



International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the third periodic report of Guinea*

1. The Committee considered the third periodic report of Guinea (CCPR/C/GIN/3) at its 3534th and 3535th meetings (CCPR/C/SR.3534 and CCPR/C/SR.3535), held on 10 and 11 October 2018. At its 3557th meeting, held on 26 October 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Guinea and the information therein, but regrets that it was submitted 23 years late. The Committee expresses appreciation for the opportunity to renew its constructive dialogue with the State party's high-level delegation on the measures taken to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/GIN/Q/3/Add.1) to the list of issues (CCPR/C/GIN/Q/3), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party, including the adoption of the following laws:

(a) Act No. L/2007/013/AN of 29 October 2007 on the establishment, powers, membership, organization and functioning of the Independent National Electoral Commission;

(b) Act No. L/2008/01/AN of 19 August 2008 on the Children's Code;

(c) Organic Act No. L/08/CNT/2011 of 14 July 2011 on the organization and functioning of the independent national human rights institution;

(d) Organic Act No. L/055/CNT/2013 of 17 May 2013 on the membership, organization and functioning of the Supreme Council of Justice;

(e) Organic Act No. 002/2017/AN of 24 February 2017 on the Electoral Code.

4. The Committee welcomes the State party's accession, on 8 February 2008, to the Convention on the Rights of Persons with Disabilities.

* Adopted by the Committee at its 124th session (8 October–2 November 2018).



C. Principal subjects of concern and recommendations

Implementation and applicability of the Covenant in the domestic legal system and in the territory of the State party

5. The Committee notes that, under article 151 of the Constitution, treaties have an authority superior to that of laws, and the provisions of the Covenant are an integral part of domestic law. It regrets, however, that in practice the provisions of the Covenant are rarely invoked before or applied by the courts (art. 2).

6. The State party should continue its efforts to raise awareness of the Covenant among judges, lawyers and prosecutors in order to ensure that the Covenant's provisions are taken into account before and by the national courts.

7. The Committee takes note of the delegation's explanations regarding the influence of traditional and customary norms in Guinean society. However, it is concerned at the information indicating that positive law is not applied throughout the territory of the State party. Particularly troubling is the fact that, as the pre-eminent law in the vast majority of the State party is customary law, some provisions of which are inconsistent with the Covenant, the rights set forth in the Covenant are in practice inaccessible to much of the population (art. 2).

8. In accordance with the Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, the State party should ensure to all individuals within its territory the rights recognized in the Covenant and should take all possible steps to ensure that traditional and customary norms are consistently harmonized and made compatible with the Covenant. It should also ensure that traditional authorities receive training on the primacy of the Covenant's provisions and of positive law over customary law.

Independent national human rights institution

9. While welcoming the establishment of the independent national human rights institution pursuant to the Organic Act of 14 July 2011, the Committee remains concerned about the fact that the institution does not have the material resources necessary for its effective functioning and the fulfilment of its mandate. The Committee is also concerned at reports that the institution's work has little visibility and there is little awareness of its existence among the general public (art. 2).

10. The State party should provide the independent national human rights institution with a sufficient budget and enough trained permanent staff to enable it to discharge its mandate in full, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). It should also consider applying for accreditation with the Sub-Committee of the Global Alliance of National Human Rights Institutions and should take all possible steps to enhance the visibility of the institution's mandate and activities among the general public.

Combating corruption

11. The Committee takes note of the adoption of the Anti-Corruption Act of 7 July 2017; the inclusion, in the 2013 Mining Code, of the principle of transparency in the granting of mining concessions; and the establishment, in 2004, of the National Agency for Combating Corruption and Promoting Good Governance. However, it notes with concern that corruption in the State party remains a systemic phenomenon that has the effect of weakening the rule of law and leading to violations of Covenant provisions. Particularly regrettable are reports that: (a) corruption is commonplace in the State party's public services; (b) there are no implementing regulations for the Act of 7 July 2017; and (c) the National Agency for Combating Corruption and Promoting Good Governance lacks resources. The Committee notes with regret that there have been few investigations, prosecutions and convictions in relation to anti-corruption efforts, despite the introduction

of a broader definition and more severe penalties in the amended Criminal Code of 2016 (arts. 2, 14 and 25).

