

CHAD

Chad has been in a state of near constant internal conflict for the past 30 years. The Government's human rights record remains poor and impunity with respect to serious human rights violations is widespread. President Déby has intervened inappropriately in cases before the judiciary. For the first time in the country's history, a Supreme Court and a Constitutional Council were officially functional.

Chad, which gained its independence from France on 11 August 1960, is a unitary republic. Although General Idriss Déby has ruled Chad since 1990, he was not elected as President until 3 July 1996. General Déby, President of the Patriotic Movement of Salvation (*Movement Patriotique de Salut*, hereinafter MPS) originally came to power after overthrowing the former dictator, Hissein Habré, who had been president since 1981 and has lived in exile in Senegal since his ouster in 1990.

The 1989 Constitution was suspended in 1990 by the then self-proclaimed President Déby and his transitional regime. In 1993, General Déby lifted the ban on political parties, and a national conference created a transitional parliament under the control of MPS. In 1996, a new democratic Constitution was adopted and approved by popular referendum, providing for an elected President and a Parliament. President's Déby's victory in Chad's first multi-party elections in 1996 was strongly endorsed by France, despite serious allegations of fraud and vote-rigging in the 1996 presidential elections. Similar allegations proceeded parliamentary elections in 1997.

On 27 May 2001, President Déby was re-elected, having received more than 67 per cent of the vote. International observers noted a few "incidents", but did not witness any deliberate intention to commit fraud. Despite the generally positive reports produced by observers, the six opposition candidates alleged that the poll had been marred by massive fraud and called for the result to be annulled. One of the major irregularities reported by the opposition was that opposition party representatives had been expelled from several polling stations. On 28 May 2001, the police detained the six opposition candidates. The six men were released after an hour. Shortly afterwards, an opposition supporter, 22-year old student Brahim Selguet, was killed during clashes with the police in N'Djamena. The six opposition leaders were again arrested for a brief period on 30 May, purportedly so as to prevent violence from breaking out at the funeral of Selguet.

The new Constitution, adopted on 31 March 1996, provides for a system of separation of powers among the executive, the legislative and the judicial branches of government. Executive power is exercised by the President, elected by popular vote for a five-year term (Article 59). The Government is headed by the Prime Minister, who is nominated by the President and confirmed by the National Assembly. The legislative power is exercised by the Parliament, composed of the National Assembly and the Senate (Article 106). In August 2000, the MPS-dominated National Assembly increased the number of legislators from 125 to 155.

An economically important and environmentally sensitive pipeline project was put on hold following petitions by national and international NGOs to the World Bank. The petitions expressed the need to inform and educate the local population and to address serious human rights concerns.

Armed Conflict

Chad has been in a state of almost constant war since achieving independence. Ethnic and religious differences have led to conflicts marked by external intervention by France and clan rivalries. Government forces have suffered casualties in their fighting against insurgents in the Tibesti region in the Northwest part of the country. The *Mouvement pour la Démocratie et la Justice au Tchad* (MDJT), led by Youssouf Tougoumi, a former Minister of Defence and Justice, constitutes the most serious threat to the Government. The Government had begun efforts to negotiate with the group, but by the end of 2000 the fighting had intensified, resulting in heavy casualties on both sides, and the success of negotiations was in doubt.

HUMAN RIGHTS BACKGROUND

Chad is a State-party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of Child, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Chad has also ratified the first Optional Protocol to the International Covenant on Civil and Political Rights.

Chad is also a member of the African Union, (formerly Organisation of African Unity).

