

DRAFT FINAL REPORT



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Submitted by the Lead Consultant

to the

East Africa Law Society

for

**The Development of a Rule of Law Index for the East African Region for
the period January 2022 to July 2023**

30th June 2024

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LIST OF ACRONYMS

1. KENYA

CAS	Chief Administrative Secretaries
CDF	Constituency Development Fund
CPC	Criminal Procedure Code
DPA	Data Protection Act, 2019
EACCA	Ethics and Anti-Corruption Act
HCJ	High Council of the Judiciary
ICCPR	International Covenant on Civil and Political Rights
ICJ-K	International Commission of Jurists - Kenya
IEBC	Independent Electoral and Boundaries Commission
IPOA	Independent Policing Oversight Authority
JSC	Judicial Service Commission
KICA	Kenya Information and Communications (Amendment) Act
LSK	Law Society of Kenya
MCA	The Media Council Act, 2013
NCSA	National Cyber Security Authority
NPPA	The National Public Prosecution Authority
ODPC	The Office of Data Protection Commissioner
PPAD	The Public Procurement and Asset Disposal Act, 2015
SCOK	Supreme Court of Kenya

2. RWANDA

BFP	Budget Framework Paper
CSO	Civil Society Organizations
DPA	Data Protection and Privacy Law
ICCPR	International Covenant on Civil and Political Rights
MAJ	Access to Justice Bureaus
MAP	Methodology for Assessing Procurement Systems
NCSA	National Cyber Security Authority
NPPA	National Public Prosecution Authority
PAC	Parliamentary Accounts Committee
PPP	Private Public Partnerships
RGB	Rwanda Governance Board
RIB	Rwandan Investigation Bureau

3. SOUTH SUDAN

IIAG	Ibrahim Index of African Governance
ICCPR	International Covenant on Civil and Political Rights
ICC	International Chamber of Commerce
CTHR	Commission of Truth Reconciliation and Healing
UNMISS	United Nations Mission in South Sudan
UNDP	United Nations Development Programme
GI-TOC	Global Initiative Against Transnational Organized Crime
AU	African Union

R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan
SPLM	Sudan People’s Liberation Movement
SPLM/OI	Sudan People’s Liberation Movement –In Opposition
CRA	Compensation and Reparation Authority
SSOA	South Sudan Opposition Alliance

4. TANZANIA

PDRA	Public Procurement Regulatory Authority
CAG	Controller and Auditor General
PAC	Public Accounts Committee
LAAC	Local Authorities Accounts Committee
JSC	Judicial Service commission
TLS	Tanganyika Law Society
PCCB	Prevention and combating of Corruption Bureau
CSOs	Civil Society Organization
NGOs	Non-governmental Organization
PDPC	Personal Data Protection Commission

5. UGANDA

ADF	Allied Democratic Forces
ASF	Avocats Sans Frontiers
COSASE	Committee on Commissions, Statutory Authorities and State Enterprises

CSO	Civil Society Organization
DRC	Democratic Republic of Congo
DRDIP	Development Response to Displacement Impacts Project
EACOP	East Africa Crude Oil Pipeline
ECCMIS	Electronic Court Case Management Information System
FDC	Forum for Democratic Change
GCIC	Government Citizen Interaction Centre
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
NGO	Non-Governmental Organization
NUP	National Unity Platform
OHCHR	United National Human Rights Office of the High Commissioner
PPDA	Public Procurement and Disposal of Public Assets
PWDs	Persons with Disabilities
STAAC	Strengthening Action Against Corruption
UHRC	Uganda Human Rights Commission
UHRNJ	Uganda Human Rights Network for Journalists
ULS	Uganda Law Society
URA	Uganda Revenue Authority
WJP	World Justice Project

Executive Summary

The Project

The East Africa Law Society (EALS) is a regional bar association for the East Africa region. One of its core mandates is to monitor and enhance the Rule of Law within the East African Community. This mandate forms part of the Fundamental Principles of the East African Community as provided in the Treaty for the establishment of the East African Community (the treaty). Accordingly, the EALS commissioned the development of the Status of Rule of Law Report for all Partner States of the East African Community. The 1st Report covered the period between January 2020 to July 2021. It focused on seven key Rule of Law parameters in the region and their status, taking stock of the developments, progress or regression in the status of the Rule of Law in Partner States.

In a bid to continue with the monitoring process of adherence to the Rule of Law, the EALS commissioned the 2nd Rule of Law Index report for the period of January 2022 to July 2023. This time, the report focused on four parameters identified as the Fundamental and Operational Principles of the Community. These are good governance; access to justice; corruption and fundamental rights and freedoms. The Report aims to be a measurable and credible Index with a highlight of the areas for reform and improvement.

The 2nd Report seeks to build on the findings of the 1st Report. It does this through comparing the rule of law in legislation and the lived experiences of key stakeholders. It entails a review of locally relevant indicators; multi-stakeholder approach; and country specific data. The 2nd Report was developed through extensive desktop research supplemented by limited field research entailing administration of questionnaires to key stakeholders in the capital cities of Partner States to enhance credibility.

Impact of the Project

Overall, the project appears to have a positive impact in achieving the EAC and EALS shared mandate. The research exposed the low adherence to the rule of law in various states revealing the need for more improvement.

The essential impact of the index is that it will identify and expose areas where Partner States can take on a targeted measures to ensure adherence to the Rule of Law. This will enhance compliance with the provisions of the treaty and overall certainty and stability in the Partner States.

Overview of Methodology

Introduction

The East Africa Law Society (EALS) Rule of Law Index plays a crucial role in evaluating the legal environment and judicial effectiveness within the East Africa Community states. This summary outlines the methodology utilized in developing the index, which primarily involves thorough desktop research supplemented by limited on-the-ground field research.

Desktop Research

Building on the 1st Rule of Law report, our desktop research method entailed meticulously gathering, analyzing existing data and literature from publicly available sources. This phase encompasses a wide range of materials, including legal databases, academic papers, government reports, international organization publications, and reputable news sources.

We carefully examined various legal indicators, such as legislative frameworks, court judgments, legal precedents, policies and reforms efforts. The collected data undergoes rigorous scrutiny to uncover trends, patterns, and disparities within the legal systems across different East African jurisdictions.

To ensure accuracy and reliability, findings from desktop research are cross-referenced across multiple sources.

Field Research

The desktop research was supplemented with limited field research involving first-hand data collection through interviews, surveys, and direct observation. Its primary objective is to complement desktop findings by providing qualitative insights through the lived experiences of legal practitioners, policymakers and other stakeholders within the East Africa Community states.

We strategically select diverse participants, including judges, lawyers, government officials, civil society representatives, and members of the public.

Various data collection techniques, such as structured interviews, focus group discussions, and participant observation, are employed during field research.

Qualitative data gathered undergoes thematic analysis to identify recurring themes, opinions, and challenges within the legal systems.

To enhance comprehensiveness and credibility, findings from field research are compared and triangulated with desktop research data.

Below is a table of that demonstrates the areas where the Consultants agreed to focus their field research:

	Country	Proposed Cities for Field Research/Case Studies	Tentative key stakeholders to be interviewed
1	Tanzania	<ul style="list-style-type: none"> • Dar es Salaam (ground transport required) • Dodoma (Travel required) • Zanzibar(travel required) • Arusha(travel required) • Mwanza (Travel required) 	<ul style="list-style-type: none"> • General population (as per the identified sample) • Legal practitioners- which shall include practicing and non-practicing lawyers • Members from academia • Members of the judiciary- active sitting on the bench and retired • Government officials from identified ministries/ agencies • Members from identified Non-Governmental Organizations and CSOs.
2	Kenya	<ul style="list-style-type: none"> • Nairobi (minimal travel required) • Kisumu (Travel required) • Mombasa (Travel required) 	<ul style="list-style-type: none"> • Legal Practitioners • Law Society of Kenya branches in Kisumu, Nairobi & Mombasa • Community Organisations such as Kituo Cha Sheria, Muhuri • The Judiciary • The County Commissioner, Kisumu • Regional Police Commanders

			<ul style="list-style-type: none"> • Relevant academics
3	Uganda	<ul style="list-style-type: none"> • Kampala • Gulu • Jinja • Masindi • Kabale • Kabarole <p>(Districts with ULS Pro Bono offices)</p>	<ul style="list-style-type: none"> • Sample members of the public. • Practicing Advocates (Lawyers). • Officials of Government entities. • Officials of Civil Society Organizations / NGOs. - Chapter Four Uganda; Defenders Defenders; Initiative for Social and Economic Rights (ISER); Unwanted Witness Uganda; Center for Public Interest Litigation (CEPIL); Human Rights Network for Journalists – Uganda (HRNJ – U); Norwegian Refugee Council (NRC) – Uganda; The Private Sector Foundation Uganda (PSFU); The Advocates Coalition for Development & Environment (ACODE); Anti – Corruption Coalition Uganda (ACCU); The Civil Society Budget Advocacy Group (CSBAG).
4	South Sudan	<ul style="list-style-type: none"> • Juba – Central Equatoria State • Wau – Warrap • Bor – Jonglei 	<ul style="list-style-type: none"> • Judicial officers • Law practitioners • Public officers selected MDAs • Police • CSO members • Traditional authorities • Academics
5	Burundi	<ul style="list-style-type: none"> • Bujumbura (minimal travel required) 	<ul style="list-style-type: none"> • Legal practitioners • Legal order of Bujumbura

		<ul style="list-style-type: none"> • Gitega (Travel required) • Ngozi, to be confirmed (Travel required) 	<ul style="list-style-type: none"> • Legal order of Gitega • Members of the judiciary • Government officials from the Ministry of justice and Ministry of National Solidarity, Social Affairs, Human Rights and Gender • Relevant experts in academia and within NGOs
6	Rwanda	Musanze (Travel required) Huye (Travel required)	<ul style="list-style-type: none"> • Legal practitioners • Legal Aid Musanze branch • Legal Aid Huye branch • Any relevant institutions

Limitations

Funding and time constraints necessitate limited field research in the capital cities and an extensive reliance on desktop research. As such, the results may mirror what happens in the capital cities and not in the rural areas.

Additionally, the project was designed by a common-law framework lawyer while some of the jurisdictions are civil law jurisdictions and this may skew the conclusions drawn.

Finally, the report in investigating the rights of the accused, does not focus on the whole criminal justice system, specifically, pre-arraignment procedures are not considered.

Integration and Report Generation

Data from both desktop and field research phases are synthesized to develop comprehensive indicators and rankings for the EALS Index. The findings are compiled into a detailed report offering a comprehensive assessment of the legal landscape in East Africa, highlighting strengths, weaknesses, opportunities, and threats.

Based on these findings, the report may include recommendations for legal reforms, policy interventions, and capacity-building initiatives aimed at strengthening the rule of law and improving access to justice in the region.

Conclusion

The methodology adopted for the EALS Index combines rigorous desktop research with insightful field investigations to provide a holistic evaluation of the legal environment in East Africa. By leveraging both quantitative and qualitative data, the index offers valuable insights for policymakers, legal practitioners, and stakeholders, facilitating legal reforms and enhancing the rule of law across the regio

CHAPTER 1: GOOD GOVERNANCE

1. BURUNDI

The research on this parameter focused on enforcement of court orders, the framework for privatization programmes, limitation of government powers, public participation of citizens in policy and law making as well as regulatory enforcement. We reviewed the legal framework and its practical application but were faced with challenges with accessing information for the review period, and this is a key limitation.

i. Enforcement of court orders

During the review period, there are no reports of unenforced court orders and decrees against the government. At the regional level, some judgments against the government of Burundi have been rendered by the East African Court of Justice. There is however no publicly available information as to whether these have been enforced or not.¹

ii. Expenditure, Disposal and Privatization

The rules under the law on public procurement² in Burundi are built on “*principles such as freedom of access to the public order, equal treatment of candidates, transparency in the procedures for purposes of efficiency, effectiveness and economy in the management of the public procurement, independent of the amount*”³. Furthermore, art.15 of the Law N.01/04 of 29, January 2018 provides for institutions in charge of the management, monitoring and regulation of public procurement.

Though seen as one of the main characteristics of government budget management for which it is vital to make sure that it is monitored as needed, public procurement faces a number of challenges in Burundi.⁴ These include the slowness of procedures for passing public procurement, corruption, lack of transparency, inadequate skills and

¹ See cases before the East African Court of Justice

² Law N.01/04 of 29 January 2018 revising Law N.1/01 of 04/02 2008 on public procurement:

<https://armp.bi/files/Lois/Code_des_Marchs_Publics_rvis.PDF>

³ Art. 11 of Law N.1/04 of 29 January 2018 amending Law N.1/01 of 14 February 2008 on the Code of Public Procurement: <https://armp.bi/files/Lois/Code_des_Marchs_Publics_rvis.PDF >

⁴ Journal Iwacu, ‘PARCEM : Renforcer la gouvernance budgétaire pour assurer la relance économique’, (2023)

<<https://www.iwacu-burundi.org/parcem-renforcer-la-gouvernance-budgetaire-pour-assurer-la-relance-economique/>> Accessed 12 December 2023.

performance on the part of public procurement officers, lack of independence on the part of the regulatory authority, etc.⁵

A representative of the public procurement authority in Burundi confirmed that transparency is still a challenge that can be addressed “...by setting up an electronic platform that it will be possible to try to spread out public procurement data”⁶.

At the EAC level, Burundi has been ranked last with regards to transparency of public procurement. The EAC also recommends the introduction of a contract management platform and the dematerialization of procedures, where Burundi is still lagging behind⁷.

iii. Privatization

In 2012, Burundi adopted a law on the privatization of state-owned companies which provides for the establishment of the Organization in charge of the implementation of the privatization programme as well as monitoring all the related operations. This is the “Inter-ministerial Committee of privatization” which draws its members from different Ministries.⁸ Moreover, that Committee collaborates with other services which ensures a technical role.

The Committee adopts the list and action plan of the privatization of state-owned companies (submitted by the technical service) and adopts a strategy and technical notes on such privatization. Furthermore, the Committee prepares a biannual report of the privatization of public owned companies that it submits to the Parliament.

The Committee is responsible for the national programme of communication that explains to the general public as well as to potential takeovers about the ongoing privatization programme.⁹

⁵ Journal Iwacu, ‘Le Burundi peine à assainir le secteur des marchés publics’ <<https://www.iwacu-burundi.org/le-burundi-peine-a-assainir-le-secteur-des-marches-publics/>> Accessed 12th December 2023.

⁶ Félix Haburiyakira & Jérémie Misago, ‘Le Burundi peine à assainir le secteur des marchés publics’ (Journal Iwacu, 10 December 2023) <<https://www.iwacu-burundi.org/le-burundi-peine-a-assainir-le-secteur-des-marches-publics/>> accessed 13 December 2023.

⁷ *Idem*

⁸ See art.5, Loi N°1/ 01 du 09 février 2012 portant Révision de la Loi N°1/ 03 du 19 février 2009 relative à l’Organisation de la Privatisation des Entreprises à Participation Publique, des Services et des Ouvrages Publics <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Loi-2012-privatisation-des-entreprises.pdf>

⁹ See art.7, Loi N°1/ 01 du 09 février 2012 portant Révision de la Loi N°1/ 03 du 19 février 2009 relative à l’Organisation de la Privatisation des Entreprises à Participation Publique, des Services et des Ouvrages Publics <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Loi-2012-privatisation-des-entreprises.pdf>

This law at art. 17 further stipulates that calls for tenders must be largely published within the media in Kirundi and in French. It enumerates the whole process of privatization from the preparation of call for tenders, to its evaluation and the nature of the potential takeover, be it a physical or moral person (art.16). Finally, art.22 confirms that the whole process is funded “*by a special Fund supplied by five per cent deducted from annual state dividends in public owned companies, from production of privatization and liquidation or donor funding*”.

Although there are challenges in practice, Burundi is in the process of privatizing a number of state owned entities such as *Mutuelle de la Fonction Publique(MFP)*, *l’Office Nationale des Télécommunications (ONATEL)* or even the *régie de production et de distribution de l’eau de l’électricité (Regideso)*¹⁰.

iv. Limitation of government powers

o Budget approval

The Ministry of Finance prepares the budget on government expenditures and then submits it to the National Assembly for assessment and approval in accordance with the Constitution of Burundi. The budgetary year starts on the 1st of July and ends on the 20 June of the following year. If the National Assembly has not decided by the 30 June, the budget of the previous year is provisionally adopted in twelfths.¹¹

o Independent Auditor on government expenditure

Budget transparency is one of the main and conditional features of good governance. The Court of Auditors, “*La Cour des comptes*” is the independent organ in charge of reviewing government expenditure¹².It examines, makes a judgement and certifies the accounts of all public services. The Court also supports Parliament in the monitoring of the implementation of the law of finances, including the budget. The Court of Auditors submits to the Parliament a report on the consistency of the state’s overall accounts and confirms whether the funds were used in accordance with established

¹⁰ Dona Fabiola Ruzagiriza, ‘Les entreprises publiques dans le viseur du Président’ (*Journal Burundi Eco*, 8 January 2021) < <https://burundi-eco.com/entreprises-publiques-dans-viseur-du-president/> > accessed 10 November 2023.

¹¹ See art.182 of the Constitution of Burundi, 2018.

¹² See art.183 of the Constitution of Burundi, 2018.

procedures and the budget approved by Parliament. (Art.118-119)¹³. Reports of the Court of Auditors are all publicly accessible online.¹⁴ Stakeholders in the sector have however cited that the Court's audit role has been limited due to insufficient resources allocated to budgetary control structures.¹⁵

The International Budget Partnership has ranked Burundi 108 out of 120 countries in 202.¹⁶

o **Oversight mechanism**

In Burundi, Parliament (the National Assembly¹⁷ and the Senate¹⁸) has a mandate to exercise oversight on government expenditure through its permanent committees such as the Finance and Budget Committee. Although reportedly not very active in its oversight role, Parliament has all rights to enquire and request clarification, and ask oral or written questions with regard to government budget management.¹⁹ One of the critiques of the process is that the Ministry of Finance delays in presenting the project of law on the budget to be voted on, which leaves the National Assembly little time to examine its content.²⁰

A key recommendation in order to improve the process is that Parliament ought to allow members of the public and civil society organizations to testify during its hearings on the budget proposal prior to its approval; as well as during its hearings on the Audit Report.²¹

¹³ See art.118-119 of Law n°1/002 of 03/31/2004 on the creation, missions, organization and functioning of the court of auditors: <<https://www.burundiembassy-germany.de/content/articles/business-info/courdescomptes.pdf>>

¹⁴ Institut Supérieur de contrôle des finances publiques : <<https://courdescomptes.bi/2019/08/16/rapports-publics-annuels/>>

¹⁵ Journal Iwacu, 'PARCEM : Renforcer la gouvernance budgétaire pour assurer la relance économique', (2023) <<https://www.iwacu-burundi.org/parcem-renforcer-la-gouvernance-budgetaire-pour-assurer-la-relance-economique/>> Accessed 12 December 2023.

¹⁶ Open Budget Survey 2021- Burundi Country summary: <<https://internationalbudget.org/sites/default/files/country-surveys-pdfs/2021/open-budget-survey-burundi-2021-en.pdf>>

¹⁷ Assemblée Nationale du Burundi, 'Les commissions permanentes', <<https://www.assemblee.bi/spip.php?rubrique29>> Accessed on 10 December 2023.

¹⁸ Sénat de la république du Burundi, 'Les commissions permanentes', <<https://www.senat.bi/les-commissions-permanentes/>> Accessed on 10 December 2023.

Assemblée Nationale du Burundi, 'Les commissions permanentes', <<https://www.assemblee.bi/spip.php?rubrique29>> Accessed on 10 December 2023.

¹⁹ Observatoire de l'Action Gouvernementale, 'Budget Général de l'Etat : Bref aperçu des lacunes et propositions de solutions' (2014),

http://www.oag.bi/IMG/pdf/Les_lacunes_budgetaires_et_propositions_de_solutions.pdf Accessed on 10 December 2023.

²⁰ Journal Iwacu, 'Des lois budgétaires viciées' (2022), <<https://www.iwacu-burundi.org/des-lois-budgetaires-viciees/>> Accessed on 10 December 2023.

²¹ Open Budget Survey 2021- Burundi Country summary: <<https://internationalbudget.org/sites/default/files/country-surveys-pdfs/2021/open-budget-survey-burundi-2021-en.pdf>>

o **Oversight mechanism for the police**

There is an oversight mechanism for the police in Burundi. The “*Inspection générale de la sécurité publique et de la gestion des catastrophes*”, (General Inspectorate of Public Security) is one of the structures within the Ministry of Home Affairs, Public Security and Local Development and its main mission is to have oversight on all services which emanate from this Ministry. Moreover, it is empowered to receive complaints and denunciations from the citizens and the public.

This oversight mechanism is however a part of the executive and most cases are resolved internally. It therefore cannot be considered as independent. Additionally, some view the oversight mechanism as inefficient since it is unknown by the public and by police officers themselves, for the reason that there is very little information available as to the number of complaints it has already received.²²

v. **Public Participation**

The Constitution provides that, “*every Burundian has to participate, directly or indirectly, through its representatives, in the leadership and management of the country, subject to statutory conditions such as age and capacity*”.²³ Therefore, the legislative is broad with regards to public participation in law and policy making.

At the local level, the public is represented by government structures from the hill level to the provincial level. As the national level, citizens are represented by the Parliament, deputies and senators, who have an active role in voting and adopting laws.

If one looks at the process of adoption of laws, the public is not directly consulted. Their voices are supposedly expressed through the Parliament²⁴.

A representative of a CSO with expertise in budget governance has advanced that public participation should be strengthened when it comes to the approval of the national budget, for instance. He argues that “it’s their money, it’s their right”. The

²² Willy Nindorera, ‘*La police nationale, le renforcement démocratique et la consolidation de la paix au Burundi*’ (2011), <<https://www.tandfonline.com/doi/full/10.1080/02255189.2011.583172>> accessed 10 January 2024.

²³ See art.51 of the Constitution of Burundi, 2018.

²⁴ Website of the Senate, ‘*Procédure d’examen d’un projet de loi*’ <<https://www.senat.bi/fonctionnement/procedure-dexamen-du-loi>> Accessed 13 December 2023.

budget should be drafted in a simplified language that allows all citizens to understand its content.²⁵

International Budget Partnership has ranked 100 out of 120 countries with 0 per cent for citizen participation in 2021.

vi. Regulatory enforcement

Statutory instruments, “*actes réglementaires*” are made by the president of the Republic “*through decrees countersigned, where appropriate, by the Vice-President and the Minister concerned*”²⁶. The government may request permission from the Parliament to issue decree-laws, for a limited period. If the decree law is not ratified by the Parliament, it becomes null and void.²⁷

Presidential decrees and ministerial orders are usually published online, either on the website of the Presidency²⁸, of the Ministry²⁹ as well as through media with regards to presidential and Ministerial decrees respectively. If a ministerial order concerns an institution, the Ministry disseminates the information.

Regulatory instruments do not go through a ratification process in parliament before adoption. These are also publicly and easily accessible.

²⁵Journal Iwacu, ‘*PARCEM : Renforcer la gouvernance budgétaire pour assurer la relance économique*’ (2023), <<https://www.iwacu-burundi.org/parcem-renforcer-la-gouvernance-budgetaire-pour-assurer-la-relance-economique/>> Accessed 13 December 2023.

²⁶ See art.108, of the Constitution of Burundi, 2018.

²⁷ See art.200 of the Constitution of Burundi, 2018.

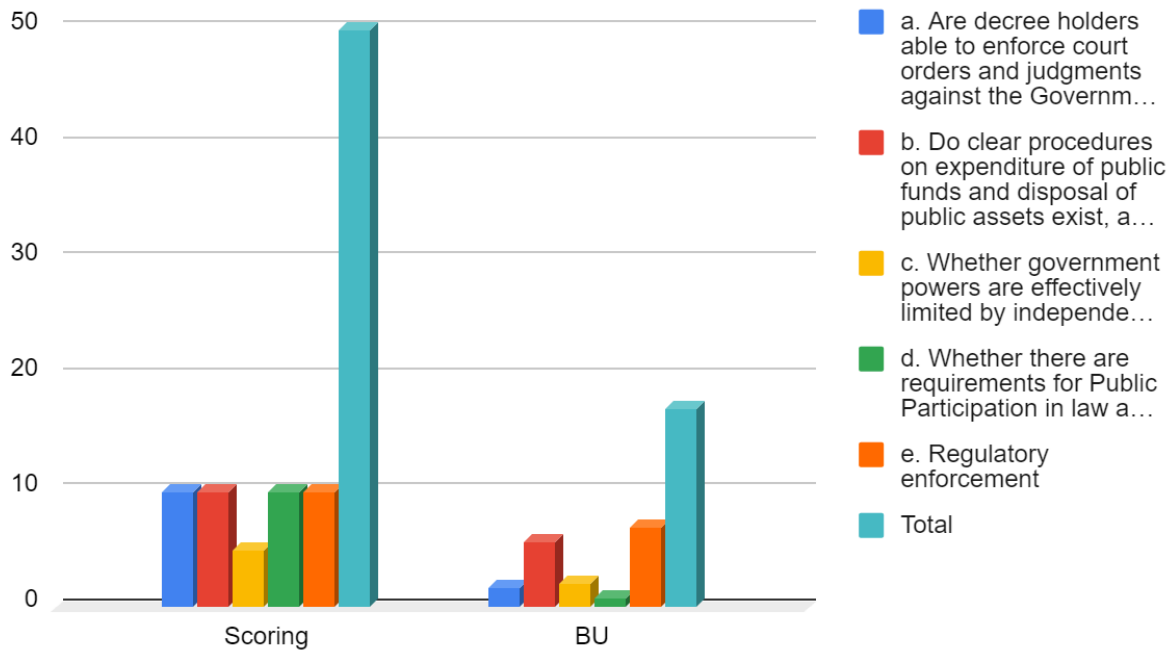
²⁸ Website of the Presidency: <<https://www.presidence.gov.bi/category/textes-legaux/decrets/decrets-2023/>>

²⁹ Website of the Ministry of Justice: <<https://burundi.justice.gov.bi/ordonnances/>>

Findings

Parameter	Indicators	Scoring (Marks)	BU
Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	1.75
	b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	5.75
	c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	2
	d. Whether there are requirements for Public Participation in law and policy-making and whether such public participation is reflected in legislation and policy	10	0.75
	e. Regulatory enforcement	10	7
	Total	50	17.25

Burundi good governance score chart



Recommendations

With regards to the above indicators, we recommend the following:

- i) Put in place a framework – including the setting up of an electronic platform– that allows transparency in the passing of public procurement laws/rules with a clear timeframe of the whole process to avoid corruption;
- ii) Promote adequate skills and performance of public procurement officers through capacity building and strengthening sessions;
- iii) Strengthen public participation in law and policy making by putting in place a clear and accessible procedure; for instance, by allowing the public and civil society organizations to participate in hearings on the budget proposal prior to its approval.

2. KENYA

During the Review Period, the most notable development was the election of H.E William Samoei Ruto further to the general election held on 9th August 2022. Though his election was disputed, the Supreme Court of Kenya delivered a judgment upholding President Ruto's victory in September of that same year.

i. Enforcement of Court Orders:

During the review period, compliance with court orders by Government for private parties was low. Court awards in the financial year ending June 2023 stated that historical awards against State ministries, departments and agencies climbed to an estimated Kshs 126.20 billion. Reportedly, the government had paid only Kshs 11 billion of those awards representing 9% of the arrears.³⁰

Some of the notable cases during this period are as below:

o The Ogiek Decision

On 23rd June 2022, the African Court on Human and Peoples' Rights entered judgement on reparations (compensation) payable to the Ogiek, an indigenous minority ethnic group by the government of Kenya. This followed its merit judgement delivered on 26th May 2017. Amongst others, the Court ordered that the government pays damages to the Ogiek in respect of material and moral prejudice suffered by that group. The Court also directed the government to recognize the group and to grant it title for its ancestral land.³¹ However, despite the recognition of the Ogiek's rights to the Mau Forest,³² this judgement is yet to be implemented and new evictions of the Ogiek are ongoing.

o The CDF Act, 2013

On 8th August 2022, the Supreme Court of Kenya delivered its judgement on the Constitutionality of the *Constituencies Development Fund Act, 2013* and the *Constituencies Development Fund (Amendment) Act No. 36 of 2013 (CDF Act, 2013)*.³³

³⁰ *The Business Daily*, Friday, 26th January 2024, page 4

³¹ Judgement is available at:

<https://www.african-court.org/cpmt/storage/app/uploads/public/62b/aba/fd8/62babafd8d467689318212.pdf>

³²

<https://www.amnesty.org/en/latest/campaigns/2023/06/ogiek-case-protection-of-an-indigenous-community-in-kenya/>

³³ *Institute for Social Accountability & another v National Assembly & 3 others & 5 others* [2022] KESC 39 (KLR).

The *CDF Act, 2013* allocates 2.5% of the national government’s ordinary revenue to constituencies for amongst others, community projects and infrastructural developments. It also establishes an oversight committee consisting of amongst others, the Constituency member of the National Assembly.

The Petitioners, the Institute for Social Accountability and the Centre for Enhancing Democracy and Good Governance, challenged these Acts for violating certain constitutional principles.

In its determination, the SCOK held that the *CDF Act, 2013* was inimical to the national values and principles of good governance as provided for in the Constitution. It held that some of the functions contemplated in section 3 of the *CDF Act, 2013* concerned County governments (*such as the community-based projects*) and the Amendment Act therefore ought to have been tabled before the Senate in accordance with section 96 of the Constitution for consideration. Further, that any decentralization of service delivery must be undertaken within the confines of the structures of the National and County governments. As such, any parallel structure participating in the sharing of national revenue whose location within the constitutional system was unclear violated the principles of division of revenue, prudent and responsible management of public funds contrary to articles 202 (1) and article 218(1)(a) of the Constitution. Additionally, the conflict of interest resulting from the inclusion of the Member of Parliament who was tasked with the implementation of the projects in the oversight committee violated the principles of accountability and integrity. The Acts were thus declared unconstitutional.

Despite this determination, the National Government continues to fund CDF and the funds continue to operate.³⁴

o ***The CAS decision***

On 3rd July 2023, a 3 Judge Bench of the High Court of Kenya delivered its determination on the constitutionality of the office of the Chief Administrative Secretary (“CAS”). The Public Service Commission had on 12th October 2022 invited

³⁴ <http://www.parliament.go.ke/node/19935>

applications for 23 CAS positions. After the interview process was finalized, the President nominated 50 persons for appointment, thereby unilaterally creating an additional 27 positions. These were sworn in on 23rd March 2023 when the matter was still pending in Court. Notably, this swearing in was after the National Assembly declined to vet the CAS on the basis that it did not have any constitutional authority to do so.³⁵ On 24th March 2023, the Court barred them from assuming office or receiving any remuneration until its determination.³⁶

In making its determination, which has been lauded as reaffirming the principles of constitutionalism and the integrity of democracy,³⁷ the Court was emphatic that public participation as a constitutional principle ought to be real and not illusory. That it was not a mere formality or a public relations act that ought to be both quantitative and qualitative. The Court thus held that the entire complement of the 50 CAS positions was unconstitutional for the reason that following the abolishment of the previous CAS office on 21st September 2022, the newly created office had to comply with constitutional principles and the criteria set out in the *Okiya case*.³⁸ It did not.

Conclusion

These cases demonstrate a low compliance with Court orders by the government, an action that undermines the Rule of Law.

ii. Expenditure, Disposal and Privatisation

Article 10 of the Constitution mandates public bodies to adhere to principles of good governance, integrity, equity, professionalism, value for money, transparency and accountability.³⁹ Article 201 (d) further provides for the principles of administration of public finance while article 227 emphasizes the need to achieve a standard public

³⁵ See for instance:

<https://www.citizen.digital/news/judiciary-now-says-it-did-not-preside-over-swearing-in-of-rutos-50-cass-n316832>

³⁶<https://www.standardmedia.co.ke/article/2001469601/high-court-stops-cass-from-assuming-office-receiving-salaries>

³⁷ ICJ Kenya Statement welcoming the High Court Judgement on the unconstitutionality of the 50 Chief Administrative Secretary (CAS) Positions, dated 5th July 2023 at <https://icj-kenya.org/wp-content/uploads/2023/07/Statement-on-the-H.C-declaration-on-the-unconstitutionality-of-the-CAS-position.pdf> (accessed on 22nd January 2024)

³⁸ *Okiya Omtatah Okiya & another v Public Service Commission & 73 others; Law Society of Kenya & another (Interested parties)* [2021] eKLR

³⁹ Civil Suit No. E044 of 2022: *Assets Recovery Agency v Flutterwave Payment Technology Ltd & 2 Others*.

procurement and asset disposal system that is fair, equitable, transparent, competitive, sustainable and cost effective.

Article 228 of the constitution sets up the Office of the Controller of Budget whose mandate is to authorize the withdrawal of public funds and to oversee how the national and county governments implement their budgets. These powers are exercised under *the Controller of Budget Act, 2016* and *the Controller of Budget Regulations, 2021*.

Article 229 of the Constitution and *the Public Audit Act, 2015* establish the office of the Auditor General whose mandate is amongst others to audit and report of the accounts of entities funded from public funds.

o **Legislative framework for expenditure and asset disposal**

The *Public Finance Management Act, 2012* underscores the fiscal responsibility principles in administration of public finances. The *Public Procurement and Asset Disposal Act, 2015* (*“the PPADA, 2015”*) on the other hand provides the framework for procurement and asset disposal that is in line with article 227 of the Constitution by upholding principles such as Transparency, Integrity, Openness, and Fairness. It provides policy interventions to address perennial concerns of mis-procurement, delayed payments, project delays, inflated costs and cost overruns, in order to achieve value for money. It has also established the *Public Procurement Regulatory Authority* which has oversight of public procurement and asset disposal.

The *PPADA, 2015* further delineates the role of the National Assembly, stipulates ethical and specific requirements for eligible bidding companies, and establishes procedures aligning with these guidelines to ensure fairness in this space. This comprehensive legislative structure serves as the foundation for addressing issues arising from procurement and asset disposal processes, forming the basis for legal recourse in relevant cases.

The *Public Private Partnerships Act, 2021* provides a framework for state departments, agencies or state corporations at the national or county governments to procure private entities to perform a public function or to provide a service which is to be

compensated from a public fund. The Act has established *the Public Private Partnership Committee*,⁴⁰ which is tasked with formulating policies on public private partnerships and oversees amongst others the implementation of such contracts.⁴¹

Despite this robust framework, mismanagement of public resources within the review period was rife. For instance, on or around 7th March 2023, the Controller of Budget, Dr. Margaret Nyakang'o, CBS testified before *the Parliamentary Public Petitions Committee* that just before the 2022 general elections, despite her reservations, Kshs. 15 Billion was approved, which could not be accounted for.⁴²

o **Legislative framework for privatization**

After Kenya's independence in 1963, the establishment of parastatals aimed to foster economic development. However, reviews in 1979 and 1982 exposed inefficiencies and financial mismanagement. In response, the government-initiated privatization in 1992, classifying 240 entities into non-strategic and strategic categories.⁴³ By 2002, most non-strategic enterprises had been privatized.

Under Vision 2030, privatization is viewed as the tool to enhance efficiency, competitiveness, and infrastructure development, contributing significant funds to national development goals.⁴⁴ During the review period, this process was governed by the *Privatization Act, 2005* which has since been repealed by the *Privatization Act, 2023*, enacted outside the review period. The *Privatization Act, 2005* had established the *Privatization Commission* which was tasked with formulating and executing the privatization program set out in Part III of the Act and which was published through the Gazette. Section 17 (2) of the Act required the Program to be approved by the Cabinet and section 25 set out a list of methods of privatization. Section 23 provided that the Commission would oversee proposals while section 24 provided what the contents of the proposals should be. Lastly, section 47 provided that the payment of proceeds from privatization would be paid into a consolidated fund. We were however

⁴⁰ Section 6, *public private partnerships Act, 2021*

⁴¹ Section 8, *public private partnerships Act, 2021*

⁴²<https://ntvkenya.co.ke/news/how-controller-of-budget-was-pressured-to-approve-kes-15b-spending-days-to-elections/> and

<https://nation.africa/kenya/news/uhuru-pressured-me-to-sign-off-on-sh15bn-payment-budget-boss-says-4149550>

⁴³ [Privatization Programme | The Privatization Commission \(pc.go.ke\)](https://www.pc.go.ke/privatization-programme)

⁴⁴ [Privatization Programme | The Privatization Commission \(pc.go.ke\)](https://www.pc.go.ke/privatization-programme)

unable to access any information regarding how much had been raised through this process for the review period.

iii. Limiting of Government Powers

Article 95(4)(c) of the Constitution grants the National Assembly the authority to oversee both national revenue and its expenditure. The public funded government agencies are tasked with providing reports and preparing budgetary reports to be approved by Parliament so as to enable them to receive government funding to operate throughout the fiscal year.

The schedule for the budget is typically outlined in the Treasury circular, as mandated by section 36 of *the Public Finance Management Act, 2012*. These circular offer guidance on the processes and procedures involved in preparing the upcoming financial year and the Medium-Term Budget.

Once funds are allocated, the *Auditor General* is mandated under Article 229 of the Constitution to audit and report on the use of public resources by all entities funded with public funds. The Auditor General is also empowered under the Constitution, *the Public Audit Act, 2015* and *the Public Finance Management Act, 2012* to assess and confirm whether public entities are using public resources entrusted to them lawfully. The reports prepared by the Auditor-general on each fiscal year are publicly available and accessible online.

Parliament also has a *Public Accounts Committee* which is tasked with scrutinizing the accounts of funds approved by the House for public expenditure, along with any other accounts presented to the House as deemed appropriate by the Committee. The Committee prepares reports which are readily available on its website.

iv. Police oversight

The *Independent Policing and Oversight Act, 2011* established the *Independent Policing Oversight Authority (IPOA)* which is mandated to provide oversight over the police. IPOA

is an independent entity⁴⁵ which is not subject to any person or authority.⁴⁶ It is also entitled to assistance and protection from government officers and institutions to ensure its effectiveness. Interference with the Authority's decision-making and operations is prohibited, and Parliament is tasked with securing adequate funding for its efficient functioning. A key limitation to its functions however, is that this independence does not extend to security of tenure outside Board Members who hold office for a term of six years.

IPOA publishes bi-annual performance reports detailing the number of investigations conducted, a comprehensive list of cases brought before courts and other essential details regarding their investigations in that period.⁴⁷ However, there is no consolidated information given on the outcome of these investigations and ensuing trials.

v. Public Participation

Article 1 of the Constitution provides for both participatory and representative democracy by declaring that all sovereign power belongs to the people and may be exercised directly or delegated to state organs. These organs can only perform their functions in accordance with the national values espoused in Article 10(2) which include; the Rule of Law, Participation of the people, and Democracy. It is these principles that ought to guide the legislative houses when making law.

Article 118 expressly provides that Parliament is mandated to conduct its proceedings openly, with both its sessions and committee meetings held in public view. This reemphasizes the principle of public participation set out in Article 10 of the Constitution. Article 174(c) of the Constitution also provides that one of the objectives of devolution is “*to give powers of self-governance to the people and enhance their participation in the exercise of the powers of the State and in making decisions affecting them*”. As such, the exclusion of the public from the making of law is generally prohibited, except where there are justifiable reasons to do so.

⁴⁵ Section 4, *Independent Policing and Oversight Act*, 2011

⁴⁶ Section 34, *Independent Policing and Oversight Act*, 2011

⁴⁷ [PERFORMANCE REPORTS | The Independent Policing Oversight Authority \(ipoa.go.ke\)](http://ipoa.go.ke)

Importantly, the different legislative houses have Standing Orders which provide for timelines for when public participation ought to be conducted. For instance: the National Assembly enacted Standing Order No. 127 which requires that after the first reading, a Bill is to be committed to a committee of the house which is to conduct public participation. Thereafter, the committee is tasked with preparing a report and giving its recommendations on the Bill for tabling before the whole house. The responses obtained are recorded and considered in the final bill. In Nairobi County for instance, the Petitions made by the public are kept and maintained in a register by the county secretary which is known as the Register of Petitions (*Section 19 of the Nairobi City County Public Participation Act*).

In undertaking this process, the Courts have cautioned that public participation “*ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfilment of the Constitutional dictates.*”⁴⁸ While the manner in which public participation is carried out depends on the matter at hand, any mode of undertaking public participation must factor, in the minimum, the following basic four elements:

- a. *Firstly*, the public be accorded reasonable access to the information which they are called upon to give their views on;
- b. *Secondly*, that the people be sensitized or be made to understand what they are called upon to consider and give their views on;
- c. *Third*, once the public is granted reasonable access to the information and is made to understand it, the public must then be accorded reasonable time to interrogate the information and to come up with its views; and
- d. *Fourth*, there must be a defined manner in which the public or stakeholders will tender their responses on the matter. There several tools which have been used for public participation, amongst them; Petitions by the public to the government (Article 119 of the Constitution), Submissions or Memoranda when the National Assembly is considering Bills, and public forums where members of the public can have face –to-face engagement with Members of Parliament and give their feedback.⁴⁹

⁴⁸ Odunga J in *Robert N. Gakuru & Others v Governor Kiambu County & 3 others* [2014] eKLR.

⁴⁹ *Kaps Parking Limited & another v County Government of Nairobi & another* [2021] eKLR.

In evaluating whether public participation is recorded effectively in legislation, we look to the case of *Finance Act, 2023*. In this case, one of the major issues raised was whether the public participation conducted was sufficient and whether the participation was implemented. The Court held that the National Assembly had adequately conducted public participation exercises through public meetings and written submissions. Records were used to show that some proposals were rejected while others were accepted and that all comments accepted were considered.

During the review period therefore, there was qualitative public participation in law and policy making in Kenya.

vi. Regulatory Enforcement

Article 94(5) of the Constitution confers power to make law on Parliament and the County Assemblies. Art 94(6) allows for legislation to confer power on State organs and State officers the authority to make subsidiary legislation. The legislation conferring such powers must delineate the limits of this power by expressly specifying: the purpose and objectives for which that authority is conferred; the limits of the authority; the nature and scope of the law that may be made; and the principles and standards applicable to the law made under the authority.

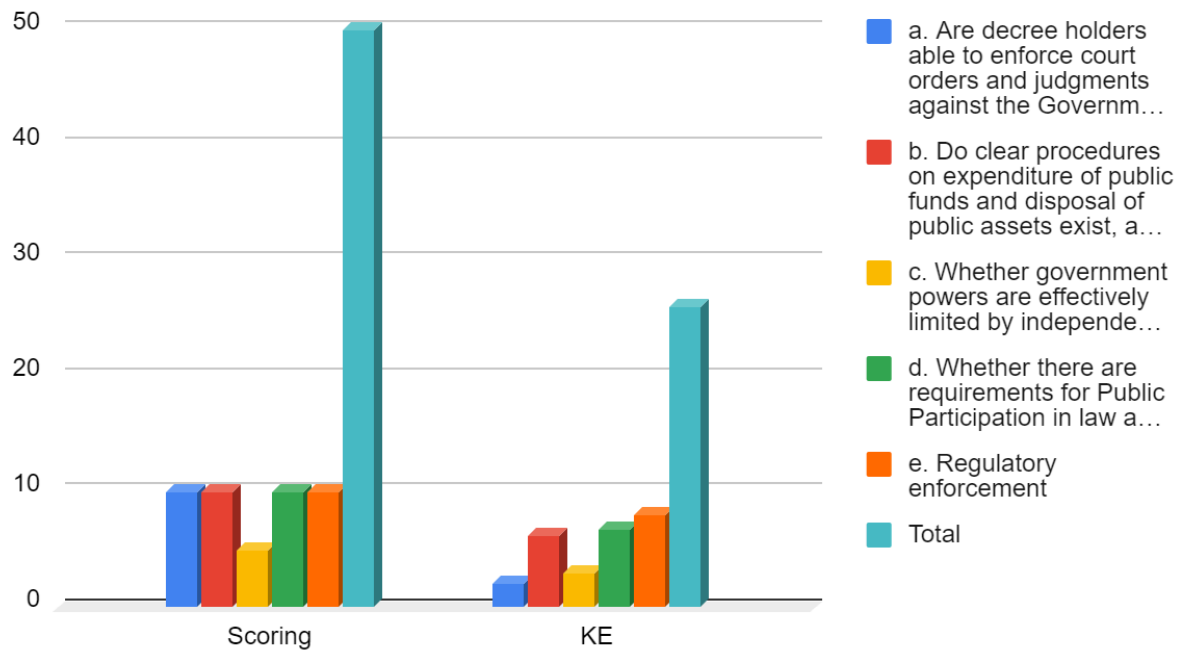
In practice and guided by *the Fair Administrative Act, 2015* certain salient features must be factored in when making any administrative action, amongst them; the clarity of rules, the right to be heard (S 4 (3 (b))), the right of appeal (S 4 (3(c))) and transparency in the form of public hearing (S 4). Judicial Review mechanisms allow for accountability as regards regulatory enforcement by allowing complainants to institute Judicial Review proceedings where a decision is either: illegal, unreasonable, ultra-vires, procedurally unfair or irrational.

All Regulatory enforcement/subsidiary legislation in Kenya are publicized and easily accessible.

Findings

Parameter (25% each)	Indicators	Scoring (Marks)	KE
Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	2
	b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	6.25
	c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	3
	d. Whether there are requirements for Public Participation in law and policy-making and whether such public participation is reflected in legislation and policy	10	6.75
	e. Regulatory enforcement	10	8
	Total	50	26

Kenya good governance score chart



Recommendations

- a) Government should promptly comply with court orders (more so decrees and orders on compensations) upon fulfillment of all procedural requirements for enforcement.
- b) There is a need for proper accountability for public funds in light of rampant corruption and flawed service delivery to the citizenry.

3. RWANDA

Rwanda, usually referred to as the land of a thousand hills, is applauded for its cleanliness and progressive development. It has made significant strides in economic growth and development since the tragic events of the 1994 genocide against the Tutsi. During the review period, a notable event is the preparations for the upcoming presidential elections in 2024.

Rwanda has a unique approach to governance which emphasizes transparency, accountability, consistency, and effectiveness. This is achieved through home grown initiatives such as: “*Imihigo*” also known as performance contracts set annually with specific targets that are set at different levels of government. These are rigorously monitored and evaluated by institutions like the National Institute of Statistics (2021/2022);⁵⁰ “*Meet the President*”, an annual intervention which allows direct interaction between the President and different stakeholders including the citizens, leaders, and members of different sectors; “*Umushyikirano*”, also known as the national dialogue council, which is an annual event which brings together citizens and leaders of different levels from top to local leaders to discuss national matters. This forum fosters a practice of dialogue and collective decision making ensuring that different voices are heard in the governance of the Country; and “*Umuganda*” also known as the tradition of community work. It involves members of the community coming together on the last Saturday of every month to work on public projects, such as building simple street roads, cleaning streets, cutting grass, and building schools, and health centers. This practice promotes community involvement, cleanliness, and social interaction.

These incentives ensure that the government consistently enforces the regulations, works efficiently, and is held accountable. The *Rwanda Governance Board* (“RGB”) plays a crucial role in the governance framework of the Country. It ensures that regulations are enforced uniformly across all sectors. It oversees and guides the

⁵⁰ National Institute of Statistics, Evaluation of Imihigo implementation, (2021/2022) available at: <https://www.statistics.gov.rw/publication/imihigo-20212022-evaluation-final-report> accessed on 22nd December 2023

practices within the structure of the Country's governance and consistently assesses the state of governance in Rwanda.⁵¹

i. Enforcement of Court Orders

The Constitution provides for the public's right to fair justice and fair trial. Rwanda has enacted regulations that allow and facilitate any party that wishes to seek judicial review for failure by government institutions to comply with court orders.

The law relating to the civil, commercial, labour, /and administrative procedures (section 2)⁵² provides that an administrative authority who fails to execute a court order may be summoned to the court that issued the decision to justify reasons for non-compliance upon request by the interested party. In practice, it is the head of the regulatory institution who gets summoned.

The World Justice index (2022)⁵³ ranked Rwanda as 2nd in Africa and 42nd globally out of 140 countries in relation to enforcement of court orders. This indicates the effective adherence of court orders by both the public and the government.

ii. Expenditure, Disposal and Privatisation

Rwanda has enacted measures to ensure the effective and transparent use of public funds. These include: proper budget allocation, monitoring of expenditure, and transparent procurement processes. All procurement is done in accordance with the governing law,⁵⁴ backed by strong policies and regulations as well as systems that ensure good procurement practices. According to a World Bank Report, Rwanda's procurement system is characterized by a consolidated legislative framework, effective control and audit systems, strong ethics, anti-corruption measures, and a fully functional e-procurement system, comparable to those in advanced economies.⁵⁵

Transparency International Rwanda also plays a pivotal role in promoting transparency in among others, public procurement.

In addition to a strong legislative framework, Rwanda has the UMUCYO online system, the official platform which has helped increase efficiency in procurement. The

⁵¹ Rwanda Governance Scorecard (RGS) 10th edition, RGB (2023) available at rgb.rw/index.php?eID=dumpFile&t=f&f=82565&token=229c2a694c5b465bec1f2622e04f33ee39430e25, accessed on 14/12/2023

⁵² LAW No 22/2018 OF 29/04/2018 Relating to the Civil, Commercial, Labour and Administrative Procedure.

⁵³ The World Justice index (2022), available at: <https://worldjusticeproject.org/rule-of-law-index/country/2022/Rwanda>

⁵⁴ Law N° 031/2022 of 21/11/2022 Governing Public Procurement

⁵⁵ MAPS 2022, Assessment of Rwanda's public procurement system, published in 2022 available on : <https://www.mapsinitiative.org/assessments/> accessed on 8/12/2023

requirement to use e-procurement includes the publication of tender opportunities and electronic submission and opening of bids.

Rwanda has also adopted systems in public procurement at various institutions e.g., at Rwanda Development Board (RGB), a notable cost-benefit analysis service-based IT procurement system, which aggregates and monitors printing practices. This system has led to a reduction in the purchase of office equipment by at least 70% thus a reduction on expenses of the public funds.

iii. Disposal of public assets

The disposal of Public Assets is regulated to ensure that it is carried out in a transparent, competitive, and fair manner. The procedure follows a Public Auction or public tenders which must comply with laws as well as regulations, policies, and instructions. For example, property disposals are carried out through UMUCYO online platform which is under the supervision of the National Procurement Authority.

The process also includes mechanisms for accountability, where the public procurement authority and other relevant bodies are required to keep records and report on the disposal process, ensuring that it can be audited and reviewed during the audit carried out by the Auditor General.

iv. Privatization

Rwanda recognizes the importance of the Private Sector involvement in the Country's development. Its legal regulatory framework provides for laws like the privatization law, investments, and the Public-Private Partnerships (PPP Law), which guide how the property of the government is placed in the hands of the private sector. Additionally, the government is mandated to ensure proper approvals for projects to align with the country's goals and adhere to established standards.

The existing privatization law was adopted in 1996. Rwanda has since undergone significant development and this has required an amendment to this law. Significant amendments include the separation of investments, privatization, and PPPs, and the establishment of different institutions to ensure proper supervision and approvals. However there has been critique that privatization is not sufficiently regulated. An example is the interview by Zigirababiri Protogene, a legal advisor of the Ministry of Government Investments with the *New Times* of August 2023.

Presently, Rwanda is in the final stages of adopting a new law which will repeal the 1996 law. The bill under consideration by Parliament proposes among others: establishment of a committee and transaction team; the process of privatization; the option of recalling; and further clauses that ensure transparency, fairness, inclusiveness, efficiency, sustainability, and value for money.

v. Limiting of Government Powers

o Preparation of budgets for approval by Parliament:

Budget preparation is governed by the law on public finance management.⁵⁶ The Parliament considers, gives its opinions and adopts the state budget for each fiscal year through a law. For the period of the study, the Parliament passed two laws approving the budgets, for the fiscal year 2021/2022⁵⁷ and for the fiscal year 2022/2023.⁵⁸

The Ministry of Finance and Economic Planning plays a vital role in preparation of the budget using *Imihigo*, to attain a performance-based budgeting with set targets for different institutions. On 3rd May 2023, the Minister of Finance and Economic Planning Dr. Uzziel Ndagijimana presented to both chambers of Parliament, the Budget Framework Paper (BFP) and medium-term budget estimates for 2023/24-2025/26.⁵⁹

Upon presentation of the budget, Parliament submits it to various relevant committees for detailed review and recommendations. These are sent back to the government to consider before approval by the Parliament. There is an active interaction between the legislative arm with the executive arm. This reflects the supervisory power of the legislative arm in the management and allocation of the public funds.

vi. Independent Auditor General and PAC

The law on Public Finance Management requires great responsibility from the Office of the Auditor General, Ministry of Finance and the Cabinet in managing public finances. It empowers Parliament, through its parliamentary committees to summon and

⁵⁶ Law N° 002/2022/OL of 12/12/2022, Organic law on public finance management.

⁵⁷ Law N° 031/2021 of 30/06/2021 determining the state finances for the 2021/2022 fiscal year N° 031/2021 du 30/06/2021.

⁵⁸ Law NO:019/2022 OF 30/06/2022, determining the state finances for the 2022/2023 fiscal year

⁵⁹ Parliament, government outlines spending priorities for 2023-24 available at: <https://www.minecofin.gov.rw/news-detail/government-outlines-spending-priorities-for-2023-24> Retrieved on 01/12/2023

examine parties on the use of the state budget. These bodies create checks and balances to ensure accountability, transparency, and limitation to the powers of the government in public finance management.

o **Office of the Auditor General**

The office of the Auditor General is an independent body which derives its powers from the Constitution of Rwanda. Article 166 of the Constitution requires the office of the Auditor General to, on an annual basis, submit to each chamber of Parliament a complete report on the consolidated state of accounts for the previous year indicating how the state budget was utilized.

Article 167 mandates the office of the Auditor General to: audit and present a report on the manner in which the budget was executed, unnecessary or unlawful expenditures, and whether there was embezzlement or squandering of public funds; and submit this audit report to the President of the Republic, the Cabinet, the President of Supreme Court and the Prosecutor General. The audit reports from the Office of the Auditor General are publicly accessible through the office of the Auditor General's website.⁶⁰

o **The Parliamentary Accounts Committee (PAC)**

The Rwandan Parliament is composed of the Senate and the Chamber of Deputies. Both Chambers have different committees that play a vital role in overseeing the actions of the government, including government expenditure. Parliament has established a Public Accounts Committee (PAC) which analyses the reports of accounts submitted by the Auditor General to ensure that government institutions use public funds in a proper manner. It has the authority to summon government officials for questioning and recommending actions based on their findings.