12. The State party should: (a) step up its efforts to combat corruption and the impunity associated with it, including through the adoption of implementing regulations for the Act of 7 July 2017; (b) ensure that the National Agency for Combating Corruption and Promoting Good Governance is a fully independent and effective anti-corruption body; (c) establish a robust policy for dealing with corruption in public services, including preventive and remedial measures; and (d) ensure that acts of corruption are investigated and that those responsible, including officials at the highest level of government in the State party, are tried before the courts in proceedings in which the fundamental safeguards established in article 14 of the Covenant are respected.

State of emergency

13. The Committee expresses concern at credible reports of non-compliance with the safeguards provided for in article 4 of the Covenant during the states of siege and emergency declared in 2007, 2010 and 2014 and regrets the lack of measures to protect certain rights that cannot be derogated from, in particular the right to life. The Committee is also concerned about allegations of disproportionate restrictions on the freedoms of expression and peaceful assembly when states of siege or emergency are declared (arts. 4, 6, 19 and 21).

14. The State party should take all necessary steps to ensure that its legislation on states of siege and emergency and the implementation of such legislation are fully compatible with article 4 of the Covenant.

Past human rights violations, combating impunity and promoting national reconciliation

15. The Committee expresses concern about the serious human rights violations that have been committed, in particular those that took place in January and February 2007, September 2009, August 2012, July 2013 and September 2014. It notes with regret the slow progress of investigations and the small number of prosecutions initiated and penalties imposed, as this has fostered a climate of de facto impunity, particularly in relation to the events that took place on 28 September 2009 in the stadium in Conakry. In this connection, it takes note of the conclusion of the judicial investigation, the establishment of a steering committee in April 2018 for the organization of the trial and the State party's cooperation with the International Criminal Court with regard to the preliminary examination of the facts. However, it regrets the long delay in starting the trial and is deeply concerned at reports that several of the individuals involved in these events continue to occupy important decision-making positions. In particular, the Committee regrets that: (a) to date, none of the victims or members of their families have received reparations for the violations committed; and (b) the State party has not provided any information on measures taken to clarify the fate of victims of enforced disappearance, to locate mass graves or to exhume the remains of the victims. Lastly, the Committee takes note of the draft bill on the creation of a truth, justice and reconciliation commission, but regrets that the commission has not yet been established (arts. 2, 6, 7 and 16).

16. The State party should: (a) take immediate steps to expedite the conduct of investigations and trials and the imposition of penalties in relation to past human rights violations, in particular those that took place on 28 September 2009; (b) ensure that all persons suspected of serious violations, including members of the Government, are suspended from their duties for the duration of the investigations and trials; (c) see to it that all victims and members of their families receive full reparation for the violations suffered; (d) ensure that the families of victims of disappearance or execution have access to the truth, in particular by arranging for the exhumation of mass graves and the identification of remains by scientific means; and (e) take steps to establish the truth, justice and reconciliation commission as soon as possible and ensure that it has sufficient resources to discharge its mandate effectively.

Combating discrimination

17. The Committee notes that discrimination is defined and criminalized in articles 313 et seq. of the new Criminal Code. However, it regrets that, despite the new legal framework, no complaints of discrimination have been filed to date and the State party has provided no information on any effective civil or administrative remedies provided to victims. It regrets in particular that article 274 of the Criminal Code, which criminalizes individuals' conduct on account of their sexual orientation, has been retained, and underscores the discriminatory nature of provisions of this kind. It is also concerned about acts of discrimination, stigmatization and violence against persons with albinism and persons living with HIV/AIDS and about the fact that little has been done to ensure that persons with disabilities are not discriminated against in practice (arts. 2 and 26).