The Government's human rights record has always been problematic. However, the situation improved somewhat after the ouster of Hisssein Habré in 1990. According to a 1992 Truth Commission report, there were some 40,000 cases of political murder and systematic torture under the Habré regime. The former dictator was indicted in February 2000 in Senegal, but in July 2000 an appellate court there dismissed the charges on the grounds that Senegal had no jurisdiction over crimes committed in Chad. In February 2001, in Senegal's High Court, the prosecutor argued that charges should be reinstated, and Chadian victims moved to bring cases against Habré's accomplices to court in Chad. In March 2001, Senegal's High Court ruled that Habré could not stand trial in the country and on 7 April 2001, Senegal's President announced that he had asked Habré to leave Senegal. The UN Committee against Torture has called on Senegal to prevent Chad's exiled former president from leaving the country. In parallel proceedings, Habré's victims initiated proceedings in November 2000 against the former dictator in Belgium. On 26 October 2000, 17 Chadian victims filed a complaint against Habré and former high ranking officials of his government in Chad. On 6 April 2001, the Constitutional Council of Chad ruled that Chadian courts had jurisdiction to try this case. On May 2001, proceedings were initiated at the N'Djamena court of first instance.

Upon seizure of power in 1990, President Déby declared that his aim was to "bring neither gold nor silver but freedom and democracy", and he formally ended single party rule. Déby has since officially recognised the right of NGOs to operate, and despite harassment Chadian human rights NGOs carry out activities and publish findings critical of the Government. However, the *Commission Nationale des Droits de l'Homme* (CNDH), established by a national assembly law in 1994, has had to contend with presidential interference and has been weakened after an impressive start.

The right to freedom of expression and political freedom

The Constitution provides for freedom of speech and freedom of the press, but in practice the Government has continued to limit this right in a number of instances. The Government has used retaliatory threats against journalists writing about the insurgence in the Tibesti region, and has imposed restrictions on freedom of assembly. On 17 April 2001, the Government decided to ban political programmes on private radio stations ahead of the presidential election of 20 May 2001. *Reporters sans Frontières* (RSF) asked the High Council of Communications to revoke the ban decision, which states that "during the entire 2001 presidential election campaign period, any political debate or debate of a political nature is banned on the airwaves of private, associative or community radio stations". Moreover, Article 35 of the above mentioned decision provides that radio stations "that do not conform to the present decision will be suspended during the entire electoral campaign period." While newspapers are not affected by the ban, the decision to restrict radio communications is of critical importance in a country with a 90 per cent illiteracy rate. On 8 May 2001, the High Council of Communications decided to suspend the operation of "FM-Liberté", a radio station s advocating human rights, on the grounds that it continued broadcasting political debates in contravention of the governmental ban.

On 4 December 2000, the N'Djamena's Magistrate Court sentenced Garonde Djarama, a former senior public servant, to a suspended sentence of six months' imprisonment, a fine of 50,000 CFA Francs (USD68, 72 Euros) and a symbolic fine of one CFA Franc in damages and interest. His article in the *N'Djamena Hebdo* criticised the slack reaction of the Chadian Government to the racist attacks against Chad nationals in Libya. The *N'Djamena Hebdo* director, Oulatar Begoto Nicolas was summoned by the police the day following the publication of the article and was interrogated before being released the same evening.

On 1 February 2001, the acting editor of *Le Temps* was sentenced to 1 year imprisonment, was fined and was asked to pay the disproportional amount of five million CFA francs (7622 Euros) for damages.

Racial discrimination

Article 14 provides for equal rights for all citizens, regardless of origin, race, sex, religion, political opinion, or social status. In practice, however, the army and the political life are dominated by members of the small Zaghawa and Bideyat groups from President Déby's northeastern region. This ethnic dominance has served as a major impetus to the rebellion of political groups in the south. These tensions are taking place in a country where there are approximately 200 ethnic groups within a population of about seven million people.

Exercise of democracy

Chad has never experienced a peaceful, and fair transference of political power, and both presidential and legislative elections have been marred by serious irregularities and indications of outright fraud.