For instance, for the period of the study (2022/2023): PAC during the review of the Auditor's Report summoned 68 Public Institutions to explain the matters raised in the Report for the financial year ending June 2023. This demonstrates that regulatory institutions are not effectively enforcing the existing regulations to ensure effective utilization of the state budget. A few matters at hand are;

⁶⁰ Auditor General's Office, available at: https://www.oag.gov.rw/fileadmin/REPORTS/Annual_Audit_Report_2022.pdf accessed on 16th 12 2023.

- *The New Times*⁶¹ reported the findings for the public hearing of PAC that in the financial year ending on June 20th 2023, Rwanda Housing Authority management signed five contracts amounting to Rwf11.68 billion to implement different construction projects, all of which were not supervised. This is contrary to the regulations that require public procuring entities to conduct feasibility studies and hire supervision companies for all individual projects whose value exceeds Rwf50 million⁶²
- Further, *The New Times* (2023), reported that an audit by the Auditor General's report shows that in the financial year 2021/2022, the University of Rwanda ran 38 tenders worth more than Rwf8.8 billion, and 23 of them were awarded without compliance with the legislation.

vii. Independent and effective oversight mechanisms for the police

There is no independent oversight mechanism for the police. The police force works under the supervision of the Ministry of Interior and disciplinary matters are dealt through internal disciplinary procedures. However, the article 159 of the Constitution requires the National police to work hand in hand with other security agencies such as the Rwanda Defense Forces and the National Intelligence, and Security.

Generally, Rwanda's police has very minimal reported instances of misconduct. The bulk of the reports involve corruption which will be discussed under the parameter on corruption.

⁶¹Auditor General's Office, available at: https://www.oag.gov.rw/fileadmin/REPORTS/Annual_Audit_Report_2022.pdf accessed on 16th 12 2023; Article 11, Guidelines N° 001/RLRC/2022 of 18/10/2022 on legislative drafting Law N° 031/2021 of 30/06/2021 determining the state finances for the 2021/2022 fiscal year N° 031/2021 du 30/06/2021; Law NO:019/2022 OF 30/06/2022, determining the state finances for the 2022/2023 fiscal year Parliament, government outlines spending priorities for 2023-24 available at: <https://www.minecofin.gov.rw/news-detail/government-outlines-spending-priorities-for-2023-24>; MAPS 2022, Assessment of Rwanda's public procurement system, published in 2022 available on: <https://www.mapsinitiative.org/assessments/> accessed on 8/12/2023; Law No: 002/2022/OL of 12/12/2022, Organic law on public finance management. The World Justice index (2022), available at: <https://worldjusticeproject.org/rule-of-law-index/country/2022/Rwanda>; The new times (October 2023), PAC takes on housing authority over lack of regular supervision, available: <https://www.newtimes.co.rw/article/10563/news/housing/pac-takes-on-housing-authority-over-lack-of-regular-supervision>; Ministerial order N001/16/10/TC of 26/01/2016 relating to financial regulations. (Available at https://www.minecofin.gov.rw/fileadmin/user_upload/Minecofin/Publications/LAWS/Ministerial_Orders/Ministerial_Order_on_Financial_Regulations.pdf); Organic law no 12/2013/OL of 12/09/2013 on State Finances and Property (Available at https://www.migeprof.gov.rw/fileadmin/user_upload/Migeprof/Laws/The_Organic_Law_No._12-2013-OL_of_12-09-2013_on_State_Finances_and_Property.pdf); Public Financial Manual, July 2019, Available at https://www.minecofin.gov.rw/fileadmin/user_upload/Minecofin/Publications/REPORTS/Accountant_General/IPSAS_Implementation/New_PFM_Manual.pdf)

⁶² *The New Times*, 10th October 2023), PAC takes on housing authority over lack of regular supervision, available: <https://www.newtimes.co.rw/article/10563/news/housing/pac-takes-on-housing-authority-over-lack-of-regular-supervision>

viii. Public participation in the formation of laws

The process of legislative drafting includes both direct and indirect involvement of the public. Generally, the power to propose amendments, repeals, or formation of laws is vested in the line Ministry. For laws proposing the amendment of the Constitution or in instances where a referendum is needed, the public directly signs petitions and votes publicly.

The line Ministry works with stakeholders, CSOs, including the public to get the public's perspectives. The Rwanda Bar Association is relied on to acquire lawyer's perspectives.⁶³

Guidelines on legislative drafting (Art 11)⁶⁴ require that the line Ministry carries out research prior to proposing a bill. The line Ministry thereafter submits a Report to Parliament demonstrating: the institutions and people that were contacted during the research; the opinions that were provided; the opinions that were accepted; and the opinions that were rejected together with the ministry's justifications for rejection.

Examples of a major law that was amended and which reflects the people's voice is the law governing labor. In its amendment increasing paternity leave day to 7 days, the petition was brought by the Rwanda Men's Resource Centre and Rwanda civil society platform The new Times (2023).⁶⁵ Another is the amendment to the law governing companies in Rwanda of 2021 and 2023.

Despite the strides in public participation, much effort is needed in sensitizing the citizens on their right to participation in policies that affect them.

Recommendations

- i. Conduct public education programs on the importance of budget integrity and the consequences of misallocation.
- ii. Rwanda should focus more on projects that are directed towards sensitizing the public in policy making participation.

⁶³ For example, an email of 14th April 2023 addressed to lawyers from the Rwandan Bar Association requests for opinions on the draft law governing contractual and non-contractual obligations.

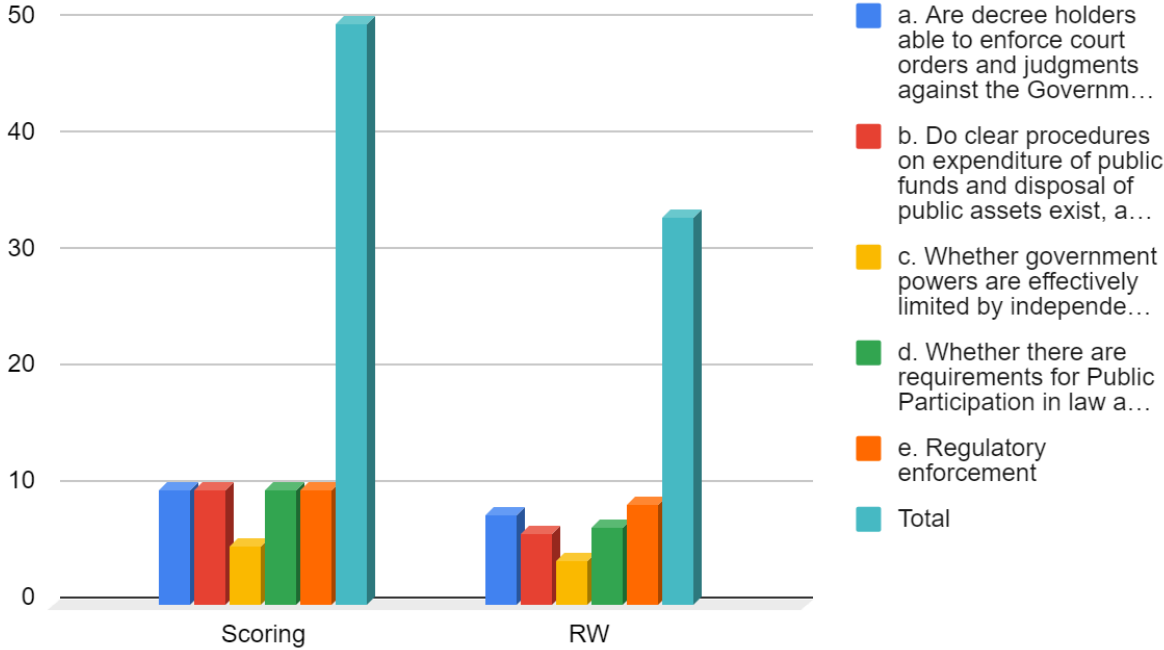
⁶⁴ Article 11, Guidelines N° 001/RLRC/2022 of 18/10/2022 on legislative drafting

⁶⁵ The New Times, 2nd March 2023, available at: <https://allafrica.com/stories/202303030089.html> 21st January 2024

Findings

Parameter	Indicators	Scoring (Marks)	RW
Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	7.85
	b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	6.25
	c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	3.77
	d. Whether there are requirements for Public Participation in law and policy-making and whether such public participation is reflected in legislation and policy	10	6.75
	e. Regulatory enforcement	10	8.75
	Total	50	33.37

Rwanda good governance score chart



4. SOUTH SUDAN

Introduction

With a score of 18.5 (out of 100.0), South Sudan ranked 54th (out of 54) in Overall Governance in 2021 according to the Ibrahim Index of African Governance (IIAG), 2022.⁶⁶ This is on account of weak institutions and poor economic management that characterize the State with few institutions visibly picking up in performance.

i. Enforcement of court orders

The law requires that, where a decree has been made against a government institution or a public servant, a period is to be specified in the decree within which it must be satisfied. If the decree remains unsatisfied, at the expiration of the given period the executing court is mandated to report the case to the President of the Supreme Court.⁶⁷ In principle, execution shall not be issued on any decree of court against a government institution or a public servant unless it has remained unsatisfied for a period of three months from the date of court's report to the President of the Supreme Court.⁶⁸

Whereas enforcement of court orders against private parties is not met with much resistance or contemptuous disobedience, enforcement of court orders or decrees against the government and some powerful individuals remains of serious concern. It has been reported that police sometimes ignore court orders to take arrested persons before the court.⁶⁹ The award against the Government of South Sudan in the Vivacell license suspension case has not enforced yet despite the Swiss Federal Supreme Court's rejection of South Sudan's bid to overturn the partial award in the US\$2.7 billion ICC dispute with the Lebanese-owned mobile operator over a licence.⁷⁰

ii. Expenditure, Disposal and Privatization

The *Public Procurement and Disposal of Assets Act*, 2018 is the primary legal framework that governs procurement and disposal of public assets. Section 7 mandates the South Sudan Procurement and Disposal of Assets Authority to ensure

⁶⁶ Mo Ibrahim Foundation. (2022). *2022 Ibrahim Index of African Governance (IIAG)*. <https://iiag.online/locations/ss.html>

⁶⁷ Section 223(1) of the Code of Civil Procedure Act, 2007

⁶⁸ Section 223(2) of the Code of Civil Procedure Act, 2007

⁶⁹(2022). *South Sudan 2022 Human Rights Report*. United States Department of State, Bureau of Democracy, Human Rights and Labor.

⁷⁰ Fisher, Toby. (2023). *South Sudan loses challenge to telecoms award*. Global Arbitration Review. <https://globalarbitrationreview.com/article/south-sudan-loses-challenge-telecoms-award>

application of fair, competitive, transparent, accountable, non-discriminatory and value for money public procurement and disposal of assets standards and practices.

o **Privatization programme**

South Sudan does not have a privatization framework or program.⁷¹ So far, there appears to be no plans for privatization, and there are few government-owned entities that provide services to individuals.⁷² The National Council of Ministers being the highest executive authority, possesses the power to formulate, approve and implement government policies and agreements.⁷³ Arguably, any privatization or development of a privatization program must be approved by the National Council of Ministers.

o **Budgeting and expenditure**

Each Spending Agency (Government Ministry, Commission, Public Corporation, Institution or Public Enterprise which receives a budget allocation) is legally required to demonstrate outputs and targets relating to service delivery for past and future budgets to the Finance and Economic Planning and the President during the budget preparation, and during and at the end of the financial year.⁷⁴ It is the duty of the Minister of Finance and Economic Planning to compile the detailed Budget estimates and submit them to the President to cause its presentation to the National Legislative Assembly (Parliament).⁷⁵

Each Spending Agency submits final annual accounts reports to the Minister responsible for finance,⁷⁶ and it is the duty of the Minister responsible for finance to make expenditure reports to the National Legislative Assembly (Parliament).⁷⁷

⁷¹ (2023). *2023 Investment Climate Statements: South Sudan*. U.S Department of State. <https://www.state.gov/reports/2023-investment-climate-statements/south-sudan/>

⁷²

⁷³ Article 110 and 111 of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

⁷⁴ Section 8 of the Public Financial Management and Accountability Act, 2011

⁷⁵ Section 26(1) of the Public Financial Management and Accountability Act, 2011

⁷⁶ Section 50(2) of the Public Financial Management and Accountability Act, 2011

⁷⁷ Section 49 of the Public Financial Management and Accountability Act, 2011
Section 50(1) of the Public Financial Management and Accountability Act, 2011

o ***Oversight by the Auditor general***

Government expenditure is subject to review by an Independent Auditor General. Accordingly, annual account reports of spending agencies are required to be submitted to the Auditor General no later than four months after the end of the Financial Year.⁷⁸ The Auditor General is obliged to examine and audit annual account reports of the National government, a State Government or a Local Government, and render an opinion on whether the accounts show a true and fair view of the financial position of National government or State government or Local government as the case may be.⁷⁹ The reports of the Auditor-General are publicly available online – on the website of the National Audit Chamber.⁸⁰ However, access to physical copies is limited due to the long process of getting access to them (in terms of approvals).

o ***Oversight by the Public Accounts Committee***

The National Legislative Assembly (Parliament) has a Public Accounts Committee. However, the committee like many others do not exercise effective oversight on government expenditure.

Further, the reports of the Public Accounts Committee are not publicly and easily accessible. The National Legislative Assembly does not have an online website/platform or repository that facilitates public and easy access to e-copies. Access to physical copies has been burdensome due to the unreasonably long processes to obtain approvals.

iii. Independent and effective oversight mechanisms for the police

The Constitution provides for a Public Grievances Chamber.⁸¹ However, this Chamber’s mandate is not properly stipulated and is non-functional (not established) at the time of writing this report.

There is no special independent and effective oversight mechanism for the police. Oversight is done by different line institutions in their respective mandates which touch on the function or activities of the police. The Human Rights Commission generally monitors the application and enforcement of the rights and freedoms; and is

⁷⁸Section 50(1) of the Public Financial Management and Accountability Act, 2011; Section 30 of the Southern Sudan Audit Chamber Act, 2011

⁷⁹ Section 52(1) of the Public Financial Management and Accountability Act, 2011; Section 31 and 35 of the Southern Sudan Audit Chamber Act, 2011

⁸⁰ <https://nac.gov.ss>

⁸¹ Article 147 of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

also mandated to investigate any violation of human rights and fundamental freedoms.⁸² The Anti-Corruption Commission is obliged to investigate cases of corruption involving public property and public interest and combat administrative malpractices in public institutions.⁸³

iv. Public Participation

It is the right of every citizen to participate in the development of South Sudan.⁸⁴ It is a constitutional principle that the needs of the people must be appropriately addressed, and that the public must be encouraged to participate in policymaking.⁸⁵

At the national level, the government is constitutionally obliged to promote and encourage the participation of the people in the formulation of its development policies and programmes.⁸⁶ Similarly, at the local government level, the Constitution mandates the Local Government to promote self-governance and to enhance the participation of people and communities in maintaining law and order and promoting democratic, transparent and accountable local government.⁸⁷

Public participation is recorded and obtained through public consultative meetings/conferences or workshops. Sometimes through, the media (radio) via specialised programs developed to capture the views of the public. There is established timelines for conducting public consultations. However most public consultations have taken more than one month. Article 5.2.1.3 of the Revitalised Agreement on the Resolution of the Conflict in South Sudan for example, required public consultation to be conducted in a period not less than one (1) month prior to the establishment of the Commission of Truth Reconciliation and Healing (CTHR) to inform the design of the CTRH legislation.

No known public consultations were conducted for the *Financial Act, 2022-2023*. Accessing Bills and public consultation reports is a challenge and close to impossible. However, on other pending Bills, for example on the Commission of Truth Reconciliation and Healing, consultations were conducted which lasted for more than

⁸² Article 145 and 146 of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

⁸³ Article 144 of the Transitional Constitution of the Republic of South Sudan, 2011 as amended; Section 9 of the Southern Sudan Anti-Corruption Commission Act, 2009.

⁸⁴ Article 46(2)(e) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

⁸⁵ Article 139(1)(e) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

⁸⁶ Article 168(3) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

⁸⁷ Article 165(6)(a) of the Transitional Constitution of the Republic of South Sudan, 2011 as amended.

six (6) months. Relatedly, a public consultation conducted by the Centre for Inclusive Government Peace and Justice to inform the design and framework of the Compensation and Reparation Authority under Chapter V of the Revitalised Agreement on the Resolution of the Conflict in South Sudan, lasted for about 6 months and covered ten (10) states and three (3) Administrative Areas.

Many citizens complain that their Members of Parliament do not visit them, while those MPs stated that they lacked the resources to properly engage with communities; that many of their constituencies were inaccessible due or that their constituents had been displaced due to conflict.

v. Regulatory Enforcement

Regulatory enforcement broadly covers all activities of state structures (or structures delegated by the state) aimed at promoting compliance and achieving regulatory outcomes. In South Sudan, regulatory enforcement is organized in a manner of — shared competences in enforcing regulations between the central, state, local government and other semi- or fully autonomous regulatory bodies. Evidently, while most regulatory agencies are accessible, access to others still poses a challenge especially in terms of fees. Notably, heads of regulators are not competitively recruited but are appointed directly by the president.

o Power to make administrative rules

The ability of Ministers or heads of government institutions to make subsidiary legislation is limited to where an Act of parliament expressly gives them the power to do so. However, one of the most remarkable features of the state is the extent to which government ministries, departments and agencies derive regulatory arrangements from administrative rules and circulars. This is found to be convenient with the limited and scarce parliamentary time and difficulty in securing draftspersons to prepare appropriate legislations or statutory instruments. There is some evidence that most government ministries, departments and agencies prefer to issue – almost as a matter of policy – administrative rules and circulars rather than opting for legislation especially where there is no legislation. The consequence is that there has been no

parliamentary control over the making of administrative circulars which create legitimate expectations which the public body is obliged to respect.

o ***Accessibility of regulatory enforcement rules***

There is limited access to regulatory enforcement rules. The State does not have a central online repository where laws are stored for public access – there is no public library to ease access as well as. Few government institutions post laws/rules or circulars that relate to their mandate/service on their websites and pages. Administrative circulars/directives or regulatory notices are usually published in the daily newspapers since there is no official gazette.

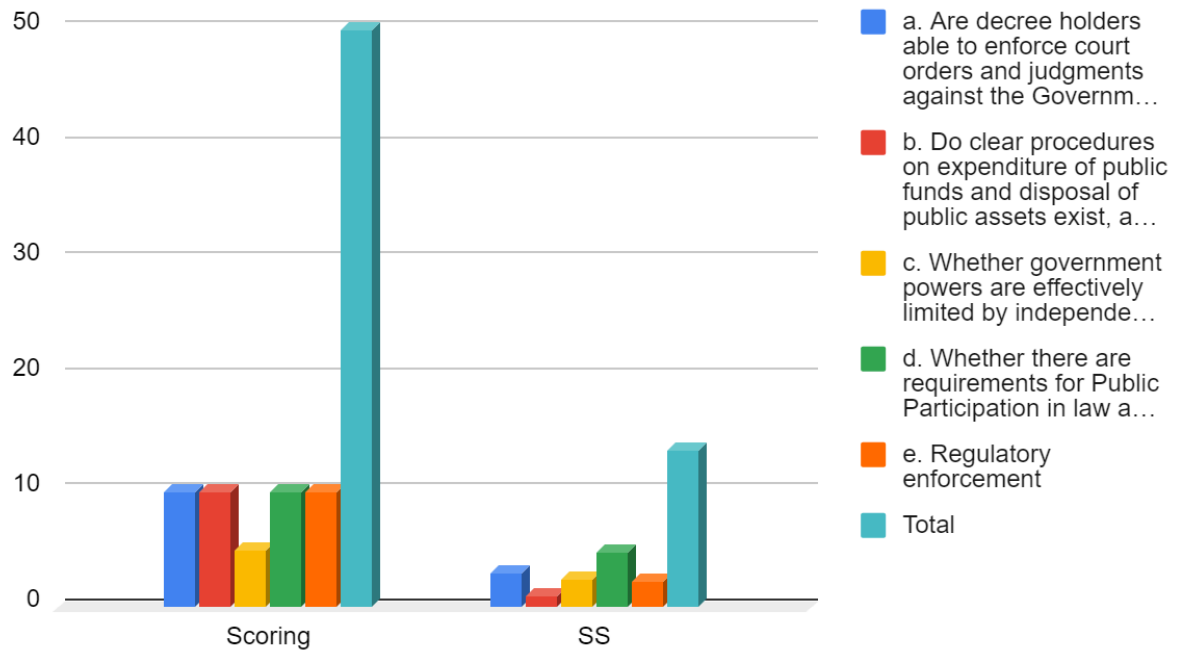
o ***Administrative tribunals***

There are few administrative tribunals established by statute. However, majority and if not all, are non-operative or non-functional. Majority of the population are not aware of the existence, mandate and procedure of administrative tribunals. Hearings are limited to parties to a claim and decisions are not publicly accessible. Complaints against regulatory or administrative actions are made in the form of an appeal either to the appellate body or court for review.

Findings

Parameter	Indicators	Scoring (Marks)	SS
Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	3
	b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	1
	c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	2.5
	d. Whether there are requirements for Public Participation in law and policy-making and whether such public participation is reflected in legislation and policy	10	4.81
	e. Regulatory enforcement	10	2.25
	Total	50	13.56

South Sudan good governance score sheet



Recommendations

1. Strengthen and adequately resource the justice system to ensure judicial check against any executive hegemony, impunity and to increase access to justice.

5. TANZANIA

The United Republic of Tanzania is a multiparty democracy, comprising the mainland Tanzania and the former People's Republic of Zanzibar. The Union is made up of two governments: one to manage the affairs of the Union and another to manage the affairs of the semi-autonomous islands of Zanzibar.

The notable event during the review period is the change of the heads of State. The 6th President, H.E. Dr. Samia Suluhu Hassan, took over office in 2021 following the demise of the 5th President, Hon. John Joseph Pombe Magufuli, on 17th March 2021. Under the new leadership, there have been some positive changes with regards to the rule of law, under the new regime. This includes: reduced repression of journalists and media houses; increased freedom of speech without reprisals; and increased security of persons. The repressive laws that were complained of during the previous regime laws have however not changed.

Tanzania has also experienced several amendments to laws, including those that provided immunity to the members of the Executive arm of the Government. Furthermore, there have been restrictions on accessing domestic courts via public interest litigation and the continued stance of the State to not re-enter declaration under Article 34(6) of the Protocol Establishing the African Court on Human and Peoples' Rights which allows individuals and NGOs to bring cases against the State before the African Court on Human and Peoples' Rights (AfCHPR). The NGO space has also been limited by increased censorship of the NGOs and media houses.

Zanzibar

Zanzibar, is a semi-autonomous region of the United Republic of Tanzania, having a separate government with its own President, Cabinet, Legislature, and Judiciary. The island comprises two main islands, Unguja and Pemba and other small isles with a total area of 2,654 sq km. According to the National Population and Housing Census of 2022, Zanzibar had a total population of 1,889,773 with annual intercensal growth rate of 3.7. The government is referred to as the Revolutionary Government of Zanzibar, the legislative assembly as the House of Representatives and the judicial system has incorporated the Kadhi Court system unlike the Mainland Tanzania. The judicial system shall be discussed in detail below under the section on enforcement of court orders.

i. Enforcement of Court Orders

There has been unsatisfactory compliance with court decisions both at the domestic and international level by the Government. At the domestic level, examples include:

- *Joran Lwehabura Bashange v The Chairman of National Electoral Commission and Attorney General.*⁸⁸

The petitioners challenged the constitutional validity of section 44 of the *National Elections Act*, Cap 343 and section 45(5) and 13(7) of the *Local Government (Elections) Act*, Cap 292, which allowed the unopposed candidates for members of Parliament and councilors to represent a constituency and the wards respectively without being voted in. The Court found the Petition to be merited and declared the impugned provisions unconstitutional and, therefore, null and void for offending the Constitution of the United Republic of Tanzania. The Court also ordered the provisions to be struck out from the statute book. The judgment was delivered on 29th March 2023. To date, there is no compliance with this decision.

- *Tito Elia Magoti & Another vs National Electoral Commission & 3 Others.*⁸⁹

The Petitioners challenged the restrictions imposed on prisoners and remandees awaiting trial to register and vote in the general election. The Court ruled that the right to vote in respect of remandees aged above eighteen years who are citizens of Tanzania is cherished and enriched in Article 5(1) of the Constitution; therefore, the provision of section 11(1) (c) of the *National Election Act*, was unconstitutional. The matter was decided on 19th December 2022. To date, the State has taken no steps to amend the law.

At the Regional level, the African Court on Human and Peoples' Rights (AfCHPR) presented its 2022 Activity Report to the African Union Executive Council⁹⁰ which highlighted that Tanzania must still comply with the court orders.⁹¹ Similarly, at the

⁸⁸ Miscellaneous Civil Cause No. 19 of 2021, Mgella, Masoud and Kakolaki JJJ, in the High Court of Tanzania (Main Registry) <https://tanzlii.org/akn/tz/judgment/tzhc/2023/16367/eng@2023-03-29/source.pdf>

⁸⁹ (Misc. Civil Cause 3 of 2022) [2022] TZHC 15383
<https://tanzlii.org/akn/tz/judgment/tzhc/2022/15383/eng@2022-12-19>

⁹⁰ During its 40th Ordinary Session, 20th January – 3rd February 2022, Addis Ababa, Ethiopia,

⁹¹ <https://www.african-court.org/wpafc/wp-content/uploads/2022/03/2021-activity-report-of-the-african-court.pdf>

East African Court of Justice, there are no reports of compliance with the Judgments of the Court.

Zanzibar

Zanzibar has its own legal system independent of mainland Tanzania. Under the United Republic of Tanzania constitution, administration of justice is not a union matter. As such, Zanzibar maintains a separate legal sector regime which is distinct from that of Mainland Tanzania though the two jurisdictions share some legal sector institutions, laws and even legal practice.

Additionally, the High Court of Zanzibar plays a crucial role in adjudicating matters and the enforcement of court orders, The court system in Zanzibar has three main components; the ordinary courts which administer non-Islamic legal regimes. This part of the court system comprises the Primary courts, District courts, Regional Magistrate Courts and the High Court. These courts administer all civil and criminal matters emanating from the applicable laws of Zanzibar except those emanating from the Islamic law. The second component is the Kadhis' courts. These are the courts which administer elements of Islamic personal law which is applicable as between Muslims in Zanzibar. There are District Kadhis' Courts and an appellate Chief Kadhis Court. The supreme appellate court for matters arising from the Kadhis' courts is the High Court of Zanzibar which is constituted by a judge who sits with four Islamic scholars as provided under section 10(2) of Kadhis Court Act.

The third component is the judicial tribunals. There are a number of judicial tribunals such as Rent Restriction Board, Land Tribunal, Industrial court, Liquor Licensing Board and Tax Appeals Board.

As stated, each part of the United Republic has its own judicial system. However, the Court of Appeal generally has jurisdiction, except where otherwise expressly stated, to hear and determine appeals from the High Court of both parts of the Union.

The legal system in Zanzibar is distinct from mainland Tanzania, and the enforcement of court orders in Zanzibar is overseen by its judiciary, ensuring the implementation of legal decisions.

Enforcement of judgements of the Kadhi's Court is a difficult task. According to one State Attorney, there is a misconception that the Kadhi Court is a "lover's court" due

to the nature of cases filed in the court. This may partly explain the lack of seriousness accorded to these courts by a cross section of the people and institutions on the Isles, including those required to enforce its judgements.

On the other hand, the Magistrates' Court in Zanzibar handles a broader range of legal matters beyond Islamic law, including civil and criminal cases that fall under its jurisdiction. While the Kadhi's Court focuses on Islamic law and personal matters, the Magistrates' Court has a more general scope of authority in adjudicating various legal disputes in Zanzibar.

ii. Expenditure, Disposal and Privatisation

o Public procurement and Disposal

Procurements account for the biggest government expenditure. The *Public Procurement Regulatory Authority (PPRA)* oversees and regulates the public procurement systems in the country. Its mission is to promote best practices for attaining value for money.⁹² However, over the years, the procurement framework, specifically regulatory and institutional framework, has been critiqued as inadequate, in the face of challenges such as procurement corruption; contract management inefficiencies; staff incentives; confidence in the procurement system; applicability of retrospective approvals; and abuse of emergency procurements. There is therefore need for it to be strengthened to insure effectiveness, efficiency and transparent management of public funds.⁹³

In an attempt to remedy some of the challenges, the government tabled the bill for *Public Procurement Act, 2023* on 12th May 2023. It aims to replace the *Public Procurement Act of 2011*. Its objective is to cure the regulatory challenges by making it mandatory for all in the disposal of public assets.⁹⁴

Zanzibar

The government's expenditure and privatisation processes are subject to scrutiny, ensuring transparency and accountability as it is done in the Tanzania mainland, in

⁹² <https://www.ppra.go.tz/pages/mission-and-vision>

⁹³ Institutional Analysis of Systemic Challenges on Public Procurement: The Case of Tanzania https://www.ijbssnet.com/journals/Vol_7_No_4_April_2016/18.pdf see also Tanzania Country Procurement Assessment Report(CPAR) 2003

⁹⁴ See the objective of the Bill [https://www.parliament.go.tz/polis/uploads/bills/1688298738-MUSWADA%20WA%20SHERIA%20YA%20UNUNUZI%20WA%20UMMA%20WA%20MWAKA%202023\(1\).pdf](https://www.parliament.go.tz/polis/uploads/bills/1688298738-MUSWADA%20WA%20SHERIA%20YA%20UNUNUZI%20WA%20UMMA%20WA%20MWAKA%202023(1).pdf)

Zanzibar the Constitution of Zanzibar 1984 under Article 112 provides for the Constitutional Mandate of the Controller and Auditor General (OCAG). The functions of the OCAG are governed by the provisions of the Constitution, Act No. 11 of 2003, which set up the establishment of Office of the Controller and Auditor General and the Public Finance Act no. 12 of 2016. the mandate of the OCAG among others is to ensure that the use of any moneys proposed to be paid out of the Consolidated Fund of the Revolutionary Government of Zanzibar has been authorized in accordance with the law and if he is satisfied that those conditions have been properly complied with then he shall authorize payment of such moneys.

iii. Limiting of Government Powers – budgeting and expenditure

Government agencies and ministries are required to prepare budgets which they submit to the Ministry of Finance and Planning. These budgetary proposals outline the agencies' financial requirements for the upcoming fiscal year. The Ministry of Finance and Planning consolidates these proposals to form the national budget, which is then presented to the National Assembly for approval. During this process, government officials, including ministers and heads of agencies, may be called upon to provide explanations, justifications, and details regarding their budgetary needs and proposed expenditures.

Once the National Assembly approves the budget, government agencies must adhere to the allocated funds and report their expenditures periodically. They are required to provide reports detailing their expenditures, highlighting how the allocated funds were utilized and whether they remained within the approved budgetary limits.

o Oversight

Government expenditure is subject to review by the Controller and Auditor General (CAG), whose powers are stipulated in the Constitution.⁹⁵ There are also oversight committees within the National Assembly, such as the Public Accounts Committee (PAC) and the Local Authorities Accounts Committee (LAAC). PAC holds the Government to account for how public money has been spent and therefore examines the implementation of policy and spending decisions rather than their merits.⁹⁶ PAC

⁹⁵ Article 143 and Part II of the Public Audit Act, Chapter 418 Revised Edition, 2020

⁹⁶ The Oversight Function of the PAC and LAAC: A Qualitative Analysis of the Oversight Committees and the Implementation of their Directives at Central and Local Level.

https://sikika.or.tz/images/ourProgramme/finance/SIKIKA_PAC_and_LAAC_Report_.pdf

usually conducts its work based on the Controller and Auditor General (CAG) reports. This oversight ensures that public funds are used appropriately per the approved budgets. Another Committee with a similar mandate is the Local Authorities Accounts Committee (LAAC), which examines local government spending based on the report of CAG.

CAG's reports and the Public Accounts Committee are public, easily accessible and published on the National Audit Office website.⁹⁷ Similarly, the reports of PAC and LAAC are published on the Parliament website under the Committee Reports⁹⁸ The Committee reports evaluate the CAG report and make recommendations to hold the Government accountable and limit the misappropriation of funds.

CAG's annual report also contains a detailed summary of the status of the implementation of the audit report made by the oversight committees. The 2022/ 2023 CAG report shows several Government Ministries, departments and local authorities that have with impunity not adhered to the allocated budgeted funds. This is evidenced in various Reports by the Controller and Auditor Reports submitted to Parliament and discussed extensively but without any action being taken against the culprits. Of interest is the follow-up Report on the implementation of the recommendations from the previous Performance Audit Reports which covers sixteen (16) individual Performance Audit Reports for the period between 2018 and 2019, issued in 2023. The related recommendations were given to nineteen (19), Government entities and the results shows that as of December 2022; 32 out of 197 recommendations (equivalent to 16%) were fully implemented, 105 recommendations (equivalent to 53%) were partially implemented, while 60 recommendations (equivalent to 30%) were not implemented. Furthermore, it was indicated that 137 out of 197 recommendations (equivalent to 70%) were either fully or partially implemented.⁹⁹

Generally the CAG report and the oversight committee reports show a poor track record of implementing the recommendations and that more effort is required to ensure full implementation. Specifically, the *Public Finances Act (Surcharge and Penalties) Regulations, 2005*¹⁰⁰ gives recourse to Accounting Officers' money deducted

⁹⁷ <https://www.nao.go.tz/reports>

⁹⁸ <https://www.parliament.go.tz/committee-reports-list>

⁹⁹ See the full report at

https://www.nao.go.tz/uploads/Follow-up_on_the_Implementation_of_Recommendations_on_the_Sixteen_Performance_Audit_Reports_Issued_and_Tabled_before_the_Parliament_in_April_2018_and_2019.pdf

¹⁰⁰ <https://www.policyforum-tz.org/sites/default/files/PublicFinanceAct2005regulations.pdf>

from their salaries if the Committee finds that public funds have been misused.¹⁰¹ However, this recourse is rarely invoked.

The CAG is a recognized appointment under the constitution. However, on 2 November 2019, the former CAG, Prof Mussa Juma Assad was removed from office and this removal has been declared unconstitutional by the High Court.¹⁰² This demonstrates a lack of respect of this office by the executive. Similarly, the CAG report, though thorough is generally ignored by government bureaucrats and politicians.

Notably, the legislative powers conferred on the President over the affairs of the National Assembly are considerable. For instance, where the President has withheld her assent to a bill, this can only be overridden by a two-thirds majority in Parliament.¹⁰³ Nonetheless, even where the bill is backed up by the majority votes, if it is presented for the second time and the President does not assent to it within twenty-one days, she then must dissolve Parliament. Although the President has never dissolved Parliament, this amount of power functions as a mechanism of pressure, ensuring support and compliance with government policy.

Further, the legitimacy of Parliament has been questioned on several accounts: firstly, Parliament is dominated by members from the ruling party, Chama cha Mapinduzi (CCM), with only one opposition Members of Parliament (MP) from Chama cha Democrasia na Maendeleo (CHADEMA). This lack of diverse representation undermines Parliament's ability to effectively hold the executive accountable; secondly, the "Special Seats" women MPs, often referred to as "Covid-19" seats, were not properly nominated and their presence in parliament has been contested in court on multiple occasions.¹⁰⁴

The assessment of the 1977 Constitution shows it lacks provisions enabling parliamentary oversight of the Executive. The parliament has limited non-legislative powers to hold the government accountable. The lack of diverse representation, questionable nomination processes, constitutional constraints, resource limitations, and the dominance of the ruling party undermine the legitimacy and effectiveness of

¹⁰¹ Regulation 4 and 5 of the *Public Finances Act (Surcharge and Penalties) Regulations* 2005 *ibid*

¹⁰² *Zitto Zuberi Kabwe vs President of the United Republic of Tanzania* (Misc. Civil Cause 8 of 2022) [2022] TZHC 15339 (5 December 2022).

¹⁰³ Article 97 of the Constitution

¹⁰⁴ *In the Matter of an Application for Orders of Certiorari, Mandamus and Prohibition by Halima James Mdee & 18 Others and In the Matter of the Decision of CHADEMA Expelling the Applicants from Being Members of CHADEMA between Halima James Mdee & 18 Others and The Registered Trustees of CHADEMA & 2 Others* (Miscellaneous Cause No. 36 of 2022) [2023] TZHC 23309 <https://tanzlii.org/akn/tz/judgment/tzhc/2023/23309/eng@2023-12-14>

the parliament in holding the Executive accountable, a key function of a representative democracy, irrespective of the challenges, some studies show Tanzanians place high trust in parliament.¹⁰⁵

Further it is to ensure that the moneys is spent appropriately and in accordance to the underlying provisions. There is a requirement for an annual audit of the accounts of the Revolutionary Government of Zanzibar, the accounts managed by all officers of the Revolutionary Government of Zanzibar, the accounts of all courts in Zanzibar, the accounts of Commissions or other organs established by this Constitution and the accounts related to the House of Representatives.

Zanzibar

The Office of the Controller and Auditor General (OCAG) in Zanzibar operates independently and is responsible for auditing the expenditure of public money in Zanzibar, including all ministries, departments, commissions, units, the House of Representatives, local authorities, and public corporations. The OCAG plays a critical role in ensuring efficiency, effectiveness, and probity in the expenditure of public funds in Zanzibar, as mandated by the Zanzibar Constitution.

In Zanzibar, the House of Representatives exercises parliamentary control which plays a crucial role in limiting the powers of the government, ensuring a system of checks and balances.

iv. Oversight of the Police

There is no independent and effective police oversight mechanism. The oversight of the police is conducted both through internal disciplinary procedures and externally by the mandate shared by the Principal Secretary of the Ministry of Home Affairs and the Inspector-General of Police.¹⁰⁶ Although private citizens can file complaints against individual members at police stations, internal oversight mechanisms are generally ineffective.¹⁰⁷

¹⁰⁵ see Wang V, The Accountability Function of Parliament in New Democracies: Tanzanian Perspectives <https://www.cmi.no/publications/1954-the-accountability-function-of-parliament-in-new>

¹⁰⁶ <https://www.policinglaw.info/country/tanzania>

¹⁰⁷ *ibid*

The Human Rights Committee in its Concluding Observations on Tanzania stated that: in light of reports of ill-treatment of detainees by law enforcement officials, it lacked sufficient information regarding the independence of the mechanisms in place to investigate and prosecute complaints of torture and ill-treatment in police custody and detention facilities, including prisons.¹⁰⁸

Cases of police brutality are rampant with cases of accusations of rape by police officers within police stations, robbery of businessmen, assault such as beating of people in police stations or in front of their families, torture, humiliation and murder.¹⁰⁹ All these have created a growing demand for police reforms as presently, the Police Force investigating and disciplining itself amounts to it being a “judge in its own cause.”

In July 20, 2022, the President announced the formation of a special committee to on ways of improving the criminal justice system. The Committee was inaugurated in January 2023 with Retired Chief Justice Mohamed Othman Chande as the chairperson and Retired Chief Secretary Ambassador Ombeni Sefue as a Vice Chairperson. The Commission made key findings and recommended the need to develop and implement a specific crime detection and prevention strategy addressing maritime and cyber-crimes. It also observed that there was misuse of power by authorities leading to harassment, and cases of arbitrary arrests based on false accusations. The regional and district commissioners were identified as key violators of the rights of citizens. The commission recommended amendment of the Regional Administrative Act to remove arrest authority held by executive leaders and recommended that institutions involved in criminal justice or providing services to the public in a militarized manner, such as the Fire and Rescue Force, Immigration Department, and Wildlife and Forest Conservation Force, should focus on their original mandate of providing services to the public.

¹⁰⁸ Human Rights Committee, Concluding Observations on Tanzania, U.N. doc. CCPR/C/TZA/CO/4, 6 August 2009.

¹⁰⁹ see the case of Onesphory Materu vs Republic (Criminal Appeal 334 of 2009) [2011] TZCA 165 (28 March 2011) where the Court of Appeal upheld the conviction of a police officer accused of rape within the police station, also media report on police brutality <https://thechanzo.com/2022/09/29/police-in-tanzania-faces-fresh-accusations-of-torture-murder/>

Zanzibar

The police fall within the union matters, as opposed to the Revolutionary Government of Zanzibar. However, there are other uniformed services under the Revolutionary Government and this include the Zanzibar Anti-Smuggling Unit (Kikosi Maalum cha Kuzuia Magendo), Fire Brigade and Rescue Force (Uokozi), Zanzibar Correctional Facilities (Mafunzo), National Service Brigade (Jeshi la Kujenga Uchumi), and Zanzibar Volunteer Defense Force.

Having the same police force the similar observation made for Mainland applies to Zanzibar as well that still as a country with similar cry and complaints of torture and ill-treatment in police custody and detention facilities, including prisons.

v. Public Participation

Public participation is guaranteed in the Constitution.¹¹⁰ Every citizen is free to participate in matters of the country's governance, directly or through representatives freely elected by the people. The standard mode of public participation is through elected members of Parliament; other means such as public meetings and hearings, surveys, and questionnaires are not commonly used. The Government has increasingly used digital platforms such as official government websites, social media, or dedicated online portals to gather public input. However, there is limited access to the internet/ online platforms for most citizens, which makes public participation ineffective.

However, public participation during the legislative process is not given much weight by the State. Recently, there has been a trend of passing legislation under a certificate of urgency, which denies the citizens sufficient time to submit their views.¹¹¹ One such example was the amendments to laws in the extractive industry.¹¹² There is also a growing tendency of the Government to bring to the Parliament amendments of some strategic and important legislation under the veil of “Miscellaneous Amendments”

¹¹⁰ Article 21

¹¹¹ A bill under a certificate of urgency is introduced if a certificate under the hand of the President is laid on the table of the Assembly by a Minister or Attorney-General stating that the relevant Bill is of such an unusually urgent nature that time does not permit compliance with the prescribed procedure

¹¹² The governance costs of legislating under a certificate of urgency in Tanzania's mining sector, *The Extractive and Society*, Volume 15, 2023, <https://www.sciencedirect.com/science/article/abs/pii/S2214790X23000539>
These laws include the *Investment Promotion Act*, 1997; the *Mining Act*, 1998; the *Mining Act*, 2010; the *Oil and Gas Revenue Management Act*, 2015; the *Petroleum Act*, 2015; the *Tanzania Extractive Industries (Transparency and Accountability) Act*, 2015; the *Natural Wealth and Resources (Permanent Sovereignty) Act*, 2017; the *Natural Wealth and Resources (Review and Renegotiation of unconscionable Terms) Act*, 2017; and the *Written Laws (Miscellaneous Amendments) Act*, 2017

which does not give enough room for public participation.¹¹³ During the review period, an excellent example of a Bill passed under a certificate of urgency was the Personal Data Protection Bill whose enactment process took only one month.¹¹⁴ The feedback from civil society organizations was that there was not enough time for citizens to submit their views. Similarly, the passing of the *Finance Act 2023* was rushed and passed within a record seven days;¹¹⁵ an insufficient period to obtain and take into account views from the public.

v. Regulatory Enforcement

Ministers are responsible for a specific sector and have the power to make rules, which may include subsidiary legislation. These become operational with the effect of the law after being published in the Government Gazette.

Article 4(1) and (2) of the Constitution vests judicial powers in the Judiciary of the United Republic and the Judiciary of the Revolutionary Government of Zanzibar. Similarly, the Constitution of Zanzibar, 1984, under Article 5A(2), confers judicial authority to the Courts of law, similar to Article 107A(1) of the Constitution of Tanzania. Even though the organ vested with judicial powers is the Judiciary, some of its functions are performed by the Executive, for example, imposition of fines, levy of penalty, confiscation of goods or cancellation of licenses. The powers of Ministers here have in some instances ousted the power of the judiciary which ultimately violates the constitution.¹¹⁶ The Tanzania Communication Regulatory Authority (TCRA) is among enforcing agencies, where some of the regulations passed by the Minister of Information have serious human rights and rule of law implications particularly in regulating the right to information and freedom of expression.¹¹⁷

¹¹³ Examples are the Written Laws (Miscellaneous Amendments) (No.3) Act, 2019 which amended various laws at once such as the Companies Act, the Copyright and Neighbouring Rights Act, the Films and Stage Plays Act, the Non-Governmental Organizations Act, the Societies Act, Statistics Act, and other laws. Similarly in 2021 under the Written Laws (Miscellaneous Amendments) (No. 3) Act, 2021 the amendment of the Advocates Act was bundled up with other several laws.

¹¹⁴ <https://www.parliament.go.tz/bills-list>

¹¹⁵ It was introduced on 19th June 2023, and the first reading was conducted on 20 June 2023, the second on 26th June 2023, and it was passed on 26th June 2023.

¹¹⁶ An example was the provision of Section 37 of the Immigration Act [Cap 54 R.E 2016] which derogated the Court's power to inquire on the decisions of Minister in appeals from the decisions of Commissioner general of Immigration, the section puts it in a way that the decision of the Minister is final in appeals that originated from resident permits. This section was challenged in Court vide Miscellaneous Civil Cause No. 17 of 2022 in Prisca Nyang'uba Chogero v Attorney General of the United Republic of Tanzania, High Court of Tanzania. The Court held that the section is unconstitutional, it violates Article 107A (1) as it limits the access to court remedies to those aggrieved.

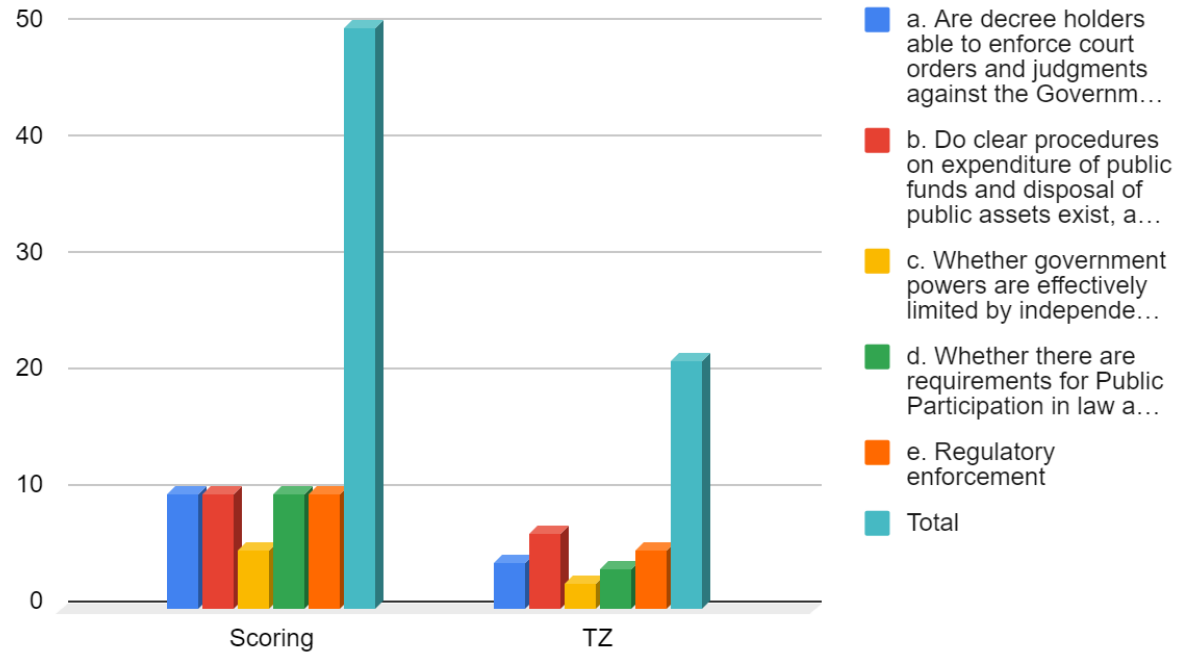
¹¹⁷ An example is the law the Electronic and Postal Communications – EPOCA (Online Content) Regulations 2020.

Administrative tribunals also form the regulatory enforcement regime in Tanzania. These administrative tribunals are not necessarily bound by strict rules of procedure, evidence, and other legal technicalities, as they have judicial powers. It is worth noting that administrative powers originate from respective Acts of the Parliament and the Constitution of Tanzania and Zanzibar, which recognise tribunals, as they require Courts and other agencies to take into account the principle of fairness. These tribunals are accessible; for example, the fair competition tribunal and the tax tribunal exercise the right to be heard and the right to appeal is guaranteed. Despite the positive attributes of these tribunals, it is the sentiment of the majority that most of the heads of tribunals are presidential, rather than competitively recruited, appointees.

Findings

Parameter (25% each)	Indicators	Scoring (Marks)	TZ
Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	4
	b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	6.5
	c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	2.3
	6. Whether there are requirements for Public Participation in law and policy-making and whether such public participation is reflected in legislation and policy	10	3.5
	7. Regulatory enforcement	10	5
	Total	50	21.3

Tanzania good governance score chart



6. UGANDA

Introduction

Uganda is governed under the framework of constitutional supremacy, similar to other EAC Partner States. The 1995 Constitution is the basis from which all other laws, government organs, institutions and persons draw their legitimacy to exercise authority, power, and govern the country. The same Constitution and enabling laws require accountability by government entities, openness and participation in governance, following due process and procedures in regulatory enforcement. Under the principle of separation of powers which applies in Uganda, the Legislature (Parliament), the Executive, and the Judiciary are separate arms of government. The arms of government are required to exercise and execute their constitutional and lawful mandates without interference from other arms of government. The review period has seen Uganda score some highs and lows on good governance on the indicators considered in this review.

i. Enforcement of Court Orders

Whereas judicial power under Article 126 (1) of the Constitution is derived from the people and should be exercised by courts established by the Constitution in the name of the people and in conformity with the law, values, norms and aspirations of the people of Uganda, the exercise of this power and enforcement of court orders still faces challenges.

The law allows for a person to sue the government, whether on a private right based action or a public interest-based action. During the review period, the bureaucratic delays in enforcing judgments for financial compensations against the government hindered such enforcements.¹¹⁸ Decrees with declaratory orders have been easily complied with due to the guidance and advice always given by the Attorney General as principal legal advisor, to government entities to obey court orders. The Attorney General has been very vocal in insisting on court orders be obeyed by the government even prior to the period of review.¹¹⁹

¹¹⁸U.S. Department of State, Bureau of Democracy, Human Rights and Labour, 'Uganda 2022 Human Rights Report, Country Reports on Human Rights Practices for 2022', <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda> accessed 10th December 2023.

¹¹⁹Monitor, Attorney General Kiryowa tells police to obey court orders, 13th November 2021, <https://www.monitor.co.ug/uganda/news/national/attorney-general-kiryowa-tells-police-to-obey-court-orders-3617110> accessed 10th December 2023.

In the review period, the government or its entities have not been reported to be implicated in many contempt of court applications in courts. However, the court in a ruling dated 10th March 2022, in *Mark E. Kamanzi versus National Drug Authority & Dr. Medard Bitekyerezo Miscellaneous Application No. 138 of 2021*, condemned the actions of the respondents, which included the National Drug Authority for refusing to comply with a court order.

ii. Expenditure, Disposal and Privatization

Expenditure of public funds and drawings from the Consolidated Fund must be done in accordance with the Constitution and enabling laws. Chapter 9 of the Constitution on Finance sets out the principles for management and expenditure of public funds. Article 164 of the Constitution provides for accountability of public funds. The use of public funds contrary to existing instructions (appropriation votes) makes a public officer liable for the loss under Article 164 (2) of the Constitution. Parliament is empowered to monitor all expenditure of public funds under Article 164 (3) of the Constitution.

o Legislative framework for expenditure and asset disposal

The Constitutional provisions on expenditure of public funds are further operationalized by the *Public Finance Management Act, 2015* which guides the national budget process. The appropriation of public funds in accordance with Article 156 of the Constitution is by way of an Appropriation Act passed by Parliament. Under Section 43 of the *Public Procurement and Disposal of Public Assets Act, 2003* (the PPDA Act), the procurement of goods works and services in expenditure of public funds is guided by the principles of non-discrimination, transparency, accountability and fairness, maximization of competition and ensuring value for money, confidentiality, economy and efficiency, and promotion of ethics.

The PPDA Act prescribes methods of disposal of public assets under Section 87 of the Act. The procedures for both procurement and disposal of public assets are provided under the Act and the regulations thereunder. The Annual Report of the Auditor General to Parliament for the Financial Year ended 30th June 2022¹²⁰ noted

¹²⁰ Office of the Auditor General, Annual Report of the Auditor General to Parliament for the Financial Year ended 30th June 2022, Consolidated Audit Findings, at page 70, December 2022, <https://www.oag.go.ug/viewmegareport/20> accessed 10th December 2023.

procurement irregularities in the Development Response to Displacement Impacts Project (DRDIP).

Subject to the nature of irregularity in the public procurement or disposal process, the legal framework under Part VIIA of the PPDA Act, provides for mechanisms of administrative review for breach of procurement and disposal processes, and appeal to the PPDA Appeals Tribunal.

iii. Limiting of Government Powers

Parliament is mandated under Article 164 (3) of the Constitution to monitor the expenditure of public funds. The Rules of Procedure of the Parliament of Uganda 2021¹²¹ provide for the Public Accounts Committees among the standing committees of Parliament. The Rules establish a Public Accounts Committee for Central Government, a Committee on Commissions, Statutory Authorities and State Enterprises (COSASE), and one on Local Governments.

The Auditor General further undertakes audits on public accounts of all public offices and is required by the Constitution under Article 163 (4) to annually submit to Parliament a report of the accounts audited for the preceding financial year.

The courts through mechanisms like judicial review check the excesses of improper use of public authority, call the government to account and uphold principles of good governance.

iv. Public Participation

Under the National Objectives and Directive Principles of State Policy, Objective II (i), the Constitution provides for democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance. Uganda has a decentralized system of government. The participation of the people and democratic control in decision making, are key tenets of the envisaged decentralization under Article 176 (2) (b) of the Constitution.

In unequivocal terms, the Constitution guarantees the right for every Ugandan to participate in affairs of government and influencing policies under Article 38 of the Constitution on civic rights and activities.¹²²

¹²¹ Rule 158 of the Rules of Procedure of the Parliament of Uganda 2021

¹²² Constitution of Uganda, 1995 revised in 2017.

