

ATTACKS ON JUSTICE – REPUBLIC OF CHAD

Highlights

Administration of justice is weak as the conditions in which it operates are poor. The 2003 *Etats Généraux de la Justice* highlighted numerous failings in the judiciary and recommended legal reforms to improve it. Despite the drawing up of a judicial reform program for the period 2005-2015, the long-awaited changes have yet to take place. Although independence of the judiciary is enshrined in the Constitution, in practice it is subject to interference from the executive and thus is not independent. In March 2005, judges went on a three-day strike to protest at the absence of judicial independence and violation of the principle of security of tenure. The judiciary has completely lost public trust and there are increasing signs of a parallel justice system being operated in rural areas by the police and traditional leaders. The rules pertaining to pre-trial detention, the presumption of innocence, the speed of proceedings and legal aid are not enforced. Growing insecurity in the country also affects judicial actors who are regularly threatened, assaulted or killed. In the course of 2003 and 2004, all judicial actors went on strike in protest at the lack of security and interference from the executive.

BACKGROUND

The centralized Republic of Chad has been in a state of almost constant war since achieving independence from France in 1960. Ethnic and religious differences have led to internal conflicts marked by clan rivalries and outside intervention from France and Libya. General Idriss Déby, President of the Patriotic Movement of Salvation (a rebel group which became a political party in 1990), who came to power in 1990 after overthrowing the former dictator and president since 1981, Hissein Habré, put members of his own *Zaghawa* ethnic group into positions of power where they enjoy impunity. The multi-party presidential elections of 1996 and 2001 endorsed General Déby as President of Chad, despite widespread allegations of fraud, vote rigging and irregularities (see *Attacks on Justice 2002*: http://www.icj.org/news.php3?id_article=2653&lang=en).

In 1998, a new rebellion led by the Movement for Democracy and Justice in Chad (MDJT), an opposition rebel group acting in Tibesti, Northern Chad, took place. A fruitless peace agreement signed on **7 January 2002** and adopted by the National Assembly on **26 February 2002** was followed by a second peace accord on **14 December 2003**, which provided for an immediate ceasefire, an amnesty for MDJT members, the appointment of a number of MDJT members as government ministers and the transformation of the movement into a legal political party. Although some MDJT members refused to accept the agreement, it resulted in a loss of strength by the group, thus allowing the government to regain control of parts of the territory. By the **end of 2004**, the government and the MDJT were still negotiating a final end to the rebellion.

Another rebellion led by the **National Alliance for Resistance (ANR)** is continuing in south-eastern Chad. An unsuccessful peace agreement between the ANR and the

government was signed on **17 January 2003**. It called for an immediate ceasefire, an amnesty for ANR members and their reintegration into civil society and the military. Although the ANR announced in October 2004 that it was withdrawing from the agreement, the group does not seem to have resumed hostilities.

Despite the reduction in rebel activity, the overall situation in Chad is still extremely unstable due to the 2003 and 2004 crises in the neighbouring Central African Republic and Darfur, Sudan. The police and the military continue to perpetrate serious human rights violations and the civilian authorities fail to exercise effective control over them. Security forces continue to carry out extrajudicial killings and to torture, beat, abuse, arbitrarily arrest and detain people without charge. Impunity for human rights abuses is widespread. Local human rights defenders, particularly those working outside of the capital, N'Djaména, are subjected to intimidation, threats, arbitrary arrest and detention. The work of international human rights organizations is also restricted. The government has occasionally limited freedom of assembly. Freedom of expression and of the press was increasingly restricted in 2003 as libel law was used to suppress criticism.

On **26 May 2004**, the Parliament accepted several **amendments to the Constitution**, in particular to article 61 which concerns the requirements laid down to be President of the Republic. The amendments, which were adopted by referendum on 6 June 2005, remove the previous limit of two five-year terms as well as the age requirements, thereby allowing President Idriss Déby to stand for a third term in the forthcoming presidential elections of **2006**. The amendments also replaced the Senate, which was established in the 1996 Constitution but never put in place, with an Economic and Social Council (articles 106 and 120). The introduction of new legislation will from now on be the sole prerogative of the executive. The Chadian administration is also becoming militarized, with many of its senior officials being former military officers.