The Constitution provides citizens with the right to change their government peacefully, but, in practice, this right remains limited. President Déby declared that presidential elections would take place on 20 May 2001 due to strained resources. Legislative elections, initially scheduled in 2001 are to take place in 2002. The President of the Independent National Electoral Commission (CENI) announced on 17 May 2001 that "everything is ready" for the first round of the presidential elections. However, there were noted logistical problems 36 hours before the elections, and the CENI could not decide whether to use the hand-written lists or the computer generated ones.

Opposition parties accused President Déby of vote-rigging and fraud even before the elections took place and all opposition leaders have signed a coalition agreement against the president in the second round. According to reports by international observers, the first round of the electoral process was considered to have been conducted fairly.

The rebellion: child-soldiers and impunity.

The *Mouvement pour la Justice et la Démocratie au Tchad* (MJDT), led by the former defence minister Youssouf Togoimi, has been fighting government forces in Tibesti, a region bordering Libya and Niger, since 1998. Fighting intensified throughout 2000, with both groups suffering heavy casualties. The MJDT has announced that since December 2000 it has killed 423 soldiers, while government troops claimed to have killed 120 rebels. Brutality by soldiers and rebels marked the clashes, and those who committed human rights abuses have generally enjoyed impunity. The Déby Government has denied allegations that it is responsible for killing 13 MJDT prisoners in December 2000.

Minors continue to serve in the army, and it has been reported that teenagers from the Zaghawa tribe have been forced to fight on the Government's side in the Tibesti region. It has also been reported that recruited children were put on the front line in order to detect mines, and that the two generals involved in the children's recruitment did so with impunity. The Government denies that its military has been recruiting young people from Southern Chad. However, there is information that students in the Sarh region are living with the fear of forced enrolment.

The Judiciary

Structure

The 1996 Constitution establishes an independent judiciary (Article 146). Judicial power is exercised by the Supreme Court, the Courts of Appeal, tribunals and the Justices of the Peace.

Interestingly, under a separate section of the Constitution (*Titre VIII*), a High Court of Justice is established, which has the power to judge the President of the Republic and high ranking government officials in cases of high treason. The High Court, composed of senators, members of the Parliament, the Constitutional Court and the Supreme Court, also has jurisdiction to try gross violations of human rights, as these are included in the definition of high treason, under article 178.

Law N°004/PR/98 of 28 May 1998 reorganised the judiciary. Article 1 of the new law sets out the jurisdictions as consisting of the Supreme Court, the Courts of Appeal, the Criminal Courts, the Courts of First Instance, the Labour Tribunals (*les tribunaux du travail*), the Trade Tribunals (*les tribunaux de commerce*) and the Justices of the Peace (*justices de paix*), which are local courts with jurisdiction over light offences and established where there is no tribunal of first instance.

The Court of Appeal is composed of six chambers (civilian and customary affairs, administrative and auditing, trade, social matters, correctional and simple police affairs, and one accusation chamber).

The Creation of a Supreme Court and a Constitutional Council

For the first time since Chad achieved its independence in 1960, legislation has been adopted to provide for the creation of a Supreme Court and a Constitutional Council, which were officially installed on 28 April 1999. These two high jurisdictions complete the Chadian judicial system.

The Supreme Court is the highest jurisdiction, composed of three chambers with jurisdiction in judicial, administrative and auditing matters (Article 7). It is the only tribunal competent in local election affairs. The Supreme Court is comprised of 16 justices including the President. Article 12 of Law N°006/PR/98 guarantees Supreme Court judges security of tenure. Judges can only be removed in case of retirement or on grounds of conviction for certain crimes.

The Constitutional Council has jurisdiction over constitutional matters, international treaties and agreements. It is also competent to consider matters related to presidential, legislative and senatorial election disputes. Its decisions are binding on all administrative authorities and public powers and there is no possibility of appeal against them. Every citizen can question the unconstitutionality of a law during his trial and before any competent jurisdiction.

On 28 April 1999, President Déby swore in 16 members of the Supreme Court as well as nine members of the Constitutional Court. They fully began operations only in October 2000, due to inadequate funding.