Whereas there are various civic participation mechanisms and platforms in Uganda, ranging from representations of CSOs on Boards and Committees, Sector Working Groups, the Government Citizen Interaction Centre (GCIC), parliamentary committees providing audience to the public to make comments and input in legislation process at bill stages, judiciary court user committees, local council committees, and umbrella bodies, a July 2022 Report by USAID *et al* on Public Participation Mechanisms in Uganda, established that public participation around policy formulation, implementation and accountability was said to be limited and many local level participatory platforms were reported as described to be inactive or ineffective.¹²³ The shrinking civil society space among other limitations also has a diverse effect on effective public participation for influencing legislation and policy making.

v. Police Oversight

Police officers are required to abide by the disciplinary code of conduct established under Section 44 of the *Police Act* Cap 303. Internally, the police has a professional standards enforcement unit which receives complaints for professional misconduct.¹²⁴ The *Police Act* Cap 303 provides for a police disciplinary court at every unit under section 49 (1) of the Act.

However there have been few cases of police officers who have been held accountable for professional misconduct compared to the high levels of human rights abuse by the police. Concerns of police abuse of rights have been echoed at various occasions.¹²⁵ The 2022 Uganda Human Rights Commission (UHRC) Annual Report¹²⁶ on the state of human rights and freedoms noted the highest number of complaints on human rights violations at the Commission were against the police.¹²⁷ The mechanisms are therefore not as effective.

¹²³ USAID, International Centre for Not For Profit Law, 'Public Participation Mechanisms in Uganda and The Enabling Environment for Civil Society: A Baseline Study' (July 2022) at page 74, <https://ewmi.org/sites/ewmi.org/files/OrgFiles/Uganda%20public%20participation%20report%20final%20web.pdf> accessed 10th December 2023.

¹²⁴ Section 70 of the *Police Act* Cap 303, complaint can be made against a police officer under Form 105, <https://www.upf.go.ug/complaints/> accessed 10th December 2023.

¹²⁵ United Nations Human Rights Office of the High Commission, Uganda, 'Police Leadership Commit to ensure human rights are given due attention in police operations', 6th January 2023, <https://uganda.ohchr.org/news/police-leadership-commit-ensure-human-rights-are-given-due-attention-police-operations> accessed 10th December 2023.

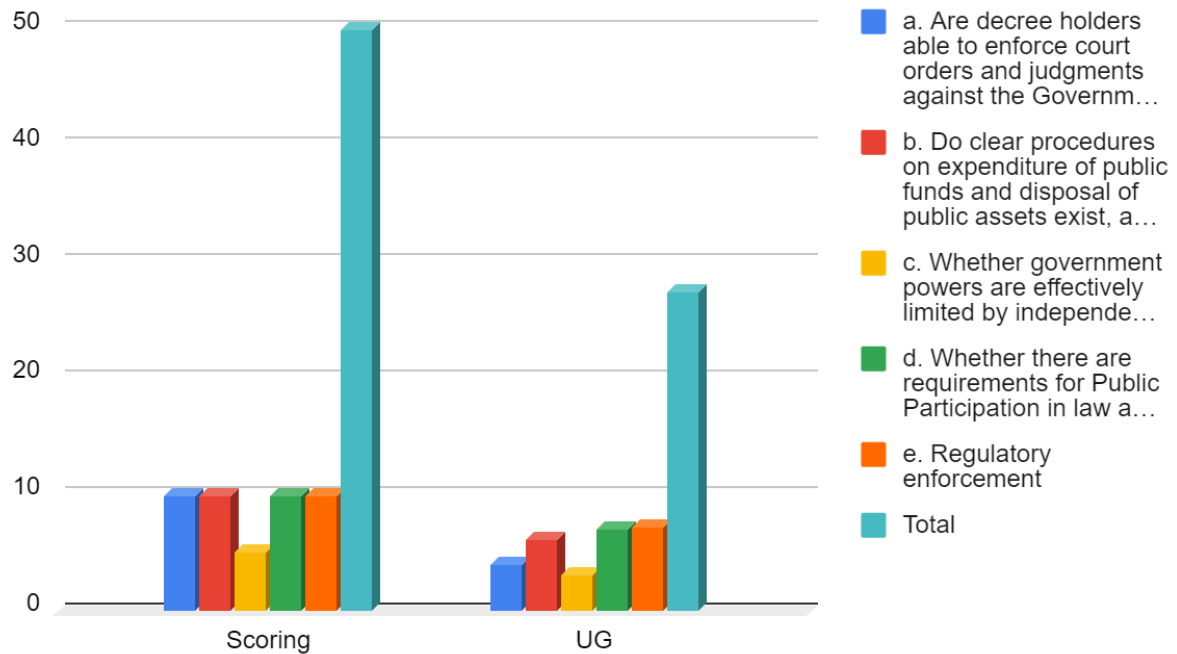
¹²⁶ Uganda Human Rights Commission, The 25th Annual Report on the State of Human Rights and Freedoms in Uganda in 2022, <https://uhrc.ug/download/25th-uhrc-annual-report/?wpdmdl=1946&refresh=65738ac1ca0f01702070977> accessed 10th December 2023.

¹²⁷ Monitor, 'Police top human rights violation in Uganda – UHRC report', <https://www.monitor.co.ug/uganda/news/national/police-top-human-rights-violation-in-uganda-uhrc-report-4241192> accessed 10th December 2023.

Findings

Parameter (25% each)	Indicators	Scoring (Marks)	UG
Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	4
	b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	6.2
	c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	3.05
	d. Whether there are requirements for Public Participation in law and policy-making and whether such public participation is reflected in legislation and policy	10	7
	Regulatory enforcement	10	7.2
	Total	50	27.45

Uganda good governance score chart



Recommendations

The research conducted for Uganda on good governance shows that whereas the legal and institutional frameworks exist to promote good governance, through transparency, accountability, responsibility, participation and responsiveness to the needs of the people,¹²⁸ a number of aspects and principles of good governance were not fully observed in the review period.

The following recommendations are therefore made: -

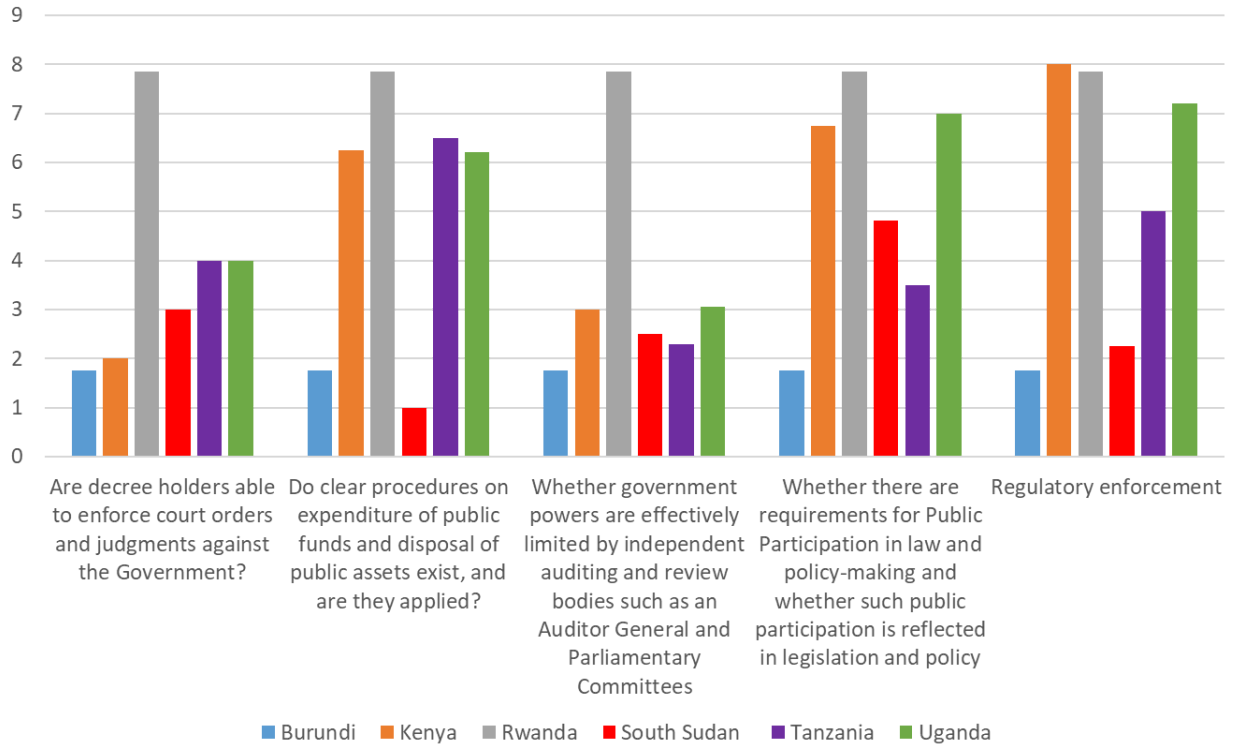
- a) It is strongly recommended that every branch of government should exercise its powers and mandate independently without influence or interference from other arms of government. This will enable each branch of government to check the actions of the other arms, prevent abuse of power, and promote accountability and transparency as aspects and principles of good governance.

¹²⁸ United Nations Human Rights Office of the High Commissioner, "About Good Governance - OHCHR and Good Governance" <https://www.ohchr.org/en/good-governance/about-good-governance> accessed 10th December 2023.

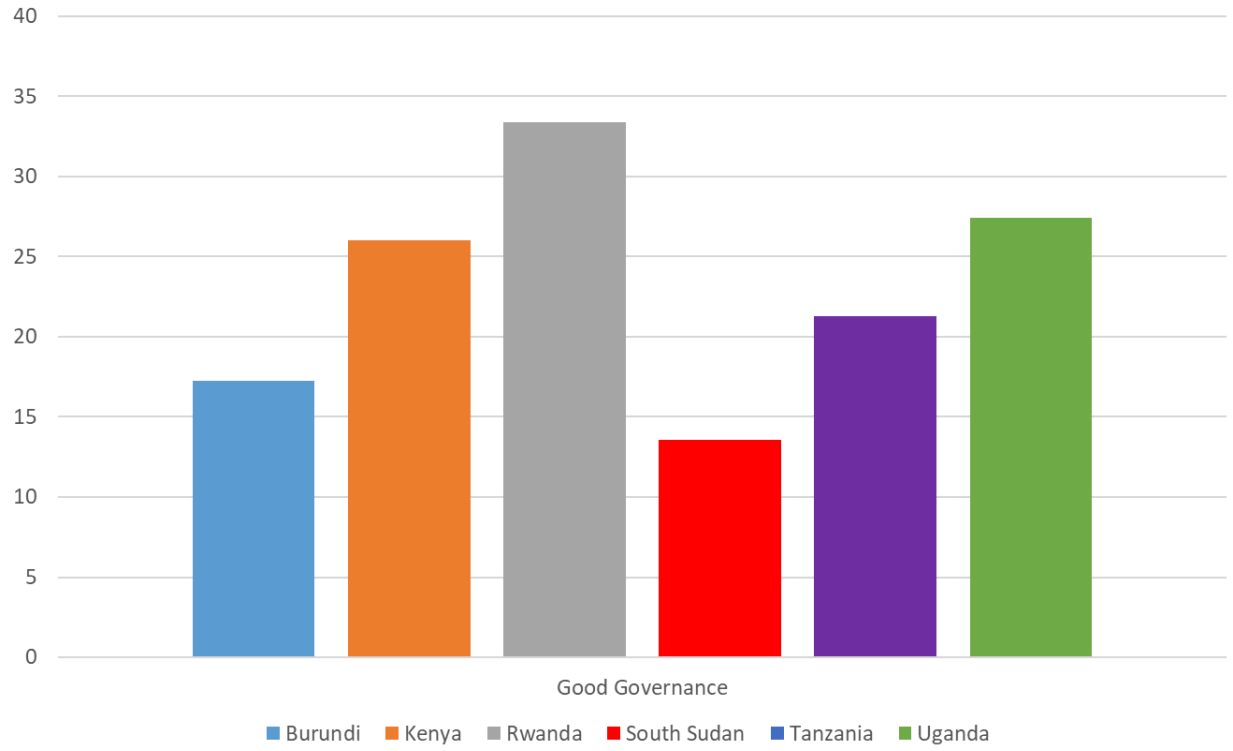
- b) Government should adopt a national legal and policy framework on public participation, with clear mandatory procedures, processes and guiding principles for inclusive decision making at the national and local levels. ¹²⁹
- c) It is recommended that Government and CSOs continue to sensitize the citizens to demand accountability from the government, hold the Government and their leaders accountable and use all means available within the law in doing so.
- d) Meaningful public participation in legislative and policy making requires that proposals made at consultation forums are meaningfully considered by the Government and decision makers, and to the extent possible adopted for the public voices to count in influencing law making and policy formulation.
- e) Government should promptly comply with court orders (more so decrees and orders on compensations) upon fulfillment of all procedural requirements for enforcement.
- f) There is still a need for full and proper accountability for public funds in light of rampant supplementary budgets, and service delivery which is below the expectation of the citizenry in public expenditure.
- g) Reports of flaunting and defiance to procedures and processes of expenditure of public funds and disposal of public assets, without proper accountability should yield prosecution of perpetrators in such public offices with convictions to reprimand others.

¹²⁹USAID, International Centre for Not For Profit Law, 'Public Participation Mechanisms in Uganda and The Enabling Environment for Civil Society: A Baseline Study' (July 2022) at page 100, <https://ewmi.org/sites/ewmi.org/files/OrgFiles/Uganda%20public%20participation%20report%20final%20web.pdf> accessed 10th December 2023.

GOOD GOVERNANCE - INDICATORS



GOOD GOVERNANCE

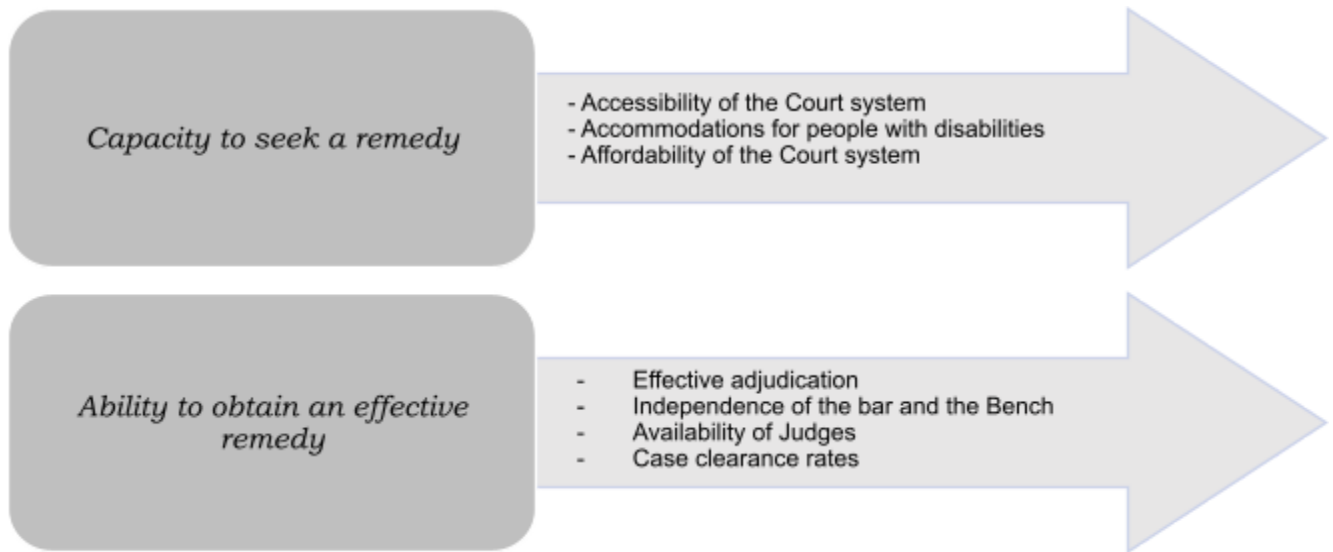


CHAPTER 2: ACCESS TO JUSTICE

The OECD defines access to justice as “...*the ability of individuals and businesses to seek and obtain just resolution of legal problems through a wide range of legal and justice services*”.¹³⁰ The ICCPR and Banjul Charter obligate their signatories to ensure equality of all persons before the law, the Courts and Tribunals. As such, all persons are entitled to a fair and public hearing by competent, independent and impartial Tribunals, have a right to Counsel of their own choice and a right to an appeal by competent national organs.¹³¹ Furthermore, article 26 of the Banjul Charter places a duty on the States to guarantee the independence of courts. Consequently, ensuring access to justice for all is one of the most important aspects of the Rule of Law.

For the purpose of this report, this parameter seeks to measure the accessibility, impartiality, and effectiveness of each State’s civil justice system. The accessibility of courts looks at two main things: the physical accessibility of the courts and affordability of the justice system.

In this Report, the evaluation broadly looks at two main things:



¹³⁰<https://www.oecd-ilibrary.org/docserver/8b8c48af-en.pdf?expires=1702893787&id=id&accname=guest&checksum=06F3108660A7B42987502124DF46B5BF>

¹³¹ Article 3 & 7 of the Banjul Charter and article 14 of the ICCPR.

1. BURUNDI

Within this section, the report looked at the independence of judges and magistrates in Burundi by focusing on whether procedures related to their recruitment and removal, the disciplinary process in case of misconduct, their working conditions are independent from the executive in any way.

i. Independence of the bench

For contextual background, in Burundi, bench magistrates include all the presidents, vice-presidents, judges and advisors to the courts and tribunals from the lowest jurisdictions –residential tribunals– to the highest jurisdictions such as the Supreme Court¹³². Moreover, there is a distinction of bench magistrates and prosecution magistrates; but all are magistrates. Therefore, all judges are bench magistrates.

It is in this sense that this report will use the concept of “magistrates” to both bench and prosecution magistrates and “judges” to refer to bench magistrates.

Legal and institutional framework

o Recruitment of magistrates and disciplinary process and the executive

Burundi has a legal and institutional framework which provides for a recruitment and disciplinary process in respect of magistrates.

With regards to the institutional framework, the Constitution affirms that the Superior Council of the Judiciary is the highest disciplinary instance with regards to magistrates. In reality, the Council deals with complaints of individuals or those of the Ombudsman towards the professional misconduct of magistrates as well as the complaints of magistrates themselves against disciplinary measures taken against their career¹³³. It is worth mentioning that members of this Council are appointed by the President of the Republic following the approval of the Senate¹³⁴ and its members

¹³² See art.68 of the code d'organisation et de la compétence judiciaire, 2005.

¹³³ See art.216 of the Constitution of Burundi, 2018.

¹³⁴ See art.223 of the Constitution, 2018.

are composed of the president of the Republic, the president of the Supreme Court as vice-president and the Ministry of Justice as the secretary.¹³⁵

Therefore, since the members of the institution that is involved in the appointment and in charge of disciplinary measures are from the executive, the independence from the executive is questionable. Yet, the Constitution of Burundi clearly provides that the judiciary is independent of the legislative and executive powers.¹³⁶

- *Appointment and removal of magistrates*

The law governing the status of magistrates, establishes set criteria for the appointment and removal of judges.

Magistrates are appointed by presidential decree of the President of the Republic following the advice of the Ministry of Justice, the latter being advised by the Superior Council of the Judiciary.¹³⁷

The Law governing magistrates states that a competitive examination shall be conducted¹³⁸ so as to guide the choice of candidate. Indeed, candidates ought to be selected taking into account objective criteria such as integrity, competence and qualifications.¹³⁹

- *Working conditions of judges and magistrates and the executive*

The budget related to the functioning of the judiciary is allocated and managed by the Ministry of justice. The Magistrates do not possess an autonomous budget. In fact, salaries and pensions emanate from a Special Law of magistrates. Consequently, salaries and pensions depend on the executive. This leads to confirmation that salaries and pensions pertaining to judges and magistrates established by law are dependent on the Executive.

¹³⁵ See art.223 of the Constitution, 2018.

¹³⁶ See art.214 of the Constitution of Burundi, 2018.

¹³⁷ See art. 219, Constitution of Burundi, 2018

¹³⁸ See art. 8, Loi N° 1/001 du 29 février 2000 portant réforme du statut des magistrats

¹³⁹ See art. 17, Loi N° 1/001 du 29 février 2000 portant réforme du statut des magistrats

It is argued by several experts on access to justice, that the financial compensation of magistrates is relatively low compared to the other two powers; which situation might lead to corruption.¹⁴⁰

- *Security of tenure of judges*

Judges in Burundi possess security of tenure in principle. Article 21 of the law governing magistrates states that “*Judges are appointed for life. Their active career ends when they reach the age of sixty-five*”¹⁴¹. In the same sense, art.217 of the Constitution states that a Magistrate –generally speaking, including judges– “*may only be removed for a professional fault or incompetence, and solely through the proposal of the Superior Council of the Judiciary*”. Moreover, art. 22 of the law governing magistrates states that “*A judge may be transferred to perform duties of at least the same grade in a court of at least the same rank*”. Consequently, judges may be transferred to other jurisdictions, in other provinces without their consent if the competent organ in charge of the transfer, the Ministry of Justice, finds it necessary.¹⁴²

In reality, although security of tenure of judges is guaranteed, the law brings out exceptions that may jeopardize it.

- *Complaints about judicial officers and magistrate: Institutional framework*

All complaints about judicial officers on account of corruption, incompetence or delay are addressed to the Anti-corruption Court. As for judges and magistrates, such cases are referred to the Superior Council of the Judiciary. The latter does not keep publicly accessible records with respect to complaints received in respect of judges and their outcome. However, cases of removal of magistrates have been made public through media rather than ongoing complaints. For instance, the Superior Council of the Judiciary publicized that it received a total of 300 files made up of complaints related

¹⁴⁰Observatoire de l’Action Gouvernementale, ‘*Exposé sur « l’indépendance de la magistrature au Burundi : Bilan et perspectives*’, (2010),

<https://medialibrary.uantwerpen.be/oldcontent/container2143/files/DPP%20Burundi/Pouvoir%20judiciaire/Rufyik_iri_220110.pdf> Accessed on 30th November 2023.

¹⁴¹ See Loi n°1/001 du 29 février 2000 portant réforme du statut des magistrats

¹⁴² Observatoire de l’Action Gouvernementale, ‘*Analyse de l’état des lieux de la carrière des magistrats au Burundi.*’ (2019), < <https://medialibrary.uantwerpen.be/files/4739/9ff36065-5f5b-4356-862e-4db8b91b71df.pdf> > Accessed on 10th December 2023.

to magistrate trials and discipline. After analysis it was concluded that 35 magistrates were guilty of corruption and mismanagement, and the council decided to dismiss them¹⁴³. Overall, the average time to resolve those cases was five days as the Superior Council of the Judiciary organized a 5-day long retreat and pronounced the results of their deliberations.

ii. The independence of the Bar

- *Legal and institutional framework: admission to the Bar*

Burundi has a legal and institutional framework for the admission of lawyers to the Bar and their regulations are independent of the executive.

With regards to the legal framework, the brand-new law governing the profession of lawyers of July 2023 has come to respond to challenges of the old 2002 Law, including its non-conformity to new reality¹⁴⁴. The 2023 Law is the main piece of legislation that defines a number of aspects with regards to the admission of lawyers to the bar, including the conditions required, the rights and obligations, the ethics, the discipline of lawyers amongst others.¹⁴⁵

As to the institutional framework, the Order Council, “Conseil de l’ordre” is the body in charge of admission as well as removal of lawyers from the bar. The Order Council is totally independent from the Executive; its members are part of the Law society and are elected by their peers for a mandate of three years, renewable. The members of the Order Council elect a chair who holds the title of Batonnier.¹⁴⁶

¹⁴³Site de la présidence, ‘Le Président Ndayishimiye annonce la révocation de 35 magistrats accusés de corruption et de mauvaise gestion’ (2022)

<<https://www.presidence.gov.bi/2022/07/29/le-chef-de-letat-annonce-la-revocation-de-35-magistrats-accuses-de-corruption-et-de-mauvaise-gestion/>> Accessed 8 December 2023.

¹⁴⁴ Journal Iwacu, ‘Analyse du projet de loi portant révision du statut de la profession d’avocat’ (2023),

<<https://abpinfo.bi/2023/06/01/analyse-du-projet-de-loi-portant-revision-du-statut-de-la-profession-davocat/>> Accessed 10 December 2023.

¹⁴⁵ Loi no. 1/17 du 24 juillet 2023 portant modification de la Loi no. 1/014 du 29 novembre 2002 portant réforme du Statut de la profession d’avocat

<<https://assemblee.bi/IMG/pdf/n%C2%B017%20du%2024%20%20juillet%202023.pdf>>

¹⁴⁶ See art.13, of Loi no. 1/17 du 24 juillet 2023 portant modification de la Loi no. 1/014 du 29 novembre 2002 portant réforme du Statut de la profession d’avocat

<<https://assemblee.bi/IMG/pdf/n%C2%B017%20du%2024%20%20juillet%202023.pdf>>

- *Governance of the Burundi Law Society*

The Burundi Law Society is self-governing. The Order Council, “*Conseil de l’ordre*” is its executive body and runs its affairs independent of the Executive. The members of the Order Council are part of the Law society and are elected by their peers for a mandate of three years, renewable. The members of the Order Council elect a chair who holds the title of *Batonnier*.¹⁴⁷

- *Regulations of the Law society: Discipline, removal of lawyers*

The Burundi Law Society has internal regulations which are publicly accessible to all. Moreover, the law governing the status of the profession of lawyers also has a whole chapter on the discipline of lawyers – chapter III - as well as a paragraph on the deontology of lawyers, from article 43 to article 63.

The Order Council, “*Conseil de l’ordre*” is the competent body that deals with discipline, including suspension for a period of one year as well as removal from the Bar¹⁴⁸. In fact, members of the Order Council are part of the Law society and are elected by their peers for a mandate of three years, renewable. The members of the Order Council elect a chair who holds the title of *Batonnier*¹⁴⁹. Therefore, the body in charge of discipline of lawyers is absolutely independent from the Executive and the Judiciary.

- *Professional training of lawyers*

The National Committee of the two Law Societies - Bujumbura and Gitega- is the body in charge of coordinating the professional training of lawyers.¹⁵⁰

¹⁴⁷ *Idem*, art.13.

¹⁴⁸ See art.65 of Loi no. 1/17 du 24 juillet 2023 portant modification de la Loi no. 1/014 du 29 novembre 2002 portant réforme du Statut de la profession d’avocat.<<https://assemblee.bi/IMG/pdf/n%C2%B017%20du%2024%20%20juillet%202023.pdf>>

¹⁴⁹ *Idem*, art.13.

¹⁵⁰ *Idem*, art, 21, para 5.

Furthermore, The President of the Burundi Bar Association ought to organize a professional training of lawyers through (i) a theoretical and professional training in collaboration with universities and the Centre for professional training of the Ministry of Justice and (ii) practical internships in law firms.¹⁵¹

- *The right to counsel*

The right to counsel of one's choice is provided for in Burundian Law. The Criminal Procedure Code, in article 138, clearly provides that the accused has all the rights to exercise their right to defense, including their choice of a counsel, their free communication with the latter, all the assistance attached to drafting correspondence, etc.

Also, there are no laws that hinder lawyer-client in the Burundian jurisdiction. Lawyers possess immunity of their words and writing when exercising their profession.¹⁵²

- *Limits to the rights of counsel*

During the covered period, the Burundi Law Society has received complaints in respect of its members in the course of their duties. Lawyers have faced violations of their rights during the exercise of their profession, and these go from intimidations to arrests. Most cases are of lawyers who defend cases which involve high level authorities or affairs of national security.¹⁵³ According to informants, when conducting their profession, lawyers' cases become subjectively entrenched to their person, contrary to the law which prohibits the suing of lawyers, for their writings or words, when conducting their profession.¹⁵⁴

¹⁵¹ *Idem*, art. 27

¹⁵² *Idem*, art.41

¹⁵³ Interview with the Batonnier of the Burundi Law Society on 11th December 2023.

¹⁵⁴ See art.41 of Loi no. 1/17 du 24 juillet 2023 portant modification de la Loi no. 1/014 du 29 novembre 2002 portant réforme du Statut de la profession d'avocat.

iii. Access to justice: Affordability

- *Justice fees*

Justice fees are set by joint order of the Minister of Justice and the Minister of Finance.¹⁵⁵ High courts and magistrate courts charge fees ranging from USD 0.33 to USD 3 depending on the service provided. For instance, summoning fees cost USD 0.33 while an expertise report costs around USD 3.¹⁵⁶ One might view such costs as reasonable and proportionate, although for Burundians for which the economic cost of life, these rates might be seen as expensive.

iv. Mechanisms to promote access to justice

- *Court fees waiver for indigents*

The Burundian Civil Procedure Code as well as the Criminal Procedure Code provide for an exemption from court fees for indigent persons. In the same sense, the indigent person must deliver a certificate from the communal level of the administration that stipulates that the concerned person does not possess sufficient income to be able to cover for court/legal fees. Following the availability of the certificate of indigence, all legal documents will be issued to the indigent person considering their indigent situation.¹⁵⁷

- *National legal aid programme in legislation*

The Criminal Procedure Code stipulates that if the accused does not have a lawyer –unless the latter objects– a judge can ask the *Batonnier* to appoint a lawyer from the Bar Association to support the vulnerable person. Furthermore, the same code requires that minors which are accused must be assisted by a defendant. In the same sense, if the offence for which an accused is charged with is punishable by more than twenty, legal assistance is similarly mandatory, except if the accused renounces it.¹⁵⁸

¹⁵⁵ See art.406, Law N.1/010 of 13 May 2004 on the civil procedure code of Burundi, < <http://www.droit-afrique.com/upload/doc/burundi/Burundi-Code-2004-procedure-civile.pdf> > Accessed 10th December 2023.

¹⁵⁶ See Joint Order N.550/540/2306 of 30/12/2016 on the amendment of rates on duties and taxes applied to the Minister of Justice, < [https://info.commerce.bi/media/Ordonnance\(1\).pdf](https://info.commerce.bi/media/Ordonnance(1).pdf)> Accessed 10th December 2023.

¹⁵⁷ See Article 405, Civil Procedure Code of Burundi, 2004 and art. 219 and art. 384 of the Criminal procedure code, Burundi

¹⁵⁸ See art.222, Criminal Procedure Code

There also exists a decentralised public service that provides legal services in a number of provinces; the Centre for Family Development which guides indigent persons to the Prosecutor's Office and supports the latter in getting a lawyer if needed.

Moreover, within the budget allocated to the Ministry of Justice, there is an amount reserved to legal aid. The said budget, although little, serves to provide lawyers for indigent persons. While the figures and budget for 2022-2023 is not available, the ministry argues that it provided legal and judicial assistance for 1,350 vulnerable and destitute people, including 509 women during the 2021-2022 fiscal year.¹⁵⁹

In practice nevertheless, legal aid programmes are almost exclusively conducted by civil society organizations rather than by public institutions.¹⁶⁰

- *Pro bono programmes by the Law Society*

The Law Society offers *pro bono* services in a number of ways:

Firstly, the law governing the profession of lawyers requires that if a president of a jurisdiction finds that there are imbalances between the two parties, in case one does not possess a defense, the batonnier may be invited to appoint a lawyer who must ensure their defense, and this *pro bono*.¹⁶¹

Secondly and more importantly, their governing requires all lawyers from the Burundi Bar to assist at least one vulnerable person per year.¹⁶²

¹⁵⁹Ministère de le Justice, 'Présentation du bilan de grandes réalisations durant le premier semestre de l'exercice budgétaire 2021-2022'.<
<https://burundi.justice.gov.bi/2022/01/26/presentation-du-bilan-de-grandes-realizations-durant-le-premier-semestre-de-lexercice-budgetaire-2021-2022>> Accessed 10 December 2023.

¹⁶⁰Avocats Sans Frontières, 'Propositions pour une stratégie nationale d'aide légale au Burundi' (2012)<https://www.asf.be/wp-content/uploads/2012/07/ASF_BUR_PropositionSNAL_2012.pdf> Accessed 11 December 2023.

¹⁶¹ See art.62 of the Law la Loi no. 1/17 du 24 juillet 2023 portant modification de la Loi no. 1/014 du 29 novembre 2002 portant réforme du Statut de la profession d'avocat

¹⁶² *Idem*,art.62.

Thirdly, within the Burundi Law Society, there is a commission on legal aid which organises legal aid services in favour of the indigents. Within the said commissions, there are lawyers who are trained on how to support those vulnerable persons.

Lastly, the Burundi Law Society often collaborates with organizations, be it governmental or non-governmental on projects aiming at supporting vulnerable groups. For instance, the Burundi Law Society has received financial support from the UNDP and Cordaid to cover transport feed and other indemnities for lawyers who assist indigent persons. In these programs, indemnities are applied and not classic lawyer honorariums.¹⁶³

- *Fees for the losing party*

The Civil Procedure Code provides that the “*costs of expenses incurred in the course of litigation may be reimbursed by the losing party to the winning party, unless the court orders otherwise. They include procedural costs, witness fees, expert fees and other experts' fees and other costs incurred by the trial*”¹⁶⁴.

- *Access to justice for persons with disabilities*

There are no provisions in the courts for the use of interpreters, sign language and/or braille when required. The Criminal Procedure Code stipulates that if the accused cannot express themselves in the language of “proceedings”, which is usually Kirundi, then the Public Prosecutor must appoint an interpreter at the expense of the Treasury¹⁶⁵. Similarly, if a witness or the civil party is unable to speak the official language, the president of the court will appoint an interpreter and swear the later in¹⁶⁶. The mentioned provisions seem to be designed for persons who are unable to express and/or understand the official language rather than persons with disabilities. The Law in Burundi seems to be silent on this aspect.

¹⁶³ Interview with the Batonnier of the Burundi Law Society on 11 December 2023.

¹⁶⁴ See art. 401 of the Civil Procedure Code of Burundi, 2004.

¹⁶⁵ See art.115, Criminal Procedure Code Burundi, 2018.

¹⁶⁶ See art. 254, Criminal Procedure Code Burundi, 2018.

As to the access to public buildings for persons with disabilities, the legislation is silent with regards to access to public buildings for persons with disabilities.

v. The functioning of the justice system

- *Availability of judges*

All jurisdictions, from the lowest to the highest level, possess a total number of magistrates which are available to address matters. The president of the jurisdiction appoints the number of magistrates for a given case. The code governing judicial organization and competence specifies how each jurisdiction, including the High Court, is organized with regards to the number of magistrates needed.¹⁶⁷

- *Delivery of Judgments*

In principle and according to the Civil Procedure Code, after the hearing of a civil dispute, the judgement is delivered immediately. Furthermore, the judgement may be postponed, for further deliberation, to a date indicated by the judge, but which may not exceed two months, which period if not respected, would be considered as denial of justice.¹⁶⁸ If the period provided for by the law is extended, the president of the jurisdiction ought to motivate by giving reasons.

vi. Case clearance rate

Within the framework of the report, consultants inquired on the case-clearance rate for civil cases in the High Court and/or in Courts of Appeals in the respective jurisdictions.

On a monthly basis, all responsible jurisdictions –presidents of courts and tribunals– submit statistics of open cases, closed cases, cases in progress as well as cases under deliberation to the Minister of Justice.¹⁶⁹ In this respect, it is deduced that such data

¹⁶⁷ See Code d'organisation et de la compétence judiciaires du Burundi, 2005.

¹⁶⁸ See art.124, Law N.1/010 of 13th May 2004 on the civil procedure code of Burundi, <
<http://www.droit-afrique.com/upload/doc/burundi/Burundi-Code-2004-procedure-civile.pdf> >

¹⁶⁹ Interview with the President of the Burundi Bar Association

is combined in a judicial statistical yearbook, developed by the statistical section of the Ministry of Justice. The said yearbook contains incoming cases, pending cases and outgoing cases per jurisdiction¹⁷⁰. Although the monthly reports might be provided to the Ministry of Justice, the latter has not yet published a report within which a case-clearance rate could be found for the period covered. The latest published yearbook is from 2015-2016. Moreover, the Burundi Institute of Statistics and Economic Studies published reports in which a whole section is reserved for “Justice”. Within that section, can be found cases registered per jurisdiction, those pending and those closed. Unfortunately, the latest published report only analyzes cases from 2014 to 2018.¹⁷¹

Recommendations

With regards to the above sections, the following conclusions and recommendations have emerged:

- Reform legislation on the recruitment, disciplinary process, appointment and removal of judges –including their security of tenure– working conditions of judges and magistrates to guarantee the total independence of the judiciary from the executive as per the provisions of the Constitution;
- Allocate a wider budget to the Ministry of Justice dedicated to legal aid for the vulnerable, including indigents and persons with disabilities;
- Put in place an online platform to facilitate the availability of information with regards to availability of judges, delivery of judgments, case clearance rate, amongst others.

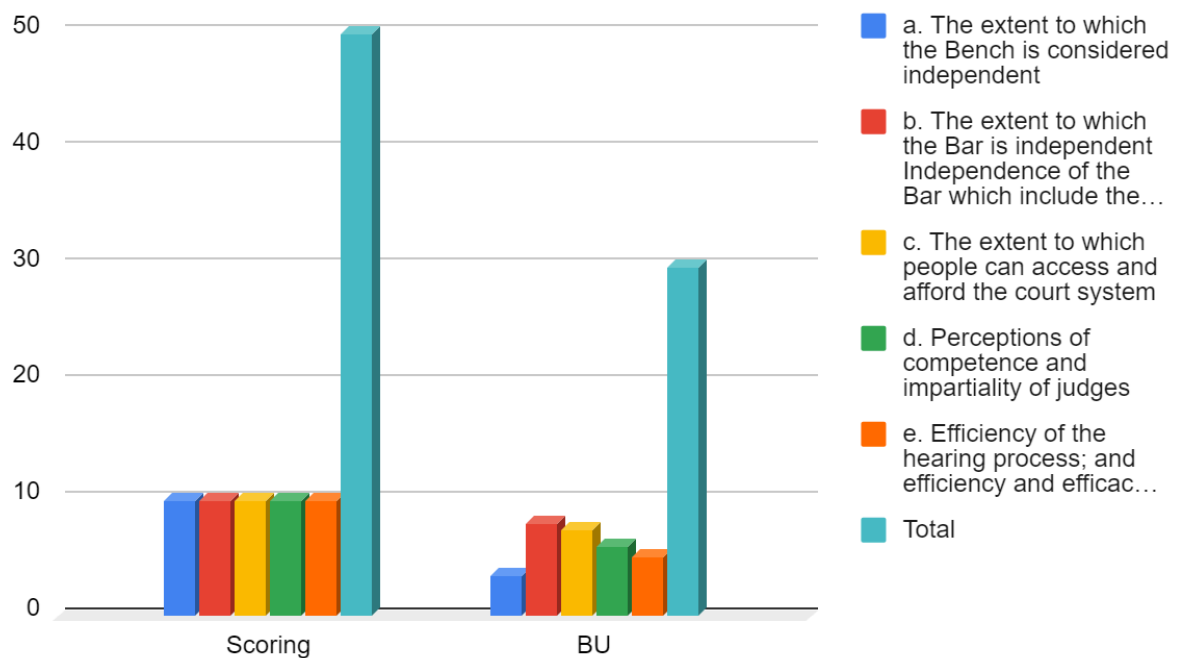
¹⁷⁰ Service statistique du Ministère de la Justice, ‘*Annuaire des Statistiques judiciaires : Edition 2015-2016*’ < <https://burundi.justice.gov.bi/wp-content/uploads/2020/01/Annuaire-des-statistiques-judiciaires-2015-2016.pdf> > Accessed 11th December 2023.

¹⁷¹ Institut de Statistiques et d’Etudes Economiques du Burundi (ISTEEBU), ‘*Annuaire statistique du Burundi*’ (2019), < <https://www.isteebu.bi/wp-content/uploads/2022/08/Annuaire-statistique-2019.pdf> > Accessed 11th December 2023.

Findings

Parameter (25% each)	Indicators	Scoring (Marks)	BU
Access to Civil Justice	a. The extent to which the Bench is considered independent	10	3.5
	b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	8
	c. The extent to which people can access and afford the court system	10	7.5
	d. Perceptions of competence and impartiality of judges	10	6
	e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	5
Total		50	30

Burundi access to justice score chart



Recommendations

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- (2) Allocate a wider budget to the Ministry of Justice dedicated to legal aid for the vulnerable, including indigents and persons with disabilities.

- (3) Put in place an online platform to facilitate the availability of information with regards to availability of judges, delivery of judgments, case clearance rate, amongst others.

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2. KENYA

Kenya has made significant strides in ensuring access to justice. This has been through its constitutional dispensation, increased court stations and judicial officers, reduced case backlog and independence of the Bench and the Bar. All these elements, embedded in constitutional order, have improved the efficiency and efficacy of the court hearing process. Kenya seeks to demonstrate these components at play in detail in the section set out below.

Access to justice is a central theme of the *Constitution of Kenya, 2010*:

- a. Article 48 places an obligation on the State to ensure access to justice for all persons;
- b. Article 22 makes Courts more accessible by allowing persons who have disputes to go to court either for themselves or on behalf of others. This is further broadened by article 258 which provides that every person has the right to institute court proceedings;
- c. Article 50 deals with fair hearing and contains provisions that create facilitative mechanisms to ensure that court processes are fair, amongst them, the right to a legal representation of one's choice; and
- d. Finally, article 159 provides for some minimum principles that should guide access to justice, including that justice shall be accessible to all irrespective of their status and shall be administered expeditiously without regard to procedural technicalities.

i. Accessibility of Court

In Kenya, a lot of progress has been made when it comes to the physical accessibility of court. There are High Court stations in 41 out of 47 counties, with all the major cities having High Court stations.¹⁷² There are also roughly 127 Magistrate Court

¹⁷² 'The changing landscape of justice in Kenya' by Chief Justice Martha Koome (2023)
<https://www.standardmedia.co.ke/national/article/2001487124/the-changing-landscape-of-justice-in-kenya>

Stations in the country, manned by about 600 Judicial Officers.¹⁷³ Though this is great on paper, the reality is that the estimated ratio of Judicial Officers to the population is about 1:67,000 which may not be the strongest comparison when we look at other established democracies.¹⁷⁴

The need for improvement when it comes to the physical accessibility of Courts is clearer in the marginalized Counties such as; Lamu – which, with a total surface area of 6,273 km, has just two courts and Marsabit (the largest County), which with a total land area of 70,961 km, has only two courts situated in Marsabit and Moyale townships.¹⁷⁵

Though the online Court system may have mitigated some of these challenges, making Courts more accessible, certain challenges have also arisen with the online court system. This is especially so since the online Court system is reliant on a party having access to internet connectivity and technological devices – a luxury which many Kenyans might not have. This then diminishes the ability of all persons to meaningfully participate in the Court system to protect their interests.

Aside from the physical accessibility of the Court system, when instituting a Civil Claim for a liquidated sum, a Plaintiff needs roughly Kshs. 71,000 (this being only the Court filing fees) to successfully institute the Claim in the High Court and the Magistrates Court. These Court fees – usually contained in the various procedure codes and regulations - may serve as a barrier to justice for low-income earners who may not be able to afford the Court filings costs. This position is affirmed by the Chief Justice who noted that by the year 2022 roughly 42% of the 404,000 new cases filed

¹⁷³ Baseline Study: Programme for Legal Empowerment and Aid Delivery in Kenya.
https://www.unodc.org/documents/easternafrika/Criminal%20Justice/PLEAD_Baseline_Study_Report_-_Oct_2018.pdf

¹⁷⁴ Baseline Study: Programme for Legal Empowerment and Aid Delivery in Kenya.
https://www.unodc.org/documents/easternafrika/Criminal%20Justice/PLEAD_Baseline_Study_Report_-_Oct_2018.pdf

¹⁷⁵ Baseline Study: Programme for Legal Empowerment and Aid Delivery in Kenya.
https://www.unodc.org/documents/easternafrika/Criminal%20Justice/PLEAD_Baseline_Study_Report_-_Oct_2018.pdf

in court were from urban areas such as Nairobi, Mombasa, Nakuru, Kiambu and Machakos counties.¹⁷⁶

To ease these high costs, Parliament enacted a *Small Claims Court Act, 2016* as a reprieve for Claims providing a lower filing fee of Kshs. 2,000. It is important to note that the Small Claims Court's jurisdiction is limited to claims under Kshs. 1,000,000/-. This means that all persons with higher claims are subjected to the higher filing fees – unless they forfeit the claim above Kshs.1,000,000/-.

As a further relief to the high filing fees, Order 33 Rule 1 of the *Civil Procedure Rules, 2010* provides for Pauper Briefs. The manner in which the Pauper Briefs are administered is provided for in the *Practice Directions Relating to Pauper Briefs Scheme and Pro Bono Services, 2016*.¹⁷⁷ This enables meaningful access to courts by indigent persons without sufficient means to meet the filing fees prescribed or to retain legal representation.

In a bid to enable the delivery of affordable, available and accessible legal aid to indigent persons, Kenya through *the Legal Aid Act, 2016* has set up the National Legal Aid Service and a Legal Aid Fund. It has however been challenging to operationalize the Legal Aid Fund which is critical in supporting accredited legal aid providers to conduct access to justice programmes. Similarly, the National Legal Aid Service has been severely understaffed and hence incapacitated to fully fulfil its mandate.¹⁷⁸

ii. Accommodations for people with disabilities and the vulnerable

Children: One of the most integral accommodations made for vulnerable persons is the creation of a separate court for Children matters. The Children's Court created pursuant to sections 90 and 91 of the *Children Act, 2022* is designated to handle all

¹⁷⁶ 'CJ Martha Koome: Here are 5 counties that filed many court cases last year' by David Nyaga (2022) <https://www.standardmedia.co.ke/national/article/2001459823/cj-koome-here-are-5-counties-that-filed-many-court-cases-last-year>

¹⁷⁷ Gazette Notice No. 370 dated 20th January 2016. Available at <http://kenyalaw.org/kl/index.php?id=6006>

¹⁷⁸ Baseline Study: Programme for Legal Empowerment and Aid Delivery in Kenya. https://www.unodc.org/documents/easternafrika/Criminal%20Justice/PLEAD_Baseline_Study_Report_-_Oct_2018.pdf

matters pertaining to minors save for murder charges. In these Courts, a protective cover of a witness protection box is provided to children and a friendly environment is mandated under the Act so as to accommodate the child. Further and most importantly, section 96 of the Act mandates legal aid where a child under 16 years is the complainant or where the child is unrepresented.

Persons with disabilities: Accommodations are also made for persons with disabilities so as to enable them to access and obtain justice. Section 22 of the *Persons with Disabilities Act, 2003* requires public buildings, such as Courts, to adapt so as to facilitate the accessibility and mobility of disable persons in these spaces. The Practice Directions on standardization of Practice & Procedures in the High Court also highlight the need for the Court to have interpreters including sign language interpretations.

iii. Independence of the Bench

The judiciary interprets the law and applies it to particular cases. As such, an independent, politically impartial, honest and competent judiciary is necessary for the rule of law and integral for any democratic constitutional order. It is therefore important that the mode of recruiting, remunerating, funding, disciplining and removing Judges helps meet these requirements.

Kenya has a fairly independent judiciary whose processes fall outside the ambit of other arms of government. The recruitment of Judges is provided for in two legal frameworks; Article 166 of the Constitution as well as in the *Judicial Service Commission Act, 2011* which place the recruitment of Judges in the hands of the Judicial Service Commission.

The remuneration of Judges and Magistrates is handled by the Salaries and Remuneration Commission – a body established under Article 230(4) of the Constitution tasked with setting and reviewing the remuneration and benefits of Judges. The tenure of Judges is also secured under these frameworks.¹⁷⁹

¹⁷⁹ Art. 167, Constitution

Article 168 (2) of the Constitution entrusts the responsibility for initiating the removal of a Judge from office exclusively to the Judicial Service Commission. The *Judicial Service Act, 2011* also provides detailed provisions on “*Appointment and Removal of Judges and Discipline of Other Judicial Officers and Staff*” (Part.V), and empowers both the Judicial Service Commission and the Tribunal to subject “*judicial officers*” to disciplinary procedure.

While removal of judges requires a formal, public inquiry to be made, these complaints are not made readily available to the public. The Petitions however may be made available in the event of an appeal. An illustration of this is seen in the case of *Apollo Mboya v Judicial Service Commission & another; Justice Kalpana Rawal & 4 (Interested Parties)* [2020] eKLR where the Petitioner appealed the decision by the JSC and the complaint was made accessible.¹⁸⁰ For these reasons, it is difficult to discern how many complaints were issued in the year 2022-2023 and what the substance of these complaints were so as to know the main challenge raised as regards independence of Judiciary.

There has been progress seen in this area recently. To ensure transparency in the removal of judges, the Judiciary has proposed the *Judicial Service (Processing of Petitions and Complaints Procedure) Regulations, 2023* as a guideline on the process of raising complaints about judges.

Publicly, a more recent issue has been raised as regards the independence of the judiciary by the International Commission of Jurists (ICJ-K). The ICJ-K, in a bid to promote more judicial independence and accountability in the country, raised concerns that the Judiciary is slowly losing its independence from the Executive due to the funding of independent commissions. The challenge raised in this regard has been the need to review the functions and mechanisms provided when it comes to the manner in which these independent commissions are funded. The lack of adequate funding has raised some challenges in ensuring these institutions dispense their constitutional mandates as enshrined.¹⁸¹

¹⁸⁰ *Apollo Mboya v Judicial Service Commission & another; Justice Kalpana Rawal & 4 (Interested Parties)* [2020] eKLR

¹⁸¹ ‘Kenya’s Judiciary Is Slowly Losing Its Independence From The Executive – ICJ’ by Ben Kirui

<https://www.citizen.digital/news/kenyas-judiciary-is-slowly-losing-its-independence-from-the-executive-icj-n329790>

iv. Independence of the Bar

The principle of independence of the legal profession is an essential component of a democratic society and the rule of law and most importantly, is a necessary prerequisite for access to justice and the effective enforcement of human rights. It is important to note that in Kenya, all persons have the right to the counsel of their choice. Accordingly, it is important for effective administration of justice that the advocates representing parties are independent and that the bar society works independently from the executive.

In Kenya, the legal and institutional framework for the admission of advocates to the Bar is the *Advocates Act*.¹⁸² The Act sets requirements that need to be met before one is admitted to the bar. It also tasks the Council of Legal Education with overseeing the educational and vocational training of lawyers and the Law Society of Kenya with the continuous professional training and/or development of advocates. These two bodies are established by *Council of Legal Education Act, 1995* and *The Law Society of Kenya Act, 2014* respectively and function independent of the other arms of government to ensure that the standards of the legal profession is maintained and the advocates are protected from harassment and intimidation when carrying out their duties.

The legal profession in Kenya is guided by the *Advocates Act* and Code of Standards of Professional Practice and Ethical Conduct. The Act establishes the Advocates Disciplinary Tribunal and Advocates Complaint Commission both of which handle complaint of advocates professional misconduct and negligence. In recent times, there is an emerging challenge of quacks or advocates who have not taken out practicing certificates acting as advocates.¹⁸³

¹⁸² Chapter 16, Laws of Kenya.

¹⁸³ See for instance:

<https://www.standardmedia.co.ke/thenairobi/money/2001473693/beware-of-quacks-posing-as-lawyers>;
<https://www.citizen.digital/news/lsk-cracking-down-on-quacks-masquerading-as-advocates-n319886>

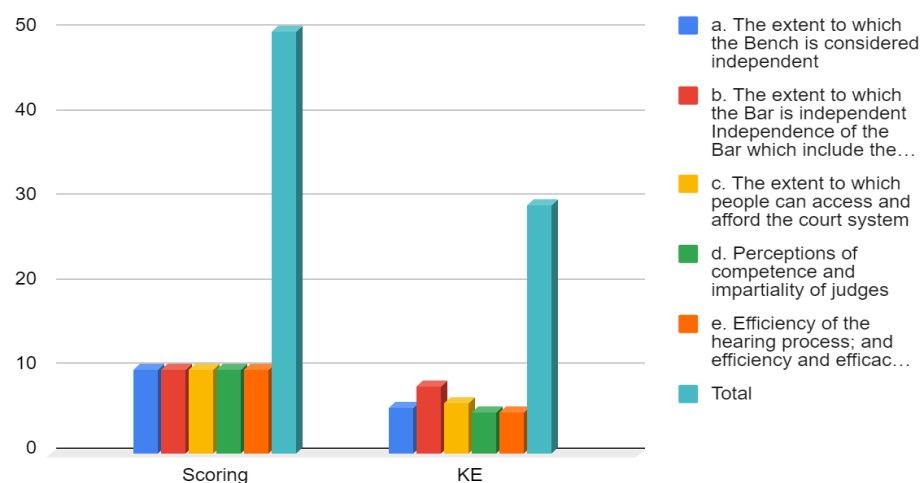
v. Case Clearance

By 2022, the Judiciary stated that it had recorded a Case Clearance Rate of 94% where 381,317 cases were resolved.¹⁸⁴

Findings

Parameter	Indicators	Scoring (Marks)	KE
Access to Civil Justice	a. The extent to which the Bench is considered independent	10	5.5
	b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	8
	c. The extent to which people can access and afford the court system	10	6
	d. Perceptions of competence and impartiality of judges	10	5
	e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	4.98
Total		50	29.48

Kenya access to justice score chart



¹⁸⁴<https://www.judiciary.go.ke/wp-content/uploads/2023/07/PMMUs-EVALUATION-REPORT-2021.2022-May-2023.pdf>

Recommendations

Based on these findings on access to justice in Kenya, below are some recommendations for further enhancing access to civil justice:

- (1) Improving Physical Accessibility of Courts** – This can be done through increasing the number of court stations, particularly in marginalized areas, to ensure physical accessibility for all citizens. Additionally, to ensure up to standard court rooms in these marginalised areas to enhance the court experience for both the judicial officers, the advocates as well as the citizens. To expand the online court system while addressing challenges related to internet connectivity and technological devices to ensure broader access to justice.
- (2) Reducing Financial Barriers** – This can be done by reviewing and potentially reducing court filing fees to increase affordability, especially for low-income earners. To strengthen the implementation of the Small Claims Court Act to provide a cost-effective avenue for resolving disputes with lower filing fees.
- (3) Legal Aid Services** – This can be done through operationalization of the Legal Aid Fund and adequate staffing of the National Legal Aid Service to provide accessible legal aid services to indigent persons. To also ensure effective implementation of Pauper Briefs scheme to facilitate access to justice for those unable to afford legal representation.
- (4) Improving Case Clearance Rates** – this can be by implementing measures to enhance the efficiency of the court system and streamlining the hearing process to reduce case backlog and improve case clearance rates. To additionally, enhance the efficacy of the appeal system to provide timely resolution of disputes and uphold the right to fair trial.

