

Overall Score:

61 - Weak

Legal Framework Score:

64 - Weak

Actual Implementation Score:

52 - Very Weak

Category 1. Non-Governmental Organizations, Public Information and Media

1.1. ⁶³Anti-Corruption Non-Governmental Organizations

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

67

01a. In law, citizens have a right to form NGOs focused on anti-corruption or good governance.

Yes

No

Comments:

This law allows formation of all kinds of NGOs.

References:

Loi No. 10/92 ADP portant Liberté d'association

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. Non-governmental organizations (NGOs) are defined here as any organized group that is separate from the state working on issues of governance, transparency, and/or anti-corruption.

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.

01b. In law, anti-corruption/good governance NGOs are free to accept funding from any foreign or domestic sources.

Yes | No

Comments:

No law forbids NGOs from accepting foreign funding, and some NGOs receive funding from foreign governments, including the Burkina Faso Movement for Human Rights and Peoples (MBDHP), the Ren-Lac, and the Centre for Democratic Governance (CGD).

References:

Loi No. 10/92 ADP portant Liberté d'association.

Yes: A YES score is earned if anti-corruption/good governance NGOs 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 any formal legal or regulatory bans on foreign or domestic funding sources for NGOs focused on anti-corruption or good governance.

01c. In law, anti-corruption/good governance NGOs are required to disclose their sources of funding.

Yes | No

References:

Loi 10/92 ADP

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

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

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

83

02a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance NGOs.

100 | 75 | 50 | 25 | 0

Comments:

NGOs focused on promoting good governance or anti-corruption operate freely. Since it began operations in Burkina Faso, the “National Network of Anti-corruption” (REN-LAC) has never been significantly disturbed in its work.

References:

Thomas Ouédraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou.

Frederic Nikiéma, deputy executive director of Centre pour la Gouvernance Démocratique, 10 October 2011, Ouagadougou.

Claude Wetta, executive secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou.

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou.

100: NGOs 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: NGOs 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 NGO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

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

02b. In practice, anti-corruption/good governance NGOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

A coalition of NGOs, Réseau National de lutte Anti-corruption (REN-LAC), contributes on behalf of civil society to the struggle against the corruption in Burkina. Through studies and various investigations, it enlightens the most corrupt sectors and proposes appropriate solutions. However, these suggestions are not taken into account by the government and investigations are rarely begun.

For example, in a publication on the phenomenon of the corruption in and around the offices of customs of Cinkassé and Bittou in the border Burkina-Togo, REN-LAC submitted evidence of a complicity between some customs-officers and a group of tradesmen named “Alkaïda”, including complaints that road carriers and economic operators committed customs fraud. Repeated observations and investigations revealed that several trucks heavily loaded with various goods, from Togo or Ghana, evaded customs upon entering Ouagadougou.

References:

Thomas Ouédraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou.

Frederic Nikiéma, deputy executive director of Centre pour la Gouvernance Démocratique, 10 October 2011, Ouagadougou.

Claude Wetta, executive secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou.

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou.

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

75:

50: Anti-corruption/good governance NGOs are active, but may not be relevant to political decisions or the policymaking process. Those NGOs 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 NGOs are effectively prohibited from engaging in the political process. Those NGOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

02c. In practice, no anti-corruption/good governance NGOs have been shut down by the government for their work on corruption-related issues during the study period.

Yes

No

Comments:

No activists in Burkina have been shut down during the study period. For example, both Centre pour la Gouvernance Démocratique (CGD) and Réseau National de lutte Anti-corruption (REN-LAC), the main local anti-corruption NGOs can conduct investigations and various surveys on corruption freely.

References:

Ouédraogo Thomas, researcher, 10 October 2011, Ouagadougou

Nikiéma Frederic, Deputy Executive Director of Centre pour la Gouvernance Démocratique, 10 October 2011, Ouagadougou

WETTA Claude, Executive Secretary, Réseau National de lutte Anti-corruption, 10 October 2011, University of Ouagadougou

Yes: A YES score is earned if there were no NGOs 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 NGO 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 NGO’s work may not be explicit, however the burden of proof here is low. If it seems likely that the NGO 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 anti-corruption/good governance NGO activists safe when working on corruption issues?

03a. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been imprisoned.

Yes

No

Comments:

In the past year, no NGO activist was imprisoned because of his/her work covering corruption.

References:

Nikiéma Frederic, deputy Executive Director of Centre pour la Gouvernance Démocratique (CGD), 10 October 2011, Ouagadougou

WETTA Claude, Executive Secretary, Réseau National de lutte Anti-corruption (REN-LAC), 10 October 2011, University of Ouagadougou

DIALLO Aboulaye, Manager National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Yes: A YES score is earned if there were no NGO 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.

03b. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been physically harmed.

Yes

No

Comments:

In the past year, no NGO activist was physically harmed because of his/her work covering corruption.

References:

WETTA Claude, Executive Secretary, Réseau National de lutte Anti-corruption (REN-LAC), 10 October 2011, University of Ouagadougou

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

Frederic Nikiéma, Deputy Executive Director of Centre pour la Gouvernance Démocratique (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, Manager National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Yes: A YES score is earned if there were no documented cases of NGO 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.

03c. In practice, in the past year, no anti-corruption/good governance NGO activists working on corruption issues have been killed.

Yes | No

Comments:

During the study period, no NGO activist was killed because of his/her work covering corruption.

References:

WETTA Claude, Executive Secretary, Réseau National de lutte Anti-corruption (REN-LAC), 10 October 2011, University of Ouagadougou

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

Frederic Nikiéma, deputy executive director of Centre pour la Gouvernance Démocratique (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Yes: A YES score is earned if there were no documented cases of NGO 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?

100

04a. In law, citizens have a right to organize into trade unions.

Yes | No

Comments:

Trade unions are formed freely, without previous administrative authorization (art. 27 of the law above).

References:

LOI N°10/92 ADP PORTANT LIBERTE D'ASSOCIATION, article 27

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.

04b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

There are countless trade unions in Burkina, grouped in four umbrella unions. In fact, unions are an important player in the political process in Burkina Faso. They form freely, as evidenced by the fact that there are currently over 3000 trade unions.

References:

Thomas Ouedraogo , Researcher, and Frederic Nikiéma , Deputy Executive Director, Centre pour la Gouvernance Démocratique, 10 October 2011, Ouagadougou

René Bagoro , judge, member of the Union of the magistrates, Administrative court, 07 october 2011, Ouagadougou

Parfait Loure , magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

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.

1.2. Media's Ability to Report on Corruption

5. Are media and free speech protected?

05a. In law, freedom of the media is guaranteed.

Yes

No

Comments:

Under the provisions of the code information, the publication of any newspaper is “without permission and without payment of any security” (Article 7). That insofar as in our context, “publishing, printing, publishing, library and messaging are free” (article 6). Before publication, the newspaper must be reported to the Prosecutor of the Attorney who is required to issue a declaration receipt within 15 days after the filing of the record (s. 13).

References:

Loi N°56/93/ADP du 30 décembre 1993 portant Code de l’information (articles 1,

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.

05b. In law, freedom of speech is guaranteed.

Yes

No

Comments:

According to the article 8 in Constitution, liberties of opinion, of press and right to information are guaranteed. All person has the right to express and to distribute his/her/its opinions in the setting of the laws and regulations in force.

The article 1 of the law above admits the right to information as part of the fundamental rights of the citizen. Further, Article 31 in “Loi N°56/93/ADP” also settles that political organizations and parties have a strict equality of access to the public national organs and written press, resonant and television broadcasting.

References:

Constitution, article 8

Loi N°56/93/ADP du 30 décembre 1993 portant Code de l’information (art. 1, 31)

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?

75

06a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

Print media entities can freely organize. Such companies are established freely by both Government (Siswaya) and opposing parties or citizens (L'Observateur, L'Opinion, L'Indépendant, etc.).

