

Overall Score:

71 - Moderate

Legal Framework Score:

79 - Moderate

Actual Implementation Score:

59 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁶³Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

67

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

According to a country-wide survey, approximately 80 percent of CSOs in post-genocide Rwanda carry out health and education-related activities, while 20 percent provide social services. Only one CSO, Transparency Rwanda Chapter, which is affiliated to Transparency International, is focused on good governance/anti-corruption activities.

References:

The rights of CSOs are vested in the constitution of Rwanda, Art. 33 and 35. Freedom of thought, opinion, conscience, religion, worship and the public manifestations thereof are guaranteed in accordance with conditions determined by law. In addition to the constitutional provisions, Iwa No. 20/2000 of July 26, 2000, governing non-profit organisations in its articles 1 and 2.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

The organic law referred to above provides for three categories of nongovernmental organizations: local, international and religious organizations. Specific laws yet to be voted on in Parliament shall determine which NGO falls into each of the categories.

References:

According to section 4 of law governing nongovernmental organizations referred to above, CSOs in Rwanda are free to obtain funding from any foreign or domestic sources and may even engage in commercial and economic activities if its proceeds are used for the purpose for which that organization was founded. Apollinaire Mupiganyi, Executive Secretary for Transparency Rwanda, confirmed the applicability of the law.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there are any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

There are no technical barriers for CSO registration in Rwanda. The only barrier is lack of enough qualified professionals focused on good governance and anti-corruption.

References:

The organic law regulating nongovernmental organizations referred to above also states in section 5 that the organizations must be granted legal personality by competent authorities in the area in which it wishes to work and inform the proper ministry and, among other things, according to section 12 and 13, the means available, which would be material, human and financial without disclosing the funders.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

References:

There are no barriers or little if there are any unnoticed” created by government against formation of a CSO with a visionary target of curbing social injustices and corruption,” said Bahizi Bakerman, a lecturer at Kigali Institute of Education, in an interview on Sept 4.

Apollinaire Mupiganyi, Executive Secretary, Transparency Rwanda Chapter, also ruled out any government interference in establishment of CSOs on good governance and anti-corruption, citing professional inabilities caused by the 4-year war and genocide of 1994 that claimed many, including experienced professionals.

Marcel Museminari, Managing Editor, The Business Daily also said in an interview on Aug. 20: “The leadership is so intolerant to corruption and abuse of office, that they can impose any hardships to partners like anti-corruption CSOs.”

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

CSOs’ contributions to Rwandan education and health policy framework are invaluable, to the extent that private schools and clinics favourably compete with public schools and clinics and create a productive competition.

References:

Generally, active engagement of CSOs in political and policy-making process is neglected by the government according to a number of credible interviewees.

We only actively participate in discussions on political and policy issues in some conferences, and our input may or may not be taken seriously,” Prof. Athenase Shyaka, a lecturer at the National University of Rwanda, Butare Southern Province observed on Aug. 30.

Charles Muvunyi, a legal advisor with CESTRAR, an umbrella organization of 20 Rwandan trade unions, says CSOs are not denied participation in political and policy-making, but their contributions may be ignored, he observed Sept.10, citing their

contests against a law increasing work hours from 40 to 45 per week was ignored.

Gasana John Bosco, Managing Editor of Umuvugizi, a local weekly, says, “There are international NGOs like World Vision, which articulate opinions on political and policy matters, but their contribution is less than that of political figures.” (Sept. 15) Nyagatare, Eastern province.

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | **NO**

References:

According Ms. Claudine Kayitesi, a director in charge of the nongovernmental organization department for the ministry of local government, in an interview on Aug. 20, no anti-corruption/good governance CSO has been shut down by government in the last six years.

Mupiganyi Apollinaire, executive secretary for Transparency Rwanda, also confirmed Kayitesi’s assertion.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period. YES is a positive score.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

Comments:

As indicated earlier, there is only one CSO focused on good governance/anti-corruption, and therefore, no imprisonment has been subjected on any of its staff, according to the executive secretary.

References:

According to Chief Inspector of Police under CID department in an interview on Aug. 28, no CSO activists working on good governance/anti-corruption issues have been arrested or detained.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

As indicated above, according to a police CID official, and a number of nongovernmental organization representatives mentioned, no CSO activist has either been imprisoned or physically harmed.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

As indicated in the above two descriptions of sources, no CSO activist has either been physically harmed, imprisoned or killed.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

There are 20 worker trade unions in Rwanda affiliated under CESTRAR, according to the union official referred to earlier.

References:

The rights workers' trade unions, like those of civil society organizations are vested in the Rwanda constitution articles 33 and 35. The operational law governing trade unions is also the Law No.20/ 2000 of July 26, 2000 relating to non-profit organizations.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

References:

Citizens of multi-disciplinary sections are at liberty to organize into trade unions," said David Asiimwe, an advocate practicing law in Butare Southern Province on Sept.30.

"Even employees in public institutions are free to join trade unions because the unions for for the interest of workers," Aron Makuba, a former legislator emphasized.

Kasule Daniel, an editor with "The New Times", Rwanda's only daily English newspaper, disclosed in an interview on Aug. 18, that of the 20 trade unions, one of them was initiated by journalists, but added that journalists in government-owned media outlets are not comfortable to register as members.

100: Trade unions are common and are an important part of the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Under the Rwandan constitution, article 34, freedom of the press and freedom of information are recognized and guaranteed by the state.

The freedoms shall not, however, prejudice public order and good morals, the right of every citizen to honor, good reputation and the privacy of personal and family life.

These constitutional guarantees re-enforce law No.18/2002 of 11/05/2002 governing the press in its articles 10, 11 and 13.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

The freedom of speech is guaranteed under the constitution as aforementioned (Art.34 and Art.11 of the press law).

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

56

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Most of the media outlets, especially the private ones, lack vigilant, experienced and trained practitioners. Due to high competition and insufficient financial strength, they can not engage and retain them. The scarcity of experience journalists is because of the 4-year war and genocide that claimed many journalists.

References:

According to reliable documentary evidence and interviews with credible sources in the media, government does not create barriers to form a print media.

In fact, according to the Media High Council Report 2008, issued on July 10, 2009, five newspapers and one magazine pushed the total of print media outlets to 61 by the end of 2008. According an experienced journalist, Marcel Museminari, Editor for Business Daily” weekly paper, “Nobody can be denied a right to establish a newspaper, unless she or he has incredible moral records.”

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | **NO**

Comments:

This has been debated and included in the amendment legislation currently been scrutinized by the senate.

References:

The press law referred to above does not substantiate the appeals mechanism if a license is revoked or denied.

Article 16 states that every launching of a press publication must first notify by written statement, at least one month before the first issue by the publishing director, the ministry of information with an acknowledgement receipt.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

Besides provisions of the law (Article 16) cited above, a journalist, Shyaka Kanuma, managing editor of Rwanda Focus”, a weekly English paper said in an Aug. 20 interview, “It took me only two weeks to have the publication registered and published – the maiden issue after application.”

According to Ignitius Kabagambe, a director in the ministry of information, “The one month provided under the press law is the maximum duration within which to register.”

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

According to the two interviewees, aforementioned, the financial cost is negligible compared to the costs in the neighbouring east Africa countries. The required registration fee is 50,000 francs (US\$88).

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

56

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

References:

The post-genocide era has encouraged the establishment of electronic media compared to the previous regimes.

According to Andrew Butare, a country director for Christian Aid in an interview at Nyagatare town on Sept. 25, There has been tremendous development. I can't imagine opening of more than 15 radio stations in less than 10 years."

Claver Shyaka, an employee of Radio10 FM said the business atmosphere in Rwanda is so friendly that "even multi-media groups on the continent have been given a green light open radio and TV stations."

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeals mechanism if a license is denied or revoked.

YES | **NO**

References:

As clearly indicated earlier, the press law in force is ambiguous on appeals mechanisms if a license is denied or revoked. The ambiguity is being clarified under the amendment bill in which media practitioners were given a chance to participate in the process.

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is, however, only one TV-RTV, a government-owned station that has enjoyed monopoly, mainly due to the financial strength and low-profit incentives.

References:

As indicated earlier, according to credible sources in the media cited above, citizens can, and have, indeed obtained broadcast media licenses within a maximum of one month time period.

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | **50** | 25 | 0

References:

According credible sources, compared to the cost incurred in acquisition of licenses by print media proprietors, an electronic media license is more that double that of high capital investment required to buy expensive gadgets,” said Victor Mugalura, an editor with Gateway Development, intimated in an interview in Butare, southern province Sept. 20.

Ignitius Kabagambe, a director at the ministry of information also said the reason national TV is enjoying a monopoly is due to high costs required and long-term profit prospects.

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

100

8a. In practice, the government does not prevent citizens from accessing content published on-line.

100 | 75 | 50 | 25 | 0

References:

Practically, there are no restrictions whatsoever, imposed on the public from accessing content published online. In fact, most journalists, the elite, and any citizens rely on various websites for accurate information on national and international affairs.

According to Shyaka Kanuma, a managing editor at Rwanda Focus, a weekly English paper, Rwanda’s progress in ICT has undoubtedly made it a regional business hub.”

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content on-line.

100 | 75 | 50 | 25 | 0

References:

There is not a recorded case where any citizens or organizations have been censored creating content of any kind online. In fact, Alfred Mwisa, an editor for the Rwanda News Agency in Kacyiru, Kigali City, said in a Sept. 30 interview, even if government wanted to censor on-line content, the move would be practically impossible.”

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

75

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

The private print media outlets have played a big role in helping the government's efforts to curb corruption. In less than three years, many ministers, legislators and heads of public institutions have been sacked, others are undergoing prosecution in the courts on charges of alleged embezzlement of public funds, all exposed by journalists.

References:

In accordance with the freedoms and independence guaranteed under the constitution, journalists are at liberty to accurately and diligently investigate and expose injustices and any abuse of office by government personalities.

Article 11 of the press law referred to above guarantees protection to journalists, who investigate injustices and abuse of office by public officials.

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

It is true that self-censorship exists as a byproduct of buying space in form of adverts from public institutions. And, in the past journalists have been tortured, detained, or expelled from the country if foreign, or fled the country just because they dared report damning stories of political leaders. However, that is history now. After the transitional government of unity that ended in 2000, the then Vice-President Paul Kagame became the President after the controversial resignation of president Pasteur Bizimungu. After the transitional government term ended in 2003, democratic presidential, parliamentary and local government elections were held and serious governance and judicial reforms were carried out, after which no individual citizens, journalists, politicians, professionals have been harassed contrary to the law. John Bosc Gasasira, Managing editor of Umuvugizi, a vernacular paper, and a host of Umuseso journalists can attest. In fact, it's on record both Gasasira and three of the senior journalists of UMUSESO; Charles Kabonero, Didas Gasana have cases in courts related to investigative stories allegedly exposing a cabinet minister, a Female Mayor of Kigali City council and one senior public prosecutor in two sexual scandals. However, none of the aforementioned journalists was intimidated or subjected to detentions. They were accused in different competent courts pursuant to the legal provisions and the accused persons are confident they will win the cases. I

References:

In practice, President Paul Kagame has always demonstrated his intolerance to irresponsibility and greed of any public figure and encouraged journalists on a regular monthly live radio and TV press conferences. Felly Kimenyi, a senior journalist with The New Times' says, "Unless we impose self-censorship on ourselves, the government has legally and practically protected us on that."

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

One of the interviewees, Shyaka Kanuma's made the observation that Government media practitioners can easily be censored by their bosses or else they lose their jobs."

References:

There has not been a single case of pre-publication censorship on corruption-related stories by government in the private media outlets," said Arthur Asiimwe, political editor, The New Times in an interview on Aug. 30.

Shyaka Kanuma, managing editor for "Rwanda Focus", also testified he has heard of a non-independent media practitioner being censored, but hastened to add that government media practitioners can easily be censored by their bosses or else they lose their jobs.

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

65

10a. In law, print media companies are required to publicly disclose their ownership.

YES | NO

References:

The press clearly obliges anyone registering a media entity to include the following elements: detailed identity of the owner for an individual or the charter in case it is a legal entity, detailed identity and full address of the publishing director and of the chief editor in Article 16 paragraph 2.

YES: A YES score is earned if print media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10b. In law, broadcast (radio and TV) media companies are required to publicly disclose their ownership.

YES | NO

References:

The same provision (Article 16, paragraph 3) obliges broadcast media companies to disclose their ownership.

YES: A YES score is earned if broadcast media companies are required by law to publicly disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being publicly disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

Critics argue that the New Times publication – the only daily newspaper in the county – is in practice a mouthpiece of the ruling RPF.

References:

In accordance with the annual report 2008 of the media high council:

There was positive professional performance for last year. Their efforts to adhere to professional high standards, respect for various rules and generally operating within the law is worth commending,” a press release issued on July 10, 2009 states.

Felly Kimenyi, a journalist, said, “Those who could not adhere to professional ethics are either facing the law or subjected to disciplinary sanctions by the council.”

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell” favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | **50** | 25 | 0

Comments:

All candidates are, by law, given equal opportunities for finances and access to public media. But practically and ,according to interviewees, the opposition parties and the minority independent candidates are unsatisfied, while the incumbent ruling party takes a lion’s share.

Edwin Musoni, a journalist with The New Times”, explained in an interview on Sept. 30, that the election coverage was more fair because unlike controversial individual candidacy, the electorate was required to vote for the preferred political party. There were very few independent candidates. Pursuant to the ammended presidential and parliamentary elections law, voting is done on a party basis and only independent candidates may vie on an individual basis.

References:

According to a May 17, 2009, press release by the media council and The State of the Media Report 2008”, which can also be accessed on website www.hcp.gov.rw, they said, “Noted also was good professional performance of the media during the September parliamentary elections.”

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The New Times publication- the only daily newspaper in the county is the mouthpieces of the ruling RPF. But besides it's vanacular sister paper called "IZUBA RIRASHE" the party has no other media outlet.

References:

In an interview with David Asimwe, university lecturer and private legal practitioner on Sept. 25, he says, In law, all political parties have equal access to state-owned media, but in practice the ruling RPF party enjoys more opportunities, and it is no surprise they occupy the majority seat in the executive and Parliament."

Felly Kimenyi, also affirmed these statements by saying the ruling party can even influence the private media outlets, because they even have more financial strength than the opposition.

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

100

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

References:

By the end of year 2008 up to July 10, there was no journalist in jail. In fact even Agnes Nkusi-Uwimana, of Umurabyo Newspaper who had pleaded guilty and apologized for publishing a defamatory and discriminatory article in 2007 completed her one-year jail term and was set free in January 2008," the State of the Media Report 2008 released on July 10 2009 said on page 3.

Agnes Nkusi-Uwimana has since re-joined the profession. Even a number of journalists, referred to in earlier sources, have said to this researcher that no journalist has been apprehended for exposing corruption.

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

Generally, corruption scandals involving public figures have been minimized due serious negative consequences endured by the accused. A number of ministers, directors and many senior civil servants have been sacked, while others are still undergoing prosecution in courts of law.

References:

John Mudakikikwa, rights activist with LIPRODOR and confirmed that no single journalist in Rwanda investigating corruption has been harrassed or physically harmed.

Leslie Haskell representative of Human Rights Watch, stated, I have not recorded qny cases of journalists who hqve been physically harmed in the past two years. She, hozever hastened to add> " But two senior journalists, Silver Busingo, then employee of The New Times publication and John Bosco Gasasira, managing Editor Umuvugizi vanacular paper were ambushed at night in october 2007 and were seriously injured" she stressed.

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

References:

No journalists investigating corruption-related scandals have been killed," said Arthur Asiimwe of "The New Times" in a Sept. 30 interview.

Shyaka Kanuma of "Rwanda Focus" confirmed this on Sept. 30, while Alfred Mwisa of the "Rwanda News Agency" ruled out any incident on October 1. The state of Media Report 2008 issued on July 10, 2009, also rules out a single journalist's death related to corruption investigations.

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

33

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

The proposed law on access to public information, according to Augustin Hitimana, a communications officer for Parliament, revealed to this researcher on Sept. 28, that the act has been passed by the Chamber of Deputies and forwarded to the Senate.

References:

Pursuant to Article 34 of the constitution, freedom of the press and freedom to public information are recognized and guaranteed by the state. Paragraph 3 of the provision; however, states that the conditions for exercising such freedoms are determined by law, yet the press law referred to earlier does not guarantee access to information.

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

The law guaranteeing access to public information is still awaiting legislative approval. This law was initiated due to media outcry.

As of now, there is a media council to provide information to journalists but it is not open to the public. Some private media presumed to be anti-government” were accused of publishing “unverified, sensational and unfair stories” and were denied access to information, and the Media High Council challenged the government to operationalize the constitutional guarantees to the press

If passed through the legislature, under the constitution, the government will be obliged to guarantee an appeal for relevant information to all citizens. Any aggrieved citizen can challenge government in court. Government communications officer Faustin Hitimana has suggested it will soon be passed into law.

References:

Interview with communications officer Faustin Hitimana

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | **NO**

Comments:

The law guaranteeing access to public information is still awaiting legislative approval. This law was initiated due to media outcry. As of now, there is a media council to provide information to journalists but it is not open to the public. Some private media presumed to be anti-government” were accused of publishing “unverified, sensational and unfair stories” and were denied access to information, and the Media High Council challenged the government to operationalize the constitutional guarantees to the press.

References:

Interview with communications officer Faustin Hitimana

The Rwandan constitution referred to above under Article 34 paragraph 4 relating to the High Council of the Press says it was established as an independent institutional mechanism through which the press can request government records in the interest of all citizens. The perception is that the media acts in the interests of the general public.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

33

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

Comments:

Although a right to information exists in the constitution, a law to establish and require mechanisms for citizen requests to information has not been passed through legislation yet. As of now, journalists can request information through the high media council, but this mechanism is widely viewed as only for journalists and its responses are not always satisfactory.

References:

According Prof. Laurent Nkusi a lecturer at the National University of Rwanda and former Minister of Information in a Sept. 28 interview in Butare, Southern Province, The absence of a right to information law makes the situation harder for journalists and any other member of the public interested. It is crucial that this law be voted on soon to guarantee the access and hold accountable those who withhold it from the media and public."

Victor Mugalura, editor, Development Gateway said on Sept. 28, "Given the crucial role of media in development and nurturing of nascent democratic culture in Rwanda, public authorities must endeavor to sensitize the personnel of the need to respect the rights of the media and cooperate with them by accessing necessary public information."

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

Comments:

Although a right to information exists in the constitution, a law to establish and require mechanisms for citizen requests to information has not been passed through legislation yet. As of now, journalists can request information through the high media council, but this mechanism is widely viewed as only for journalists and its responses are not always satisfactory.

References:

According to the State of Media Report 2008, Restrictions on access to information for some media outlets were observed on what was termed as a government boycott to Umuseso, Rushyashya, Umuvugizi vernacular newspapers as well as the BBC Gahuzamiryango radio program."

Editor Arthur Asimwe says getting credible information from any ministry being investigated is a big challenge to any journalist.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, responses to information requests are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

Although a right to information exists in the constitution, a law to establish and require mechanisms for citizen requests to information has not been passed through legislation yet. As of now, journalists can request information through the high media council, but this mechanism is widely viewed as only for journalists and its responses are not always satisfactory.

References:

According to Editor Arthur Asiimwe (referred to above), Information requests are always given sufficient responses, but responses to incriminating information requests may be vague or overly general when sensitive information is sought from alleged culprits. But of course we must get what we call 'impeccable sources' close to the culprits."

100: Responses to information requests typically address the requestor's questions in full and are not redacted or edited to remove sensitive information.

75:

50: Information requests are sometimes met with sufficient responses, but responses to information requests may be vague or overly general when sensitive information is sought.

25:

0: The government rarely or never replies to information requests with meaningful responses. If and when responses are issued, they are so overly general or heavily redacted as to render them useless.

13d. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

The law to guarantee the right of appeal has not yet been passed through legislature and these initiatives typically take some time to implement. Generally, there is a perception that media council mechanisms are only for journalists.

References:

Usually, apart from journalists, member of the public have got chances to petition public officials, through live talk show TV and radio programs on any issue of public concern. When it happens, the officers concerned must act first or lose their jobs,” said Andrew Butare, country director, Christian Aid.

Edwim Musoni, a senior journalist with The New Times concurred with Andrew in an interview on Sept. 30, saying, “Such live talk show have incriminated many in the past, resulting in arrests and sackings.”

In other words, any request for any public information is done through the concerned line ministry or public institution. However there is no legal responsibility for the ministry to respond to a citizen request.

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13e. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

The law guaranteeing an appeals mechanism for citizen access to information is currently awaiting legislative approval. As of now, there is no official appeals mechanism for citizens. There is only a media council which is only used by journalists. Once the law is passed, it will take time to establish appeal mechanisms in each ministry. The ordinary citizens usually use media as the best option to acquire any sort of public information.

References:

In accordance to Edwin Musoni’s observations (above), the live call-in programs on radio and TV or any meetings between government officials and the citizens are the most convenient and productive appeal process for public information at a reasonable cost.