3. RWANDA

i. Independence of the Bench

Article 151 of the Constitution upholds the independence of the judiciary declaring independence in finances as well as in administrative matters. Further, the constitution provides the need for the judges to exercise their roles with independence and with safeguards for impartiality.

The independence can be seen in the Judicial appointments and removals as per Law n° 014/2021 of 03/03/2021. Judges in primary, intermediate, commercial, and high courts are appointed and removed by the High Council of the Judiciary. Judges of the Court of Appeal are appointed by Presidential Order after consulting the Cabinet and the High Council of the Judiciary. Supreme Court judges are appointed by the President following similar consultations, with the Senate approving the nominees.

The High Council of the Judiciary (HCJ), established by the Constitution, is the custodian of justice and is responsible for safeguarding the independence of the judiciary and ensuring the proper conduct of judges. One of its primary roles is to receive and investigate complaints about the conduct of judges. The HCJ has the power to take disciplinary measures, including the dismissal of judges and other Judicial Officers found guilty of serious misconduct.

As per the legal framework, the Bench would be considered independent.

ii. Independence of the Bar

It is vital to note that the Rwandan Bar Association (RBA) is financially independent, allowing it to operate without relying on government funding. This autonomy is important for maintaining its independence, integrity and effectiveness in regulating the legal profession and providing services to its members. The Association funds its activities through membership contributions and internal revenue sources such as profits made from its various investments.

Under the Law which governs the bar association in Rwanda, advocates have the freedom to practice their profession in service of justice and in truth.

The law also provides protection for advocates in their professional duties, stating that they cannot be arrested or detained provisionally without the consent of the President of the Bar Association, except in cases of felony offenses. If an advocate violates the law or disrupts court proceedings, the court may document the incident and report it to the Council of the Bar Association.

Furthermore, the Internal Rules and Regulations of the Rwanda Bar Association, particularly Article 130 (12), emphasize on the importance of an advocate's independence. Advocates are obligated to advise and defend their clients impartially, without undue influence from external forces, including political or judicial authorities, or personal interests that might conflict with the principles of justice.

During the period of our study, we did not find any evidence suggesting that the executive branch has influenced the Bar Association in any form.

iii. Functions of the Judiciary

The judiciary is composed of the Supreme Court, Court of Appeal, High Court, Intermediate Courts, and Primary Courts, along with specialized Commercial and Military Courts. The High Council of the Judiciary governs the system, by ensuring access and affordability of the court services to the population. The principles of the judiciary emphasizes that justice is rendered in the name of the people, court proceedings are public (unless otherwise specified by law), and judgments are detailed and delivered publicly.¹⁸⁵

¹⁸⁵ The Government of Rwanda, available at: <https://www.gov.rw/government/judiciary> accessed on 14/11/2023

o *Accessibility of courts:*

According to the law determining the jurisdiction of courts in Rwanda , there is at least one primary Court stationed in every District among the thirty (30) Districts in the country, which means there are 30 Primary Courts in the Country and twelve (12) Intermediate Courts shared by two (2) districts on average¹⁸⁶. This easy distribution of Court stations and judges has helped in easing access to courts of law by citizens and foreigners living in Rwanda including children and persons with disabilities. Electronic Court System (E-Courts): In addition to Court's distribution all over the country for easy access, Rwanda has also implemented an online court system known as the Integrated Electronic Case Management System (IECMS)¹⁸⁷ to address the challenges among others easy access. Currently, people do not need to go to court to submit a case, as this is done online. The e-courts also contribute to more efficient and cost-effective justice delivery by reducing the need for physical court appearances, thereby lowering associated costs. The system has already been used in the trial of hundreds of cases, indicating a significant step towards modernizing and making the justice system more accessible.

Legal Aid and Access to Justice: The Ministry of Justice in Rwanda has established Access to Justice Bureaus known as MAJ in every district, and which are staffed with lawyers who provide free legal aid. These bureaus offer various services, including legal advice, law dissemination, legal representation in courts for the poor and vulnerable, and assisting in conflict resolution through mediation. This system plays a crucial role in ensuring that legal support is accessible to those who may not have the financial means to afford it¹⁸⁸.

Court Fees: In October 2020, the Rwandan government made tremendous efforts to ease access to courts by reducing the court fees to almost half, as provided in the ministerial order n° 18/MOJ/AG/20 of 30/10/2020 determining court fees in civil,

¹⁸⁶ [Annex II to law n°30/2018 of 02/06/2018 determining the jurisdiction of courts (Official Gazette n° Special of 02/06/2018)].

¹⁸⁷ <https://iecms.gov.rw/>

¹⁸⁸ <https://www.gov.rw/services/legal-aid-services> (retrieved on 14/11/2023)

commercial, labor administrative and criminal matters (Official Gazette n° 34 of 02/11/2020).

- *Children*

Pursuant to Articles 33 and 34 of the Law Determining the Jurisdiction of Courts,¹⁸⁹ cases involving minors are heard in a specialized chamber. Rwanda has set up child friendly systems which are less intimidating and more accommodating for children.

- *Persons with disabilities*

The Constitution of Rwanda of 2003 as amended in 2015 and 2023 prohibits discrimination on the basis of any form of disability. Furthermore, Rwanda ratified the Convention on the Rights of Persons with Disabilities. This requires among others ensuring that persons with disabilities have effective access to justice.

Most courts in Rwanda are physically accessible to persons with disabilities and where accessibility is not possible, the courts are flexible to facilitate them. For instance, a court can hold the hearing in a different room if the usual room is not accessible to the individuals. However, it should be noted that more efforts should be added in facilitating persons with disabilities by equipping courts with trained people on sign languages as well as on interpersonal skills on how to engage with persons with disabilities.

iv. Efficiency of the hearing process

Efficient Processes: The Constitution guarantees that everyone has the right to effective/due process of law. Thus, various provisions and legislations have been put in place in Rwanda to ensure the smooth and efficient running of the justice system.

Further, it is worth mentioning that the introduction of amicable settlement and plea bargain mechanisms have also expedited the efficient process of justice in Rwanda.

¹⁸⁹ Articles 33 and 34 of the Law no: 30/2018 of 02/06/2018 law determining the jurisdiction of courts

According to the Judicial performance report (Year 2022-2023¹⁹⁰), *“this year 909 cases were settled through mediation facilitated by court registrars during pretrial conferences, while Judges facilitated mediation in 283 cases (from 73 last year). In addition, [during 2022-23] 934 cases were settled through plea-bargaining”*.

Limit to the time of hearing cases: Rwandan law and practice dictate that no case goes unsolved for a period of six months for the civil matters and 15 days for suspects of a criminal offence who is caught red handed.

Right to an Appeal: The Constitution of Rwanda (2003, as revised in 2015 & 2023): Article 29 provides for the right to due process of the law and fair trial, which includes the right to appeal against a judgment in a manner established by law. Further, Article 147 and 148 of the Civil Procedure Code¹⁹¹ states that *“A person who was a party to the proceedings in the first instance may appeal the judgment if that person has an interest therein, except when the law provides otherwise”*. *“The time limit for lodging an appeal is one (1) month that starts running from the day the party gets knowledge of the judgment pronouncement” (Art. 148)*.

The interested party can appeal against the decision up to two times all at different levels of court.

- o Challenges

- i. Enforcement of judgments for court decisions by the public is very hard where the person/ company does not have property/ financial ability to pay. As a result, there are a few judgements whose enforcement have failed.

¹⁹⁰Rwanda annual Judicial Report (2022/2023), <https://www.judiciary.gov.rw/index.php?eID=dumpFile&t=f&f=73995&token=84af314e35ebbf11df0b99521b3d6659f07214> (retrieved 10/10/2023)

¹⁹¹ Law no 22/2018 of 29/04/2018 relating to the civil, commercial, labour, and administrative procedure

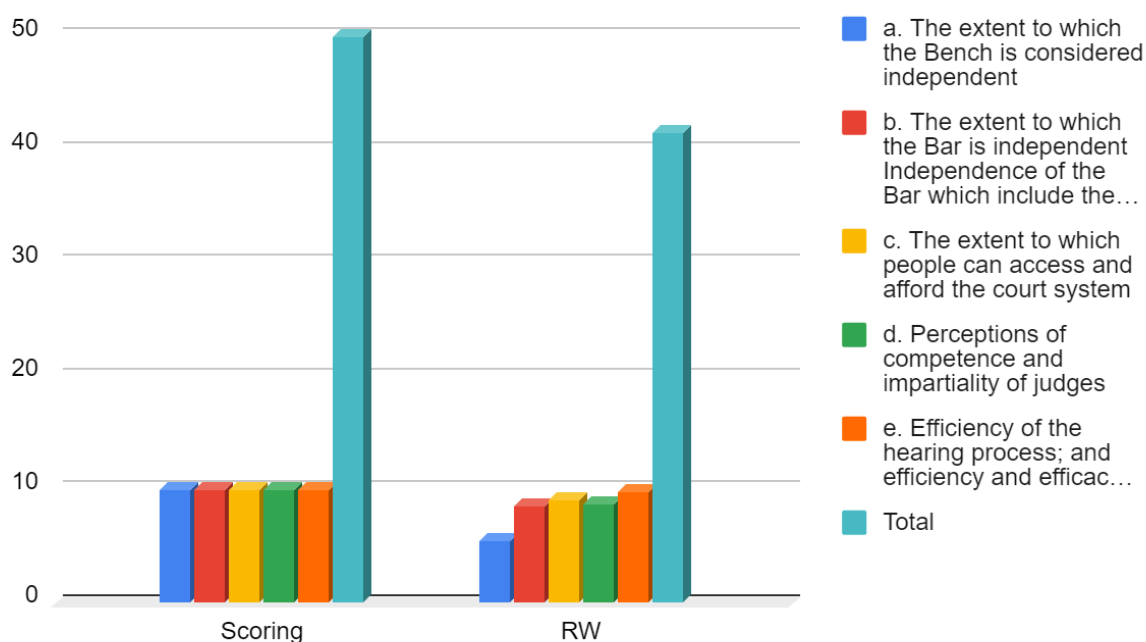
- ii. According to the Annual judicial report (2022/2023)¹⁹², the number of case backlog increased by 122% between 2022/2023. This was attributed to an increase of new filed cases, such an increase was noted at 21%.
- iii. The judiciary is faced with a persistent increased backlog due to the upward trend of new cases filed during the study period while the number of judges and other judicial officers kept declining.
- iv. Difficulties in attracting and retaining competent judges due to salaries that are less attractive.
- v. There is a lack of appropriate working premises (court stations) for a number of courts.

¹⁹² Rwanda annual Judicial Report (2022/2023), page 19 & 20, available at <https://www.judiciary.gov.rw/index.php?eID=dumpFile&t=f&f=73995&token=84af314e35ebffe11df0b99521b3d6659f07214> retrieved on 20/11/2023

Findings

Parameter	Indicators	Scoring (Marks)	RW
Access to Civil Justice	a. The extent to which the Bench is considered independent	10	5.5
	b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	8.5
	c. The extent to which people can access and afford the court system	10	9
	d. Perceptions of competence and impartiality of judges	10	8.75
	e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	9.80
Total		50	41.55

Rwanda access to justice score chart



Recommendations

- (1) There is a need for more efforts in facilitating persons with disabilities by equipping courts with trained people on sign languages as well as on interpersonal skills on how to engage with persons with disabilities.
- (2) An increase in the budget directed towards the administration of the judiciary in order to hire and maintain good talent to help increase the quality of the work and services delivered as well as to reduce case backlog.
- (3) To provide a budget towards the infrastructure of courts.

4. SOUTH SUDAN

Access to justice is a cross-cutting right. It is fundamental for the enjoyment and fulfilment of all human rights. This right enables and enhances other rights such as the right to health as it guarantees judicial and administrative protection of other rights.¹⁹³ The right to access to justice has been guaranteed and expressed as a collection of various rights in the Transitional Constitution of the Republic of South Sudan, 2011 (as amended). Constitutionally, these rights include the guarantees; to litigate or resort to courts of law to redress grievances against any individual, government or organization; ¹⁹⁴ equal access to an independent and impartial process and the opportunity to receive a fair and just trial;¹⁹⁵ and entitlement to equal protection of the law without discrimination.¹⁹⁶ Whereas the right to access to justice is constitutionally provided for, many barriers prevent people from accessing justice on an equal basis. Under resourcing of the judiciary, lacking necessary funds and personnel for territorial distribution, impartiality, and independence; and lack of an effective presence of the judiciary in many parts of the country have been noted as some of the underlying challenges.¹⁹⁷

i. Impartial and independent judges

Article 125 of the Transitional Constitution of the Republic of South Sudan, 2011(as amended) provides for the independence of the Judiciary and requires judicial officers to apply the law impartially and without political interference, fear or favour. The Constitution and the Judiciary Act mandates regard to competence, integrity, credibility and impartiality in the appointment of judicial officers.¹⁹⁸ Additionally, the Code of Judicial Ethics emphasizes the impartiality and independence of judges.

¹⁹³ Pautassi L, 'Access to Justice in Health Matters: An Analysis Based on the Monitoring Mechanisms of the Inter-American System. Health and human rights' [2018] 20(1), 185–197.

¹⁹⁴ Transitional Constitution of the Republic of South Sudan, 2011, art 20)

¹⁹⁵ *ibid* art 19)

¹⁹⁶ *ibid* art 14

¹⁹⁷ Radio Tamazuj, 'Dysfunctional judiciary increases violence, says UN rights body' (Radio Tamazuj, 16 February 2024) <www.radiotamazuj.org/en/news/article/dysfunctional-judiciary-increases-violence> accessed 17 November 2023

¹⁹⁸ *ibid* (n 247) art 125; Judiciary Act, 2008, s 21(1)

ii. Public hearings

The right to a fair and public hearing by a competent court of law is a constitutional guarantee.¹⁹⁹ Likewise the general public has been given statutory right to access to court during the trial of any offense unless otherwise (necessarily) excluded by the presiding judicial officer.²⁰⁰ Practically, there has been unrestricted access to court hearings to the public, a right enjoyed in its abundance.

iii. Efficient processes

The elements of fairness that relate to efficient processes include the requirement to be; presumed to be innocent until proven guilty; informed, at the time of arrest, of the reasons for arrest and to be promptly informed of any charges; physically present during trial and to be tried without undue delay; to be represented by an advocate or be provided legal aid – all of which are constitutionally guaranteed.²⁰¹ Whereas there is evidence of prolonged pre-trial detention, statutorily, pre-trial detention is limited to twenty four (24) hours.²⁰² Relatedly, cases are limited to be adjourned for a reasonable period of time – implying that timelines are determined on a case by case basis.²⁰³

iv. Appeals and stay of execution orders

The Transitional Constitution of the Republic of South Sudan, 2011(as amended), The Judiciary Act, 2008, Code of Criminal Procedure Act, 2008 and the Code of Civil Procedure Act, 2007 all provide for right to appeal and establishes the appellant jurisdictions of the High Court, Court of Appeal and the Supreme Court.

A litigant who is dissatisfied by a judgement of a court has the right to apply for stay of execution pending the appeal.²⁰⁴ However, a submission of an appeal does not

¹⁹⁹ *ibid* (n 247) art 19

²⁰⁰ Code of Criminal Procedure Act, 2008, s 181

²⁰¹ *ibid* (n 247))

²⁰² *ibid* (n253) s 64(1)

²⁰³ Code of Criminal Procedure Act, 2008; Code of Civil Procedure Act, 2007

²⁰⁴ Code of Civil Procedure Act, 2007, s 228

operate as stay of the execution of the decision appealed against.²⁰⁵ Specifically, death sentence is required to be stayed until confirmed by the Supreme Court.²⁰⁶

v. Expeditious disposal of small claims

There is no special court or tribunal that allows people to sue in claims designated specifically as small claims. However, the County and Payam Courts are responsible for disposal of claims that may arguably be categorized as small claims.²⁰⁷

vi. Mechanisms for handling complaints against Judicial Officers

The National Judicial Service Commission is responsible for recruitment of judicial officers and regulation of their conduct.²⁰⁸ Discipline of Justices and Judges is exercised by the Chief Justice with the approval of the Judicial Service Commission.²⁰⁹ Where there is a complaint touching on the discipline of a judicial officer, the Chief Justice is mandated to constitute a Board of Discipline to consider the complaint.²¹⁰ It must however be noted that currently the National Judicial Service Commission is arguably non-functional – this caused a controversy when the President removed 14 Justices of the Court of Appeal from office without a recommendation of the National Judicial Service Commission in 2017. This matter was litigated before the EACJ that rendered a decision in favour of the dismissed Justices in 2020.²¹¹ There are no publicly accessible records regarding complaints made about Judicial Officers.

vii. Timely delivery of judgments

There is no statutory requirement mandating delivery of judgments within a specified timeline. However, judgments are required to be pronounced either immediately after

²⁰⁵ *ibid* s 292

²⁰⁶ *ibid* (n 253) s 277

²⁰⁷ Code of Civil Procedure Act, 2007, s 20-22

²⁰⁸ Transitional Constitution of the Republic of South Sudan, 2011, art 133

²⁰⁹ *ibid* art 135(1); Judiciary Act, 2008, s 48

²¹⁰ Judiciary Act, 2008, s 48

²¹¹ Hon. Justice Malek Mathiang Malek v The Minister of Justice of the Republic of South Sudan and the S.G of E.A.C, Ref No 9 of 2017

the termination of the trial/proceeding or at some subsequent time of which due notice must be given.²¹²

viii. Adequacy of physical infrastructure in terms of court rooms, stations etc.

It is axiomatic that the judiciary must have the necessary resources in order to administer justice.²¹³ South Sudan still grapples with inadequacy or unjustifiable lack of material facilities, equipment, services and resources for judges. Apart from Juba and some state capitals, where one can find a judicial presence of some substance, there are very few judges in the rest of the country, with some areas having no judicial mechanisms nearby. Physical accessibility of statutory courts is a problem throughout the country²¹⁴ – this is also exacerbated due to the impact of the conflict that has caused massive destruction of existing structures and facilities and displacement of people. Juba for example, has only four (4) High Court circuits with improper court infrastructure and facilities. There are approximately fourteen High Court Circuits – at least one supposedly in every state and administrative area. The Court of appeal seats in Juba and has no stations in other areas – all appeals are filed and handled in Juba.

On 3rd December 2020, the Judiciary of South Sudan operationalized the country's first Gender Based Violence and Juvenile Court, in a commitment to end impunity for gender-based crimes and hold perpetrators accountable.²¹⁵ This continues to run despite logistical challenges. The specialised mobile courts system supported by the UNDP and United Nations Mission in South Sudan (UNMISS) is used to effect access to justice in remote areas. The mobile courts have proven effective as a way to mitigate some effects of the shortage of judges and access to justice in remote areas.²¹⁶

²¹² *ibid* (n 260) s 100; Code of Criminal Procedure Act, 2008, s 248

²¹³ ICJ, 'South Sudan: An Independent Judiciary in An Independent State?' (*ICJ*, 18 December 2013) <www.refworld.org/pdfid/530cb3604.pdf> accessed 18 November 2023

²¹⁴ *ibid*

²¹⁵ UNDP, 'South Sudan's Gender Based Violence Court Inaugurated During #16DaysOfActivism' (*UNDP*, 3 December 2020)

<www.undp.org/south-sudan/press-releases/south-sudan's-gender-based-violence-court-inaugurated-during-16daysofactivism> accessed 19 November 2023

²¹⁶ *ibid* (n 266)

ix. Corruption according to civil society

Although a robust institutional framework was put in place since 2010, global reports on corruption such as the Index from Transparency International release thought-provoking results. Illustratively, in 2021, Burundi was ranked 169 out of 180 countries and 19 out of 100; while in 2022, Burundi has been ranked 171 out of 180 countries and 17 out of 100²¹⁷. According to Transparency International, the region is still struggling from the COVID-19 pandemic and a high cost of living; and this adding to the conflict and security challenges.²¹⁸

Relatedly, during the celebration of the African day against corruption, every 11 July, one of the leading civil society organizations with regards to corruption has argued that one of the tools to the fight against illicit enrichment is to allow civil society, including the media to have access to information so as to document such cases. In the same sense, it was recommended that public officials declare their assets when taking office and after their mandate, as per the Constitution, to reform the public procurement system and separation of powers²¹⁹.

²¹⁷ The CPI ranks 180 countries and territories around the world by their perceived levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean).

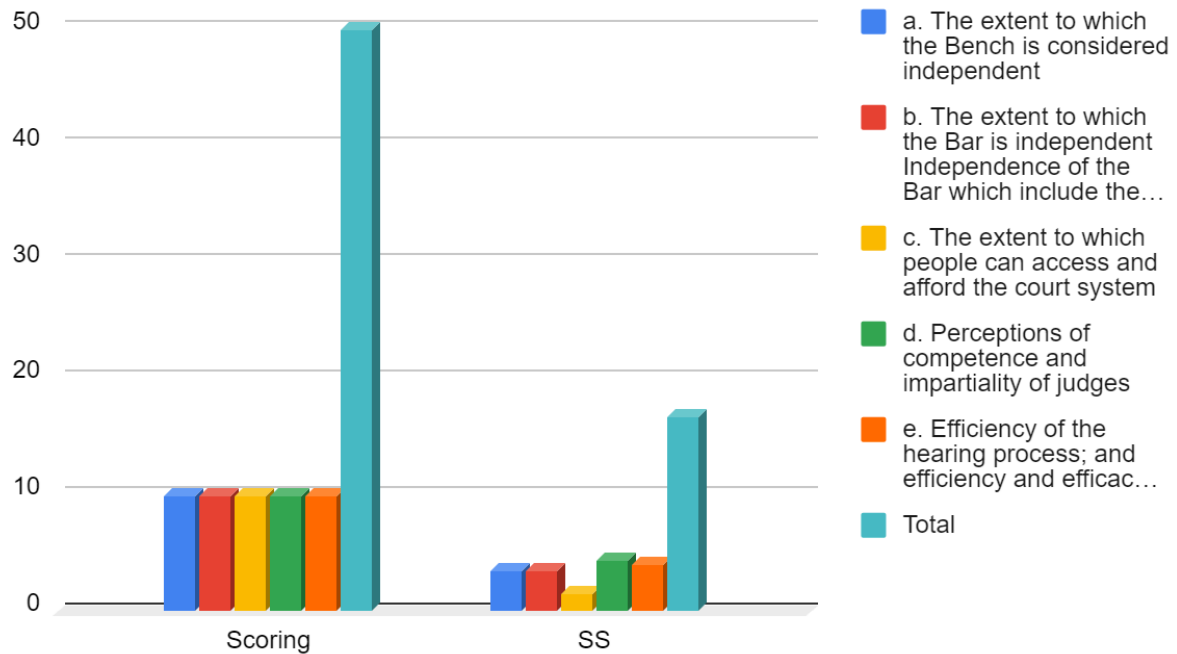
²¹⁸ Transparency International, 'CPO 2022 for Sub-Saharan Africa : Corruption compounding multiple crises' <<https://www.transparency.org/en/news/cpi-2022-sub-saharan-africa-corruption-compounding-multiple-crises>> Accessed 23 October 2023.

²¹⁹ Egide Harerimana, '*Olucome: Le niveau du Burundi a sensiblement chuté en matière de lutte contre la corruption*' (2023) <<https://www.iwacu-burundi.org/olucome-le-niveau-du-burundi-a-sensiblement-chute-en-matiere-de-lutte-contre-la-corruption/>> Accessed 23 October 2023.

Findings

Parameter	Indicators	Scoring (Marks)	SS
Access to Civil Justice	a. The extent to which the Bench is considered independent	10	3.5
	b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	3.5
	c. The extent to which people can access and afford the court system	10	1.5
	d. Perceptions of competence and impartiality of judges	10	4.3
	e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	4
Total		50	16.8

South Sudan access to justice score chart



Recommendations

1. Ensure adequate resourcing of the judiciary, in terms of necessary funds and personnel for territorial distribution.
2. Guarantee and ensure the independence of the judiciary and bar.
3. Uphold the right to legal aid as a fundamental right and establish mechanisms for its realization such as adequate funding and resources for legal aid programs.
4. Ensure that the justice system is accessible and affordable to all throughout the country. Barriers such as location, cost, language, etc. should not prevent individuals from seeking legal redress.
5. Encourage and promote the use of Alternative Dispute Resolution (ADR) mechanisms that are accessible and effective as a means of resolving disputes in a timely, cost-effective, and amicable manner.

6. Operationalize the National Judicial Service Commission to independently carry out its mandate.

5. TANZANIA

i. Independence of the Judiciary

The Judiciary of Tanzania is the system of courts that interprets and applies the law. Its foundation is the constitution of the United Republic of Tanzania of 1977²²⁰ which establishes its independence from governmental influences in dispensing justice. The Justices and Magistrates ought to operate autonomously, bound solely by the provisions of the Constitution and the laws of the land.²²¹ The Judiciary operates under a dual judicial system, with distinct judicial structures governing Tanzania Mainland and Zanzibar. The Court of Appeal of Tanzania serves as the final appellate judicial body, holding jurisdiction over the entirety of the Union, ensuring uniformity and consistency in legal interpretation and application.

An effective Judiciary is built on a foundation of public faith. Rulings should be made on the basis of the law and the people must believe that the same came from competent, lawful and independent judicial officers.²²² It is essential to note that the Constitution sets out provisions for the appointment and removal of the Judges.²²³ Further, other legislations provide the legal and institutional framework for the recruitment and disciplinary process for judges and magistrates.²²⁴ Unfortunately, the system is not free from influence of the Executive. The Act provides that the appointment of the Chief Court Administrator, judges of the High Court, justices of Appeal and the Chief Justice are all made by the President; this tarnishes the process of independence of the appointing authority. The Constitution and subsequent legislations give the President powers to shape the Judiciary through appointments, thus creating a Judiciary that lacks the boldness to challenge the Executive.

²²⁰ Article 107A (1) of The Constitution of the United Republic of Tanzania, Cap 2 of 1977 as amended from time to time

²²¹ Article 107B of The Constitution of the United Republic of Tanzania, Cap 2 of 1977 as amended from time to time

²²² Judicial Misconduct and Public Confidence in the Rule of Law

<https://www.unodc.org/dohadeclaration/en/news/2019/08/judicial-misconduct-and-public-confidence-in-the-rule-of-law.html>

²²³ Article 109, 110 and 110A of the Constitution.

²²⁴ The Judiciary Administration Act, 2011, The Judiciary Administration (General) Regulations, 2021 and the Judiciary Administration (Service Scheme), 2021 outline the disciplinary process for non-judicial officers, including magistrates.

ii. Security of Tenure and remuneration/ benefits

In Tanzania, judges typically have a degree of security of tenure, which is a fundamental aspect of judicial independence. The Constitution and related laws often provide safeguards to ensure judges can perform their duties without fear of arbitrary removal or interference.

Similarly, the salaries, allowances, benefits and entitlements of the Chief Justice, a Justice of Appeal, a Principle Judge and a Judge are established by law.²²⁵ The salaries, allowances, benefits and entitlements are drawn directly from the Consolidated Fund and not voted for by Parliament. This provision ensures independence of Judges preventing them from being compromised by politicians.

It should be noted that in Tanzania, there is no formal mechanism for the promotion of judges, making it challenging to ensure that promotions are done the requisite standards. Parallel to that, the Executive has greater control over selection, which includes the promotion of judges, without oversight from other bodies. This undermines the Court's ability to uphold human rights in the country. The process is thus for lack of transparency. While there are Employment Advisory Committees established with the aim of recruiting, confirming, promoting, and disciplining non-judicial officers, and which play a role on the entry level into the Judiciary,²²⁶ higher-level appointments are made almost exclusively by the Executive with most promotions and appellate appointments characterised by ad hoc procedures.

These Employment Advisory Committees comprise of a chairman and nine other members who are appointed by the Commission in accordance with the procedures set out in Regulation 9 of the First Schedule to the Judiciary Administration (General) Regulations.²²⁷

²²⁵ Section 4(2) of the Judges (Remuneration and Terminal Benefits Acts) of 2007

²²⁶ Section 14(2) of the Judges (Remuneration and Terminal Benefits Acts) of 2007

²²⁷ Section 17(2) of the Judiciary Administration (General) Regulations of 2021

iii. Complaints against judicial officers

Complaints against judicial officers regarding corruption, incompetence, or delays in the administration of justice are addressed through a combination of institutional mechanisms, ensuring accountability and transparency within the Judiciary. The key institutions handling such complaints include the Judicial Service Commission (JSC). The JSC often plays a pivotal role in investigating complaints against judicial officers. It is tasked with overseeing the conduct of judges and magistrates. The Commission may receive complaints from various sources, including the public, legal professionals, or other judicial officers. It investigates these complaints, ensuring due process and fairness, and recommends disciplinary actions to the appropriate authorities if warranted.

The Judicial Administration Act establishes Judicial Officers Ethics Committees at various levels with the aim of investigating and conducting inquiries into the conduct of judicial officers. These levels include the Judges Ethics Committee, which is responsible for receiving complaints against Justices of Appeal, the Jaji Kiongozi, or a judge.²²⁸

The Judges Ethics Committee is composed of the Chief Justice as Chairman, three Justices of Appeal, three High Court Judges, and the Chief Registrar as Secretary of the Committee. In performing its duties, the Committee is guided by the procedures stipulated under the Fourth Schedule to the Judicial Administration Act.²²⁹

The Judicial Administration Act establishes other disciplinary levels for judicial officers other than the Justices of Appeal, Jaji Kiongozi, and Judges of the High Court. The Judicial Officers Ethics Committee for judicial officers other than the Justices of Appeal, Jaji Kiongozi, and Judges of the High Court is composed of the Jaji Kiongozi as Chairman, two Judges of the High Court, two judicial officers who are neither Justices of Appeal nor Judges of the High Court, and the Registrar of the High Court

²²⁸ Sections 36 to 45 of the Judiciary Administration Act, 2011

²²⁹ Section 38 (3) of the Judiciary Administration Act, 2011

as Secretary of the Committee. Its procedures are guided by the Fourth Schedule to the Act.

Another level is the Regional Judicial Officers Ethics Committee, composed of the Regional Commissioner as Chairman, the Resident Magistrate in charge of the region, the Regional Administrative Secretary, two other members appointed by the Regional Commissioner from prominent persons in the region, and two judicial officers appointed by the Judge in charge. The committee aims to receive and investigate complaints from the members of the public concerning District or Resident Magistrates in the region and submit a report to the Commission for a decision.

The District Judicial Officers Ethics Committee is composed of the District Commissioner as Chairman, the District Magistrate or Resident Magistrate in charge of the district, the District Administrative Secretary as Secretary, two other members (one of whom is a religious leader appointed by the District Commissioner from among prominent persons who, in his opinion, are of proven high integrity, knowledgeable, and capable of effectively participating in the discharge of the functions of the District Judicial Officers Ethics Committee), and two judicial officers appointed by the Judge in charge. The role of the District Judicial Officers Ethics Committee is to receive and investigate complaints submitted by members of the public concerning Primary Court Magistrates in the district, submit reports to the Commission, carry out inquiries into the conduct of Primary Court Magistrates as directed by the Judge in charge, and report back to him.

These complaints are however not publicly accessible, and neither are their outcomes, making it difficult to ascertain how many complaints the Commission or the ethics committee has received or its pace in resolving them and the final outcome.

iv. Independence of the Bar

The Bar is not independent in Tanzania. The admission of the Advocates in Tanzania is managed by the High Court of Tanzania (for the mainland) ²³⁰ and High Court of Zanzibar. Both the Mainland and Zanzibar have Bar Associations. Tanganyika Law Society (TLS) is the Bar Association of Tanzania Mainland, while Zanzibar Law Society caters to the islands.

The bar associations oversee lawyers' education and vocational training through continuous legal education. For the Mainland, each member must have a minimum of 10 points acquired after they have attended continuous legal education to renew their practicing certificate annually.

The bar associations are self-governing, and their executive body is elected by its members. Theoretically, the associations can run their affairs independent of the Executive. The Tanganyika Law Society has however raised concerns about their independence citing attempts by government to control and regulate the profession, a clear encroachment by the Executive.²³¹

The Advocates Committee was established to deal with disciplinary issues of advocates in Tanzania. Unfortunately, the Committee is not independent due to interference by the Chief Justice and High Court Judges. The Chief Justice and Judges of the High Court are empowered to deal with misconduct or offences by advocates. These powers have been abused many times, such as in the case of Mpale Kaba Mpoki, who was arbitrarily suspended from practising for six months for merely raising a preliminary objection in the case of Boniface Mwabukusi.²³²

²³⁰ Section 6 of the Advocate's Act, Chapter 341, R.E. 2019, places the duty to keep a Roll of Advocates

²³¹ Warning Shots: Threats to the Independence of the Legal Profession in Tanzania

https://www.americanbar.org/groups/human_rights/reports/warning-shots--threats-to-the-independence-of-the-legal-professi/

²³²<https://tls.or.tz/2023/11/21/arbitrary-suspension-of-our-tls-member-senior-counsel-mpale-mpoki/>

The Tanganyika Law Society Act has undergone several amendments over time.²³³ These amendments to the TLS Act have been cited as an example of the Government's efforts to restrict the independence of the Tanganyika Law Society. The amendments have introduced a change in the structure of the Society; and Annual General Meetings are now conducted by representation. They have also made it mandatory for the Council to submit a report of the Annual General Meeting to the Minister responsible for legal affairs. Similarly, auditing the Society's financial statements is supposed to be done by the auditor approved by the Ministry of Finance, and the Society ought to submit the audited financials to the same Minister.

TLS is said to have been a vibrant bar association; however, the external pressure negatively affects the Society. The State is interested in who runs for the office of TLS Governing Council (this includes the President and Vice President). The amendments set the qualifications and excluded others from running, such as public servants, Ward Councillors, Members of Parliament, or political party leaders.

The code of conduct governing advocates is publicly accessible.²³⁴ However, there are expressions of dissatisfaction with the composition of the disciplinary Committee (s) by the lawyers because it is not for the benefit of the advocates. The Advocates Act states that the 'Advocates Committee' is responsible for hearing and determining 'any allegation of misconduct made against any advocate by any person' and that it can remove an advocate from 'the Roll of Advocates' if such allegations are deemed valid. The same law establishes that the Advocates Committee comprises a judge of the High Court, the Attorney General, the Deputy Attorney General or the Director of Public Prosecutions, and a practising advocate nominated by the TLS. A quorum, however, can be established by two of these members. This means disciplinary proceedings can occur without a TLS member being present.

²³³ the Written Laws (Miscellaneous Amendments) (No. 2) Act, 2018, the Written Laws (Miscellaneous Amendments) Act, 2020 and the Legal Sector Laws (Miscellaneous Amendments) Act, 2023

²³⁴[https://tanzlii.org/akn/tz/act/gn/2018/118/eng@2018-03-09/source.pdf#:~:text=%2D\(1\)%20Every%20advocate%20shall.and%20\(e\)%20the%20profession](https://tanzlii.org/akn/tz/act/gn/2018/118/eng@2018-03-09/source.pdf#:~:text=%2D(1)%20Every%20advocate%20shall.and%20(e)%20the%20profession)

Further amendments were done to the Advocates Act to introduce the Regional Advocates Ethics Committees that handle disciplinary proceedings against advocates on a regional level. The Advocates Committee, now renamed the National Advocates Committee, serves as an appellate body and handles appeals from those Regional Advocates Committees. However, the amendments retain the same members of the Advocates Committee, and a TLS member is still unnecessary to duly constitute the quorum.

Various lawyers have expressed their concerns over the amendments that the same did not resolve the problems regarding the independence and impartiality of the disciplinary proceedings. During disciplinary proceedings, the Regulations made under the Advocates' Act allow the Advocate accused of misconduct to appear with a fully recognised agent, including an advocate or a legal representative.

During the period under review, some lawyers have reported incidents of intimidation, hindrance, harassment or improper interference in their duties as lawyers; some have even been arrested.²³⁵ The U.N. Basic Principles on the Role of Lawyers emphasises that lawyers should be able to perform their professional functions without intimidation, hindrance, harassment, or improper interference and should not suffer sanctions for actions taken in accordance with recognised professional duties.²³⁶ These instances highlight the challenges faced by lawyers in Tanzania and the importance of upholding their independence and ability to carry out their professional duties without interference.

²³⁵ Advocate Boniface Mwabukusi is now facing disciplinary charges before the Advocates' Committee. Adv. Mwabukusi is charged with professional misconduct under the Committee where the Attorney general has lodged the complaints. The attorney general has prayed to remove the name of advocate Mwabukusi from the roll of advocates. Prior to disciplinary charges, Advocate Mwabukusi was arrested and detained by the police for interrogation. His arrest and subsequent disciplinary charges are associated with his expression of opinion against the Intergovernmental agreement between Tanzania and D.P. World. Another Advocate is Dr Rugemeleza Nshala, the Executive Director of the Lawyers Environmental Action Team and the former President of the Tanganyika Law Society, who received death threats. As a result, he issued a press conference explaining the threats against him.

²³⁶ Basic Principles on the Role of Lawyers.

<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>

v. The extent to which people can access and afford the court system

o Fees, Costs and Charges

Whether the fees set by the High Court and Magistrates' Courts for civil disputes are reasonable and proportionate is subjective.

However, the Legal Aid Act cures this issue. Matters related to legal aid in Tanzania are governed by the Legal Aid Act. An application for legal aid may be made by either an indigent person; any other person authorised by the indigent person or any person/institution on behalf of the indigent.²³⁷

Section 3 of the Act defines an indigent person as a person whose means are insufficient to enable him to engage a private legal practitioner and includes other categories of persons where the interests of justice so require. A person who fits this definition may, according to section 21(1) of the Act, approach any legal aid provider and apply for legal aid services. Upon receipt of the application, the legal aid provider may proceed to process the case. The application will be assessed based on the legal aid provider's procedures.

It monitors the registration and operation of legal aid providers. Indigent members can apply to the respective registry for the court fees to be waived. Furthermore, during civil proceedings, if the Court finds that a party needs legal aid, it may order so. The law society and other legal aid providers, such as the Legal and Human Rights Centre and Tanzania Women Lawyers Association, offer *pro bono* legal services to indigent members of the society. Further, to save time and costs in civil disputes, court-annexed Alternative Dispute Resolution is mandatory for all disputes.

²³⁷ Section 22 of the Legal Aid Act

o *Persons with Disabilities/ special needs*

Unfortunately, the courts do not have adequate services for persons with disability; for example, there are no interpreters, sign language availability, or documents in Braille. However, a regulation firmly provides for issues of access to public buildings, premises, transport services, stations and platforms services, and other recreational services for persons with disability.²³⁸ These regulations extensively address accessibility, which is explicitly required, in mandatory terms, that all public buildings, premises, transport services, stations and platform services, and other recreational services should be accessible to persons with disabilities.

o *Availability of Judges*

In Tanzania, there is one High Court with unlimited territorial jurisdiction over Tanzania's Mainland. The Original proceedings in the High Court may be instituted either in the Commercial Registry at Dar es Salaam or in the Sub-Registry (if any) for the area where the cause of action arose, or the defendant resides. While there is one High Court station in major cities or regions in Tanzania, it is essential to note that its jurisdiction extends across the entire country, and judges have been stationed in these sub-registries.

vi. Case-Clearance Rate

During the pre-trial proceedings, the parties and the Court determine the speed track the case will adopt. In rare instances, the Court delivers judgments in that time frame; however, in most instances, the time frame is usually extended. The Court has aired various reasons for the delay in issuing judgements, including the backlog in the Judiciary.

²³⁸ the question is now comprehensively addressed in law under the Persons with Disabilities (General) Regulations of 2012

According to the Comprehensive Performance Report of the Judicial function for the year 2022,²³⁹ the Judiciary recorded an increased rate in the case-clearance rate for civil cases. It recorded a remarkable increase in the overall clearance rate by 7%, from 99% in 2021 to 106% in 2022, as per table below:

Table 2.3: Clearance Rate – 2022

Courts	Filed	Decided	Clearance Rate
CoA	2,040	1,890	93
HC Registries	15,977	16,454	103
Commercial Court	684	1,009	148
Land Court	2,111	2,808	133
Labour Court	1,570	2,726	174
CECC	29	29	100
Courts of RM	9,519	11,602	122
DC	45,719	48,479	106
Juvenile Courts	1,482	1,446	98
PC	164,467	170,857	104
Total	243,597	257,299	106

Source: Comprehensive Performance Report of The Judicial Functions –2022, pg. 26

Findings

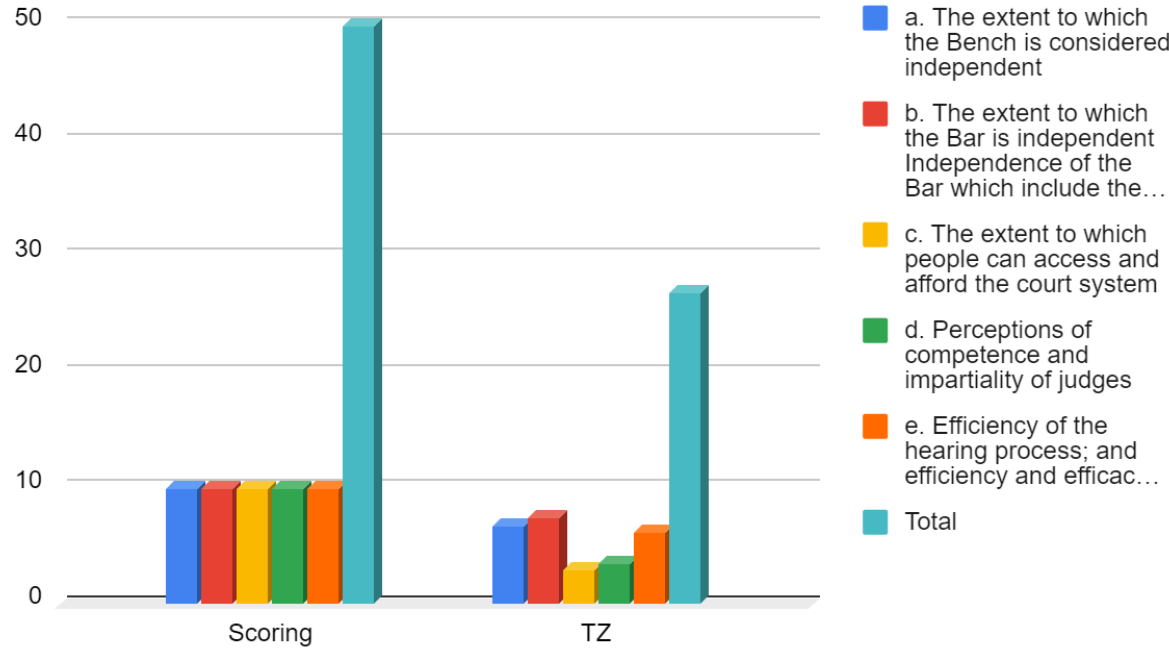
Parameter	Indicators	Scoring (Marks)	TZ
Access to Civil Justice	a. The extent to which the Bench is considered independent	10	6.75
	b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	7.5
	c. The extent to which people can access and afford the court system	10	3

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<https://tanzlii.org/akn/tz/doc/jot-documents-and-guidelines/2023-02-01/comprehensive-performance-report-of-the-judicial-functions-2022/eng@2023-02-01/source.pdf>

Parameter	Indicators	Scoring (Marks)	TZ
	d. Perceptions of competence and impartiality of judges	10	3.5
	e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	6.25
Total		50	27

Tanzania access to justice score chart



Recommendations

Since the introduction of multiparty democracy in 1992, there has been advancement in the Rule of Law in Tanzania and the general legal system, including the increase in the number of court registries, to ensure access to justice in the country. The judiciary has also played a significant role in preventing parliamentary legislation from undermining the Constitution and reviewing executive actions to further enhance access to justice.

6. UGANDA

Introduction

In Uganda, access to justice through the courts of law is available to all persons. Judicial power under Article 126 (1) of the Constitution is derived from the people. Access to justice for all therefore through both formal and simplified court processes is pertinent. However, there are still limitations to effective access to justice in the courts of law, the independence of the judiciary (the bench), and the independence of the bar still face interference from Government, the access to justice by the vulnerable and persons with disabilities still requires much more steps and reforms to be undertaken for effective access to justice for all.

i. Accessibility of Court

Strides were made in 2022 to operationalize additional High Court Circuits. Six (6) new High Court circuits were operationalized in 2022 after about six years of being designated under the Judicature (Designation of High Court Circuits) Instrument S.I. No. 55 of 2016 to bring services closer.²⁴⁰ The 2016 Instrument was later revoked by the Judicature (Designation of High Court Circuits) Instrument S.I. No. 94 of 2023.²⁴¹ The 2023 Instrument designates nineteen (19) new High Court Circuits, bringing the total number of High Court Circuits to thirty eight (38).

The Magistrates' Courts (Magisterial Areas) Instrument, 2017 provides for 82 magisterial areas, with 470 magistrates court (Chief and Grade One Courts). Uganda is currently divided into 135 districts, grouped into four administrative regions.

In March 2022, the Judiciary launched an online court system, the Electronic Court Case Management Information System (ECCMIS) as part of the digital transformation intended to promote access to timely justice.²⁴² This was piloted in seven courts as the first cluster.

²⁴⁰ Monitor, Judiciary operationalizes 6 new High Court Circuits' 6th October 2022
<<https://www.monitor.co.ug/uganda/news/national/judiciary-operationalises-6-new-high-court-circuits-3974974>>
accessed 10th December 2023.

²⁴¹ Gazetted 24th November 2023.

²⁴² Judiciary Launches ECCMIS, 2nd March 2022,
<<https://judiciary.go.ug/data/news/1083/Judiciary%20Launches%20ECCMIS.html>> accessed 10th December 2023.

On 26th May 2022, the President appointed 16 new High Court judges in acting capacity to enhance clearing the backlog in the court system. On 8th July 2022 the Judiciary deployed 161 newly appointed magistrates.²⁴³

According to the speech of the Chief Justice at the launch of the Judiciary Annual Performance Report for FY 2022/2023 (October 2023), further steps are being taken to have a Chief Magistrate's Court for every district in Uganda and at least one Magistrate Grade One Court in each county constituency. The Chief Justice further noted that the Magistrates Courts (Magisterial Areas and Magistrates Court) Instrument 2023 was approved by the Judiciary Council for gazetting at the meeting of 28th September 2023.²⁴⁴

In July 2023, due to the increasing backlog of cases in the superior courts, Parliament passed a Resolution to increase the number of Judges of the High Court from 83 to 151, with the rationale to have at least one judge per District.²⁴⁵ However the proposal to increase the number of High Court Judges was rejected, and in the Judicature (Amendment) Act 2024 which commenced on 1st March 2024, the Act only increased the court of appeal Justices to 35 (inclusive of the Deputy Chief Justice).²⁴⁶ In rejecting the proposal to increase the number of High Court Judges, the Parliament took the view that backlog is not caused by lack of numbers of judges, but is a result of inefficiency, poor case management, and apparent unlimited jurisdiction of the Supreme Court to which all appeals end.

Courts in Uganda have adopted court users' committees and forums through which court users interact with judicial officers giving feedback on experience of using court services.²⁴⁷

²⁴³ Uganda Law Society, Justice Law & Order Sector, Rule of Law Report 2022 3rd Quarter, page 8.

²⁴⁴ The Judiciary of Uganda, Address by Hon. Alfonse Chigamoy Owiny - Dollo Chief Justice of Uganda at the Launch of the Judiciary Annual Performance Report for FY 2022/23, 20th October 2023, at page 12, <https://www.judiciary.go.ug/files/downloads/CJ%20Address%20at%20the%20Annual%20Performance%20Report%20FY%202022-23_compressed.pdf> accessed 10th December 2023.

²⁴⁵ The Parliament of Uganda, Motion for a Resolution under Section 13 of the Judicature Act to Increase the number of Judges of the High Court, (14th June 2023), <<https://parliamentwatch.ug/wp-content/uploads/2023/07/Motion-for-a-Resolution-Under-Section-13-of-the-Judicature-Act-to-Increase-the-Number-of-Judges-of-the-High-Court.pdf>>

²⁴⁶ The Judicature (Amendment) Act 2024 (Act No. 3 of 2024), Assented to on 2nd February 2024, commenced on the 1st March 2024.

²⁴⁷ Standing International Forum of Commercial Courts, The Commercial Court of Uganda, <<https://sifocc.org/countries/uganda/>> accessed 10th December 2023. (Uganda Commercial Court has a Court Users' Committee).

However, the challenges of technology limitations to effectively use the ICT services introduced by court (ECCMIS), the budget constraints on the judiciary to fully roll out and operationalize the courts across the country, and cost of litigation are some of the impediments to accessibility of court in the review period.

ii. Accommodations for people with disabilities and the vulnerable

Children – under the Children Act Cap 59, Section 14 of the Act, a Family and Children Court is established, subject to other provisions of the Act, with jurisdiction to hear and determine criminal charges against children, and applications relating to childcare and protection. The proceedings and environment in the Family and Children Court to the best possible extent have to be child friendly. The court whenever possible sits in a different building from one normally used by other courts when proceeding as a Family and Children Court under Section 15 of the Children Act.

Persons with disabilities (PWDs) – Section 15 of the Persons with Disabilities Act 2020 mandates Government to promote access to justice for PWDs through development, training and use of sign language, tactile and sign language interpreters in all public institutions, use information assistive devices and technology, as well as train judicial and law enforcement officers in matters concerning persons with disabilities.

There are still gaps in the legal system that hinder PWDs to access court and justice with ease. The hindrances range from systemic limitations, technical procedural limitations, legal limitations, to lack of necessary facilities in courts to enhance the ease to access and effectively use the courts. PWDs organizations in the period of review continue to seek reform in the justice system.²⁴⁸

iii. Independence of the Bench

The principle of the independence of the judiciary (bench) is well enshrined in Article 128 of the Constitution of Uganda. The courts in exercising judicial power should not be subject to the control or direction of any person or authority. However, this has been tested time and time again in matters that are highly politically sensitive.

²⁴⁸ New Vision, 'PWDs seek reform in justice system' 23rd February 2023, <https://www.newvision.co.ug/category/news/pwds-seek-reform-in-justice-system-NV_154525> accessed 10th December 2023.

The most recent incident was the President's letter to the Chief Justice dated 7th December 2023²⁴⁹ which drew mixed perceptions.²⁵⁰ In the said letter, the President requested the Chief Justice to personally review a matter to restore sanity and avert the sale of National Mosque at Old Kampala in an execution process by attachment and sale. The matter was at the Court of Appeal, and a single justice of the Court of Appeal had ruled dismissing a stay of execution. Shortly after the President's letter, a panel of three justices issued a stay of execution. The letter from the President was reported to have appeared to be interfering with the independence of the judiciary.²⁵¹

In the period of review, there were statements from the President that were still perceived to undermine the independence of the judiciary, to the effect that government agencies sometimes do not respect court orders because they do not agree with the orders.²⁵²

On 21st November 2022, the Prime Minister intervened in a matter at the Mengo Chief Magistrates Court, took over the judicial officer's office and chaired a televised meeting in the chambers of the magistrate. The conduct was condemned by the Chief Justice and the Uganda Law Society.²⁵³

iv. Independence of the Bar

The Ugandan Bar is organized under the membership of the Uganda Law Society, a membership body established by statute.²⁵⁴ However, the regulation of legal practice in Uganda is a mandate of the Law Council established under Section 2 of the Advocates Act Cap 267. The conduct of advocates is further guided by the Advocates

²⁴⁹ New Vision, 'Museveni asks CJ to review verdict on Gaddafi Mosque' 14th December 2023, <https://www.newvision.co.ug/category/news/museveni-asks-cj-to-review-verdict-on-gaddafi-NV_176938> accessed 14th December 2023.

²⁵⁰ The Independent, 'Museveni Asks Chief Justice to Review Decision Allowing Sale of Muslim Properties' 14th December 2023, <<https://www.independent.co.ug/c-asks-chief-justice-to-review-decision-allowing-sale-of-muslim-properties/>> accessed 14th December 2023.

²⁵¹ Monitor, 'Museveni draws mixed views for stopping sale of Gaddafi mosque' 15th December 2023, <<https://www.monitor.co.ug/uganda/news/national/museveni-draws-mixed-views-for-stopping-sale-of-gaddafi-mosque-4465062>> accessed 15th December 2023; Monitor, 'President wrong to direct Chief Justice on reversal' 17th December 2023, <<https://www.monitor.co.ug/uganda/oped/commentary/sparing-gaddafi-mosque-president-wrong-to-direct-chief-justice-on-reversal-4466776>> accessed 17th December 2023.

²⁵² U.S. Department of State, 2022 Country Reports on Human Rights Practices: Uganda, <<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/uganda>> accessed 10th December 2023.

²⁵³ Uganda Law Society, Justice Law & Order Sector, The State of the Rules of Law Fourth Quarterly Report, 2022, at Page 30 - 31.

²⁵⁴ Uganda Law Society Act Cap 276, Section 2.

(Professional Conduct) Regulations S.I. 267—2. Disciplinary matters of lawyers are handled by the Law Council.

The Bar in Uganda is fairly independent. The Uganda Law Society has remained alive to matters of the Rule of Law. The Uganda Law Society actively monitors and reports on matters of the Rule of Law in the quarterly Rule of Law Reports through its Rule of Law Committee.²⁵⁵ The Uganda Law Society investigates transgressions to the Rule of Law and has remained at the forefront of condemning actions contravening the Rule of Law, as well as seeking redress in the courts of law whenever possible. In all its Rule of Law Reports, the Uganda Law Society firmly makes practical recommendations to the respective stakeholders, both Government and the private sector on measures that can be undertaken to address the specifically highlighted infringement on the Rule of Law.

The Uganda Law Society also actively lobbies for legal and policy reforms intended to further the Rule of Law in Uganda. The Rule of Law Reports of the Uganda Law Society have been heavily relied on in the desktop research that informed the findings of this index.