Regarding the newspaper, the creation is placed under the simple declaration. Under the provisions of the code information, the publication of any newspaper is “without permission and without payment of any security” (Article 7). That insofar as in our context, “publishing, printing, publishing, library and messaging are free” (article 6). Before publication, the newspaper must be reported to the Faso Prosecutor of the Attorney who is required to issue a declaration receipt within 15 days after the filing of the record (s. 13).

The declaration must be made in writing on stamped paper and indicate:

- the purpose of publication;
- the language of publication;
- the title of the publication and its periodicity (daily, weekly, monthly, etc.).
- place of publication, the geographical areas of distribution;
- the names, surname and address of the editor and if the co-director;
- format;
- the address of the printer and printing means provided.

References:

OUÉDRAOGO Thomas, Researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Arnaud Ouedraogo , cabinet chief of the president of high communication council (CSC), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, national centre of press – Norbert Zongo, 11 October 2011, CNP-NZ

Souleymane Sore , independent consultant, 07 January 2012, Ouagadougou

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.

06b. In law, where a print media license is necessary, there is an appeals mechanism if a license is denied or revoked.

Yes | **No**

Comments:

All print media can be published without a license and just has to make a Declaration

References:

LOI N° 56/93/ADP portant Code de l'information au Burkina Faso, article 7

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.

06c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

With the creation of single website, the whole procedure takes less than two weeks.

References:

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, National Centre of Press, Norbert Zongo, 11 october 2011, CNP-NZ

Julien Natielse, teacher/researcher in the law faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

GNAMBA Mathias, Judge, Vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

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.

06d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are not required. All periodic newspapers can be published without previous authorization and without deposit of security bond after the declaration prescribed (art. 7 of “Loi N°56/93/ADP du 30 décembre 1993 portant Code de l’information”).

References:

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

Aboulaye Diallo, manager National Centre of press – Norbert Zongo, 11 October 2011, CNP-NZ

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?

75

07a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

Broadcast media entities can freely organize. There are many radios and TV’s created. According to the “Conseil supérieur de la communication”, the overview of the media landscape in Burkina Faso is the following: about 178 radios (42 commercial, 47 associative, 40 confessional, 6 local, 9 international, 34 public) and 61 TV’s (19 commercial, 1 associative, 6 confessional, 1 international, 30 public). However, in 2010 there has been no allocation of new frequencies, following a call for applications. But according to the 2010 Report of the High Council for Communication (CSC), 36 media have received a renewal of their operating license to frequencies, with the signing of agreements operating frequencies, including 26 on July 8, 2010 and 10 on Nov. 4, 2010 .

References:

Thomas Ouedraogo , researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager national centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

Arnaud Ouedraogo , cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

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.

07b. 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**

Comments:

No license required, just a declaration [registration].

References:

Loi N°56/93/ADP du 30 décembre 1993

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.

07c. 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:

Licenses are not required.

References:

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

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.

07d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Licenses are not required.

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Aboulaye Diallo, manager national centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

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

08a. In practice, the government does not prevent citizens from accessing content published on-line.

Comments:

The “Loi N°56/93/ADP du 30 décembre 1993 portant Code de l’information” doesn’t prevent people from accessing information online. Apart from some cybercafes prohibiting access to pornographic and other dangerous sites, it is perfectly possible (especially with a normal private connection) to access any type of site on the Internet in Burkina Faso.

Initiated by the Association of Journalists of Burkina (AJB), the League of Private Press Publishers (September) and the Autonomous Union of Workers of Information and Culture (SYNATIC), the National Press Centre (CNP-NZ, www.cnpres-zongo.org) was created through the program “Media for Democracy in Africa” implemented by the International Federation of Journalists (IFJ) on financing the European Union. It can be now considered as one of the best (if not the best) independent Observatory of press freedom in Burkina.

References:

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager national centre of press – Norbert Zongo, 11 October 2011, CNP-NZ

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.

08b. In practice, the government does not censor citizens creating content on-line.

Comments:

There is no government restriction. The “Loi n°56/93/ADP du 30 décembre 1993 portant Code de l’information” doesn’t keep people from using it. Most opposition newspapers have their own websites and posting them in real-time information that appears in their editions. During the period covered by the study, none of these newspapers has seen its site banned or censored because of its content.

References:

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

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?

92

09a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

Yes

No

Comments:

No law specifically prevents it.

References:

LOI N° 56/93/ADP portant Code de l'information au Burkina Faso, article 1

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.

09b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100

75

50

25

0

Comments:

According to the league for the defense of the liberty of the press in Burkina, the liberty of the press is assured relative to Burkina,

but serious hindrances to its widening are notably the repressive legal arsenal concerning offense of press exists, as well as the lack of independence of the council superior of communication that suspended critical popular radio broadcasts. The President of the Society of the Private Publishers denounces the self-censorship of the journalists by fear of power.

References:

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, National Centre of Press, Norbert Zongo, 11 october 2011, CNP-NZ

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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.

09c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Editors of newspapers are the only ones making the review of the content of various articles to be published in their newspapers. In some conditions (art. 105 of “Loi N°56/93/ADP du 30 décembre 1993 portant Code de l’information”), offense to the head of the state or to the chief of government is punished by confinement.

References:

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Aboulaye Diallo, manager of the National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Arnaud Ouédraogo, cabinet director of the Chairman of the Superior council of communication, 10 october 2011, CSC, Ouagadougou

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?

50

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

Yes | **No**

Comments:

No specific law exists.

References:

LOI N° 56/93/ADP portant Code de l'information au Burkina Faso

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**

Comments:

No specific law exists.

References:

LOI N° 56/93/ADP portant Code de l'information au Burkina Faso

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:

Many editors and journalists abide by a strict journalistic code. However, some infringements of the Information code can be noticed in the annual Report of CSC, pages 49-53): L'Opinion (art.109 and 113), Le Pays (art. 109, 113, 118), L'Express du Faso (art. 18).

References:

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo , manager of the national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Frédéric Nikiema, deputy executive director of the "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

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:

According to the 2010 Report of the CSC (p. 66), the management of the media coverage of the country for the presidential election of November 21, 2010 was actually satisfactory. However, there was some insufficiency in the distribution of the antenna time. Indeed, the political parties cohabit with a contrasted dynamism of the media actors on the ground.

References:

Arnaud Ouedraogo , cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive Director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Aboulaye Diallo, manager of the national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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:

Particularly during the past election, access to state-owned TV was quite unbalanced in favor of the candidate Blaise Compaoré. Nevertheless, on the whole, access to the state-owned newspaper “Sidwaya” was quite balanced for the seven candidates.

References:

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Aboulaye Diallo, manager of the national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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

Comments:

No journalist has been imprisoned related to his/her work covering corruption during the study period. No such cases have been reported in terms of justice or the High Communication Council.

References:

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Aboulaye Diallo, manager of the national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Parfait Loure, magistrate to high court of Ouagadougou, 05 January 2012, Ouagadougou

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:

No journalist has been physically harmed related to his/her work covering corruption during the study period. No such cases have been reported in terms of justice or the High Communication Council.

References:

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Aboulaye Diallo, Manager of the national centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

LOURE Parfait, Magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

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

Comments:

No journalist has been killed because of his/her work covering corruption-related issues during the study period. No such cases have been reported in terms of justice or the High Communication Council.

References:

Arnaud Ouedraogo, cabinet chief of the president of High Communication Council (CSC), 10 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

a

Aboulaye Diallo, manager of the national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Parfait Loure, magistrate to high court of Ouagadougou, 05 January 2012, Ouagadougou

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.