JUDICIARY

Independence

According to article 146 of the 1996 *Constitution*, the judiciary is independent of the executive and the legislature. Article 150 adds that the President of the Republic is the guardian of this independence and, with the assistance of the High Council of the Judiciary (*Conseil supérieur de la Magistrature*), is responsible for ensuring that laws and judicial decisions are enforced. According to article 78 of *Law N° 004/PR/98*, the Ministry of Justice exercises overall administrative supervision of the activities of the courts and the operation of judicial bodies. Despite these constitutional and legal provisions, in practice, the judiciary is subjected to executive interference and lacks independence. The 17-21 June 2003 *Etats Généraux de la Justice*, a national forum on justice issues (see below), identified the problems facing the judiciary and these were still relevant as of **May 2005**.

The judiciary has proved to be ineffective and subject to executive interference. Government officials, members of Parliament and members of the military and police, continue to interfere in the courts and fail to enforce court decisions when they are involved. Likewise, judicial police officers are insubordinate to judges and prosecutors and accept bribes in return for enforcing court decisions. *Magistrats* (i.e. judges and

prosecutors) lack authority. The material and financial conditions in which the judiciary operates are poor: the salaries of judges, prosecutors, judicial officers and clerks are so low that they have a negative effect on their ability to function independently, their initial and continuing professional training is inadequate, and the recruitment criteria for *magistrats* are not always applied since they are appointed by the government. Furthermore, the shortage of *magistrats* means that, in some instances, a *magistrat* can be both the sitting judge and the prosecutor in the same case, which poses a major problem for fair trial and due process. The court infrastructure is inadequate and basic. In addition, judicial corruption and impunity are rampant. The judiciary has completely lost the trust of the public and there are increasing signs that a parallel justice system, operating outside of the ordinary system or customary traditional tribal courts, is being implemented by the police, including judicial police, and traditional leaders, especially outside the capital, N'Djaména.

Threats and attacks on judges and judicial staff increased during **2003 and 2004** as a result of the growing insecurity throughout the country (especially outside the capital N'Djaména) and are usually linked to judicial decisions that have displeased individual complainants. The threats and assaults, including killings, to which they are often subjected act as a further deterrent to *magistrats* whose working conditions are already difficult, and courts have been forced to close due to a lack of judges, for example, in the city of Iriba.

Strikes

On **1 October 2003**, the **Union of Chadian *Magistrats*** (*Syndicat des Magistrats Tchadiens, SMT*) began a **three-day strike** protesting to an attack carried out on Judge Dogo Djanglang Mbaissan (see Cases below) and calling on the government to take action against the increasing lack of security and to stop interfering in judicial proceedings. Similarly, on **7 October 2004**, the SMT and National Union of Staff working in Clerk's Offices (*Syndicat National du Personnel des Greffes, SYNAPGREF*) decided to strike in protest at the murder of Deputy Prosecutor Etienne Dainguirim Ndodoum (see Prosecutors below) as well as the growing insecurity. Discussions about the issue of security were subsequently opened with the government and continued on **18 October 2004** with unions representing lawyers and other judicial officers also involved. The SMT and SYNAPGREF decided to call off their strikes on **25 October 2004**.

Following the adoption by President Déby of *Decree No 114/PR/MJ/2005* concerning the appointment of judges on **21 March 2005**, the SMT called for a **three-day strike** starting on **22 March 2005** to protest against the decree. The union claimed that the decree ordered judges to be transferred without their consent, thus violating the principle of security of tenure. The strike also sought to denounce continuing interference from the Minister of Justice and to show judges' anger at the violation of the constitutional principles of independence of the judiciary and the irremovability of judges.

