traditional practices and paedophilia;

- The country's participation in several regional and international conferences on female genital mutilation, including:
    - The 1994 Dakar conference on female genital mutilation, organized by the Inter-African Committee on Traditional Practices (IAC);
    - The International Conference on Zero Tolerance to Female Genital Mutilation, held in Addis Ababa, Ethiopia, in 2003;
    - The West and Central Africa regional conference on protecting the rights of children and women, held in Lomé, Togo, in 2000;
    - The workshop held in Abuja, Nigeria, on the strategic plan relating to violence against women in the ECOWAS subregion in March 2006.

On the ground

129. The Guinean Government, its development partners and civil society organizations working in this area have rolled out several strategies on the ground in an attempt to curb the practice:

- The Regional Plan of Action to Accelerate the Elimination of Female Genital Mutilation in Africa, launched by the World Health Organization in 1997;
- A 10-year strategic plan for the period 2003–2013 aligned with the global plan adopted on the basis of the recommendations made at the International Conference on Zero Tolerance to Female Genital Mutilation, held in Addis Ababa, Ethiopia, in February 2003;
- Radio and television programmes and articles on female genital mutilation.

130. The establishment of the Office for the Protection of Gender, Children and Morals as part of the Ministry of Security and Civil Protection in 2010 showed that the Guinean Government is committed to building the capacity of the police services in this area so as to afford women and children better protection.

131. The post of National Ombudsman, for which provision is made in article 129 of the Constitution, was created in 2010.

132. Human rights focal points were appointed within the Ministry of National Defence, the Ministry of Security and Civil Protection and the High Command of the National Gendarmerie in 2010.

133. The Inspectorate-General of the Armed Forces was restructured in 2011 with the aim of enhancing oversight of the activities of military units and ensuring that abuses committed by officers, sub-officers and other ranks are punished.

134. Decree No. D289/PRG/SGG/2011 of 28 November 2011 established the Code of Conduct for members of the military and the security forces. The relevant legislation was strengthened so as to bring the former Code of Conduct into step with the new realities and the requirements relating to the promotion and protection of human rights by the military and the security forces.

135. The adoption and promulgation of the Military Justice Code (No. 002/CNT of 17 January 2012) served to reinforce criminal legislation and led to the establishment of the Military Court, which has jurisdiction over offences that are objectively military in nature and offences under ordinary law committed by soldiers while at camp, on mission, on official travel or in host accommodation.

136. Act No. 003/CNT of 17 January 2012 on the status of military justice personnel defines the functions of military justice officials and auxiliaries.

137. The establishment of the High Command of the National Gendarmerie and the Directorate of Military Justice in 2012 demonstrates the desire of the Guinean Government to keep the gendarmerie separate from the general military command and to bring it under the authority of the Ministry of National Defence and the Ministry of Justice.

138. The establishment of the Ministry of Human Rights and Public Liberties pursuant to Decree No. D/109/PRG/SGG of 5 October 2012 and Decree No. D/2012/130/PRG/SGG of 4 December 2012 reflected the determination of the President of the Republic to ensure the implementation of government policy on promoting and protecting human rights in Guinea.

139. Decree No. D293/PRG/SGG/2012 of 6 December 2012 regulates general discipline in the army.

140. As part of its efforts to strengthen legislation, the Guinean Government, pursuant to its security sector reform policy, has begun drafting a code that brings together and harmonizes, in a single document, the provisions dispersed across different texts.

141. By way of example, the introduction in the document of the theory of "rational obedience", whereby soldiers must disobey unlawful orders, represents a major step forward in the process of putting in place a republican army.

142. The granting of special powers to criminal investigation officers by the Prosecutor-General since 2012 represents a major development in the application of the following provisions of the Code of Criminal Procedure:

- **Article 14**: The following shall be considered criminal investigation officers:

  (1) Gendarmerie officers;

  (2) Gendarmerie sub-officers who perform the functions of brigade commander or head of unit;

  (3) Directors of police services;

  (4) Police commissioners;

  (5) Police inspectors;

  (6) Police officers;

  (7) Gendarmerie officer and sub-officer cadets appointed by joint decree of the Minister of Justice and the Minister of National Defence, with the approval of a special commission;

  (8) Police officials appointed by decree of the Minister of Justice on the recommendation of the competent authorities, with the approval of a special commission. The composition of the special commissions referred to in paragraphs 7 and 8 shall be determined by joint decree of the Minister of Justice and the Minister concerned.