However, the independence of the members of the Bar in Uganda still faces challenges. The Report of the Lawyers for Lawyers Foundation of May 2022 highlights five issues affecting the work of lawyers in Uganda, which in turn affects their independence.²⁵⁶ The issues include lack of access to clients, lack of lawyer-client confidentiality, harassment of lawyers, lawyers' identification with clients, and challenges faced by lawyers working for NGOs. The report recommends full respect for and ensuring guarantees for proper functioning of lawyers under Article 14 of the ICCPR.

²⁵⁵ Uganda Law Society, Rule of Law Reports, <<https://uls.or.ug/rule-of-law-reports/>> accessed 10th December 2023.

²⁵⁶ Lawyers for Lawyers Foundation, Human Rights Committee Consideration of the 2nd Periodic Report of Uganda, (2nd May 2022), <https://lawyersforlawyers.org/wp-content/uploads/2022/06/Lawyers-for-Lawyers_HRC-List-of-issues-report-Uganda_Final.pdf> accessed 10th December 2023.

v. Case Clearance

The number of registered cases according to the Chief Justice (20th October 2023) have consistently increased each year.

In FY 2022/23 the newly registered cases across courts increased by 64,645 (from 229,375 in FY 2021/22 to 294,020).²⁵⁷ The total caseload in FY 2022/23 was 433,672 including cases brought forward (FY 2021/22 - 128,652) and cases registered in the said financial year (FY2022/23 - 294,020).

The concluded matters reported in FY 2022/23 totaled to 266,323 leaving the pending cases as at 30th June 2023 at 156,349.

According to the Judiciary Annual Performance Report FY 2022/2023, 42,960 of the 156,349 pending caseloads as at the close of the financial year were backlogged since they were older than two years in the system. The Judiciary therefore acknowledged the persisting case backlog and needed to significantly reduce them. The Judiciary remains committed to improving access to justice, enhancing the efficiency of court processes and reducing case backlog.²⁵⁸

The interventions reported to having been taken to mitigate the issue of case backlog included; monitoring and evaluation of case backlog, daily hearing of cases under the criminal division of the High Court, holding of criminal case backlog reduction sessions, special sessions on sexual and gender-based violence related cases, juvenile criminal sessions, and election petition sessions.²⁵⁹

A much earlier report of the Judiciary Case Backlog Reduction Committee, highlighted the following causes of case backlog which are still being addressed over the years; poor work attitude and poor performance by some judicial and non-judicial officers in

²⁵⁷ The Judiciary of Uganda, Address by Hon. Alfonse Chigamoy Owiny - Dollo Chief Justice of Uganda at the Launch of the Judiciary Annual Performance Report for FY 2022/23, 20th October 2023, at page 12, <https://www.judiciary.go.ug/files/downloads/CJ%20Address%20at%20the%20Annau%20Performance%20Report%20FY%202022-23_compressed.pdf> accessed 10th December 2023.

²⁵⁸ The Judiciary, Annual Performance Report FY 2022/2023 (October 2023), <https://judiciary.go.ug/files/downloads/Judiciary_Annual_Performance_Report_202223_Web_231115_140706.pdf> accessed 10th December 2023.

²⁵⁹ The Judiciary, Annual Performance Report FY 2022/2023 (October 2023), page 33-39 <https://judiciary.go.ug/files/downloads/Judiciary_Annual_Performance_Report_202223_Web_231115_140706.pdf> accessed 10th December 2023.

the judiciary; lack of optimal staff numbers; litigants who frustrate cases and who lack knowledge of the court processes; failure of witnesses to attend court; inadequate case preparation by advocates; double booking of cases by advocates; delays in the criminal justice system; lack of infrastructure; poor storage and record management; lack of prioritization; poor planned and executed session system and provisions on law on jurisdiction.²⁶⁰

The report identified systemic challenges to contribute to 47% of the causes of case backlog, the people aspect contributed to 38%, the laws and procedures issues contributed to 9%, and the infrastructure challenges contribute to 6% of causes of case backlog.²⁶¹

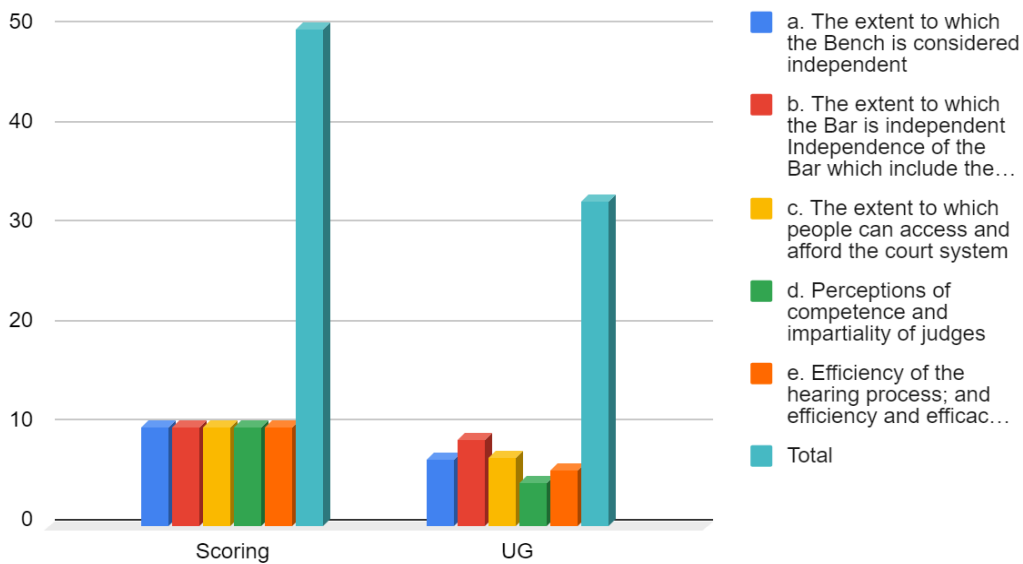
Findings

Parameter	Indicators	Scoring (Marks)	UG
Access to Civil Justice	a. The extent to which the Bench is considered independent	10	6.8
	b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	8.8
	c. The extent to which people can access and afford the court system	10	7
	d. Perceptions of competence and impartiality of judges	10	4.35
	e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	5.75
Total		50	32.7

²⁶⁰The Judiciary, Justice Law & Order Sector, A Report of the Case Backlog Reduction Committee (29th March 2017), pg. 45 — 51 <<https://judiciary.go.ug/files/downloads/case%20backlog%20Report%20final.pdf>> accessed 10th December 2023.

²⁶¹ Ibid, page 52.

Uganda access to justice score chart



Recommendations

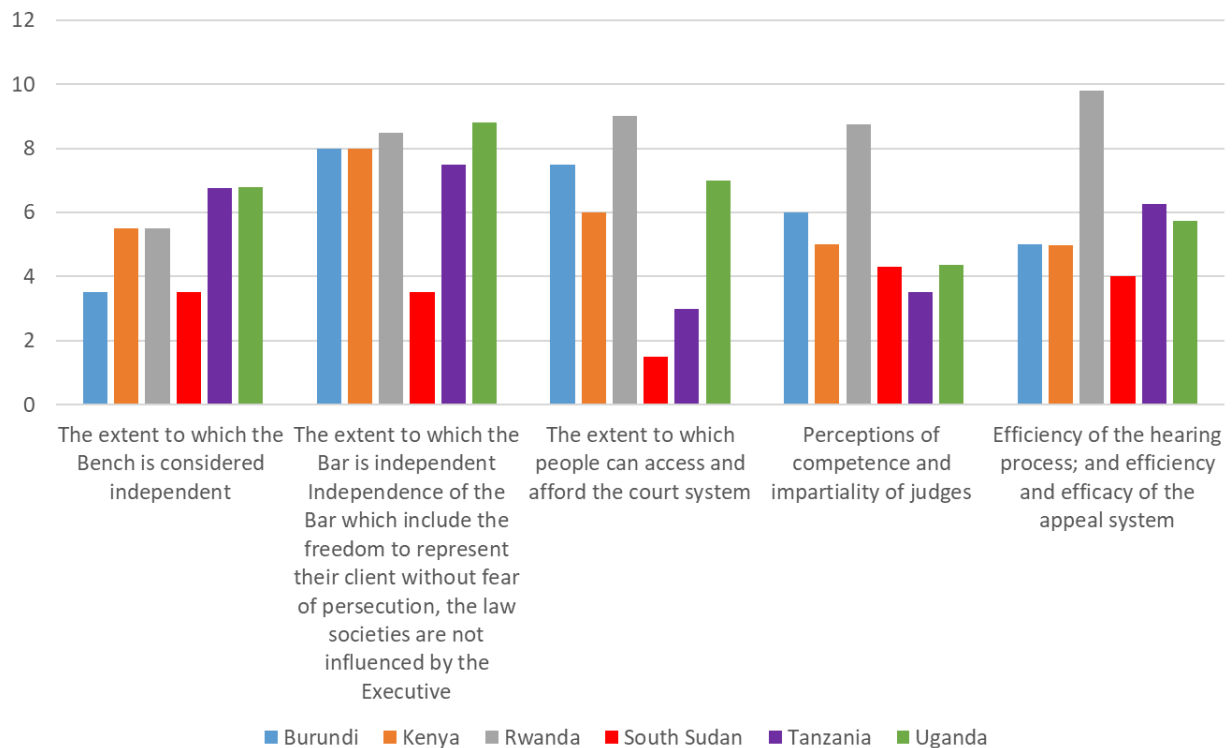
The following recommendations are made: -

1. Judiciary to lobby for appointment of more High Court Judges and to fully operationalize all High Court Circuits designated under the Judicature (Designation of High Court Circuits) Instrument S.I. No. 94 of 2023.
2. Further investigations will be undertaken by the Judiciary Case Backlog Committee on access to justice taking into account the extent to which ADR and traditional justice systems are utilized.
3. There is a need to fast track the delivery of the Alternative Justice System (AJS) Strategy by the adhoc Committee constituted by the Chief Justice in May 2023. The Chief Justice constituted the adhoc Committee to Develop the Alternative Justice System (AJS) Strategy to guide the ADR approach of the Judiciary, train all judicial officers on ADR, work with courts to endure the effective implementation of the AJS Strategy, and ADR approaches in the resolution of disputes, as well as compile a Judicial Bench Book on ADR.²⁶²

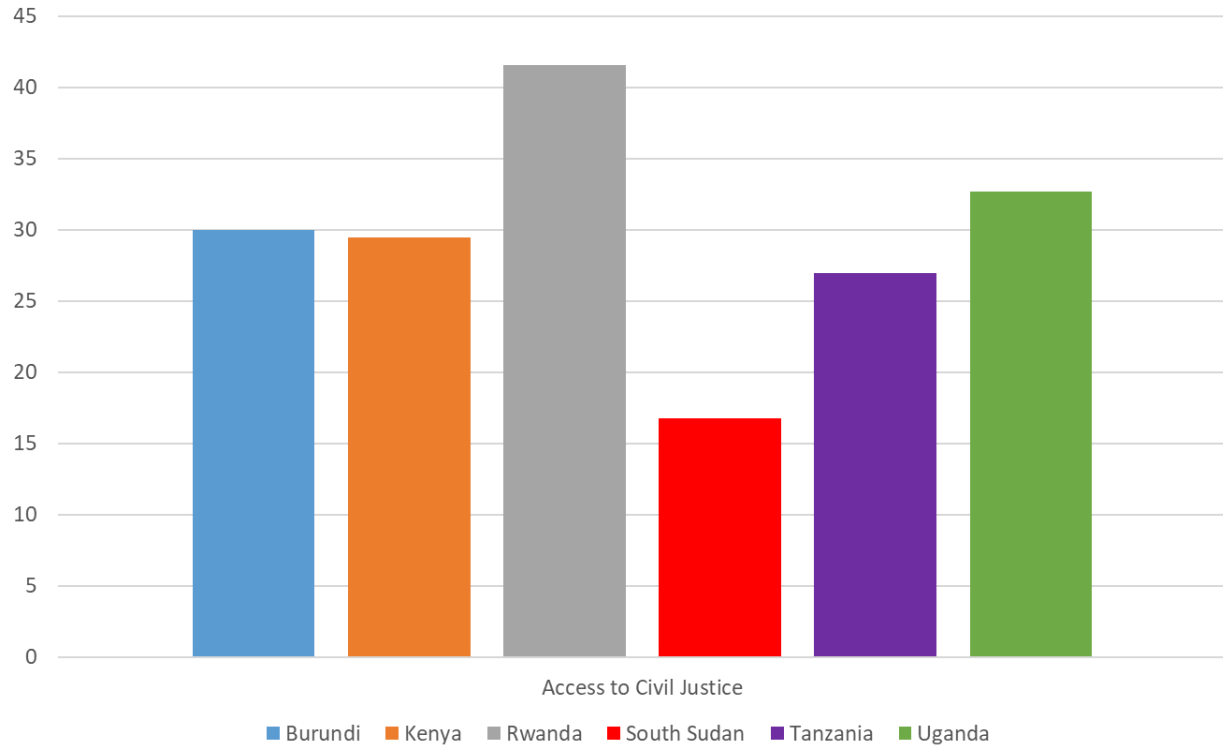
²⁶² The Judiciary, CJ Constitutes 20-Member Committee to Spearhead ADR Programme, <<https://judiciary.go.ug/data/news/1308/CJ%20Constitutes%2020-Member%20Committee%20to%20Spearhead%20ADR%20Programme.html#:~:text=The%20adhoc%20Committee%20was%20constituted,of%20the%20AJS%20Strategy%2C%20and>> accessed 10th December 2023.

4. Judiciary to reinforce the initiatives of the case backlog committee to fast track the addressing of the identified causes of case backlog.
5. Government to undertake reforms of the justice system by establishing the infrastructure to address challenges of access to justice by the vulnerable and persons with disabilities.

ACCESS TO CIVIL JUSTICE – INDICATORS



ACCESS TO CIVIL JUSTICE



CHAPTER 3: ABSENCE OF CORRUPTION

1. BURUNDI

Burundi possesses a robust legal and institutional framework on corruption. However, the robustness of the laws and institutions formed to eliminate corruption are, in some ways, defeated when it comes to implementation, as will be demonstrated below.

Following the ratification of the African Union and the UN Convention on Preventing and Combating Corruption, different institutions were established through the 2006 Law on measures to prevent and punish corruption and related offenses. The later instruments thereafter called for specialized and independent institutions which aimed at combating corruption.

i. Legal framework

The legal framework on eliminating corruption mostly comprises of the following:

- The Constitution prohibits all acts related to the non-respect of public goods, including corruption and provides for punishment of agents of public administration in case of corruption and related offenses.²⁶³
- The Penal code which reserves a whole chapter on the different types of corruption and related offenses as well as conditions of penalty.²⁶⁴
- The 2006 law, a law on measures to prevent and punish corruption and related offenses within public and private sector bodies as well as non-governmental organizations was adopted. This is one of the major laws which came to materialize the conventions ratified by Burundi, including the UN Convention as well as the African Union Convention on the fight against corruption. The piece of law has been praised by civil society as an effective legal tool to combat corruption. However, gaps have been identified in respect of the protection of whistleblowers, the declaration of assets and the recovery of assets. Although the

²⁶³ See art. 69 and art.146 of the Constitution of Burundi, 2018.

²⁶⁴ See chapter 2, Law n°1/27 of 29 December 2017 amending the Penal Code

2006 Law imposes an obligation on senior public officials to declare their assets, the requirement is reportedly unimplemented.²⁶⁵

- Burundi has also ratified the United Nations Convention against corruption as well as the African Union Convention on preventing and combating corruption.²⁶⁶

ii. Institutional Framework

The main institutions created to combat corruption are the special anti-corruption Brigade- an institution that deal with cases of corruption, the anti-corruption court and its Public prosecutor's office.²⁶⁷

The anti-corruption brigade (i) deals with corruption cases ; (ii) refers to the Public Prosecutor's Office facts likely to constitute corruption or related offences; (iii) and co-operates with national, foreign and international bodies whose missions are equally to fight against corruption and related offences.²⁶⁸ Similarly, the State Inspectorate General, the Court of Auditors, and the National Financial Intelligence Unit have the legitimacy to monitor and search for corruption related practices.²⁶⁹

The Anti-corruption court is the only legal institution competent to address corruption and related offenses provided by the 2006 Law. Its decisions can be subject to appeal before the Judiciary Chamber of the Supreme Court and cassation.²⁷⁰

²⁶⁵ Ella Ndikumana, Lucia Cizmaziova (CiFAR), '*La lutte contre la corruption , le recouvrement d'avoires volés et la société civile au Burundi*', <<https://cifar.eu/wp-content/uploads/2022/04/Burundi-FR-2022.pdf> > Accessed on 30 October 2023.

²⁶⁶ African Union on preventing and combatting corruption,2003 <[https://au.int/sites/default/files/treaties/36382-treaty-0028 - african union convention on preventing and combating corruption e.pdf](https://au.int/sites/default/files/treaties/36382-treaty-0028_-_african_union_convention_on_preventing_and_combating_corruption_e.pdf) >

²⁶⁷ Art.3 of the Law n° 1/12 of 18 April 2006 on measures to prevent and punish corruption and related offences.

²⁶⁸ *Idem*, art.6.

²⁶⁹ Observatoire de l'Action Gouvernementale (OAG), '*Analyse de l'efficacité des mécanismes de lutte contre la corruption au Burundi* ', (2022), p.54-60, Unpublished.

²⁷⁰ Art.23 of the Law n° 1/12 of 18 April 2006 on measures to prevent and punish corruption and related offences and art.41 of Law N,1/21 of 3 August 2019 amending Law N.1/07 of 25 February 2005 governing the Supreme Court.

Nevertheless, in April 2021, a legal project suggested the abolition of the anti-corruption court, the special anti-corruption brigade as well as the Public Prosecution on anti-corruption. The reason being that the scope of such institutions is too large and it could affect its (in) efficiency when it comes to the accessibility towards justice users. These reforms generated significant debate.²⁷¹ While the government considered the abolition of specific anti-corruption institutions as a pursuit of efficiency and progress in terms of combating corruption, civil society viewed such a decision as a regression.²⁷² The reforms were challenged by the Constitutional Court finding that law to be unconstitutional. Consequently, both institutions are still functional²⁷³ except the anti-corruption Brigade.²⁷⁴

With respect to the number of cases reported to the institutions charged with addressing corruption, field research proved that such data was not accessible to the public.²⁷⁵

iii. Corruption according to civil society

Although a robust institutional framework was put in place since 2010, global reports on corruption such as the Index from Transparency International release thought-provoking results.

²⁷¹ Assemblée Nationale du Burundi, *‘Analyse et adoption du Projet de loi organique portant réattribution des compétences de la cour anti-corruption, de son parquet général et celles de la brigade spéciale anti-corruption.’* <<https://www.assemblee.bi/spip.php?article2334>> Accessed 8 December 2023.

²⁷² Journal Iwacu, *‘Olucome remonté contre le projet de suppression des institutions anti-corruption’* (2021), <<https://www.iwacu-burundi.org/olucome-remonte-contre-le-projet-de-suppression-des-institutions-anti-corruption/comment-page-1/>> Accessed on 7 December 2023.

Burundi Eco, *‘Suppression de la Cour anti-corruption : Pourquoi le volte-face du gouvernement ?’* (April 2021) <<https://burundi-eco.com/suppression-cour-anti-corruption-pourquoi-volte-face-gouvernement/>> Accessed 6 December 2023

²⁷³ Journal Iwacu, *‘Arrêt RCCB 403 : Olucome salue la décision de la Cour constitutionnelle’* (2021), <<https://www.iwacu-burundi.org/arret-rccb-403-olucome-salue-la-decision-de-la-cour-constitutionnelle/>> Accessed 6 December 2023.

²⁷⁴ Interview with a civil society organisation working on good governance and the fight against corruption, 11 December 2023.

²⁷⁵ Visit to the Anti-corruption court of Burundi, 14 December 2023.

In 2021, Burundi was ranked 169 out of 180 countries and 19 out of 100; while in 2022, Burundi has been ranked 171 out of 180 countries and 17 out of 100²⁷⁶. According to Transparency International, the region is still struggling when it comes to combatting corruption.²⁷⁷

Relatedly, during the celebration of the African day against corruption, every 11 July, one of the leading civil society organizations in the fight against corruption argued that one of the tools to the fight against illicit enrichment is to allow civil society, including the media to have access to information so as to document such cases. Similarly, it was recommended that public officials declare their assets when taking office and after their mandate, as per the Constitution, to reform the public procurement system and separation of powers²⁷⁸.

Findings:

Parameter	Indicators	Scoring (Marks)	BU
Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	2
	b. The extent of corruption (if any) in the provision of public services	10	1.25
	c. The extent of corruption (if any) in the provision of services in registries	10	5
	d. Perceptions of corruption amongst the general public	2	0
	Total	30	8.25

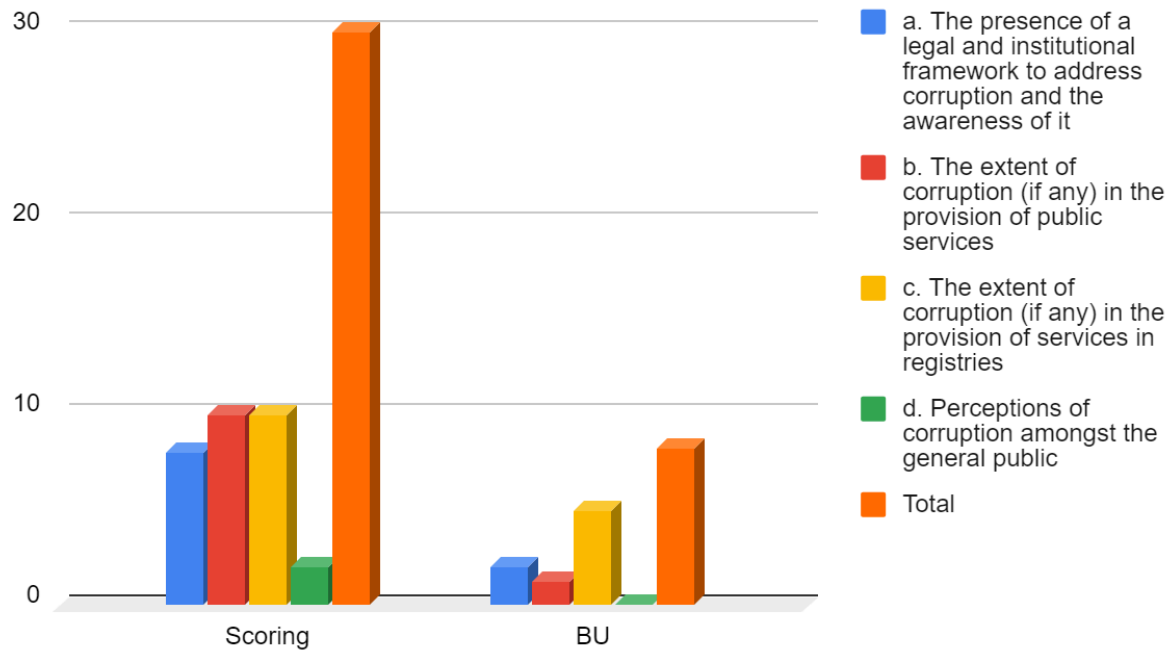
²⁷⁶ The CPI ranks 180 countries and territories around the world by their perceived levels of public sector corruption, scoring on a scale of 0 (highly corrupt) to 100 (very clean).

²⁷⁷ Transparency International, 'CPO 2022 for Sub-Saharan Africa : Corruption compounding multiple crises' <<https://www.transparency.org/en/news/cpi-2022-sub-saharan-africa-corruption-compounding-multiple-crises>> Accessed 23 October 2023.

²⁷⁸ Egide Harerimana, 'Olucome: Le niveau du Burundi a sensiblement chuté en matière de lutte contre la corruption' (2023)

<<https://www.iwacu-burundi.org/olucome-le-niveau-du-burundi-a-sensiblement-chute-en-matiere-de-lutte-contre-la-corruption/>> Accessed 23 October 2023.

Burundi Corruption score chart



Recommendations

With regards to the above sections, the following conclusions and recommendations have emerged:

- (1) The government ought to organize outreach and engagement strategies to raise awareness on the existence of the available institutions and legislation on corruption.
- (2) In ensuring the effectiveness and transparency of corruption-related institutions, the government ought to make publicly accessible the data on the number of corruption cases received, including those against public officials.
- (3) Implement the strategic objectives of Burundi's National development Plan (2018-2027) by planning institutional and operational capacity building of state and non-state actors in fighting against corruption.

2. KENYA

In this section, Kenya seeks to examine its adherence to the Rule of Law by studying its legal and institutional framework to identify systems intended to curb corruption. Further to that, this examination involves the pursuit of the views of civil society with regard to corruption. Ultimately, this exploration will assess the extent of Kenya's detachment from corruption.

i. Legal and Institutional Framework

Article 79 of the *Constitution of Kenya, 2010* required Parliament to enact legislation to establish an independent Ethics and Anticorruption Commission with the status and powers of a Commission under Chapter 15 of the Constitution. To this end, Parliament enacted the *Ethics and Anti-Corruption Act, 2011* ("the EACC Act") which at section 3 establishes the Commission ("the Commission").

The Commission is tasked with ensuring compliance and enforcement of the provision of Chapter 6 of the Constitution – on Leadership and Integrity. Serving as a key authority alongside the Directorate of Criminal Investigations and the Office of the Director of Public Prosecutions, the Commission plays a pivotal role in combating corruption.

The functions under the Act are also aided by the provisions of the *Bribery Act, 2016*, whose main purpose is to provide for the prevention, punishment and investigation of bribery and other related issues. Other significant legal instruments that have been enacted or ratified by the State to fight corruption include: The United Nations Convention Against Corruption (2004); The African Union Convention on Preventing Corruption (2006); and *The Anti-Corruption and Economic Crimes Act, 2003*.

ii. Reporting Mechanisms

The Commission being the main government body tasked with addressing corruption, has established processes regarding enforcement of its rules. This is achieved mainly through complaints that are sent out to the Commission. It has a mandate to address these complaints and can forward them for investigations by the Directorate of Criminal Investigations.

The Commission has the powers to institute and conduct proceedings in court, but only for the following purposes: the recovery or protection of public property; for the freeze or confiscation of proceeds of corruption or related to corruption; and the payment of compensation, or other punitive and disciplinary measures including proceedings for the recovery of property or proceeds of corruption located outside Kenya. For other breaches, the Commission works with the Office of the Director of Public Prosecutions to prosecute corruption charges.²⁷⁹

To convey how many complaints the Commission receives, it releases an Annual Report detailing these statistics, in line with Section 27 of the EACC Act. According to its Annual Report for the Year 2021/2022, the Commission received and processed 5,048 reports of corruption. Out of these, 1916 Reports were recommended for investigations, 496 Reports were referred to other agencies, 154 were forwarded to the Director of Public Prosecutions (DPPS) for review and 822 were recommended for no further action.²⁸⁰ During that year 60 cases were finalized in court, out of which 30 convictions were issued. The EACC has yet to release an Annual Report for the year 2022/2023.

iii. Corruption in the view of Civil Organizations

The current state of corruption in Kenya has mainly been examined in the Transparency International's Corruption Assessment Index.²⁸¹ This Index is used to assess the level of government corruption for an economy. In the year 2022, Kenya

²⁷⁹ Section 11, EACC Act.

²⁸⁰ EACC Report of Activities and Financial Statements for The Financial Year 2020/2021

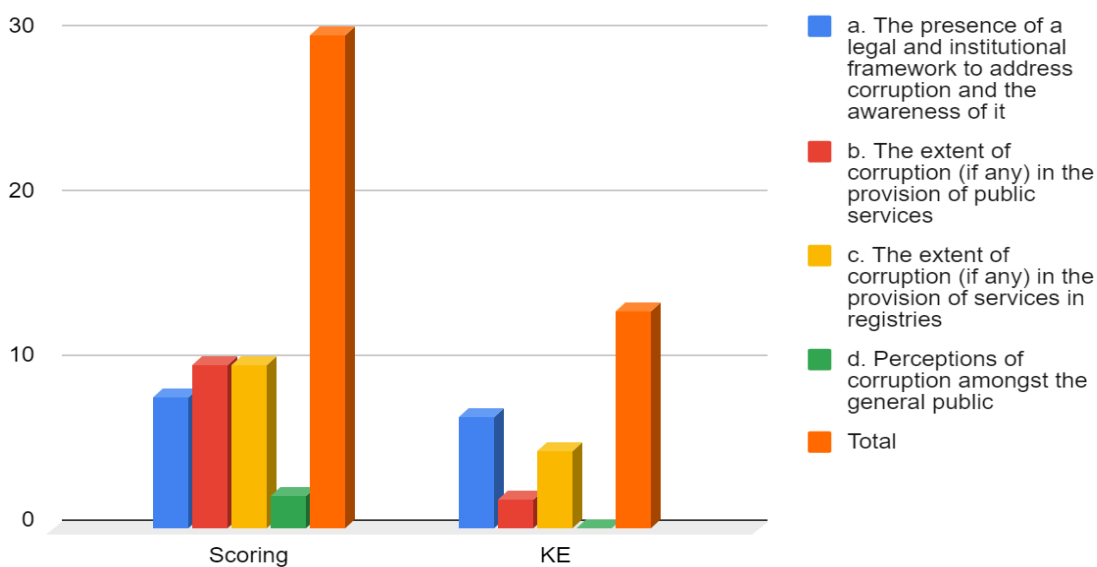
²⁸¹ https://images.transparencycdn.org/images/Report_CPI2022_English.pdf

scored 32 (0 being highly corrupt and 100 being low rate of corruption) and ranked 128 out of 180 countries. This score reflects the widespread nature of corruption in Kenya and the need for improvement in this area.

Findings

Parameter	Indicators	Scoring (Marks)	KE
Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	6.75
	b. The extent of corruption (if any) in the provision of public services	10	1.75
	c. The extent of corruption (if any) in the provision of services in registries	10	4.7
	d. Perceptions of corruption amongst the general public	2	0
Total		30	13.2

Kenya corruption score chart



Recommendations

Based on these findings on corruption in Kenya, below are some recommendations for addressing corruption and enhancing the rule of law:

- (1) Strengthening Legal and Institutional Framework** – By enhancing the capacity and independence of the Ethics and Anti-Corruption Commission (EACC) to effectively address corruption. By also ensuring effective coordination among key anti-corruption agencies, such as the EACC, the Directorate of Criminal Investigations, and the Office of the Director of Public Prosecutions.

- (2) Improving Reporting Mechanisms** - Enhancing transparency and accountability in the handling of corruption complaints by the EACC, including timely processing and investigation of reported cases. Further, by publishing annual reports consistently to provide updates on the progress made in addressing corruption and the outcomes of investigations and prosecutions.

- (3) Combatting Corruption in Public Services** – This can be done through implementing measures to strengthen integrity and accountability in the provision of public services, including robust anti-corruption policies and enforcement mechanisms. Also, by enhance training and awareness programs for public officials to promote ethical conduct and deter corrupt practices.

- (4) Addressing Corruption in Service Registries** – Kenya may be achieved by implementing reforms such as digitalization of services and the use of technology to enhance transparency and to minimize opportunities for corruption. Additionally, by strengthening oversight mechanisms to detect and prevent corruption in service registries for instance through regular audits.

- (5) Engaging Civil Society Organizations** - Foster collaboration with civil society organizations (CSOs) and non-governmental organizations (NGOs) to raise awareness about corruption and promote transparency and accountability. Support initiatives by CSOs and NGOs to monitor and report instances of corruption, and ensuring that their voices are heard in anti-corruption efforts.

3. RWANDA

Rwanda is known for having low tolerance to corruption. This is evidenced by the World Justice Project Rule of Law Index (2022) where Rwanda was ranked 34th out of 140 countries globally and 1st out of 34 countries regionally in respect of its absence of corruption.²⁸²

i. Legal and institutional frameworks

Rwanda has ratified the African Union Convention on Preventing and Combating Corruption and the United Nations Convention against Corruption. The country's adherence to these conventions is evidenced by its drive to strengthen its legal and institutional frameworks to combat corruption.²⁸³

In Rwanda, there is strong policy to achieve a public service that appreciates and embraces integrity; accepts the need for transparency and accountability; and ensures full compliance with regulatory and legal requirements. The National Anti-Corruption Policy is set within this overall policy framework of zero tolerance and national planning.

The National Anti-Corruption Advisory Council is the key coordination mechanism for all anti-corruption institutions. Rwanda's anti-corruption policy is also underpinned by a comprehensive legal and institutional framework which includes Law N° 54/2018 of 13/08/2018 on fighting against Corruption. This legal framework aims to prevent and punish corruption in the public and private sphere.²⁸⁴ It defines specific corruption crimes ranging from soliciting of illegal benefits to abuse of power and their sanctions.²⁸⁵

²⁸² The World Justice Project index (2022), available at: <https://worldjusticeproject.org/rule-of-law-index/country/2022/Kenya/Fundamental%20Rights/> accessed on 22nd December 2023

²⁸³ Art 5 of the United Nations Convention Against Corruption

²⁸⁴ Art 1 of the Law N° 54/2018 of 13/08/2018 on fighting against corruption

²⁸⁵ *Ibid*, Art 2

The law requires that all public organs, private institution, civil society or international organizations operating in Rwanda must implement mechanisms for the prevention of corruption. Further, that these organisations carry out activities in a transparent manner, present the mechanisms in place for the prevention and against corruption upon request by a competent organ and ensure equal treatment of clients and timely delivery of services.

ii. Reporting mechanisms

The Office of the Ombudsman has power to request for administrative sanctions against any leader of an organ that fails to comply with the provisions of the law against corruption.²⁸⁶ Within the Office of the Ombudsman, there is a Corruption Prevention Unit,²⁸⁷ which has the mandate of conducting reviews, investigations and advocacy.²⁸⁸ The Office of the Ombudsman compiles an Annual Report on Corruption every fiscal year which is reported to Parliament and the President's office.

Other institutions that play a role in combating corruption are the National Public Prosecution Authority, the Rwanda National Police, the Office of the Auditor General of State Finances and the Rwanda Public Procurement Authority.

During the review period, Rwanda has punished several public officials for corruption matters, a recent example being the case of Former Minister of State for Culture, Edouard Bamporiki who was sentenced to five years and ordered to pay a fine worth Rwf30 million by the Kigali-based High Court, on a corruption charge, to which he pleaded guilty.²⁸⁹

²⁸⁶ Article 3 of the Law N° 54/2018 of 13/08/2018 on fighting against corruption

²⁸⁷ Law n° 762013 of 11/09/2013 determining the mission, powers, organization and functioning of the Office of the Ombudsman

²⁸⁸ Law n° 54/2018 of 13/08/2018 on fighting against corruption

²⁸⁹ *The Newtimes, Former Minister of state for culture, Edouard Bamporiki was on Monday sentenced to five years in jail and ordered to pay a fine worth Rwf 30 million by the High Court.* pub 23rd January 2023, available at: <https://www.newtimes.co.rw/article/12217/news/health/rwandas-grace-umutesi-scoops-laureate-award-for-cervical-cancer-fight> accessed on 10th November 2023.

Awareness programmes have also helped raise public knowledge on the anti-corruption legislation and institutions (*the annual “Anti-Corruption Week”*).²⁹⁰ The Government has also collaborated with specific CSOs such as Transparency International Rwanda as well as the media to allow citizens to have the opportunity to report corruption or cases of injustice.²⁹¹

The National Public Prosecution Authority (NPPA) received 218 complaints relating to corruption cases,²⁹² of which 150 progressed to trial, 65 could not progress due to insufficient evidence whilst 3 are pending.

Further, in 2022-2023, the Office of the Ombudsman received 40 complaints related to corruption during that judicial year.²⁹³ There were 35 cases related to corruption crimes; those tied to corruption in public procurement were 4 cases and only 1 case was reported on poor performance in public institutions.

Out of the 40 complaints made to the Office of the Ombudsman, 21 complaints were forwarded to the Rwandan Investigation Bureau (RIB); 12 had insufficient evidence for progression; 2 were referred to investigations by other organs and 5 are under investigation.

iii. Corruption in the view of Civil Organizations

The current state of corruption in Rwanda has mainly been examined in the Transparency International Corruption Index. According to Transparency International’s corruption perceptions index (2022), Rwanda was ranked 54th / 180

²⁹⁰ Office of the ombudsman, available at:

<https://www.ombudsman.gov.rw/en/news/others/the-office-of-the-ombudsman-launched-the-anti-corruption-week-2022>, accessed on 10th November 2023

²⁹¹ Transparency International Rwanda Citizen Engagement as a Driver to Fight Corruption available at https://www.tirwanda.org/IMG/pdf/final_booklet.pdf accessed on 10th November 2023.

²⁹² Office of Ombudsman Final Annual Report 2022-2023, page 111

²⁹³ Office of Ombudsman annual report 2022-2023, page 103

countries with a score of 51/ 100.²⁹⁴ However, the Rwanda Bribery Index of 2022 shows a rise in corruption from 13.30% in 2019 to 22.10% in 2022. The challenges that persist are as follows:

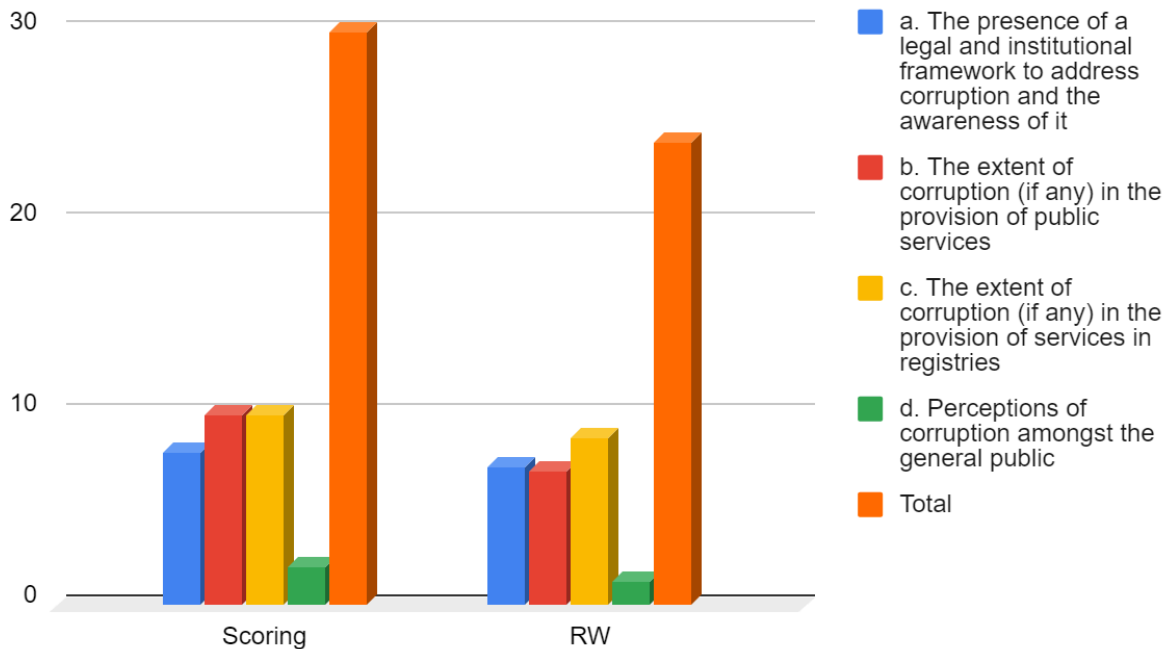
- The Rwanda Bribery Index (2022) ranked corruption in traffic police at 16.4%, local government at 10.6%, Rwanda energy group at 10.4% and water and sanitation corporation at 10.2%
- Traffic Police remain a challenge. In December 2022, *KT Press* reported an interview with the Deputy General of Police who advised that at the time 500 police officers faced disciplinary proceedings on account of corruption offences.

Findings

Parameter	Indicators	Scoring (Marks)	RW
Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	7.25
	b. The extent of corruption (if any) in the provision of public services	10	7
	c. The extent of corruption (if any) in the provision of services in registries	10	8.75
	d. Perceptions of corruption amongst the general public	2	1.25
	Total	30	24.25

²⁹⁴ Corruption perceptions Index (2022) available at: <https://www.transparency.org/en/countries/rwanda#:~:text=.54%2F180%0A%0A2022%20Score%20%0A%0A51%2F100> accessed on the 15th November 2023.

Rwanda corruption score chart



Recommendations

- (1) Continuous public awareness campaigns to educate citizens about the negative effects of corruption and to promote a culture of integrity and transparency within the Rwandan society.
- (2) Training sessions and lectures should be conducted to emphasize ethical behavior and the importance of adhering to the law
- (3) Strengthen efforts on corruption reporting systems and protection of whistleblowers in order to encourage the reporting of corruption cases.

4. SOUTH SUDAN

i. Legal and Institutional Framework

South Sudan's anti-corruption framework is still in its infancy, and even where legal instruments exist, the lack of capacity and resources still hamper the effectiveness of these frameworks and mechanisms in the fight against corruption.

The *Anti-Corruption Commission Act, 2009* is the main legal framework aimed at combating corruption in both the Government and Institutions. It also provides for an oversight requirement for all persons holding constitutional posts and senior public officers to make declaration of their income, assets and liabilities, and any other related issues.

ii. Oversight mechanisms

The South Sudan Anti-Corruption Commission is an autonomous body responsible for the investigation of cases of corruption with a view to protecting public property, combating administrative malpractices in public institutions, and requiring all public office holders to make declaration of their income, assets and liabilities.²⁹⁵

iii. Current Status

According to the South Sudan Anti-Corruption Commission, 413 cases were received as of December 2022, 114 out of 413 cases were submitted to the Ministry of Justice and Constitutional Affairs for prosecution. However, none were prosecuted.²⁹⁶

Transparency International also ranked South Sudan as 178/180 with a score of 13/100²⁹⁷ in 2022. This result indicates widespread corruption. Corruption is

²⁹⁵ Section 6 of the Anti-Corruption Commission Act, 2009

²⁹⁶ (2022). *Nationwide Discussion on Anti-Corruption Day*. Radio Miraya.

https://audioboom.com/posts/8210954-nationwide-discussion-on-anti-corruption-day?fbclid=IwAR0bAi71ewSHyazIRi8gtoVjVUEer-j3YDr56CEQW31NY_97uLw3zqhvH0E

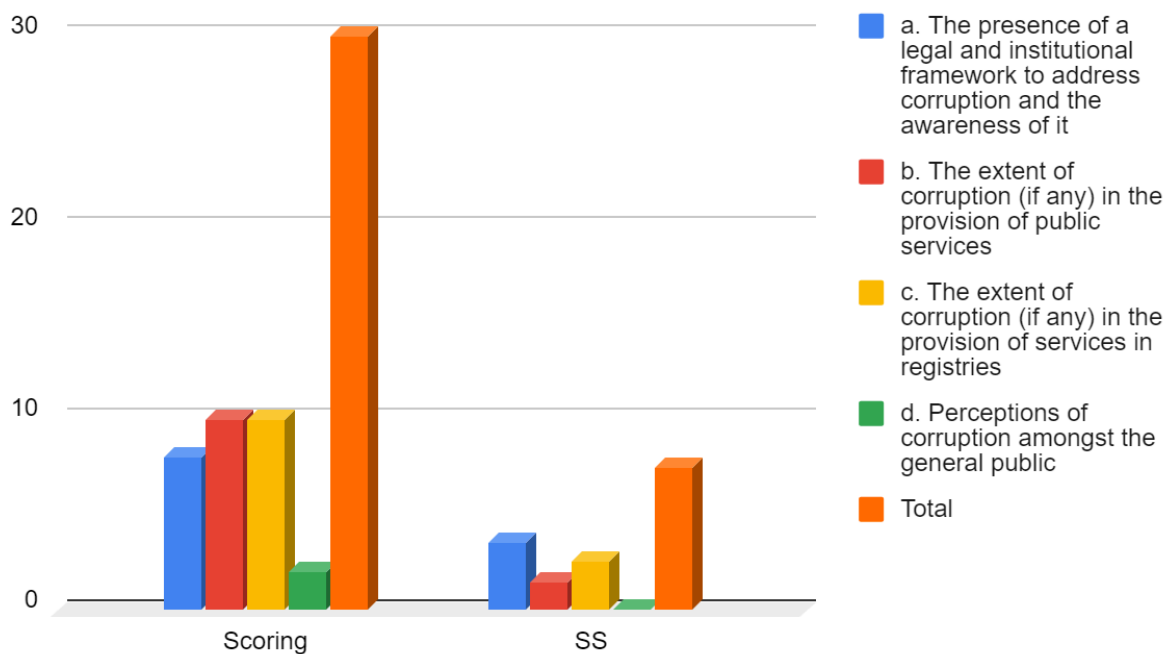
²⁹⁷ (2022). *Corruption perception index*. Transparency International. <https://www.transparency.org/en/countries/south-sudan>

rampant, according to the Global Initiative Against Transnational Organized Crime (GI-TOC) report.²⁹⁸

Findings

Parameter	Indicators	Scoring (Marks)	SS
Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	3.5
	b. The extent of corruption (if any) in the provision of public services	10	1.5
	c. The extent of corruption (if any) in the provision of services in registries	10	2.5
	d. Perceptions of corruption amongst the general public	2	0
	Total	30	7.5

South Sudan corruption score chart



²⁹⁸ M.Hunter, M. Sibanda, K. Opala, J. Kaka, L. Modi. (2023). *Illicit Gold Markets In East And Southern Africa*. Global Initiative Against Transnational Organized Crime. <http://globalinitiative.net/wp-content/uploads/2021/05/Illicit-gold-markets-in-East-and-Southern-Africa-GITOC-.pdf>

Recommendations

- (1) Build the capacity of and ensure adequate resources for bodies responsible for combating corruption at all levels.

- (2) Ensure inadequate political will to stir up effective fight against corruption.

- (3) Ensure expeditious investigation and prosecution of corruption cases by the Ministry of Justice and Constitutional Affairs.

5. TANZANIA

The primary law governing anti-corruption/bribery in Tanzania is the Prevention and Combating of Corruption Act, 2007.²⁹⁹ The Act establishes the Prevention and Combating of Corruption Bureau (PCCB) which is mandated to investigate and prosecute corrupt offences which are considered economic crimes.

Despite a robust anti-corruption legal framework, corruption is still a serious problem across all sectors including; government procurement, land administration, taxation, and customs. It is observed that the anti-corruption laws are applied inconsistently and not vigorously enforced, which creates constraints for businesses. According to Transparency International, corruption is widespread in Tanzania. The country is ranked 94th in the corruption perception index for the year 2022.

In 1996, the then President of the United Republic of Tanzania formed the Presidential Commission Against Corruption (PCAC) commonly known as the Warioba Commission. This commission made comprehensive recommendations to address corruption, however the long-term impact was limited as subsequent governments only partially implemented the reforms.

The Commission on Corruption was led by Judge Joseph Sinde Warioba, it made the following key findings that rampant corruption was found in all sectors of the Tanzanian government. The commission uncovered widespread bribery, embezzlement, and abuse of power by public officials. It also provided a comprehensive overview of the corruption problem in Tanzania and made recommendations to combat it. It was a landmark study that brought national attention to the issue. The report called for sweeping reforms to strengthen the rule of law, improve transparency in government, and empower oversight bodies. It made specific recommendations to reform the judiciary, public procurement, tax administration and other areas vulnerable to corruption. It also made

²⁹⁹ The law is applied in conjunction with other related laws like the Anti Money Laundering Act 2006, the Economic and Organised Crimes Control Act, the Criminal Procedure Act, the Public Procurement Act 2011, and the Public Finance Act 2004

recommendations on setting up a 'Truth Commission' to establish a code of ethics, administer oaths, and take legal action against those making false declarations. Leaders were required to declare all presents received to enhance transparency among others.

These recommendations aimed to address corruption at various levels within the government and public sector, emphasizing the need for ethical conduct, transparency, and accountability to curb corrupt practices in Tanzania. Some of its recommendations were implemented such as setting up a 'Truth Commission' to establish a code of ethics, administer oaths, and take legal action against those making false declarations. Also, leaders were required to declare all presents received to enhance transparency.

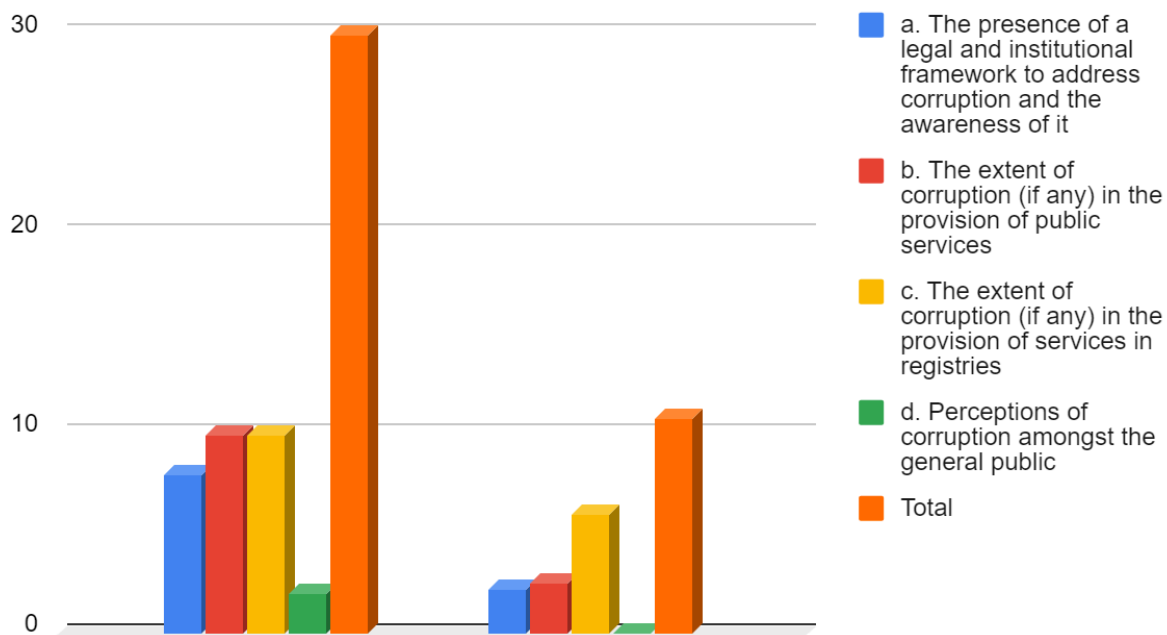
However, many other recommendations are yet to be implemented, such as forfeiting property for breaches of established rules as a deterrent against corruption and also reducing the size of the government to combat corruption more effectively.

The Warioba Report generated momentum to fight corruption and led to some high-profile dismissals and prosecutions. But entrenched interests resisted meaningful reforms, and corruption remains a major challenge in the country to date.

Findings

Parameter	Indicators	Scoring (Marks)	TZ
Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	2.25
	b. The extent of corruption (if any) in the provision of public services	10	2.5
	c. The extent of corruption (if any) in the provision of services in registries	10	6
	d. Perceptions of corruption amongst the general public	2	0
	Total	30	10.75

Tanzania corruption score chart



6. UGANDA

Introduction

Uganda still faces the challenge in its fight against corruption. In the World Justice Project Rule of Law Index 2023, Uganda was ranked at 135 out of 142 countries on the factor of absence of corruption.³⁰⁰ This ranking is an indication that Corruption is still widespread in Uganda.

i. Legal and Institutional Framework

Chapter 13 of the Constitution of Uganda establishes the Office of the Inspectorate of Government (IGG) whose functions, as provided for under Article 225 (1) (b) of the Constitution, are the elimination of corruption and the prevention of abuse of authority and public office. The Office of the IGG is also constitutionally mandated to enforce the Leadership Code of Conduct – *a code that operationalises Chapter 14 of the Constitution on Leadership*- for all persons holding public offices.

The Anti-Corruption Act 2009 is the framework enacted with the objective of preventing corruption in both the public and private sector. The Anti-Corruption Division of the High Court has continued to adjudicate cases of corruption. In the prosecution of corruption related cases, the Office of the IGG works with the Office of the Director of Public Prosecution (DPP), among other authorities.

In furtherance of the fight against corruption, the State House Anti-Corruption Unit (SH-ACU) was also established by the President in exercise of his executive authority under Article 99 of the Constitution.³⁰¹ The SH-ACU was formed to curb the prevalent corruption in Uganda. The SH-ACU has been able to make some recoveries from reported complaints and investigations on corruption in the period of this Index, specifically: UGX. 8.65 Billion from inflated prices of COVID 19 government relief food by the senior Office of the Prime Minister Officials; UGX. 3.6 Billion from inflated compensation of Bukasa Project affected persons by some officials from Ministry of Works & Transport; UGX. 1.5 Billion recovered and paid back to unemployed youths extorted by labour export companies; UGX. 738 Million recovered from the Leadership of Gaming and Lotteries Board; UGX. 161 Million recovered from Local Governments

³⁰⁰ World Justice Project, Rule of law Index 2023, at Page 29.

³⁰¹ State House Anti-Corruption Unit, <https://sh-acu.go.ug/about/> accessed 26th January 2023.

of Jinja Municipality, Nansana Municipality, and Butembo District; and UGX. 85 Million recovered from a fraudster lawyer and returned to an aggrieved client.³⁰²

However, it is noted that despite having a well-established legal, regulatory and institutional framework to combat corruption, the vice is still rampant in public offices. During the period of review, there were corruption scandals reported in the media, the most recent being the Karamoja Iron sheets scandal between July 2022 and March 2023, for which some of the persons implicated are being prosecuted.³⁰³

The Uganda Law Society in its 2023 First Quarterly Rule of Law Report also highlighted reports of corruption and extortion at the Entebbe International Airport, as well as revelations of mismanagement at the National Social Security Fund (NSSF). Despite this, the government continues to take steps to fight corruption. The Inspectorate of Government (IG) in July 2022 embarked on a programme to train and send out volunteer community monitors to report corruption cases in their communities. The Government is furthering the Strengthening Action against Corruption (STAAC) programme. The Inspectorate of Government continues to undertake strategies through advocacy, education and community mobilization to curb corruption.³⁰⁴

ii. Reporting Mechanisms

A complaint on a matter of corruption can be reported as follows:

- A complaint can be made to the police for the investigation of a criminal offense provided for under the Anti-Corruption Act 2009. The police investigate these complaints and the DPP prosecutes offenses of corruption under the Anti-Corruption Act through the specialized Anti-Corruption Department (ACD) of the Office of the DPP.³⁰⁵

³⁰² State House Anti-Corruption Unit, <https://sh-acu.go.ug/about/> accessed 26th January 2023.