85

1.3. Public Requests for Government Information

12. Do citizens have a legal right to request information?

33

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

Yes | No

Comments:

The Constitution in Article 8 stipulates that “freedom of opinion, the press and the right to information are guaranteed. Everyone has the right to express and disseminate his opinions within the laws and regulations. “

LOI N° 56/93/ADP (JON°05 1994) portant Code de l’information au Burkina Faso states that “the right to information is a fundamental right of citizens of Burkina Faso.”

References:

The Constitution in Article 8

Loi n° 56/93/ADP (JON°05 1994) on Information Code in Burkina Faso.

Yes: A YES score is earned if there is a formal right to request 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 a request for a basic government record is denied.

Yes | No

Comments:

No specific law addresses it.

References:

Constitution

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:

No specific law exists.

References:

Constitution

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 to information requests effective?

0

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

100 | 75 | 50 | 25 | 0

Comments:

There is no specific waiting period to obtain requested information.

References:

Arnaud Ouedraogo, cabinet chief of the president of High Communication Council (CSC), 10 October 2011, Ouagadougou

Thomas Ouedraogo, , researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

a

Aboulaye Diallo, manager of the national Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Parfait Loure, magistrate to high court of Ouagadougou, 05 January 2012, Ouagadougou

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 information request mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

No such mechanism exists.

References:

Thomas Ouédraogo, researcher, "Centre pour la Gouvernance Démocratique" (CGD), 10 october 2011, Ouagadougou

Aboulaye Diallo, manager national centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

No such a mechanism exists.

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Aboulaye Diallo, manager national Centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

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 information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

No mechanism exists.

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Aboulaye Diallo, manager national Centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

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:

No such mechanism exists.

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Aboulaye Diallo, manager national Centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

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:

No such mechanism exists.

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Aboulaye Diallo, manager national Centre of press – Norbert Zongo, 11 october 2011, CNP-NZ

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 2. Elections

2.1. ⁶⁰Voting and Party Formation

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

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

Yes

No

Comments:

Constitution says that all Burkinabè without any distinction have the right to participate in the management of the state and the society. For the same reason, they are voters and eligible in the conditions foreseen by the law.

According to the law n°014-2001/AN above, the electorate consists of all Burkinabe of both sexes, aged at least eighteen years of age, enjoying their civil and political rights, a registered voter and not being in any case of incapacity under the law

References:

Constitution (articles 12, 33)

Loi n°014-2001/AN portant Code électoral (articles 42, 43, 48, 49, 59)

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

Comments:

The President is elected for a 5-year mandate (Constitution, art. 37) and the length of the term for the legislature is five years (art. 81).

References:

Constitution (article 37, 81),

Loi n°014-2001/AN portant Code électoral (articles 42, 43, 48, 49, 59)

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?

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

100 | 75 | 50 | 25 | 0

Comments:

Of almost 8 millions potential voters in Burkina Faso, only 3,239,777 people are registered on voting lists. Some people are not registered because of their delay, others because of lack of identity documents.

References:

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), Member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Thomas Ouedraogo , researcher, and Frédéric Nikiema ,deputyexecutive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Etienne Ouedraogo, deputy of the “Alliance pour la Démocratie et ... Rassemblement démocratique africain” (ADF RDA), 07 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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:

In most cases ballots are secret. Exceptions are made in the case of disabilities: the blind who are assisted throughout the voting phase, those with mental health problems who are accompanied to the ballot box, etc.

References:

Julien Natielse , research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Etienne Ouedraogo, deputy of the "Alliance pour la Démocratie et ... Rassemblement démocratique africain" (ADF RDA), 07 January 2012, Ouagadougou

Abdoul Karim Sango , member of « Commission électorale nationale indépendante » (CENI), Member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

The elections are held on a regular schedule: the presidential elections (December 1991, November 1998, November 2005, November 2010) and the legislative elections (May 1992, May 1997, May 2002, May 2007).

References:

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Thomas Ouedraogo , researcher, and Frédéric Nikiema ,deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Aboulaye Diallo , manager of thenational Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Report of Centre pour la Gouvernance Démocratique, "Voter turnout in Burkina Faso: quantitative and qualitative analysis", page 3.

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?

80

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

Yes | No

Comments:

The Constitution states that political parties can be created freely.

References:

Constitution (article 13)

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:

The Constitution (art. 12) states that all Burkinabe, without distinction, have the right to participate in the affairs of the State and Society.

References:

Constitution (Articles 12, 21)

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

Comments:

More than 130 political parties participate in the political scene.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

There is some preference for the ruling party members or sympathizers. For example, most of the ministers are either from the ruling party or from political partner parties ("Mouvance présidentielle"). The reality on the ground also requires consideration of ethnicity and regional balances, for example a Fulani cannot easily apply to become president of the Congress for Democracy.

References:

Abdoul Karim Sango, member of « commission électorale nationale indépendante » (CENI), Member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 1 October 2011, Ouagadougou

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:

The opposition's ability to force votes or publicly debate certain topics is very limited.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema , deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

2.2. Election Integrity

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

100

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

Yes | No

Comments:

Missions of CENI (Loi n°014-2001/AN portant Code électoral, article 3): (i) constitution, management and preservation of the national electoral dataset, (ii) organisation and supervision of votes et referenda.

Missions of ONEL (Loi n°014-2001/AN portant Code électoral, article 37): (i) monitoring of votes observation, (ii) suggestions to the CENI on good implementation of votes

References:

Commission électorale nationale indépendante – CENI (Loi n°014-2001/AN portant Code électoral, article 2)

Observatoire national des élections -ONEL (Loi n°014-2001/AN portant Code électoral, article 35)

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.

18. Is the election monitoring agency effective?

65

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

Yes | **No**

References:

Articles 5 and 12 of “Loi n°014-2001/AN portant Code électoral”

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

Comments:

The legitimacy of the members of the CENI had been contested by the Burkina's political parties in its wide majority. The opposition had even withdrawn from the CENI in the beginning of the month last June. That's why the Government asked the Parliament to vote a law that ends the mandate of the team of the CENI (law that was effective at the beginning of July 2011).

References:

Abdoul Karim Sango, member of « commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

OUEDRAOGO Etienne, Deputy of the "Alliance pour la Démocratie et ... Rassemblement démocratique africain" (ADF RDA), 07 January 2012, Ouagadougou

NATIELSE Julien, Research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

The Independent National Electoral Commission (CENI) is endowed with a permanent administration with a permanent seat; its administration is directed by a Chief of Staff and is placed under the authority of the President of the institution.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « commission électorale nationale indépendante » (CENI), Member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Independent National Electoral Commission (CENI), <http://www.ceni.bf/spip.php?rubrique1>

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 report on presidential elections (December 2010) is ready but not yet publicly available.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « commission électorale nationale indépendante » (CENI), Member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

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:

Yes, for example, the citizens who didn't enroll on time were not registered on the electoral lists. Just as voters arriving at the polling station without the full required documents are precluded from voting. These are the only notable cases for the period of this study. They correspond to the presidential election on November 21, 2011 and concern the areas of intervention vested in the Independent National Electoral Commission (INEC).

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

NATIELSE Julien, Research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

SORE Souleymane, Independent consultant, 07 January 2012, Ouagadougou

LOURE Parfait, Magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

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?

92

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

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

Comments:

For the last processes, troubles with registration lists were mainly linked to the lack of proof of identity. People also lacked birth certificates in Burkina Faso, as noted by the president of CENI.

References:

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Etienne Ouedraogo, deputy of the “Alliance pour la Démocratie et ... Rassemblement démocratique africain” (ADF RDA), 07 January 2012, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

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

Comments:

Temporary results can be contested by candidates before the constitutional Council in the seven days following the publication of the temporary results Electoral Code, art. 98).

The Constitution also states that: the constitutional Council controls the regularity, the transparency and the sincerity of the referendum, of the presidential and legislative elections and it is the judge of the electoral litigation. It proclaims the definitive results of the presidential, legislative and local elections (art. 152).