- **Article 15**: The public servants mentioned in the preceding article may perform the functions of criminal investigation officer or act in that capacity only if they are appointed to a post entailing the exercise of those functions on the basis of a decision by the Prosecutor-General at the Court of Appeal granting them the appropriate powers. The performance of criminal investigation functions by these public servants shall be temporarily suspended when they are engaged, as part of a unit, in an operation to maintain public order. When they are attached to a service the jurisdiction of which falls outside that of the Court of Appeal, the decision

granting them special powers shall be issued by the prosecutor-general attached to the appeal court closest to where they are stationed. The appraisals of criminal investigation officers issued by the Prosecutor-General shall be taken into account in promotion exercises. The conditions for granting, withdrawing or suspending for a specified period the special powers referred to in the preceding article shall be set out in a joint order of the Minister of Justice and the other Ministers concerned.

Adoption and promulgation of the acts of 12 January 2013 on the special status of police and civil defence officers

143. As part of its policy to reform the security sector, the Guinean Government has established a legal instrument regulating the national police and civil defence services, the first of its kind in Guinean legislation.

144. The special status conferred on police and civil defence officers will allow shortcomings affecting the recruitment, training, structure, wages and equipping of the respective services to be addressed.

Establishment of the Supreme Council of Justice pursuant to Organizational Act No. 055 of 17 May 2013

145. The election of the members of the Supreme Council of Justice and their assumption of office represent a considerable step forward in terms of justice sector reform and the independence of the judiciary, on the one hand, and in the establishment of disciplinary and career management structures for judges, on the other.

Adoption and promulgation of Act No. 054 of 17 May 2013 on the special status of judges

146. The Guinean Government proposed the adoption and promulgation of the above-mentioned Act with a view to creating better working conditions for judges, supporting their independence in the exercise of their functions and strengthening the legal framework of the profession.

Establishment of the National Assembly on 13 January 2014

147. The Independent National Electoral Commission organized legislative elections in Guinea on 28 September 2013, leading to the formation of the current National Assembly, which constitutes the second pillar maintaining constitutional balance, on 13 January 2014. Its first session was convened on 7 April 2014 by presidential decree, thus marking the end of a long transition period.

148. The National Assembly, which is empowered to oversee the actions of the Government and to pass laws, is one of the keystones of the rule of law.

149. The Council of Ministers, at its ordinary session of 17 April 2014, approved the draft decree establishing the Interministerial Committee on Human Rights, which comes under the authority of the Ministry of Human Rights and Public Liberties. The Committee will operate on the basis of the following provisions:

- **Article 1**: There shall be established an Interministerial Committee on Human Rights under the authority of the Ministry of Human Rights and Public Liberties, in accordance with the recommendations made by the United Nations Human Rights Council;
- **Article 2**: The Interministerial Committee on Human Rights shall provide support and guidance to the Ministry of Human Rights and Public Liberties;

- **Article 3**: The Interministerial Committee on Human Rights shall be competent to monitor all matters relating to the promotion and protection of human rights throughout Guinea. Its mission shall be to:
    - Ensure that all legal instruments on human rights ratified by Guinea are in conformity with the laws and regulations in force;
    - Prepare initial and periodic reports on human rights for prompt submission to subregional, regional and international mechanisms;
    - Advise and guide the Government and State institutions on matters relating to human rights;
    - Promote the ratification of new legal instruments on human rights;
    - Follow up on the implementation of the recommendations and observations addressed to Guinea by human rights mechanisms;
    - Make recommendations to the Government through the Ministry of Human Rights and Public Liberties.

