

Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL YEM 1/2022
(Please use this reference in your reply)

3 March 2022

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 44/8.

In this connection, I would like to bring to the attention of your Excellency's Government information we have received concerning allegations regarding a long-standing strike by the Judiciary in Yemen's Southern governorates as well as forced closure of judicial facilities which are affecting access to justice and the right to a fair trial in the country. This strike would be due in part to the appointment of the new General Prosecutor.

According to the information received:

Strike of the Judiciary in the Southern governorates

On 4 February 2021, the Southern Judges Club (STC) announced the suspension of work and the closure of all courts and prosecutions in the Aden and surrounding governorates (Abyan - Lahj - Al-Dhalea). This strike was later extended to the entire former South Yemen. The alleged reasons for the strike include: a) the appointment of the Attorney General without following legislation in the country related to this appointment, b) conditions in the judiciary.

On 7 February 2021, the Bar Council, in Aden Governorate, called the Southern Judges Club to reconsider the strike and pursue other means and methods in light of the negative impact this was having on the functioning of justice.

On 15 August 2021, the Southern Judges Club announced the partial resumption (Sundays and Mondays) of the courts' work, after some seven months of strike.

To date, the strike remains in force.

Appointment of the new General Prosecutor of the Republic of Yemen

On 15 January 2021, H.E. President Abdrabuh Mansour Hadi appointed General Ahmed Ahmed Saleh Al-Mousai, the Deputy Minister of Interior for Security and Police at that time, as the new Attorney General of the Republic through Presidential Decree No.4 for 2021.

The appointment did not follow the procedure set in place by legislation. According to Judicial Authority Law No.1 from 1991 and its 2013 amendments, this appointment would have required the nomination and prior approval of the Supreme Judicial Council, which allegedly did not take place.

On 16 January, the Southern Judges Club rejected this appointment in a public statement. The same day, the Southern Transitional Council (STC) a political grouping that is part of the Government of Yemen formed on 26 December 2020, also rejected the appointment of the Attorney General.

On 18 January the Southern Judges Club submitted an application to the first instance Administrative Court in Aden requesting the President of the Republic to repeal his Decree No. 4 of 2021 on the appointment of Mr. Ahmed Saleh Al-Mousai as Attorney General of the Republic. Since this appointment was made public, a number of judges not affiliated with the SJC have also expressed concerns publicly on the appointment and lack of transparency in the process

On 3 February 2021, the Administrative Court decided to refer the case to the Constitutional Division of the Supreme Court of the Republic with seat in the temporary capital, Aden. The case submitted to the Constitutional Division at the Supreme Court has not progressed. The Supreme Court is forcibly closed by security personnel affiliated with the STC.

On 11 April 2021, the Supreme Judiciary Council endorsed the decision of the head of the Executive.

On 31 August 2021, the Southern Judges Club challenged the 3 February decision of the first instance court regarding the decision of the President of the Republic to appoint Dr. Ahmed Ahmed Saleh Al-Mousai, against whom a preliminary judgement had been handed down to suspend the appointment and which had not yet been implemented.

On 19 September 2021, the Court of Appeal issued a decision accepting the appeal filed by the Southern Judges Club, as well as returning the case file to the Administrative Court of First Instance to decide on the case, as it is competent to look into the matter.

Acting as the Government lawyer, the Ministry of Human Rights and Legal Affairs challenged the decision of the administrative court of appeal considering that the Supreme Court should indeed be involved but through its Administrative Division and not the Constitutional one.

On 11 October, the administrative court of first instance in Aden decided to stop the implementation of Presidential Decree 4/2021 and instructed the Central Bank, the First Attorney General (Deputy of the Attorney General in Yemeni legal terminology) and any other public body from taking action based on instruction from the Attorney General until the issue is resolved.

On 1 November 2021, the Attorney General's private counsel filed a case before the Administrative Court in Aden to dismiss the case and asked that the presiding judge be removed from any case regarding the President's Decision

No. (4) of 2021.

On 7 December 2021 the Ma'rib Administrative Court of First Instance issued a decision that, according to the Southern judges Club, lacked legal basis and jurisdiction for the summary judgment issued by the Administrative Court of First Instance in Aden until the ruling on the lawsuit filed by the Southern Judges Club.

On 9 January 2022 the first instance Administrative Court in Aden confirmed that the Attorney General appointment was of no effect and that all public institutions have to disregard his requests and instructions.