³⁰³ Monitor, 'Iron sheets scandal: The evidence against Kitutu, Lugoloobi, 30th June 2023, <https://www.monitor.co.ug/uganda/news/national/iron-sheets-scandal-the-evidence-against-kitutu-lugoloobi-4288382> accessed 10th December 2023; The Independent, 'Dropping Iren Sheets case shocks, divides Karamoja leaders' 1st July 2023, <https://www.independent.co.ug/dropping-iron-sheets-case-shocks-divides-karamoja-leaders/> accessed 10th December 2023; Monitor, 'Iron sheets scandal: Kitutu, Nandutu make first trip to Karamoja, 27th November 2023, <https://www.monitor.co.ug/uganda/news/national/iron-sheets-scandal-kitutu-nandutu-make-first-trip-to-karamoja-4446364> accessed 10th December 2023.

³⁰⁴ The Inspectorate of Government, 'Uganda Commemorates African Anti – Corruption Day 2023' 12th July 2023, <https://www.igg.go.ug/updates/news/uganda-commemorates-african-anti-corruption-day-2023/> accessed 10th December 2023.

³⁰⁵ Office of the Director of Public Prosecutions, Uganda <https://dpp.go.ug/directorate/> accessed 10th December 2023.

- Complaints can also be made to the Office of the IGG to undertake investigations and recommend prosecution of any culprits. The Office of the IGG has a mandate under Section 29 of the Inspectorate of Government Act 2002, to submit to Parliament a report on the performance of its functions at least once in every six months, making recommendations as it considers necessary.
- Such complaints can also be made to the State House Anti-Corruption Unit (SH-ACU) which investigates and advises the prosecution of culprits of corruption.

However, despite the widely reported corruption scandals, few cases of corruption lead to convictions, and some high-profile corruption matters end up with charges withdrawn.

iii. Corruption in the view of Civil Organizations

The Civil Society Organizations in Uganda have been at the forefront of exposing corruption and taking initiatives to campaign against corruption. Coalition KICK Corruption Out of Uganda, composed of indigenous CSOs was formed to further the efforts of fighting corruption.³⁰⁶

In the November 2023 report of the Anti-Corruption Coalition Uganda, a review of Uganda's implementation and enforcement of selected articles in the UN Convention Against Corruption (UNCAC) Chapters II (Preventative Measures) and V (Asset Recovery), observed that whereas Uganda has undertaken significant steps towards implementation of the provisions of Chapter II and V of the UNCAC by establishing comprehensive anti-corruption laws and several bodies, the actual implementation of this legal and institutional framework remains weak.³⁰⁷ Corruption therefore remains widely spread in Uganda.

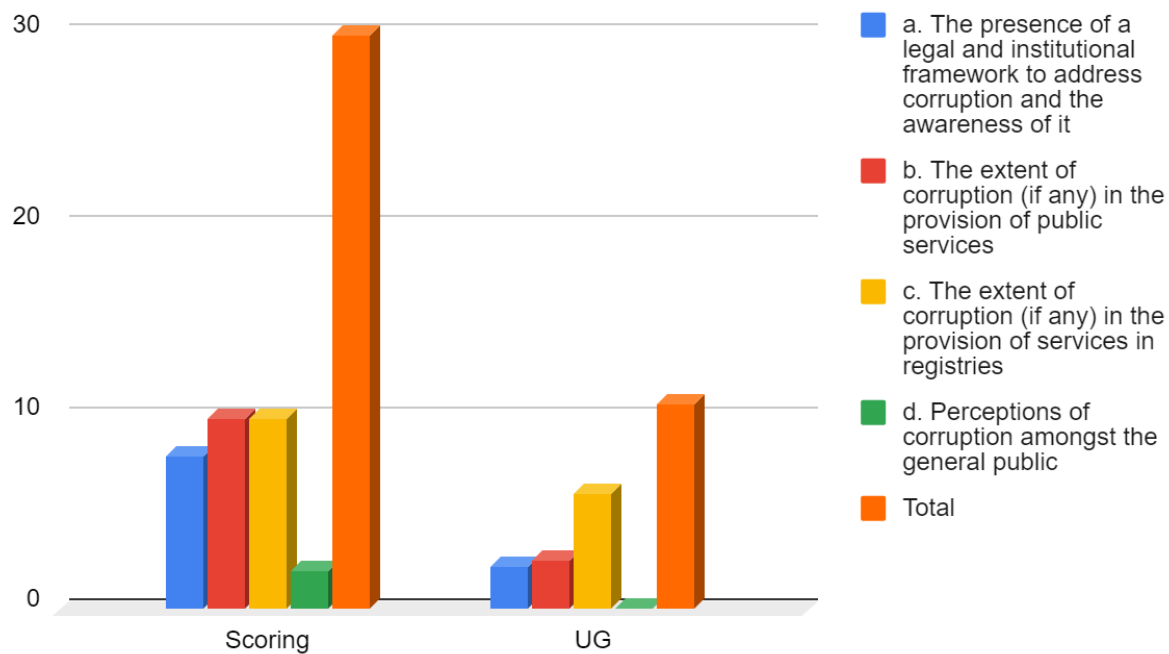
³⁰⁶ KICK- U, <https://kick-u.org/page/overview-about-us> accessed 10th December 2023.

³⁰⁷ Anti Corruption Coalition Uganda, Uganda: Civil Society Report by Anti-Corruption Coalition Uganda (14 November 2023), <https://uncaccoalition.org/wp-content/uploads/UNCAC-Coalition-CoSP10-submission-Civil-society-parallel-report-Executive-summary-Uganda.pdf> accessed 10th December 2023.

Findings

Parameter	Indicators	Scoring (Marks)	UG
Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	2.25
	b. The extent of corruption (if any) in the provision of public services	10	2.5
	c. The extent of corruption (if any) in the provision of services in registries	10	6
	d. Perceptions of corruption amongst the general public	2	0
	Total	30	10.75

Uganda Corruption score chart

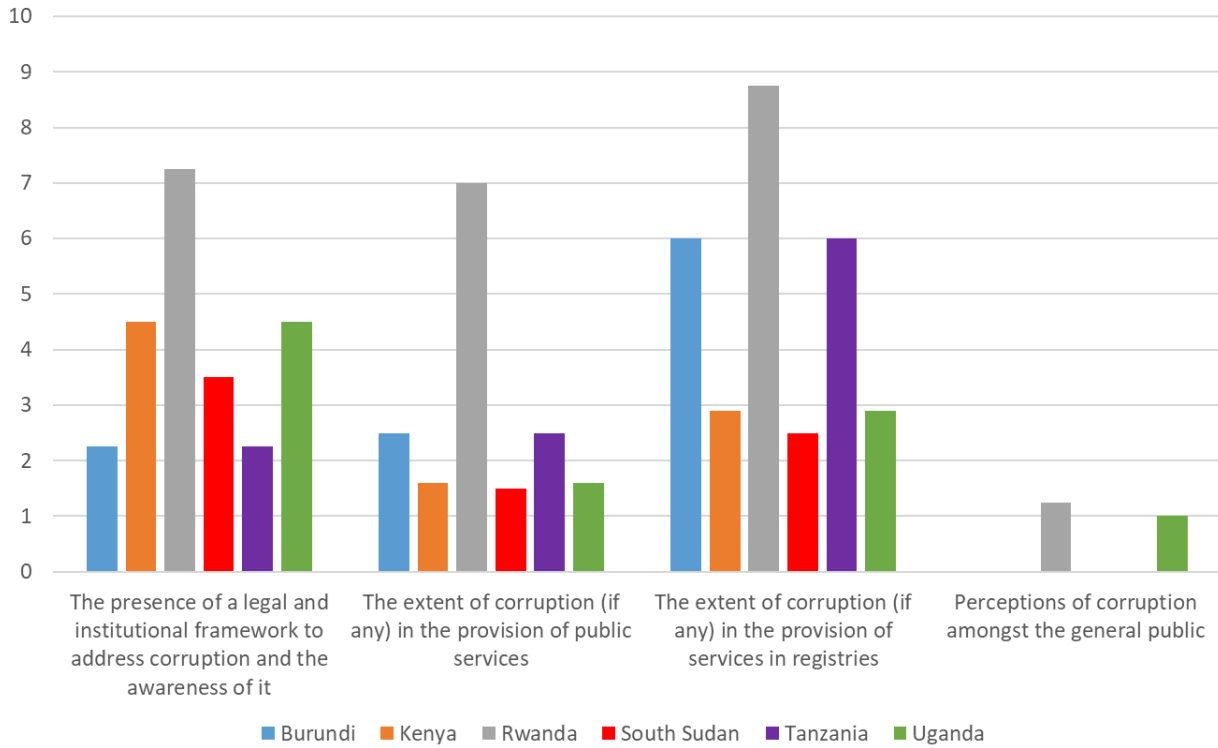


Recommendations

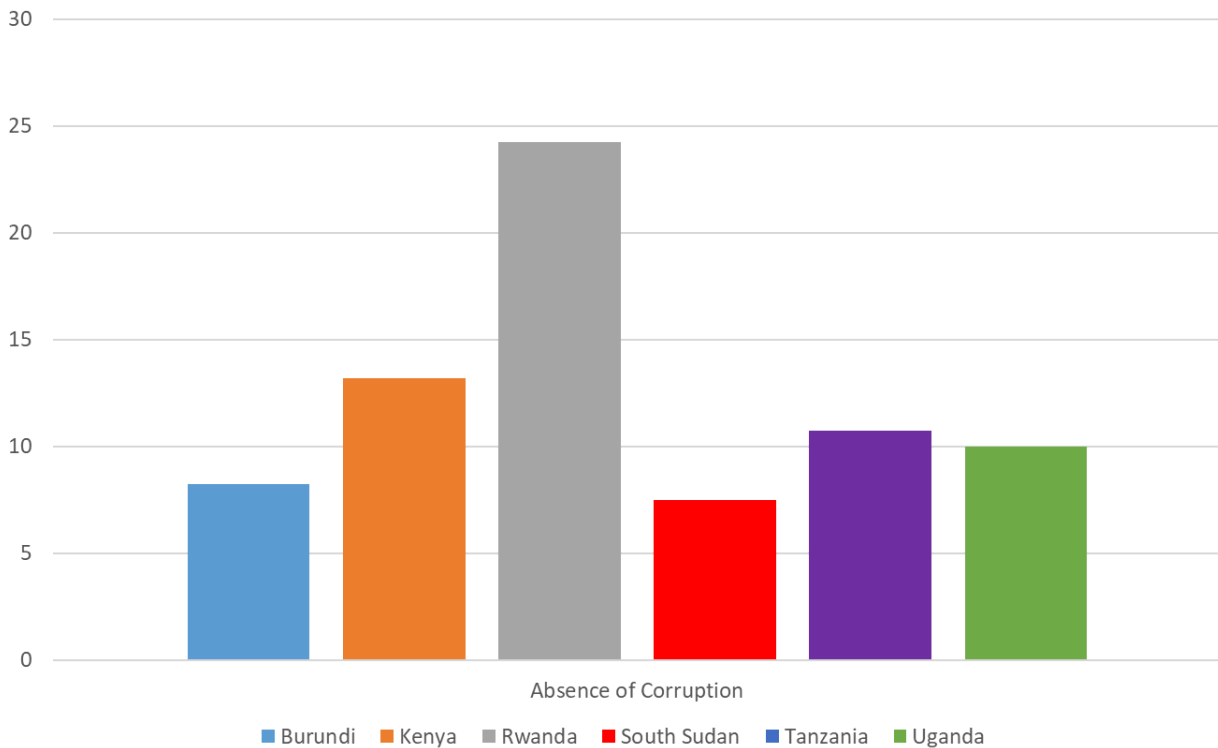
The following recommendations are made: -

- (1) Government should increase funding of the anti-corruption agencies to capacitate them to execute their mandate, specialized staff training with modern forensic technologies and skills to address emerging forms of corruption.
- (2) Government should establish a legal and institutional regime for protection of witnesses, from investigations, prosecution and post trial periods.
- (3) It is recommended that public and private actors refrain from interfering with the activities of the Office of the Inspectorate of Government (IGG).
- (4) The office of the IGG should organize more trainings on the declarations especially amongst the public officers to enhance compliance on declaration of wealth with the IGG's Office under the Leadership Code Act 2002.

ABSENCE OF CORRUPTION - INDICATORS



ABSENCE OF CORRUPTION



CHAPTER 4: FUNDAMENTAL RIGHTS AND FREEDOMS

Introduction

All of the EAC Member States examined in this Report have ratified international human rights treaties including the International Covenant on Civil and Political Rights (“the ICCPR”) and the African Charter on Human and Peoples' Rights (“the Banjul Charter”). These frameworks place key obligations on the States, chief amongst them being enacting laws and policies which guarantee the citizens fundamental rights and freedoms.

In this section, we review whether each State has implemented these obligations as well as the practical enjoyment of this right by the citizens, in respect of the following rights and freedoms.

- Order & Security

As defined by the Universal Declaration of Human Rights, security of persons and property looks at two main aspects. The first entails living free from fear of attack, loss of life, arbitrary arrest, detention or coercive interrogation and the second surrounds property rights being effectively guaranteed. Security of persons is provided for in article 9.1 and article 6 of the ICCPR and the Banjul Charter respectively, while that of property is provided for in article 14 of the Banjul Charter.

- Freedom of expression

Provided for under article 19(2) of the ICCPR and 9(2) of the Banjul Charter, this freedom entails the right to seek, receive and impart information, ideas and opinions in various forms within the confines of law. It is provided for under article 19.2 of the ICCPR and 9.2 of the Banjul Charter.

- Freedom of association & assembly

Deemed to be the cornerstone of democracy, the protection of this right makes it possible for people to unionize in protection of their labour rights, peaceably picket and protest infractions of their rights by the State as well as join political parties of their choice. It is provided for in article 22.1 of the ICCPR and articles 10 and 11 of the Banjul Charter.

- Right to privacy

Article 17 of the ICCPR prohibits arbitrary and unlawful interference with one’s privacy. Due to technological advances, the increasing use of social media and the use of data by Governments, business and political organisations, the protection of this right is of urgent importance. At its core, the right to privacy encapsulates the idea that individuals should enjoy a space of independent development, interaction, and freedom—an exclusive "private sphere," whether engaged with others or not. This realm should be shielded from arbitrary State interference and unwarranted intrusion by uninvited individuals.³⁰⁸ Activities that impede the right to privacy, such as surveillance and censorship, are justifiable only when prescribed in the law.³⁰⁹

Parameter	Indicators	Scoring (Marks)	BU	KE	RW	SS	TZ	UG
Fundamental HR & Freedoms								
Ratification and domestication of Treaties:	The African Charter on Human and Peoples Rights.	10	10	10	10	5	10	10
	International Convention on Civil and Political Rights.							
	Reservations to the treaties	5	5	5	5	5	2.5	5

³⁰⁸ Martin Scheinin, *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, 2009, A/HRC/17/34.

³⁰⁹ *Universal Declaration of Human Rights*, article 29; General Comment No. 27, Adopted by The Human Rights Committee Under Article 40, Paragraph 4, Of the International Covenant on Civil & Political Rights, CCPR/C/21/Rev.1/Add.9, November 2, 1999; see also Martin Scheinin, “Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism,” 2009, A/HRC/17/34.

	Sub-total	15	15	15	15	10	12.5	15
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We turn now to the findings from the Member States.

1. BURUNDI

Burundi has ratified a number of regional and international instruments when it comes to civil and political rights. These include the African Charter on Human and Peoples Rights on 28 July 1989³¹⁰ as well as the International Convention on Civil and Political Rights on 9 May 1990 with no reservations³¹¹. This section will look at the actual state of the protection of various of human rights in Burundi.

i. Rights Accused Persons

o Legislative framework: National level

While Burundian legislation promotes important principles of law, such as the presumption of innocence in its Constitution³¹² and the principle that liberty is the rule and detention is the exception in its Criminal Procedure Code³¹³, it also has other provisions which limit liberty, before being taken to a court of law.

The Criminal Procedure Code provides for provisional preventive detention as a form of deprivation of liberty, which occurs before being presented before a court of law. In cases where the accused is in preventive detention, the set time period is 15 days,³¹⁴ after which the accused has the right to appeal before the competent authority. It is important to note that the order authorizing preventive detention is valid for a maximum of thirty days³¹⁵; the period of preventive detention can be extended with good reason for one month or more, as long as it is in the public interest. However, the

³¹⁰ African Commission on Human and People's Rights: African Charter on Human and People's Rights <<https://achpr.au.int/en/charter/african-charter-human-and-peoples-rights>> Accessed 15 November 2023.

³¹¹ United Nations treaty collection: *Human rights : International Covenant on Civil and Political Rights* <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en#EndDec> Accessed 15 November 2023.

³¹² See art.40 of the Constitution of Burundi, 2018.

³¹³ See art.154 of the Criminal Procedure Code, Burundi, 2018.

³¹⁴ See art. 155 of the Criminal Procedure Code, Burundi, 2018.

³¹⁵ See art.159 of the Criminal Procedure Code, Burundi, 2018.

period for preventive detention cannot exceed one year if the offense for which the person is accused is punishable by a period less than five years. If the offense is punishable by more than five years, preventive detention cannot exceed three years.

However, there appears to be a disparity between the law and its implementation in practice. Available documentation indicates that the period of thirty days for which the order authorizing preventive detention is valid often elapses without extension. Officers of the Public Prosecutor's Office tend not to seek its extension as provided by the Criminal Procedure Code. Consequently, there is a significant number of accused individuals in police custody with outdated authorization orders. Moreover, contrary to the provisions of the Criminal Procedure Code, some accused individuals find themselves in preventive detention for more than one year, even though the penalties for the offenses they are accused of are less than five years.³¹⁶

The lack of respect for the presumption of innocence of accused persons can be attributed to several factors, including the lack of accountability from stakeholders involved in the justice system in cases of non-compliance with the law and corruption within the justice system.³¹⁷ Additionally, the presumption of guilt placed on the accused, along with their lack of financial resources, contributes to the erosion of the presumption of innocence.³¹⁸

o *The right to bail in Burundi*

Bail and bond guidelines are outlined within the Criminal Procedure Code, specifically in articles 160, 162, 164, 166, 178, 260, 263, 289, and 360. Article 162 states that if the accused submits a request, they may be provisionally released on bail if they guarantee their participation in all legal proceedings, including the payment of damages or fines related to the offense.

³¹⁶ International Bridges to Justice, '*Manuel sur les procédures d'arrestation et de détention instituées par le Code de Procédure Pénale du Burundi*', <<https://www.ibj.org/wp-main/wp-content/uploads/2020/04/French-Pretrial-Detention.pdf>> Accessed 10th November 2023.

³¹⁷ Journal Iwacu, '*Mauvaise administration de la justice : Des responsabilités partagées*', (September 2023), <<https://bitly.ws/ZRNK>> Accessed 10 November 2023.

³¹⁸ Avocats Sans Frontières, '*Regards croisés sur la détention préventive au Burundi : de la norme à la pratique*' <https://www.asf.be/wp-content/uploads/2015/04/ASF_BUR_RegardsCrois--sD--tentionPr--ventive_201503_FR.pdf> Accessed 10 November 2023.

The Criminal Procedure Code also provides guidelines on the conditions for the refund of bail. Article 360, paragraph 2, specifies that bail must be paid within two months; otherwise, imprisonment may be enforced.

However, the Burundian Criminal Procedure Code, being the primary source concerning the payment of bail, does not offer specific guidelines to simplify the payment process. Instead, it outlines the conditions under which bail is to be paid,³¹⁹ the conditions under which bail is reimbursed to the accused³²⁰ and circumstances in which alternatives –imprisonment– are implemented.³²¹

Findings

Parameter	Indicators	Scoring (Marks)	BU
Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	4
	b. The presence and efficacy of the right to bail	5	3
	c. The application of the rights of accused persons in court	5	1
	d. The efficiency of the criminal trial process	5	2.2
	Sub-Total	20	10.2

ii. Freedom of expression

o Legislative framework

³¹⁹ See art.160 of the Criminal Procedure Code, Burundi, 2018.

³²⁰ See art.162 of the Criminal Procedure Code, Burundi, 2018.

³²¹ See art. 360 al.2 of the Criminal Procedure Code, Burundi, 2018.

The Constitution of Burundi acknowledges a range of fundamental rights for citizens in its articles 21 to 61. Article 31 recognizes the freedom of expression and asserts that the state must respect citizens' freedoms of religion, thought, and conscience.

Notably, Burundi does not impose any explicit statutory restrictions on the freedom of expression. However, a law governing the Burundian press, adopted in 2018, has been criticized for restricting press freedom. This law includes provisions requiring journalists to obtain authorization from a governmental institution to practice their profession.³²²

Moreover, the same law prohibits media from releasing content that may infringe on societal morals and public order.³²³ This gives government authorities the power to censor content deemed detrimental to societal morals and public order without justification. Such a provision indirectly hinders the media from addressing certain topics, as they may be judged to infringe on public order.

o Independence and diversity of the media

Several factors can demonstrate whether Burundi has progressed or regressed in terms of media freedom, independence, and diversity. One of the primary sources for assessing its progress is the annual World Press Freedom Index, published by Reporters Without Borders. Burundi was ranked 147th out of 180 countries in 2021, 107th in 2022, and 114th in 2023 by Reporters Without Borders.³²⁴

iii. Freedom of the Press

While the Burundian media has faced a difficult period following the 2015 political crisis, during which some radio stations were forced to close and others had to relocate abroad, the new regime has expressed its intent to restore relations with the media. In 2021, for example, some media outlets, such as Bonesha FM, the BBC, and

³²² Les Afriques, *Les médias et la liberté d'expression au Burundi : l'état de la presse, les restrictions et les défis à la liberté d'expression*, (March 2023), <<https://lesafriques.com/2023/03/les-medias-et-la-liberte-dexpression-au-burundi-letat-de-la-presse-les-restrictions-et-les-defis-a-la-liberte-dexpression/>> Accessed 17 November 2023.

³²³ See art.62b, Law N.1/19 of 14 September 2018 amending Law N.1/15 of 9 May 2015 governing press in Burundi.

³²⁴ Reporters Without Borders, 'Burundi' <<https://rsf.org/en/country/burundi>> Accessed 15 November 2023.

other online platforms, were granted authorization to resume their activities after being suspended in 2015. However, according to Reporters Without Borders, the government's expressed will to restore links with the media has been slow to materialize, as results are lagging. The press remains largely unfree in its operations. For example, while the law governing the press in Burundi states that a journalist has the right to work independently once they possess a press card issued by the National Council of Communication (Conseil National de la Communication), this is not fully realized in practice,³²⁵ There are instances where journalists have been required to request authorization from the provinces they travel to for reporting the news. Additionally, there have been cases where journalists must show their news to authorities before broadcasting it.³²⁶

Regarding media freedom, stakeholders contend that there has been considerable progress. However, visible challenges persist, such as self-censorship and a lack of in-depth analysis when processing information. It's important to note that the increase in the number of media houses does not necessarily equate to a greater respect for press freedom.³²⁷

o *Restrictions to the freedom of press*

During the period being reviewed, a Burundian journalist who resides in Rwanda returned to the country for personal reasons. Upon her return, she was arrested by members of the intelligence services, subsequently brought before court, and sentenced to 10 years in jail.³²⁸

³²⁵ See art.48, Loi N.1/19 du 14 septembre 2018 portant modification de la loi N,1/15 du 9 mai 2015 régissant la presse au Burundi.

³²⁶ Burundi Eco, '*La liberté de la presse au Burundi : Pourvu que ce léger mieux dure*' (July 2022) < <https://burundi-eco.com/liberte-de-la-presse-au-burundi-pourvu-que-ce-leger-mieux-dure/> > Accessed on 15 November 2023

³²⁷ Journal Iwacu, '*Liberté de la presse : des avancées sur un très long chemin*'(May 2022)<<https://www.iwacu-burundi.org/liberte-de-la-presse-des-avancees-sur-un-tres-long-chemin/><https://www.iwacu-burundi.org/liberte-de-la-presse-des-avancees-sur-un-tres-long-chemin/><https://www.iwacu-burundi.org/liberte-de-la-presse-des-avancees-sur-un-tres-long-chemin/>>Accessed on 13 November 2023.

³²⁸ Journal Iwacu, '*Affaire Floriane Irangabiye : les défenseurs des droits humains s'insurgent contre le verdict de la Cour d'appel de Mukaza*' (May 2023), <<https://www.iwacu-burundi.org/affaire-floriane-irangabiye-les-defenseurs-des-droits-humains-sinsurgent-contre-le-verdict-de-la-cour-dappel-de-mukaza/>> Accessed on 18 November 2023.

In January 2023, a Burundian journalist was charged with violating national integrity and thereafter sentenced to 10 years of imprisonment and a fine of 1,000,000,000 Burundian francs as per article 611 of the Penal Code. The journalist has been incarcerated from August 2022.³²⁹ Several civil society organizations advocating for human rights, along with media outlets, have asserted that the government violated the journalist's freedom of expression by arresting and sentencing her. This is primarily due to her role in facilitating radio programs, including discussions on the political landscape of Burundi, where she invited opposition members to participate and comment.³³⁰

o *Access to social media*

Regarding social media, in 2017, access to *Iwacu*, a weekly media outlet considered the most widely read print newspaper in Bujumbura, the capital city, was blocked online. It was not until 2022 that the government allowed online access to *Iwacu*. This move was perceived as a promising step toward establishing an open and free media environment.³³¹

Analysis of the freedom of speech of the public

People generally discuss politics in public places, private circles, and on various media platforms, including TV and radio. However, it's worth noting that since 2015, amidst the critical political context, members of the diaspora tend to be the ones who freely express their opinions on politics. Additionally, online platforms such as the *Iwacu* Readers' Forum and comment sections of various media outlets like YAGA have been created to allow Burundians to freely express their political opinions. Social media

³²⁹ Journal *Iwacu*, 'Affaire Floriane Irangabiye : 10 ans de prison et un million de BIF d'amende', (January 2023) <<https://www.iwacu-burundi.org/affaire-floriane-irangabiye-10-ans-de-prison-et-un-million-de-bif-damende/>> Accessed on 18 November 2023.

³³⁰ Amnesty International, 'Burundi. De nouveaux appels à la libération d'une journaliste, un an après son arrestation', August 2023), <<https://www.amnesty.org/fr/latest/news/2023/08/burundi-one-year-on-fresh-calls-for-journalists-release/>> Accessed on 18 November 2023.

³³¹ Reporters without Borders, 'After being blocked for five years, Burundian news site is accessible again' (December 2022) <<https://rsf.org/en/after-being-blocked-five-years-burundian-news-site-accessible-again>> Accessed on 15 November 2023.

platforms such as Twitter and Facebook also serve as forums where Burundians can discuss politics, either anonymously or using their personal credentials.

Findings

Parameter	Indicators	Scoring (Marks)	BU
Freedom of Expression	a. Whether there is legislation protecting the freedom of expression or a wide acknowledgement of this freedom as a right	5	3
	b. Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	2.5
	c. The presence of a vibrant and independent media and civil society	5	2
	Sub-Total	15	7.5

iii. Freedom of assembly

The Burundian Constitution provides for both the freedom of assembly and the freedom of association in Article 32. While these freedoms are legally guaranteed, occasional restrictions may be observed. A recent example is the disruption of activities of one of the main political parties, the Congrès National de la Liberté (CNL), by the Ministry of the Interior. This occurred after two meetings aimed at updating the party's internal organization, during which some members were removed from its organs. In response, the Ministry of Interior suspended the party's activities across the country in a letter addressed to the CNL representative on 2nd June 2023. Some of reasons cited included *inter alia* irregularities within the party's internal regulations.³³² The concerned political party's representative stated that the

³³² Jeune Afrique, 'Au Burundi, le parti d'Agathon Rwasa suspendu', (June 2023) <<https://www.jeuneafrique.com/1451495/politique/au-burundi-le-parti-dagathon-rwasa-suspendu/>> Accessed on 14 November 2023.

Constitution and the law on political parties³³³ have been violated; the latter prohibits any interference by public authorities in the operation of political parties. Furthermore, its representative is concerned that the government might be attempting to weaken the party as a strategy to hinder it from being acting in the next elections in 2025.³³⁴

In June and July 2022, while the CNL was planning to celebrate its anniversary, the ceremonies were reportedly prohibited and disrupted in several provinces by local authorities.³³⁵

Furthermore, human rights organizations argue that suspending the activities of the main opposition political party across the entire territory, while mandating that its meetings be subject to approval by the Ministry, is certainly concerning, especially considering the upcoming 2025 elections, which are expected to be democratic.³³⁶

Findings

Parameter	Indicators	Scoring (Marks)	BU
Freedom of Assembly	a. Whether the freedom of assembly is widely acknowledged as a right	5	3
	b. Do people participate in demonstrations i.e., are they aware of their right to assemble?	2.5	0
	c. Practical enjoyment of the right, i.e. absence of harassment during demonstrations	2.5	1.5

³³³ See art.10, of Loi N. 1/16 du 10 septembre 2011 portant révision de la loi N.1/006 du 26 juin 2003 portant organisation et fonctionnement des partis politiques.

³³⁴ Journal Iwacu, 'Les partis politiques burundais à nu' (October 2023) <<https://www.iwacu-burundi.org/les-partis-politiques-burundais-a-nu/>> Accessed 16 November 2023.

³³⁵ Amnesty International, 'Burundi: 2022' <<https://www.amnesty.org/fr/location/africa/east-africa-the-horn-and-great-lakes/burundi/report-burundi/>> Accessed 16 November 2023.

³³⁶ Journal Iwacu, 'Les partis politiques burundais à nu' (October 2023) <<https://www.iwacu-burundi.org/les-partis-politiques-burundais-a-nu/>> Accessed 16 November 2023.

	Sub-total	10	4.5
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iv. Freedom of Association

o Legislative framework

The Burundian Constitution guarantees the freedom of association, as provided for in Article 32, similar to the freedom of assembly. Additionally, there exists a specific law governing the organization and functioning of political parties. This law outlines the rights and obligations of political parties, the registration procedure, funding procedures, and the conditions under which sanctions can be applied.³³⁷

Indeed, political parties can be registered in accordance with the 2011 Law by submitting a complete file of required documents to the Ministry of Interior.³³⁸

o The presence of a multiparty system

There are approximately thirty-five political parties registered with the Ministry of Interior, with four of them considered the major ones due to their consistent actions and presence throughout Burundi. These four political parties include the ruling party, CNDD-FDD (Conseil National pour la défense de la démocratie/Forces de défense de la démocratie), CNL (Conseil National pour la Liberté), FRODEBU (Front pour la Démocratie au Burundi), and UPRONA (Union pour le Progrès National).³³⁹

The recognition of a multiparty system by legislation, along with the ability for numerous political parties to legally form and operate, suggests the presence of opposition to the government. However, the effectiveness of this opposition may be questionable, considering the reported limitations imposed on other political parties in the opposition regarding their ability to assemble freely.³⁴⁰

³³⁷ See art.1, of Law N. 1/16 of 10 September 2011 amending Law N.1/006 of 26 June 2003 on the organisation and functioning of political parties.

³³⁸ See art.47, *Idem*.

³³⁹Journal Iwacu, 'Les partis politiques burundais à nu' (October 2023) < <https://www.iwacu-burundi.org/les-partis-politiques-burundais-a-nu/>> Accessed 13 November 2023.

³⁴⁰ *Idem*.

Regarding limits to the freedom of association, there are no recorded news reports concerning any human rights violations of individuals for exercising their right to associate freely during the period of this study.

Findings

Parameter	Indicators	Scoring (Marks)	BU
Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	4
	b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	4
	c. Presence of at least two major political parties, other than the ruling party	5	4
	d. Whether the freedom of association is practically enjoyed	5	3
	Sub-Total	20	15

v. Order and security

Due to the lack of data from national crime reports for Burundi, the collection of data was based on global indices that assess criminal activities. The report explored whether there are criminal activities in each of the countries, including terrorist activity, communal conflicts and clashes, cattle rustling, and the presence of gangs and militias in the country.

- o *Criminal activities*

According to the 2023 Global Terrorism Index (GTI),³⁴¹ Burundi was ranked 39th out of 93 countries, with a score of 4.051 out of 10. The GTI does not report any particular terrorist incidents, nor did it record any terrorist gangs or groups engaged in organized crime in Burundi.³⁴²

Communal-related conflicts have ceased since the signing of the Arusha Peace and Reconciliation Accords in 2000. These were essentially ethnic conflicts between the Hutu and Tutsi ethnic groups. Human rights organizations and the National Human Rights Commission report violations of civil, political as well as socio economic rights.³⁴³ Similarly, there is no record of Cattle Rustling types of conflicts in Burundi.

o *Criminal groups*

The GTI does not record any gangs or terrorist groups engaged in organized criminal activities in Burundi.³⁴⁴

As for the presence of militia groups, there are no officially recognized militia in Burundi. The government does not recognize the Youth League members of the ruling party - the *Imbonerakure* - as a militia.³⁴⁵ However, human rights organizations and the OHCHR reports consider the group as a militia that commits human rights violations under the pretext of ensuring security.³⁴⁶ Nonetheless, there have been

³⁴¹ The calculation of the GTI score considers deaths, incidents, hostages and injuries from terrorism, weighted over a five-year period

³⁴² Institute of Economics and Peace, 'Global Terrorism Index 2023', <

<https://www.economicsandpeace.org/wp-content/uploads/2023/03/GTI-2023-web.pdf>> Accessed 20 November 2023.

³⁴³ Commission nationale indépendante des droits de l'homme (CNIDH), 'Rapport annuel d'activités : Exercice 2022',

(February 2023), <www.cnidh.bi> Accessed 26 November 2023

³⁴⁴ Institute of Economics and Peace, 'Global Terrorism Index 2023', <

<https://www.economicsandpeace.org/wp-content/uploads/2023/03/GTI-2023-web.pdf>> Accessed 20 November 2023.

³⁴⁵ United Nations Office at Geneva, 'Experts of the Committee against Torture Commend Burundi on Efforts to Repatriate Burundian Refugees, Ask about Acts of Torture Committed by the Burundian Police Force and Security Forces and about the Role of the Imbonerakure' (November 2023),

<https://www.ungeneva.org/en/news-media/meeting-summary/2023/11/examen-du-burundi-devant-le-comite-contre-la-torture-la-pratique> Accessed 27 November 2023.

³⁴⁶ Office of the High Commissioner of Human Rights (OHCHR), 'Situation mondiale- Déclaration de Nada Al-Nashif, Haute-Commissaire des Nations Unies aux droits de l'homme par intérim' (September 2022),

<<https://www.ohchr.org/fr/statements/2022/09/global-update-statement-nada-al-nashif-un-acting-high-commissioner-human-rights>> Accessed 26 November 2023.

Human Rights Watch, 'Burundi: events of 2022', <<https://www.hrw.org/world-report/2023/country-chapters/burundi>> Accessed 24 November 2023.

cases crimes committed by some members of the *Imbonerakure*.³⁴⁷ There is no availability of data regarding how widespread such criminal activity is.

o *An overview of the crime rate in Burundi*

As an alternative to the lack of a crime report, other reports have been explored. Specifically, the 2022 annual report of the National Human Rights Commission, the 2023 civil society coalition's report, the GTI as well as the Global Peace Index (GPI) have been consulted to gather as much information as possible when it comes to order and security.

The 2022 National Human Rights Commission's annual report, reported three (3) cases of murder, seven (7) cases of enforced disappearances, two (2) cases of ill-treatment, one case of torture and seventy-six (76) cases of arbitrary detention.

According to the 2023 Civil Society Coalition's Report, between December 2022 and January 2023, about thirteen (13) cases of extra-judicial executions, enforced disappearances and over forty (40) cases of torture were reported.³⁴⁸ It is important to highlight that this report records numbers from years prior to the review period of this 2nd Report.

Moving to the GPI, it scores countries using three parameters: safety and security; ongoing conflict; and militarization domains. While Burundi improved its score in the first two parameters, its score deteriorated in the third. The GPI report acknowledges that Burundi made the second highest improvement in peace in 2023. In fact,

Initiative for Human rights, 'Burundi report', (March 2022), < <https://burundihri.org/rep/Rapport-Mars-2022-Fr.pdf>> Accessed 26 November 2023.

³⁴⁷ SOS médias, '*Bubanza : le tribunal de province a condamné à vingt ans de prison un Imbonerakure accusé de meurtre*', (December 2022).

<<https://www.sosmediasburundi.org/2022/12/13/bubanza-le-tribunal-de-province-a-condamne-a-vingt-ans-de-prison-un-imbonerakure-accuse-de-meurtre/>> Accessed 30th November 2023.

³⁴⁸ Burundian civil society coalition, '*Rapport alternatif d'une coalition de la société civile burundaise pour l'examen du 3ème rapport périodique du Burundi par le Comité des droits de l'Homme*', (May 2023), <<https://www.acatburundi.org/wp-content/uploads/2023/08/Rapport-alternatif-OSC-pilotees-par-Reseau-SOS-Torture-appui-FiACAT-OMCT-et-CCPR.pdf>> Accessed on 26 November 2023.

Burundi improved in the ‘ongoing conflict’ domain by 15%. Some of the events leading to its improvement include the fall in deaths from internal conflict and reduced intensity of internal conflict. Reportedly, this is attributed to the 2020 elections and the events that occurred after the former president sought a third term.

Similarly, Burundi improved in the ‘safety and security’ domain. This can be credited to progress in the Political Terror Scale – acknowledged by other countries - which recorded a fall in terrorism impact as well as a reduction in *inter alia* the numbers of refugees and Internally Displaced Persons.

Furthermore, in February 2022, the European Union (EU) recognized progress in the rule of law and human rights by lifting financial sanctions and resuming direct financial assistance to the Burundian government. Similarly, the increased repatriation of Burundian refugees from countries like Tanzania, despite civil society questioning the voluntariness of the process, also indicates progress in domestic security.³⁴⁹

Findings

Parameter	Proposed Indicators	Scoring (Marks)	BU
Order & Security	a. Presence and extent of crime & criminal activities	5	1.75
	b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	5	4
	Sub-Total	10	5.75

³⁴⁹ Institute for Economics & Peace, ‘Global Peace Index: 2023’, <
<https://www.economicsandpeace.org/wp-content/uploads/2023/06/GPI-2023-Web.pdf> > Accessed 27 November 2023.

vi. **Rights to privacy**

o *The right to privacy in criminal procedure law*

When evaluating the right to privacy, it is pertinent to consider whether police or other government officials can conduct physical searches without warrants in Burundi. In principle, no; however, there are exceptional circumstances where they can. In practice, members of the Public Prosecutor's Office and agents of the judiciary police are only authorized to conduct physical searches with search warrants. These warrants must be presented along with their work card and must be duly signed by the competent authority.³⁵⁰

Regarding exceptions, the Criminal Procedure Code stipulates that before any search, a mandate is required, except in cases of flagrante delicto or serious threat to the physical integrity of persons and in cases of terrorism. In such instances, the usual set hours for search warrants, which are between 6 am and 6 pm, do not apply³⁵¹; and can therefore be conducted at night. Furthermore, the Criminal Procedure Code requires that all searches be accompanied by the drafting of minutes, with a copy provided to the person being searched. Additionally, all objects and documents seized must be inventoried and recorded in the minutes (article 128). In 2018, when the new Criminal Procedure Code was voted on, the practice of conducting physical searches without warrants for cases enumerated above received significant criticism from the media and civil society organizations. They argued that such actions would undermine the privacy of citizens.³⁵²

While the latter viewed such a practice as a way of reinforcing police violence, as the legality of the search warrant, even during night hours, would be questionable, the

³⁵⁰ See art.123, Criminal Procedure Code, 2018.

³⁵¹ See art.29 and 126, Criminal Procedure Code, 2018.

³⁵² Jeune Afrique, 'Lles perquisitions désormais autorisées de nuit, sans mandat' (May 2018), <<https://www.jeuneafrique.com/555750/politique/burundi-les-perquisitions-desormais-autorisees-de-nuit-sans-mandat/>> Accessed on 29 November 2023.

proponents of the law argued that it was a response to the high criminal rate in the country, especially concerning terrorism.³⁵³

o *The legitimacy of interception of electronic communications*

Electronic communications of private individuals may lawfully be intercepted without a court order but under the authority and control of the Public Prosecutor and in confidentiality. In fact, article 72 of the Criminal Procedure Code grants the Public Prosecutor the ability, "when required by the needs of information" and "in the course of a judicial investigation," and "without the knowledge of the parties concerned," to set up a technical device with the purpose of accessing, recording, storing, and transmitting computer data in any place.

o *Data protection: legal and institutional framework*

Currently, there is no legislative framework on data protection in Burundi, including its collection, storage, processing, or removal from the country. However, it's important to note that the right to privacy is enshrined in the Constitution, specifically in Article 28. Additionally, laws and regulations governing sectors such as banking, telecommunications, healthcare, and employment contain data protection provisions for various types of personal information.³⁵⁴

Similarly, there is no body or institution directly mandated to deal with breaches to the right to privacy and data protection.

Findings

Parameter	Indicators	Scoring (Marks)	BU
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³⁵³ Voice of America, 'L'Assemblée approuve les perquisitions sans mandat au Burundi' (April 2018), <<https://www.voafrique.com/a/l-assemblee-approuve-les-perquisitions-sans-mandat-au-burundi/4355716.html> > Accessed 29 November 2023.

³⁵⁴ Data Protection Africa, *Burundi : data protection factsheet*, (May 2022), <<https://dataprotection.africa/burundi/#:~:text=DATA%20PROTECTION%20FACTSHEET&text=DPA%20legislation%3A%20Burundi%20does%20not.and%20highlight%20areas%20for%20reform.>> Accessed 20 November 2023.

Right to Privacy	a. Whether there is a legislative and institutional framework concerning the right to privacy	4	0
	b. The effectiveness of the legislative and institutional framework in addressing complaints of breaches to the right to privacy	6	0
	Sub-Total	10	0

Recommendations

Based on the preceding sections, the following conclusions and recommendations have emerged:

- (1) Significant progress has been made in respecting a wide range of human rights and liberties in Burundi. However, certain areas such as the rights of the accused, including the right to privacy in the criminal procedure, and the freedoms of assembly and press still require attention in terms of implementation.
- (2) To strengthen the justice system and increase opportunities for filing complaints in case of human rights violations.
- (3) To establish a data protection framework to guarantee the right to privacy as outlined in Article 23 of the Constitution.

2. KENYA

This part aims to provide a comprehensive overview of Kenya's commitment to fundamental human rights and freedoms, identifying areas of progress, gaps in implementation, and opportunities for further enhancement. By examining the legal and institutional framework alongside practical realities, it seeks to contribute to a nuanced understanding of the rule of law as it pertains to human rights in Kenya within the broader East African context.

i. Rights of an accused person

The principal legal framework safeguarding the rights of accused persons in Kenya is enshrined in Article 50 of the Constitution. Article 50 (2) comprehensively outlines the rights of the accused, ensuring a fair trial. These include the presumption of innocence until proven guilty, the right to a fair trial, protection from torture and inhumane treatment, and the right to legal representation.

Kenya has also adhered to the edicts of Article 10 of the ICCPR which requires the separation of accused and convicted persons, with specific provisions for juvenile accused individuals, mandating their separation from adults for a prompt and fair adjudication process.

Other additional legislation regarding the protection of the rights of accused persons include:

- a) The *Legal Aid Act*, 2016 which seeks to bolster the right of an accused person an accused to have an advocate assigned to them and to provide legal aid to accused persons.
- b) *Evidence (Out of Court Confessions) Rules* (2009): makes guidelines regarding the rights of an accused person when recording evidence. These rights are specific presentation in a language in which the accused can understand, the presence of legal representation, deprivation of food, water, or sleep, and ensuring their general well-being during the recording of their statement.

○ *Timelines for presenting accused persons before court*

If an individual is arrested, Article 49 (1)(f) of the Constitution requires that they be brought before court not later than 24 after their arrest. When they are arrested outside court hours, they should be brought before the court by the end of the next court day.

○ *Bail and Bond Guidelines*

The *Bail and Bond Policy Guidelines* (2015) were created to ensure constitutional compliance in the decision-making process, provide direction to police and judicial officers, balance the rights of suspects with public interests, address disparities for fair administration, promote inter-agency cooperation, align with international standards, counter overuse of pre-trial detention, safeguard victims' interests, and facilitate effective supervision of individuals granted bail. These guidelines have since provided a practical framework that can be used by police and judicial officers when making decisions regarding bail and bond.

○ *Provisions on the payment of bail*

In 2023, the Chief Justice issued a new directive to encourage a simpler and more effective bail and bond process.³⁵⁵ These include:

- a. Cash bails will now be processed in open court for increased transparency. This will be done through the Case Management System which is in line with the Judiciary's adoption of technology.
- b. Every plea-taking session should have two Court Assistants; one to support Magistrates in their duties and another to handle the processing of fine and cash bail payments.
- c. Accused persons who cannot make payments in open court will be given invoices to be settled within a reasonable period.
- d. Committal warrants will be prepared for individuals who fail to pay bail by 4 pm on the day of their plea.

³⁵⁵ We note that this was not a development that took place during the review period. However, we have included it as it is a significant development. This will not be considered when scoring.

- e. Pleas are to be registered by 9 am daily and if not, court users’ committees will give further directions.
- f. Each court station is to have an accountant responsible for daily revenue collection.

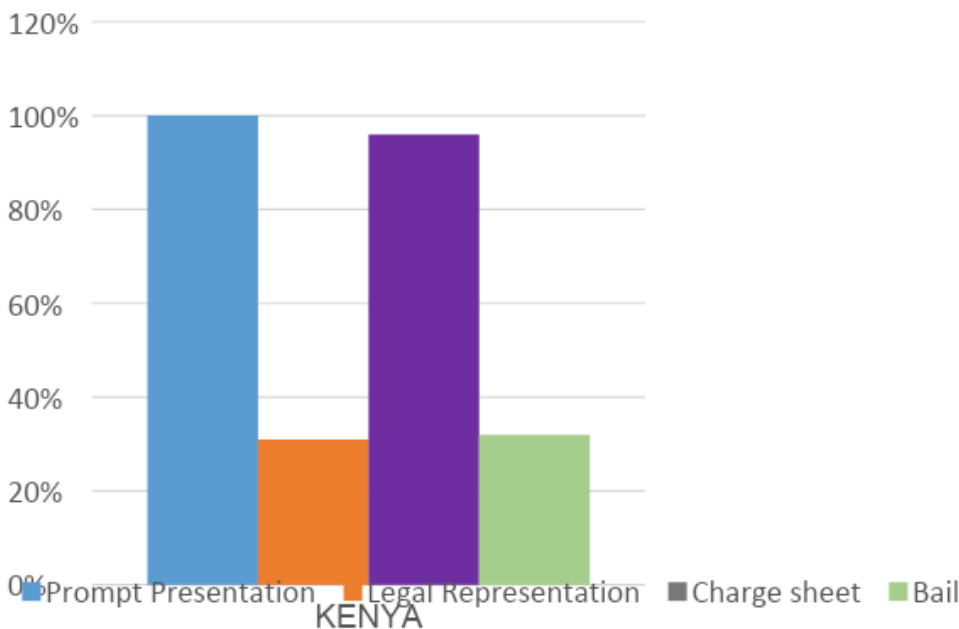
Following these directives, the Judiciary’s Directorate of ICT committed to automating these processes within 40 days.

o *Current status*

In discerning public knowledge on Access to Criminal Justice, the National Crime Research Centre Preliminary Report on Public Perceptions and Experiences on Access to Criminal Justice in Kenya had a variety of findings on the rights of the accused.

An assessment of the findings of 2372 Respondents across 20 Counties found that 56.4% of the Respondents considered the right to a fair hearing as one of the factors required for access to criminal justice. 14% of the Respondents knew of their right to be presented in Court promptly, 8.5% knew that they have a right to legal representation and only 6.7% knew that they had a right to access bail and bond terms.

ANALYSIS OF KENYA’S PERFORMANCE ON THE RIGHTS OF ACCUSED PERSONS



Following a field study in various courts across Kenya, below are the findings in the Kenyan Courts as regards:

- The presentation of accused persons in line with the statutory timelines;
- The number of accused persons with legal representation during the plea taking process;
- The number of matters where an accused person was read to the charge sheet in a language they understand; and
- The number of matters where an accused person was read to their charge sheet.

Findings

Parameter	Indicators	Scoring (Marks)	KE
Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	4
	b. The presence and efficacy of the right to bail	5	2
	c. The application of the rights of accused persons in court	5	2.2
	d. The efficiency of the criminal trial process	5	1
	Sub-Total	20	9.2

ii. Freedom of expression

iii.

The media sector in Kenya has been a direct reflection of the political transformation of the State. From the early 1990s to date, the different regimes (authoritarian and semi-liberal) have had differing effects on the enjoyment of this right. Over the past few decades, the movement has been towards the protection of this freedom. Article 33 of the *Constitution of Kenya, 2010* protects the right to freedom of expression, subject to certain exclusions, namely:

- Propaganda for war;
- Incitement to violence;
- Hate speech, which is proscribed by the *National Cohesion and Integration Act, of 2008*;
- Advocacy that constitutes ethnic incitement, vilification of others, or incitement to cause harm; and
- Hatred that is based on any ground of discrimination.³⁵⁶

³⁵⁶ Article 33(2), Constitution of Kenya 2010.

Further to the freedom granted under the Constitution, the media sector in Kenya is regulated by two laws: *the Media Council Act 2013* (MCA) and the *Kenya Information and Communications (Amendment) Act (2013)* (KICA).³⁵⁷ Both of these, seek to regulate the freedom of expression and media freedom by placing penalties on journalists and media outlets in breach of the law.

Other than the restrictions provided for in law, Kenya does not overly restrict persons' freedom of expression or the citizens' access to any social media, newspaper, or radio signal for the period of January 2022 to September 2023. Generally, citizens openly comment or speak about politics on social media platforms and can voice their discontentment (if any).

That said, there have been a few instances within the review period where the government has made directives and utterances that could be viewed as seeking to restrict the enjoyment of this freedom outside the restrictions provided in law. These include:

- The barring of the Media from documenting what was happening in Shakahola (*a forest incident where numerous people died due to a religious cult*);³⁵⁸ and
- Threats by Cabinet Secretary Moses Kuria against the National Media Group after they published an article on certain government officials' involvement in corrupt schemes.³⁵⁹

³⁵⁷ The Kenya Information and Communications (Amendment) Act, 18 December 2013.

³⁵⁸ Esther Nyambura "Media Council of Kenya condemns government's move to block media from Shakahola" The Standard (Nairobi, June 2023)

³⁵⁹ "Kenyan government minister Moses Kuria insults, threatens Nation Media Group" Committee to Protect Journalist (Nairobi, 21 June 2021).

Parameter	Indicators	Scoring (Marks)	KE
Freedom of Expression	Whether there is legislation protecting the freedom of expression or a wide acknowledgement of this freedom as a right	5	4.25
	Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	2.2
	c. The presence of a vibrant and independent media and civil society	5	2.4
	Sub-Total	15	8.85

iv. Freedom of Assembly

The freedom to assemble peacefully is enshrined under Article 37 of the Constitution which recognizes and protects the right to peaceful assembly. This right is not absolute, as it may be limited per the provisions of Article 24.

There have been challenges to the enjoyment of this freedom during the review period. Authorities have been criticized for using force to disperse protests led by the opposition against the rising cost of living (“*maandamano*”) and there have been concerns about the implementation of legislative changes that might impact the freedom of assembly.

o *Practical enjoyment of this right*

The practical realization of this right in Kenya has therefore not been seamless. In 2023, the Mbeere North MP, Geoffrey Ruku, proposed the Maandamano Bill which was to give the government/ police the power to restrict gatherings and protests in specific

places and require any persons wishing to demonstrate to notify the authorities at least 3-14 days before the proposed date of demonstration. This would increase the limitations placed on the right to protest hindering the full enjoyment of this right. Further, following the recent demonstrations which commenced on 20th March 2023, there were numerous reports in newspaper articles of protestors being arbitrarily detained, killed, and injured by the police.

Findings

Parameter	Indicators	Scoring (Marks)	KE
Freedom of Assembly	(b) Whether the freedom of assembly is widely acknowledged as a right	5	3.75
	(c) Do people participate in demonstrations i.e., are they aware of their right to assemble?	2.5	1.6
	(d) Practical enjoyment of the right, i.e. absence of harassment during demonstrations	2.5	0.8
	Sub-total	10	6.15

v. Freedom of Association

Freedom of association is provided for in Article 36 of the Constitution. This right includes the right to join a political party of their choice. Kenya has a history of vibrant civil society organizations, trade unions, and political parties, the presence of which indicates a relatively strong tradition of freedom of association.

o *Legislative framework*

Kenya has a legal framework for the registration and regulation of political parties namely, *the Political Parties Act, 2011*. This Act governs the formation, registration,

and operations of political parties. To register a political party in Kenya, an organization must meet the certain criteria set out in the Act which include; having a national character, adhering to democratic principles, and having a constitution.

The Act establishes a political party fund that receives budgetary allocation from the government and is administered by the Registrar of Political Parties. The aim is to ensure the parties have money to run them, which ostensibly safeguards democracy.

The Independent Electoral and Boundaries Commission (IEBC) is responsible for overseeing political party registration and monitoring compliance with electoral laws. Kenya has a multi-party system with numerous registered political parties. These parties participate in national and local elections. In Kenya, this right is enjoyed as enshrined with parties also having the option to form coalitions toward attaining a common goal.

- *Effective opposition*

In addition to the vibrant political scene, Kenya also has competitive elections with opposition parties playing a significant role in the country's political landscape. The opposition serves as a check on the actions and policies of the ruling party. By scrutinizing government decisions, the opposition helps prevent the abuse of power and ensures that the government operates within the confines of the law. For instance, in the past year, the opposition has organized several protests to hold the government accountable for the increasing cost of living and the unpopular policies implemented.

Though limitations have been placed as regards the freedom to assemble, the freedom to associate is largely enjoyed in Kenya. Regarding the effectiveness of the opposition, Kenya's opposition has been active, particularly in scrutinizing the government's actions and ensuring compliance with the laws.