References:

Constitution (article 152)

Electoral Code (articles 98, 149, 150, 151, 152, 153)

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:

Candidate Sankara and three other candidates of the opposition (Hama Arba Diallo, Boukary Kabore “The Lion”, Ouampoussoga François Kabore) deposited a recourse in annulment of the presidential vote 2010 before the administrative court in Ouagadougou. According to them, the electoral cards have a defect: the voter’s birth place doesn’t appear, contrary to what has been required by the law.

After the presidential election, the four candidates met the press to give their reading of the vote of November 21, 2010, to announce that they reject all results. Appeals were filed on various charges, including creation, copying, and use by the CENI of documents not in conformity with the electoral code; setting aside some commissioners of the opposition in the supervision of the electoral operations, voting without the CNIB or other document required, multiple votes of some voters who had several cards, refusal of some presidents of polls to deliberate or to sign the verbal suits, existence of parallel lists, indiscreet presence of the police in offices, disappearance of polls, and so on.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Etienne Ouedraogo, deputy of the "Alliance pour la Démocratie et ... Rassemblement démocratique africain" (ADF RDA), 07 January 2012, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

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

Comments:

Military officers and other security forces refrained from interfering with political campaigns, rallies, or voting. During the last election, any incident related to the interference of law enforcement has been revealed or observed.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Etienne Ouedraogo, deputy of the "Alliance pour la Démocratie et ... Rassemblement démocratique africain" (ADF RDA), 07 January 2012, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

The CENI must ensure the welcome and the accreditation of observers and uphold all measures to facilitate their mission at the time of the votes.

References:

Electoral Code, article 14

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:

For the 2010 presidential election, there were international observers from the African Union, Communauté Economique Des États de l'Afrique de l'Ouest (CEDEAO), and the European Union. During the voting, these observers were able to visit all the places they had chosen.

References:

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager of the National Centre of Press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Frederic Nikiéma, deputy executive director of CGD (Centre pour la Gouvernance Démocratique), 11 October 2011, Ouagadougou

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.

86 2.3. Political Financing Transparency

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

Comments:

There is no specific law on this case.

References:

Constitution

Electoral Code

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**

Comments:

No specific law exists.

References:

Constitution

Electoral Code

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**

Comments:

No law exists.

References:

Constitution

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**

Comments:

No law exists.

References:

Constitution

Electoral Code

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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**

Comments:

No specific law exists.

References:

Constitution

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**

Comments:

No specific law exists.

References:

Constitution

Electoral Code

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 non-governmental 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**

Comments:

No specific law exists.

References:

Constitution

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**

Comments:

No specific law exists.

References:

Constitution

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**

Comments:

No specific law exists.

References:

Constitution

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. Systems where only certain donation amounts are required to be made public (above a non-trivial amount) also earn a NO score.

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

Yes | **No**

Comments:

No specific law exists.

References:

Constitution

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**

Comments:

No specific law exists.

References:

Constitution

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 non-governmental 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.

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

Comments:

Except for the law "n°012-2000/AN du 02 mai 2000 portant financement des activités des partis politiques et des campagnes électorales", which addresses public financing of political parties, there is no specific law concerning private financing.

References:

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (GENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Bruno Kere Juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

NATIELSE Julien, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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.

100 | 75 | 50 | 25 | 0

Comments:

There is no specific law on private financing for political parties or candidates. However, there is a law on financing political parties. This law applies only to funding provided by the Government (public funding). In reality, the law in question is not strictly adhered to because some political parties receive private funding; this happens especially from most major traders, to the ruling party.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Maxime Nikiema, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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.

Comments:

There is no specific law on private financing for political parties or candidates. However, there is a law on financing political parties. This law applies only to funding provided by the Government (public funding). In reality, the law in question is not strictly adhered to because some political parties receive private funding; this happens especially from most major traders, to the ruling party.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

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.

Comments:

There is no specific law on private financing for political parties or candidates. However, there is a law on financing political parties. This law applies only to funding provided by the Government (public funding). In reality, the law in question is not strictly adhered to because some political parties receive private funding; this happens especially from most major traders, to the ruling party.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

100: The agency or entity aggressively starts investigations into allegations of wrong doing 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

Comments:

There is no specific law on private financing for political parties or candidates. However, there is a law on financing political parties. This law applies only to funding provided by the Government (public funding). In reality, the law in question is not strictly adhered to because some political parties receive private funding; this happens especially from most major traders, to the ruling party.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Maxime Nikiema, programme officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

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

Comments:

There is no specific law on private financing for political parties or candidates.

References:

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

Frederic Nikiéma, deputy executive director of CGD (Centre pour la Gouvernance Démocratique), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member, CENI (Commission Electorale Nationale Indépendante), 07 October 2011, University of Ouagadougou

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

Comments:

There is no specific law on private financing for political parties or candidates. However, there is a law on financing political parties. This law applies only to funding provided by the Government (public funding). In reality, the law in question is not strictly adhered to because some political parties receive private funding; this happens especially from most major traders, to the ruling party.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

NIKIEMA Maxime, Programme officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

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

Comments:

There is no specific law on private financing for political parties or candidates. However, there is a law on financing political parties. This law applies only to funding provided by the Government (public funding). In reality, the law in question is not strictly adhered to because some political parties receive private funding; this happens especially from most major traders, to the ruling party.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of « Commission électorale nationale indépendante » (CENI), member of the « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

Maxime Nikiema, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

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

Comments:

No specific law exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive Director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member, CENI, 07 October 2011, University of Ouagadougou

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

Comments:

No specific law exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member, CENI, 07 october 2011, University of Ouagadougou

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:

The finances of individual candidates' campaigns are not audited. No specific law exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member, CENI, 07 october 2011, University of Ouagadougou

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.

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

100 | 75 | 50 | 25 | 0

Comments:

Political parties publish their sources of funding or expenditures only rarely.

References:

Abdoul Karim Sango, member, CENI, 07 October 2011, University of Ouagadougou

Thomas Ouedraogo, researcher, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

There are persistent delays in obtaining politically sensitive records, because some of these records (like financial reports) are not produced. In fact, reports on the use of funding from the Government, are not made on time by political parties. For example, there has been failure to meet deadlines for submission to the Supreme Audit Institution, the non-production of financial reports and balance sheets, the lack of certification of the financial reports by the competent body, etc. However, all these steps are prior to the publication of reports. Thus, an applicant may wait several years without getting the financial reports.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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

Comments:

Records are available for the cost of photocopying.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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 NGOs. 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 NGOs 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

Comments:

When the publicly available records of political parties’ finances are available, they are often lacking important details. Indeed, during the meeting with the President of the Supreme Audit Institution, he noticed several cases of non respect of legality in the

use of the subventions. The disregard for the transmission delays to the Court of the accounts, the non production of the financial report and the balance accountant, the defect of certification of the financial report by the competent organ, the production of an unique financial report (or global) to justify the use of two different subsidies (election campaign and out country) or of two exercises (subsidy out country). He noticed also the disregard for the procedure of the public expenses, and the non opening of the account for the management of the subvention.

References:

Frederic Nikiéma, deputy executive director of CGD (Centre pour la Gouvernance Démocratique) ,11 October 2011, Ouagadougou

Abdoul Karim Sango, member of CENI (Commission électorale nationale indépendante), one of the leaders of PAREN (« Parti de la renaissance nationale », opposition political party), 07 October 2011, University of Ouagadougou

Supreme Audit Institution, Meeting with political parties on the justification of Government's subsidies, October 18, 2007, Report 2006.

Ouédraogo Thomas, Researcher, 10 October 2011, Ouagadougou

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?

0

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

100 | 75 | 50 | 25 | 0

Comments:

The individual candidates never publish their sources of funding or expenditures.