Commission d'Enquêtes et de Poursuites du Personnel Judiciaire et des Auxiliaires de Justice

President Déby, in his capacity as President of the High Council of the Judiciary and after seeking the advice of its members, set up, pursuant to *Decision No 001/PCSM/02* of **20 June 2002**, a *Commission d'Enquêtes et de Poursuites du Personnel Judiciaire et des*

Auxiliaires de Justice (CEPPAJ) ("Commission to investigate and prosecute judicial personnel and court officers") in order to combat public distrust of the justice system and tackle judicial corruption. CEPPAJ was authorized to take disciplinary action in respect of all judicial actors, including lawyers, court clerks and notaries, who were not subject to the jurisdiction of the High Council of the Judiciary which is limited to *magistrats* (i.e. judges and prosecutors). It was mandated to investigate any civil, criminal, commercial or social cases tried since January 2001 which had been strongly contested by the parties, to report any cases of professional misconduct to the High Council of the Judiciary and the disciplinary organs of each judicial profession and to institute legal proceedings in the case of offences, such as corruption. The defendants were able to challenge court decisions before CEPPAJ, whose five members, appointed by the President of the Republic, could be anyone other than members of the High Council of the Judiciary. In 2003, CEPPAJ heard its first cases and, following its investigations, the High Council of the Judiciary suspended two *magistrats* for corruption.

The establishment of CEPPAJ was immediately criticized by the judiciary and discussed at the *Etats Généraux de la Justice* in June 2003, which recommended it be dissolved. It was found to be contrary to article 154 of the Constitution which states that the disciplining of *magistrats* is a matter for the High Council of the Judiciary, the governing body of the judiciary. It was also contrary to article 3 of the *Statut de la Magistrature*, the regulations governing the judiciary (*Order No 008/PR/MJ/91* of 3 August 1991), since judges could not be asked about the reasoning behind their judicial decisions. The SMT ("Union of Chadian *Magistrats*") believed that CEPPAJ had increased the sense of insecurity among *magistrats* and judicial actors, as it had incited the population to rebel against the judiciary. Although its recommendations were mandatory, they had not been implemented as of **June 2005**. In April 2005, following a 48-hour strike by *magistrats* and lawyers protesting against it, the Minister of Justice ordered CEPPAJ to be dissolved.

Etats Généraux de la Justice

From 17 to 21 June 2003, the government organized the *Etats Généraux de la Justice*, a national forum to discuss and address the poor functioning of the judiciary and associated problems. All levels of society as well as all the different areas of the judiciary were represented. According to the then Minister of Justice, Djimnain Koudji-Gaou, the forum's recommendations (which were mandatory in nature) were to be used to devise future legal reforms.

The *Etats Généraux de la Justice* issued recommendations to the Government with a view to improving the entire gamut of problems that were impeding the proper administration of justice. It assessed institutions, civil society, developments and citizens, including the lack of financial resources, infrastructure, properly-trained staff, the independence of the judiciary, the existence of a parallel justice system operated by the police, the prison service, corruption, impunity, traditional and alternative methods of conflict resolution, human rights, the role of the media, the law on *Organisation pour l'harmonisation en Afrique du droit des affaires* (OHADA) ("The Harmonization of Business Law in Africa"), labour law, regional communities law, dissemination of legislation, access to justice and the enforcement of court judgments.

The recommendations included boosting human, financial and material resources, including the granting of financial autonomy to the judiciary and increasing salaries,

establishing new tribunals and courts throughout the country and building new prisons, as well as improving the legal aid system. They also called for the independence of the judiciary to be respected, coupled with better initial and continuous training for *magistrats* and all judicial personnel, including the judicial police and prison officers, stricter observance of the criteria established for recruiting and transferring *magistrats* and punishment of corrupt judicial personnel. Other recommendations included the effective and non-discriminatory enforcement of court judgments, improved police records, the simplification of legal procedures, improved dissemination of laws, including their translation into Arabic, and written codification of customary law. The forum also called for the establishment of a system of mediation and a better and clearer definition of traditional justice as regards the applicable customary law and the role of traditional chiefs, as well as for a stop to be put to the parallel justice system by prosecuting those who implement it. It also requested judges, *inter alia*, to improve their compliance with the applicable texts, explain the reasons for their decisions and keep records of all decisions in order to improve follow-up.