150. The reform of the national academy for police and civil defence officers in January 2014 put an end to more than a decade of dysfunction in the procedures for recruiting and training those officers. Further to the reform, the subject of human rights will be taught as part of the basic and in-service training provided to the commissioner, officer, sub-officer and constable corps.

151. In February 2013, the Minister of Human Rights and Public Liberties toured the interior of the country for the purpose of visiting police stations, gendarmerie posts and civilian prisons. The aim of the visits was to educate law enforcement officers about the need to eradicate torture, ensure compliance with the time limits for police custody and improve detention conditions.

152. On 26 June 2013, to mark the United Nations International Day in Support of Victims of Torture, the Guinean Government and the Office of the United Nations High Commissioner for Human Rights (OHCHR) country office organized an awareness-raising event designed to aid all victims of torture and other cruel, inhuman or degrading treatment or punishment.

153. On 17, 18 and 20 December 2013, the Ministry of Human Rights and Public Liberties, with financial support from the United Nations Development Programme (UNDP), organized training workshops in the regions of Kindia, Labé, Kankan and N'Zérékoré for law enforcement officers and prison guards. A total of 150 gendarmes, police officers and prison guards were alerted to the need to eradicate torture in the exercise of their criminal investigation and custodial functions.

Judicial framework

Cases of torture that have given rise to legal proceedings

Conviction of gendarmes by Conakry Assize Court in December 2012 for acts of torture in the case of *Public Prosecutor's Office v. Gendarmerie Sergeant Momo Bangoura et al*.

154. Moussa Deen Diaré, a student of September 28 High School in Kindia, was arrested on 20 February 2012 by gendarmes from mobile squadron No. 7 for having stolen a motorcycle and was taken to the squadron's headquarters in Kindia, where he was tortured to death. When news of the incident broke, many young people took to the streets of Kindia, triggering riots and clashes with law enforcement officers. To restore calm, the gendarmes in question were replaced and a commission of inquiry was set up to establish the exact

circumstances of Mr. Diaré's death. Following this inquiry, the public prosecutor's office charged seven gendarmes from mobile squadron No. 7 with "intentional bodily harm" resulting in death.

155. On 19 December 2012, Gendarmerie Sergeant Momo Bangoura, was sentenced to 15 years' rigorous imprisonment by Conakry Assize Court at its 2012 session. During the court proceedings, he admitted having tortured the victim to make him confess to the acts of which he had been accused. Three other gendarmes were given suspended sentences of 2 years.

Charging of three senior officers in February and July 2013 in the October 2010 torture case

156. On 29 May 2012, the public prosecutor at the Court of First Instance in Dixinn (Conakry II) launched a judicial investigation into allegations of "illegal arrest, unlawful imprisonment, intentional bodily harm, abuse of authority and commission of offences while performing official duties" against members of the security detail of the President of the Transitional Government, General Sekouba Konaté. They reportedly arrested, arbitrarily detained and tortured 17 people in the presence of, and following instructions from, Commander Sékou Resco Camara, the former Governor of Conakry, General Nouhou Thiam, the former Chief of General Staff of the Armed Forces of the Transitional Government, and Commander Sidiki Camara, also known as "De Gaulle", the former head of the presidential security detail during the transition.

157. Commander Sékou Resco Camara and General Nouhou Thiam were charged on account of their alleged responsibility in this case on 14 and 25 February 2013, respectively.

158. On 31 July 2013, the investigating judge charged Commander Aboubacar Sidiki Camara on account of his alleged responsibility for the acts in question and ordered his detention.

Suspension of three high-ranking gendarmerie officers in December 2013 for acts of torture in the Balla Condé case

159. In the above-mentioned case, the Deputy Minister of Defence, by ministerial decree, suspended Colonel Salifou Camara, commander of the gendarmerie in Kankan region, Lieutenant-Colonel Mamadou Ciré Bah, commander of mobile squadron No. 9 in Kankan, and Captain Oumar Sampil, deputy commander of mobile squadron No. 9, until further notice on grounds of "gross misconduct".