References:

Frederic Nikiéma, deputy executive Ddirector of CGD (Centre pour la Gouvernance Démocratique) ,11 October 2011, Ouagadougou

Abdoul Karim Sango , member of CENI (Commission électorale nationale indépendante), member of PAREN (« Parti de la renaissance nationale », opposition political party), 07 October 2011, University of Ouagadougou

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

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

Comments:

The individual candidates never publish their sources of funding or expenditures.

References:

Frederic Nikiéma, deputy executive director of CGD (Centre pour la Gouvernance Démocratique), 11 October 2011, Ouagadougou

Abdoul Karim Sango, member of CENI (Commission Electorale Nationale Indépendante), member of PAREN (« Parti de la renaissance nationale », opposition political party), 07 October 2011, University of Ouagadougou

Aboulaye Diallo, manager of the National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

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

Comments:

The individual candidates never publish their sources of funding or expenditures.

References:

Frederic Nikiéma, deputy executive director of CGD (Centre pour la Gouvernance Démocratique) ,11 October 2011, Ouagadougou

Abdoul Karim Sango , member of CENI (Commission Electorale Nationale Indépendante), member of PAREN (« Parti de la renaissance nationale », opposition political party), 07 October 2011, University of Ouagadougou

Aboulaye Diallo, Manager of the National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

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 NGOs. 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 NGOs 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:

The individual candidates never publish their sources of funding or expenditures.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Aboulaye, Diallo, manager of the National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Abdoul Karim Sango « Parti de la renaissance nationale » (PAREN, political party), 07 October 2011, Ouagadougou

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 3. Government Conflicts of Interest Safeguards & Checks and Balances

48
3.1. Conflicts of Interest Safeguards & Checks and Balances:
Executive Branch

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

100

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

Yes

No

Comments:

The Constitution (art. 4) states that all citizens and all person living in Burkina benefit from equal protection of the law. All who are charged are presumed innocent until proven guilty. The rights of the defense, including the one to choose a defender freely, is guaranteed before all jurisdictions. The liberty of meeting, the free practice of custom as well as the liberty of demonstration are guaranteed... subject to the respect of the law, of the public order, of good customs and the human person (art. 7).

References:

Constitution (articles 4, 7, 8)

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.

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

69

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

100 | 75 | 50 | 25 | 0

Comments:

Once a year, the Prime Minister presents before the Parliament the general politics and actions for the next 12 months, and their justifications.

References:

Aboulaye Diallo, manager, National Centre of Press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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

Comments:

The Constitutional Council is the appropriate institution in constitutional and electoral matters. It is charged with deciding the constitutionality of laws, ordinances and compliance of international treaties and agreements with the Constitution (art. 152).

References:

Constitution (articles 62, 63, 68, 76, 152)

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

Comments:

During the study period, the judiciary did not effectively review executive policy.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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:

During the study period, the chief executive didn't utilize executive orders. The head of the Executive has not used these orders in the past ten years.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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?

100

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

Yes

No

Comments:

The Government member is responsible; owing the High Judicial court of the crimes and offenses he committed in the exercise of his functions (article 76). The High Judicial court is competent to know some acts committed by the President of Faso in the exercise of his functions and constituent of high treason, of attempts to change the Constitution or diversion of public deniers. The High Judicial court is also competent to judge the Government's members because of the facts about qualified crimes or offenses committed in the exercise of their functions. In all other cases, they stay responsible to the jurisdictions of common right and the other jurisdictions (art. 138).

References:

Constitution (articles 76, 137, 138)

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

Comments:

The Constitution states that the Government member is responsible for informing the High Judicial court of the crimes and offenses committed by it in the exercise of his functions.

References:

Constitution, article 76

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?

25

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

Yes | No

Comments:

The Constitution requires the Head of State (art. 44) and the members of Government (article 77) to inform appropriate agencies of any violations.. During the ceremony of his investiture, the President of Burkina Faso gives the written statement of his assets to the President of the Constitutional Council (art. 44).

References:

Constitution (article 44, 77)

Loi n° 22/95/ADP portant institution d'une procédure de dépôt et de vérification des listes des biens des membres du Gouvernement (article 1)

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

Comments:

When they take up their duties and at the end of their term, the Government's members are required to deposit a list of their goods to the Constitutional Council (Constitution, art. 77).

References:

Constitution, article 77

Loi n° 22/95/ADP portant institution d'une procédure de dépôt et de vérification des listes des biens des membres du Gouvernement (article 1)

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

Comments:

No specific law exists.

References:

Constitution

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

Comments:

No specific law exists.

References:

Constitution

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**

Comments:

Such restrictions don't exist.

References:

Constitution

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**

Comments:

There are no regulations.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Etienne Ouedraogo, deputy of the "Alliance pour la Démocratie et ... Rassemblement démocratique africain" (ADF RDA), 07 January 2012, Ouagadougou

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

Comments:

No control exists on goods received by the official during their functions, therefore respect of the rules in this domain cannot be ensured.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

Executive branch asset disclosures are not audited since there's no specific law.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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?

0

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

Yes | **No**

Comments:

No specific law addresses this issue.

References:

Constitution

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

Comments:

No specific law

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No specific law exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs 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

Comments:

No specific law to ensure records' availability. No records available.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

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

0

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

100 | 75 | 50 | 25 | 0

Comments:

The government's bureaucracy is an extension of the ruling party. This is evident in that the Institutions of the Republic political and administrative plan have a preponderance of the majority party ("Congrès pour la Démocrate et le Progrès" (CDP)), which could constitute a risk of monopolization of the power.

References:

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Aboulaye Diallo, manager of the National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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.

3.2. Conflicts of Interest Safeguards & Checks and Balances: Legislative Branch

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

50

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

Yes

No

Comments:

Article 152 in Constitution stipulates that the Constitutionnel Council is the competent institution in constitutional and electoral matter. It is in charge of taking action on the constitutionality of the laws, of the orders as well as the conformity of the treaties and international agreements with the Constitution.

References:

Constitution (article 152)

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.

100 | 75 | 50 | 25 | 0

Comments:

During the study period, there was no constitutional review of law.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

No member of Parliament can be pursued, sought-after, convicted or judged because of the opinions or votes made by him in the exercise or on the occasion of the exercise of his/her functions (Constitution, art. 95). Indeed, except in cases of flagrant offense, none of them can be pursued or judged in criminal or criminal matter without the authorization of at least a third of the members of the assembly during the sessions or the office of the assembly outside of the sessions.

References:

Constitution (article 96)

Résolution n° 004-2007/AN portant Règlement de l'Assemblée nationale (article 79)

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?

0

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

Yes | **No**

Comments:

No specific law on this issue.

References:

Constitution

Résolution n° 004-2007/AN portant Règlement de l'Assemblée nationale

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:

No specific law on this case

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:

No specific law on this case.

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:

No specific law on this case

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**

Comments:

There is no specific law on this case, and this kind of case hasn't been noticed during the study period.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Frédéric Nikiema, deputy executive director of the "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

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

100 | 75 | 50 | 25 | 0

Comments:

They are not audited.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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?

0

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

Yes | **No**

Comments:

No specific regulation exists.

References:

Constitution

Résolution n° 004-2007/AN portant Règlement de l'Assemblée nationale

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, non-governmental 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**

Comments:

No records available.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No records available.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

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

100 | 75 | 50 | 25 | 0

Comments:

No records available.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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?

100

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

Yes

No

Comments:

The Constitution in article 84 states that the National assembly votes the law, grants the tax and control the Government's action. However, the laws are published in the Official Journal.

Under Article 58, the sessions of the National Assembly are public. The minutes of all hearings are published in parliamentary debates or in the form of minutes.

References:

Constitution (article 84)

Résolution n° 004-2007/AN portant Règlement de l'Assemblée nationale (articles 25, 58, 140)

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

Comments:

Most of them are available on the Parliament's website (www.an.bf) and other files can be obtained within two days.