Article 38 of the regulations governing the operation of the *Etats Généraux de la Justice*, adopted on 17 June 2003, provided for the establishment of a committee to monitor implementation of the recommendations and decisions adopted ("**Comité de suivi de la mise en oeuvre des recommandations et décisions**"). The committee, which was established on **8 December 2003** pursuant to an order (*Arrêté*) issued by Prime Minister Moussa Faki Mahamat, started drafting a **judicial reform program for the period 2005-2015**. Nevertheless, resource constraints and political pressures have limited the committee's work and, as of **June 2005**, the judicial reform program had not yet been set in motion.

Cases

On **29 September 2003**, **Dogo Djanglang Mbaissan**, an examining magistrate (*juge d'instruction*) at the Court of First Instance in Abéché, was assaulted and stabbed several times in his office by Hissein Abakar, a claimant (*partie civile*) in a case he had heard who was unhappy with the judgment he had handed down. His assailant was arrested and transferred to N'Djaména Prison, from where he subsequently escaped. On 1 October 2003, the SMT (Union of Chadian *Magistrats*) began a three-day strike in protest at, among other things, the attack on their colleague.

Justice of the Peace (*juge de paix*) **Harounga Tagui Bissi**, was reportedly murdered in Massakory on **28 May 2003**. The police did not find the murderer or accomplices who fled after the incident. No more information is available on this case.

In **March 2005**, the President of the N'Djaména Court of Appeal, Judge **Mahamat Abdéramane**, was demoted to the rank of 2nd substitute of the General Prosecutor because of a ruling he had made. The judgment granted ownership of a building in a real estate dispute between the Libyan company Lafico-Tchad and a Chadian shopkeeper, Abdelkhader Yacoub, to the latter. The Minister of Justice, Kalzeubet Pahimi, disobeyed this ruling and ordered Abdelkhader Yacoub to be evicted.

LEGAL PROFESSION

President Déby, in his capacity as President of the High Council of the Judiciary and after seeking the advice of its members, set up, pursuant to *Decision No 001/PCSM/02* of 20 **June 2002**, a *Commission d'Enquêtes et de Poursuites du Personnel Judiciaire et des Auxiliaires de Justice* (CEPPAJ, "Commission to investigate and prosecute judicial personnel and court officers") in order to combat public distrust of the justice system and tackle judicial corruption. CEPPAJ had authority over all judicial actors, including lawyers, court clerks and notaries who were not subject to the jurisdiction of the High Council of the Judiciary for disciplinary matters. Disciplining lawyers is the responsibility of the Bar Council, as stated in *Law No 033/PR/96* of 5 November 1996 on the establishment and organization of the legal profession. CEPPAJ was mandated to investigate any civil, criminal, commercial or social cases tried since January 2001 which had been strongly contested by the parties, to report any cases of professional misconduct to the High Council of the Judiciary and the disciplinary organs of each judicial profession and to institute legal proceedings in the case of offences, such as corruption. The defendants were able to challenge court decisions before CEPPAJ, whose five members, appointed by the President of the Republic, could be anyone other than members of the High Council of the Judiciary. In 2003, CEPPAJ heard its first cases but no lawyers were suspended.

The decision to set up CEPPAJ was immediately criticized by the judiciary and the *Ordre des Avocats* (Bar Association) and discussed at the *Etats Généraux de la Justice* in June 2003, which recommended it be dissolved. Although its recommendations were mandatory, they had not been implemented as of **June 2005**. In April 2005, following a 48-hour strike by *magistrats* and lawyers protesting against it, the Minister of Justice ordered CEPPAJ to be dissolved. The Bar Association had called for its abolition but many lawyers reportedly disagreed with the official position. They believe that it is necessary to have a body to control and discipline lawyers, given the conduct of some of them.

