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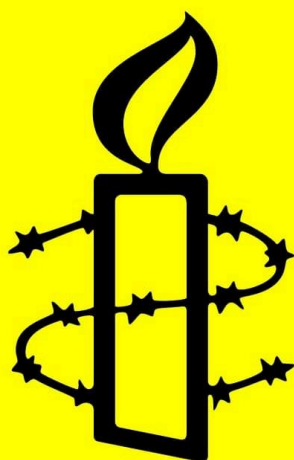
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May 23, 2016

Guinea: New law could abolish death penalty but repressive provisions remain

Several draft laws currently under examination by Guinean parliamentarians propose major improvements to human rights, particularly the abolition of the death penalty and the criminalization of torture. However, a group of 30 non-governmental organizations, including Amnesty International, have today highlighted the fact that these laws still contain repressive and discriminatory provisions.

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Guinea is in the process of criminalizing torture and becoming the 19th African state to abolish the death penalty

Francois Patuel, West Africa researcher at Amnesty International.

Thirty organizations have today published a legal analysis of the draft laws on the Criminal Code, the Criminal Procedure Code, the Military Justice Code, the Civil Code and Cybersecurity, all currently being considered by the National Assembly. These organizations are calling on parliamentarians to ensure that the texts are in keeping with international and regional human rights law, including with regard to freedom of expression and freedom of peaceful assembly. They must also ensure that the discriminatory provisions, particularly affecting women, are removed.

“Guinea is in the process of criminalizing torture and becoming the 19th African state to abolish the death penalty,” stated Francois Patuel, West Africa researcher at Amnesty International.

“But these major advances must not be weakened by provisions that would form a real threat to freedom of expression and peaceful assembly, women’s rights and the war on impunity.”

Repression of peaceful demonstrations

The signatory organizations consider that the criteria for prohibiting a demonstration are badly defined in the draft law on the Criminal Code. This gives the authorities a wide margin of discretion and enables them to ban peaceful demonstrations for vague reasons that are not in keeping with international standards.

The draft law on the Criminal Code would enshrine already existing practices such as arbitrary bans on demonstrations and arbitrary arrests of individuals exercising their right to peaceful assembly, and would result in the risk of an arbitrary and abusive use of force. The law establishes prison sentences for organizers of demonstrations that are considered illegal under Guinean law or not declared in the

proper form. One provision holds the organizers of demonstrations responsible for any possible unlawful acts committed by other demonstrators.

This draft Criminal Code also anticipates the possibility of the use of force by the security services outside the conditions and limits set by international standards. Guinean legislation should, in particular, clarify that the security forces may only use force if other means have proved ineffective or not had the desired results.

“In 2015 alone, the repression of demonstrations and an excessive use of force resulted in around a dozen deaths and hundreds of wounded. The revision of the Criminal Code offers a unique opportunity to provide better protection of the right to freedom of peaceful assembly and to regulate excessive use of force,” stated Saïkou Yaya Diallo, President of the Guinean Centre for Human Rights Promotion and Protection (*Centre guinéen de promotion et de protection des droits de l'homme*).

Impunity and threats facing the right to a fair trial

The signatory organizations consider that the competence of the military court as set out in the draft law on the Code of Military Justice is too far-reaching. It enables military courts to try civilians when they are co-authors or accomplices in offences that fall under military jurisdiction, such as treason, terrorism or military conspiracy. This threatens their right to a fair trial.

Soldiers charged with ordinary criminal offences committed during periods of armed conflict, including torture, rape and the crime of genocide, could be tried by a military court and not an ordinary civil court. This provision might violate their right to an impartial and independent trial. It could also encourage a culture of impunity with regard to human rights violations committed by members of the security forces . Despite the complaints made by the families of people killed in the context of demonstrations in 2015, no member of the security forces has yet been brought to justice.

“Justice for human rights violations must be the same for all. If Guinea criminalizes torture in the draft law on the Criminal Code then it must ensure that the security forces, including soldiers, can be tried for human rights violations by the ordinary civil courts, whether in peacetime or during periods of armed conflict,” stated

Clément Boursin, Head of Africa at Christian Action for the Abolition of Torture (*Action des chrétiens pour l'abolition de la torture / ACAT-France*).

Suppression of dissident opinions

Several provisions could be used to suppress dissident opinions or prevent the disclosure of information on human rights violations. For example, the draft Criminal Code anticipates a sentence of up to five years in prison and a fine of around 233 euros for disrespect, defamation and insult, including in relation to public figures, whether in the form of gestures, writings or drawings.

Under the terms of the draft law on cybersecurity, any person who discloses “information that must be kept confidential” for reasons of national defence runs the risk of being accused of treason or espionage, which carries a life sentence. The dissemination and communication of “false information” is also liable to a sentence of up to three years in prison and a fine of around 11,557 euros.

“These provisions represent a clear step backwards in the protection of freedom of expression. They are based on poorly-defined notions and could be inappropriately used to incriminate people who express dissident opinions, including journalists, bloggers and whistleblowers seeking to expose human rights violations,” stated Labila Sonomou, President of Lawyers Without Borders-Guinea (*Avocat Sans Frontière Guinée / ASF*).

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Discrimination against women

Some texts under examination by the National Assembly contain discriminatory provisions, particularly with regard to women. The draft law on the Civil Code upholds the general ban on polygamy but authorizes it under certain, poorly-defined circumstances such as “serious reasons of force majeure”.

In a report published in April 2016, the United Nations raised concerns over the increase in female genital mutilation in Guinea, which affects 97% of women and girls aged 15 to 49. Genital mutilation generally is criminalized in the draft law on the Criminal Code but the sentence for female genital mutilation may be no more than a simple fine. This seems rather light in comparison with the sentence for male genital mutilation, which ranges from 10 to 20 years in prison, and even a life sentence if the person dies following such mutilation.

According to a study by the UN Population Fund (UNFPA) published in 2012, Guinea has one of the highest rates of child marriage in the world. On average, three in every five girls are married before the age of 18. Although forced marriage is “formally prohibited” and marriage must be based on “free, mutual and willing consent between two adults”, the draft law on the Criminal Code provides for exemptions in the case of “particular situations” that are not clearly defined in the text.

“The authorities must ensure that the ban on forced and child marriage applies to all forms of marriage, including customary and religious forms, and they must set the minimum age for marriage as 18 years for boys and girls, in accordance with the African Charter on the Rights and Welfare of the Child,” stated Fatou Souaré Hann, Executive Director of WAFRICA – Guinea.

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