References:

Julien Natielse , research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Emma Zobilma, director of sessions and committees of the National Assembly, January 5, 2012

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

Comments:

Records are available for the cost of photocopying, they also can be obtained on-line.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

38

3.3. Conflicts of Interest Safeguards & Checks and Balances: Judicial Branch

36. Are judges appointed fairly?

67

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

Yes

No

Comments:

Article 15 cited above precises general conditions for selecting national-level judges. May be appointed judges, nationals of Burkina Faso, aged 23 years and not more than 40 years as of the date of appointment:

- Fulfilling the conditions of access to the general public Burkina Faso;
- Hold at least the Master of Laws or any other equivalent degree;
- Having obtained the diploma of completion of studies at the Ecole Nationale d'Administration and Magistracy (Judicial Section) or that of a training center recognized equivalent;
- Having received a positive vetting.

References:

Loi organique n° 036-2001/An du 13 décembre 2001 portant statut du corps de la Magistrature, article 15

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:

Judges are selected based on professional qualifications and a formal application process. Judges must study at a professional school for judges (Ecole Nationale d'Administration et de Magistrature). After studying, judges must apply to be national level judges with the Ministry of Justice. The Minister and a committee select judges based on the quality of their application. The decisions is not solely to the discretion of the Minister.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Parfait Loure, magistrate to high court of Ouagadougou, 05 January 2012, Ouagadougou

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

Comments:

The Ministry of Justice verifies the applicants and their application forms.

References:

Loi organique n° 036-2001/An du 13 décembre 2001 (articles 10, 15)

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?

75

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

Yes

No

Comments:

Judges are obliged to give reasons for their judgments.

References:

Article 5 of Loi 010/93/ADP du 17 mai 1993 portant organisation judiciaire au Burkina Faso.

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

Comments:

Judges are formally required to explain their judgments in detail (Loi n° 010/93/ADP portant organisation judiciaire au Burkina Faso, article 5), otherwise these judgments can be cancelled. In practice, judges give reasons for their judgments in Burkina Faso.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Parfait Loure, magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

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

Comments:

In accordance with Article 127 of the Constitution the “Court de cassation” (as the superior jurisdiction of the judicial order) has a mission to look after the respect of the right rule by the lower jurisdictions and so to guarantee by its jurisprudence the uniqueness of the right; it is a guaranteed right in the judicial order.

References:

Constitution (article 127)

Loi organique n° 036-2001/AN, article 54: Commission de discipline du Conseil supérieur de la Magistrature

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:

The President of Burkina Faso is the president of the “Conseil Supérieur de la Magistrature.”

References:

Constitution, article 132

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

Comments:

During the study period no case of investigation has been reported. But, when a judge is implicated in a corruption case, malpractice etc., the judicial disciplinary agency will start or cooperate in investigations. The judiciary often relies on external pressure to set priorities

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Parfait Oure, magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

During the study period, no case of penalties imposed on offenders has been reported.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Parfait Loure, magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

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?

0

38a. In law, members of the national-level judiciary are required to file an asset disclosure form.

Yes | **No**

References:

No specific law on this case

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:

No specific law on this case

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:

No specific law on this case

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:

No specific law on this case

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**

Comments:

No specific regulation exists on this issue.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No specific law exists.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, Deputy Executive Director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No specific law exists.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

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?

0

39a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

Yes | **No**

References:

No specific exists law on this issue.

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**

Comments:

No records are available.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

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

Comments:

No records are available.

References:

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

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 NGOs. 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 NGOs 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

Comments:

No records are available.

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

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.

3.4. Budget Process Oversight & Transparency

40. Can the legislature provide input to the national budget?

75

40a. In law, the legislature can amend the budget.

Yes

No

Comments:

There are some restrictions to the amendment. It is only allowed to increase revenues or to decrease expenditures in the budget (art. 46). No additional item or amendment to a bill of Finance may be proposed by the National Assembly, unless it tends to eliminate or reduce actual expenditures, to create or increase resources.

References:

Resolution N° 004-2007/AN Portant Reglement de L'Assemblee Nationale, Article 118

LOI N° 006-2003/AN Relative aux Lois de Finances, Article 46

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

Comments:

During the study period all significant government expenditures have been approved by the legislature, except secret programs which don't appear in the State's budget. However, each year a supplementary budget, taking into account the adjustments budget, is passed by Parliament.

References:

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie , inspector of taxes, 07 October 2011, Ouagadougou

Modeste Thiombiano, Ministry of Economy and Finance, November 15, 2011, Ouagadougou

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

Comments:

The capacity is not strong enough. Legislators are occasionally overwhelmed by the volume of work to be performed. The members of the finance Commission ("Commission des finances et du budget, (COMFIB)") don't have assistants to help them scrutinize the budget.

References:

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, inspector of taxes, 07 October 2011, Ouagadougou

Modeste Thiombiano, Ministry of Economy and Finance, November 15, 2011, Ouagadougou

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?

17

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

Comments:

The transparent process for budget debate is just formal. The members of COMFIB (finance commission) used to meet during sessions out of Ouagadougou which were closed to the public. The public does not participate in the sessions for the review of the state budget because these sessions are held in camera. In addition, there is no mechanism for consultation indirect public on the budget proposals made by the Executive.

References:

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, inspector of taxes, 07 October 2011, Ouagadougou

Modeste Thiombiano, Ministry of Economy and Finance, November 15, 2011, Ouagadougou

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.

100 | 75 | 50 | 25 | 0

Comments:

People have to keep quiet during the budget debates.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

100: Citizens, usually acting through NGOs, 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 NGOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or NGOs have no formal access to provide input to the budget debate.

41c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The complete budget can be downloaded on the finance ministry's website (www.dgb.gov.bf), but sometimes it is not posted early enough. Sometimes, the public can access the draft of the state budget through some MPs (mostly from opposition parties) who do not hesitate to lend their documents. On the other hand, the query can be expressed in written form and addressed to the Minister of Economy and Finance and to the President of the Parliament, but this procedure can be long: up to several weeks.

References:

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, inspector of taxes, 07 October 2011, Ouagadougou

Modeste Thiombiano, Ministry of Economy and Finance, November 15, 2011, Ouagadougou

TRAORE Albert, President of Supreme Audit Institution, 06 January 2012, Ouagadougou

100: Citizens, journalists and NGOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and NGOs 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.

42. In law, is there a separate legislative committee which provides oversight of public funds?

100

42a. In law, is there a separate legislative committee which provides oversight of public funds?

Yes

No

Comments:

The Commission of Finances and Budget (COMFIB) is in charge of public finances, budget, currency, credit and domains issues.

References:

Resolution N° 004-2007/AN Portant Reglement de L'Assemblee Nationale, Article 38: Commission of Finances and Budget (COMFIB)

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).

43. Is the legislative committee overseeing the expenditure of public funds effective?

92

43a. In practice, department heads regularly submit reports to this committee.

100

75

50

25

0

Comments:

The Ministry of Finance submits twice a year (each semester) reports of expenses to the budget oversight committee.

References:

Claude Wetta research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, Inspector of taxes, 07 October 2011, Ouagadougou

Modeste Thiombiano, Ministry of Economy and Finance, November 15, 2011, Ouagadougou

OUEDRAOGO Etienne, Deputy of the “Alliance pour la démocratie et la fédération – Rassemblement démocratique africain” (ADF RDA), 07 January 2012, Ouagadougou

TRAORE Albert, President of Supreme Audit Institution, 06 January 2012, Ouagadougou

SORE Souleymane, Independent consultant, 07 January 2012, Ouagadougou

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

Comments:

The Legislative Committee has 25 members from more than 5 political parties.

References:

Thomas Ouédraogo, researcher, 10 October 2011, Ouagadougou

Frederic Nikiéma, deputy executive director, Centre de Gouvernance et Démocratie, Ouagadougou

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

Comments:

The committee usually investigates at least once a year, for example on drilling and local agricultural projects.