The June 2003 *Etats Généraux de la Justice* (see [Judiciary](#) above) concluded that the **33** lawyers who were exercising the profession at that time lacked professional training. As judicial actors, lawyers took part in the protest against the murder of Deputy Prosecutor Etienne Dainguirim Ndodoum and the growing insecurity in Chad and decided to join the unions representing *magistrats* and judicial officers in a one-day strike on **7 October 2004**. Discussions with the government about the growing insecurity were subsequently opened and continued on 18 October 2004 with the unions representing lawyers and other judicial officers also participating.

Cases

After she was attacked by members of the anti-sedition police unit on 11 June 2001 (see *Attacks on Justice 2002*), lawyer **Jacqueline Moudeïna**, who was representing the Chadian victims in the proceedings against former President Hissein Habré and his accomplices, as well as being legal counsel for the Chadian Association for the Promotion and Defence of Human Rights (*Association tchadienne pour la promotion et la défense des droits de l'homme, ATPDH*), filed a complaint on 18 March 2002 before the N'Djaména Court of First Instance, together with six other women who were also attacked during the demonstration, against three police officers: Mahamat Wakaye,

Mahamat Idriss and Taher Babouri. Mahamat Wakaye, a former official of the Documentation and Security Directorate (DDS), Habré's political police, is currently under investigation in proceedings that are before the Belgian courts. On **11 September 2003**, the N'Djaména Court of First Instance acquitted the three defendants on the grounds that they were following orders from the highest State authorities. The verdict, which was appealed by Jacqueline Moudeïna, was upheld on **5 October 2004** by the N'Djaména Court of Appeal.

On 24 May 2005, **Delphine Djiraibé Kenneloum**, a lawyer and former president of the ATPDH, was assaulted and threatened with death by two men, allegedly officials of the National Security Agency (*Agence nationale de la Sécurité, ANS*), reportedly on the grounds that she is the lawyer in the case before the Supreme Court seeking annulment of the referendum amending the 1996 Constitution.

PROSECUTORS

Under the Chadian judicial system, which is influenced by the French legal tradition, both judges and prosecutors are known as "*magistrats*" and, as part of the judiciary, are regulated by the same 1991 *Law, No. 008/PR/MJ/91* on the status of the judiciary (*Loi portant Statut de la Magistrature*). Prosecutors are supervised by the Attorney General but take their orders from the Minister of Justice. Some prosecutors, like some judges and other judicial officers, are corrupt. They also suffer from a lack of material and financial resources and qualified personnel. This shortage means that, in some instances, a *magistrat* can be the sitting judge and prosecutor in the same case, which poses a major problem for fair trial and due process. Threats and attacks on prosecutors increased during **2003 and 2004** as a result of the growing insecurity throughout the country (especially outside the capital, N'Djaména) and are often linked to judicial decisions that have displeased individual complainants.

Cases

Emmanuel Deukeube, Prosecutor (*Procureur de la République*) at the Court of First Instance of Biltine and his brother were reportedly attacked at the former's home on **30 November 2003**. Deukeube was wounded but his brother died later. No further information is available on this case. Their alleged attackers were subsequently arrested but then released by the Abéché police. No legal proceedings were instituted against them.

On **5 October 2004**, **Etienne Dainguirim Ndodoum**, Deputy Prosecutor (*substitut du procureur*) at the Court of First Instance in Abéché, was assaulted in his office by Mr. Abdelwakil as he was signing an order releasing the latter. Etienne Dainguirim Ndodoum died the next day. His alleged murderer was transferred to N'Djaména Prison on 21 October 2004. On 7 October 2004, the SMT, the *magistrats'* union, and the SYNAPGREF, the clerks' union, decided to go on strike in protest at the murder and the growing insecurity. Discussions with the government about the security issue were subsequently opened and continued on 18 October 2004 with the unions representing lawyers and other judicial officers also participating. The SMT and SYNAPGREF called off their strike on 25 October 2004.