18. The State party should take all necessary measures to: (a) ensure that all victims of discrimination have knowledge of and access to effective civil and administrative remedies and that they receive reparations; (b) begin a process aimed at the repeal of article 274 of the Criminal Code; (c) effectively protect persons with albinism and persons living with HIV/AIDS and safeguard their fundamental rights, while ensuring that all cases of discrimination are duly examined, that all cases of violence are systematically investigated, that the perpetrators are brought to justice and convicted and that adequate compensation is provided to the victims; and (d) adopt a legal framework with specific, mandatory targets concerning the accessibility of services to persons with disabilities.

Gender discrimination and gender equality

19. The Committee notes the information that the Constitutional Court has declared that the 30-per-cent quota for women candidates on each list for legislative and commune-level elections, which was established by the law of 24 February 2017, is unconstitutional. The Committee is concerned that the rejection of this measure, in addition to the prevalence of gender stereotypes in society, will result in the further deterioration of women's low level of representation in political and public life, including at the highest levels of government and in the judicial system. It regrets that the State party has not provided any statistics in this regard (arts. 3, 25 and 26).

20. The State party should take all necessary steps to ensure that women are not discriminated against in law or in practice and to increase women's participation in public life and representation at the highest levels of government and in the judicial system. It should also strengthen measures to raise public awareness with a view to combating gender stereotypes in the family and in society.

21. The Committee notes with concern that discrimination against women persists in the area of family law, particularly with regard to inheritance, choice of residence, custody of children, freedom to work, repudiation, adultery and polygamy. While noting that many objections to the draft new Civil Code have been raised, particularly with regard to the prohibition of polygamy, which is already prohibited by law but is widely practised in the State party, the Committee regrets that the adoption of the Code has been delayed since 2002 (arts. 3, 17 and 26).

22. The State party should continue its efforts towards the adoption, as soon as possible, of a new Civil Code abolishing all provisions that discriminate against women in matters relating to family law. It should in particular ensure that the prohibition of polygamy is maintained in the draft and adopted by the legislature; in the meantime, it should take all necessary measures to raise public awareness of the discriminatory nature of this practice.

Violence against women and practices harmful to women

23. The Committee welcomes the State party's efforts to prevent and end violence against women, but remains concerned at the fact that such violence is widespread and widely accepted, and regrets that the new Criminal Code of 2016 does not criminalize marital rape. It also expresses deep concern about the prevalence and persistence of practices that are harmful to women, in particular forced marriage, early marriage and

female genital mutilation. The Committee is particularly concerned at reports that, despite the introduction of a ban on such practices in the new Criminal Code, very few investigations and prosecutions have been undertaken, and such penalties as have been imposed have been extremely lenient (arts. 3, 7, 17, 23 and 26).

24. The State party should: (a) pursue its efforts to prevent and combat all forms of violence against women, including by criminalizing marital rape; (b) pursue its efforts to prevent and combat the practices of forced marriage, early marriage and female genital mutilation; and (c) see to it that all cases involving practices harmful to women are thoroughly investigated, that those suspected of responsibility for such acts are prosecuted and, if found guilty, sentenced to appropriate penalties, and that victims receive reparation.

Voluntary termination of pregnancy and maternal mortality

25. The Committee expresses concern about the continued high rates of maternal and child mortality in the State party and is particularly troubled by the fact that unsafe abortion is a major cause of maternal mortality. The Committee is concerned to note that, owing to social stigma and lack of information and the fact that, under article 265 of the Criminal Code, access to legal abortion is subject to onerous conditions, namely authorization by a panel of specialized physicians, in most cases women resort to unsafe abortions that endanger their life and health (arts. 3, 6, 7, 17 and 26).

26. The State party should improve women's access to sexual and obstetric health-care services in order to prevent and combat maternal mortality. It should amend its laws to guarantee safe, legal and effective access to abortion in cases where the life or health of the pregnant woman or girl is at risk or where carrying the pregnancy to term would cause her substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or the fetus is not viable. The State party should also: (a) prevent the stigmatization of women and girls seeking to obtain an abortion and ensure that criminal sanctions are not applied against them or against medical service providers assisting them in doing so; and (b) ensure access for women and men and, especially, girls and boys to quality and evidence-based information and education about sexual and reproductive health and to a wide range of affordable contraceptive methods.