According to the information received, Mr. Al-Mousai was unable to take up his post in Aden and his office has been forcibly closed by security personnel affiliated with the STC. The newly appointed Attorney General continues to work from a secure location in the East of the country and to withdraw large amounts from the Central Bank account of his Office. All Government bodies, including the Government, the offices of the Prime minister and the Central Bank recognise the appointment made by the President, and provide full access of funds and support to the appointed Attorney General.

This appointment takes place against a background of protracted criticism by Judges affiliated with the Southern Judges Club and the Yemeni Judges Club regarding the deteriorating status and declining independence of the judiciary and the judicial system. Concerns include:

- Allegations that appointments of members of the Supreme Judicial Council are not made on the basis of the experience and qualifications of the candidates/concerned individuals
- Lack of a medical insurance scheme for judges (with COVID aggravating this situation).
- Insufficient personal protection measures, including vehicles for judges
- Negative impact in the salary of the judges and their purchasing power since the Yemeni Riyal dropped in 2021 vis-a-vis the USD from 700 to 1700, which remain unaddressed.
- Allegations on the lack of transparency in the management of funds by the Supreme Judiciary Council; and possible embezzlement or misuse of these funds.
- Alleged sanctioning of judges and prosecutors with the withholding of their salary without following the legal procedure that requires the involvement of the Judicial Inspectorate.

Without prejudging the accuracy of this information, I am concerned over the allegations regarding the appointment of the Attorney General, as the information received would seem to show the appointment did not follow the legislation in the country, a fact that has brought about a strike in the Judiciary for over a year.

Additionally, I am concerned that the described events in connection to the impact of the strike on individual's right to access to justice and an effective remedy. may constitute a violation of the right to fair trial for the people of Yemen. The right to a fair trial is a key element of human rights protection and serves as a procedural

means to safeguard the rule of law. International human rights standards, for example those included Article 14 of the Covenant on Civil and Political Rights, aim at ensuring the proper administration of justice, and to this end guarantee a series of specific rights. A strike in the Judiciary of the magnitude described limits everyone's access to justice. For example, it brings about delays in both civil and penal cases. It negatively affects the safeguards in place to ensure due process and to protect from torture and may lead to increased overcrowding in places of deprivation of liberty.

As they relate to the administration of justice, I take note with concern as well of the complaints mentioned regarding the conditions of work in the Judiciary of the country and disregard of court decisions by authorities while armed personnel allegedly become involved to prevent access to places of work and enforce a lockdown.

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 my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information or comments regarding the above allegations.
2. Please provide information regarding the measures taken to address the concerns that have brought about the strike in the Judiciary.
3. Please provide information on measures taken in Yemen to ensure that appointments to the post of General Prosecutor meet legislative requirements.
4. Please provide information on measures taken to ensure access to justice in the country in light of the long-standing strike.

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

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

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

Annex

Reference to international human rights law

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

The independence of the judiciary and the right to a fair trial are prescribed, *inter alia*, in the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Yemen on 9 February 1987; and article 10 of the Universal Declaration on Human Rights.

Article 14 of the ICCPR establishes the right to fair proceedings before a competent, independent and impartial tribunal established by law. In this regard, General Comment No. 32 (2007) of the United Nations Human Rights Committee notes, in paragraph 2, "the right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law. Article 14 of the Covenant aims at ensuring the proper administration of justice, and to this end guarantees a series of specific rights".

A strike by the Judiciary for any length of time affects the right to a fair trial as it touches upon the access to the administration of justice in the country. As noted by the Human Rights Committee: "access to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived, in procedural terms, of his/her right to claim justice" (Paragraph 9, General Comment No. 32 (2007)).

Further elements of concern are related to intimidation and intrusion in judicial proceedings, as well as undue delays. The Committee indicates that "the notion of fair trial includes the guarantee of a fair and public hearing. Fairness of proceedings entails the absence of any direct or indirect influence, pressure or intimidation or intrusion from whatever side and for whatever motive (paragraph 25). The right of the accused to be tried without undue delay, provided for by article 14, paragraph 3 (c), is not only designed to avoid keeping persons too long in a state of uncertainty about their fate and, if held in detention during the period of the trial, to ensure that such deprivation of liberty does not last longer than necessary in the circumstances of the specific case, but also to serve the interests of justice.(General Comment No. 32, para 35).

The Basic Principles on the Independence of the Judiciary (adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985) provide there shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law (principle 4).

The Guidelines on the Role of Prosecutors, (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Havana, Cuba, 27 August to 7 September 1990), in principle 1, indicate that “persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications”. They also provide that States will ensure that “prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law”.