References:

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, inspector of taxes, 07 October 2011, Ouagadougou

Modeste Thiombano, Ministry of Economy and Finance, November 15, 2011, Ouagadougou

Etienne Ouedraogo, deputy of the "Alliance pour la démocratie et la fédération – Rassemblement démocratique africain" (ADF RDA), 07 January 2012, Ouagadougou

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.

Category 4. Public Administration and Professionalism

4.1. ⁴⁸Civil Service: Conflicts of Interest Safeguards and Political Independence

44. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

44a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

Yes | No

Comments:

The law above fixes the fundamental principles of management of the jobs and the agents of the Public service.

References:

Loi n° 013/98/AN du 28 avril 1998 portant Régime juridique applicable aux emplois et aux agents de la Fonction publique (articles 7 et 8).

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

Comments:

Article 12 of the law regulating the civil service (Loi 013/98/AN) states that civil servants are recruited through a competitive process by an independent jury.

References:

Article 12 of the Law Regulating the Civil Service (Loi 013/98/AN)

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

Comments:

Although there is no specific independent redress mechanism, the Minister in charge of the public service has instituted the Consultative Council of the Public Service. It has the expertise to know all questions of general order concerning the public service and other related questions.

References:

Loi Organique n° 22/94/ADP du 17 Mai 1994 portant Institution d'un Médiateur du Faso (articles 1, 11, 14)

Loi n° 013/98/AN du 28 avril 1998 portant Régime juridique applicable aux emplois et aux agents de la fonction publique (articles 51, 52)

La loi organique N° 015-2000/An du 23 mai 2000, article 1

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:

No specific law exists.

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

Comments:

The ruling party sometimes interferes with civil servants.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

Civil servants who want to normally reach high position must be part of the ruling party, or be close to the Head of State. In practice, officials are usually appointed and evaluated according to professional criteria. However, the “sensitive” positions are filled on the basis of subjective criteria such as being the party in power, be close to the head of state or his family, or being “controllable.”

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Souleymane Sore , independent consultant, 07 January 2012, Ouagadougou

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

Comments:

Political leaders or senior officials often appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment. "Sensitive" positions are filled on the basis of subjective criteria such as being part of the ruling party, being close to the head of state or his family, or being "controllable."

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

Permanent jobs are defined in a forecast table that determines the number and quality of jobs needed to achieve the missions of each institution or administration, and staffing trends in the medium term. In this way, every post provided for in estimate shall be identified by a standardized name, its location in the administrative structure and the corresponding professional profile there. However, in practice, some civil servants are unmotivated, and sometimes spend two or three days without going to work.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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

Comments:

Civil servants sometimes receive little indemnities relative to their job. Such compensation, when present, rarely exceeds 5% of normal salary.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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

Comments:

Most of the departments have their own flow chart. But there is some “ghosting” in civil service. Since the implementation of thorough checking of staff to the Ministry of Public Service, established in 2009, the Ministry claims to have identified 248 shadow agents.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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:

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 politically sensitive issues. Indeed, the “invisible hand” of the Executive occurs a few times, such as maintaining a high official of the national financial administration in office, despite serious cases of alleged mismanagement and corruption, without commitment of legal proceedings against him.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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:

All the civil servants have been paid on time last year. No significant delay in the payment of wages was noticed during the period.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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.

Comments:

This kind of system is not formally in place. Prohibition of civil servants convicted of corruption from future government employment is not efficient towards persons close to the ruling party.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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?

17

46a. In law, senior members of the civil service are required to file an asset disclosure form.

Yes | **No**

References:

No law exists.

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

Comments:

Civil servants cannot exercise, by professional title, a lucrative private activity of any nature, nor to have by themselves or by interposed people, under any denomination that it is, of the interests in an enterprise of which they have or had the administration, the management or the control.

References:

LOI N° 013/98/AN DU 28 AVRIL 1998 Portant Regime Juridique Applicable aux Emplois et Aux Agents de la Fonction Publique, Article 16.

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

References:

No specific regulation exists.

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:

No specific regulation exists.

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:

No specific regulation exists.

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**

Comments:

Public servants often work in the private sector at the same time as their service, after completing their 10 year minimum commitment to the public service corps. Recently, the Ministry of Territorial Administration and Decentralization have performed tighter controls.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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

Comments:

No specific law exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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

Comments:

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. For example, in the process of disposing of State property, some officials manage to acquire some of these assets through nominees.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique”

(CGD), 11 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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:

No audits are performed.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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?

0

47a. In law, citizens can access the asset disclosure records of senior civil servants.

Yes | **No**

References:

No specific law exists for this issue.

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:

No records exist, so citizens cannot access them.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

No records exist, so citizens cannot access them.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs 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

Comments:

There are no records of this.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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.

4.2. Whistle-blowing Protections

48. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

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:

No specific law exists.

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**

Comments:

Public sector whistle-blowers can't report abuses of power without fear of negative consequences, because they are not protected. However, the obligation of professional secrecy, to which public servants are bound, does not apply to the disclosure with the requirements of criminal law, crimes or offenses which the officer of Public Service has learned.

References:

Abdoul Karim Sango, teacher at the National School of Administration and Magistrature (ENAM), 07 October 2011, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

René Bagoro, judge, administrative court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

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:

No specific law exists.

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:

No protections are given for whistle-blowers.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

49. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

0

49a. 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:

No internal mechanism exists.

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.

50. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

0

50a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100

75

50

25

0

Comments:

No such mechanism exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No such a mechanism exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No such mechanism exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

No mechanism exists.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

0
4.3. Government Procurement: Transparency, Fairness, and
Conflicts of Interest Safeguards

51. Is the public procurement process effective?

51a. In law, there are regulations addressing conflicts of interest for public procurement officials.

Yes

No

Comments:

Directive n°04/2005 (art. 17) states that the following persons are not admitted to participate in the procedures of public procurements or delegations of public service because of conflicts of interest:

- companies in which the members of the contracting authority, of the administrative entity in control of the public procurements, the person, responsible for the procurements or the members of the Commission of opening of the folds and some financial or personal interests possess assessment of the offers likely to compromise the transparency of the procedures of transfer of the public procurements;
- companies affiliated to the consultants having contributed to prepare all or some of the files of call of offers or consultation.

References:

Directive N°04/2005/CM/UEMOA Portant Procédures de Passation, D'Exécution et de Règlement des Marchés Publics et des Délégations de Service Public dans l'UEMOA, Article 17.

Directive N°05/2005/CM/UEMOA Portant Contrôle et Régulation des Marchés Publics et des Délégations de Service Public dans l'UEMOA, Articles 6, 8, 9, 10.

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:

The Ministry of Ecole Nationale des Régies Financières (ENAREF) conducts initial and continued training of public finances civil servants.

References:

LOI N° 013/98/AN DU 28 AVRIL 1998 Portant Régime Juridique Applicable aux Emplois et aux Agents de la Fonction Publique, Article 85.

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.

100 | 75 | 50 | 25 | 0

Comments:

Regulations regarding conflicts of interest for procurement officials are enforced.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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:

No specific law exists.

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

Comments:

According to the Directive above, bids can be open or restricted.

References:

Directive N°04/2005/CM/UEMOA Portant Procédures de Passation, D'Exécution et de Règlement des Marchés Publics et des Délégations de Service Public dans l'UEMOA, Article 29.

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

Comments:

Articles 71 and 72 of the Decree on Public Procurement (Decree No 2008-173/PRES/PM/MEF du 16 avril 2008 portant réglementation générale des marchés publics et des délégations de service publique au Burkina Faso) specifies the conditions under which sole sourcing can be used. These include among others, extreme urgency, and situations where a supplier is the only source of the desired skill or technology. Sole sourcing is exceptional according to this decree and is tightly regulated (see art. 57 and 73 of the Decree).