Findings

Parameter	Indicators	Scoring (Marks)	KE
Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	4
	b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	4
	c. Presence of at least two major political parties, other than the ruling party	5	4
	d. Whether the freedom of association is practically enjoyed	5	2.5
	Sub-Total	20	14.5

v. Order & Security

In Kenya, these rights are enshrined under Articles 29 and 40 of the Constitution of Kenya. The Constitution provides that every person is entitled to the security of the person, which includes the right not to be deprived of freedom arbitrarily, or subjected to any form of violence from either public or private sources.

o *Significant Developments*

The *Inter-Agency Anti-Terrorism and Terrorism Financing Guidelines* were issued in April 2022 under Section 50(3) of the Office of the Director of Public Prosecutions Act No. 2 which empowers the Office of the Director of Public Prosecution to work with law enforcement to come up with guidelines for investigating crimes. The objective of these guidelines is to reduce terrorism.

o *Challenges*

Despite the progress seen in this area, the implementation of the security of persons and property remains a challenge which can be attributed to numerous reasons, key amongst them: -

i. Arbitrary deprivation of life

According to Missing Voices, a coalition of human rights organizations, 128 people were executed by the police in the year 2022. In January 2022, 37 bodies were recovered from the River Yala in Western Kenya, the cause of which was said to be extrajudicial killings and enforced disappearance.³⁶⁰

Further, during Kenya's 2022 general elections there were rising reports of intimidation, ethnic profiling, and disappearances, especially of Independent Electoral and Boundaries Commission (IEBC) Commissioners and staff. The murder of Embakasi East Returning Officer and Independent Electoral & Boundaries Commission (IEBC) employee Daniel Mbolu Musyoka was one such instance.

ii. Communal conflict/clashes

Communal conflict and clashes have continued in 2023. Clashes have been recorded in Kitui and Tana River Counties.³⁶¹ The violence led to the destruction of a primary school and the death of 12 people. Further, in June 2023 reports show that Samburu militiamen launched a cattle raid attack in Meru County killing two police men and a civilian.³⁶²

iii. Terrorist activity

As regards terrorist activity, in 2023 over 60 terrorists affiliated with the al-Shabaab terror group from Somalia targeted civilians in Kenya's Garissa-Lamu border, killing at least 14 military and police reservist forces. The attack on the busy

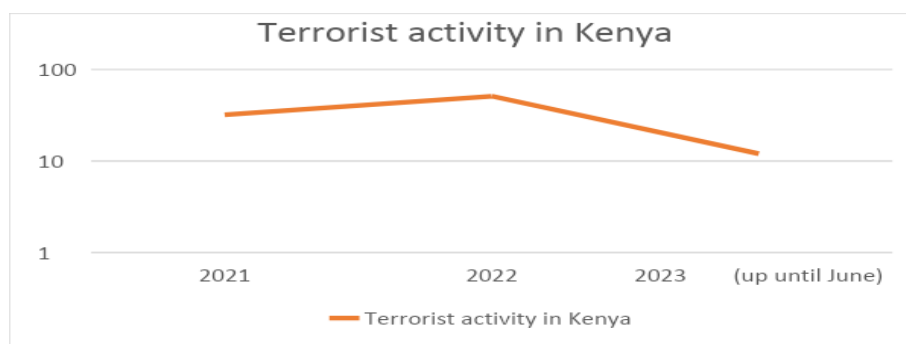
³⁶⁰ International, A. (2022). Missed Opportunities - A Scorecard on the Jubilee Administration and Lessons for the Next Government.

³⁶¹ International, A. (2022). Missed Opportunities - A Scorecard on the Jubilee Administration and Lessons for the Next Government.

³⁶² International, A. (2022). Missed Opportunities - A Scorecard on the Jubilee Administration and Lessons for the Next Government.

Garsen-Witu-Lamu Highway in Lamu County, approximately 241 kilometres North-East of the capital Nairobi, led to the death and injury of numerous persons.³⁶³

In the month of June 2023, several terrorist activities were noted in the Northern Region of Kenya. On 21st June 2023, Al-Shabaab militants targeted a public service vehicle in Mandera County leading to several casualties. Similar incidents were reported in Lamu West Sub-County where a group of over 30 men, identifying themselves as “the original Al-Shabaab” attacked the villages of Salama and Juhudi, and reportedly killed five men.³⁶⁴



Parameter	Indicators	Scoring (Marks)	KE
Order & Security	a. Presence and extent of crime & criminal activities	4	1
	b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	6	3
	Sub-Total	10	4

vi. Right to privacy

Article 31 of the Constitution establishes a fundamental principle asserting the right to privacy for every individual. This right encompasses the protection against unwarranted searches of one's person, home, or property, the seizure of possessions,

³⁶³ ACLED (2023). Al-Shabaab Attacks Surge ahead of Somalia- Kenya Border Re-opening.

³⁶⁴ ACLED (2023). Al-Shabaab Attacks Surge ahead of Somalia- Kenya Border Re-opening.

unnecessary requisition or disclosure of information related to family or private matters, and infringement upon the privacy of communications.

In *PAK & another v Attorney General & 3 others* [2022] e KLR, the Court held that this right is central to the protection of human dignity, forms the basis of any democratic society and supports and reinforces other rights, such as freedom of expression, information and association.

It is however not an absolute right as article 24 of the Constitution acknowledges specific lawful circumstances that permit its limitation. Such limitations can only be imposed through the enactment of legislation and must meet the criteria of being reasonable and justifiable in an open and democratic society. The legislation must consider factors such as ensuring that the exercise of rights and fundamental freedoms by any individual does not adversely affect the rights and freedoms of others. Additionally, the importance, purpose, nature, and extent of the limitation must be considered to strike a balance in upholding constitutional rights while addressing legitimate concerns.³⁶⁵

o *Searches without a warrant*

In line with article 31 and 24 of the Constitution, Section 118 of the *Criminal Procedure Code* (CPC) requires a police officer to obtain a warrant where s/he suspects that an offence has been committed. However, there are exceptional circumstances under the Act where a police officer may carry out a search without a warrant.

Section 22 of the CPC, permits a police officer with arrest authority to search a premise without a warrant where s/he has a reasonable belief that the person to be

³⁶⁵ The *National Police Service Act* echoes the provisions found in the Criminal Procedure Code. According to Section 57 of the Act, if a police officer has reasonable grounds to believe that obtaining a warrant to enter and search certain premises would jeopardize an ongoing investigation or the arrest of a suspect, they are authorized to demand free entry from the person in charge of the premises. This individual is required to provide all reasonable facilities for the search, if the officer believes that crucial evidence related to an alleged offense is present.

arrested is within a certain area and the person residing in that area has an obligation to permit entry and provide reasonable assistance for a search.

Notably, if in the course of this search, an officer stumbles upon some information or evidence that allude to the commission of a crime by the owner or occupier of the premises completely unrelated to his search for the person to be arrested, Kenyan law bars the officer from seizing such evidence as it would be deemed as 'illegally obtained'.

When it comes to the protection of citizens' data, Kenya has enacted the *Data Protection Act, 2019*. The Act enforces the constitutional provisions outlined in article 31(c) and (d), focusing on the right to privacy. This Act establishes data protection measures placing safeguards on personal information acquired.

The Act establishes a body - the Office of Data Protection Commissioner - mandated to deal with the breaches to the right to privacy and data protection. The office has issued various guidelines to ensure compliance with the Act and Regulations thereunder.

Complaints regarding such breaches are reported to this body under the 'Data Breach Portal' with no charges or costs. The ODPC has the power to issue enforcement notices against such breaches and an aggrieved party has a right to appeal to the High Court.³⁶⁶ Being a regulatory body, the High Court also has supervisory jurisdiction over the ODPC and the power to review its decisions.³⁶⁷ During the period under review, the ODPC received and determined various complaints.³⁶⁸

³⁶⁶ Section 64, *Data Protection Act, 2019*:

³⁶⁷ See for instance: *Gichuhi & 2 others v Data Protection Commissioner; Mathenge & another (Interested Parties)* (Judicial Review E028 of 2023) [2023] KEHC 17321 (KLR) (Judicial Review) (12 May 2023) (Judgment)

³⁶⁸ ODPC Complaint No. 436 of 2023: *Chepkoech Lorna & 22 Others v Firch International Company Ltd T/A Pesa Pay*: Available at

<https://www.odpc.go.ke/download/odpc-complaint-no-436-of-2023-determination/?wpdmdl=9765&refresh=656f37a913b681701787561>; ODPC Complaint No. 725 of 2023: *Edith Andeso v Olerai Schools Ltd*: Available at <https://www.odpc.go.ke/download/odpc-complaint-no-725-of-2023-determination/?wpdmdl=9761&refresh=656f37a93bfae1701787561>

Findings

Parameter	Indicators	Scoring (Marks)	KE
Right to Privacy	a. Whether there is a legislative and institutional framework concerning the right to privacy	4	3
	b. The effectiveness of the legislative and institutional framework in addressing complaints of breaches to the right to privacy	6	4.16
	Sub-Total	10	7.16

Recommendations

Based on these findings on corruption in Kenya, below are some recommendations for addressing corruption and enhancing the rule of law:

1. **Security of Persons and Property** - Strengthen efforts to combat arbitrary deprivation of life and enforced disappearances by holding accountable those responsible for extrajudicial killings and enforced disappearances. Enhance security measures to address communal conflicts and terrorist activities, particularly in regions prone to violence.
 2. **Freedom of Expression** - Review existing laws and regulations to ensure they do not unduly restrict freedom of expression, particularly by eliminating vague or overly broad provisions that could be used to suppress dissent. Encourage an open and inclusive media environment by protecting journalists from intimidation and threats and fostering an atmosphere where media outlets can operate independently without fear of reprisals.
 3. **Freedom of Assembly** - Reconsider proposed legislative changes, such as the Maandamano Bill, that could potentially restrict the right to peaceful assembly and ensure that any limitations placed on this right are proportionate and
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necessary to protect public safety. Train law enforcement officers on the proper handling of peaceful protests to minimize the use of force and respect individuals' rights to assemble and express their grievances peacefully.

4. **Freedom of Association** - Continue to uphold and protect the right to freedom of association, including the right to form and join political parties, civil society organizations, and trade unions without undue interference or harassment. Ensure that the registration and regulation of political parties are transparent, fair, and non-discriminatory, allowing for a diverse and vibrant political landscape.
5. **Rights of Accused Persons** - Raise awareness among the public about the rights of accused persons, including the right to a fair trial, legal representation, and access to bail and bond terms, to ensure that individuals are informed of their rights when interacting with the criminal justice system. Strengthen implementation mechanisms for existing legislation, such as the Legal Aid Act and the Bail and Bond Policy Guidelines, to ensure that accused persons have adequate support and resources throughout legal proceedings.
6. **Right to Privacy** - Review and update legislation, such as the *Data Protection Act, 2019* to address emerging challenges and ensure robust protection of individuals' privacy rights in the digital age. Enhance oversight mechanisms for data protection, including the Office of Data Protection Commissioner, to effectively investigate and address complaints of data breaches and privacy violations.

3. RWANDA

Rwanda has ratified the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and is guided by the principles of the Universal Declaration on Human Rights.

Through the ICCPR and the Banjul Charter, Rwanda is committed to respecting human freedoms and rights which among others are the freedom of speech, assembly, and association.

Rwanda's ratification of such treaties necessitates the enactment of laws and policies that align with the set standards. Such include putting in place legal frameworks that enable the enforcement of the rights and freedoms which are already embedded under the Constitution of the Republic of Rwanda of 2003 revised in 2015 & 2023 established bodies that monitor and enforce such rights as well as provide remedies for any violations.

The World Justice Project index (2022), ranked Rwanda on the global position of the 78th out of 140 countries and on the region position of 10th out of 34 countries concerning respecting fundamental rights and freedoms.³⁶⁹

i. Rights of Accused Persons

The Constitution of the Republic of Rwanda of 2003 revised in 2015 & 2023, provides for the right to due process (article 29), which includes the right to be informed of the nature and cause of charges and the right to defense and legal representation; to be presumed innocent until proven guilty by a competent Court; not to be subjected to prosecution, arrest, detention or punishment on account of any act or omission which

³⁶⁹ WJP (2022), Rule of Law Index available at: <https://worldjusticeproject.org/rule-of-law-index/country/2022/Rwanda/Fundamental%20Rights/> accessed on 21 December 2023.

did not constitute an offense under national or international law at the time it was committed.

o *Detention*

Rwandan legal framework limits the period of detention of suspects before they are presented to court. The limits are stipulated in the law N° 027/2019 of 19/09/2019 relating to the criminal procedure in Rwanda, as follows:

o *Detention by the Rwanda Investigation Bureau (RIB)*

This is an institution functioning under the supervision of the Ministry of Justice which plays the role of the judicial police.

The law dictates a limit of five (5) days of detention if held by RIB. This period is used to conduct initial investigations and prepare and submit the case file to the competent Prosecutor.³⁷⁰

o *Detention by the Prosecutor*

Once the matter is transferred to the prosecutor from RIB within the mentioned 5-day detention period, the prosecutor in their discretion may decide to extend the detention period for another 5 days, totaling 10 days of pre-arraignment detention.

o *Detention where the suspect is caught red-handed*

Where a suspect is caught red-handed committing a crime, the law dictates an expedited process and where detention is deemed necessary, RIB's detention period is 72 hours and the prosecution has a maximum of 5 days if they wish to extend the detention period.

³⁷⁰ This detention is not absolute, as RIB may opt to conduct its investigation while the suspect is not in custody, depending on the gravity of the offense and other factors.

o *Bail*

Bail is granted in Rwanda which echoes the rights granted by the country's Constitution such as the right to liberty, security, and presumption of innocence until proven guilty. The bail provision is enshrined under the law N° 027/2019 of 19/09/2019 Relating to the Criminal Procedure (“Criminal Code”).

Bail can be posted on all offenses. Bail is granted at different levels; the investigation level, the prosecutor's level, and the court level.

o *Posting Bail*

In Rwanda, bail can be posted in various forms such as cash, immovable property, or third-party guarantee. If bail is posted through cash, such an amount is held by the prosecutor who granted bail. The law requires RIB, Courts, and the prosecution to have accounts designated for bail.

o *Current status*

While the legal framework in Rwanda establishes the provision of bail, Our field research shows there is a noticeable minimal use of bail. This practice has contributed to the low approvals of bails during the study period resulting in a high number of prisoners in prisons.

According to the World Prison Brief data (2023), the prison population of Rwanda including both remand prisoners and those under detention at 89,034³⁷¹ over 14 facilities (13 prisons and 1 juvenile rehabilitation center) This brings an occupancy level of 38.1%, signifying severe overcrowding.

Nonetheless, the government of Rwanda has introduced interventions to reduce the prison population over the study period, including the conditional release of convicts before the end of their sentence, on the promise of good behavior (“release on Parole”),

³⁷¹ World Prison Brief data (2023), available at: <https://www.prisonstudies.org/country/rwanda> accessed on 12/12/2023

as well as, the arrangement between the prosecutors and the suspects/defendant, wherein, the defendant pleads guilty to a charge in exchange for a more lenient sentence or even dismissal of the charges upon payment of relevant fines, known as “Plea-bargain”, as per Public Prosecution Authority regulation relating to Plea-Bargain.³⁷²

Findings

Parameter	Indicators	Scoring (Marks)	RW
Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	3.5
	b. The presence and efficacy of the right to bail	5	4
	c. The application of the rights of accused persons in court	5	3.5
	d. The efficiency of the criminal trial process	5	3.3
	Sub-Total	20	14.3

ii. Freedom of Expression

In Rwanda, freedom of expression is a right granted by the constitution under Article 38. The article ensures the acknowledgment and recognition of the freedom of expression and access to information. However, the constitution requires that such expression and freedom of access to information should not prejudice public order, good morals, the protection of the youth and children, the right of every citizen to honor, and dignity, and the protection of personal and family privacy.

³⁷² Regulation N° 6/2022 of 19/7/2022 relating to Plea-Bargain.

Additionally, the law regulating media grants people a right to receive, disseminate, or send information via the Internet and to create websites without requiring professional journalism credentials.

The Constitution puts great emphasis on the prohibition of any expression that instills genocide ideology and to this respect, the penal code imposes heavy prison sentences for any offender who disseminates genocide ideology in public through documents, speeches, pictures, media, or any other means.³⁷³

According to the World Press Freedom Index (2023) by Reporters Without Borders, Rwanda is ranked 131 out of 180 countries,³⁷⁴ indicating significant challenges related to media freedom, independence, and diversity. This suggests that there are considerable limitations and restrictions on the media in Rwanda.

According to the Freedom House, *“In June 2023, 15 online radio stations and websites owned by Rwandan critics living outside Rwanda were inaccessible. The article states that “numerous independent news outlets and opposition blogs that have been blocked for years reportedly remained inaccessible, including the website of the newspaper The Rwandan, as well as the online publication Le Prophete”.*³⁷⁵

Nevertheless, for the period of the research, Rwanda has seen a huge growth in the number of media houses. The increased access to the internet has also seen an increased growth in citizens openly commenting about politics and politicians on social media platforms, especially Twitter. Through these social media platforms, citizens and residents can voice their discontent with the government and the public at large.

³⁷³ Law No. 18/2008 of 23/07/2008 Relating to the Punishment of the Crime of Genocide Ideology.

³⁷⁴ RSF (2023) INDEX, available at: <https://rsf.org/en/country/rwanda>, accessed on 10th December 2023

³⁷⁵ House, F. (n.d.). Freedom on the net 2023. Washington, DC 20036: Freedom House. Available online at <https://freedomhouse.org/country/rwanda/freedom-net/2023>. Accessed on 14th November 2023

Findings

Parameter	Indicators	Scoring (Marks)	RW
Freedom of Expression	a. Whether there is legislation protecting the freedom of expression or a wide acknowledgement of this freedom as a right	5	3
	b. Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	2.5
	c. The presence of a vibrant and independent media and civil society	5	3
	Sub-Total	15	8.5

iii. Freedom of Assembly

The freedom of assembly in Rwanda is explicitly guaranteed under Article 40 of the Constitution of the Republic of Rwanda of 2003 revised in 2015 & 2023, which states that “the right to freedom of peaceful and unarmed assembly is guaranteed”. Further, *“the right to freedom of peaceful and unarmed assembly is exercised per law and does not require prior authorization, except when provided for by law”*. However, this right is subject to certain restrictions, especially when it comes to maintaining public order, public health, and national security.

No demonstrations or rallies were reported during the period January 2022 to July 2023.

Findings

Parameter	Indicators	Scoring (Marks)	RW
Freedom of Assembly	a. Whether the freedom of assembly is widely acknowledged as a right	5	3.75
	b. Do people participate in demonstrations i.e., are they aware of their right to assemble?	2.5	2
	c. Practical enjoyment of the right, i.e. absence of harassment during demonstrations	2.5	1.5
	Sub-total	10	7.25

iv. Freedom of Association

The legal framework of Rwanda upholds the freedom of association spearheaded by the constitution in its article 39. The Constitution grants this right without the need to seek authorization. This includes civil society organizations, trade unions, and political parties of their choice.

o Legislative framework

Political Parties in Rwanda are governed by Organic Law N° 10/2013/OL of 11/07/2013, which was amended in 2018.

The law sets out the procedures, regulations, and requirements for setting up a political party. For purposes of registration, the political party is required to have a constitution that governs the members of the party, its rules and procedures, and minutes of the members forming the party authorizing its formation.

The law requires political parties to respect the Constitution as well as the principles of democracy. The law provides that political parties should not use state property in the interest of the political party. However, the law provides for equal budgetary allocation from the government which is administered by the Registrar of Political Parties. This ensures that the parties have the finances to run their operations.

The Rwanda Governance Board is responsible for overseeing political party registration and monitoring compliance with laws. Rwanda has 11 registered political parties. These parties participate in national and local elections and have representation in Rwanda's Parliament.

o *Current status*

The political landscape is largely dominated by the ruling party, the Rwandan Patriotic Front (RPF -INKOTANYI). The opposition is not considered as strong by the public.

Findings

Parameter	Indicators	Scoring (Marks)	RW
Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	2.25
	b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	4
	c. Presence of at least two major political parties, other than the ruling party	5	3.75
	d. Whether the freedom of association is practically enjoyed	5	2.25

	Sub-Total	20	12.25
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v. Order & Security

Over the review period, Rwanda recorded relatively few instances of crime. No terrorist activities, communal conflicts, cattle rustling, or tribal clashes were recorded. Rwanda records no militia or armed gangs operating within its borders.

Findings

Parameter	Indicators	Scoring (Marks)	RW
Order & Security	a. Presence and extent of crime & criminal activities	5	4
	b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	5	4
	Sub-Total	10	8

vi. Right to Privacy

In Rwanda, the right to privacy is embedded in the Constitution which protects against arbitrary or unauthorized searches for individuals and their homes. However, Article 29 of the Law that provides for the responsibilities and functions of the Rwanda National Police,³⁷⁶ grants police authorization to conduct searches without a warrant in specific circumstances under which a police officer may carry out warrantless searches. The police officer carrying out the warrantless search is required to provide a report explaining why such a search was required to his/her superior supervisor.

Additionally, the Constitution (Art. 23) and (Statute N° 60/2013) prohibit interception of communications with an exception for national security purposes carried out per the law. The law regulating the interception of communications provides for conditions

³⁷⁶ Law N°46/2010 of 14th December 2010 Determining the Powers, Responsibilities, Organization and Functioning of the Rwanda National Police

of the interception to be carried out and most importantly, requires the interceptor to hold a warranty provided by a National Prosecutor designated by the Minister of Justice.³⁷⁷

Rwanda has further implemented a Data Protection and Privacy Law (DPA) which came into force in 2021. The National Cyber Security Authority (NCSA) oversees the law's enforcement. The law puts a great emphasis on the need for explicit and informed consent for data collection and processing and gives the owners of the data a right to withdraw their consent at any time. Data controllers and processors are required to hold licenses that allow them to engage in such activities.

The law also requires that the data collected be stored in Rwanda and can only be controlled or processed outside Rwanda if such processor or controller has been allotted a license that allows them to do so. In case of violations, the law sets administrative fines.³⁷⁸

The Data Protection Law in its article 54, allows a right to data controllers and processors to appeal to courts in case they are not satisfied with the decision taken against them.

There are no fees charged for submitting a Complaint to the institution at the moment. The fees are paid in case one wishes to file the case to the Competent Court (“court fees”) following the normal Court fee structure.

³⁷⁷Law No 60/2013 OF 22/08/2013, law regulating the interception of communications

³⁷⁸ Article 53 of Law No. 058/2021 of October 13, 2021, relating to the protection of personal data and privacy.

Findings

Parameter	Indicators	Scoring (Marks)	RW
Right to Privacy	Whether there is a legislative and institutional framework concerning the right to privacy	4	3
	d. The effectiveness of the legislative and institutional framework in addressing complaints of breaches to the right to privacy	6	4
	Sub-Total	10	7

Recommendations

- (1) Conduct regular training for judges and court personnel on the importance of bail.
- (2) Educate the public and legal practitioners about the benefits and procedures of bail. This can increase bail applications as well as increase in understanding of bail as a human right.
- (3) Regularly review bail decisions taken to ensure consistency and fairness. This may also focus on the higher courts quickly making decisions on wrongful denials for bail.
- (4) Create accountability for court officials who unfairly deny bail.
- (5) Create community-based programs that encourage trusted members of the community to act as sureties for defendants to increase personal guarantees, especially for members who are unable to pay cash or provide collateral as a form of bail.

4. SOUTH SUDAN

Twelve years after independence in 2011, South Sudan has ratified several international human rights treaties that confer upon her human rights obligations at the regional and universal levels including the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Optional Protocol of the Convention against Torture, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and the International Convention on Civil and Political Rights.³⁷⁹

Regionally, South Sudan has ratified the African Charter on Human and Peoples' Rights and the African Union (AU) Convention Governing Specific Aspects of Refugee Problems in Africa. However, South Sudan has not ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights — which commit states to respect civil, political, economic, social, and cultural rights; and has also not accepted the jurisdiction of the African Court on Human and Peoples' Rights.

Notwithstanding the non-ratification of the key two human rights treaties, South Sudan has placed fundamental human rights and freedoms at the heart of its 2011 Transitional Constitution. The Transitional Constitution strongly affirms the nature of the Bill of Rights as a covenant among the people and between them and the government and a commitment to respect and promote human rights and fundamental freedoms enshrined in the Constitution. The Bill of Rights chapter guarantees approximately thirty fundamental rights and freedoms and allows the inclusion of rights in ratified treaties, covenants, and instruments.³⁸⁰

i. Rights of an accused person

The Transitional Constitution, 2011 is the principle legal framework that constitutionally establishes the rights of an accused person. Article 19 lists the rights of an accused person including the presumption of innocence, the right to be promptly

³⁷⁹ UN Human Rights Bodies, 'Ratification Status for South Sudan' <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en> accessed 15 January 2024

³⁸⁰ Transitional Constitution of the Republic of South Sudan, 2011(as amended), art 9

informed of the reasons for arrest and any preferred charges, the right to a fair and public hearing, and the right against retroactive application of criminal law. The *Code of Criminal Procedure Act, 2008* also provides for the protection of the rights of accused persons.

- *Timeline for presenting accused persons before court*

A person arrested by the police as part of an investigation is required to be held in detention, for a period not exceeding twenty-four (24) hours for investigation.³⁸¹

- *Bail and Bond Guidelines*

There are no special bail and bond guidelines to provide a practical framework that can be used by police and judicial officers when making decisions regarding bail and bond.

The *Code of Criminal Procedure Act, 2008* is the only law that provides for the release of an accused person on bond or bail — including who may be released and the cases of release on bond and bail, conditions, and forfeiture among others.³⁸²

- *Provisions on the payment of bail*

As a practice, cash bail is processed in court, however, a Public Prosecution Attorney has the power to release an accused person on cash bail. The cash bond is required to be remitted into the court's account or the public prosecution account used specially for retrieving money in prosecution processes.

- *Current status*

The number of pretrial detentions is high. In March 2023, alone, it was revealed that there were over 500 pending cases in 12 police divisions (in Juba alone), 300 of which

³⁸¹ Code of Criminal Procedure Act, 2008, s 64(1)

³⁸² Code of Criminal Procedure Act, 2008, s 123 - 139

have not yet been classified as criminal or civil cases.³⁸³ In June 2023, 1,800 inmates were reported to be pending trials.³⁸⁴

Findings

Parameter	Indicators	Scoring (Marks)	SS
Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	4
	b. The presence and efficacy of the right to bail	5	0
	c. The application of the rights of accused persons in court	5	4
	d. The efficiency of the criminal trial process	5	4.5
	Sub-Total	20	12.5

ii. Freedom of expression

The right to freedom of expression is constitutionally guaranteed in South Sudan.³⁸⁵ As such, all levels of government are required to guarantee the freedom of the press and media.³⁸⁶

³⁸³Justice Minister orders public prosecutor to clear backlog of cases' (*Radio Tamazuj*, 23 March 2023) <www.radiotamazuj.org/en/news/article/justice-minister-orders-public-prosecutor-to-clear-backlog-of-cases> 15 January 2024

³⁸⁴ Michael Daniel, 'Chief Justice Reec to speed up trials of unsentenced inmates' (*Eye Radio*, 15 June 2023) <www.eyeradio.org/chief-justice-reec-to-speed-up-trials-of-unsentenced-inmates/> accessed 17 January 2024

³⁸⁵ Transitional Constitution of the Republic of South Sudan, 2011(as amended), art 24(1)

³⁸⁶ *ibid*

Like many other states, this right is not without restriction. The *Media Authority Act*, No. 64 of 2013 criminalizes publication, broadcast, or dissemination of content deemed otherwise as hate speech or that incites violence.³⁸⁷ Individual journalists are mandatorily required to be accredited and issued with a license by the Media Authority.³⁸⁸ Unaccredited journalists do not have access to cover public events.

According to the U.S. Department of State, 2022, the National Communication Authority has at times blocked access to certain websites, such as Radio Tamazuj and Sudan Tribune (*two popular news websites*). It has also blocked access to two blogs, Paanluel Wel and Nyamilepedia, which were accused of disseminating “non-peace” messages. At the time of writing this report, these websites and blogs are still inaccessible.

On 7th August 2022, Diing Magot, a freelance correspondent for the Voice of America, was arrested and spent 8 days in detention while peacefully covering a protest over high food prices in Konyokonyo Market – Juba.³⁸⁹

In October 2023, the government spokesperson, Michael Makuei, admitted in a press briefing that the country’s security officers had been instructed to remove articles that were considered hateful, inciteful, or a threat to security.³⁹⁰ Whereas the right to freedom of expression may be limited to public order, safety, or morals³⁹¹, removal of these articles was not justified under the constitutional exceptions and was unwarranted.

Further, on 6th October 2023, South Sudan's government admitted to having censored the media and removed articles it deemed to incite hatred after a U.N.-backed inquiry

³⁸⁷ Media Authority Regulations on Accreditation of Journalists, 2018, s 29

³⁸⁸ *ibid*

³⁸⁹ Sheila Ponnio, ‘South Sudan Journalist released after 8 days in detention’ (VOA, 15 August 2022) <www.voanews.com/a/south-sudanese-journalist-released-after-8-days-in-detention/6702437.html> accessed 17 January 2024

³⁹⁰ ‘We must not restrict the media and create a biased enterprise’ (*City Review Daily Newspaper*, 2022) <<https://cityreviewss.com/we-must-not-restrict-the-media-and-create-a-biased-enterprise/>> accessed 18 January 2024.

³⁹¹ Transitional Constitution of the Republic of South Sudan, 2011, art 24

detailed "pervasive" restrictions on free press in the troubled country.³⁹² On 19th May 2022, the Jonglei State government shut down Jonglei Radio for actions that allegedly undermined the state leadership.³⁹³

Findings

Parameter	Indicators	Scoring (Marks)	SS
Freedom of Expression	a. Whether there is legislation protecting the freedom of expression or a wide acknowledgement of this freedom as a right	5	1.6
	b. Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	1.65
	c. The presence of a vibrant and independent media and civil society	5	2.1
	Sub-Total	15	3.75

iii. Freedom of Assembly

Article 25(1) of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended) recognizes and guarantees the right to peaceful assembly. The Constitution does not expressly make limitations on this right. Except for political assemblies or advocacy gatherings by civil society organizations in response to democratic and governance issues, the enjoyment of this right is largely enjoyed.

o *Practical enjoyment of this right*

In certain instances, South Sudan has allowed the practical enjoyment of this right:

³⁹²Agence France-Presse, 'South Sudan Admits Removing News Articles Deemed Hateful' (VOA, 6 October, 2023) <www.voanews.com/a/south-sudan-admits-removing-news-articles-deemed-hateful> accessed 19 October 2024

³⁹³ Deng Ghai Deng, 'Silenced South Sudan Station Ordered Back On' (VOA, 20 May 2022) <<https://www.voaafrica.com/a/silenced-south-sudan-station-back-on/6582811.html>> accessed 19 January 2024

- In April 2023, some internally displaced persons staged a peaceful protest against the high cost of living in Yei County of Central Equatoria State.
- Community events/gatherings: many community assemblies/events in the form of meetings, processions, rallies, and vigils have taken place without unwarranted interference by the State. For example, in February 2023, the Collo Kingdom in a successful gathering that attracted hundreds of people honored the President of the Republic of South Sudan for his efforts towards peace. In June 2023, the Kakwa tribe successfully conducted approximately a week's week-long cultural conference in Yei River County. This gathering attracted hundreds of participants including political leaders at State and local government levels.

○ *Challenges in the enjoyment of this right*

Concerns have also been expressed about the alleged government's persistent targeting of the rights to freedom of opinion and expression, association, and peaceful assembly, including a new wave of repression in response to calls for peaceful protests.³⁹⁴

The treatment of civic actors as well as members of the political opposition has been reported to be a troubling indicator of the continued repression. For example, on 12 April 2022, the police arrested four activists for protesting outside Freedom Hall, where members of parliament had gathered to consider a bill on the constitution-making process. The activists demanded the resignation of Dr Joseph Manytuil, the Unity State governor, due to ongoing violence in Leer County. Use of force was documented on 9 February 2022, when security officers in Bor, Jonglei State violently dispersed protesters and injured approximately 17 people after civil servants

³⁹⁴Amnesty International, 'South Sudan must respect the right to freedom of peaceful assembly' (*Amnesty International*, 23 September 2021) <www.amnesty.org/en/documents/afr65/4760/2021/en/> accessed 19 January 2024

gathered to protest against a planned reduction of their salaries by the state government.³⁹⁵

On 18 September 2023, State security forces disrupted and shut down an assembly in Juba organized by the South Sudan Opposition Alliance (SSOA) to welcome its Secretary General, Lam Akol, back to South Sudan³⁹⁶, while on 7th August 2023 seven people (in KonyoKonyo market - Juba) who protested against the rising cost of living were arrested by security operatives.³⁹⁷

Findings

Parameter	Indicators	Scoring (Marks)	SS
Freedom of Assembly	a. Whether the freedom of assembly is widely acknowledged as a right	5	0.5
	b. Do people participate in demonstrations i.e., are they aware of their right to assemble?	2.5	0.8
	c. Practical enjoyment of the right, i.e. absence of harassment during demonstrations	2.5	0.6
	Sub-total	10	1.9

iv. Right to Freedom of Association

Article 25 of the Transitional Constitutional of the Republic of South Sudan, 2011 recognizes and guarantees the right to freedom of association with others, including

³⁹⁵ Civicus, 'Overview of recent restrictions to civic freedoms' (*Civicus*, 25 August 2022). <www.civicus.org/index.php/media-resources/reports-publications/5988-south-sudan-overview-of-recent-restrictions-to-civic-freedoms> accessed 20 January 2024

³⁹⁶ *ibid* (n 448).

³⁹⁷ Commission on Human Rights in South Sudan, 'Entrenched repression: systematic curtailment of the democratic and civic space in South Sudan' (2023) <www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/cohrsouthsudan/A_HRC_54_CRP.6.pdf>

the right to form or join political parties, associations, and trade or professional unions for the protection of his or her interests.

o *Legislative framework*

Section 9 of the Labour Act No. 64 of 2017 also provides for the right of all employees and employers to establish and join an association of their choosing. South Sudan has a Political Parties Act, 2012 (as amended) which provides for and establishes the registration criteria for political parties. Only political parties who meet this criterion are eligible for registration. The Political Parties Council is in charge of the registration of political parties.³⁹⁸

Since independence, South Sudan has not held any elections, however, elections are hoped to be conducted by the end of 2024.³⁹⁹

o *Practical enjoyment of this right*

Whereas the limitation to free exercise of their activities has been a big concern, the establishment, cropping up and presence of multiple political parties is evidence of the progressive realization of this right. For example, there are 14 registered political parties in South Sudan and more than 50 political parties in operation.

o *Challenges*

The quality of democratic space available for civil society actors to both safely and meaningfully participate in public debate and illustrate the broader public's ability to participate in democratic processes has been highlighted as a concern.⁴⁰⁰ Unwarranted restriction of activities of political parties or groups such as meetings or mobilization

³⁹⁸ Political Parties Act, 2012, Part III

³⁹⁹ 'South Sudan's Kiir to run in first-ever presidential election' (Africanews, 2023)<

www.aljazeera.com/news/2023/7/5/south-sudans-kiir-to-run-in-first-ever-presidential-election> ; 'South Sudanese president promises first elections since independence' (Aljazeera, 2023)

<[www.africanews.com/2023/07/05/south-sudanese-president-promises-first-elections-since-independence//](http://www.africanews.com/2023/07/05/south-sudanese-president-promises-first-elections-since-independence/)> accessed 21 January 2024

⁴⁰⁰ *ibid* (n 451).

campaigns has been a serious challenge, a complaint raised by some political parties such as the Sudan People’s Liberation Movement-In Opposition and the South Sudan Opposition Alliance.

Findings

Parameter	Indicators	Scoring (Marks)	SS
Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	0.5
	b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	2.75
	c. Presence of at least two major political parties, other than the ruling party	5	4
	d. Whether the freedom of association is practically enjoyed	5	0
	Sub-Total	20	7.25

v. Order & Security

The Transitional Constitution of the Republic of South Sudan guarantees this right under Article 12 which provides that *“Every person has the right to liberty and security of person; no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and by procedures prescribed by law”*.

o *Progress*

On 4th August 2022, all signatories to the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) agreed to a roadmap extending the transitional period by 24 months to implement its key outstanding tasks.

One of the central aspects of the roadmap related to the unification of forces and their redeployment, the drafting of a permanent constitution, and the electoral process. The extension of the transitional period arguably provides an opportunity to hasten the unification and deployment of forces to guarantee the security of persons and property across South Sudan.

The graduation of more than 20,000 members of the Necessary Unified Forces (NUF) to form a unified national army, police, and other security forces is a critical step, a notable political and security development. This has constituted more than a symbolic act and could be an active contributor to national peace as commended. The graduation and unification of the Necessary Unified Forces are hoped to strengthen the capacity of the Transitional Government to protect the people of South Sudan by curtailing subnational and inter-communal violence. It has also demonstrated South Sudan's respect for human rights by enhancing accountability, and also guaranteeing the territorial integrity of the country.⁴⁰¹

o *Challenges*

Lack of progress towards transitional security arrangements remains one of the most critical pending issues. Intercommunal and subnational violence persists in many areas of the country and continues to be a challenge.

⁴⁰¹UNMISS, 'UNMISS welcomes critical graduation of first batch of necessary unified forces for South Sudan'.(UNMISS,2022) <<https://unmiss.unmissions.org/unmiss-welcomes-critical-graduation-first-batch-necessary-unified-forces-south-sudan>> accessed 15 January 2024

o *Arbitrary deprivation of life*

The inherent right to life, dignity, and integrity of a person is a constitutional guarantee.⁴⁰² Despite this, extra-judicial killings remain a great concern.

On 7th August 2022, there were viral videos of the killing of soldiers allegedly allied to one of the rebel groups inside a hut. According to the media, the deceased soldiers were netted by members of the Sudanese intelligence agency in Al-Fula town of West Kordofan State being accused of orchestrating the attack that killed the Commissioner of Mayom County along with 12 others in July 2022.⁴⁰³ Despite public outrage over the reported killings, no one has been held to account yet.⁴⁰⁴

Between January and May 2023, the United Nations Mission in South Sudan documented 22 cases of extra-judicial executions. Of these, 14 persons were executed in Warrap State and eight in Lakes State. These executions were allegedly committed by South Sudan security apparatus personnel.⁴⁰⁵

On 23rd August 2023, a mother and her baby were killed by unidentified armed persons in Mayom County.⁴⁰⁶ In the same month, six people were killed and one wounded in an overnight ambush in Koana Gatdeng, Mayom County in Unity State by armed bandits believed to be cattle raiders.⁴⁰⁷

⁴⁰² Transitional Constitution of the Republic of South Sudan, 2011 (as amended), art. 11

⁴⁰³Reporter, 'Haunting words of man burnt alive in Mayom County' (*Eye Radio*, 2022)

<www.eyeradio.org/haunting-words-of-man-burnt-alive-in-mayom-county/> accessed 15 January

⁴⁰⁴ Nyagoah Tut Pur, 'South Sudan Awaits Justice for Mayom Extrajudicial Killings' (*UN Human Rights Watch*, 2023)

<<http://www.hrw.org/news/2023/08/09/south-sudan-awaits-justice-mayom-extrajudicial-killings>> accessed 15 January 2024

⁴⁰⁵ 'Violence against Civilians Persists Across South Sudan According To Latest UNMISS Human Rights Brief' (*UNMISS*, 2023) <<https://unmiss.unmissions.org/violence-against-civilians-persists-across-south-sudan-according-latest-unmiss-human-rights-brief>> accessed 15 January 2024

⁴⁰⁶ Moyo Jacob, 'Woman killed alongside baby's grandmother in Unity State' (*Eye Radio*, 2023) <<https://www.eyeradio.org/woman-killed-alongside-babys-grandmother-in-unity-state/>> accessed 16 January 2024

⁴⁰⁷ Matik Kueth, 'Six people killed, one wounded in overnight attack in Mayom County' (*City Review Daily Newspaper*, 2023) <<https://cityreviewss.com/six-people-killed-one-wounded-in-overnight-attack-in-mayom-county/>> accessed 16 January 2024

o *Communal conflict/clashes*

Entrenched patterns of inter-communal violence affecting civilians have persisted in South Sudan, often perpetuated by community-based militias and self-defense groups.⁴⁰⁸ During the second quarter of 2022, inter-communal violence by community-based militias constituted the primary source of violence affecting civilians, accounting for more than 60% (556) of civilian casualties. This reflects the evolving nature of inter-communal conflict, which is now often carried out with military-style tactics and military-grade weapons.

Just during the second quarter of 2023, inter-communal violence accounted for more than three-quarters (87%) of civilians harmed (382 killed, 236 injured, 129 abducted and 10 subjected to sexual violence), including 65 women and 128 children. For instance, in Warrap State, the protracted border dispute between the Dinka Ngok of Abyei Administrative Area and the Dinka Twic Mayardit of Twic County persisted and impacted the civilians in the area, undermining the Inter-Communal Peace Conference organized in early April 2023. Likewise, the recurring incidents of cattle-related cross-border violence and inter-ethnic attacks between the armed Nuer from Mayom County in Unity State and armed Dinka from Gogrial East and Tonj North Counties in Warrap remained a challenge to the civilian communities. Inter-communal violence related to cattle raiding perpetrated by different community armed groups persisted during the reporting period such as the attacks against civilians by the armed Murle elements in the areas of Akobo, Duk, Nyirol, and Uror among others in Jonglei State.

In May 2023, armed Murle elements accounted for the majority of civilians harmed in Jonglei State (65 killed, 36 injured, and 88 abductions), including 28 women and 75 children. In one of its attacks, 35 women and children were abducted in Duk County.

⁴⁰⁸ Human Rights Division, United Nations Mission in South Sudan, 'Brief on Violence Affecting Civilians' (UNMISS, 2022) <https://unmiss.unmissions.org/sites/default/files/human_rights_brief_2022_21_oct_2022.pdf> accessed 17 January 2024

Additionally, the Human Rights Division also documented attacks targeting humanitarian properties and convoys, disrupting the delivery and transportation of food aid and other lifesaving supplies to the community.⁴⁰⁹

o *Terrorist activity*

South Sudan has not reported any incident of terrorist activities resulting in death, injury, or destruction of property in the last year.

Parameter	Indicators	Scoring (Marks)	SS
Order & Security	a. Presence and extent of crime & criminal activities	5	0.85
	b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	5	0
	Sub-Total	10	0.85

Recommendations

- (1) Strengthen the protection of people by curtailing subnational and intercommunal violence.
- (2) Remove unwarranted restriction and interference with the rights to freedom of opinion and expression, association, and peaceful assembly.
- (3) Improve the quality of democratic space available for civil society actors to both safely and meaningfully participate in public debate.
- (4) Establish a special law and policy framework on bail and police bond.

⁴⁰⁹ Human Rights Division, United Nations Mission in South Sudan, 'Brief on Violence Affecting Civilians' (UNMISS, 2023) <<https://reliefweb.int/report/south-sudan/unmiss-brief-violence-affecting-civilians-april-june-2023>> 17
January 2024

5. TANZANIA

Tanzania has ratified most international instruments that protect civil and political rights and Social and economic rights at the international and regional levels.⁴¹⁰ It ratified the African Charter on Human and Peoples Rights on 18 February 1984 without any reservations. Similarly, it ratified other instruments, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights in 1976.

It should be noted that the state has not signed or ratified several other important international instruments such as the United Nations Convention against Torture (UNCAT) and the International Covenant on Civil and Political Rights (ICCPR) Optional Protocol despite being part of many major international human rights instruments. The failure to ratify the UNCAT which prohibits torture and inhumane treatment sends a negative message to the international community, especially considering Tanzania's documented incidents of torture, including those in police stations and involving state agencies. Additionally, the ICCPR Optional Protocol aims to strengthen the protection of civil and political rights, yet Tanzania has not ratified it, indicating a gap in aligning with international standards in human rights protection.

As a result of the non-ratification of the Optional Protocol to the ICCPR, the death penalty remains a legal punishment in Tanzania, however, no executions have been carried out since 1995, hence the country is classified as "Abolitionist in Practice".

The death sentence is a mandatory penalty for murder and other capital offenses including treason. There are instances where death sentences were commuted to life

⁴¹⁰ Key instruments at international level include the Universal Declaration of Human Rights (UDHR) of 1948; the International Covenant on Civil and Political Rights (ICCPR) of 1966; U.N. Convention on the Rights of Persons with Disabilities (CRPD) of 2006; the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) of 1979; the U.N. Convention on the Rights of the Child of 1989; and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984 while at Regional level it has ratified Including the African Charter on Human and Peoples' Rights (ACHPR/Banjul Charter) of 1981; Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (popularly known as the Maputo Protocol) of 2003; the African Charter on the Rights and Welfare of the Child (ACRWC) of 1990; African Charter on Democracy, Elections and Governance of 2007; SADC Protocol on Gender and Development of 2008; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa of 2018.

imprisonment. However, individuals are still regularly sentenced to death in murder cases, though the exact number of condemnations is not published.

Despite the legal status of the death penalty, there have been efforts to challenge its constitutionality. In 1991, the Nyalali Commission recommended abolishing capital punishment as a "barbaric form of punishment". In 1994, the High Court in the case of *Republic v Mbushuu* ruled that the death penalty was "inherently cruel, inhuman and degrading". However, these efforts have not led to the abolition of the death penalty in Tanzania.

i. Rights of an accused person

The rights of an accused person are mainly provided for under the Constitution of the United Republic of Tanzania and other written laws.⁴¹¹ These rights include the right to a fair hearing by a court of competent jurisdiction, the right of appeal or for another legal remedy, the presumption of innocence until proven guilty, the preservation of human dignity during the criminal investigation process, or restraint of a person, protection from torture or inhumane or degrading punishment or treatment.⁴¹²

The provision of legal aid in criminal matters in Tanzania is governed by the Legal Aid Act, Chapter 21 Revised Edition of 2019. This law regulates the provision of free legal aid in the country, intending to ensure effective access to justice for all, including the poor and vulnerable. The law allows a presiding judge or magistrate during any criminal proceedings if it appears that in the interests of justice, an accused person should have legal aid in the preparation and conduct of his defense or appeal and he has insufficient means to enable him to obtain legal services, to certify that the accused should have legal aid. Similarly in cases where a child is accused.⁴¹³

⁴¹¹ Article 13(6)(b) of the Constitution, Article 13(6)(b) of the Constitution provides that no person charged with a criminal offence shall be treated as guilty of the offence until proven otherwise by a court of competent jurisdiction.

⁴¹² Other laws that elaborate the criminal procedure system and the rights of an accused person include:

- a) *Criminal Procedure Act*, Cap. 20 R.E. 2019 ("the CPA");
- b) *The Economic and Organized Crimes Control Act*, Cap. 200 R.E. 2019 ("the EOCCA");
- c) *The Appellate Jurisdiction Act*, Cap. 141 R.E. 2019 ("the AJA");
- d) *The Magistrates' Courts Act*, Cap. 11 R.E. 2019 ("the MCA"); and
- e) *The Primary Court Criminal Procedure Code*, Third Schedule to the MCA

⁴¹³ Section 33 of the Legal Aid Act

o *Timelines for presenting accused persons before the court*

Once a person has been taken into Custody, the law⁴¹⁴ requires that in circumstances where the offense is punishable with death, the officer in charge of the police station to which he is brought shall bring him before an appropriate court within twenty-four hours after he was taken into Custody.

o *Bail and Bond Guidelines*

The Bail and Bond Guidelines⁴¹⁵ were developed in 2020 and their main objective is to assist judges and magistrates in criminal proceedings in handling bail matters to realize the accused person's right and freedom of liberty guaranteed under the Constitution.

Section 148 of the CPA and section 36 of the EOCCA regulate the grant of bail to an accused person in criminal proceedings conducted in the District Courts, the Court of Resident Magistrate, and the High Court. On the other hand, sections 24(a) (i) of the MCA, section 368 of the CPA, and section 10 of the AJA regulate the grant of bail pending Appeal. In addition, the Chief Justice promulgated rule 11(2) (b) of the Tanzania Court of Appeal Rules,¹ empowering the Court of Appeal to grant bail to appellants pending determination of their appeals. In primary courts, this is provided for under section 16 of the PCCPC.

Regarding payment of bonds once bail is granted in Tanzania, some mechanisms and guidelines simplify the payment. Bail can be granted by the Court and paid via the Court. The security can be in cash, bond, or word from a reputable surety.

⁴¹⁴ The Criminal Procedure Act [CAP. 20 R.E. 2022]

<https://www.parliament.go.tz/polis/uploads/bills/acts/1662103298-CHAPTER%2020-THE%20CRIMINAL%20PROCEDURE%20ACT.pdf>

⁴¹⁵ The Guidelines of 2020 developed by the Judiciary,

<https://tanzlii.org/akn/tz/doc/jot-documents-and-guidelines/2020-09-01/bail-guidelines/eng@2020-09-01/source.pdf>

o *Current status*

Activists call for changes in Tanzania's bail system application to widen human rights and decongest remand prisons.⁴¹⁶ However, it has also been noted that the automatic denial of bail for enumerated crimes under Tanzanian law runs afoul of fundamental rights under regional and international human rights law.⁴¹⁷

Findings

Parameter	Indicators	Scoring (Marks)	TZ
Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	4
	b. The presence and efficacy of the right to bail	5	2.75
	c. The application of the rights of accused persons in court	5	2
	d. The efficiency of the criminal trial process	5	3.8
Sub-Total		20	10.55

ii. Freedom of expression

Freedom of expression is a constitutional right in Tanzania,⁴¹⁸ however, the State places statutory restrictions on the freedom of expression beyond decency or defamation prevention. While the Constitution guarantees the right to freedom of expression, the Government has passed a series of repressive regulations that

⁴¹⁶ Report calls for change in Tanzania's bail system application <https://www.theeastafrican.co.ke/tea/news/east-africa/report-calls-for-change-in-tanzania-s-bail-system-application-3601782>

⁴¹⁷ ABA, A Legal Analysis of Tanzania's Anti-Money Laundering Laws Under Regional and International Human Rights Law, https://www.americanbar.org/groups/human_rights/reports/tanzania--a-legal-analysis-of-tanzania-s-anti-money-laundering-l/

⁴¹⁸ Article 18 of the Constitution of the United Republic of Tanzania of 1977, as amended from time to time

undermine this right.⁴¹⁹ Examples of such are the *Cybercrimes Act* of 2015 and the *Electronic and Postal Communications – EPOCA (Online Content) Regulations*, 2020, which grant state actors the right to police the internet and social media interactions. Additionally, the Government has been accused of intimidating and harassing human rights defenders, activists, civil society actors, and journalists.⁴²⁰

While most Tanzanians report feeling free to express their opinions and join political organizations of their choice, they also say that people have to be careful about what they say about politics.⁴²¹ Similarly, since the coming to power of the 6th President of the United Republic of Tanzania in 2022, the Government lifted its bans on four newspapers, namely *Mseto*, *Mawio*, *Mwanahalisi*, and *Tanzania Daima* that were banned during her predecessor's time. In early 2023, an end to the government's ban on politicians holding rallies outside of their constituencies was announced.⁴²²

The country has been ranked low on its performance in ensuring the freedom, independence, and diversity of the media.⁴²³ International organizations have reported that laws such as the *Media Services Act* and the repealed *Newspaper Act* have been used to shut down, fine, or suspend independent and critical media outlets.⁴²⁴

During the review period, there is no evidence that Tanzania has restricted access to social media sites, newspapers, or radio signals. However, in reviewing the events of 2022 in Tanzania,⁴²⁵ The Government is still accused of imposing severe restrictions on media freedom.⁴²⁶

⁴¹⁹ <https://globalvoices.org/2022/12/06/freedom-of-expression-in-tanzania-is-on-a-downward-spiral/>

⁴²⁰ <https://www.amnesty.org/en/location/africa/east-africa-the-horn-and-great-lakes/tanzania/report-tanzania/>

⁴²¹ Research conducted by Afrobarometer, 2023,

<https://www.afrobarometer.org/wp-content/uploads/2023/10/AD713-Tanzanians-enjoy-freedoms-but-support-government-restrictions-Afrobarometer-5oct23.pdf>

⁴²² *ibid*

⁴²³ The Media Viability East Africa has ranked Tanzania the lowest on free and independent media presence in East Africa. https://ecommons.aku.edu/cgi/viewcontent.cgi?article=1070&context=eastafrica_gsmc

⁴²⁴ <https://www.amnesty.org/en/latest/news/2022/02/tanzania-victory-for-media-freedom/>

⁴²⁵ World Report by Human Rights Watch, 2023 <https://www.hrw.org/world-report/2023/country-chapters/tanzania>

⁴²⁶ *Ibid*

The Government of Tanzania plays a significant role in the country's media landscape, including advertising in local newspapers. Privately owned newspapers often get between 40 and 80% of their income from state advertising, according to a report issued by Reporters Without Borders⁴²⁷ Furthermore, the Government controls two daily newspapers. This indicates that the Government does advertise in local newspapers as part of its media strategy.

As highlighted above during the rule of the late President John Magufuli, the Government cracked down on its critics, including the press. After he died in 2021, President Samia Suluhu Hassan began to reverse these trends, lifting bans and suspensions of several significant newspapers. However, this was only done by word of mouth, the operative law still exists and it can be applied against any media house, hence the actual threat of media freedom still lingers in the background.

Despite the lifting of bans and suspensions, self-censorship and pro-government bias remain prevalent in the Tanzanian media⁴²⁸ The ban of Uhuru Newspaper in 2021 did not go unchallenged. The human rights activists challenged it in the High Court for infringement of the right to receive information as guaranteed by the Constitution and that the powers conferred to the Director of Information Services under the *Media Services Act* are too broad; however, the petition did not succeed.⁴²⁹ These instances indicate that the Tanzanian Government still holds massive power to limit media freedoms forcing them to sensor their editorial policy or publications.

During the review period, there have been perceptions of restrictions on political freedom in Tanzania. According to the Afrobarometer findings, most citizens say they have to be careful when discussing politics.⁴³⁰ While the country's Constitution

⁴²⁷ <https://rsf.org/en/country/tanzania>

⁴²⁸ <https://www.bbc.com/news/world-africa-14095831>

⁴²⁹ *Prisca Nyang'uba Chogero vs The Attorney General of the United Republic of Tanzania* (Misc. Civil Cause No.26 of 2021) [2022] TZHC 15880 (24 June 2022)

<https://tanzlii.org/akn/tz/judgment/tzhc/2022/15880/eng@2022-06-24/source.pdf>

⁴³⁰

<https://www.afrobarometer.org/publication/ad713-tanzanians-say-they-enjoy-freedoms-but-support-government-restrictions/>

guarantees freedom of expression and association, there have been concerns about the decline in these freedoms. The Government's interpretation of cybercrime has extended into online spaces, leading to the risk of being arrested for content shared online and affecting how people express political dissent in the country. Therefore, while people in Tanzania still engage in political discussions in public places and online, they do so under the shadow of restrictions and potential risks associated with expressing political opinions in the current political climate.