160. On the morning of 16 December 2013, on Espace FM radio station, the Minister for Human Rights and Public Liberties stated that it was necessary to go beyond administrative penalties and to bring justice to all the victims in this case and in other similar cases throughout the country.

161. Disciplinary penalties should be recognized as a first step in the right direction, signalling the Guinean authorities' determination to outlaw the use of torture in the country. However, while laudable, such penalties should be followed by criminal ones.

162. A judicial investigation has been launched to that end.

Case concerning the events of 28 September 2009

163. Some progress has been made, albeit insufficient, in this case. In 2013, the pool of judges in charge of the case heard testimony from hundreds of victims who have brought criminal indemnification proceedings, and, in the same connection, a gendarme was charged and imprisoned for rape and is currently awaiting trial.

164. Moreover, the fact that senior State officials, namely an army commander and two colonels, have been charged clearly demonstrates the State's willingness to see justice done in this case.

165. However, the cumbersome nature and slow pace of the judicial system in Guinea are an obstacle to the effective monitoring of proceedings and their final disposition.

166. It should be noted that the cooperation between Guinea and the International Criminal Court in the management of this case is satisfactory.

Cases of torture that have not given rise to legal proceedings

167. Despite the significant progress made, many other proven cases of torture reported by representatives of civil society have not given rise to legal proceedings. This may be attributed, inter alia, to:

- The dysfunctional nature of the judicial system;
- The lack of training provided to certain members of the Guinean military and security forces, and ignorance of the legal texts prohibiting the practice of torture;
- The inadequacy of detention centres;
- The silence of victims;
- The prevailing culture of impunity;
- The breakdown of the State.

Sociocultural aspects

168. Guinean society has become increasingly aware of the negative effects of torture and other cruel, inhuman or degrading treatment or punishment in recent years, on account of:

- The conduct of awareness-raising campaigns against violence addressing the general public;
- The abandonment of the practice of corporal punishment in the family;
- The formal prohibition of corporal punishment in secondary schools by the national education authorities;
- The formal prohibition of physical and psychological abuse of children in the family, in schools, and in institutional and other settings, pursuant to article 403 et seq. of the Children's Code.

B. Future prospects

Institutional aspects

169. The Guinean Government has undertaken a programme of reforms in the security and justice sectors through the Ministry of National Defence, the Ministry of Security and Civil Protection, the Ministry of Justice, the Ministry of the Environment and the Ministry of Finance.

170. The main objectives of the reforms include:

- The operationalization of the Military Court;
- The strengthening of community policing;
- The review of the geographical organization of the national police and the courts.

171. The Ministry of Human Rights and Public Liberties is planning to carry out related actions to support the reform process, which include:

- The establishment of an observatory on arbitrary detention and on torture and other cruel, inhuman or degrading treatment or punishment;
- The establishment of an observatory on violence against women and vulnerable persons;
- The setting up of a hotline for reporting human rights violations;
- The establishment of an observatory on impunity;
- The appointment of human rights focal points within regional police headquarters, central police stations and police stations located in urban areas in the country's 33 prefectures;
- The introduction of human rights as a subject in the education system in general and as part of the training provided to the military and the security forces in particular;
- The establishment of the Interministerial Committee on Human Rights;
- The establishment of the national independent human rights institution;
- The conclusion of a partnership agreement with the media for the purpose of human rights education.

Legislative and regulatory aspects

172. The Guinean Government has undertaken a vast programme of reforms aimed at enhancing the legislative and legal framework for combating torture and other cruel, inhuman or degrading treatment or punishment. These reforms include:

- The ratification of the Optional Protocol to the Convention against Torture;
- The ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure;
- The ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;
- The ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The ratification of the [other] two optional protocols to the Convention on the Rights of the Child;
- The ratification of the International Convention for the Protection of All Persons from Enforced Disappearance;
- The bills to define and expressly criminalize torture and other cruel, inhuman or degrading treatment or punishment in the Criminal Code and the Code of Criminal Procedure;
- The bill amending the Code of Military Justice;
- The bill on freedom of assembly and on maintaining and restoring order;
- The bill amending the organizational act on the composition, structure and functioning of the national independent human rights institution;
- The bill on the organization of the courts.