Death penalty

27. The Committee welcomes the removal of the death penalty from the new Criminal Code of 2016 and the new Code of Military Justice of 2017. However, it regrets that persons who were sentenced to death prior to these legislative changes have not yet had their sentences commuted (art. 6).

28. The State party should take all necessary measures to ensure that the sentences of persons who remain under sentence of death are commuted without delay and to begin the process of accession to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

Mob justice

29. The Committee expresses concern about mob justice and lynchings. It regrets that there have been very few investigations, prosecutions and convictions of persons responsible for such acts (arts. 2, 6 and 7).

30. The State party should take all necessary measures to eliminate practices involving mob justice and lynchings and should ensure that the alleged perpetrators are investigated and prosecuted and, if found guilty, sentenced to appropriate penalties.

Excessive use of force and conduct of law enforcement officers

31. The Committee welcomes Act No. L/2015/009/AN of 4 June 2015 on the maintenance of public order, which requires the use of non-lethal weapons for law

enforcement and allows firearms to be used only in self-defence and in cases of compelling need. However, the Committee remains concerned about credible reports, confirmed by the delegation, that excessive force is often used by law enforcement officers, especially during demonstrations, and has resulted in deaths and injuries. It is deeply concerned to note that such officers are rarely, if ever, prosecuted for such acts and that this has created a climate of de facto impunity. The Committee also expresses concern at reports of looting and vandalism perpetrated by law enforcement officers in private homes during searches (arts. 6, 7, 9, 17 and 21).

32. The State party should: (a) ensure that its law enforcement officers strictly abide by the provisions of the law of 4 June 2015, inter alia by stepping up training on the use of force and raising the awareness of judges, prosecutors and lawyers in this regard; (b) ensure that all cases of excessive use of force are independently investigated and that the perpetrators are prosecuted and sentenced to penalties commensurate with the seriousness of their acts, and that reparations are provided to the victims; and (c) ensure that law enforcement officers adhere strictly to the provisions of the Code of Criminal Procedure governing the conduct of searches and that any officers who fail to do so do not go unpunished.

Torture and cruel, inhuman or degrading treatment

33. The Committee welcomes the revision of the Criminal Code to introduce a definition of torture and to criminalize it as a separate offence. It regrets, however, that under article 232 (2) of the Code, a number of acts that constitute torture, such as electric shocks or burns, are categorized as cruel and inhuman treatment, for which the range of penalties is not specified. It is also concerned to note that, while torture is no longer used in prisons, it is still frequently practised, in particular, in police custody centres in order to extract confessions or information (arts. 7 and 9).

34. The State party should: (a) update its legislative framework to ensure that the acts described in article 232 (2) of the Criminal Code are categorized as torture and are subject to specific penalties that are commensurate with the seriousness of such acts; (b) ensure that all suspected cases of torture or ill-treatment are thoroughly investigated and that the alleged perpetrators are prosecuted and, if found guilty, sentenced to appropriate penalties, and that the victims receive reparations; and (c) establish a national mechanism for the prevention of torture and an independent mechanism to investigate all allegations of torture or cruel, inhuman or degrading treatment.

Prison conditions

35. The Committee is concerned about reports that prisons are overcrowded, in part because of the large number of detainees awaiting trial, and that the conditions of detention are extremely harsh, particularly with regard to access to food, sanitation and health care. The Committee is concerned to note that some prisons do not separate adults from juveniles or accused persons from convicted ones (arts. 7, 9 and 10).

36. The State party should: (a) step up its efforts to improve the living conditions and treatment of prisoners; (b) intensify measures to address prison overcrowding, in keeping with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); and (c) take the necessary steps to separate prisoners according to age, sex and detention regime.