Appointment and Security of Tenure

Judges are nominated by decree of the President of the Republic with the approval of the High Council of the Magistracy (*Conseil Supérieur de la Magistrature*). The President of the Republic, the Minister of Justice and the President of the Supreme Court preside over the High Council of the Magistracy. They can be removed under the same conditions (Article 153). Article 155 states that judges can only be removed under several conditions, as prescribed by law.

The Supreme Court is composed of a President and fifteen *Conseillers*. The President of the Supreme Court is designated from among the highest judges of the judicial order by the President of the Republic, on approval of the National Assembly and the Senate (Article 8). The Presidents of the chambers are designated by decree of the President of the Supreme Court. The *Conseillers* are nominated by the President of the Republic, the National Assembly and the Senate, from among high magistrates and specialists of administrative law and auditing. Article 12 of Law N°006/PR/98 guarantees Supreme Court judges security of tenure. Judges can only be removed in case of retirement or on grounds of conviction for certain crimes.

The Constitutional Council is composed of nine members, among them three judges and six highly qualified jurists, nominated by the President of the Republic, the President of the National Assembly and the President of the Senate to terms of nine years (Article 1 of Organic Law N°019/PR/98, of 20 July 1998).

Administrative Control

The Ministry of Justice exercises overall administrative control over the activities of the courts and the functioning of the judicial bodies (Article 78 of Law N°004/PR/98). The Presidents of the Courts of Appeal and the Attorney Generals (*Procureurs Généraux*) control their own jurisdictions and send an annual report on the functioning of the judiciary to both the President of the Supreme Court and the Minister of Justice (Article 79). The President of the Supreme Court and the Attorney

General send a similar report to the Minister of Justice (Article 80) regarding the state of independence of the judiciary.

Independence of the Judiciary in practice

The Constitution provides for an independent judiciary. However, the judiciary has proved to be ineffective and subject to executive interference. It has been reported that Déby favoured the incarceration of two former administrators for several months during 2000 on the grounds of misappropriation of funds, despite the fact that there was a lack of evidence.

Two Supreme Court justices, Maki Adam and Ruth Romba, were demoted in April by the Chief Justice, and apparently in reaction to a decision that went against the Chief Justice's personal interests.

At the beginning of the year, President Déby dismissed the Minister of Justice due to a torture incident that has generated negative publicity. In September 2000, police and military officials allegedly tortured a detained businesswoman. However, apart from the dismissal of the Minister of Justice, no legal action was taken against the officials involved.

Residents in rural areas often address their cases to traditional tribal courts, and traditional practices and customary law are applied in addition to French-based legal code by judicial institutions.

The salaries of the officials in the judiciary branch are at levels so low as to carry negative implications for the independent functioning of judges.

Cases

Maître Jacqueline Moudeina {lawyer-legal counsel at the *Association Chadienne pour la Promotion et la Défense des Droits de l'Homme (ATPDH)*}: On 11 June 2001, members of the anti-sedition police unit attacked Ms. Moudeina while she was participating with approximately 100 women in a peaceful demonstration outside the French Embassy in N'Djamena. The demonstrators were protesting against French policy in Chad in relation to the outcome of the May 2001 election, in respect of which vote-rigging was alleged. Ms. Moudeina was wounded by a grenade. She was hospitalised in a private clinic in N'Djamena and subsequently in Paris. It was reported that the police identified Ms. Moudeina within the group of demonstrators and that the grenade was especially directed against her. This attack against Ms. Moudeina was due to her legal activities as lawyer of the Chadian victims in the proceedings against the former president of the country, Hissein Habré. The official in charge of the anti-sedition police unit during the demonstration, Mahamat Wakayé, was a former high-ranking security officer in the Habré regime. At the time of the attack against Ms. Moudeina there was a lawsuit pending against former Habré officials including Mahamat Wakayé. The lawsuit was filed by victims of the Habré regime.