

Mandates of the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence

REFERENCE:
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13 September 2021

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, pursuant to Human Rights Council resolutions 44/8 and 45/10.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **arbitrary dismissal of 151 judges from service, allegedly on the basis of a disciplinary procedure that did not comply with established international standards.**

According to the information received:

The adoption of the Constitution

In August 2019, the Transitional Military Council and the Forces of Freedom and Change, a coalition of opposition parties to the 30th June 1989 Regime toppled after the December Revolution, signed the Draft Constitutional Charter for the 2019 Transitional Period (hereinafter "the Constitution").

The Constitution established Sudan's civilian-led Transitional Government through the creation of the "Transitional Government Bodies." The Transitional Government will govern Sudan until general elections are carried out in 2024. Until then, the Constitution entrusts the Transitional Government with carrying out the necessary reforms to rebuild Sudan's institutions and laws in order to achieve comprehensive and lasting peace across the country.

The Transitional Government Bodies are:

- the Sovereignty Council, which represents the Head of State and the armed forces, and is formed by agreement between the Transitional Military Council and the Forces of Freedom and Change;
- the Cabinet, which represents the executive authority of the State and is composed of a Prime Minister and a number of ministers, not exceeding twenty; and
- the Transitional Legislative Council, which is the authority responsible for legislation and oversight over the executive branch's performance, and is composed by a maximum of 300 members to be selected by the Forces of Freedom and Change and a mix of other forces participating in the transition.

Chapter 8 of the Constitution is devoted to the judiciary. Section 30 provides that in the Republic of Sudan, jurisdiction is entrusted to the judicial authority. The judicial authority is independent from the Sovereignty Council, the Cabinet and the Transitional Legislative Council, and has jurisdiction to adjudicate disputes and issue rulings in accordance with the law. The Chief Justice of Sudan is the head of the judicial authority, presides the National Supreme Court and is accountable to the Supreme Judicial Council.

The Supreme Judicial Council is established pursuant to Section 28 to replace and assume the duties of the National Judicial Service Commission. The law defines its composition, competencies and powers. The Supreme Judicial Council selects the president and members of the Constitutional Court and the Chief Justice and his/her deputies.

The Dismantling Committee

To carry out reforms during the transitional period, the Constitution provides for the establishment of twelve independent thematic commissions, including the “Anti-Corruption and Public Funds Recovery Commission”.¹ The formation of these commissions and their competencies are defined by the laws that establish them.

On 28 November 2019, the Transitional Government adopted the Law for Dismantling Ingaz (Salvation) Regime and Removing Empowerment, which established the Empowerment Elimination, Anti-Corruption, and Funds Recovery Committee (hereinafter the “Dismantling Committee”).

The Dismantling Committee is composed by members of the Sovereignty Council and the Cabinet of Ministers, and is responsible for taking actions to dismantle the former regime, including carrying out the dissolution of the former ruling National Congress Party, confiscating the regime’s property and assets, and recovering looted resources.² The Committee is also tasked with dissolving Government agencies, political parties, companies or other partisan bodies belonging to the regime, and to end the service of its employees.

The law provides that Dismantling Committee’s decisions are subject to appeal before a Special Appeal Committee. The Special Appeal Committee is chaired by a member of the Sovereignty Council, and the Minister of Justice serves as a rapporteur. Decisions of the Special Appeal Committee are also subject to appeal before a judicial chamber set up by the Chief Justice.³

On 7 January 2020, The Dismantling Committee formally dissolved the National Congress. On the same occasion, the Committee issued a decision dismissing more than 100 diplomats and employees of the Ministry of Foreign Affairs and a few thousand civil servants from other ministries and government institutions.⁴

Collective dismissal of Judges

¹ Constitutional Charter for the 2019 Transitional Period, Article 39(4)(c).

² A/HRC/45/53, para 49.

³ A/HRC/45/53, para 49.

⁴ A/HRC/45/53, para 50.

On 30 April 2020, the law establishing the Dismantling Committee was amended, allegedly to target “State” entities rather than “Government” entities. As a result, the Dismantling Committee has been enabled to dismiss all public employees who had appointed by and were perceived to be loyal to the former regime, including those serving in the judiciary.⁵

On 10 June 2020, the Dismantling Committee reportedly established a sub-committee (the “Empowerment, Removal and Anti-Corruption Committee in the Judiciary”) to conduct a thorough review of members of the judiciary and provide recommendations to the Dismantling Committee on judges whose employment had to be terminated in view of their allegiance to the toppled regime. According to the information received, the sub-committee was composed of 16 members appointed by the Dismantling Committee. Of these members, eleven were judges and six were representatives of the Transitional Government.