Pretrial detention

37. The Committee takes note of the establishment, in 2016, of a monitoring commission on pretrial detention. However, it remains concerned at reports that pretrial detention is routinely used by investigating judges; that the number of persons in pretrial detention is thus very large, accounting for some 60 to 80 per cent of the prison population; and that some individuals have been held in pretrial detention for periods in excess of 10 years. It regrets the lack of information on the number of persons, if any, who have had

their period of custody shortened or have been released as a result of intervention by the monitoring commission on pretrial detention (arts. 7 and 9).

38. The State party should: (a) take all necessary measures to ensure that investigating judges use pretrial detention only in exceptional circumstances and to develop alternative, non-custodial measures; (b) strictly apply the provisions of the new Code of Criminal Procedure under which judges who keep accused persons in pretrial detention without extending expired warrants of committal are penalized; and (c) ensure that all persons who have been detained for long periods without trial are released and, where necessary, compensated.

Trafficking in persons and forced labour

39. The Committee takes note of the establishment of the National Committee to Combat Human Trafficking and Similar Practices and the National Unit to Combat Human Trafficking. However, it is concerned about the fact that anti-trafficking measures are still sporadic and limited in practice. In particular, it regrets that there have been few complaints filed, investigations and prosecutions conducted and convictions handed down. The Committee also expresses concern about: (a) the situation of Guinean migrants who are still in Libya; (b) the situation of children, girls and women who are victims of domestic servitude and prostitution networks in foreign countries, especially in North Africa and the Middle East; and (c) reports that nearly half the children in the State party are working and that some of them are subjected to forced labour or forced begging (arts. 7, 8 and 24).

40. The State party should: (a) strictly apply the national legal framework on trafficking in persons and ensure that anti-trafficking institutions have the necessary resources to discharge their mandate effectively; (b) ensure that suspected cases of trafficking in persons are investigated and that those responsible are prosecuted and sentenced to penalties that are commensurate with the seriousness of the offence and are effectively enforced; (c) take all possible measures to ensure the return and reintegration of Guinean migrants who have been subjected to exploitation and servitude in foreign countries; and (d) take all necessary measures to eliminate child labour, in particular forced labour, and ensure that those responsible for such acts are prosecuted to the full extent of the law and convicted.

Independence of the judiciary and administration of justice

41. The Committee welcomes the State party's efforts in the area of judicial reform, in particular the law of 13 August 2015 on the organization of the judiciary and the priority action plan for judicial reform for the period 2015–2019. However, it remains concerned at the low percentage of the budget allocated to the Ministry of Justice and at the delays in the administration of justice, due in particular to a shortage of resources, staff and premises, that have given rise to widespread public mistrust of the justice system. It regrets that it has not received specific answers on measures to implement the decision to convert all magistrates' courts into courts of first instance or on the establishment of the High Court of Justice provided for in article 117 of the Constitution. It is also concerned at reports of corruption and a lack of independence in the judiciary (art. 14).

42. The State party should: (a) increase the budget of the Ministry of Justice in order to address the significant delays in the administration of justice; (b) take all necessary measures to implement the decision to convert all magistrates' courts into courts of first instance; (c) make the High Court of Justice operational by promulgating the implementing regulations that determine its functioning; (d) enhance the independence of the judiciary, in particular by ensuring that judges and prosecutors are appointed on the basis of objective and transparent criteria and by strengthening the powers and independence of the Supreme Council of Justice; and (e) continue and intensify its efforts to eliminate corruption in the judiciary.

Freedom of expression and protection of journalists and human rights defenders

43. The Committee is concerned to note that the State party's legislation still contains provisions that curb freedom of expression, in particular: (a) article 363 of the Criminal

Code, which criminalizes defamation of the civil service, public authorities, the army, and the courts and tribunals; and (b) article 31 of the Cybercrime Act of 28 July 2016, which criminalizes, on vague criteria, the production, dissemination and provision of data that may jeopardize public order or security. It is also concerned about allegations, confirmed by the delegation, of arbitrary closures and suspensions of private media outlets, suspensions of interactive programmes and arrests of journalists for spreading rumours about the President. Finally, it deplores the fact that human rights defenders are reported to have been threatened, detained and physically harmed (arts. 9, 7 and 19).

