

GUINEA-BISSAU

Attack on the independence of the judiciary

The independence of the judiciary in Guinea-Bissau has come increasingly under threat from the government of President Kumba Ialá, who took office in February 2000 following a landslide victory at the polls a month earlier. The most serious attack was the dismissal in September 2001 of senior Supreme Court judges by presidential decree.

Amnesty International is concerned that these dismissals may have been carried out for political reasons and that they seriously undermine the authority of the judiciary and the rule of law in Guinea-Bissau. Such action by the government is incompatible not only with the Constitution of Guinea-Bissau but also with international human rights standards, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights (ICCPR), which guarantee the independence of the judiciary.

These judges were removed without recourse to due process. Doctor Emiliano Nosolini Reis, President of the Supreme Court, Doctor Venâncio Martins, its Vice-President, Doctor Paulo Sanha, a judge and Doctor Albino Pires, an official of the Supreme Court and the representative of the Attorney-General's Office were dismissed by a Presidential decree 52/2001 issued on 7 September 2001. The decree appointed four other judges to replace them. It did not give any reason for their dismissal, although it was widely reported that in August, during a meeting with members of the Muslim community in Bissau, President Ialá had described the Supreme Court judges as corrupt, mediocre, liars and false and threatened to "overthrow all judges in the courts".¹ However, no specific allegations of corruption have been made against those dismissed.

The dismissal of these judges and the subsequent appointment of four others violated Articles 120 and 123 of the Guinea-Bissau Constitution. Article 120 states that Supreme Court judges are appointed by the Higher Council of Magistrates and sworn in by the President of the Republic. This is reinforced by Article 68 which limits Presidential prerogative to swearing in Supreme Court judges. Article 120 also proclaims the courts as independent and subject only to the law, and recognizes the Higher Council of Magistrates as the superior organ of management and discipline of the judiciary. In addition, Article 123 says that the "appointment, dismissal, transfer and promotion of judges is of the competence of the Higher Council of Magistrates only, in accordance with the law".

The dismissals also contravene the provisions of the United Nations Principles on the Independence of the Judiciary. Principles 1, 18 and 19 impose upon states the duty to respect and observe the independence of the judiciary, to suspend or remove judges from office only for

¹See, for instance, *Diário de Bissau* of 12 September 2001; *Gazeta de Notícias* of 9 September 2001; the United Nations Integrated Regional News Service (IRIN) of 25 September 2001

reasons of incapacity or behaviour that render them unfit to discharge their duties and only by means of proceedings that accord with established standards of judicial conduct.

Amnesty International believes that the independence of the judiciary is indispensable to the effective protection of internationally recognized human rights, including fair trial guarantees. The independence of the judiciary requires other branches of the State, including the executive, to refrain from conduct that may undermine or diminish the legitimacy of the judiciary.

The dismissal of the Supreme Court judges in Guinea-Bissau follows a number of incidents in which President Ialá is reported to have threatened the independence of the courts and coerced magistrates. Amnesty International is concerned that these dismissals constitute an attack on the judiciary's ability to try cases before them fairly and impartially. According to some reports, the dismissals may have been related to judicial decisions which apparently displeased the authorities.

According to several reports, in October 2000, he attempted to suspend elections to the Supreme Court on the grounds that he had not appointed representatives to the Higher Council of Magistrates. Following the elections that eventually went ahead, he was reported to have said during the swearing in ceremony that he would end the independence of the judiciary " if there was manipulation and corruption in the justice system".²

On 10 January 2001, an investigating judge at the Bissau Regional Court ordered the release on bail of four detainees. Generals Armando Soares da Gama and Bouta Na N'Batcha, Major Augusto Mário Có and another officer, Saia Braia Na Nhapkba, had been arrested in November 2000 on suspicion of involvement in an alleged attempted coup. They were sent back to prison reportedly on the orders of President Ialá and remained in detention until they were released on bail in June 2001.³ Their continued detention violated Article 9 (1) of the ICCPR which states that: "Everyone has the right to liberty and security of the person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law".

It was reported that in July 2001, President Ialá sought to annul a decision taken by the Higher Council of Magistrates to remove some judges from litigation concerning an internal dispute between two factions of the political party, the *Resistência da Guiné-Bissau*.

² Judicial sources interviewed by Amnesty International in Guinea-Bissau in March 2001; Open letter by a number of judges to the President of the Republic and other organs of power, cited, in full in the *Gazeta de Notícias* newspaper of 7 September 2001; Memorandum to the President of the Republic by the Higher Council of Magistrates, cited in full in the *Diário de Bissau* newspaper of 13 September 2001; *Diário de Bissau* of 20 October 2000

³ See Higher Council of Magistrates Resolution N°1/CSMJ/2001 of 16 January 2001

Movimento Bafatá (RGB-MB), Guinea-Bissau Resistance- Bafatá Movement.⁴ The same report suggested that President Ialá was displeased with the Supreme Court's subsequent ruling in favour of one of the factions.

On 20 August 2001, national television and radio broadcast a statement by President Ialá in which he apparently accused the *Associação Islâmica Ahmadiyya* (The Ahmadiyya Muslim Association), a religious group originally from Pakistan and based in the United Kingdom, which has had members in Guinea-Bissau since 1995, of contributing to instability in Guinea-Bissau and causing misunderstandings within the Muslim community. In his statement President Ialá's reportedly banned the activities of the Association and ordered the closure of its mosques and community centres and the expulsion from Guinea-Bissau of its Pakistani members within 48 hours. No details were provided as to the activities of the Association which had allegedly contributed to instability.⁵ This move violated Articles 52.1 and 55.2 of the Constitution which respectively guarantee freedom of religion and stipulate that religious associations cannot be dissolved or suspended by the State except in cases provided for in law and after a court decision. On appeal by the Association, a week later the Bissau Regional Court found the decision to be illegal and in violation of the country's Constitution, and declared it null and void.

Amnesty International is seeking clarification from the Guinea-Bissau authorities of the reasons for the dismissal of the judges and urging that, if there is evidence of any criminal offence, that they be given the right to a fair hearing and other rights, including the right to be informed promptly of any charges against them. The organization is also calling on the authorities to reinstate the dismissed judges and permit them to perform their functions subject to no overriding authority except as directed by law, pending a thorough and fair investigation of any allegations that may be levelled against them.

Amnesty International is urging the government to consider the serious implications for the rule of law in Guinea-Bissau, and to respect court rulings. Failure to comply with court rulings not only undermines the independence of the judiciary but jeopardizes respect for human rights and perpetuates a culture of impunity.

KEYWORDS: INDEPENDENCE OF JUDICIARY1 / CHANGE OF GOVERNMENT / JUDGES / RELIGIOUS INTOLERANCE

⁴ See interview with Dr Venâncio Martins, former Vice-President of the Supreme Court, about his meeting with President Kumba Ialá on 27 July 2001, in *Diário de Bissau* of 12 September 2001.

⁵ The Ahmadiyya Muslim Association is a religious organization founded in northern India about 150 years ago, expelled from Pakistan in the 1970s, and not known for engagement in political activities.