In 2022, seventeen (17) "press violations", including threats, arrests, denial of access to information, and equipment seizures, were reported.⁴³¹ The same report highlights that the number of journalists being censured for their work in Tanzania has fallen slightly, raising hopes that press freedom is improving in the country.⁴³² However, members of the Media Council of Tanzania (MCT) see the State of press freedom in Tanzania as one of both "hope" and "distress". He added that the Ministry of Information is re-engaging after years of chilly relations, but journalists still routinely face difficulties and excessive scrutiny.⁴³³ The Media leaders believe the country has taken the right direction. However, the laws have not been changed; the current changes are based only on the President's goodwill and should be rooted in law instead.

There has not been explicit compulsion from the Government to the media houses or editors to dismiss editors or reporters; however, with the Government being a key media advertiser covering 40 to 80% of the income of the media houses, which comes from state advertising, it has led to self-censorship of the media houses.

⁴³¹ Report by the Media Council of Tanzania to the Guardian. "Hopes rise for press freedom in Tanzania as number of censured journalists falls"
<https://www.theguardian.com/global-development/2023/jan/09/tanzania-press-freedom-violations-president-suluhu>

⁴³² Ibid

⁴³³ Such as the requirement to register for the media accrediting board under *Media Services Act*

Findings

Parameter	Indicators	Scoring (Marks)	TZ
Freedom of Expression	a. Whether there is legislation protecting the freedom of expression or a wide acknowledgement of this freedom as a right	5	3
	b. Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	0
	c. The presence of a vibrant and independent media and civil society	5	1
	Sub-Total	15	4

iii. Freedom of Association

Freedom of association is also a constitutional right under Article 20.

o Legislative framework

Political parties and their members may be registered via the framework under the *Political Parties Act*⁴³⁴ which is the primary legislation governing the formation, registration, and operation of political parties in Tanzania, including both the Mainland and Zanzibar.⁴³⁵ Critical aspects of the Act include forming political parties where the law allows a political party to be formed to further objectives and purposes that are not contrary to the Constitution of the United Republic or any other written law. It also provides for the terms, conditions, and procedures for the registration of political parties, giving party structure and values to be adopted, such as the promotion of core values such as the Zanzibar Revolution, democracy, good

⁴³⁴ Chapter 258, Revised Edition of 2019

⁴³⁵ *The Political Parties Act* Chapter 258, R.E. 2019,

<https://media.tanzlii.org/files/legislation/akn-tz-act-1992-5-eng-2019-11-30.pdf>

governance, anti-corruption, national ethics and core values, patriotism, secularism, Uhuru torch, national peace and tranquility, gender, youth, and social inclusion in the formulation and implementation of their policies, the nomination of candidates for elections, and election of leaders. The Act has been amended several times since its enactment. The most recent amendments, passed by Tanzania's Parliament in 2023, grant the Registrar of Political Parties powers including that to de-register parties.

o *Effective opposition*

Currently, there are more than one major political party in Tanzania; the lifting of a ban on opposition rallies in 2022 by President Samia Suluhu Hassan has created room for effective opposition to the Government of the day in Tanzania, signaling a commitment to increased political freedom in the country.⁴³⁶ However, there are news reports concerning authorities harassing and intimidating journalists in Tanzania during the reporting period, according to the United States Department of State.⁴³⁷

iv. **Freedom of Assembly**

The freedom to assemble peacefully is provided for under Article 20(1) of the 1977 Constitution.

o *Practical enjoyment of this right*

There have been concerns raised by organizations such as Amnesty International about the Government's use of laws and regulations to stifle political and civil freedoms, including restrictions on NGOs and civil society organizations. Despite the constitutional provision, the legal framework in Tanzania is not favorable for civil society organizations (CSOs) and civic freedoms.⁴³⁸

⁴³⁶ <https://www.aljazeera.com/news/2023/1/22/first-opposition-rally-in-six-years-excites-tanzanian-politicians>

⁴³⁷ 2022 Country Reports on Human Rights Practices: Tanzania
<https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/tanzania/>

⁴³⁸ <https://www.icnl.org/resources/civic-freedom-monitor/tanzania>

Findings

Parameter	Indicators	Scoring (Marks)	TZ
Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	2
	b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	2
	c. Presence of at least two major political parties, other than the ruling party	5	1.5
	d. Whether the freedom of association is practically enjoyed	5	2.5
Sub-Total		20	8

iv. **Order and Security**

During the reporting period, there has not been any report of terrorist activities. However, there has been a high level of communal activities which indeed have resulted in high levels of destruction of properties, for example, the disputes between farmers and pastoralists, have led to the destruction of farms or the killing of animals. These conflicts arise from land disputes that have been on the rise in many parts of the country, particularly in pastoral regions. These conflicts have been triggered by climate change which has led to pastoralists' movement from one place to another across farms seeking green pastures.

Similarly, during the reporting period, there has not been widespread cattle rustling activities, however, they are only prevalent in the regions with Pastoral societies. It should be noted that cattle raiding is a cultural practice among some ethnic groups in Tanzania, but it has evolved into cattle rustling, which is a violent and illegal activity.

While cattle rustling is not widespread in the whole country, it is a problem in some areas, particularly in the northern regions where many young men are engaging in it.

There have also been gangs organized by the youth known as “Panya Roads” which engage in organized criminal activities. These groups are seasonal and operate within selected areas in the city of Dar es Salaam. These groups engage in the theft of people’s personal belongings. It is a group that terrorizes people and conducts petty theft; however, the police force has apprehended several of them.

The country also has a history of various militia formations, such as the People’s Militia, which was established by the Militia Act of 1963 to provide the military with Tanzanian citizens. The country raises and maintains a volunteer reserve in the form of the People’s Militia and the National Service. They provide support across crisis and capability warning times, in addition to complementary or supplementary skills as individuals, small groups, and units to sustain the defense and security of Tanzania.

Additionally, the *Sungu Sungu*, created in 1981, is a local militia formed to protect specific ethnic groups against cattle rustling and other security threats. Depending on the purpose of the creation, there have been instances where the militia was used to harass and assault small vendors in the streets. Militia are in every region in Tanzania.

Findings

Parameter (25% each)	Proposed Indicators	Scoring (Marks)	TZ
Order & Security	a. Presence and extent of crime & criminal activities	5	2
	b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	5	5
Sub-Total		10	5

v. Right to Privacy

The right to privacy is a fundamental right provided for under Article 16 of the Constitution. For over fifty years, there has not been an Act of Parliament to enforce the constitutional provision until May 2023, when the *Personal Data Protection Act, of 2023*⁴³⁹ came into force. The preamble of the law states that it provides for principles of protection of personal data to establish minimum requirements for the collection and processing of personal data; to provide for the establishment of a Personal Data Protection Commission; to provide for improvement of protection of personal data processed by public and private bodies. It however only covers a part of the right to privacy, leaving other aspects such as protection from unwarranted publicity, inviolability of the dwelling, and protection against arbitrary interference, which forms the essence of "the right to be left alone."⁴⁴⁰ at the mercy of other legal regimes for protection or violation.

o Searches without a warrant

The right to privacy is not absolute. For instance, the police can conduct physical searches without warrants in certain circumstances. According to the *Criminal Procedure Act*, a police officer may search a person's clothing or property in the immediate control of a person and seize anything relating to an offense found during the search. Additionally, a police officer is authorized to stop, search, and detain any vessel, boat, aircraft, or vehicle in which there is reasonable cause to suspect the presence of stolen goods or items used or intended to be used in the Commission of an offense. These powers are subject to specific provisions and regulations outlined in the law.

Electronic communications of private individuals can be intercepted without a court order. The *Electronic and Postal Communications (Investigation) Regulations, 2017*⁴⁴¹ acknowledges the right to privacy but gives exemptions which the communications may be intercepted, which includes reservation and protection of national security,

⁴³⁹ Chapter 44, June 2023

⁴⁴⁰ Yankwish. L.R., Right of Privacy: Its Development, Scope and Limitations, Vol. 27/ Issue 4, Notre Dame Law Review, P. 504 <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?article=3749&context=ndlr>

⁴⁴¹ Made under the Electronic and Postal Communications Act, Chapter 306

prevention investigation or proof of criminal offenses⁴⁴² while on the other hand, the Cybercrimes Act punishes the offense of interception of private communication with fines and jail time.⁴⁴³ Therefore, electronic communications of private individuals cannot be intercepted; however, the police or investigation mechanisms have been given so much power, which sometimes violates the right to privacy.

The Personal Data Protection Act of 2022 was passed on 1 November 2022 and passed into law on 27 November 2022. The Act provides a legislative framework concerning data protection, specifically how data may be collected, stored, and processed, and provisions imposing obligations on data controllers and processors. It also sets out principles for the lawful and fair processing of personal data, including conditions for collection, processing, and storage. Additionally, the Act establishes the Personal Data Protection Commission, which is responsible for ensuring the implementation of the provisions of the Act and the registration of data processors and collectors in Tanzania. The Personal Data Protection Commission (PDPC) of Tanzania is operational. The PDPC is an independent authority established by the Act. The PDPC is responsible for ensuring the implementation of the provisions of the Act and the registration of data processors and collectors in Tanzania. The law also allows a person aggrieved by the administrative action taken by the Commission, including the directions given in the enforcement notice or penalty imposed in the penalty notice, to appeal to the High Court.⁴⁴⁴

⁴⁴² Section 4(2)

⁴⁴³ Sections 4 to 9 of the *Cybercrimes Act* 2015 provide for various offences relating to illegal interference of data or transmission, and the punishment ranges between a fine of two million to twenty million Tanzanian Shillings or imprisonment of a period between one year to three years.

⁴⁴⁴ Section 49

Findings

Parameter (25% each)	Proposed Indicators	Scoring (Marks)	TZ
Right to Privacy	a. Whether there is a legislative and institutional framework concerning the right to privacy	4	1.5
	b. The effectiveness of the legislative and institutional framework in addressing complaints of breaches to the right to privacy	6	1.5
	Sub-Total	10	3

Recommendations

It is essential to ensure that laws are drafted in both English and Kiswahili to enhance access to justice and understanding of rights and also to strengthen the protection of human rights, particularly equality before the law, the presumption of innocence and enforcement of social economic rights.

6. UGANDA

Introduction

Uganda is a State Party to numerous international and regional human rights instruments and treaties, which had been ratified in addition to the Bill of Rights under Chapter Four of the Constitution of the Republic of Uganda, 1995. As a member of the African Union, Uganda ratified the African Charter on Human and Peoples Rights and acceded to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The domestic, regional, and international human rights frameworks in Uganda are the bedrock of the enabling laws and policies guaranteeing the inherent fundamental rights and freedoms of citizens.

The index highlights the human rights rule of law aspects noted from the review period concerning the following:

i. Rights of an accused person

The rights of an accused person in Uganda stem from the Constitution which under Article 28 guarantees the right to a fair hearing. The right to a fair hearing includes the right to a speedy and public hearing before an independent and impartial court or tribunal, it is premised on the presumption of innocence and legality of the offense, as well as the right to legal representation, and due process. Criminal proceedings in Uganda are further guided by the enabling law that ensures due process is followed.

o Timeline for presenting accused persons before court

Article 23 on the protection of the right to personal liberty, under clause (4) (b) expressly requires that where a person has been arrested or detained *upon reasonable suspicion of his or her having committed or being about to commit a criminal offense under the laws of Uganda, the person shall, if not earlier released, be brought to court as soon as possible but in any case, not later than forty-eight (48) hours from the time of his or her arrest.*"

Bail and Bond Guidelines

On 27th July 2022, the Chief Justice of Uganda issued Legal Notice No. 8 of 2022, the *Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions, 2022*. The Guidelines apply to all Courts of Judicature. Among others, the Guidelines are intended to ensure that bail decision-making complies with the provisions of the Constitution, promote uniformity and consistency by courts when considering bail applications, reduce pretrial detention incidences, and promote transparency and efficiency in the management of bail deposits and refunds. The Guidelines are premised on five key principles – the presumption of innocence, the right to liberty, an obligation of the accused to attend a trial, the discretion of the court to grant bail on reasonable terms and conditions, and the need to balance the rights of the accused and the interests of justice.

o Provisions on the payment of bail

Part V of the Constitution (Bail Guidelines for Courts of Judicature) (Practice) Directions 2022 provides for the Management of Bail Funds. Paragraph 23 of the Guidelines provides that upon grant of the Bail, the file is submitted to the court cashier for assessment on the Uganda Revenue Authority (URA) portal. The cashier prints and issues the assessment form to the applicant (accused). The payment is made to the relevant bank. Upon payment, the URA acknowledgment receipt is presented to the court cashier. The court cashier issues a Government of Uganda general receipt upon confirming the payment deposit in the URA system.

o Current status

Whereas the legal framework guaranteeing the rights of an accused person in Uganda is well established, there have been reported instances where these rights have not been respected. The Human Rights Watch World Report 2023 reports an incident involving two Members of Parliament (Hon. Allan Ssewanyana & Hon. Muhammad Ssegirinya) who were detained without trial on charges of murder.

However, according to Avocats Sans Frontiers (ASF), the number of pretrial detentions in Uganda has reduced over the last three years.⁴⁴⁵ In 2020 the pretrial detentions were at 53.3%, in 2022 at 49% and in 2023 these were reported to be at 48%.

However, several times, the court will grant the bail when the day is about to end, banks are about to close, and applicants (accused) persons have been remanded to the following day until the cash bail payment is made.

Findings

Parameter	Indicators	Scoring (Marks)	UG
Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	2
	b. The presence and efficacy of the right to bail	5	3
	c. The application of the rights of accused persons in court	5	4.05
	d. The efficiency of the criminal trial process	5	1
Sub-Total		20	10.05

ii. Freedom of expression

The freedom of expression which includes freedom of the press and other media is guaranteed under Article 29 (1) (a) of the Constitution. A review of Uganda's ranking and performance in respect of the freedom of expression and media freedom in the

⁴⁴⁵ New Vision, Uganda sees drop in Pretrial Detention Figures, 26th October 2023, <https://www.newvision.co.ug/category/news/uganda-sees-drop-in-pretrial-detention-figure-NV_173572> accessed 10th December 2023. ; ASF, Protecting constitutional rights of pre-trial detainees through access to justice in Uganda, 17th February 2023, <<https://asf.be/protecting-constitutional-rights-of-pre-trial-detainees-through-access-to-justice-in-uganda/>> accessed 10th December 2023.

period of review shows that despite the progress made towards respecting, upholding, and promoting the freedom of expression and media freedoms, there have been incidences where the legal framework has been used to constrain the enjoyment of this freedom.

The Press Freedom Index Report – 2022 (Uganda) by the Human Rights Network for Journalists (HRNJ) reported a total of 94 cases of human rights violations and abuses against journalists and media practitioners. The report further notes that the cases range from assaults, unlawful arrests, and detentions, denials of information, and sexual harassment, especially of female journalists.

According to the World Justice Project (WJP), Rule of Law Index 2023, Uganda's general global ranking is 125/142 countries. The aspect of a free and independent press was measured under the constraints on government powers and Uganda ranked 114/142 countries. Uganda, in the 2022 WJP Rule of Law Index ranked 128/140 and ranked 115/140 in respect of the constraints on government powers where the aspect of a free and independent press was measured.

o *Significant Developments*

The Computer Misuse (Amendment) Act 2022 - On 14th October 2022 the President of Uganda signed into law this Act amending the 2011 Principal Act. The Amendment was tabled in Parliament on 19th July 2022. In the ULS Rule of Law Report 2022 3rd Quarter, the amendment was opined as an unnecessary amendment to the law, on the basis that alternatives could have been explored without further stifling the freedom of expression. On 10th January 2023, the Constitutional Court in *Andrew Karamagi & Robert Shaka v Attorney General Constitutional Petition No. 5 of 2016* quashed Section 25 of the *Computer Misuse Act, 2011* on offensive communication as null and void for being inconsistent and /or in contravention with Article 29 (1) of the Constitution. The Court was of the view that the section is unjustified as it curtails the freedom of speech in a free and democratic society.

Attacks & Assault of Journalists – The ULS – Justice Law and Order Sector (JLOS) Rules of Law Report 2023 3rd Quarter (July – October) noted the incident of 20th July 2023 where journalists were brutally attacked while covering a press briefing at the party headquarters of the Forum for Democratic Change (FDC). It is reported that those journalists were not only assaulted but also lost their mobile telephones and gadgets.

Findings

Parameter	Indicators	Scoring (Marks)	UG
Freedom of Expression	a. Whether there is legislation protecting the freedom of expression or a wide acknowledgement of this freedom as a right	5	2.5
	b. Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	2.5
	c. The presence of a vibrant and independent media and civil society	5	2
	Sub-Total	15	7

iii. Freedom of Assembly

The freedom of assembly is enshrined under Article 29 (1) (d) of the Constitution of Uganda which provides for the right to freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition. Freedom of assembly is not an absolute right.

However, on 17th March 2023, the Constitutional Court in the decision of *Uganda v Lule David & 4 Others Constitutional Reference No. 22 of 2020* passed a judgment declaring sections 5 and 10 of the *Public Order Management Act, 2013* to contravene Article 29 (1) (d) of the Constitution, to the extent that the said provisions impose penal sanctions on organizers and participants in peaceful albeit unauthorized public meetings, including demonstrations and assemblies. In an earlier decision of 26th March 2020, the Constitutional Court in *Human Rights Network Uganda & 4 Others v Attorney General Constitutional Petition No. 56 of 2013* annulled section 8 of the *Public Order Management Act, 2013* as unconstitutional and thereby declared null and void and all acts done under the said law were declared null and void.

The decisions of the Constitutional Court have been progressive in furthering the respect, upholding, and promotion of the right to freedom of assembly. The decisions have had the effect of halting the criminal prosecutions of persons organizing and participating in peaceful assemblies and demonstrations, where the same has not been authorized under the *Public Order Management Act, of 2013*.

In addition, on 9th May 2022, the High Court in *Chapter Four v National Bureau for Non-Governmental Organizations Miscellaneous Cause No. 292 of 2021* annulled the decision of the respondent regulator to indefinitely suspend the applicant organization. The decision was viewed by the Civil Society Organizations (CSOs) as fostering the rule of law and the right to freedom of association and assembly given the increasingly repressive environment for Non-Governmental Organizations (NGOs) and CSOs.

However, the Human Rights Watch (HRW) World Report 2023 reported the following incidences that occurred in the period of review: -

- a) In February 2022, a security officer kicked a freelance journalist Lawrence Kitatta as he covered a protest led by the opposition in Kampala.

- b) In March 2022, a group of armed police and military officers are reported to have raided the offices of The Alternative DigTalk in Kampala, arrested nine staff members, and confiscated equipment.
- c) In October 2022, police are reported to have arrested nine university students protesting the building of the East Africa Crude Oil Pipeline (EACOP) through Uganda.
- d) In May 2022, the police arrested Kizza Besigye and other opposition leaders in a rally protesting the increasing fuel prices and other basic commodities.
- e) On 28th March 2023, police in Kampala are reported to have arrested 11 activists who were demonstrating over the Karamoja iron-sheets scandal. Police reports noted that some police officers were assaulted in the attempts to quell the demonstration.

Findings

Parameter	Indicators	Scoring (Marks)	UG
Freedom of Assembly	a. Whether the freedom of assembly is widely acknowledged as a right	5	4
	b. Do people participate in demonstrations i.e., are they aware of their right to assemble?	2.5	0.5
	c. Practical enjoyment of the right, i.e. absence of harassment during demonstrations	2.5	0.5
	Sub-total	10	5

iv. Freedom of Association

Article 29 (1) (e) of the Constitution of Uganda guarantees the right to freedom of association. The right includes the freedom to form and join associations or unions, including trade unions and political and other civic organizations. Uganda has a vibrant presence of civil society organizations, NGOs, political parties, and trade

unions among other forms of associations. In respect of this freedom, this Report however pays particular attention to political parties, CSOs, and NGOs.

o *Legislative framework*

Uganda's democracy allows for a multiparty political system under Article 71 of the Constitution. The Constitution sets out the principles to which a multiparty political system shall conform. These are further operationalized by the *Political Parties and Organizations Act*, of 2005 (as amended in 2020). As a representative democracy, political parties have a big influence on the representation of the people at various levels of Government, both national (in Parliament) and local government (at district down to village council levels).

The key legislative regulatory framework for CSOs and NGOs in Uganda is the *Non-Governmental Organizations Act*, of 2016. The Act establishes a regulatory system of NGOs from the national level (NGO Bureau) to the local government level. With the legal requirement for an NGO to have a permit to run its operations, the NGO Bureau exercises regulatory oversight in requiring non-compliant organizations to cease operations.

o *Practical enjoyment of this right: An effective opposition*

The opposition in Uganda scrutinizes and checks the exercise of the political mandate by the ruling party in power. At the parliamentary level, the opposition has a leader of opposition and a shadow government for this purpose. The opposition is intended to act as a check on key aspects of proper use of power and hold the government accountable to act within the law. The period under review has seen the current leading opposition party suffer setbacks and constraints in exercising the right to freedom of association together with the right to assemble. The opposition engagements on unpopular policies have been queried by security clearances in the bid to balance security concerns. However, there remain platforms for the opposition leaders to express themselves albeit with constraints. In 2023 the Uganda Parliament had instances of suspension of an opposition Member of Parliament from the House by

the Speaker. There are also reports of blocking opposition leaders from appearing at talk shows on radio stations which curtails this freedom.

On the other hand, the shrinking civic space in Uganda due to the high regulatory constraints has hindered the further progressive realization of the right to association through CSOs and NGOs in the civic space. The cost of compliance with the regulatory requirements before various regulators, and the effects of non-compliance including the closure of such organizations remain a challenge.

Findings

Parameter	Indicators	Scoring (Marks)	UG
Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	4
	b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	4
	c. Presence of at least two major political parties, other than the ruling party	5	2.6
	d. Whether the freedom of association is practically enjoyed	5	1.1
	Sub-Total	20	11.7

v. Order & Security

The rights to life, liberty, and property are enshrined under Articles 22, 23 & 26 of the Constitution of Uganda respectively. The exception to the right to life is the execution of a sentence passed in a fair trial by a court of competent jurisdiction in respect to a criminal offense and the sentence is confirmed by the highest appellate court. The right to liberty equally is only subject to lawful limitations prescribed by law. Any deprivation of property by compulsory acquisition is subject to prior, prompt compensation and following prescribed legal procedures. The safeguards in the law are intended to guarantee the security of persons and property in Uganda.

According to the Human Rights Watch Report (March 2022), the period of review is reported to have had cases of enforced disappearances, arbitrary arrests, unlawful detentions, and torture among others by the police, army, and military intelligence.

o Progress

The security forces have been reported to have prevented several terrorism attack plots from materializing and arrested operatives.⁴⁴⁶ Steps have been taken to counter the financing of terrorism, countering violent extremism, and through regional and international security cooperation.⁴⁴⁷

o Challenges

Despite these strides, the implementation of the security of persons and property remains a challenge.

o Arbitrary deprivation of life

A review of published reports in the period of review identified the following unfortunate incidences: -

⁴⁴⁶ US Department of State, Country Reports on Terrorism 2022: Uganda, <<https://www.state.gov/reports/country-reports-on-terrorism-2022/uganda>> accessed 10th December 2023.

⁴⁴⁷ US Department of State, Country Reports on Terrorism 2022: Uganda, <<https://www.state.gov/reports/country-reports-on-terrorism-2022/uganda>> accessed 10th December 2023.

- a) On 8th July 2022 the former acting Chief Administrative Officer, Bukwo District (Charles Robert Ogwang) was murdered by an armed gang.
- b) On 16th July 2022, Kakooza James was attacked while on a morning workout, the assailants hit him with a blunt object and fled the scene on a motorcycle.
- c) On 19th July 2022, a student (Atungura Bewotti) was attacked and stabbed to death by a group of students during the final round of the Makerere University Presidential Guild Campaign.
- d) On 9th January 2023 Vincent Kasana Kimbugwe was reported to have been murdered and demoted on the Northern by-pass in Kampala by unknown assailants.
- e) It is reported that on 11th January 2023 unknown assailants raided a village in Ogur Sub-County Lira district and killed three family members before stealing five million shillings. Two other members of the family were left seriously injured.
- f) On 2nd May 2023, the State Minister for Labor, Employment and Industrial Relations, Col (rtd) Charles Okello Engola was shot dead by his bodyguard (Private Wilson Sabiiti).
- g) On 6th May 2023 unknown assailants shot and killed Ibrahim Tusubira alias Isam Olaxes (a vlogger) in a Kampala suburb.
- h) On 12th May 2023, Utta Bhandari a businessman was shot by a police constable John Wabwire allegedly over loan issues. The incident happened in a building along Parliamentary Avenue near the National Parliament.
- i) On 17th May 2023 John Okudi was shot by a fellow security guard Moses Okedi in Tororo District following a disagreement at their place of deployment.

j) On 30th May 2023 unknown assailants, in a gruesome murder shot and killed a lawyer (Ronnie Mukisa) at his home in Kampala.

k) On 17th November 2023, a couple of British (David Barlow) and South African (Emmaretia Geyer) husband and wife on honeymoon, together with their Ugandan guide (Eric Alyai) were killed at Queen Elizabeth National Park. The attack is blamed on the ADF militia.

o *Abductions, Arbitrary Arrests and kidnaps*

In the review period, numerous abductions, arbitral arrests, and kidnaps were reported. The 3rd Quarter Uganda Law Society (ULS) Rule of Law Report highlighted to Parliament by the Minister of Internal Affairs reported hundreds of people were arrested by security forces. The Report further remarks that over 758 people were reported to be abducted. In 2023 the ULS First Quarterly Rule of Law Report still captured issues of illegal arrests and detentions, at a time when the Ministry of Foreign Affairs communicated the government's decision not to renew its agreement with the United Nations Human Rights Office of the High Commissioner (OHCHR) on 3rd February 2023. ⁴⁴⁸

In January 2023 a kidnap and murder of a 7-year-old boy over a ransom of three million was reported.

o *Terrorist activity*

Uganda has been challenged with incidences of terrorism attempts some of which have claimed lives: -

a) On 17th and 23rd April 2022 two Improvised Explosive Devices (IEDs) were detonated on the Kampala – Masaka Highway, damaging vehicles but with no casualties reported. No terrorist group is reported to have claimed responsibility for the attacks.

⁴⁴⁸ Human Rights Watch, Uganda Threatens to Close UN Human Rights Office, 15th February 2023, Uganda Threatens to Close UN Human Rights Office, accessed 10th December 2023.

- b) On 13th December 2022 an estimated 50 ISIS – DRC fighters reported to be of Congolese and Ugandan origin crossed Semliki River into Uganda and attacked villages. Approximately 12 civilians were either injured or killed in the attacks.

Parameter (25% each)	Proposed Indicators	Scoring (Marks)	UG
Order & Security	a. Presence and extent of crime & criminal activities	5	2.5
	b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	5	2.5
Sub-Total		10	5

vi. Right to Privacy

The right to privacy in Uganda is protected under Article 27 of the Constitution. The Constitution guarantees the right to privacy of persons, homes, and other property. The Constitution expressly prohibits subjecting a person to an unlawful search of the person, their home, or other property and further prohibits the unlawful entry by others on the premises of a person. The Constitution further guarantees protection from interference with the privacy of a person's home, correspondence, communication, or other property.

Uganda enacted the Data Protection and Privacy Act 2019 to further the protection of the right to privacy of data subjects. Part VII of the Act provides for complaints against breaches and noncompliance with data protection and privacy.

However, the right to privacy as guaranteed under the Constitution of Uganda is not absolute. It is subject to legal limitations.

○ *Searches without a warrant*

Notwithstanding the guarantees under the Constitution on the right to privacy, the law under Section 27 of the Police Act Cap __ grants power to an officer to conduct a search without a warrant for purposes of an investigation into any offence, which the said officer is authorized to investigate.

○ *Interception of Communications*

Lawful interception of communication under the Regulation of Interception of Communications Act 2010 can be done upon obtaining a warrant issued by a Judge. Under Part VII, Section 19 (4) of the Anti-Terrorism Act 2002, interception of communications and surveillance can be conducted to safeguard the public interest, preventing the violation of the fundamental and other human rights and freedoms of any person from terrorism, preventing or detecting the commission of any offense under the Anti-Terrorism Act, and safeguarding the national economy from terrorism.

The scope of interception and surveillance allowed under Section 19 (5) of the Anti-Terrorism Act is limited to interception of letters and postal packages of any person; telephone calls, faxes, emails, and other communications made or issued by or received by or addressed to a person; monitoring meetings of any group of persons; surveillance of the movements and activities of any person; electronic surveillance of any person; access to bank accounts of any person; and searching of the premises of any person.

In 2023 the Government of Uganda announced the launching of the Intelligent Transport Monitoring System (ITMS). The ITMS is a digital number plate system that was intended to have motor vehicle motorcycle license plates that have digital technology to facilitate mass surveillance for combating crime. The announcement was met with reservations from privacy human rights organizations like Human Rights Watch, and except for some government vehicles, the system has not been implemented yet for private vehicles.

The enjoyment of the right to privacy in Uganda is heavily subject to the limitations and exceptions created by the law, which in furtherance of national security, or through regulatory interventions, the privacy of persons, and their communications and property would be subject to interference under the exceptions in the law.

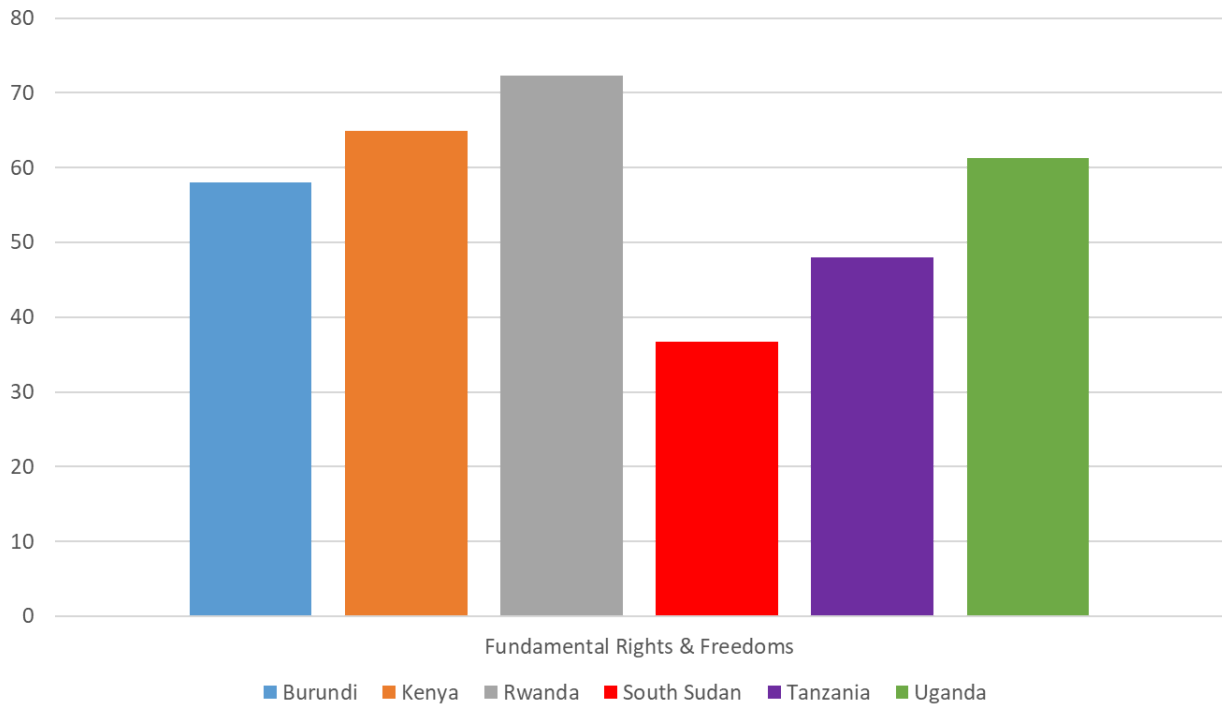
Findings

Parameter (25% each)	Indicators	Scoring (Marks)	UG
Right to Privacy	a. Whether there is a legislative and institutional framework concerning the right to privacy	4	3
	b. The effectiveness of the legislative and institutional framework in addressing complaints of breaches to the right to privacy	6	4.5
	Sub-Total	10	7.5

Overall findings for Fundamental Rights & Freedoms

Parameter (25% each)	Proposed Indicators	Scoring (Marks)	BU	KE	RW	SS	TZ	UG
	Total for Fundamental Rights & Freedoms	100	57.95	64.86	72.3	36.75	48.05	61.25

Fundamental Rights & Freedoms States Score Chart



Recommendations:

The following recommendations are made:

- 1) The Government should fast-track investigations of cases of enforced disappearances, arbitrary arrests, unlawful detentions, and torture among others by the police, army, and military intelligence.
- 2) Enacting laws that further stifle freedoms should be shunned, with a preference for using existing laws to regulate aspects of enjoyment of fundamental rights and freedoms per the law and respect for other people's rights.
- 3) The Government should implement necessary legal reforms to align with the constitutional court decision in - *Andrew Karamagi & Robert Shaka v Attorney General Constitutional Petition No. 5 of 2016* which quashed Section 25 of the *Computer Misuse Act, 2011* on offensive communication.
- 4) Government should implement legal reforms to align with the decisions of the court in - *Uganda v Lule David & 4 Others Constitutional Reference No. 22 of 2020* declaring sections 5 and 10 of the *Public Order Management Act, 2013* to contravene Article 29 (1) (d) of the Constitution, and *Human Rights Network Uganda & 4 Others v Attorney General Constitutional Petition No. 56 of 2013* which annulled section 8 of the *Public Order Management Act, 2013* as unconstitutional.
- 5) The Government should rollback on regulatory approaches that have the effect of stifling and shrinking the CSO space to align with proper regulatory mandates as guided by the High Court in *Chapter Four v National Bureau for Non-Governmental Organizations Miscellaneous Cause No. 292 of 2021*.

- 6) It is recommended that prompt trial and completion of criminal cases should be enhanced, to protect the rights of the accused persons spending long periods on remand, yet they are presumed innocent until proven guilty.

OBSERVATIONS

General State Observations

i. Burundi

All in all, the parameters and the proposed indicators considered in this report indicate that the status of the rule of law in Burundi has evolved while efforts still need to be made for some parameters. Illustratively, Burundi possesses a robust legal and institutional framework on various parameters around the rule of law such as clear procedures on expenditure of public funds and on corruption; however desktop and field research demonstrated that concerns are entrenched to the implementation part. Similarly, although Burundi has ratified a number of international human rights instruments, its implementation ought to be fortified for rights of the accused, the freedom of assembly and freedom of press. It is important to note that significant progress has been made with regards to other human rights and liberties covered such as the freedom of expression, including the presence of an independent media and civil society as well as the freedom of association.

With regards to access to justice, efforts still have to be made with regards to the independence of the bench from the Executive as the conclusions of the report have shown. The Bar is rather independent from the Executive given its structure. In the same line, field research results indicate that citizens can access and afford the court system –except for vulnerable persons– and find the hearing process more or less efficient.

Recommendations

1. Strengthen public participation in law and policy making by putting in place a clear and accessible procedure for the general public and civil society organizations.
2. The government should commit to preserve the independence of the judiciary by reforming legislation on the disciplinary process, appointment and removal of judges, the budget related to the functioning of the judiciary; all of which are regulated by the executive.

3. Judges should advocate to enjoy absolute security of tenure as a principle with no exceptions and exercise their right to stay in office until the age of retirement.
4. With regards to limitation of government powers, the oversight mechanism on budget management at the Parliament should be reinforced to allow the later the ability to examine the project of law on the budget to be voted.
5. Ensure that the passing of public procurement as a characteristic of good governance is conducted through a transparent manner to avoid corruption in the related process; and enhance skills and performance of public procurement officers through capacity strengthening sessions.
6. For access to justice purposes, allocate a greater budget dedicated to a legal aid programme applicable to different categories of vulnerable persons, including indigents and persons with disabilities.
7. Put in place mechanisms to protect lawyers from interference intimidation and ensures their personal safety during their work.
8. The government ought to organize outreach and engagement strategies to raise awareness on the existence of the available institutions and legislation on corruption.
9. Take appropriate measures to guarantee the respect of rights and freedoms guaranteed by the Constitution of Burundi, including the right to privacy in the criminal procedure, the freedom of assembly and freedom of press.
10. Put in place a data protection framework to guarantee the right to privacy as per art.23 of the Constitution.

ii. Kenya

Despite Kenya scoring the lowest when it comes to representation of accused persons in Court, Kenyans appear well aware of their rights and the law. This is all thanks to the *Constitution of Kenya, 2010* which is indeed an aspirational one with an extensive bill of rights. Its aim is to entrench constitutionalism in governance by upholding human rights, equality, freedom, democracy, social justice and the rule of law. It mandates a constitutional order that centers public participation, accountability, transparency, inclusiveness and equity as cornerstones of governance. To achieve this, it protects and promotes the institutional and independence of the judiciary.

Article 22 has made Courts more accessible by allowing persons who have disputes to go to court either for themselves or on behalf of others. As such, public interest litigation has been utilized as a tool to promote the Rule of Law and to rein in the excesses of the executive. The court has not shied away in exercising its power to issue remedies including: declaration of rights; injunctions; conservatory orders; voiding laws that contravene the constitution; orders for compensation; and judicial review remedies.

These gains have however been undermined by the government's failure to adhere to court orders. There is therefore a need to make public the information on how the government complies and enforces court orders, and to hold accountable government officials who don't comply. There is also a need to establish effective frameworks to uphold and promote qualitative public participation in the legislative and governance process.

iii. Rwanda

Rwanda is continuously applauded for its significant development and economic progress in the region. The establishment of a strong rule of law has provided a stable foundation for its economic growth, social development, and political stability. Investors are increasingly choosing Rwanda because of its predictable legal environment, while citizens enjoy greater access to justice and protection of their

rights. The country's commitment to rule of law has also facilitated better governance and more effective public service delivery, hence its overall development.

To achieve this, Rwanda has made progress in creating a robust environment for the rule of law. This environment has been achieved through a comprehensive approach that includes but not limited to the adoption of effective laws, the establishment of institutions, the implementation of home-based solutions.

Accountability has become a critical pillar of Rwanda's strategy to promote the rule of law. To ensure this, Rwanda has put in place strict measures that hold those responsible for enforcing laws accountable for their actions. This includes regular oversight, performance evaluations, and strict disciplinary measures for misconduct. By ensuring that the government, law enforcement officers, judges, and other officials are held to high standards of integrity and professionalism. This accountability framework has not only deterred corruption and abuse of power but has also encouraged a culture of transparency and ethical behavior among public officials.

The main challenge that Rwanda is facing in regards to Rule of law is in adequate financing. Financial resources are vital for developing the necessary legal institutions, training professionals, providing access to justice, and raising public awareness. Overcoming this challenge involves increasing budget allocations, foreign support, and the involvement of the private sector through public-private partnerships.

iv. South Sudan

Whereas there is notable improvement in security in some areas, constitutionalism and the rule of law has not yet been properly embraced. Militarization of private and public life, impunity, and personalized rule is still evident. The post-independence conflicts and entrenched levels of subnational or intercommunal violence have devastated among others families, communities, and institutions—including judicial institutions. The presence of accountability institutions and mechanisms including rule of law actors throughout the Country is limited and access justice is low despite efforts to move the courts to the hard to reach areas through the mobile court program.

Recommendations

1. Strengthen and operationalize government institutions and oversight mechanisms to independently carry out their constitutional or statutory mandates.
2. Strengthen and adequately resource the justice system to ensure judicial check against any executive hegemony, impunity and to increase access to justice.
3. Establish a comprehensive privatization framework to govern and regulate privatization.
4. Improve public access to information including budget, expenditure and audit reports and regulatory enforcement rules.
5. Establish independent and effective oversight mechanism for the police to ensure accountability.
6. Encourage the public to participate in formulation and development of policies and programmes.
7. Harmonize regulatory enforcement between the central, state, local government and other regulatory bodies.
8. Strengthen the protection of people by curtailing subnational and intercommunal violence and ensuring prosecution of perpetrators.
9. Remove unwarranted restriction and interferences with exercise and enjoyment of constitutionally guaranteed rights.
10. Improve quality of democratic space available for civil society actors to both safely and meaningfully participate in public debate.

v. Tanzania

Notable progress in the Rule of Law in Tanzania is the reinforcement of general elections since the introduction of multiparty democracy in 1992 and the development of the legal system, including the increase in the number of court registries, to ensure access to justice in the country. The judiciary has also played significant role in preventing parliamentary legislation from undermining the Constitution and reviewing executive actions to ensure they do not violate basic human rights.

Areas of Regression in the Rule of Law in Tanzania: The Rule of law is still in its initial phases and needs to be strengthened further in all parameters tested in this Rule of law index, that is, good governance, access to justice, corruption and fundamental rights. While there are some positive trends in the Rule of Law in Tanzania, such as access to justice, there are also significant challenges and declines in Fundamental Rights, Civil Justice, and Criminal Justice. The need for reform and improvement in these areas is emphasized by the research.

Recommendations

Constitutional and Legal Reforms: Revamp the process for obtaining a new constitution and review the laws to ensure adherence to international human rights norms and standards.

1. Institutional Reforms: Strengthen legal institutions, such as the judiciary, to ensure their independence and effectiveness in upholding the Rule of law. Judicial accountability, including monitoring the judiciary to identify gaps that necessitate further training, is also needed.
2. Accountability in Government Expenditures is crucial for the Rule of law. Improving transparency, respect, and implementation of the report of the Controller and Auditor General are also crucial.
3. Tanzania is committed to adhering to international human rights norms and standards. It is recommended that it ensure that its laws and practices align with these standards.

Generally, Tanzania's commitment to the Rule of law positively impacts its economic development by promoting transparency and accountability, strengthening the judiciary, ensuring access to justice, protecting human rights, fostering partnerships and financing for development, and supporting sustainable development. The government plays a vital role in upholding the Rule of law in Tanzania by ensuring a constitutional framework, drafting laws, enforcing laws, maintaining an independent judiciary, promoting transparency and accountability, and overall strengthening the legal framework in the country.

vi. Uganda

A review of the status of the Rule of Law in Uganda in the period of the Index shows that there have been both strides of progress to advance the Rule of Law, but as well as acts of regression averse to the advancement of the Rule of Law.

The Constitutional Court decision of 10th January 2023 in *Andrew Karamagi & Robert Shaka v Attorney General Constitutional Petition No. 5 of 2016*, in quashing Section 25 of the Computer Misuse Act 2011 for being inconsistent with Article 29 (1) of the Constitution is a good advancement of the freedom of expression. The Constitutional Court decision of 17th March 2023 in *Uganda v Lule David & 4 Others Constitutional Reference No. 22 of 2020* in quashing Section 5 and 10 of the *Public Order Management Act 2013* as being in contravention Article 29 (1) (a) of the Constitution, speaks to the advancement, protection and promotion of the freedom of assembly. The 9th May 2022 High Court decision in the controversial matter of *Chapter Four v National Bureau for Non-Governmental Organizations Miscellaneous Cause No. 292 of 2021* was a good check on the NGO Bureau powers in regulating the shrinking CSO space in Uganda.

However, despite the proactive decisions from the courts of law intended to foster the furtherance and progress of the Rules of law, there were numerous regressive actions and incidences disinclined to the progress of the Rule of Law in Uganda. In respect to good governance and accountability, corruption scandals, abuse of power, failure to render proper accountability of public resources, and disregard of legal procedures and processes largely featured as regressive to the progress of the Rule of Law in the index period. Despite the constitutional guarantees of the independence of the bench,

this still received direct or perceived interferences from other arms of government, the case backlog challenge still remained as a limitation to access to justice, notwithstanding the operationalization of more High Court Circuits and appointment of more judges. The obligation to respect, uphold and promote human rights and freedoms was abdicated in numerous incidents. The prevailing legislation and its manner of enforcement, that has the effect of curtailing constitutionally guaranteed human rights and freedoms, remained a big limitation to the full enjoyment and realization of the respective rights and freedoms.

Uganda has a proper legal and institutional framework for the promotion of the Rule of Law in the accessed areas of the index. However, more is left to be desired to fully implement and realize the respect and promotion of Rule of Law.

OVERALL SCORE CHART

	Parameter (25% each)	Proposed Indicators	Scoring (Marks)	TZ	UG	KE	RW	BU	SS
1.	Good Governance (encompassing power and accountability of government bodies, openness in Government and regulatory enforcement)	a. Are decree holders able to enforce court orders and judgments against the Government?	10	4	4	2	7.85	1.75	3
		b. Do clear procedures on expenditure of public funds and disposal of public assets exist, and are they applied?	10	6.5	6.2	6.25	6.25	5.75	1
		c. Whether government powers are effectively limited by independent auditing and review bodies such as an Auditor General and Parliamentary Committees	5	2.3	3.05	3	3.77	2	2.5
		d. Whether there are requirements for Public Participation in law and policy-making and whether	10	3.5	7	6.75	6.75	0.75	4.81

		such public participation is reflected in legislation and policy							
		e. Regulatory enforcement	10	5	7.2	8	8.75	7	2.25
		Total	50	21.3	27.45	26	33.37	17.25	13.56
2.	Access to Civil Justice	a. The extent to which the Bench is considered independent	10	6.75	6.8	5.5	5.5	3.5	3.5
		b. The extent to which the Bar is independent Independence of the Bar which include the freedom to represent their client without fear of persecution, the law societies are not influenced by the Executive	10	7.5	8.8	8	8.5	8	3.5
		c. The extent to which people can access and afford the court system	10	3	7	6	9	7.5	1.5

		d. Perceptions of competence and impartiality of judges	10	3.5	4.35	5	8.75	6	4.3
		e. Efficiency of the hearing process; and efficiency and efficacy of the appeal system	10	6.25	5.75	4.98	9.80	5	4
		Total	50	27	32.7	29.48	41.55	30	16.8
3.	Absence of Corruption	a. The presence of a legal and institutional framework to address corruption and the awareness of it	8	2.25	4.5	6.75	7.25	2	3.5
		b. The extent of corruption (if any) in the provision of public services	10	2.5	1.6	1.75	7	1.25	1.5
		c. The extent of corruption (if any) in the provision of services in registries	10	6	2.9	4.7	8.75	5	2.5
		d. Perceptions of corruption amongst the general public	2	0	1	0	1.25	0	0
		Total	30	10.75	10	13.2	24.25	8.25	7.5

4.	Fundamental HR & Freedoms								
	Ratification and domestication of Treaties:	1. The African Charter on Human and Peoples Rights & the International Convention on Civil and Political Rights.	10	10	10	10	10	10	5
		2. Reservations to the treaties	5	2.5	5	5	5	5	5
		Sub-total	15	12.5	15	15	15	15	10
	i. Rights of Accused Persons	a. Whether there are limits placed on the discretion of police as to when to charge (prompt presentation of arrested persons in court)	5	4	2	4	3.5	4	4
		b. The presence and efficacy of the right to bail	5	2.75	3	2	4	3	0
		c. The application of the rights of accused persons in court	5	2	4.05	2.2	3.5	1	4

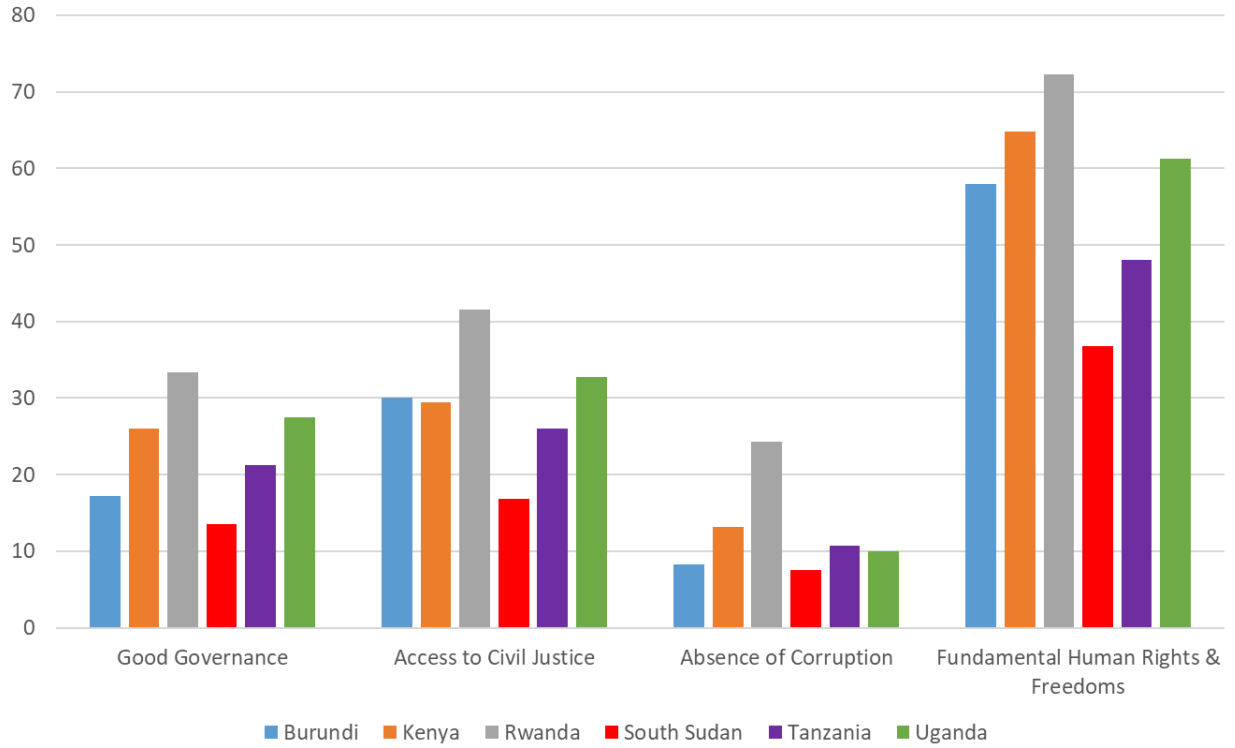
		d. The efficiency of the criminal trial process	5	3.8	1	1	3.3	2.2	4.5
		Sub-Total	20	12.55	10.05	9.2	14.3	10.2	12.5
	(ii) Freedom of Expression	a. Whether there is legislation protecting the freedom of expression or a wide acknowledgment of this freedom as a right	5	3	2.5	4.25	3	3	1.6
		b. Whether the freedom of expression is practically enjoyed by the media, bloggers and independent commentators	5	0	2.5	2.2	2.5	2.5	1.65
		c. The presence of a vibrant and independent media and civil society	5	1	2	2.4	3	2	2.1
		Sub-Total	15	4	7	8.85	8.5	7.5	3.75
	(iii) Freedom of Assembly	a. Whether the freedom of assembly is widely acknowledged as a right	5	1.5	4	3.75	3.75	3	0.5

		b. Do people participate in demonstrations i.e., are they aware of their right to assemble?	2.5	0.5	0.5	1.6	2	0	0.8
		c. Practical enjoyment of the right, i.e. absence of harassment during demonstrations	2.5	1	0.5	0.8	1.5	1.5	0.6
		Sub-total	10	3	5	6.15	7.25	4.5	1.9
	(iv) Freedom of Association	a. Whether the freedom of association is acknowledged and/or widely recognized	5	2	4	4	2.25	4	0.5
		b. Whether there is a legal and institutional framework for the recognition, registration and regulation of political parties and their members	5	2	4	4	4	4	2.75
		c. Presence of at least two major political parties, other than the ruling party	5	1.5	2.6	4	3.75	4	4

		d. Whether the freedom of association is practically enjoyed	5	2.5	1.1	2.5	2.25	3	0
		Sub-Total	20	8	11.7	14.5	15	12.25	7.25
	(v) Order & Security	a. Presence and extent of crime & criminal activities	5	2	2.5	1	4	1.75	0.85
		b. Limited/Controlled political violence including terrorism, armed conflict and political unrest	5	3	2.5	3	4	4	0
		Sub-Total	10	5	5	4	8	5.75	0.85
	(vi) Right to Privacy	a. Whether there is a legislative and institutional framework concerning the right to privacy	4	1.5	3	3	3	0	0.25
		b. The effectiveness of the legislative and institutional framework in addressing complaints of breaches to the right to privacy	6	1.5	4.5	4.16	4	0	0.25
		Sub-Total	10	3	7.5	7.16	7	0	0.5

		Total for Fundamental Rights & Freedoms	100	48.05	61.25	64.86	72.3	57.95	36.7 5
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OVERALL SCORE



General Comments

The following observations were noted from the data collected: -

1. The **legal framework** across the Member States in all the parameters we reviewed appeared structurally sound. In East Africa, a lack of the law is not the major impediment to the development of the Rule of Law; rather the genuine application of the legal framework is what hinders the development of the Rule of Law.
2. Across the Member States, certain factors seemed to play a role in determining adherence to the Rule of Law. One of the most notable factors was whether the Review Period was an **election season** for the Member State. Election seasons tended to present more breaches of the Rule of Law; such that States which were not going through an election season were likely to post higher scores on areas in which they otherwise would not score well.
3. High levels of **corruption** went hand-in-hand with lower scores across the other parameters measured in this Index. Corruption permeates through the other parameters and seems to be the basis for breaches of the Rule of Law across the board.
4. **Access to information** means that some States may appear to perform worse in these scores simply because of the abundance of information available across the parameters, for example in Kenya. In some countries, notably Burundi, information was notoriously difficult to come across and our view is that that lacuna certainly impacts on the accuracy of the research. In such cases, we moderated the scores to reflect the challenges with obtaining information.
5. The size of the **population** appeared to impact across the parameters, particularly in respect of governance; a suggestion perhaps that States with a smaller population are easier to govern.

6. Newer States scored lower on fundamental rights and freedoms.

7. **Culture** played a role in the willingness of citizens to activate their fundamental rights and freedoms. Citizens in some Member States were said to be more vocal than in others; more demonstrative, such that the presence or absence of vocal expression or demonstrations could not conclusively be said to be definitive of the awareness of the existence of the right.