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13f. In practice, the government gives reasons for denying an information request.

100 | 75 | **50** | 25 | 0

Comments:

The law guaranteeing an appeal mechanism for citizens has not yet passed through legislation.

References:

According to the interviewees, Andrew Burare and Edwin Musoni (quoted earlier), the government gives reasons for inaccessibility of the information sought, sometimes accepting irresponsibility of public officials and promising quick redresses to the issues concerned.

As indicated earlier, the last resort should be challenging the the public institutions to courts of law pursuant to the constitutional guarantees.

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁷ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Under the provisions of the Rwandan constitution Article 8, suffrage is universal and equal for all citizens; direct or indirect and secret. Paragraph 2 provides that all Rwandans of both sexes who fulfill the requirements provided by the law, have the right to vote and to be elected.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Under Article 100 of the constitution, the election of the president is by universal suffrage through direct and secret ballot with a simple majority, for a term of seven years, renewable only once.

Article 52 of the constitution recognizes a multi-party system of governance. Article 64 of the same fundamental law states that the right to vote by a member of parliament (MP) is ad personum. Paragraph 2 further states that MPs are elected by direct universal suffrage, through secret ballot from a final list of names using a system of proportional representation.

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

83

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

References:

Practically, the fulfillment of legal provisions all adults citizens who are not under legal detention can vote. And according to many interviewees cited above, an independent national electoral commission instituted under article 180 of the constitution, prepares and organizes local legislative, presidential elections and referendums or any other elections effectively.

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Unlike in other countries in the region there is usually power-sharing between the ruling RPF and other opposition parties before and after elections but ofcourse the winner takes a lion's share. The other thing is that at least there is a credible and transparent electoral commission.

References:

In an interview with Prof. Laurent Nkusi, an academic, former information minister and member of Parté Leberale: The post-genocide elections have practically been conducted in a transparent manner with secret bullots that are equivalently protected."

Kalisa George, a Ugandan media practitioner working for "Rwanda Dispach" monthly magazine, told this researcher in a Sept. 28 interview: "Rwandan elections I have witnessed, have been conducted more transparently, peacefully and fairer than in Uganda."

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

There are no specific cases of delayed or pushed back elections due to political tension, riots or concerns of fairness.

References:

In terms of regular schedules, elections I have monitored regularly commence at 6 a.m. and close at 11 p.m. strictly,” said Asimwe Frank Director for KANGURIRWA, a local rights nongovernmental organization in a Sept. 26 interview in Byumba, northern province.

Edwin Musoni, a journalist for “The New Times”, said irregularities in election schedules are mainly due to unavoidable circumstances such as rainy seasons but hastened to add that such incidents are negligible, especially in the country side.

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

65

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

An obsolete organic law on formation and functioning of political organizations, which was enacted before the new constitution of June 4, 2003, is being amended, according to Augustin Hitimana, communications officer for the legislature. It's before the Senate for final review, after which it will be sent to the president's office for endorsement.

The constitution of Rwanda came into force in June 2003, and some legislations that were enacted before then are still in force, and some provisions therein are not in tandem with constitution. Those have been overtaken by the fundamental law.

References:

The Rwandan constitution in its Article 52 recognizes the multi-party system of government. Again, all citizens are free to form or join political organizations of their choice or not to join them under Article 53, and no citizen shall be subjected to discrimination by reason of membership of a given political organization.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

Comments:

There is no law that encourages ethnic divisionism or make it virtually impossible for members of any ethnic group from holding office. Joseph Sebarenzi is a Tutsi genocide survivor, a former speaker of parliament who lost the job due to his extremist ethnic tendencies. There are no legal restrictions for Hutus who are interested in running for office. In fact, the current presidential hopeful Ms Victoire Ingabire, a Hutu, arrived two weeks ago and has started preparing for campaigns for presidency.

References:

Pursuant to Article 53 paragraph 3, all citizens above 25 years of age are free to run for political office, but the preceding paragraph clarified that the organic law shall determine the qualifications and formalities involved.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

References:

In an Interview with Augustin Iyamuremye, head of the communication department with the national electoral commission on Sept. 20, The only serious precondition for one to form a party, is having at least 1,000 registered members from at least 15 of the 30 districts on the territory of Rwanda.”

Prof. Laurent Nkusi, a member of Liberal Party, and lecturer at the National University-Butare, observed that, “For one to register in a political party, he or she must be a credible personality, with a fair education background and of convincing political calibre to attract followers.”

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties’ political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

References:

According to the interviewees referred to above, for one to successfully run for any political office under the multi-party context, she or he must abide by the rules and regulations governing the parties or the party constitutions.

But if he or she is an independent candidate, it depends on his or her personal credibility as well as the rules and regulations governing elections.

Human Rights Watch has recently warned against stepped-up attacks against officials of opposition parties: <http://www.hrw.org/en/news/2010/02/10/rwanda-end-attacks-opposition-parties>

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office. A system of party lists may discourage or prevent independent candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Human Rights Watch has recently warned of stepped up attacks against members of the political opposition: <http://www.hrw.org/en/news/2010/02/10/rwanda-end-attacks-opposition-parties>

References:

In an interview with Dr. Aron Makuba, a member of the administrative bureau for the PSD party and former deputy minister and MP: "Although there is minority representation of the opposition in Parliament, it's by the verdict of the electorate." He added that the constitutional provisions requiring the heads of the parliamentary chambers not to be from the ruling party has been respected.

John Bosco Gasasira, managing editor of Umuvugizi, a vernacular weekly paper said, "True, the RPF has got a lion's share in all the arms of the state, but at least over six political parties are represented in Parliament, cabinet and even all the local government structures." But he hastened to add that there can be proper accountability if the legislature is 'moderately' balanced.

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

18. Is the election monitoring agency effective?

75

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

The commissioners and other officials of the commission are appointed by virtue of their academic, professional experiences, and personal integrity. They are protected from unjustified removal from office pursuant to articles 12 and 14 of the law establishing the commission (cited above).

References:

By law, the national electoral commission is an independent commission responsible for preparation and organization of the local, legislative, and presidential elections and referendums or any other election pursuant to Article 180 of the constitution.

Paragraph 2 emphasizes that the commission ensures that elections are conducted under a free and fair environment. In accordance with this fundamental law, law No. 31/2005 of Dec. 31, 2005, on the organization and functioning of the commission, in its articles 3 and 5, the commission is empowered to prepare, conduct and supervise elections by establishing electoral constituencies and preparing and teaching civil education on elections.

The commission is also mandated to monitor, announce and publish in writing the election results as well as put in place strategies for free, fair and transparent elections.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

According to impeccable sources interviewed, the selection of commissioners of the electoral body, is a moderate selection from more than five political parties, but the other important considerations are academic competence and moral integrity of the appointees,” said Prof. Laurent Nkusi, a lecturer and Member of Liberal Party on Sept. 25.

Sam Badege, a public relations officer for Rwandan Umbrella for Persons with physical disabilities, said in a Sept. 28 interview, “Although the commission president Prof. Chrisologue Karangwa, rector, Kigali Institute of Science and Technology is a known member of the ruling RPF, the majority of commissioners belong to other opposition political parties.”

Edwin Musoni, a senior journalist for “The New Times” said, unlike in other countries like Uganda, Kenya and Tanzania, where the ruling parties appoint only their supporters to the electoral commissions, the Rwandan electoral body is ‘balanced’ and impartial.

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The Rwandan electoral commission, according to Prof. Laurent Nkusi in a Sept. 20 interview in Butare, Southern Province, is composed of academically competent full-time technical staff and commissioners, who diligently execute the day-to-day responsibilities of the commission; I do not have any reservation on its diligence.”

Other interviewees referred to above are Frank Asiimwe, and Andrew Butare.

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The electoral commission is obliged to declare the election result on national radio and T.V. immediately after the vote counting, the commission has decentralized offices throughout the country where citizens can get any election information.

References:

In practical terms, according to a cross section of interviewees, the Rwanda electoral commission: has not betrayed the electorate ever since it was established. Any complaint or protests are amicably and impartially reviewed. Election results are released on time in accordance with the legal stipulations," said Sam Badege.

According to Prof. Ogenga Latigo, Uganda's Leader of Opposition in parliament, who observed the parliamentary election in Rwanda last year, "For Rwanda, it was the biggest lesson so far, because it was run using highly-efficient and effective electoral machinery. The biggest lesson was how Rwanda values fairness in its electoral process. It uses ultra information technology facilities and modern communication gadgets." This is what he explained in an exclusive interview published in "The Independent" magazine Issue 063 of June 5 to 11, 2009.

Didas Gasana, managing editor, Umuseso weekly vernacular tabloid said, "The last parliamentary elections were really dull; we didn't get any hot controversial news. In journalism, when a dog bites man, that's no news but when man bites a dog, it's hot selling news," he said referring to the transparency manner in which elections were exercised.

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

There have been no penalties since 2003 because there have been no reported offenses, said Justin Iyamuremye, PR for the commission. The commission acts on all offenses brought before them immediately.

References:

In practice, according to a cross section of interviewees, throughout the previous local, legislative and presidential polls, no serious penalties have been recorded on any offenders.

According to Charles Munyaneza, NEC field operations officer, It was only during the 2003 presidential campaigns that we gave stern warning to Faustin Twagiramungu, opposition candidate against discriminatory utterances based on ethnicity. He was playing against incumbent Paul Kagame.”

Otherwise, according to Prof.Ogenga Latigo (referred to above), “The principle in Rwanda is that when a polling station has more than 300 voters, it is supposed to be split; they finish counting before 5 p.m. and so everything is done in broad daylight.”

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

79

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

References:

Rwanda elections registration system is so clear and transparent ensuring that any irregularities are resolved before the voting time period.

According to Charles Munyaneza (referred to above), All eligible voters are verified in the registers to cross check deaths, migrations and acquisition of majority age by minorities.” He added that the cross checks are done early enough to respect people’s rights.

Again according to a civil rights activist Frank Asiimwe, Co-ordinate for KANGURURWA, “We, the rights activists, are also at liberty to participate in educating the citizens about their civic responsibility in nurturing the law and democratic process.”

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Pursuant to article 145 of the constitution, the jurisdiction of the supreme court is provided for in this constitution and other laws and includes inter-alia; paragraph 7: Hearing elections petitions relating to presidential, legislative, local and referendum elections.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | **50** | 25 | 0

Comments:

There have not been any cases where election results were appealed through the courts because as I indicated in some other scorecard indicators, parliamentary elections were conducted on political party basis not on individual candidates except if a candidate is independent or isn't affiliated to any party. And there were only two who weren't able to win.

References:

In practical terms, unfair elections results can effectively be appealed through the judicial system.

According to Dr. Makuba Aron, former legislator and a member of the PSD, the main opposition party, Any election petition in the court of law is given first priority. Any electoral challenge case must be adjudicated within a period of one month after elections". (Interview Sept. 28)

According to Kennedy Ndahiro, managing editor The New Times, in a Sept. 30 interview, "However influential a politician may be, there is no 'shortcut' contrary to the electoral rules and regulations, At least I know none on the recent records."

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for

resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

References:

In law, judges, prosecutors, members of the armed forces, police, and prisons are not permitted to be active members of political parties.

But according to Kennedy Ndahiro (referred to above), in practical terms, RDF officers do what he calls 'clandestine' campaigns for their favourite parties or candidates".

Prof. Karangwa, president of the Commission says, "By nature, human beings are political animals, and that's why there are strict prohibitive rules against government officials, who are expected to be impartial during elections." He added that there are some police officers, who on record, have been given stern warnings for their partiality manifested during the presidential election of 2003.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

In accordance with Article 28 of the organic law No.31/2005 on the organization and functioning of the national electoral commission, it obliges the commission to guarantee a green light to external and domestic election observers in the interest of free, peaceful and transparent elections.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

Comments:

No foreign election observers have ever been denied the rights to monitor the entire electoral process. So whatever criticism must be based on the broader analysis of national election observers and not only the Norwegian Center of Human Rights NORDEM report on the 2003 presidential polls.

References:

As indicated earlier, one of the credible external election observers for the 2008 legislative election, Prof. Ogenga Latigo (referred to above), he practically and effectively monitored the election without any hindrance.

Frank Assimwe, local rights activist (referred to earlier) said, Election observers practically play a big role.”

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

All forms of elections for political administrative offices in Rwanda are organized and monitored by the national electoral commission (NEC). Under Article 180 of the national constitution, the NEC is an independent commission responsible for preparing and organizing local, legislative, and presidential elections and referendums or any other elections.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities exists that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

85
II-3. Political Financing

20. Are there regulations governing the financing of political parties?

0

20a. In law, there are limits on individual donations to political parties.

YES | NO

References:

Under the Rwandan constitution Article 57, political parties which are duly registered shall be given grants for election campaigns by the state. However, careful perusal of the organic law No.17/2003 of July 7, 2003, there is no provision prohibiting acceptance of individual donations to political parties.

YES: A YES score is earned if there are any limits in size on individual contributions to political parties. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20b. In law, there are limits on corporate donations to political parties.

YES | **NO**

References:

There are not any legal limitations under the organic law (referred to above) prohibiting corporate donations to political parties during or before election campaigns. The organic law governing presidential and parliamentary elections is silent about corporate donations.

YES: A YES score is earned if there are any limits in size on corporate contributions to political parties. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to political parties. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20c. In law, there are limits on total political party expenditures.

YES | **NO**

References:

As indicated earlier, the constitution and all the electoral legislations consulted do not impose any limit on total political party expenditures.

YES: A YES score is earned if there are any limits in size on political party expenditures during the course of an election.

NO: A NO score is earned if there are no limits on political party expenditures during an election. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20d. In law, there are requirements for the disclosure of donations to political parties.

YES | **NO**

References:

It is not indicated in any of the Rwandan electoral laws. The political parties or independent candidates are by law obliged to disclose thier financial donations.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20e. In law, there are requirements for the independent auditing of the finances and expenditures of political parties when financial irregularities are uncovered.

YES | **NO**

References:

In law, there are no requirements for independent auditing of the finances and expenditures when financial irregularities are discovered. However, according to Augustin Hitimana, the communications officer for Parliament, the organic law on presidential and parliamentary elections amending the one in force, which is before the senate for approval, there is a provision seeking audits by the state for presidential and parliamentary candidates.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of party finances and expenditures when irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties' finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for parties to self-audit.

20f. In law, there is an agency or entity that monitors the financing of political parties.

YES | **NO**

References:

There is no agency or entity in charge of monitoring the financing of political parties or individual candidates. They will only be required by the law before the parliament to account for whatever expenditures the state grants after the election.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of political parties. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

21. Are there regulations governing the financing of individual political candidates?

0

21a. In law, there are limits on individual donations to political candidates.

YES | **NO**

References:

There are not any limitations on individual donations to political candidates during or after elections stipulated under the electoral laws in force.

YES: A YES score is earned if there are any limits in size on individual contributions to political candidates. A YES score is also earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21b. In law, there are limits on corporate donations to individual political candidates.

YES | **NO**

References:

In law, there are no limits on corporate donations to individual political candidates.

YES: A YES score is earned if there are any limits in size on corporate contributions to individual political candidates. A YES score is earned if corporate contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to individual political candidates. A NO score is also earned if limits are applied by the government on opposition candidates in a discriminatory manner.

21c. In law, there are requirements for the disclosure of donations to individual political candidates.

YES | **NO**

References:

There are no requirements for disclosure of donations to individual political candidates stipulated under any legislation regarding the nature of elections.

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to individual political candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to individual political candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous

donations.

21d. In law, there are requirements for the independent auditing of the campaign finances of individual political candidates when irregularities are uncovered.

YES | **NO**

References:

There are not any provisions under the electoral laws requiring independent auditing of campaign finances of individual political candidates when irregularities are uncovered.

YES: A YES score is earned if there is a legal or regulatory requirement for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of an individual candidate's campaign finances and expenditures when financial irregularities are uncovered. A NO score is also earned if such requirements exist but allow for candidates to self-audit.

21e. In law, there is an agency or entity that monitors the financing of individual political candidates' campaigns.

YES | **NO**

References:

In law, there is not any agency or entity that monitors the financing of individual political candidates' campaigns.

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around the financing of individual political candidates' campaigns. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity. A NO score is also earned if this monitoring is solely carried out by the media and civil society organizations.

22. Are the regulations governing the political financing of parties effective?

0

22a. In practice, the limits on individual donations to political parties are effective in regulating an individual's ability to financially support a political party.

References:

According to documented professional studies under the auspices of Governance and Social Development Resource Center", a research report on political party financing, the low per capita income level, poor party fund management as well as weak enforcement of legislations and regulations are a symptom of more widespread problems in the African context.

The 2008 report prepared by DFID-Rwanda further indicates that, "The methods of party financing used in Africa are primarily individual donations, private sector donations, public funding and foreign donations by bilateral governments or diaspora contributions."

According to Augustin Iyamuremye, a field officer with NEC (earlier referred to above), says that in practice regulating elections financing cannot be done effectively.

According to Felly Kimenyi, an editor with the New Times, "Even if there were laws requiring political parties or independent candidates to disclose sources of finances, it would be the worst challenge" for government to implement it.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which individuals can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22b. In practice, the limits on corporate donations to political parties are effective in regulating a company's ability to financially support a political party.

References:

According to the interviewees referred to above, the limits do not exist and would be routinely bypassed or willfully ignored if they did exist. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a political party. However, exceptions and loopholes exist through which companies can indirectly support political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular party; unregulated loans to parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to political parties are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

22c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

In practice, the limits on total party expenditures are not effective in regulating a political party's ability to fund campaigns or politically related activities. According to the Report by Governance and Social Development Resource Center (GSDRC) Cited above, poor political public perception of political parties in Africa inhibit both private fundraising and support for public funding. Again, according to interviewees referred to above, poor financial accountability of the parties constrain the parties' ability to fund their campaigns and related activities.

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

22d. In practice, when necessary, an agency or entity monitoring the financing of political parties independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

As indicated earlier above and according to credible interviewees (identified above), there is no agency or entity monitoring the financing of political parties that can independently initiate investigations concerning financing of any sort of political parties or independent candidates' expenditures.

100: The agency or entity aggressively starts investigations into allegations of wrongdoing with respect to the financing of political parties, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, has limited effectiveness when investigating, or is reluctant to cooperate with other agencies in politically sensitive cases. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, is uncooperative with other agencies, or the agency or entity is partisan in its application of this power.

22e. In practice, when necessary, an agency or entity monitoring the financing of political parties imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

As clearly indicated, legally and practically, there is no agency or entity mandated to monitor financing of either political parties or independent candidates that can impose penalties on offenders.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or cooperates well with other agencies that impose penalties.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power and may refuse cooperation with other agencies.

22f. In practice, contributions to political parties are audited.

100 | 75 | 50 | 25 | 0

References:

When contributions to political parties are not legally required to be audited, then in practical terms, they cannot be audited.

100: Political party finances are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities. Auditing includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

23. Are the regulations governing the political financing of individual candidates effective?

0

23a. In practice, the limits on individual donations to political candidates are effective in regulating an individual's ability to financially support a particular candidate.

100 | 75 | 50 | 25 | 0

References:

There are no existing limits on individual donations to political candidates.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a political candidate. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a particular candidate. However, exceptions and loopholes exist through which individuals can indirectly support particular political candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a particular political candidate are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23b. In practice, the limits on corporate donations to individual candidates are effective in regulating a company's ability to financially support a candidate.

100 | 75 | 50 | 25 | 0

References:

In practice, the limits on corporate donations to individual candidates would be effective in regulating a company's ability to financially support a candidate if limits were there. But, as indicated, the limits are not legally provided for; neither are they practically enforceable within the Rwandan context.

100: Existing limits represent the full extent to which a company can directly or indirectly financially support an individual candidate. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support an individual candidate. However, exceptions and loopholes exist through which companies can indirectly support individual candidates above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate; unregulated loans to candidates (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to individual candidates are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

23c. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

In practice, an agency or entity monitoring the financing of individual candidates' campaigns does not exist and cannot, therefore, independently initiate investigations. This is based on the testimonies of the interviewees earlier referred to in the foregoing responses.

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to the financing of individual candidates' campaigns, or cooperates well with other agencies that do. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power. It may be reluctant to cooperate with other investigatory agencies.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power. It does not cooperate well with other investigatory agencies.

23d. In practice, when necessary, an agency or entity monitoring the financing of individual candidates' campaigns imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

In practice, an agency or entity monitoring the financing of individual candidates' campaigns cannot impose penalties when there are not rules and regulations indicating who the offenders are.

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders or in cooperating with other agencies that do.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power or may refuse to cooperate with other agencies.

23e. In practice, the finances of individual candidates' campaigns are audited.

100 | 75 | 50 | 25 | 0

Comments:

Only the national electoral commission has a constitutional mandate to handle all the electoral issues. In case of financial irregularities, the electoral commission may institute external audit to Auditor General's office.

References:

According to reliable interviewees (referred to earlier) the finances of Individual candidates' campaigns are rarely audited, most especially, those expenditures that are related to state grants and subsidies.