44. In the light of the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression, the State party should: (a) ensure that all provisions of its legislation are brought into conformity with article 19 of the Covenant and, in the meantime, ensure that no one is imprisoned for defamation; (b) ensure that any restrictions imposed on press and media activities are strictly in accordance with the provisions of article 19 (3) of the Covenant; and (c) take all necessary measures to ensure that human rights defenders are protected from threats and intimidation, in particular through the adoption of a specific and effective law for the protection of human rights defenders.

Freedoms of peaceful assembly and association

45. The Committee expresses concern at reports that demonstrations, particularly by opposition parties, have been arbitrarily prohibited and that mass arrests have been carried out during demonstrations. Also regrettable is the fact that the provisions of the Associations Act of 4 July 2005 are not observed in practice, particularly with regard to the conditions imposed, without any legal basis, for the granting and renewal of permits for associations. Finally, the Committee expresses concern at reports of: (a) restrictive legal requirements for the establishment of trade unions and the organization of strikes; and (b) arrests of trade unionists during strikes (arts. 9, 19, 21 and 22).

46. The State party should: (a) ensure that, with regard to peaceful demonstrations, all restrictions that are not strictly necessary and proportional within the meaning of article 21 of the Covenant are lifted; and (b) revise its legal framework in order to effectively protect the right to freedom of association, including the right to organize and the right to strike, and refrain in practice from any act of intimidation against trade union movements and members.

Guarantees of free and fair elections

47. The Committee expresses concern at: (a) reports, confirmed by the delegation, of failure by administrative authorities to abide by their duty of impartiality and neutrality during elections in the State party's territory; and (b) reports that the local elections of February 2018 were followed by significant electoral violence in which some persons were killed and many were injured. In particular, in view of the upcoming elections, the Committee is concerned to note that the political agreement of 12 October 2016 has not yet been fully implemented (arts. 6, 7 and 25).

48. The State party should: (a) take all necessary measures to ensure that administrative authorities abide by their duty of impartiality and neutrality during elections; (b) investigate, prosecute and convict those responsible for acts resulting in death or injury in connection with the violence surrounding the February 2018 elections and implement safeguards to ensure that such acts do not recur; (c) take all necessary measures to fully implement the political agreement of 12 October 2016 as soon as possible; and (d) take all necessary measures to ensure the effectiveness and full independence of the Independent National Electoral Commission.

Right of public participation in natural resource management

49. The Committee takes note of the implementation of the local content policy and the transfer of 14 areas of competence from decentralized structures to local authorities. It regrets, however, that in practice the public's participation in decision-making processes

relating to investment projects with a social and environmental impact and in natural resource management remains extremely limited (arts. 6 and 25).

50. **The State party should intensify its efforts to ensure public participation and hold genuine consultations with local communities before concluding contracts related to natural resource management or to projects that have a social and environmental impact in order to obtain their free, prior and informed consent.**

D. Dissemination and follow-up

51. **The State party should widely disseminate the Covenant, its third periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report, the written replies and the present concluding observations are translated into its official languages.**

52. **In accordance with rule 71 (5) of the Committee's rules of procedure, the State party is requested to provide, within two years of the adoption of the present concluding observations, in other words by 2 November 2020, information on the implementation of the recommendations made by the Committee in paragraphs 12 (combating corruption), 16 (past human rights violations, combating impunity and promoting national reconciliation) and 34 (torture and cruel, inhuman or degrading treatment) above.**

53. **The Committee requests the State party to submit its next periodic report by 2 November 2022 and to include in that report specific, up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 2 November 2019, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its report. The State party's response to the list of issues will constitute the next periodic report to be submitted under article 40 of the Covenant.**