

Burkina Faso

The judicial system in Burkina Faso is weak and remains under the control of the executive power, despite the fact that the Constitution guarantees its independence. Impunity in the country is still a widespread phenomenon.

Burkina Faso has a constitutional system that allocates substantial powers to the President, who governs the country with a Prime Minister and a Council of Ministers, presided over by himself. There is a bicameral National Assembly and a judicial system. The legislative and judicial powers are constitutionally independent, but remain susceptible to interference from the executive. President Blaise Compaoré is currently the head of state, and is assisted by members of his party, the Congress for Democracy and Progress (CDP).

Presidential elections were held in November 1998 and were won, for the second time since 1987, by President Blaise Compaoré who is to remain in office for a further seven-year term. The victory of Mr. Compaoré, with a wide majority of 87,5% of the vote, was contested by the opposition which had boycotted the elections. The CDP now controls 102 of the 111 seats in parliament.

Human Rights Background

On 4 January 1999, Burkina Faso acceded to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The state is also a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

There is a general situation of impunity in Burkina Faso. Past human rights abuses are not punished and killings by the police remain uninvestigated. Prison conditions are harsh and torture and ill-treatment by the security forces are common practices and go unpunished. Arbitrary arrests and detention without charge are frequent occurrences, despite the fact that the Constitution provides for the right to an expeditious trial and access to legal counsel. The law limits detention to a maximum of 72 hours.

Although the 1991 Constitution and the 1990 Information Code provide for freedom of speech and the independence of the press, in practice, the government exercises a strong influence over the media which results in the practice of self-censorship. Moreover, all media is supervised by the Ministry of Communication and Culture. In 1993, however, a provision in the Information Code granting the government a wide interpretation of press defamation was removed.

The killing of David Ouédraogo in January 1998, the driver of President Compaoré's brother François, allegedly by members of the Presidential Guard, continued to remain unresolved. This case is still under investigation by the military justice system because of a lack of cooperation on the part of the President's brother and an obvious manipulation of the judiciary.

On 3 January 1999, a massive demonstration took place in Burkina Faso, following the inauguration speech of the President, in protest against the results of the elections, as well as to demand justice in the case of Norbert Zongo, a journalist, human rights defender and director of the newspaper L'Indépendant. Norbert Zongo, who had pursued the case of the

death in custody of David Ouédraogo, had been killed under questionable circumstances in December 1998. Government forces opened fire against the demonstrators, seriously injuring children as well as adults. A state of emergency was declared, which entailed the use of aggressive police tactics in order to prevent demonstrations. However, by the end of the month, the government agreed to the Collective of Mass Democratic Organisations' demand to end the state of emergency. Since then, the government has allowed demonstrations without prior notification.

The Zongo Case served to reveal the deficiencies of the judiciary, which already had a negative public image. This case highlighted the weakness of the judicial system and its lack of independence, in particular with regard to the security of tenure of judges, a lack of resources and the inadequacy of outdated legal codes.

On 18 December 1998, an Independent Investigating Commission was created to look into the Zongo death by Decree No. 98-490, but non-governmental organisations (NGO's) refused to participate because of the over representation of the government and the Commission's lack of guarantees concerning its own independence and transparency. This led to a modification of the Commission's composition in January 1999.

The Investigating Commission released its final report in May 1999 determining that Mr. Zongo was killed for "purely political motives": in other words, he was killed to put an end to his writing of press articles on the killing of David Ouédraogo. Although a judge was appointed to try the six members of the presidential security force involved in the Zongo Case, no progress in the trial has been made so far.

The Judiciary

The situation of judges in Burkina Faso has considerably worsened in the last two years and the justice system has been discredited as a result of some scandals, as illustrated recently in the Norbert Zongo Case (see above).

There have not been any major amendments to the Constitution which was adopted in 1991 and provides for an independent judiciary (Article 129), as well as for a system of control of constitutionality carried out by a specialised section of the Supreme Court. However, the President has extensive powers in relation to the judiciary.

Structure

A law of 17 May 1993 organises the judiciary. The judiciary is hierarchically organised and is regulated by a decree of 26 August 1991. The Supreme Court is at the top of the system. With administrative and financial autonomy, it is composed of four chambers specialised in the resolution of constitutional, administrative, judicial, and financial disputes.

The Courts of Appeal, which are competent in civil, commercial, criminal and social matters, sit in the two largest towns of the country (Ouagadougou and Bobo-Dioulasso). The creation of a third Court of Appeal is under discussion in order to ensure coverage of the entire country.

There are ten Tribunals of First Instance which are at the base of the system. The question of increasing their number is still under discussion.

There is also a High Court of Justice, with jurisdiction to try high ranking public officials, such as the President of the Republic and senior government officials for treason and other serious crimes. This court, which was created in 1995, has never been put into operation.

In 1995, the National Assembly passed legislation reforming the military justice system. Until now, however, this reform has remained theoretical and the independence of this court system is in question.

Court Administration

The Constitution (Article 131) stipulates that the head of state is also the President of the High Council of the Magistracy (Conseil Supérieur de la Magistrature), which can nominate and remove high-ranked magistrates, as well as examine the performance of individual magistrates. A decree dating from 26 August 1991 governs the career of the magistrates, giving them guarantees of independence and tenure. A second decree concerning the High Council grants this institution the power to appoint, promote and discipline judges. The composition of this council is pluralistic. Some are non-elected members (for instance, the head of state, the Minister of Justice, the President of the Supreme Court and President of the Courts of Appeal). Other members are elected by their peers.

Reforms

A forum on justice took place in October 1998. Reforms have been, however, under discussion since the report of a Council of Wisemen appointed to give recommendations was issued on 2 August 1999. This report recommends a reform of the judicial system, a revision of the Constitution (Article 37) reintroducing presidential term limits, the creation of a truth and justice commission to direct the nation's reconciliation process and the dissolution of the National Assembly. Consequently, in October 1999, a Commission of National Reconciliation was created.

President Compaoré said that he will accept the recommendations of this commission and that he would organise new parliamentary elections if necessary.

Although the judiciary is formally independent, there is general agreement that the system does not work properly and that there is a need for change. For example, the ability of citizens to obtain a fair trial remains circumscribed by an ignorance of the law because 77% of the population is illiterate and there is an insufficient number of magistrates. Moreover, courts are concentrated in the capital. Justice continues to be slow, expensive and inaccessible.

Very often, the magistrates themselves have been accused of corruption and the politicisation of the system as a whole is increasing. The lack of means and the poor working conditions of the members of the judiciary are demonstrated by incredibly low salaries for judges at the beginning of their career, a lack of equipment and violations of their private life.

Another major problem is the control exercised by public officials and politicians over the functioning of the judicial system, which undermines substantially the independence of the judiciary. Although this is not a new phenomenon, the magistrates themselves tend not to take the guarantees of their independence granted by the Constitution seriously enough.

Cases

Mr. Bénéwendé Sankara (lawyer): On 2 December 1999, Mr. Bénéwendé Sankara, a lawyer, was taken into detention and interrogated by the Sûreté Nationale. He was accused of inciting sedition of the army, civil disobedience and prejudicing the state security. The Tribunal de Grande Instance of Ouagadougou decided on 15 December 1999 to charge Mr. Sankara. In April 2000, he was again arrested and his conditions of detention are very harsh.