100: The finances of individual candidates' campaigns are regularly audited using generally accepted auditing practices. The auditing may be regular and comprehensive or only initiated after an initial review reveals irregularities.

75:

50: The finances of individual candidates' campaigns are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions.

25:

0: The finances of individual candidates' campaigns are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

24. Can citizens access records related to the financing of political parties?

0

24a. In practice, political parties disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, political parties do not disclose data relating to financial support and expenditures within a reasonable time period because there are no specific rules and regulations concerning financial support and expenditure in the Rwandan context.

100: Political parties disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

24b. In practice, citizens can access the financial records of political parties within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens cannot access the financial records of political parties within a reasonable time period because the parties are not under obligation to disclose their finances.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

24c. In practice, citizens can access the financial records of political parties at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens cannot access the financial records of political parties at a reasonable cost because parties are no under legal obligation to disclose their financial sources or expenditures.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

24d. In practice, the publicly available records of political parties' finances are of high quality.

100 | 75 | 50 | 25 | 0

References:

In practice, the records of political parties' finances are not of high quality because of the current absence of regulations regarding private donations, including no requirement for disclosure. This has allowed the existence of corrupt kickbacks and the disproportionate influence of special interests. This, in turn, erodes public confidence in political parties.

100: Publicly available records of political parties' finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political parties' finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political parties' finances, when available, are so incomplete or overly general as to render them useless in understanding a party's sources of income and its expenditures.

25. Can citizens access records related to the financing of individual candidates' campaigns?

13

25a. In practice, individual political candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, no individual political candidates disclose data relating to their financial support and expenditures within a reasonable time period because they are not under any legal obligation to do so. However, according to the interviewees (indicated earlier), they may be required by their sponsors, especially foreign governments, to account for the expenditure of the entire campaign programs.

100: Individual candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Individual candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Individual candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

25b. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens may not access the financial records of individual candidates (their campaign revenues and expenditures) within a reasonable time period due to the aforementioned constraint.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

25c. In practice, citizens can access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost.

100 | 75 | 50 | 25 | **0**

References:

In practice, citizens cannot access the financial records of individual candidates (their campaign revenues and expenditures) at a reasonable cost. Retrieving records imposes a major financial burden on citizens. Record costs are prohibitive to most citizens, journalists, or CSOs who are trying to access this information, according to the credible interviewees who have been earlier identified.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

25d. In practice, the publicly available records of political candidates' campaign finances are of high quality.

100 | 75 | **50** | 25 | 0

Comments:

In reality, only representatives of corporate companies, private sponsors to political parties, or independent candidates can have access to their expenditures.

References:

In practice, the publicly available records of political candidates' campaign finances are of high quality according to the sources

indicated above. This happens mainly to convince those who are entitled to their access of their integrity, and in order to encourage more funding of future campaigns.

100: Publicly available records of political candidates' campaign finances are complete and detailed, itemizing all significant sources of income and expenditures.

75:

50: Publicly available records of political candidates' campaign finances are available but are often lacking in important details, are overly general, or are otherwise incomplete.

25:

0: Publicly available records of political candidates' campaign finances, when available, are so incomplete or overly general as to render them useless in understanding a candidate's sources of income and expenditures.

Category III. Government Accountability

III-1. ⁵⁶Executive Accountability

27. Can the chief executive be held accountable for his/her actions?

75

27a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

Journalists of Umuseso, Umuvugizi, Rushyashya vanacular newspapers and any other media which are independent and all private radios are invited to press conferences.

With less than a year to go for the presidential elections, President Paul Kagame is now more persuasive and more calculating in whatever decision his government makes. For instance, before he signs any legislation into law, he gauges the public opinion on it.

References:

One credible interviewee emphatically said that In practical terms, the chief executive, who in Rwandan context is President of the Republic, explains and gives reasons in general public interests for his government's policy decisions, and he must do that within the confines of law"—Dr. Devis Kashaka, Coordinator of the Forum for Activists Against Torture (FACT) a local human rights NGO, interview September 30.

Arthur Asimwe, political editor, The New Times says: "The President has always explained the rationale of the government's policy decisions in public addresses. And even where certain policy decisions are not clear to the public, the media challenges

him in his now 'traditional monthly' press conferences." (September 27).

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

27b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

In law, the supreme court representing the judicial arm of the state can review the actions of the executive under Article 145 of the constitution. Section 3 of this article mandates the court to make rulings on the constitutionality of organic laws and decrees establishing internal regulations of the executive. The court is also mandated to hear petitions on the constitutionality of laws and decrees in section 5 while it can also resolve, upon request, disputes relating to powers arising between state organs.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

27c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

References:

According to one reliable interviewee, The judiciary can review certain executive actions which are not politically sensitive, but it is limited in its effectiveness when it comes to challenging the executive issues because the Chief Justice and his team are nominees of the President"—Arthur Asiimwe observed in the interview.

Prof. Laurent Nkusi, former Minister, who is currently a University don and active politician with the Liberal Party says: "The judiciary may be slow to act and is unwilling to take on politically sensitive issues because, although their powers are protected by

the law, they fear being replaced under unclear circumstances.” He added: “After all, weren’t their candidatures to the post proposed by the President?”

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

27d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Currently, only the head of state and his entourage, premier, the President of the Senate, the Speaker of Chamber of Deputies and Chief Justice use vehicles with government number plates. Other of the few public institutions that have a number of government vehicles are the army, national police and national prisons service.

References:

In practice, according to credible interviewees President Kagame limits the use of executive orders for establishing new regulations, policies, or government practices. Professor Laurent Nkusi cites examples of when the President initiated an education policy introducing English as the language of instruction in higher learning institutions instead of French which had been used before.

Arthur Asimwe (referred to above) also cites the recent government move that auctioned almost all government vehicles and obliged the majority of the officials to acquire their own vehicles at subsidized costs: The Government was spending billions on maintenance because of the officials’ carelessness; they didn’t incur costs, but now they are very calculating because the vehicles are private.”

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

28. Is the executive leadership subject to criminal proceedings?

50

28a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

In law, the Rwandan constitution, Article 98, provides that the President of the Republic is the Head of State. He or she is the guardian of the Constitution and guarantees national unity. He or she guarantees the continuity of the state, the independence and territorial integrity of the country and respect of international treaties and agreements and shall only be prosecuted for crimes he or she allegedly committed after their final term of office.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

28b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

References:

According to the Rwandan Constitution, only a former head of state can be prosecuted for crimes he allegedly committed after expiration of his mandates, but government officials may be obliged to resign by the relevant appointing authorities and stand for criminal or civil liabilities pursuant to legal procedures under the code of criminal, administrative, civil and commercial procedures.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

29. Are there regulations governing conflicts of interest by the executive branch?

44

29a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

According to Article 182 of the constitution, the heads of state and government are obliged to faithfully declare their assets by filing asset disclosure forms and submitting the forms to the office of the Ombudsman upon taking up and upon leaving office.

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

29b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

In law, ministerial-level officials are required to file a regular asset disclosure form. Article 182, paragraph 3, obliges the Ombudsman's office to request and examine declaration of assets from cabinet ministers, legislators, judges, heads of public institutions, accountants, governors, mayors, heads of departments and any any other civil servants determined by law to file asset disclosures before June 30 of every year.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

29c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

References:

In law, there are no specific regulations governing gifts and hospitality offered to members of the executive, unlike the legal obligation to regularly declare assets to the office of Ombudsman. However, according to information minister Louse Mushikiwabo, a code of conduct document for all senior government officials is being designed.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

29d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

In law, the office of Ombudsman is empowered by the constitution under Article 182 and section 3 of the law on the organization and functions of the office of the Ombudsman. The office is mandated to receive and examine the validity of declared assets. The office has discretion to take punitive actions accordingly (paragraph 7).

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

29e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

There is no legal provision that restricts heads of state and government and ministers from entering the private sector after they leave their government appointments.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

29f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

References:

According to reliable interviewees, in practice, there are no regulations that restrict post-government private sector employment for heads of state and government and ministers. Although by law the former heads of state are entitled to a retirement package, they are at liberty to engage in private business”—Prof. Laurent Nkusi in an interview mentioned above.

According to Victor Mugalura, a journalist for Rwanda Development Gateway, “There are a big number of former cabinet ministers who are no longer in public service, who are now doing their own private business” Mr. Mugalura was citing the case of Dr. Sam Nkusi, a former state minister for infrastructure, who was sacked two years ago after his involvement in a tender scam.

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no cases or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if heads of state and government or minister are allowed to hold private sector jobs while in office.

29g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, the regulations governing gifts and hospitality offered to members of the executive branch are not effective. Actually, according to the minister of information Louse Mushikiwabo, The regulations that were expected to be codified in the code of ethics will be strictly implemented after approval of the legislature.”

According to Ignitius Kabagambe, Director Ministry of Information, in an interview on September 25: “It’s high time that restrictions governing gifts and hospitality offers are give serious attention because they can cause temptation.” He added that the code of ethics document must include disciplinary measures against any public official who is caught accepting such offers.

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside

interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

29h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | **50** | 25 | 0

References:

In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

According to Umunyana Charity, communications officer for Office of the Ombudsman said in an interview on September 30: All the asset declarations are carefully cross-examined.” She added that a number of personalities who gave inaccurate declarations have been relieved of their duties. Edwin Agaba, a journalist for the Business Daily newspaper, said he personally knows of a number of senior public officials who were tasked to reveal the actual sources of funds they used to acquire estates, adding the bank loans he sought were closely checked.

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

30. Can citizens access the asset disclosure records of the heads of state and government?

19

30a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

References:

In law, citizens cannot access the asset disclosure records of the heads of state and government. Pursuant to article 7 section 5 of the constitution governing the organization and functions of the Ombudsman’s Office, faithfully declared assets shall be kept

confidential unless the official in question is being prosecuted for corruption-related offenses; only the chief justice or prosecutor general can seek access to the declared assets of the accused during prosecution.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

30b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens cannot access the asset disclosure records of the heads of state and government within a reasonable time period. According to Ngirishuti Vedeste, a legal officer, Office of the Ombudsman in an interview held on October 1, It's illegal for us to disclose asset records of any public officer to citizens unless it is in regard to a criminal offense; only the judicial personnel can request their records.

Felly Kimenyi a journalist for The New Times confessed, "I have even tried to access asset records of a public official under investigation, but the ombudsman Dr. Tito just laughed at me, saying I was very ignorant."

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

30c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

According credible sources, in practice, citizens cannot access the asset disclosure records of the heads of state and government at a reasonable cost. Umurerwa Kellen, public relations officer, Office of the Ombudsman said on September 29 that, Citizens can only access the asset disclosure records through the public prosecutions office of the Chief Justice in cases where an official is facing corruption charges in in court. She added that otherwise the declared assets remain confidential.

Chris Kayumba, a journalism lecturer, National University of Rwanda, says: "Accessing the assets disclosure records of heads of state and government may create mistrust between the leaders and their subjects." He hastened to add: "Provided the Prosecutor General's office and the judiciary are legally authorized access to asset disclosure records of criminal suspects for investigation, then there is no need for citizens to demand access" (October 2 interview in Butare).

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

30d. In practice, the asset disclosure records of the heads of state and government are of high quality.

100 | 75 | 50 | 25 | 0

References:

In practice, the asset disclosure records of the heads of state and government are of high quality and indisputable according to according to Dr. Tito Rutaremara. The head of state has always shown an exemplary integrity and declared his assets before any other official and this has no doubt made it easy for this office to get the filed disclosure forms on time" he said in an interview referred to earlier.

Dr. Devis Kashaka, coordinator of Forum for Activists Against Torture (FACT; interview referred to earlier) says: "It's only trustworthy leadership manifested in the last decade that has improved the livelihood of ordinary citizens after the catastrophic events of four years of war and genocide that claimed hundreds of thousands of innocent people." He added that if the code of leadership ethics is made public in a gazette, it will strengthen transparency and accountability among government officials.

100: The asset disclosure records of the heads of state and government are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the heads of state and government contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the heads of state and government are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals' sources of income, investments, and other financial assets.

26. In law, can citizens sue the government for infringement of their civil rights?

26. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

References:

A citizen's liberty is guaranteed by the State.

In law, according to the constitutional provisions in Chapter 1 on fundamental human rights (Articles 18 and 19), no one shall be subjected to prosecution, arrest, detention or punishment on account of any act or omission which did not constitute a crime under the law in force at the time it was committed.

Article 19 stipulates that every person accused of a crime shall be presumed innocent until his or her guilt has been conclusively proved in accordance with the law in a public and fair hearing in which all the necessary guarantees for defense have been made available.

Article 21 guarantees rights to citizens to sue any government official or organ for infringement of their civil rights in a competent court of law.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

50

31. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Human Rights Watch has recently warned of increased attacks on opposition party officials:
<http://www.hrw.org/en/news/2010/02/10/rwanda-end-attacks-opposition-parties>

References:

In practice, official government functions are kept separate and distinct from the functions of the ruling political party. Throughout the past 15 years, the style of leadership of the ruling Rwandan Patriotic Front (RPF) has been all inclusive, the ruling party has independent party leadership structures and party affairs are private assignments to the president and other members who may be in government," Professor Laurent Nkusi, member of the opposition argued.

Jonathan Mugisha, program manager, World Vision, observed: "One thing here in Rwanda, there are no controversial party politics and this allows government officials to concentrate on their official duties- they do not mix party politics with official assignments" (Interview, September 25 in Kigali).

John Bosco Gasasira says: "We only come to hear of multi-party activities when parliamentary and presidential elections are about to occur; government officials only get involved during the official campaign calendar schedule," he commented in an interview (referred to earlier).

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

32. Can members of the legislature be held accountable for their actions?

92

32a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

In law, the judiciary can review laws passed by the legislature pursuant to article 145 of the constitution; the jurisdiction of the Supreme Court is provided for in the constitution and other laws and includes, inter alia, a section 3 ruling on the constitutionality of organic laws and laws establishing the internal regulations of each Chamber of Parliament before the laws' promulgation.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

32b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

References:

In practice, when necessary, the judiciary reviews laws passed by the legislature: For purposes of verifying the constitutionality of the laws, normally, the organ that is consulted when a complaint arises on any legislation is the supreme court," Emmanuel Butare, a lawyer and lecturer at Université Libérale de Kigali stressed in an interview September 29.

Johnston Busingye, a judge of the high court, emphasized: "It's only the supreme court that reviews the constitutionality of any legislation and, in practical terms, even the president of the republic consults the chief justice before appending his signature to the laws."

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

32c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

In law, members of the national legislature subject to criminal proceedings, under the constitution Article 44, the judiciary as a guardian of the rights and freedoms of the public ensures respect thereofin accordance with procedures determined by law. articles 16 provides that all human beings are equal before the law and shall enjoy without any discrimination, equal protection of the law. Under section 15 of the parliamentary internal rules and regulations, the legislature is obliged to waiver immunity of any legislator subjecting his/her criminal proceedings like any other ordinary citizen.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings. A NO score is also earned if the legislative branch itself controls whether investigative or prosecutorial immunity can be lifted on members of the legislature.

33. Are there regulations governing conflicts of interest by members of the national legislature?

33a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

In law, members of the national legislature are required to file an asset disclosure form. Pursuant to article 182 of the constitution, the Ombudsman's Office receives the faithful declaration of assets of other government officials from members of the national legislature. Article 7 of the law establishing the Ombudsman's Office states that faithful declaration of assets forms by parliamentarians and others designated by law shall be submitted not later than June 30 of every year and when they leave office within a period not exceeding 15 days.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

33b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | NO

References:

There is no restrictions in the law for national legislators entering the private sector after leaving the government. In fact, even when they are still in government, they are free to establish business enterprises managed by their family members provided that the business venture does not conflict with their day-to-day responsibilities in the legislature. During their term of office they may not engage in any other regularly salaried duties in public institutions. Unlike in other countries where legislators may also be cabinet ministers, a minister of parliament (MP) cannot be a minister in the government at the same time.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

33c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

References:

In law, there are no regulations governing gifts and hospitality offered to members of the national legislature. After the code of ethics bill is approved by both chambers of the legislature, it will be prohibited for most government officials to receive certain gifts and hospitality offers.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

33d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

References:

In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature. As indicated earlier, the Office of the Ombudsman, under constitution Article 182 and the law establishing the office in article 7, the office is mandated to receive and audit all the disclosure forms.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

33e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

References:

According to trustworthy interviewees, Being a legislator in Rwanda is one of the most relaxed jobs; you can have ample time to attend to private business ventures; it's one of the most highly paid jobs and it enables office holders to save for future private investment" according to Emmanuel Butare (quoted earlier).

Andrew Butare, Country Director, Christian Aid says: "Being a member of parliament is the most enviable post; you serve for over five years, create credible national and international contacts and make tangible business investments."

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no cases or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if legislators are allowed to hold private sector positions while in office.

33f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, the regulations governing gifts and hospitality offered to national legislators are not effective. Hopefully, they will be effective once they are in place but right now they are not. How do you expect something to be effective when it doesn't exist?" Emmanuel Butare wondered.

John Bosco Gasasira says, "Hospitality offers or gifts are highly encouraged in our Rwandan culture; the exchange of cows, goats or any gifts during special occasions is a cherished interactive gesture."

100: The regulations governing gifts and hospitality to national legislators are regularly enforced. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

33g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman's office audits the asset disclosures of legislators.

The legislators do not fear auditing because their day-to-day business does not involve the use of public funds, just legislating. When they are on official missions, both foreign or domestic, the funds are handled by accounting department of the legislature which is accountable to an external audit.

References:

In practice, national legislative branch asset disclosures are audited. The legislators have almost nothing to embezzle, except those few in the administrative bureaus like speakers, vice speakers and secretaries,” said Dr.Aron Makuba, a former minister of parliament (MP). “The easiest assignment for auditors is auditing the legislative branch because they are not worried about any asset disclosures”

Kalisa Swaibu, head of the accounts section, Office of the Ombudsman, confirmed in an interview on September 15, that the legislative branch asset disclosures are audited. In other words, public funds that are designated to the parliament are under direct supervision of the aforementioned bureau members and the accounts section who are solely answerable to Auditor Generals office.

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

34. Can citizens access the asset disclosure records of members of the national legislature?

19

34a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

References:

In law, only the judiciary and public prosecutions office can access the asset disclosure records of members of the national legislature under constitutional provisions in case any public officials are being investigated on charges of abuse of office, corruption and its related crimes.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

34b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens cannot access legislative asset disclosure records within a reasonable time period according to interviewees: It's illegal for the Ombudsman Office to disclose confidential asset disclosures to ordinary citizens; the law is very clear," Kalisa Swaibu, Chief accountant, Ombudsman Office, stressed.

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

34c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Citizen access to legislative asset disclosure records is forbidden according to the law and interviewees.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

34d. In practice, the asset disclosure records of members of the national legislature are of high quality.

References:

In practice, the asset disclosure records of members of the national legislature are of high quality, according to Kalisa Swaibu, Chief Accountant, Ombudsman office: The majority of legislators' asset disclosure records are of high quality, mainly because there are not the temptations regarding corruption temptations when compared to other public officials."

100: The asset disclosure records of members of the national legislature are complete and detailed, providing the public with an accurate and updated accounting of the individuals' sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the members of the national legislature contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the members of the national legislature are overly general, lack any meaningful detail, and do not provide clear accounting of the individuals' sources of income, investments, and other financial assets.

35. Can citizens access legislative processes and documents?

33

35a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

In law, citizens can access records of legislative processes and documents. according to article 66 of the constitution: The meetings of each Chamber of Parliament are public.

However, each chamber may decide, by absolute majority of the members present, to sit in camera at the request of either the president of the republic, the president of the Senate or the speaker of the Chamber of Deputies or a quarter of the members of either Chamber or the prime minister.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there are exemptions to the general right that are not clearly defined by formal rules.

35b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

According to head of the Communications Department Augustin Hitimana: There has never been such a request by ordinary citizens asking to access the legislative records of legislative processes and documents” he said in an interviewed (referred to earlier).

Edwin Musoni, a senior journalist at The New Times who covered parliamentary sessions, said: “Why access records of legislative processes and documents when the sessions are conducted publicly? If there is any controversial issue under debate, no body is denied entrance to the session.”

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

35c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The interviewees quoted above insisted that access to the records of legislative processes and documents requests have never been made in the past.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

36. Are judges appointed fairly?

92

36a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

In law, there is a transparent procedure for selecting national-level judges. Pursuant to Article 147 of the constitution, the president and vice-president of the supreme court are elected by the Senate for a single term of eight years by simple majority votes from two candidates in respect of each post proposed by the president of the republic, after consultations with the cabinet and the superior council of the judiciary.

Article 148 also empowers the president of the republic, after consultations with cabinet and the superior council of the judiciary, to submit to the Senate a list of appointment as judges of the supreme court. The candidates are then elected by absolute majority votes of the senate.