Sociocultural aspects

173. The Guinean Government, in cooperation with civil society organizations, is educating all segments of society about the need to achieve compliance with the country's obligations under the Convention against Torture, with a view to bringing about a change in mentalities and behaviour.

174. Furthermore, in 2014, the Ministry of Human Rights and Public Liberties intends to make a documentary on torture in Guinea, to launch awareness-raising campaigns in schools and to monitor places of detention with a view to preventing torture, protecting victims and improving detention conditions.

Conclusion

175. On account of its sociopolitical history, institutional fragility and lack of a social and democratic culture, Guinea has undeniably witnessed serious human rights violations and practices that run counter to the Convention against Torture.

176. The Guinean Government is aware of this reality and has a duty to show courage and determination in tackling all the phenomena that constitute human rights violations, so as to guarantee to all Guinean citizens and all persons living in Guinea the effective enjoyment of their rights and freedoms.

177. This undertaking, which is a binding obligation of the State as the primary duty bearer with respect to human rights, requires structural, as well as short-term, action.

178. Torture and other cruel, inhuman or degrading treatment or punishment endure in Guinean society to the detriment of the human values enshrined in the Guinean Constitution and international human rights conventions.

179. Whether they are committed by the military or the security services, or by private individuals, acts of torture and other cruel or degrading treatment are an expression of the State's inability to apply and enforce, through the judicial system, the legal provisions on the protection of human rights and freedoms.

180. This has been a reality since the country gained its independence up to the present day.

181. Indeed, several proven cases of serious human rights violations and torture remain unpunished on account of the breakdown of the State, the dysfunctional nature of the judicial system and multiple sociopolitical crises (communitarian and ethnic conflicts, violence), not to mention the militarization of governance for over a quarter of a century and its enduring cultural impact.

182. Since the establishment of the Third Republic, the Guinean Government has been striving to implement all international human rights instruments, including the Convention against Torture.

183. However, it should be recognized that these efforts have been insufficient in view of the challenges and issues facing the country. Moreover, the prevailing culture of impunity, which serves only to encourage the repetition of the acts in question, and the dysfunctional nature of a number of administrative and judicial institutions are impeding the overall effectiveness of the different reforms undertaken.

184. A large number of legislative, administrative and social policy measures have been taken in order to give effect to human rights instruments in general and the Convention against Torture in particular, including:

- The adoption of the new Constitution of May 2010, part II of which deals exclusively with matters relating to human rights in general and torture in particular;
- The preparation of the bill amending the Criminal Code, the Code of Criminal Procedure and the Code of Military Justice (now in the final stages of the drafting process), which is necessary to make the Convention fully applicable at the domestic level. This positive step will surely lead to the establishment of a formal legal definition of the notion of torture reflecting that contained in article 1 of the Convention against Torture and of a set of provisions pertaining specifically to it;
- The operationalization of the Military Court in accordance with the ideals of human rights and the principles of a fair trial;
- The specialization and the professionalization of criminal investigation officers belonging to the gendarmerie and the national police through formal training programmes on human rights in general and torture in particular;
- The conduct of education and awareness-raising campaigns against practices that are contrary to respect for human dignity.

185. The Guinean Government, while recognizing the scale of the task and the complexity of the challenges facing it, reaffirms its commitment to continue working to establish a genuine law-based State in which universal human rights principles are respected and, thereby to give effect to all the recommendations and observations made during the universal periodic review of 4 May 2010, in particular those concerning torture and other cruel, inhuman or degrading treatment or punishment.

186. The Government reaffirms its determination to establish a law-based State in the country that is respectful of international commitments relating to the promotion and protection of human rights.

187. It is for this reason that, while welcoming the cooperation with national and international civil society organizations and the unstinting support provided by OHCHR through its country office in Guinea, the Guinean Government remains open to any other guidance, comments, support or cooperation in the interests of promoting and protecting human rights in all their dimensions.