

Chad

For the first time in Chadian history a Supreme Court and a Constitutional Council officially began to function on 28 April 1999. The government continued to use the judicial system to harass members of opposition parties. The practice of impunity is widespread and the government continued granting amnesty to rebels who made peace with it. In August 1999, the National Assembly passed a law giving amnesty to members of one of these groups, a number of whom were integrated into the army.

Chad is a unitary republic, independent since 11 August 1960, and led since 1990 by General Idriss Deby, President of the Patriotic Movement of Salvation (Movement Patriotique du Salut -MPS), who was, however, only elected on 3 July 1996. He replaced the former dictator, Mr. Hisssein Habre, who had been President since 1981 and who is currently indicted in Senegal on torture charges. Mr. Habre has lived in exile in Senegal since his ouster in 1990.

The 1989 Constitution was suspended in 1990 by then self-proclaimed President Deby and his transitional regime, and in 1996, a new democratic Constitution was adopted and approved by popular referendum , providing for an elected President and a parliament.

The new Chadian Constitution, adopted on 31 March 1996, provides for a system of three separated powers, the executive, the legislative and the judicial powers. This is a presidential regime in which the executive power belongs to the President, elected by popular vote for a five-year term, and the government (Article 59). The government is headed by a Prime Minister 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).

Political and Military Insecurity

In 1998-1999, the Deby regime still had difficulties stopping the proliferation of rebel military movements, which led, in 1999, to an escalation of fighting with rebels in the southern region.

The tensions raised by the opposition of many rebel armed groups led to the kidnapping of four French nationals in February 1996, by a movement called Union of Democratic Forces (UFD), led by Dr. Nahor. Then, in March 1999, in the Tibesti region, 8 Europeans were kidnapped by an armed group, the National Front for a Renewed Chad (FNTR).

General Deby's MPS party had to face further rebellions in February and March 1999. However, some of those responsible were arrested in cooperating neighbouring states (Lybia and Nigeria), and a new peace agreement and reconciliation accords were signed in May 1998 and July 1999 respectively.

Chad's dispute with Lybia over the Aozou Band was definitively settled in favour of Chad by a decision of the International Court of Justice on 3 February 1994.

Human Rights Background

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions of the United Nations Commission on Human Rights reported in December 1997 that the situation of human rights in Chad was a subject of concern, notably in regard to the right to life. Extrajudicial killings and death in custody have been common practices of the security forces throughout the fighting in the southern region. Hundreds of people were extrajudicially executed by the security forces in March 1999. In 1996, the commander of the Specialised Unit Group of the Chadian National Gendarmerie ordered members of the nine gendarmerie services to immediately eliminate anyone caught in the act of stealing. The Special Rapporteur called for an end to impunity.

Impunity

Despite this situation, there were no signs of prosecution or punishment by the government of members of the security forces who committed human rights abuses. Furthermore, the government did not prosecute security personnel accused in previous years of killings, rape, torture, arbitrary arrest and detention. Moreover, the government continued to grant amnesty to rebels who made peace with it. In August 1999, the National Assembly passed a law giving amnesty to FARF/VA members, a number of whom were integrated in the army.

The Right To Freedom of Expression and Political Freedom

Many political prisoners, detained as a result of unfair trials or without being tried at all, were tortured and ill-treated by the security forces in 1997. Peaceful demonstrations were strongly repressed and a number of human rights defenders associations were suspended by the Minister of the Interior in late March 1998.

Public demonstrations are often banned by the government, although the Constitution provides for freedom of assembly and despite the fact that the organisers invariably respect the law which requires notification five days in advance.

In March 1998, the government suspended eight human rights organisations that had called on citizens to stay home on certain days in protest against human rights violations by the security forces. On 3 June 1998, President Deby publicly denounced the "imperialism of international human rights associations" which contribute to "making serfs out of Third World peoples," and "impose pre-packaged democracy" instead of "another form of organisation of society that would be better adapted to the context, reality and outlook of our peoples".

Non-governmental organisations (NGO's), however, have played an important mediation role in negotiations between the government and other parties, such as, for example, the reconciliation between herders and farmers and the government over land and water rights, as well as the negotiations which led to a peace accord between the government and the FARF.

Racial Discrimination

Article 14 of the Constitution provides for equal rights for all citizens, regardless of origin, race, sex, religion, political opinion or social status. In practice, however, the ethnic group to which President Deby belongs (Zaghawa) represents an elite which is over-represented in all key institutions in the country. This ethnic dominance has been a major factor behind the rebellion of political groups, like the FARF, in the south. These tensions are taking place in a

country where there are approximately two hundred ethnic groups in a population of about seven million people. However, this racial discrimination does not only exist on an institutional level, but it is also present, de facto, at all levels of society between the ethnic groups themselves.

The Judiciary

Structure

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

Law N°004/PR/98 of 28 May 1998 reorganises the judiciary. Article 1 of the new law sets out the jurisdictions as being 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 6 chambers (civilian and customary affairs, administrative and auditing, trade, social matters, correctional and simple police affairs, and one accusation chamber).

The High Court of Justice is competent for judging the President of the Republic and high ranking government officials in cases of high treason. Cases of gross violations of human rights are assimilated to this crime and so the High Court of Justice is competent to try such crimes (Article 178).

The Creation of a Supreme Court and a Constitutional Council

For the first time since its independence in 1960, Chadian legislation (Law N°006/PR/98 and Law N°019/PR/98) provides 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 competent in judicial, administrative and auditing matters (Article 7). It is the only tribunal competent in local elections affairs.

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.

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). They can be removed under the same conditions (Article 153).

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.

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 for 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 the independence of the judiciary.

There are reports of problems related to the right to equal justice in Chad. According to the International Federation of Human Rights:

the judicial apparatus is a veritable instrument of repression in the service of the executive branch. Any opinion contrary to that held by the powers-that-be is forcefully repressed. For instance, Deputy Yorongar Ngarlejy was charged with slander, in contravention of any legal procedure, tried and sentenced to three year's imprisonment, while the law stipulates a maximum sentence of two years in such cases. Accordingly, those to be tried are wary of decisions handed down by Chadian justice. Lastly, and most importantly, to speak of the independence of justice is a total sham when the executive branch does not hesitate to take certain cases away from the courts. Anyone close to the authorities who seriously break the law is simply transferred or promoted to a higher post.