Also, under section 3 Article 157 of the constitution, a superior council of the judiciary is established to, among other things, take decisions relating to the appointment, promotion, or removal from office of the career judges and, in general, management of the career and discipline of judges, with the exception of judges of the military courts and the president and vice president of the supreme court.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

36b. In practice, professional criteria are followed in selecting national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

All the judicial practitioners today a university law degree holders, less that 20 per cent the so-called English-speaking returnees.

References:

In practice, professional criteria are followed in selecting national-level judges according to trustworthy professional interviewers.

For one to be appointed a judge of the supreme court, the candidate must have at least a bachelors' degree in law, 15 years experience in judicial career, or be holders of doctoral degrees with seven years of experience in a legal career," Justice Johnston Busingye stressed in an interview. He added that the other judges at the national level are appointed or promoted by the superior council of the judiciary depending on candidates' resumes.

Emmanuel Butare, an academic (referred to above) stressed that "the superior council of the judiciary is a very impartial body, having representatives from the first instance to the supreme court, which deploys representatives according to the criteria and professional experiences of the judges."

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

36c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | **NO**

References:

As indicated earlier, the president of the republic, after consultation with the cabinet and the Superior Council of the Judiciary, submits to the Senate a list of candidates for appointment as judges of the Supreme Court. The list usually has two candidates per post for which there is an election. The candidates shall be elected by an absolute majority vote of the members of the Senate as provided in Article 148 of the constitution. With regard to other national level judges, the Superior Council of the judiciary, which is well represented at all levels judiciary appoints other judges at all levels.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency or entity independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by the same body that appoints the judges (such as the Prime Minister approving judicial nominees put forward by the Minister of Justice, both of whom are part of the executive).

37. Can members of the judiciary be held accountable for their actions?

88

37a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

In law, members of the national-level judiciary are obliged to give reasons for their decisions. According to provisions of article 140, paragraph 4, judicial decisions are binding on all parties concerned, be they public authorities or individuals. They shall not be challenged except through ways and procedures determined by law. However, the proceeding Article 141, paragraph 2, states that every court decision shall indicate the grounds on which it is based, be written in its entirety and shall be delivered in open court.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

37b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

References:

In practice, members of the national-level judiciary give reasons for their decisions. In an interview with Usta Kayitesi, a lecturer faculty of law, national university of Rwanda September 25: In principle and practice a judge must base his decision on nothing else but on the law." She added that the legal grounds must be clarified and explicit in the judgment.

Juckline Karigirwa, a professional lawyer and permanent secretary at the Ministry of Justice explained in an interview on September 30 at the ministry offices: "Courts apply orders and regulations only where they are not inconsistent with the Constitution and other laws as clearly stipulated in article 141, paragraph 3, of the constitution."

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

37c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

There is a disciplinary agency (or equivalent mechanism) for the national-level judicial system. Under section 3, Article 157 of the constitution, a Supreme Council of the Judiciary has a mandate (indicated above).

Article 158 states that the Supreme Council of the Judiciary is composed of :

- 1: the President of the Supreme Court, who is the chairperson;
- 2: the Vice-President of the Supreme Court;
- 3: a judge of the Supreme Court elected by his or her peers;
- 4: the President of the High Court of the Republic;
- 5: one Judge from each Provincial Court and the City of Kigali court elected by his or her peers;
- 6: one Judge of a District, Municipality or Town Court elected by his or her peers from the territorial jurisdiction of each Provincial Court and the Kigali City Court;
- 7: two deans of the Faculties of Law of recognized universities, elected by their peers;
- 8: the President of the National Commission of Human Rights;
- 9: the Ombudsman.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary. A YES score can still be earned if the judicial disciplinary agency (or mechanism) is internal to the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

37d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

Comments:

It's my humble professional conviction that on the basis of the constitutional provision cited above, the supreme council of the judiciary has the mandate: 2: to take decisions relating to the appointment, promotion or removal from office of judges and management of the career in general and discipline of judges with the exception of judges of the military courts and President and Vice-President of the Supreme Court; 3: to advise on all proposals relating to the establishment of a new court or bill governing the status of judges and other judicial personnel. This means that the appointing authority must consult the council before sacking a judge.

References:

In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

On the basis of article 157 of the constitution, the Supreme Council of the Judiciary has the following functions:

- 1: to examine and, either on its own initiative, or upon request by another organ, to give advice on matters relating to the functioning of the justice system;
- 2: to take decisions relating to the appointment, promotion or removal from office of judges and management of the career in general and discipline of judges with the exception of judges of the military courts and President and Vice-President of the Supreme Court;
- 3: to advise on all proposals relating to the establishment of a new court or bill governing the status of judges and other judicial personnel.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is protected from political interference by the executive and legislative branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an executive ministry or legislative committee.

37e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations. According to Justice Johnston Busingye, a member of the council in an interview referred to earlier: We do initiate investigations on any alleged professional indiscipline of a given judge; take decisions relating to the appointment, promotion or removal from office of judges; and management of the career in general and discipline of judges, with the exception of judges of the military courts and the President and Vice-President of the Supreme Court.”

Emmanuel Butare, a lawyer and university lecturer, quoted earlier, says: “The supreme council of the judiciary is primarily a disciplinary mechanism to monitor the professional integrity of the legal fraternity and it would be a shame if investigations on any alleged misconduct of a judge is initiated by an outsider.”

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies’ investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

37f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

In practice, when necessary, the supreme council of the judiciary imposes penalties on offenders.

Justice Busingye Johnston says: We have indeed imposed penalties to erratic judges in the recent past; two of them were removed from the bench in disgrace on accounts of soliciting bribes. However,,” he clarified, “the penalties imposed are provided under an organic law that determines the organization, powers and functioning of the Supreme Council of the Judiciary.” he clarified.

George Kalisa, a free-lance senior journalist with Rwanda Dispatch magazine said in an interview on October 3, “True, the supreme council fulfills it mandate, but the judiciary was identified as being among the most corrupt institutions in the Auditor

Generals report issued July 2009. What has the council done to clean it's image?"

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

38. Are there regulations governing conflicts of interest for the national-level judiciary?

39

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

In law, article 182 paragraph 4 of the constitution, the Office of Ombudsman receives the faithful declaration of assets from the national-level judicial personnel, in addition to many other government officials who are explicitly identified before June 30 of every year.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

38b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

References:

In law, there are no specific regulations governing gifts and hospitality offered to members of the national-level judiciary. Actually,

in its annual report of 2008, the Office of the Ombudsman proposed a professional code of conduct for judges barring them from accepting gifts and hospitality offers.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

38c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

References:

In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary. Generally, Article 182 of the constitution and, specifically, article 7 paragraph 4 of the organic law on organization and function of the Office of the Ombudsman, obliges the office to carefully audit all the asset declaration forms of all public officials designated under the law, including national level judges.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

38d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

References:

In law, there are no restrictions for national-level judges on entering the private sector after leaving the government. Like any public official, judges at any level are at liberty to either work as private advocates or engage in a private initiative.

YES: A YES score is earned if there are regulations restricting national-level judges' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

38e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, There are no regulations restricting post-government private sector employment for national-level judges and the regulations must be there to be effective,” Hillary Musinguzi, a former district judge, now a private advocate stressed in an interview on October 2.

Shyaka Kanuma, managing editor of Rwanda Focus, insists that “the regulations restricting post-government private sector employment for national-level judges cannot be effective, even if they were in place.”

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no cases or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced. A zero score is also earned if judges are allowed to hold private sector jobs while serving on the bench.

38f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, if there were regulations governing gifts and hospitality that are offered to members of the national-level judiciary, they would be effective but there is no regulation in the first place” Shyaka Kanuma, managing editor of Rwanda Focus, emphatically stressed.

While Hillary Gumisiriza (referred to above) says, “I wish the regulations were instituted to ensure checks and balances on their degree of professionalism.”

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

38g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

References:

In practice, national-level judiciary asset disclosures are effectively audited like those of any other public officials,” according to Kalisa Swaibu, chief accountant, Office of the Ombudsman (quoted earlier) said.

But in the annual report of 2008, it was revealed that a number of the judges’ asset declarations contained contradictory information.

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

39. Can citizens access the asset disclosure records of members of the national-level judiciary?

6

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

References:

In law, citizens cannot access the asset disclosure records of members of the national-level judiciary and other senior public officials designated by the law. The law on the organization and functioning of the office of the ombudsman, Article 7 paragraph 5, faithful declaration assets shall be confidential. Only the Chief Justice and the prosecutor general can request assets declaration forms from the office in the public interest.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

39b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, Citizens can ONLY access judicial asset disclosure records through public prosecutions office and the judiciary when investigating alleged embezzlement or corruption against any suspect within a reasonable time period.”

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

39c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

In practice, Citizens can only access judicial asset disclosure records through the public prosecutions office or the chief justice’s office when any official who is under obligation to declare assets is accused of embezzlement and involvement in a corruption-related case at a reasonable cost,” Kalisa Swaibu, Chief Accountant, Ombudsman Office, stressed.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

39d. In practice, the asset disclosure records of the national-level judiciary are of high quality.

100 | 75 | 50 | **25** | 0

References:

In practice, The asset disclosure records of the national-level judiciary contained useful information on their assets but some judicial personnel did not provide a clear accounting of their sources of income and other financial assets,” Kalisa Swaibu, office of ombudsman (quoted above) said.

Meanwhile, the annual report of 2008 indicated that the assets declaration records for the judicial personnel are of high quality.

100: The asset disclosure records of the national-level judiciary are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of the national-level judiciary contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of the national-level judiciary are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals’ sources of income, investments, and other financial assets.

III-4. Budget Processes

40. Can the legislature provide input to the national budget?

83

40a. In law, the legislature can amend the budget.

YES | NO

References:

Pursuant to section one, article 4 of Organic Law No.03/2005 determines the methods that the parliament uses to obtain information and exercise oversight of government actions: The methods of obtaining information and exercising oversight of Government action set out in this organic law are applicable to the Prime Minister, Ministers, Ministers of State or other members of the Government.”

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

40b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

References:

In practice, significant public expenditures require legislative approval, according to Dr.Makuba Aron, former member of parliament explained in an interview (referred to earlier): Most government expenditures are contained in the annual budget that MUST be approved by the legislature” he said and added that even all sorts of amendments to the budget are reviewed in parliament.

Edwin Musoni, senior journalist at The New Times, said: “Every year the minister of finance must present an annual budget to parliament for approval, and that budget cannot be approved if there is any unresolved issue in the previous annual expenditure.”

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive’s personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

40c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

References:

In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes according to Aron Makuba, member of Rwandan Social Democratic Party and former member of parliament.

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

41. Can citizens access the national budgetary process?

25

41a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

References:

In practice, the national budgetary process is conducted in a transparent manner in the debating stage according to Augustin Hitimana, communications officer in parliament: After the finance minister has presented the proposed annual budget, the speaker opens it for a lengthy debate; the legislators are free to challenge, ask questions or seek clarification from the minister. before final approval".

Edwin Musoni, a senior journalist at The New Times, said, "I usually enjoy their debate on the budget because that where I get a number of 'hot stories' of the year."

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

41b. In practice, citizens provide input at budget hearings.

References:

In practice, according to the interviewees indicated above, citizens do not provide input at budget hearings. There is a public, diplomat and journalist galleries in parliament but no input from any of them,” Edwin Musoni, a senior journalist at The New Times said.

The communications officer also concurred with Musoni’s view.

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

Comments:

From the Open Budget Index 2008:

In Rwanda, the proposal is not made available to the public, meaning citizens do not have a comprehensive picture of the government’s plans for taxing and spending for the upcoming year. The proposal is only available internally and to budget support donors.

Moreover, it is very difficult to track spending, revenue collection and borrowing during the year. Rwanda does not publish its in-year reports or a mid-year review. Publishing these documents would greatly strengthen public accountability, since they provide updates on how the budget is being implemented during the year.

It is also difficult to assess budget performance in Rwanda once the budget year is over. A year-end report is not typically released, preventing comparisons between what was budgeted and what was actually spent and collected.”

References:

In practice, citizens cannot access itemized budget allocations. The interviewees (quoted above) all explained that itemized budget allocation can only be accessed by journalists and diplomats.

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

43. Is the legislative committee overseeing the expenditure of public funds effective?

58

43a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | **25** | 0

References:

In practice, department heads are not answerable to parliament. Only ministers or deputy ministers regularly submit reports to this committee according to Augustin Hitimana, the parliamentary communications officer and Edwin Musoni, a senior journalist at The New Times.

The department heads may only accompany the minister and assist with additional information where necessary.

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

43b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | **75** | 50 | 25 | 0

References:

In practice, the committee acts in a nonpartisan manner with members of opposition parties serving on the committee in an equitable fashion, according to reputable sources: Actually, the president of the committee, Hon. Augustin Iyamuremye, belongs to the opposition PSD party” Edwin Musoni, a senior journalist at The New Times revealed.

“True, opposition MPs a minority, but they are usually evenly allocated in committees” Augustin Hitimana, the communications officer, clarified.

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee’s work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members’ ability to shape the committee’s activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

43c. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

In practice, when necessary, this committee initiates independent investigations into financial irregularities, according to the communications officer. According to Edwin Musoni, a senior journalist at The New Times, most investigations are initiated at the individual level of the legislators, depending on media reports. The legislators initiate a motion in the plenary session, which passes a resolution for investigations.

Makuba Aron, a former MP and opposition politician, says a member of the committee can initiate a sort of investigation. The media can obtain information via the Auditor General’s reports and the Ombudsman’s Office.

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

Comments:

The Open Budget Index for Rwanda 2008 reports that this role is also filled by the Auditor General. (<http://www.openbudgetindex.org/cms/index.cfm?fa=view&id=2424&hd=1>) The Auditor General's office, which is only eight years old, has managed to monitor over 85 percent of public expenditures, according to their 2007 annual report.

References:

In law, specifically section 4 article 24 of the organic law cited earlier, the State finances and budget committee is a separate legislative committee which provides oversight of public funds.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

Category IV. Administration and Civil Service

IV-1. ⁸⁰ Civil Service Regulations

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

In law, there are regulations requiring an impartial, independent and fairly managed civil service. According to article 126 of the

constitution, public servants shall be recruited, posted and protected in conformity with the principles of equality through an objective, impartial and transparent system on the basis of the competence, merit and integrity of applicants of both sexes. Article 181 establishes a public service commission that is an independent public institution whose responsibilities include recruitment and appointment of public servants in central government or other public institutions.

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

44b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service. Pursuant to article 181, paragraph 4, the management and personnel of the public service commission are prohibited from seeking or accepting instructions from private persons or public officials from outside the commission. Again, section 1, article 3 of the organic law 26/2005 on the organization and functioning of the commission obliges it to operate impartially without fear or favor within the confines of the constitutional provisions aforementioned.

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

44c. In law, there is an independent redress mechanism for the civil service.

YES | NO

References:

In law, there is an independent redress mechanism for the civil service. Under the Rwandan general statutes for public service Law No. 22/2002 of Sept. 7, 2002 in its article 73, a government employee enjoys all rights and liberties recognized by every citizen. He or she exercises them within the framework of laws and regulations in force.

Article 96: Any Government employee who considers himself/herself a victim of prejudice, has the right to introduce an administrative appeal or legal appeal.

Article 97: An administrative appeal is introduced at the first level to the superior hierarchical authority and at the second level to the Public Service Commission (PSC), within a period which does not exceed thirty (30) days from the date the concerned person was notified of the decision.

Article 98: The hierarchical authority or the Commission referred to must give a ruling within thirty (30) days from receipt of the request, beyond which the queried decision is null and void.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. The mechanism should be independent of their supervisors but can still be located within the government agency or entity (such as a special commission or board). Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists, or if the only recourse civil servants have is directly through the courts.

44d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

In law, civil servants who are convicted of corruption are prohibited from future government employment pursuant to articles 3, paragraph 9. The Ombudsman's Office is mandated to identify and make public the list of persons definitively convicted for corruption and other related offenses and the sentences they received so that they can be barred from public service.

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist or if the ban is not a lifetime ban.

45. Is the law governing the administration and civil service effective?

61

45a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

In practice, civil servants are protected from political interference. According to Angelina Muganza, Executive secretary, Public Service Commission (PSC): Appointment or competition for any public service post is done according to recruitment criteria. Under the law, the commission is independent and impartial, so there is no political interference whatsoever"—Interview on September 30.

But according to Dr. Aron Makuba, opposition politician and former MP, "In principle, the public services code is impartial and fair, but in practice, the ruling party gives the lion's share of public service and public institutions posts."

Marcel Museminali, Marcel Museminari, Managing Editor, The Business Daily, interview, Aug. 20: "Of course, the chief executive and his cabinet must make serious political appointments in the civil service and management of key public institutions."

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

45b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

In practice, Civil servants are appointed and evaluated according to the labour law and professional criteria. The fundamental obligation is for us to establish an appropriate system of candidate recruitment that is objective, impartial, transparent and equitable for all, or else, the victims humiliate us in courts of law," the executive secretary (referred to above) explains.

But Dr. Alphonse Ngagi, a dean of law at, Kigali private university, (September 30 interview) says: "True, appointment and evaluation of civil servants has been streamlined according to professional criteria but you cannot rule out nepotism and favoritism based on ethnic and political considerations by appointing authorities."

Shyaka Kanuma, Managing Editor, Rwanda Focus, (referred to earlier) said: "Impartiality in civil service management has tremendously improved but you cannot rule out political interference in most senior appointments."

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

45c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

In practice, Civil service management actions are not based on nepotism, cronyism, or patronage and the public service law is very clear: Only specialized categories, such as political appointees, national police, army, prison recruitments, appointments and promotions are done according to specialized laws due to their peculiar nature. But for the civil servants who are governed by the general statutes for public service, there is no room for unfair treatment,” the executive secretary stressed

Dr. Alphonse Ngagi, a dean of law, Kigali private university, (September 30 interview) said there is a high degree of impartiality but cases of nepotism and patronage cannot be ruled out completely.

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

45d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

References:

In practice, according to Angelina Muganza, the executive secretary of the Public Service Commission (PSC): All civil servants have very clear job descriptions because this commission has as its main mandate to maintain in the Rwanda Public Service:

1. objectivity and neutrality in recruitment and management of human resources;
2. respect of discipline and professional ethics;
3. respect of standards, methods, and procedures of an efficient management to guarantee a better output in public services in conformity with law texts and administrative deeds in force;
4. promotion and harmonization of efficient methods and practices in the management of various government services.

But according to Marcel Museminari, Managing Editor, The Business Daily, (interview, Aug. 20), “I have personally witnessed a case where the government lost over 10 million francs [US\$17,513] in compensation damages to a senior civil servant who was transferred under clear criteria and then later dismissed contrary to the public service law.” He added that such cases are still rampant.

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable representation of positions in terms of a person’s authority, responsibility and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

45e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | **50** | 25 | 0

References:

In practice, civil servant bonuses constitute only a small fraction of total pay according to Alexis Kamanzi, a director in public service and labour ministry(Interview, October 1). Bonuses are rarely obtained in civil service and constitute a small fraction. He hastened to add that bonuses are regularly granted in semi-autonomous institutions that make tangible gains toward their annual targets, like the Rwanda Revenue Authority (RRA).

Mugisha James, an employee of the Auditor Generals Office (interview September 29) confessed, "We usually get a bonus of one month's salary at the end of every year."

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

45f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | **25** | 0

References:

In practice, the government does not publish the number of authorized civil service positions along with the number of positions actually filled, according to Alexis Kamanzi, a director in public service and the Labor Ministry (interview, October 1). Rather, they advertise positions they have to offer, along with the required qualifications and criteria for applications.

Daniel Rebero, marketing officer for Contact Radio (interview October 3) said that all vacant positions in public service and institutions must be advertised and competed for based on fair criteria.

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

45g. In practice, the independent redress mechanism for the civil service is effective.

100 | **75** | 50 | 25 | 0

Comments:

All complaints of mistreatment of civil servants must be addressed to the Public Service commission and later to the competent courts of law if the complainants are not satisfied with the commission's resolution. On the part of complainants from the private sector, the complaints are procedurally expected to address their cases to the District Inspector of Labour before filing a law suits to the competent courts.

References:

In practice, the independent redress mechanism for the civil service is effective, according to Matre Athanase Rutabingwa (interview September 30): There is a legal saying that the law benefits the vigilant; this means that if you do not stand up for your rights, they will be not be respected." He added that the labor law is clear and its beneficiaries must play a role in its enforcement through the independent redress options.

But Thomas Kegera, an editor for Rwanda Dispatch Magazine (interview September 25) said that there is an effective redress mechanism for the civil service unlike in the private sector where employers do not respect the rights of the employees.

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

45h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

The only delay in the payment of salaries of all public service employees was on June 10 for the month of May due to global financial crisis, according to the finance officer mentioned above.

References:

In practice, in the past year, the government has paid civil servants on time according to Prof. Laurent Nkusi (interview in Butare): I have been able to move to several countries on the African continent and no government pays its employees as promptly as they do here in Rwanda. It is now a tradition that by the 25th of every month, civil servants' salaries are on their bank accounts."