ACCESS TO JUSTICE

The lack of judges and judicial officers, as well as the shortage of material and financial resources, hinders access to justice for the public at large who are ignorant of their rights. As of **June 2003**, there were only about 130 *magistrats* (i.e. judges and prosecutors) and 150 court officers unevenly spread throughout the country for a population of 9 million. Furthermore, free legal aid is not available, all of which results in widespread impunity. In addition, executive interference in the judiciary means that, in practice, government officials and influential people escape punishment by the courts.

Fair trial and due process guarantees are not observed. Although enshrined in law, the rules pertaining to pre-trial detention, presumption of innocence, the principle of legality before the law, the principle of equality, the right to have access to a lawyer, the speed of proceedings and legal aid are not enforced. Pre-trial detention can be extremely lengthy. Collective enforcement of sentences is still implemented in traditional tribal courts and in the parallel justice system (see Judiciary above).

Lack of clarity about the applicable law, given that the customary law used to supplement written law has not been written down, together with the lack of public trust in the judiciary, has led to the emergence of a parallel justice system outside the capital, N'Djaména, operating outside of the ordinary system and customary traditional tribal courts and implemented by local police and traditional leaders, and in which there is no right of appeal.

Cases

Four prisoners, Mahamat Adam Issa, Adouma Ali Ahmat, Abderamane Hamid Haroun and Moubarack Bakhit Abderamane, were sentenced to death by the N'Djaména Criminal Court on **25 October 2003** following a two-day trial for the murder on 25 September 2003 of Cheikh Ibn Oumar Idriss Youssouf, a Sudanese member of Parliament and director of the Chad Petroleum company who was close to members of President Déby's family. The accused were executed on **6 November 2003**. Their trial was reportedly unfair and they were forced to make statements under torture. The appeals process had not been exhausted since their petition for judicial review (*recours en cassation*), the only appeal allowed under the Chadian legal system, was still pending before the Supreme Court. (See the report of the mission by the International Federation for Human Rights (FIDH), 10-20 May 2004: www.fidh.org/article.php3?id_article=1976).

Charges against former President Hisssein Habré and his accomplices

Following the opening of investigations into human rights violations, including torture, murder and enforced disappearance, committed between 1982 and 1990 by former President Hisssein Habré and his collaborators in Chad (see *Attacks on Justice 2002*), and given that accomplices of the former President reportedly remain in power at different levels within the Chadian authorities, some of the complainants have been harassed and threatened. The office of the Chadian prosecutor in charge of the case was ransacked, the victims' lawyer, Maître Moudeïna, was injured and Souleymane Guengueng, the Vice-President of the Association for Victims of Political Crimes and Repression in Chad

(*Association pour les Victimes de Crimes et Répressions Politiques au Tchad, AVCRP*) has been suspended from his job in the civil service since the proceedings opened.

Investigations were opened before courts in Senegal (where former President Habré was living in exile), Belgium (under the 1993 "universal jurisdiction" law) and Chad. Following the April 2001 dismissal of the case by the Senegalese courts (see *Attacks on Justice 2002*), Senegalese President Wade decided, in September 2001, to hold former President Habré in Senegal pending an extradition request from a country such as Belgium that is capable of holding a fair trial. In May 2001, a Chadian judge from the Court of First Instance in N'Djaména started to hear witnesses and, in September 2002, the defendants began to testify before him. The investigations in Chad were then closed in 2003 without any charges being brought. Proceedings are continuing before the Court of First Instance of Brussels.

LEGAL REFORMS DURING THE PERIOD

- 19 January 2004:** adoption by the National Assembly of the *Law ratifying Order No 01/PR/2003* of 28 July 2003 pertaining to the creation of decentralized territorial authorities
- 23 May 2003:** adoption by the National Assembly of *Décret No. 158/PR/MSPI/2003* on the organization of the national police
- 2 May 2003:** adoption by the National Assembly of *Law No 005/PR/2003* on the protection of royalties (*droits d'auteur*) and the expressions of folklore
- 14 April 2003:** adoption by the National Assembly of the law relating to the creation, composition and mandate of the High Council of Communication (HCC)
- 26 February 2002:** adoption by the National Assembly of the law granting a general amnesty to members of the Movement for Democracy and Justice in Chad (MDJT)