On 23 August 2020, the Dismantling Committee issued Resolution No. 268/2020 dismissing 151 judges from service. Allegedly, 39 of these judges belonged to the Supreme Court, 39 to Appeal Courts, and 73 to District Courts. Although the Resolution did not provide the factual or legal basis for their dismissals, it appears that the judges were dismissed in relation to their actual or perceived allegiance to the former regime.

Reportedly, the removal proceedings were not conducted in a manner consistent with existing legal standards on disciplinary procedures against judges. Also, it does not appear that the procedures observed due process and fair trial guarantees.

Allegedly, the dismissed judges were not informed at any point during the proceedings of the charges against them, and Resolution No. 268 did not identify the legal basis for the dismissals. It also appears that the grounds for dismissal were not previously established by law, as required by the principle of legality. Additionally, the body in charge of the dismissal procedure – the Dismantling Committee – cannot be regarded as an independent body because it is composed by members of the executive branch of power.

At the beginning of September 2020, the dismissed judges appealed the Dismantling Committee’s decision before the Special Appeal Committee. According to the information received, the Special Appeal Committee has not yet considered their appeals, and the judges have not yet received any information on the status of their appeal.

Without prejudging the accuracy of the information received, we would like to express our concern at the arbitrary dismissal of 151 judges, allegedly due to the fact that they had been appointed during the previous regime and were perceived to be loyal to it. If confirmed, the facts described above would constitute a serious breach of the principles of judicial independence and irremovability of judges, which state that judges shall have guaranteed tenure until a mandatory retirement age or the expiration of their term of office.

⁵ A/HRC/45/53, para 51.

We would like to express concern that the decision to dismiss the judges was apparently not preceded by an appropriate and fair disciplinary proceeding carried out by an independent judicial authority. According to international standards, judges may be dismissed only on serious grounds of misconduct or incompetence, and in accordance with fair procedures ensuring objectivity and impartiality.

In relation to the body in charge of hearing disciplinary cases against judges, international standards provide that the responsibility for disciplinary proceedings should be vested in an independent authority, such as a judicial council or a court. For this reason, the involvement of members of the executive branch of power in a disciplinary body for the judiciary is *de facto* incompatible with the principles of judicial independence and separation of powers.

The current appeal procedure also raises serious concerns as to its consistency with existing legal standards concerning disciplinary proceedings against judges. International and regional standards provide that decisions in disciplinary cases should be subject to an independent review. However, the Special Appeal Committee, which was established by the law that created the Dismantling Committee, cannot be regarded as independent body because it is composed of members of the executive branch of power.

Finally, during transitions to democracy from situations such as authoritarian regime collapse or mass corruption, international standards require that States consider methods of vetting judicial personnel that are compatible with the separation of powers and the independence of the judiciary.⁶ Processes for reassessment of judges must be transparent, and observe due process and fair trial guarantees. The vetting of judges poses particular challenges because procedures need to respect the general principle of the irremovability of judges, which may only be transgressed in exceptional cases.⁷ International standards on the promotion of truth, justice, reparation and guarantees of non-recurrence states that, during transitions, judges who may have been unlawfully appointed or who derive their judicial power from an act of allegiance may be relieved of their functions, but they must be provided an opportunity to challenge their dismissal in proceedings that meet the criteria of independence and impartiality, with a view toward seeking reinstatement. Judges must also be able to request an independent and impartial body to review the decision.⁸ Judicial vetting procedures that are carried out in full compliance with international standards and are fully respectful of the separation of powers and the independence of the judiciary constitute an essential guarantee of non-recurrence of past violations and of a sustainable transition grounded on the rule of law.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law**, attached to this letter, which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

⁶ A/HRC/30/42, paras 107-108.

⁷ A/HRC/30/42, para 55.

⁸ E/CN.4/2005/102/Add.1, principle 30.