Godfrey Birungi, finance officer, the Ministry of Finance confirmed this, saying that the latest that month employees' salaries were remitted was June 10 due to constraints caused by the general global financial crisis.

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

45i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

In practice, civil servants who are convicted of corruption are prohibited from future government employment.

Geoffrey Barigye, an engineer and former Mayor in the Gatsibo District (interview, September 21 at Nyagatare, Western Province) said, I cannot waste time applying for a government post because in principle and practice I do not deserve it." He had been arrested, prosecuted, convicted and sentenced to five years imprisonment for embezzlement of public funds.

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective. Some bans are only temporary.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

46. Are there regulations addressing conflicts of interest for civil servants?

36

46a. In law, senior members of the civil service are required to file an asset disclosure form.

YES | NO

References:

In law, senior members of the civil service are required to file an asset disclosure form pursuant to article 182, paragraph 4, of the Constitution and 7 of the law on the functioning and organization of the Office of the Ombudsman.

All senior public civil servants, like other categories that are designated by law, are expected to submit faithful declaration of assets no later than June 30 of every year and when they leave office within a period not exceeding 15 days.

YES: A YES score is earned if senior members of the civil service are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any senior member of the civil service is not required to disclose assets.

46b. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

In law, there are no specific provisional requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

46c. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

In fact, after the recent civil service reforms that laid off a large number on account of their low academic qualifications, those who were dismissed were given subsidized financial assistance to enable them to initiate private income generating projects in the private sector or to pursue further studies.

References:

In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

46d. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

In law, there are no general regulations that govern gifts and hospitality that are offered to civil servants, except for certain professional categories, like judges, prosecutors and police personnel; they are guided by the code of ethics that prohibits them from accepting offers of gifts and hospitality.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

46e. In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service.

YES | NO

References:

In law, there are requirements for the independent auditing of the asset disclosure forms of senior members of the civil service, pursuant to the Constitution, article 182 and Article 7 of the law on the organization and functioning of the Ombudsman's Office.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of civil service asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of civil service asset disclosures or if such requirements exist but allow for self-auditing.

46f. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, there are regulations restricting post-government private sector employment for civil servants according to some interviewees.

According to Emmanuel Butare, a lecturer at ULK private university and former civil servant: The civil service authorities can only deny you a chance to leave public service for a better private job, but once an employee has left civil service, he or she is at liberty to join the private sector without any obstacles.”

Angelina Muganza, Executive secretary, Public Service Commission (PSC), (interview, Sept. 30) says: “If the restrictions were there, they would be effective, but why impose restrictions when the employees have peacefully retired from public service?”

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no cases or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

46g. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, the regulations governing gifts and hospitality offered to civil servants are effective according to Harson Mutabazi, a magistrate of the Kigali Court of Higher Instance (interview, Oct. 3, Nyamirambo Suburb, Kigali): We in the legal fraternity work under a strict code of professional conduct; all gifts and hospitality offers are regarded as indirect bribes that may result in reciprocal favors.”

John Bosco Mutangana, a national prosecutor (interview Sept. 27) said: “If a relative or an intimate friend offers a gift at a wedding ceremony, that is understandable, but if a business tycoon lavishes a prosecutor or a judge with questionable hospitality, it has to be investigated.”

100: The regulations governing gifts and hospitality to civil servants are regularly enforced. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

46h. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

In practice, the requirements for civil service recusal from policy decisions affecting personal interests are not effective according to Muhikira Johnson, a senior public servant with the Ministry of Local Government (interview September 28): Most policy decisions are taken at cabinet level, so our participation at the under-ministerial level cannot be taken very seriously because the final decisions are resolved in cabinet meetings.”

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

46i. In practice, civil service asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman's office has the mandate and a competent accounting section that verifies the senior civil servants declared or undeclared assets against their wages to expose any contradictions and take punitive measures. In fact over 56 culprits including former Minister of Education Theoneste Mutsindashyaka have been suspended for underdisclosures while the minister has been convicted in courts and is serving a five years sentence.

References:

In practice, civil service asset disclosures are audited effectively to ensure that they are in conformity with the laws, according to Kalisa Swaibu, chief accountant, Office of the Ombudsman (quoted earlier): "Otherwise, it would be meaningless if the filed asset disclosure forms were received but not verified."

But Felly Kimenyi, a senior journalist (quoted earlier) says: "I think the Office of the Ombudsman does not effectively audit all of the asset disclosure forms; they even complained of having an insufficient workforce in their annual report of 2008, saying they have only 38 personnel. So, how do you expect them to effectively audit dossiers of over 3,000 senior government officials?"

100: Civil service asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Civil service asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Civil service asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

47. Can citizens access the asset disclosure records of senior civil servants?

25

47a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

References:

In law, citizens can only access the asset disclosure records of senior civil servants through the National Prosecutions Office or the chief justice when they are investigating alleged embezzlement or corruption cases in the public interest.

Otherwise, Article 7 paragraph 5 of the law governing the Ombudsman's Office provides that faithfully declared asset records of public officials shall be kept in confidentiality for the access by the declarers and judicial authorities, as mandated by the law.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

47b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The law guarantee ordinary citizens access to asset disclosures of senior public officials. The asset declaration records can only be accessed by the prosecution and the judiciary when in suspected cases of corruption within their jurisdictions.

References:

John Bosco Mutangana, a national prosecutor (interview Sept. 27) says: When investigating any serious corruption scandals that involves senior government officials, the Chief prosecutor simply formally requests the dossiers from the Ombudsman's Office as required by the law and they do not hesitate. We get the access as soon as possible"

Justice Johnston Busingye, Judge of the High Court of the Republic (also quoted earlier) stressed: "As long as we make a formal request through the chief justice, any records requested are accessed in the public interest without delays."

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

47c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The law guarantees ordinary citizens access to asset disclosures of senior public officials. The asset declaration records can only be accessed by the prosecution and the judiciary when there are suspected cases of corruption within their jurisdictions.

References:

The interviewees mentioned above said the prosecutions and judiciary offices do not incur any costs to access the asset disclosure records for prosecuted officials apart from their transport to and from the Office of the Ombudsman.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

47d. In practice, the asset disclosure records of senior civil servants are of high quality.

100 | 75 | 50 | 25 | 0

References:

In practice, the asset disclosure records of senior civil servants are of high quality according to John Bosco Mutangana, a national prosecutor (interview Sept. 27) and Kalisa Swaibu, chief accountant, Office of the Ombudsman.

Arthur Asimwe, political editor, The New Times says: Most public officials do not declare all their property under their names; if they have sons and daughter who have reached majority age, they say this belongs to so and so or this belongs to my wife, so the declarations are just a formality.”

100: The asset disclosure records of senior civil servants are complete and detailed, providing the public with an accurate and updated accounting of the individuals’ sources of income, investments, and other financial interests.

75:

50: The asset disclosure records of senior civil servants contain some useful information but may be lacking important details, including politically sensitive investment or other financial arrangements in which the individual has an interest.

25:

0: The asset disclosure records of senior civil servants are overly general, lack any meaningful detail, and do not provide a clear accounting of the individuals’ sources of income, investments, and other financial assets.

IV-2. Whistle-blowing Measures

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

88

48a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

In law, civil servants who report cases of corruption, graft, abuse of power or abuse of resources are protected from recrimination or other negative consequences, pursuant to law No. 23/2003 of July 8,2003 relating to the punishment of corruption and related offenses.

Article 36: In the legal proceedings and judgment of offences provided for by this law, the judge or any qualified authority handling the offences provided for by this law, must take all the necessary measures to ensure effective and appropriate protection for the following persons:

- a) those who have supplied information concerning the offences provided for by this law or who collaborated in another way with authorities in charge of investigations or court proceedings;
- b) witnesses who have made statements concerning the offences.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

48b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

In practice, civil servants who report cases of corruption, graft or abuse of power are protected from recrimination or other negative consequences, according to credible sources.

Harson Mutabazi, Harson Mutabazi, a magistrate of the Kigali Court of Higher Instance (interview, Oct. 3, Nyamirambo Suburb, Kigali) says the witnesses are not only protected from recrimination but also get bonuses: The anti-corruption law in its article 37 states that the court will reserve a bonus for whoever will have contributed to the denunciation of offenses provided for by this law, without having participated in committing these offenses. The bonus shall be as follows:

- a) 1/10 of the value of the property confiscated from the author of the offence;
- b) 20,000 RWF [US\$35] to 100,000 RWF [US\$177] that shall be paid by the guilty person where the offence denounced could not lead to property confiscation."

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

48c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

The statutory provision (Articles 36 & 37) of the law relating to punishment of corruption and related offenses generally protect and favors not only civil service witnesses but all citizens who cooperate with designated authorities in the fight against corruption, graft, abuse of power or abuse of public resources.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

48d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | **75** | 50 | 25 | 0

Comments:

The anti-corruption law already cited protects the whistle blowers and provides for a reward of 10 percent of the recovered funds that had been embezzled.

References:

In practice, private sector employees who report cases of corruption, graft, abuse of power or abuse of resources are protected from recrimination or other negative consequences. According to reliable sources quoted above, in principle and practice, the fight against corruption and related crimes is the right and obligation of the citizens in their own interests and the law aforementioned protects them against any negative consequences.

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

69

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

According to Arthur Asimwe, The mandate to fight corruption is designated to, among others, the Office of the Ombudsman, which has a professional full-time staff, but they work in close collaboration with the public prosecutions office and the judiciary”

Mugisha Jile, investigator, Ombudsman’s Office, (interview, Oct.1): “We work closely with police Criminal Investigation Department (CID) and prosecutors to collect credible evidence against corrupt culprits.”

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

50b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

In practice, the internal reporting mechanism for public sector corruption receives regular funding, according to Kalisa Swaibu the chief accountant, Office of the Ombudsman. The office gets a regular annual budget from the government: But we are not restricted to that government contribution; under the law, we are at liberty to seek foreign or domestic funding.”

Again according to Arthur Asimwe (quoted above), “All the public bodies in the institutional mechanism against corruption have sufficient funding.”

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

50c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

Mugisha Jile, investigator, Ombudsman's Office, (interview, Oct.1) says: Although the ombudsman has personnel constraints, we usually try to respond to complaints as soon as possible and I am sure the workforce will be strengthened sooner than later."

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

50d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | **75** | 50 | 25 | 0

References:

In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations according to the Office of the Ombudsman annual report 2008. Thirty-five percent of corruption investigations are internally initiated while 65 percent of the cases investigated are initiated by external informants.

But Mugisha Jile, investigator, Ombudsman's Office, (interview, Oct.1) revealed that most serious corruption scandals are tracked via close collaboration between public prosecutors, police Criminal Investigation Department (CID) and other government institutions.

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

According to the interviewees from the Ombudsman's Office, any injustice or corruption-related complaints may be personally taken to the office or via a phone hotline.

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

85
IV-3. Procurement

51. Is the public procurement process effective?

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

In law, there are regulations addressing conflicts of interest for public procurement officials pursuant to law No. 63/2003 of Dec. 30, 2007 on the organization and functioning of the Rwanda Public Procurement Authority (RPPA):

Article 14: Conflict of interests of the members of the Board of Directors or companies in which they are shareholders are not allowed to perform any remunerated activity or bid for tenders in RPPA.”

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

51b. In law, there is mandatory professional training for public procurement officials.

YES | NO

Comments:

Secondly the RPPA is under the docket of the Ministry of finance and economic development; so it's the mandate of the ministry in collaboration with the Board of Directors of RPPA to initiate capacity strength measure.

References:

In law, there is mandatory professional training of public procurement officials pursuant to Article 11 of the law on the organisation and functioning of Rwanda Public Procurement Authority (RPPA): The Board of Directors may invite in its meeting any person from whom it may seek advice on a certain issue on the agenda. The board of directors may initiate professional training of the technical staff where deemed necessary.”

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process. A YES score is earned if such training is mandated for portions of the broader civil service, to include procurement officials.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

51c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

Comments:

TRwanda Public Procurement Authority (RPPA) was instituted just one year ago as a replacement for what used to be called National Tender Board (NTB). It has not been fully tested yet.

References:

In practice, the conflicts of interest regulations for public procurement officials are enforced according to James Musoni, minister of finance, (interview, Oct. 3): All members of the board of directors are under stern instructions and warnings that any sign of conflict of interest — explicit or implicit — will be punished accordingly.”

Mugisha Richard, a former procurement officer (interview, Sept. 30): “Having the regulations in place is one thing and enforcing them is another; human beings are difficult to manage, especially when it comes to handling money. What must be done is to ensure zero tolerance on conflict of interest by members of the board.”

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict-of-interest regulations do not exist, or are consistently ineffective.

51d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

References:

In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials. Like other senior public officials designated under the law, members of the board of director of the Rwanda Public Procurement Authority (RPPA) are obliged to regularly declare their assets pursuant to the law aforementioned and under strict code of conduct to avoid conflict of interests in the public tendering procedures.

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

51e. In law, major procurements require competitive bidding.

YES | NO

References:

In law, major procurements require competitive bidding pursuant provisions of the law No. 27/2007 of March 27, 2007, on public procurement procedures under article 23: Except where provided otherwise by this chapter, the procuring entity shall apply open competitive bidding to supplies, works, goods, and other services. Bidders from different foreign countries shall be allowed to participate in the Open Competitive bidding if they are willing to do so.”

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

51f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

In law, strict formal requirements limit the extent of sole sourcing, but pursuant to article 55 of the procurement law, the procuring entity may procure the goods, works and services by soliciting price quotations from a single qualified bidder.

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

51g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

In law, unsuccessful bidders can instigate an official review of procurement decisions.pursuant to article 43: Before the expiry of the bid validity period, the procuring entity shall simultaneously notify the successful and the unsuccessful bidders of the provisional outcome of the bid evaluation. The notification shall specify that the major elements of the procurement process would be made available to the bidders upon request and that they have seven (7) days in which to lodge a protest, if any, before a contract is signed with the successful bidder. Upon signature of a procurement contract, the procuring entity shall notify other bidders that their bids were not successful.”

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

51h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

In law, unsuccessful bidders can challenge procurement decisions. Article 70 of the law provides that a request for review against any procurement-related decision taken at the level of the District shall be made to the Independent Review Panel at the relevant District level in accordance with the provisions of paragraph 4 of Article 69 of this Law or, when the procurement contract has already been signed without fulfilling the debriefing requirements in the paragraph 2, Article 43 of this Law; the request shall be made within seven (7) days following the time the complainant became aware of the circumstances giving rise to the complaint or should have become aware of those circumstances. Decisions of all district independent panels shall be examined by the Independent Review Panel at the National level. Once the complaint is lodged, the procurement procedures shall be suspended until a decision on the complaint is issued by the Panel.

The Panel shall make a decision within thirty (30) days following the receipt of the complaint. If the panel is unable to reach a decision within a thirty-day (30) period, it shall inform both the procuring entity and the complainant of the need for the extra time. The additional time shall not go beyond thirty (30) days. Failure to reach a decision within thirty (30) days or inform both the procuring entity and the complainant of the need for the extra time, the claimant's claim shall be deemed sound and truth worthy.

The panel's decision shall be addressed to the procuring entity with copy to the relevant organ or to the individual that requested for the review, failing which the unsatisfied bidder can challenge the decision to the competent court in accordance with the laws in force.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

51i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

In law, companies guilty of major violations of procurement regulations (i.e., bribery) are prohibited from participating in future procurement bids. Pursuant to article 166: "The breach of any of the provisions related to the rules of conduct shall entail the automatic termination of the contract and disqualification for future procurement bidding."

YES: A YES score is earned if there are formal procurement blacklists, designed to prevent convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

51j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

In practice, companies that are guilty of major violations of procurement regulations (i.e., bribery) are prohibited from participating in future procurement bids, according to Mugisha Richard, a former procurement officer (interview, Sept. 30) : While I was still working with the national tender board before it changed to Rwanda Public Procurement Authority (RPPA), about three companies were blacklisted for bribery and other serious violation of procurement regulations, together with accomplices at the procurement entity.”

James Musoni, minister of finance, (interview, Oct. 3) said: “Besides the panel code, there is a new anti-corruption organic law that makes individuals in private or public sector accountable and, apart from the criminal sanctions under the law, any individuals or companies that are proved to be guilty are also prohibited from future procurement bids — we have no mercy for that,” he stressed.

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

52. Can citizens access the public procurement process?

83

52a. In law, citizens can access public procurement regulations.

YES | NO

References:

In law, citizens can access public procurement regulations. Pursuant to Article 24:

The procuring entity shall prepare an invitation to tender that sets out the following:

1. the name and address of the procuring entity;
2. the tender number assigned to the procurement proceedings by the procuring entity;

3. a brief description of the goods, works or services needed including the expected time for delivery or completion;
4. an explanation of how to obtain the tender documents, including the amount of any fee;
5. an explanation of where and when tenders must be submitted and where and when the tenders will be opened;
6. a statement that those submitting tenders or their representatives are allowed to attend the opening of tenders.

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

52b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

In law, the government is required to publicly announce the results of procurement decisions in accordance with Article 43: Before the expiry of the bid validity period, the procuring entity shall simultaneously notify the successful and the unsuccessful bidders of the provisional outcome of the bid evaluation.

“The notification shall specify that the major elements of the procurement process would be made available to the bidders upon request and that they have seven (7) days in which to lodge a protest, if any, before a contract is signed with the successful bidder.

“The successful bidder shall be required to provide a performance security in accordance with the procurement regulations. Such a security shall not exceed ten per cent (10%) of the contract price.

Upon signature of a procurement contract, the procuring entity shall notify other bidders that their bids were not successful.”

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

52c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access public procurement regulations within a reasonable time period according to James Musoni, minister of finance, (interview, Oct. 3): All the necessary public procurement regulations are accessible to all interested citizens via the media within at least a month before the deadline for the tenders”

Thomas Kegera, an editor for Rwanda Dispatch Magazine (interview September 25), says: "Most public procurement tenders are advertised via the national radio and INVAHO NSHYA, which is a countrywide circulated vernacular government newspaper and sometimes in the English print media for international bidders."

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

52d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access public procurement regulations at a reasonable cost. Ignitius Kabagambe, Director, Ministry of Information says: "All it requires for any interested citizen is acquiring a copy of the paper where a tender has been advertised and pay the non-refundable money for the procurement specificities"

But Kagire Gordon, a finance officer for the Rwanda Public Procurement Authority (RPPA) (interview October 3), said: "The minimum ranges from 50,000 non-refundable fees for the necessary procurement regulations."

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

In practice, major public procurements are effectively advertised according to James Musoni, minister of finance, (interview, Oct. 3): We really effectively advertise for purposes of transparency and qualitative public procurements; when it requires international competitiveness, we advertise with the East African weekly regional newspaper, on the Internet and the local papers and radios.”

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

52f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access the results of major public procurement bids, the minister emphasized, saying, the bidding procedures are clearly spelled out under the procurement laws and the internal rules of procedure accessed to the public without favor.

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

53. Is the privatization process effective?

53a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

In law, all businesses are eligible to compete for privatized state assets pursuant to presidential decree No. 08/14 in article 6: All public enterprises deemed to be privatized shall be advertised for sale to potentially interested citizens and other foreign bidders.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

53b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

References:

In law, there are regulations addressing conflict of interest for government officials involved in privatization. Pursuant to article 15: It is strictly prohibited to solicit directly or indirectly, offer to any official or a former employee of privatisation entity or other public authority, a bribe in any form, an offer of employment or any other service or anything of value meant to compromise someone with respect to any act or decision in connection with the privatization proceedings. The privatization Committee shall reject any bidder's offer where it is established that the latter was engaged in any corrupt or fraudulent practices while competing for acquisition of shares of the enterprise. The Privatization secretariat shall promptly notify this rejection to the concerned buyer."

Article 16: "Members of the Cabinet, heads of procuring entities and Civil Servants in general shall not offer their interests to buy the shares or entity."

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

53c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

James Musoni, minister of finance, (interview, Oct. 3) says, "If a minister or senior government official wishes to acquire a privatized public entity, he or she must first resign from the government." Likewise, if it is established that a close relative has offered interest in an entity under the docket of his ministry, he should be punished accordingly.

Nelson Bayingana, an editor with Umusingi a local vernacular newspaper (interview, Sept. 27, Rwamagana, Eastern Province) said, "Of course ministers and other senior government officials do it carefully, but they influence privatization procedures to favor certain contenders and get kickbacks. Influence peddling is a chronic disease globally."

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict-of-interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

54. Can citizens access the terms and conditions of privatization bids?

85

54a. In law, citizens can access privatization regulations.

YES

| NO

References:

In law, citizens can access privatization regulations, pursuant to article 4 of the law on the organization and functioning of the Privatization Secretariat: The enterprise to be put on sale shall be actively advertised in the media. The advertisement must specify the profile of the enterprise in order to allow potential buyers to carry out their own evaluation before submitting their bids." Paragraph 2 states that: "The preparation of tenders consists in collecting all useful information on the enterprise in order to establish its profile, prepare the terms of reference for bidders, procedures and qualifications required for the offer."

For very big and strategic enterprises, requiring a big investment capital and globally recognized specific knowledge, a shortlist is established according to well-defined eligibility criteria in order to determine potential buyers.

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

54b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

All public institutions are legally obliged to advertize the offers in the three official languages; Kinyarwanda, English and French to ensure free and fair competitions.

French is no longer the language of instruction in schools and it is now an optional subject. This decision ought to have been debated in parliament to ensure the decision was reached in the interest of all the citizens on majority vote by parliamentarians. French is broadcast, published in government and private media outlets.

References:

In practice, privatizations are effectively advertised via regular and widely circulated newspapers, on the secretariat website www.privatisation.gov.rw, as well on the national radio or other private radio stations, according to Charles Hitimana, director, Privatization Department, Ministry of Finance and Economic Development (interview, Sept.30, ministry headquarters).

Marcel Museminari, Managing Editor, The Business Daily (interview, Aug. 20) said: We usually publish ads when there are public entities offered for sale because they constitute good financial input in the form of comprehensive advertising that is published in newspapers and broadcast on radio stations.”

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

54c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

In law, the government is required to publicly announce the results of privatization decisions.

Regarding the opening and evaluation of bids, the opening of bids takes place in a public meeting right after the closing of bids. Technical offers are opened first in order to verify if the conditions specified in the terms of reference are fulfilled. Any offer containing omissions or errors is turned down. Financial offers are opened next. The Privatization Secretariat only opens offers submitted by bidders conforming to bidding conditions.

Pursuant to article 5 of the law on privatization: Bid evaluation shall be carried out by a committee including representatives of the Privatization Secretariat, the Line Ministry and other members if need be. Bid evaluation is carried out according to pre-established objective criteria. The conclusions of the committee are forwarded to the Technical Committee, comprising senior staff from different ministries and later publicly announced in the media.”

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

54d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access privatization regulations within a reasonable time period, according to George Gakuba, head of privatization unit, Ministry of Finance (interview Sept. 30 in Kigali): In practice, potential bidders must be accessed comprehensive, accurate information on the financial value of the enterprise on offer and it is in the government interest to disseminate that information or else it gets underestimated.”

George Kalisa, a freelance senior journalist with Rwanda Dispatch magazine (interview Oct. 3) says: “Besides the ads in the print and electronic media, this government initiated other privatization programs on TV and radio call-in programs.”

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access privatization regulations at a reasonable cost according to the interviewees quoted above.

George Gakuba says it doesn't cost listeners anything, apart from closely following the debates and clarifications. Otherwise, the call-in talk shows are pre-paid.

George Kalisa, a freelance senior journalist with Rwanda Dispatch magazine (interview Oct. 3) says: Perhaps the only variable cost to potential bidders are the bidding fees, but every valuable venture has its costs.”

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁸⁸National Ombudsman

56. Is the national ombudsman effective?

64

56a. In law, the ombudsman is protected from political interference.

YES | NO

Comments:

In law, the ombudsman is protected from political interference. Pursuant to article 180 of the constitution, the Office of the Ombudsman shall be an independent public institution that shall among other responsibilities, prevent and fight against injustice, corruption and other related offenses in public and private administration. Of course there are political considerations because the candidates for the posts are nominees of the President.

References:

According to law No25/2003 of Aug. 13, 2003, establishing the organization and functioning of the Ombudsman's Office, article 1, paragraph 3: For each position of the members of the Office, the Government shall submit the name of the candidates agreed upon by Cabinet to the Senate for approval."

Article 2 of the law also stipulates that: "The mandate of the Chief Ombudsman or the Assistant Ombudsman may be terminated:

1. if he or she resigns for personal motives;
2. if his or her mandate ends and he or she is not reapproved through procedure provided for in paragraph 2 of article one of this law;

3. failure to discharge his or her duties, if it is clear that he or she is no longer honest, or no longer has commitment, wisdom, analysis and capacity on which his or her election was based at the time of his or her approval;

4 he or she has physical or mental incapacity that may hinder him or her from fulfilling his or her obligations as certified by an authorized medical committee;

5 death.

The decision to remove the Chief Ombudsman or Assistant Ombudsman from Office due to reasons mentioned in part 3, paragraph 1, of this article shall be taken by the Senate upon request by Cabinet or on request of a third (1/3) of the members of the Senate.”

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the ombudsman is protected from political interference.

100 | 75 | **50** | 25 | 0

Comments:

President Paul Kagame’s government is quite intolerant to any form of injustice or abuse of office and this encourages the Ombudsman’s Office to execute its mandate without fear or favor. And the Chief Ombudsman’s connection to the ruling RPF party does not interfere with his new job.

A good example is a recent case, where the senior party member and former minister of Education, Theoneste Mistyindashyaka’s asset disclosure records were investigated. It was found out that he and other public officials had under-declared their assets. They are now in prison awaiting trial.

References:

In practice, the ombudsman is protected from political interference but of course there is some political influence as appointees come from the President.

Prof. Laurent Nkusi a former cabinet minister and an opposition politician (interview, Butare) says: President Kagame is really intolerant toward any form of injustice and all forms of corruption and he cannot compromise the ombudsman’s initiative to curb vices.” he added, “I cannot, however, rule out influence peddling by some members of his government, but all I know for a fact is that once identified, such negative elements are sacked in disgrace.”

Prof. Nkusi, also stated, “I do not doubt the professional competence of the Chief Ombudsman, but he is a known founding member of the ruling Rwanda Patriotic Front (RPF) who cannot avoid political pressure from his appointing authority; there are obviously politically sensitive cases, such as investigating the private assets of some party bigwigs.”

Geoffrey Mutagomwa, a BBC correspondent in Kigali says: “Probably the only tangible constraint on the Ombudsman’s Office in carrying out its mission is an insufficient workforce; it was even indicated in their annual report of 2008 that, considering their crucial responsibilities, a workforce of only 38 employees is too ineffective to investigate the rampant corruption and injustices countrywide”. With regard to independence and impartiality, he said, the office is, by law, protected.

Investigations can operate without hindrance from the government, including getting access to politically sensitive information.

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

56c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There have not been any cases where the ombudsman was removed from office in the first place and later for political reasons. The Ombudsman, two his deputies and most of the senior staff are the pioneers and they finished the first mandate of five year without any political hurdles.

References:

In practice, the head of the Ombudsman Agency is protected from removal without relevant justification.

According to the Attorney General Tarcise Karugarama (interview Oct. 3, Kigali), The mandate of the Chief Ombudsman or the Assistant Ombudsman may be terminated if he or she resigns for personal motives, or if his or her mandate ends and he or she is not re-approved through procedure provided for in paragraph 2 of article one of law establishing the office." He added that unless the ombudsman fails to discharge his or her duties, or if it is clear that he or she is no longer honest, or no longer has the commitment, wisdom, analysis and capacity on which his or her election was based at the time of his or her approval, they will not be dismissed.

According to Prof. Laurent Nkusi, the Chief Ombudsman, and even his deputies, are protected by law from removal without relevant justifications "But if the appointing authority is unsatisfied or uncomfortable with his style of work, he can create reasons that confirm with the legal provisions and dismiss him from office."

Shyaka Kanuma managing editor, Rwanda Focus, says: "The decision to remove the Chief Ombudsman or Assistant Ombudsman from Office due to reasons is provided under the law, shall be taken by the Senate upon request by Cabinet or on request of a third (1/3) of the members of the Senate. So if the appointing authority was to sack him or close the office on political motives, he has to convince the bicameral parliament."

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

56d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, the Ombudsman Agency (or agencies) has a professional, full-time staff according to Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali): We have a skeleton staff that is quite qualified in various disciplines; lawyers, economists, administrators and accountants. But as you know, this office is in its infant stages and we are steadily recruiting more personnel.” He added that hopefully the annual report for 2009 will widelycover the entire public and private sectors.

A wide range of journalists interviewed and quoted confirm that the ombudsman’s office has a limited staff, which hinders the ability to demonstrate its constitutional obligations.

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

In practice, agency appointments support the independence of the Ombudsman Agency (or agencies).

According to Prof. Laurent Nkusi: The appointments are usually based on professional qualifications. Indeed, the chief ombudsman is of excellent qualifications and high moral caliber but of course he is part of the ruling Rwandan Patriotic Front (RPF) party.”

Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali) shyly reacted: “By nature, human beings are political animals, according to scholars, but this should not mean we can be partisans when addressing injustices or corruption cases involving public interests”

Arthur Asimwe, editor, (quoted variously) says: “To me, the appointments of chief ombudsman and two of his deputies support the ombudsman’s independence because they are known sympathizers from different parties but definitely they are professional appointments.”

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the Ombudsman Agency (or agencies) receives regular funding and supplementary foreign funds help strengthen the professional capacity.

References:

Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali) confirmed that the government allocates them with a sufficient annual budget and does not interfere with additional foreign or domestic funds.

Kasule Daniel, economics editor, Rwanda Focus, (interview, Oct. 5) said: We recently published stories that indicated that the Swedish government had extended a grant worth US\$5 million to the Ombudsman office.”

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

56g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

Once the reports have been presented to Parliament, anybody in need of a copy gets them free of charge or may access them online via the Web site www.ombudsman.gov.rw.

References:

In practice, the Ombudsman Agency (or agencies) makes publicly available reports: We are by law under obligations to make regular annual reports or impromptu ad hoc reports whenever it is deemed necessary” Dr. Tito Rutaremara the Chief Ombudsman, stressed (interview, Sept. 12, Kigali).

Felly Kimenyi, senior journalist, the New Times says: Even when we are investigating corruption related stories we seek their reactions on different issues and the respond positively.

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

References:

In practice, when necessary, the National Ombudsman (or equivalent agency or agencies) initiates investigations.

Most of the investigations are initiated through public complaints. I myself am an investigator and I usually link with colleagues in the media to initiate first class injustice- and corruption-related assignments” said Mugisha Jile, an investigator with the Ombudsman’s Office, (interview, Oct.1).

Edwin Musoni, senior journalist, The New Times, says: “Sometimes, they initiate our investigations and we exchange field information, but you have to be trustworthy.”

100: The agency aggressively starts investigations — or participates fully with cooperating agencies’ investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies’ investigations, or the agency is partisan in its application of this power.

56i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

Comments:

The Ombudsman's office does not impose penalties on its own, but rather cooperates with law enforcement to impose penalties. In fact, at the moment, 65 senior government officials who either under-declared assets or did not meet the deadline provided under the law, have been suspended while others including former minister of education Theoneste Mutsindashyaka and legislator Senator Hon. Bikoro Munyengqizi, have been convicted by courts and are serving prison sentences.

References:

In practice, when necessary, the National Ombudsman (or equivalent agency or agencies) imposes penalties on offenders: One of our mandates is to receive and examine, in the context of the obligations, complaints from individuals and independent associations relating to acts of civil servants, state organs, and private institutions and to mobilize such civil servants and institutions in order to find solutions to such complaints if we find they are well founded"

Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali) clarified this by adding that when the complaints are under the jurisdiction of other public organs, the Ombudsman addresses them to the relevant authorities.

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

56j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

References:

In practice, the government acts on the findings of the ombudsman agency (or agencies) according to Augustin Hitimana, communications officer for the Parliament: The Minister for Presidency Soline Nyirahabimana is scheduled to appear before the Chamber of Deputies and explain the course of action government is taking on on the ombudsman's report." He added that the Ombudsman's office is directly under the supervision of the Presidency.

Arthur Asimwe, political editor, The New Times (variously quoted) said: "We are yet closely following up on the Parliament's practical response but President Paul Kagame has already warned heads of the implicated bodies to stop bickering and making counter-accusations and instead clean up their stained images. He even specifically said he was not surprised by implication of the judiciary because he had heard complaints from the public."

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman's reports are often ignored, or given superficial attention. Ombudsman's reports do not lead to policy changes.

56k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Jule Mugisha, investigator, Ombudsman's Office, (interview, Oct.1) says once a compliant comes from the public to their office, it is immediately assigned to the relevant officer and followed up on: We do not hesitate once it is clearly established that such a complaint is within our mandate and if not, we advise the complainants to address it to the relevant organs".

Mupiganyi Apollinari, Executive Secretary, Transparency Rwanda (interview, September 20) said: "The Ombudsman's office is very effective despite its insufficient human capacity; most of the investigations we carried out happen to have been addressed by the ombudsman's office."

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

57. Can citizens access the reports of the ombudsman?

83

57a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

In law, citizens can access reports of the ombudsman(s) Pursuant to article 13 of the law on organization and functioning of the Ombudsman's Office. It is under obligation to present comprehensive periodic reports on justice and corruption to the Parliament and give copies to President's office, Prime Minister's office, the Chief Justice's office as well as the Prosecutor General's office. Once the report has been tabled, citizens can access copies.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

57b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

According to Mugisha Jule, Investigator, Ombudsman's Office, (interview, Oct.1): Reports are available to the public not more than two days after their presentation to the legislature via the Web site www.ombudsman.gov.rw and even hard copies are available to any interested parties within two days."

Edwin Musoni, Senior parliamentary reporter, The New Times (interview September 15) says: "As journalists, we got hard copies on the very day after its presentation to the Chamber of Deputies without any technical hardships."

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

The interviewees— employees of the ombudsman’s office and Emmanuel Butare, a lecturer at Kigali Private University— said the reports are free to all citizens, or available for the cost of photocopying, and they can be obtained at little cost, such as by mail, or online.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

Comments:

The Ombudsman’s Office was established in May 2003.

References:

In law, there is a National Ombudsman, public protector, or equivalent agency (or collection of agencies) that cover the entire public sector, pursuant to article 182 of the constitution and article 3 of the law establishing the Office of the Ombudsman.

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

V-2. Supreme Audit Institution

59. Is the supreme audit institution effective?

59a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

In law, the supreme audit institution is protected from political interference pursuant to the constitutional provision aforementioned and article 184. The office is independent and shall submit a report each year to the parliament, prior to commencement of the session, devoted to an examination of the budget of the following year. The report must indicate the manner in which the budget was utilized, unnecessary expenses that were incurred or contrary to the law and whether there were misappropriation or squandering of public funds.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

59b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

In practice, the head of the audit agency is protected from removal without relevant justification.

According to Bahizi Breakman, a lecturer at Kigali Institute of Education, Kigali (interview September 10): The Office of the Auditor General of State finances is a public autonomous office with a legal personality that has autonomy in all financial and administrative matters without any political interferences” he observed in an .

Shyaka Kanauma, managing editor, Rwanda Focus weekly paper, says: “The auditor general and his/her deputies are protected from unjustified removal from office by law; she can only be sacked pursuant to sound legal basis.” He added that by virtue of Article 2 of the law establishing the Office of the Auditor General of State finances, he or she may make such examinations and inquiries as he or she considers necessary to enable him or her to report as required by this law.

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

59c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, the audit agency has a professional, full-time staff according to the James Musoni, minister of finance, (interview, Oct. 3): The Auditor General Ms. Everlyn Kamagaju and her technical staff are undoubtedly professional, morally and practically efficient; they have made invaluable contribution to national development.”

Emmanuel Butare, a lecturer Kigali Private university (quoted earlier) says: “If there is any public institution that has fulfilled its mandate without fear or favor in this country, the Auditor General’s office is on top; they have withstood all sorts of influence peddling and have exposed professional inefficiencies in a number of institutions, exposed corruption culprits in high offices and ensure international standard accounting procedures” he stressed in an interview quoted earlier.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

References:

In practice, audit agency appointments support the independence of the agency according to Collins Haba, an editor with The New Times (interview, September 30, Kigali): Madame Everlyn Kamagaju is the most professionally competent and courageous chief auditor the institution has ever had since its institution in 2000, unlike her predecessor, who had never garnered the courage to expose corrupt senior government officials.”

Prof. Laurent Nkusi (interview, Butare): “Of course, the auditor general and some of her senior staff are known ruling party Rwandan Patriotic Front (RPF) supporters but their competencies are undoubted. Having said that, I must emphasize the appointing authority must always ensure political balance in public administration.”

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

59e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

In practice, the audit agency receives regular funding. According to Prof. Laurent Nkusi (interview, Butare), the Auditor General of the State Finances receives regular government funding because it is obliged to submit a report on accounts of all public offices, local communities and public establishments and projects every three months, annually or whenever necessary.

Edwin Musoni, senior parliamentary reporter, The New Times (interview September 15) says: "The Auditor General office staff are among the most highly remunerated citizens, apparently on the basis of good regular funding from government and foreign donors."

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

59f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

The reports are presented to the legislature and made available to the general public thereafter.

References:

According to Auditor General Everlyn Kamagaju (interview, Sept. 15, her office, Kigali):This office, as you all have witnessed, makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work that has never been and shall never be challenged, either in terms of quality or content."

Prof. Laurent Nkusi (interview, Butare) says: "I am sure the audit reports are credible, even on international accounting standards."

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

59g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

Currently, the Auditor General's office has already presented the annual report to the parliament and the legislature has already summoned various cabinet ministers for accountability. The public prosecutions office says it's carrying out further investigations for related information; see www.newtimes.co.rw or www.allafrica.com.

References:

In practice, the government acts on the findings of the audit agency according to the Prosecutor General Martin Ngoga (interview, September 30, his office, Kigali). In practice, this office acts on the findings of the auditor general's reports and recommendations; arrests and further investigates and prosecutes the alleged culprits. In fact, as I speak now, about five accused public official have been convicted on embezzlement and abuse of office, while others are still undergoing trial. A few have been acquitted on legal technicalities."

"We have been covering trials of the high level corruption cases and we still follow cases involving former senior cabinet ministers, legislators, deputy ministers and senior civil servants facing corruption related charges" says Arthur Asimwe, political editor, The New Times without naming those accused.

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

59h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

In practice, the audit agency is able to initiate its own investigations. The Auditor General Kamagaju says: Over 80 percent of audits are carried out on our own initiative; on the basis of the previous annual reports and field work, we know the institutions to be prioritized. Only on rare cases may we rely on press reports on corruption to carry out monthly or quarterly reports”

Collins Habasays says: “Sometimes certain corruption cases that are exposed in the media are also confirmed in the annual auditor general’s reports.”

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

60. Can citizens access reports of the supreme audit institution?

83

60a. In law, citizens can access reports of the audit agency.

YES | NO

References:

In law, citizens can access reports of the audit agency, pursuant to article 2 of the law establishing the office. The Auditor General of State finances may make such examinations and inquiries as he or she considers necessary to enable him or her to report as required by this law.

According to article 3, the Office of the Auditor General of State finances shall:

- (a) audit and report on accounts of all public offices, local communities and public establishments and projects;
- (b) conduct financial and value for money, economy and efficiency audits in respect of expenditures in all services mentioned in paragraph (a) of this article;
- (c) conduct accountability, management and strategic audit in all services referred to in paragraph a) of this law and available to the relevant authorities in the public interest.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

60b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can access audit reports within a reasonable time period according to the interviewees quoted earlier, the reports are accessed online at www.auditor-general.gov.rw. Hard copies are available to all interested citizens within a reasonable time period.

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

60c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

This researcher was able to access free copies of the 2007 and 2008 annual reports.

References:

In practice, citizens can access the audit reports at a reasonable cost. According to the Auditor General Evelyn Kamagaju, the reports are free to all citizens, or available for the cost of photocopying when the initial copies are finished, by mail or online.

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

The Auditor General's office was established in 2000.

References:

In law, is there a national supreme audit institution, Auditor General's Office or equivalent agency covering the entire public sector. It was established and instituted according to article 183 of the national constitution: The Auditor General of state finances is an independent national institution for the audit of state finances. There is also an organic law on its organization's regular functioning.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

87
V-3. Taxes and Customs

62. Is the tax collection agency effective?

100

62a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, the tax collection agency has a professional, full-time staff. The Commissioner General Rwanda Revenue Authority Ms. Mary Baine confirmed this in an interview: We have got an excellent multi-disciplinary, full-time staff that has consistently collected domestic incomes far beyond annual targets and made tremendous economic recovery.”

Prof. Nshuti Manasseh, former minister of finance, now Rector, Rwanda Institute of Administration and Management (RIAM) in Southern Province (interview September 30) said: “The Revenue authority has made invaluable contribution all all the development achievements; the country now gets about 60 percent of its annual budget domestically” He added that if all the new institutions like Office of the Ombudsman, the Auditor Generals office and Rwanda Procurement Authority could make such an impact, Rwanda would be the model for Africa in governance.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Imihigo (performance) contracts has nothing to do with Rwanda revenue Authority. Imihigo (performance contract is a local governments development initiative designed encourage local government administrations from city, provincial, district, sector and grassroot levels in socio-economic agenda. So chief administrators at those levels sign a contract with the President guaranteeing fulfilling the annual targets.

References:

In practice, the tax agency receives regular funding according to the authority’s commissioner general Mary Baine: Of course it is this institutions that collects the national revenue and works on the fiscal agenda; we are given sufficient funding regularly and all the countrywide personnel are well remunerated.”

Prof. Nshuti Manasseh, former minister of finance, now Rector, Rwanda Institute of Administration and Management (RIAM) in Southern Province (interview September 30) says: “It would be shameful if such a source of revenue were given insufficient funding.”