1. Please provide any additional information and comments which you may have on the above mentioned allegations.
2. Please provide information about the Dismantling Committee, its legal status, its composition and functions.
3. Please provide detailed information on the composition and functioning of the sub-committee in charge of conducting removal proceedings against members of the judiciary during the transitional period, and explain to what extent it can be regarded as independent from the executive and legislative branches of power. What is the relationship between the sub-committee and the Dismantling Committee?
4. Please provide information as to the legal and factual basis for the dismissal of the 151 judges. Please explain, in particular, whether the ground(s) for dismissal had already been established by law, in accordance with the principle of legality.
5. Please provide detailed information on the dismissal procedure that the sub-committee observed to dismiss the judges, and explain (i) whether the procedure had already been established by law, in accordance with the principle of legality, (ii) whether the procedure was carried out in compliance with due process and fair trial guarantees and (iii) whether the accused judges had been provided with all the procedural guarantees set out in article 14 of the International Covenant on Civil and Political Rights.
6. Please provide information on the current status of the dismissed judges, including whether they are exercising the profession and receiving a salary while their appeals are pending. In addition, please explain whether they will be allowed to apply for judicial positions in the future.
7. Please provide detailed information on the measures that Sudan has taken, or intends to take, to ensure the independence of the judiciary and to guarantee fair disciplinary proceedings against judges.
8. Please explain whether the law establishing the Supreme Judicial Council has been adopted, and provide details about the functions that will be entrusted to the Council.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee the independence of the justice system and respect for the rule of law and the principle of separation of powers.

Please accept, Excellency, the assurances of our highest consideration.

Diego García-Sayán
Special Rapporteur on the independence of judges and lawyers

Fabian Salvioli
Special Rapporteur on the promotion of truth, justice, reparation and guarantees of
non-recurrence

Annex

Reference to international human rights law

The independence of the judiciary is enshrined in a number of international and regional human rights treaties to which the Republic of Sudan is a party, including the International Covenant on Civil and Political Rights (ICCPR), acceded by Sudan on 18 March 1986.

Article 14 of the ICCPR provides that “everyone is entitled to a fair and public hearing by an independent and impartial tribunal established by law”. Your country’s adherence to this treaty means that it must, *inter alia*, adopt all appropriate measures to guarantee the independence of the judiciary and protect judges from any form of political influence in their decision-making.

Similar provision are included in the African Charter on Human and Peoples’ Rights, ratified by Sudan on 18 February 1986, which affirms the States’ duty to guarantee the independence of the judiciary (Article 26).

In General Comment No. 32 (2007), the Human Rights Committee noted that the requirement of independence of a tribunal is “an absolute right that is not subject to any exception.” The requirement of independence “refers, in particular, to the procedure and qualifications for the appointment of judges, and guarantees relating to their security of tenure until a mandatory retirement age or the expiry of their term of office, where such exist, the conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from political interference by the executive branch and legislature.” The Human Rights Committee clearly stated that “[a] situation where the functions and competencies of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the notion of an independent tribunal” (para. 19).

The Basic Principles on the Independence of the Judiciary (hereinafter, the Basic Principles) provide that it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary (principle 1); and that the judiciary shall decide matters before them impartially (...) without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason (Principle 2). They also state that judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiration of their term of office, where such exists (Principle 12).

In relation to disciplinary proceedings against judges, Principle 18 of the Basic Principles outlines that, as a general rule, judges can only be suspended or removed from office for serious misconduct, disciplinary or criminal offence or incapacity “that renders them unfit to discharge their duties”. Disciplinary sanctions can only be imposed on the basis of an appropriate and fair procedure (Principle 17) and in accordance with established standards of judicial conduct (Principle 19), and should be subject “to an independent review” (Principle 20).

Finally, the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity provides that the principle of

irremovability of judges must be observed during transitional periods in respect of judges who have been appointed in conformity with the requirements of the rule of law. Conversely, “judges unlawfully appointed or who derive their judicial power from an act of allegiance may be relieved of their functions by law in accordance with the principle of parallelism”, but “they must be provided an opportunity to challenge their dismissal in proceedings that meet the criteria of independence and impartiality with a view toward seeking reinstatement” (Principle 30). The Updated Set of Principles also states that the removal of any public officials and employees who are personally responsible for gross violations of human rights, including those in the judicial sectors, “shall comply with the requirements of due process of law and the principle of non-discrimination” (Principle 36).