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

65. Is the customs and excise agency effective?

100

65a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The interviewees quoted in the foregoing responses confirmed that in practice, the customs and excise agency has a professional, full-time staff as already indicated.

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

In practice, the customs and excise agency receives regular funding, according to all the interviewees quoted above.

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

61. In law, is there a national tax collection agency?

100

61. In law, is there a national tax collection agency?

YES | NO

References:

In law, there is a national tax collection agency called Rwanda Revenue Authority (RRA) pursuant law No. 05/97 of Aug. 11, 1997, article 1: There is hereby established a body to be called the Rwanda Revenue Authority, hereinafter referred to as the RRA.

Article 5: "Within the limits of taxation and customs law, the functions of the Authority shall be to assess, collect, administer and account for fiscal and customs revenue collected thereunder to the Ministry. The Authority shall also be responsible for granting exemptions provided for in taxation and customs law, in accordance with procedure established by the Authority."

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

63. In practice, are tax laws enforced uniformly and without discrimination?

100

63. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There has never been any reported cases of people who pay bribes or are politically connected to import or export goods without paying the necessary fees

References:

In practice, tax laws enforced uniformly and without discrimination, according to the James Musoni, minister of finance, (interview, Oct. 3): Besides tax laws, there no law that is not uniformly enforced; ethnic discrimination policies and laws enforced during the pre-genocide era almost brought Rwanda to extinction as a sovereign state just one decade ago. Why discriminate?"

Prof. Nshuti Manasseh, former minister of finance, now Rector, Rwanda Institute of Administration and Management (RIAM) in Southern Province (interview September 30) says: "To the best of my knowledge, Rwanda is now the best foreign investment hub in east and central Africa mainly because of the convenient and realistic laws in place, good hospitality and decent business climate."

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

64. In law, is there a national customs and excise agency?

100

64. In law, is there a national customs and excise agency?

YES | NO

References:

In law, Rwanda Revenue Authority (RRA) is a national customs and excise agency, pursuant to Article 5 of the law on its organization and functioning: Within the limits of taxation and customs law, the functions of the Authority shall be to assess, collect, administer and account for fiscal and customs revenue collected thereunder to the Ministry. The Authority shall also be responsible for granting exemptions provided for in taxation and customs law, in accordance with procedure established by the Authority.

Article 6 further states that the Authority shall also advise the Government on matters of policy relating to revenue. The Authority shall also perform such other functions in relation to revenue as the Cabinet may direct.

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

On the issue of whether customs and exercise laws are enforced uniformly, If you asked any average citizen or foreigner living in Rwanda, you will be told it's done without fear of favor.

References:

As I indicated earlier, the commissioner General for Rwanda Revenue Authority Ms. Mary Baine and the the minister of finance James Musoni (interview, Oct. 3) stressed that tax collection procedures are applied uniformly to all tax payers without fear or favor.

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

70

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

There are a large number of state-owned institutions whose management is legally protected from any political or interference under the organic laws on organization and functioning. The constitutional provisions regarding their establishment also guarantee independent mandates of the managing teams.

YES: A YES score is earned only if the agency, series of agencies, or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency, series of agencies, or equivalent mechanism is a subordinate part of any government ministry or agency.

68b. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, a series of agencies, or equivalent mechanism overseeing state-owned companies has a professional, full-time staff according to Ms. Monique Nsanzabaganwa (interview September 30): All the institutions under the umbrella of the Rwanda Development Boards (RDB) are corporate and business-oriented under the supervision of the Ministry of Commerce, Cooperatives, Industry and Tourism and are answerable to the presidency; but there are others that are under the supervision of other ministries like agriculture and local government.” She added that each public organ has an organic law stating its scope of operations.

Prof. Nshuti Manasseh, former minister of finance, now Rector, Rwanda Institute of Administration and Management (RIAM) in Southern Province (interview September 30) says: “The RDB was created recently to coordinate foreign and local investment to profitable government priorities.”

100: The agency, series of agencies, or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency, series of agencies, or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency, series of agencies, or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

68c. In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Different agencies receive different levels of funding, depending on the priorities of the government’s development initiatives and certain initiatives are better funded than others.

References:

In practice, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies receives regular government funding and other foreign development partners according to all the interviewees quoted above.

100: The agency, series of agencies, or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency, series of agencies, or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

68d. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | **50** | 25 | 0

Comments:

The Rwanda Development Board (RDB) is an umbrella organization that brings together the Rwanda External and Internal Investment Agency (REIIA), the National Information Technology Agency (NITA) and other economic development initiatives. It is administered by a board council and other competent technical staff that is answerable to the Ministry of Commerce, Tourism and Cooperatives. It does not carry out investigations; it only advises the government on potential investment opportunities.

The agency that probes and investigate the finances of state-owned enterprises is the Auditor Generals office together with police Criminal Investigation Department (CID).

References:

In practice, when necessary, a series of agencies, or equivalent mechanism overseeing state-owned companies independently initiates investigations on investment potentialities and shortcomings and advise the government on the appropriate measures to resolve the obstacles according to the interviewees quoted above.

100: When irregularities are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency, series of agencies, or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency, series of agencies, or equivalent mechanism may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

68e. In practice, when necessary, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

Comments:

The Rwanda Development Boards (RDB) does not investigate or impose penalties on any company. The mandate to penalize is held by other public institutions such as the Revenue Authority, Rwanda Public Procurement Authority or any public institution that is mandated to do so.

The agency that probes and investigate the finances of state-owned enterprises the Auditor Generals office together with the police Criminal Investigation Department (CID).

References:

In practice, when necessary, a series of agencies, or equivalent mechanism overseeing state-owned companies imposes penalties on offenders in conformity with relevant laws on the organization, functioning and competencies according to the interviewees cited above.

100: When rules violations are discovered, the agency, series of agencies, or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency, series of agencies, or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency, series of agencies, or equivalent mechanism may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency, series of agencies, or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency, series of agencies, or equivalent mechanism may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency, series of agencies, or equivalent mechanism may be partisan in its application of power.

69. Can citizens access the financial records of state-owned companies?

85

69a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

The public supervising authority in this specific case is the Auditor General of the state finances office which is mandated by the constitution and the law establishing its organization and its functioning oversight of financial management.

References:

In law, citizens can access the financial records of state-owned companies pursuant to Organic law N° 14/2004 of May 26, 2004, which established general provisions governing public institutions.

Article 2: A public institution enjoys a legal personality and is managed in accordance with laws governing Public Service, to which the State allocates funds in order for it to carry out specialized activities for public interest. The responsibilities, category,

organization, management and functioning of such an institution shall be governed by the Law establishing it. The institution shall enjoy administrative and financial autonomy and report to a public supervising authority.

“ORGANIC LAW N° 14/2004 OF 26/5/2004 ESTABLISHING GENERAL PROVISIONS GOVERNING PUBLIC INSTITUTIONS, Article 6:

“The Institution Director shall be accountable to the deliberative assembly for the implementation of its decisions as well as for the management of activities and services of the public institution. He or she shall be allowed to attend meetings of the deliberative assembly with a deliberative or consultative vote, depending on what is provided for in the law establishing the institution and shall be its Rapporteur. The Institution Director shall not attend meetings where a case involving him or her is to be discussed.”

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

69b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

All state-owned companies are obliged to submit financial records directly to the auditor general's office every year. They may, however, be requested to submit the financial records any time upon the request of the office whenever it has deemed it necessary for investigations.

References:

In practice, the financial records of state-owned companies are regularly updated according to the Auditor General Everlyn Kamagaju in an interview (quoted earlier): Ever since this office was established in 2000, we have ensured that the accounting system in this country, specifically in public institutions, is improved to the standards of international accounting standards; we have regularly presented audits to parliament and we have been able to audit at least over 80 percent of state-owned companies.”

She stressed that the audit body has recruited more personnel to cover all the public institutions in the country

100: State-owned companies always publicly disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, file the information behind schedule, or not publicly disclose certain data.

25:

0: Financial data is not publicly available, or is consistently superficial or otherwise of no value.

69c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

References:

In practice, the financial records of state-owned companies are audited according to international accounting standards as already clarified above by the auditor general Everlyn Kamagaju. She further stressed that most importantly, a comprehensive, reliable, uniform, and integrated accounting system has been put in place that services the needs of all levels of government.

Also, according to the International Monetary Fund Report Rwanda July 2003 on the Observance of Standards and Codes (ROSC) Fiscal Transparency Module Prepared by the Fiscal Affairs Department: This report provides an assessment of fiscal transparency practices in Rwanda in relation to the requirements of the IMF Code of Good Practices on Fiscal Transparency, based on discussions with the authorities and other organizations, the authorities' response to the IMF fiscal transparency questionnaire, and other sources of information.

"Rwanda's budget management system had to be reconstructed from a low base, following the devastating events of 1994. Since then, the authorities have taken a number of actions to enhance fiscal transparency.

"The government's role in the economy has been clarified by the privatization process and improvements to the regulatory framework; budget preparation has been significantly strengthened: the budget is presented to parliament in a timely manner, the classification was revised in line with international standards, planning takes place in the context of a medium-term expenditure framework, and a comprehensible background document is being prepared." states the report's executive summary. The report can be accessed online at <http://www.imf.org/external/np/fad/trans/manual>.

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

69d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

References:

In practice, citizens can access the financial records of state-owned companies through the auditor general's annual report within a reasonable time period, especially immediately after its presentation to parliament and online at www.aog.gov.rw, according to Auditor General Everlyn Kamagaju.

Prof. Nshuti Manasseh, former minister of finance, now Rector, Rwanda Institute of Administration and Management (RIAM) in Southern Province (interview September 30) says: Any citizens or interested parties can access the Internet; they can easily get the comprehensive copies of the report without any hurdles."

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

69e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

In practice, citizens can access the financial records of state-owned companies at a reasonable cost, the above quoted interviewees say it costs less than US\$ 1 to print out a copy in an Internet cafe.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

100

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

YES | NO

Comments:

There are series of public agencies such as Rwanda Development Boards (RDB), established in September 2008, to fast-track development projects and facilitate new investment. The RDB consolidates several government agencies that were previously involved in promoting investment, including the Rwanda Investment and Export Promotion Agency (RIEPA), the Rwanda Commercial Registration Service Agency (RCRSA), the Human Resource and Institutional Capacity Development Agency (HIDA), the Rwanda Information and Technology Agency (RITA) and the Rwanda Office of Tourism and National Parks (ORTPN);

but all have specific organic laws governing them. The primary objectives of the RDB is to encourage new investment as well as oversee companies currently owned by the state.

References:

In law, there are series of agencies, or equivalent mechanism overseeing state-owned companies and they are generally governed by Organic law N° 14/2004 of May 26, 2004 establishing general provisions governing public institutions:

Article 3: Categories of Public Institutions, modified and complemented by Organic Law n° 34/2007 of 13/08/2007 and the Public Institution shall be established by Law where necessary for public interest.

Paragraph 2 states that the Public institution shall be classified in one of the following main categories in accordance with its mission:

1. Public Institution for commercial or industrial exploitation;
2. Public Institution having the responsibilities of regulation and promotion in economic, social, and other activities as required by general interest;
3. Public Institution for scientific, technological and cultural researches.

When the general interest requires, the Law may create a Public Institution with particular or hybrid characteristics according to the mission entrusted to it.

In accordance with the category of a Public Institution, the Law establishing it shall determine special matters relating to its organismic and its management.”

YES: A YES score is earned if there is an agency, series of agencies, or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. A YES score can be earned if several government agencies or ministries oversee different state-owned enterprises. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist, or if some state-owned companies are free from government oversight.

85
V-5. Business Licensing and Regulation

70. Are business licenses available to all citizens?

88

70a. In law, anyone may apply for a business license.

YES | NO

References:

In law, anyone may apply for a business license. Under articles 44 to 53 of law No.17/2002 of May 10, 2002, establishing the sources of revenue for districts and towns and its management, the duty for License to carry out trade or profession is payable each year by natural-born citizens who normally carry out an activity for gain on a non-salaried basis and by a corporate person or organization that is liable to pay corporate taxes.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

70b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

In law, a complaint mechanism exists if a business license request is denied. Pursuant to Article 4 of the law governing private business registration, if the business license is denied by the complaint, it must be petitioned to the ministry of commerce for redress.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

70c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | **75** | 50 | 25 | 0

References:

In practice, citizens can obtain any necessary business license (i.e., for a small import business) within a reasonable time period.

According to Prof. Manasseh Nshuti, former minister of commerce, cooperatives and industry ((interview September 30): All it requires is payment of the license fee and get the license without any further delay." He added that within the five countries of the East African Community, Rwanda is the only country where business registration, acquisition of licenses and other technicalities are addressed in the shortest time possible without bureaucratic obstacles.

George Gakuba, head of legal department at the ministry said: "Most applicants for licenses acquire the documents immediately after payment upon presentation of all the required documentary records."

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

70d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | **75** | 50 | 25 | 0

References:

In practice, citizens can obtain any necessary business license (i.e., for a small import business) at a reasonable cost. The two interviewees quoted above say that the maximum fee for small business is 20,000 Rwandan francs (US\$35) and that it requires applicants to visit the district offices.

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

71. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

71a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available. Each and every adult is required by the local government regulatory mechanism to pay 5 per cent of his/her monthly pay for medical insurance that ensures subsidiary medical cost that is transparently available to him and the next of kin upon presentation of the membership cards.

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available. Pursuant to article 3 of law No. 16/2006 of June 1 2006, on the organization and functioning of Rwanda Environmental Management Authority, the authority shall examine and approve environmental impact assessment at any level of social-economic undertaken by any person in the country.

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

71c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

References:

In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available, especially pursuant to the rules and regulations governing the national traffic police. All drivers, motorists and pedestrians are obliged to respect the traffic laws. Offenders are charged fines and detention sentences.

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

72. Does government effectively enforce basic health, environmental, and safety standards on businesses?

72a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

According to Dr. Innocent Nyaruhirira, former Deputy minister of health in charge of HIV and other epidemic diseases (interview October 3, in Kigali): The strict health inspections that were introduced in Kigali in the previous five years have made Kigali the the cleanest city on the African continent; you never see polythene bags scattered anywhere. Ordinary restaurants work up to the expected health standards.”

George Kalisa, a Ugandan Free-lance Journalist, says: “I have had a chance to visit many cities — Nairobi, Dar-es salaam, Kampala, Bujumbura and even Khartoum — but Kigali is still the smartest and the most organized in terms of cleanliness, with transparent regulatory mechanisms.”

The Minister of Health Dr. Richard Sezibera (interview, Oct. 2): “Public health standards in Kigali and other towns are designed to ensure comprehensive compliance by all businesses, with transparent regulatory requirements in place to improve the livelihood of all citizens.”

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner according to the Executive Secretary Rose Mukankomeje of the Rwanda Environmental Management Authority (REMA): Ensuring and supervising environmental standards is in the interest of all the citizens and future generations, so why should there be an exception?” She added that REMA’s main obligation is to sensitize the public about the negative consequences of their negligence and their obligatory requirements.

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

72c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

In practice, business inspections by government officials to ensure that public safety standards are being met are carried out in a uniform and even-handed manner.

The Minister of Local Government Christoph Bazivamo (interview September 30) says: All the local government authorities and police constables are under stern instructions to ensure that public safety standards are observed without fear or favor; it's in the interest of us all. And we have instructed the authorities concern to impose fines to any breaches by the business community."

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

YES | NO

References:

In law, attempted corruption is illegal. Pursuant to law No.23/2003 of Aug. 7, 2003 relating to the punishment of corruption and other related crimes, article 10 states: Whoever will have explicitly or implicitly demanded, indirectly or directly received gifts or any other profit for oneself or for others, or who will have accepted it as a promise in order to render a service within his or her function, mission, mandate or whoever will have used them to do it, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit' solicited."

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

73b. In law, extortion is illegal.

YES | NO

References:

In law, extortion is illegal pursuant to article 12 of the law relating to punishment of corruption and related offenses: Notwithstanding heavy sentences provided for by other penal provisions, whoever mentioned in articles 10, 11 and 12 of this law, who will have explicitly or implicitly demanded, benefited from or carried out sexual acts of non-consensual nature or who will have accepted it as a promise in order to accomplish, or refrain from carrying out his or her duties shall be sentenced to a term of imprisonment provided for in articles 11 and 12 of this law, in accordance with the distinctions therein established, and a fine ranging from 50,000 RWF [US\$88] to 1,000,000 RWF [US\$1,760]."

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

73c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

In law, offering a bribe is illegal pursuant to article 14: Whoever will have explicitly or implicitly offered, indirectly or directly proposed, gifts or any other illicit profit, to a person in charge of a function, mission or mandate or who will have promised it in order to render for him or her or for somebody else a service that is within his or her attributions or who will use the latter for that service to be rendered, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit accorded.”

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

In law, receiving a bribe (i.e., passive corruption) is illegal pursuant to article 19: Whoever will have explicitly or implicitly, solicited, promised, or directly or indirectly received gifts or any other illicit profit for himself or herself or somebody else, whether the exerted influence produces expected results or not, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit solicited, promised or received.”

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

73e. In law, bribing a foreign official is illegal.

YES | NO

References:

In law, bribing a foreign official is illegal pursuant to article 23: A sentence of a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit received shall be imposed on:

a) any public servant and any other person who openly, by fictitiously effected acts or fraudulent representation of one’s identity by use of third party, will have taken or accepted to receive, in violation of the law governing him or her, whatever benefits from acts, public tenders, in public enterprises or others of which he or she has or had, at the time of commission of the act, whether as a whole or in part, the administration or the supervision of;

b) any public servant and any other person who will have, in violation of laws which govern him or her, taken whatever benefits, from an affair for which he or she was in charge of authorizing payment or liquidation.”

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

73f. In law, using public resources for private gain is illegal.

YES | NO

References:

In law, using public resources for private gain is illegal as provided for in article 17: Any public servant who will be found guilty of misappropriation of public funds by arranging to receive, demanding or knowingly receive what was more than due for fees, taxes, contributions, fines or surety, revenues or interests, benefits or salaries, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit received.”

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

In law, using confidential state information for private gain is illegal pursuant to Article 20: Anybody who will have explicitly or implicitly, offered to somebody else, attempted to give, promised directly or indirectly, gifts or any other illicit profit intending by use of authority or acquaintances to influence decision making by another person, whether the illicit, profit is for himself or herself or for somebody else, whether the exerted influence produces the expected results or not, shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit given or promised.”

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

73h. In law, money laundering is illegal.

YES | NO

References:

In law, money laundering is illegal pursuant to Article 25: Whoever will have committed the offence of laundering shall be sentenced to a term of imprisonment of between 2 and 5 years and a fine ranging from twice to 10 times the value of illicit profit. The competent court of law will automatically deliver the verdict of the confiscation of the illicit property or revenue that was laundered.

“Article 26: Laundering is punished with a term of imprisonment of between 5 and 10 years and a fine ranging from -twice to 10 times the value of illicit profit given, if it was committed:

- a) as a habit;
- b) on the basis of professional authority;
- c) in an organized gang.

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

73i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

In law, conspiracy to commit a crime (i.e. organized crime) is illegal. Article 30 provides that: Notwithstanding other sentences provided for by the penal provisions applicable to offences provided for by this law, the court of law can deliver an additional verdict as follows:

- a) the confiscation of the object or item which was used or meant to be used to commit the offence;
- b) the confiscation of the product of the offence as well as the money or object which the author or co-authors or accomplice have illicitly received. When the confiscated object has not been seized or cannot be substituted, the confiscation is arranged in money value.”

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

75. Is the anti-corruption agency effective?

69

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

The independence of the agency is ensured through a fair and balanced appointment process; by law, the executive nominates candidates to the legislature for oversight in relation to their professional competencies and approves them for a term of five years, which is renewable only once. They cannot be sacked without any legal justification.

References:

In law, the anti-corruption agency (or agencies) is protected from political interference as clearly stated in article 182 of the constitution: The office shall be independent from political or any external interference and the independence is also supplemented by article 3 of the law on the organization and functioning of the ombudsman's office."

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

75b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The ruling party or heads of other departments and agencies do not interfere in investigations. Nor does the chief Ombudsman's connections to the ruling party interfere with his new job, provided the investigations are done in conformity with the laws in force. The interviewees were of this point of view.

References:

In practice, the anti-corruption agency (or agencies) is protected from political interference according to the Chief Ombudsman Dr. Tito Rutaremara (PhD) (interview, Sept. 12, Kigali): We do not operate under any political pressure or incentives; the personnel carry out investigations about any injustices and corruption cases without hindrance from government organs, including access to politically sensitive information."

Prof. Laurent Nkusi, a former information minister and opposition politician now a journalism lecturer at the National University of Rwanda, (interview, Butare) says: "I do not doubt the professional competence of the chief ombudsman but he is a known founding member of the ruling Rwanda Patriotic Front (RPF) who cannot avoid political pressure from his appointing authority; there are obviously politically sensitive cases such as investigating the private assets of some party bigwigs."

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information.

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

75c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

There are strict protections to protect the ombudsman from removal from office.

References:

In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

According to Prof. Laurent Nkusi, former information minister and opposition politician now a journalism lecturer at the National University of Rwanda, (interview, Butare), the Chief Ombudsman and even his deputies are by law protected from removal without relevant justifications but if the appointing authority is unsatisfied or uncomfortable with his style of work, he can create reasons that confirm with the legal provisions and dismiss him from office”

Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali) differs with Prof. Nkusi saying: “I’m at liberty to resign at any time if I am put under political or any external pressure that can interfere with the legal mandates.”

Shyaka Kanuma, Managing editor, Rwanda Focus says: “Any of the senior ombudsman’s officials are political nominees who are always conscious of interests of their appointing authorities and their continued stay in office depends on the satisfaction of their boss; the law can even be amended to keep them in office or to sack them”

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

75d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria according to Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali): Of course, our appointments were mainly based on professional criteria; all of my deputies are qualified lawyers with vast practical experience. I'm a political scientist with over 30 years experience in academics."

Emmanuel Butare, a lecturer at ULK private university and former civil servant says: "Appointments are usually based on professional qualifications although Individuals appointed may have clear party loyalties. After all human beings are by nature political animals."

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

75e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

In practice, the anti-corruption agency (or agencies) has a professional, full-time staff. The office of the ombudsman has a full-time staff according to Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali), but he hastened to that, However, this office still has insufficient personnel compared to its nationwide jurisdiction. We need to recruit more employees to effectively meet the constitutional mandate. But we have made this request and the government has promised to recruit more personnel in the next annual budget."

The Ombudsman's office annual report, published July 25, also revealed that the office has an insufficient staff of only 38 employees and advised the government to consider recruiting more to strengthen the institutional capacity.

Shyaka Kanuma, Managing editor, Rwanda Focus says: "The office must be equipped with enough personnel and technical equipment before any blame for inefficiency can be laid on them. How can we start accusing them of incompetence when they have insufficient staff?"

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

75f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

References:

In practice, the anti-corruption agency (or agencies) receives regular funding. According to an article in The New Times (October 17), the office of the ombudsman had received a grant of US\$5 million from the Swedish government.

Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali) confirmed that his office has a predictable source of funding that consistently comes from government on an annual basis, and it is supplemented by other foreign funding.

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

75g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

These reports are accessible to the public online at www.ombudsman.gov.rw and they are compiled and presented to the legislature, whereupon the ministers concerned are summoned. The reports are made every year, but there may be impromptu investigations before the end of the year if it is deemed necessary.

References:

In practice, the anti-corruption agency (or agencies) makes regular public reports. According to Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali), the office is under constitutional obligations to make regular, publicly available, substantial reports to the legislature adding that the report is directly accessible to the public in hard copy.

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

75h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate. One good example is Theoneste Mutsindashyaka a senior member of RPF and then state minister of Education was late last year prosecuted for alleged embezzlement of public funds while he was a provincial governor, convicted and sentenced to five years. Later he and other 56 senior government officials including RPF cohorts were found to have under declared their assets and removed from public institutions plus refunding the stolen public funds.

References:

According to Dr. Tito Rutaremara, the Chief Ombudsman (interview, Sept. 12, Kigali): This institution has the powers to gather information through accurate investigations on all issues related to injustices, corruption and other malpractices in the public and private sectors; we have the mandate to reprimand, arrest or bring suspects to trial in collaboration with the judiciary and the law enforcement organs.”

Prof. Laurent Nkusi, former information minister, member of the opposition Liberal Party and lecturer at the national university of Rwanda says: “The Ombudsman’s Office has most of the powers needed to carry out its mandate. He hastened to add that “there must be certain politically sensitive cases where he has to first consult his appointing authority.”

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

75i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

You may get a copy of the annual report online at website www.ombudsman.gov.rw.

References:

In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

According to Jule Mugisha, investigator of the ombudsman’s office (interview, Oct.1): There are injustices and corruption related investigations that we initiate; we also communicate with other investigators like journalists and the Criminal Investigation Department (CID) to ensure that there is credible evidence against culprits.”

Emmanuel Butare, a lawyer and lecturer at Kigali Private University says: “The office may have initiated its own investigations but it has gained the effectiveness required as they confessed in their annual report that they have insufficient staff. In the Ombudsman’s annual report presented to Parliament on July 25, insufficient personnel was identified as a big challenge, and the report advised the government to assist the office in the recruitment of more staff.”

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

76. Can citizens access the anti-corruption agency?

75

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

We immediately respond to any injustice/corruption complaints, especially when the complainants are not in the countryside, but all serious complaints are acknowledged and investigated promptly within a month, ” according to JJule Mugisha, tinvestigator, Ombudsman’s Office, (interview, Oct.1).

Steven Gahunde, a teacher at King David Academy, Gasabo District (interview September 30) says, “Some complaints are not given the attention they deserve; the school administration had gone over two months without paying salaries. We raised a complaint to the office, but they ignored us.”

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

76b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination, according to Jule Mugisha, investigator, Ombudsman's Office, (interview, Oct.1): Whistle blowers have always reported abuses of power without fear of negative consequence because they are protected under the law on the organization and functioning of the ombudsman's office as well as the anti-corruption law."

Emmanuel Butare, a lawyer and lecturer at Kigali Private University, says: "Whistle blowers are protected under the law related to the punishment of corruption specifically in Article 36: 'In the legal proceedings and judgment of offenses provided for by this law, the judge or any qualified authority handling the offenses provided for by this law, must take all the necessary measures to ensure effective and appropriate protection for the following persons:

a) those who have supplied information concerning the offenses provided for by this law or who collaborated in another way with authorities in charge of investigations or court proceedings;

b) witnesses who have made statements concerning the offenses."

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

In law, there an agency (or group of agencies) with a legal mandate to address corruption. Pursuant to article 182 of the constitution, the office of the ombudsman is an independent public institution whose mandate is, among other responsibilities, preventing and fighting against injustices, corruption and other related offenses in public and private institutions. The office works in collaboration with other public institutions established under the constitutional provisions such as the public prosecutions office, national police and the office of the auditor general of state finances.

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

81
VI-3. Rule of Law

77. Is there an appeals mechanism for challenging criminal judgments?

67

77a. In law, there is a general right of appeal.

YES | NO

References:

In law, there is a general right of appeal to any court decisions in accordance with the rules of appeal procedures. Only the decision made by the Supreme Court may not be appealed, pursuant to article 144 of the constitution:

The Supreme Court is the highest court in the country. The decisions of the Supreme Court shall not be subject to appeal save in terms of petitions for the exercise of the prerogative of mercy or revision of a judicial decision. Its decisions are binding on all parties concerned whether such are organs of the State, public officials, civilians, military, judicial officers or private individuals.”

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

77b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The judicial reforms that were recently enacted (within the last 3 years) were the reorganization of the judicial structures; elimination of the courts of appeal and establishment of the high court of the republic, courts of first instance and courts of higher instances at the district level. This also necessitate various amendments of the laws that define the new jurisdictions of the new courts as well as setting higher academic and practical competencies for legal practitioners.

References:

In practice, appeals are resolved within a reasonable time period. According to Justice Johnston Busingye, a judge of the High Court of the Republic: Generally appeals are acted upon quickly. But in the Supreme Court and the High court of the Republic there are sometimes inevitable backlogs. This is because the judicial reforms were instituted only three years ago, judges of the high court are still not enough acquainted with the reforms and we have not opened branches outside of Kigali. But the appeals are acknowledged promptly and cases move steadily towards resolution.”

David Asiimwe, a private advocate (interview Oct. 4, Kigali) says: “Appeals on criminal cases are generally acted upon quickly, but appeals on civil cases may take years while some appeals may not be acknowledged, and even simple cases may take years to resolve.”

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

77c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

In practice, citizens can use the appeals mechanism at a reasonable cost, according to James Munganeza, an employees with Forum for Activists Against Torture (FACT) a local human rights nongovernmental organization (NGO) (interview September 30): The appeals mechanism is an affordable option to both ordinary and middle-class citizens who seek to challenge criminal judgments. The appeals fee is 8,000 Rwandan francs [US\$14]maximum.”

Justice Johnston Busingye says: “The only big challenge to litigants in Rwanda is in raising the fund to engage an advocate. Advocates are expensive, but the court fees are generally negligible either at first instance or during appeals.”

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees are not a barrier to appeals.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments. Attorney fees present somewhat of a barrier to pursuing appeal.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments. Attorney fees greatly discourage the use of the appeals process.

78. In practice, do judgments in the criminal system follow written law?

50

78. In practice, do judgments in the criminal system follow written law?

100 | 75 | **50** | 25 | 0

References:

In practice, judgments in the criminal system follow written law according to Emmanuel Butare, a lecturer Kigali Private university: Pursuant to provisions of the law, every court decision must indicate the grounds on which it is based, be written in its entirety and shall be delivered in open court. A judge's decision must be based on nothing but the law."

According to Justice Sam Rugege (interview October 3): "Judgments in the criminal system are made according to established legal code and conduct. The only exceptional cases in which individuals are treated by a separate process is in the traditional Gacaca court system that deals with the exceptional genocide crimes that involved ordinary citizens."

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

79. In practice, are judicial decisions enforced by the state?

75

79. In practice, are judicial decisions enforced by the state?

Comments:

The National Human Rights Commission is also a public institution that issues annual or impromptu ad hoc reports on the state of human rights in the country. You may access last year's report online at www.nchr.gov.rw.

References:

In practice, judicial decisions enforced by the state under the supervision of public court bailiffs soon after the final court ruling according to Justice Sam Rugege (interview October 3).

But the annual report of the National Human Rights Commission, which was presented to Parliament on May 11, said that one of the challenges is the unnecessary delay in execution of definitive and final court decisions.

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

80. Is the judiciary able to act independently?

88

80a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

In law, the independence of the judiciary is guaranteed pursuant to article 44 of the constitution: The judiciary as the guardian of the rights and freedoms of the public ensures respect thereof in accordance with procedures determined by law."

Article 140 of the constitution also provides that : "The Judiciary is independent and separate from the legislative and executive branches of government. Justice is rendered in the name of the people and nobody may be a judge in his or her own cause. They shall not be challenged except through ways and procedures determined by law."

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence includes financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

80b. In practice, national-level judges are protected from political interference.

100 | 75 | **50** | 25 | 0

References:

In practice, national-level judges are protected from political interference according to the interviewees.

Johnston Busingye, judge of the High Court says that national-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. We the Judges never comment on political debates because this would mean we are partisans and not impartial legal practitioners.”

Harson Mutabazi, a magistrate of the Kigali Court of Higher Instance (interview, Oct. 3, Nyamirambo Suburb, Kigali) says: “We are protected from political or any form of interference; our terms of service are clearly stipulated in the law. We even work in accordance with a code of professional ethics. If any legal practitioner feels the contract has been abused, he or she reserves the right to challenge the decision to the relevant court.”

100: National-level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National-level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

80c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

In law, there is a transparent and objective system for distributing cases to national-level judges.

According to Article 5 of the law governing the Supreme Council of the Judiciary: Cases shall be assigned to judges in a transparent and equitable manner in accordance to their competences without any external interferences.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

80d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

In law, national-level judges are protected from removal without relevant justification.

Pursuant to the constitutional provision, article 142: Unless the law otherwise provides, judges confirmed in office shall hold tenure for life; they shall not be suspended, transferred, even if it is for the purposes of promotion, retired prematurely or otherwise removed from office.

“In the exercise of their functions, judges follow the law and only the law.

“The law on the status of judges and other judicial personnel shall determine the remuneration and other benefits due to them.”

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

81. Are judges safe when adjudicating corruption cases?

100

81a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases, according to the Justice Minister Tarcise Karugarama, and Deputy Chief Justice Sam Rugege ((interview October 3).

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

81b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

In practice, in the last year, no judges have been killed because of adjudicating corruption cases according to the interviewees mentioned above.

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

82. Do citizens have equal access to the justice system?

39

82a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

The traditional communal court referred to as Gacaca courts are the judicial court system manned by the lay jurors called INYANGAMUGAYO, meaning credible citizens of higher integrity elected by their peers to handle moderate genocide cases.

The genocide suspects were categorized into three sections. The first category of suspects are the planners and supervisors of the genocide and crimes against humanity who are tried in classic international and national courts of law. The other two categories involve individual citizens who were involved in injuring other innocent citizens, stealing their property or destruction of their property on the basis of ethnicity.

References:

In practice, judicial decisions are not affected by racial or ethnic bias according to the officials mentioned above.

Emmanuel Butare, a lawyer and lecturer at Kigali Private University, also says: I have neither heard nor read any court decisions based on racial or ethnic biases.”

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

82b. In practice, women have full access to the judicial system.

100 | 75 | **50** | 25 | 0

References:

In practice, we have full access to the judicial system like any other citizens. In fact, the post-genocide government has even applied affirmative measures to promote our rights which have been hitherto downtrodden”, says Jeanne Akimanzi, a private business lady in Remera, Kigali suburb interview September 30).

According to Jeane D’Arc Mujawamariya, a minister in charge of gender affairs (interview, Oct, 4, in her office in Kigali) says: “Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system.”

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

82c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | **NO**

References:

In law, the state does not provide legal counsel for defendants in criminal cases who cannot afford it; there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

82d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

In practice, the state does not provide adequate legal counsel for defendants in criminal cases who cannot afford it:

We do not provide it to the accused due to the financial constraints the state also faces,” says Justice Minister Tarcise Karugarama. “We only provide legal aid in criminal cases through public prosecutions. We would, of course, wish to help the vulnerable litigants, but cannot afford it. All the government does is to solicit funding from non-governmental organizations (NGOs) and foreign partners.”

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

82e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

Comments:

Even though legal costs are high, with or without legal representation, defendants or plaintiffs usually address their cases to the competent courts for redress and receive impartial hearings.

References:

In practice, citizens earning the median yearly income can afford to bring a legal suit. In some cases, according to Tarcise Karugarama, the justice minister, the legal system is an affordable option to middle-class citizens and the elite who seek to redress a grievance. In other cases, the cost is prohibitive because advocates' fees are a significant consideration in whether or not to bring a case.

Emmanuel Butare, a lawyer and lecturer at Kigali Private University, says: In most cases, ordinary citizens are not ignorant of their rights and even if they do not have the financial strength to engage a private advocate they still address their grievances to

the courts.”

Ms. Haskell, Human right watch country representative said via e-mail: ” winning civil cases in Rwandan courts sometimes depends on how fat the responents’ wallet is or how politically influential he/she is. But when it comes to criminal cases, the judge has to be careful or else he is removed in disgrace and this has started happening; recently, it’s record 5 judges were sacked in disgrace”

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. Attorney fees do not represent a major cost to citizens.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits. Attorney fees are high enough to discourage most citizens from bringing a case.

82f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

In practice, a typical small retail business can afford to bring a legal suit.

James Karake, a private business man in Kigali says: For me, the legal system is an affordable option whenever I wish to redress a grievance because I can afford the required costs. But in other cases, the cost is prohibitive and the attorney fees are a significant consideration in whether to bring a case to court.”

But Tarcise Karugarama, the justice minister, says that the main obstacle to ordinary people is the exorbitant cost of private advocates.

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. Attorneys fees do not represent a major cost to small businesses.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive. Attorney fees are a significant consideration in whether to bring a case.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits. Attorney fees are high enough to discourage most small businesses from bringing a case.

82g. In practice, all citizens have access to a court of law, regardless of geographic location.

References:

In practice, all citizens have access to a court of law, regardless of their geographic location according to the Justice Minister Tarcise Karugarama: The primary objective of the judicial reforms that were implemented a few years ago was to ensure that courtrooms are accessible to citizens at low cost, from rural courthouse up to the sector level.”

“At least now one does not have to travel many kilometers by taxi to reach the court premises; at each and every sector, there is a Court of Primary Instance with full-time judicial personnel to attend to the regular complainants,” says Charles Havuga, Chairman of the Kayonza sector in the Eastern Province (interview, Sept. 29.)

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

83. Is the law enforcement agency (i.e. the police) effective?

58

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

References:

In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

According to Charles Kayiranga, Chief Inspector of police (interview, Sept. 25, National Police Headquarters, Kigali) says: The appointments in the national police are made based on disciplinary records, ranks and professional qualifications.”

Prof. Laurent Nkusi says: “Compared to other police institutions in East and Central Africa, Rwanda has the most professional, disciplined police and they are protected from political interference. Of course we are not all angels: appointment to senior police positions like Criminal Investigation Department (CID) and commissioner general are made not only according to qualifications and seniority but also political consideration of the commander-in-chief who is the head of state.”

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

83b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

The Minister for Security Faysil Harerimana says: The national police and and the national prison services have a regular government budget for his ministry on top of any other foreign grants that make the institutions able to sufficiently fulfill their basic mandates.”

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency’s ability to fulfill its mandate.

83c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The head of state executes his mandate according to provisions of the law. The president nominates his candidates and the Parliament approves or rejects their candidates.

References:

In practice, the law enforcement agency is protected from political interference according to the security minister Faysil Harerimana: "The national police operates independently of the political process and has all the necessary legal mandates to enforce the law without fear or favor."

Prof. Laurent Nkusi, former information minister and opposition politician now a journalism lecturer at the National University of Rwanda, (interview, Butare) says: "Compared to other police institutions in East and Central Africa, Rwanda has the most professional, disciplined police and they are protected from political interference. Of course we are not all angels: appointment to senior police positions like CID and commissioner general are made not only according to qualifications and seniority but also political consideration of the commander-in-chief who is the head of state."

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

84. Can law enforcement officials be held accountable for their actions?

88

84a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

In law, there is an independent mechanism for citizens to complain about police action. Pursuant to the constitutional provisions in article 170: The National police must serve the people particularly on the basis of the following principles :

1. safeguarding the fundamental rights guaranteed by the Constitution and the law ;
2. harmonious collaboration between the National Police and the community which it serves ;
3. the accountability of the National Police to the community ;
4. informing the population on how the Police is fulfilling its mission.

The National Human Rights Commission, Office of the Ombudsman, have jurisdiction over complaints against the national police and the national defense forces.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

84b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period: We treat complaints received according to priority in terms their seriousness; for instance, cases where citizens been inflicted with serious bodily harm, car accidents, and outbreaks of fire outbreak, any suspects are followed up on quickly" police Chief Inspector Charles (quoted above) said. He added that even though there could be a backlog of cases to follow up, complaints are acknowledged promptly and investigated.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

84c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials pursuant to article 182 of the constitution: The Office of the Ombudsman shall be an independent public institution. Its responsibilities shall include the following:

- 1, acting as a link between the citizen and public and private institutions ;
2. preventing and fighting against injustice, corruption and other related offenses in public and private administration;
3. receiving and examining, in the aforementioned context, complaints from individuals and independent associations against the acts of public officials or organs, and private institutions and to mobilize these officials and institutions in order to find solutions to such complaints if they are well founded. The Auditor General's office is also mandated to receive and examine asset declaration records of senior police officers among other public officials, while the National Human Rights Commission is mandated to investigate rights abuses committed by police and national armed forces among other violators. "

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

84d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | **75** | 50 | 25 | 0

References:

In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

Mugisha Jile, investigator, Ombudsman's Office, (interview, Oct.1) says: The national police is one of the government institutions the ombudsman's office collaborates with in injustice and corruption investigations, so when it comes to the police operatives themselves being involved in the crimes, we give that a priority because they should exemplary anti-corruption body. ”

The Ombudsman's Report said that the traffic police was the most corrupt government organ and that was a very interesting and encouraging revelation, said Prof. Nshuti Manasseh, former minister of finance, now Rector, Rwanda Institute of Administration and Management (RIAM) in Southern Province (interview September 30).

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

84e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

In law, law enforcement officials are not immune from criminal proceedings pursuant to article 16 of the constitution: All human beings are equal before the law. They shall enjoy without discrimination equal protection of the law.”

Article 48: “In all circumstances, every citizen, whether civilian or military, has the duty to respect the Constitution, other laws and regulations of the country.”

Article 44: “The Judiciary as a guardian of the rights and freedoms of the public ensures respect thereof in accordance with the procedures determined by law.”

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

84f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

Comments:

The embezzlement case was reported by The New Times, www.newtimes.co.rw. Media reports on this incident can also be accessed at the Rwanda News Agency, www.rnanews.com.

References:

In practice, law enforcement officials are not immune from criminal proceedings. According to Minister for Security Faysil Harerimana: No body including the head of state is above the law; the law enforcement officers are subject to criminal investigations in an exemplary manner for official misconduct. No crimes are exempt from prosecution except those committed by insane people but that insanity must be proved by a competent medical doctor”

Prof. Laurent Nkusi, former information minister and opposition politician now a journalism lecturer at the National University of Rwanda, (interview, Butare) says: “We have witnessed senior police officers being prosecuted and being relieved of the duties; about six senior police officers were prosecuted, sentenced to imprisonment on charges of embezzlement of public funds two years ago.”

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.