References:

Articles 71 and 72 of the Decree on Public Procurement (Decree No 2008-173/PRES/PM/MEF du 16 avril 2008).

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

Comments:

The art. 11 in Directive n°05/2005/CM/UEMOA says that the bidder estimating itself ousted unjustly of the procedures of transfer, execution and regulation of the public procurements, can introduce a previous efficient complaint in opposition to these procedures and decisions, before the representative of the contracting authority. The requesting parties have the opportunity to request reconsideration of a decision during the process of awarding public contracts.

References:

Loi N° 15/94/ADP du 05 mai 1994 Portant Organization de la Concurrence au Burkina Faso, Article 69.

Directive N°05/2005/CM/UEMOA Portant Controle et regulation des Marches Publics et des Delegations de service Public dans l'Union Economique et Monetaire Quest Africaine, Art. 11.

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

Comments:

The bidders who believe they were eliminated unjustly from the procedures of transfer, execution and regulation of the public procurements or the delegations of public service can file an appeal. The bidders have the opportunity to request reconsideration of a decision during the process of awarding public procurements.

References:

Loi N° 15/94/ADP du 05 mai 1994 Portant Organisation de la Concurrence au Burkina Faso, Articles 44, 45, 46, 55, 57, 68.

Directive n° 05/2005/CM/UEMOA portant Contrôle et régulation des marchés publics et des délégations de service public dans l'Union économique et monétaire ouest africaine, Article 11.

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

Comments:

A bidder will be disqualified in some circumstances:

- linked to practices of collusion between tenderers;
- benefited from practices of dividing;
- had resort to overcharging and/or the false invoicing;
- attempted to influence the assessment of the offers or on the decisions of assignment;
- has been recognized guilty of a default to his/her/its contractual obligations at the time of the execution of previous contracts;
- provided the information or the false or untrue declarations.

References:

Directive n° 04/2005/CM/UEMOA portant Procédures de passation, d'exécution et de règlement des marchés publics et des

délégations de service public dans l'Union économique et monétaire ouest africaine, article 18

Directive n° 05/2005/CM/UEMOA portant Contrôle et régulation des marchés publics et des délégations de service public dans l'Union économique et monétaire ouest africaine (article 8)

Decret Portant Reglementation Generale des Marches Publics et des Delegations de Service Public au Burkina Faso, Articles 43, 162, 163.

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

Comments:

A system of formal blacklists and cooling off periods is in place, but no case has been related according to the study period.

References:

Maxime Nikiema, Program Officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Evariste Dabire, programme officer at the "Réseau africain des droits de l'homme" (RADHO), 13 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Dramane Bazie, former Member of the Commission of the Public Procurements, 07 October 2011, Ouagadougou

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

Comments:

The announcements of public procurements or delegations with call are published within twelve (12) workdays of their receipt by the Commission. In case of emergency, this delay is reduced to five (5) workdays.

References:

Directive n° 04/2005/CM/UEMOA portant Procédures de passation, d'exécution et de règlement des marchés publics et des délégations de service public dans l'Union économique et monétaire ouest africaine (articles 39, 40, 42, 72)

Decrete Portant Reglementation Generale des Marches Publics et des Delegations de Service Public au Burkina Faso, Article 2.

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

Comments:

The public procurements by bid must be subject to a call opinion inevitably for the competition brought to the attention of the public by making insertion, in the same terms, in a national and/or international publication and under electronic format.

References:

Directive n° 04/2005/CM/UEMOA portant Procédures de passation, d'exécution et de règlement des marchés publics et des délégations de service public dans l'Union économique et monétaire ouest africaine, Articles 39, 40, 42, 72

Decret Portant Reglementation Generale des Marches Publics et des Delegations de Service Public au Burkina Faso, Articles 55, 56

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

Comments:

The records are available in newsletters published every day.

References:

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, former member of the Commission of the Public Procurements, 07 October 2011, Ouagadougou

Aboulaye Diallo, manager of the National Centre of Press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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

Comments:

The newsletter is available at a cost of 200 FCFA.

References:

Dramane Bazie, former member of the Commission of the Public Procurements, 07 October 2011, Ouagadougou

Aboulaye Diallo, manager of the National Centre of Press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

52e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

There is a formal process of advertising public procurements, but some cases of transactions by mutual agreement remain. Furthermore, public procurement is published in a daily journal called "Review of Public Procurement."

References:

Maxime Nikiema, programme officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, former member of the commission of the public procurements, 07 October 2011, Ouagadougou

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

Comments:

Main records of public procurement results are publicly available through a formal process, like newsletters ("Review of Public Procurement") or the website of the Authority for Regulatory of Public Procurement. (www.armp.bf).

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Dramane Bazie, former member of the Commission of Public Procurements, 07 October 2011, Ouagadougou

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.

4.4. Privatization of Public Administrative Functions: Transparency, Fairness, and Conflicts of Interest Safeguards

53. Is the privatization process effective?

67

53a. In law, all businesses are eligible to compete for privatized state assets.

Yes

No

Comments:

All people who are capable of justifying legal, technical and financial capacities necessary to the execution of a public procurement or a delegation of public service can be a candidate to a contract of public order. The bidder must also prove that he is current on all legal obligations in respect of tax authorities, levies and social in his country of establishment.

References:

Directive n° 04/2005/CM/UEMOA portant Procédures de passation, d'exécution et de règlement des marchés publics et des délégations de service public dans l'Union économique et monétaire ouest africaine (articles 2, 25, 32, 34, 35, 42, 44)

Décret 2008_173/PRES/MP/MEF portant Règlementation générale des marchés publics (article 38).

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

Comments:

Some categories of companies are not allowed to participate in public procurement processes. For example, companies convicted of an offense or inaccurate information are not allowed to bid for procurement opportunities.

References:

Directive n° 04/2005/CM/UEMOA portant Procédures de passation, d'exécution et de règlement des marchés publics et des délégations de service public dans l'Union économique et monétaire ouest africaine, article 17

Décret 2008-173/PRES/MP/MEF portant Règlementation générale des marchés publics (article 43)

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

Comments:

The conflicts of interest regulations are consistently ineffective. For example, officials often give favorable treatment to those working in the mining sector. Moreover, public officials often work in the private sector at the same time as their service, thereby creating other conflicts of interest.

References:

Maxime Nikieme, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Dramane Bazie, former member of the Commission of Public Procurements, 07 October 2011, Ouagadougou

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?

75

54a. In law, citizens can access privatization regulations.

Yes | No

Comments:

The privatization regulations are published in the Official Journal, which is available to any citizen, with the cost of printing or Internet connection.

References:

Loi n° 35/94/ADP portant conditions générales de privatisation des entreprises à participation de Fonds Publics au Burkina Faso (article 6).

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:

There is a formal process of advertising privatizations with newspaper advertising, and official announcements.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

Such decisions are published in the Official Journal..

References:

Loi n° 35/94/ADP portant Conditions générales de Privatisation des entreprises à participation de Fonds Publics au Burkina Faso (article 15)

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

Comments:

The regulations governing the competitive privatization process are available at the Official Journal. People can gain access by copying them as soon as the corresponding decrees are printed in the journal.

References:

Maxime Nikiema, program officer, Réseau National de Lutte Anti-corruption (REN-LAC), 12 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Dramane Bazie, former member of the Commission of Public Procurements, 07 October 2011, Ouagadougou

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

Comments:

People have access by copying at a cost of less than 50 FCFA per page.

References:

Dramane Bazie, former member of the Commission of Public Procurements, 07 October 2011, Ouagadougou

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager of the National Centre of Press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

5.1. National Ombudsman

55. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

55a. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

Yes

No

Comments:

There is in Burkina Faso a body mediating between government and citizens called: "Médiateur du Faso." The Ombudsman intervenes on issues bonding people to government.

References:

Médiateur du Faso, Loi Organique n° 22/94/ADP du 17 mai 1994 portant institution d'un Médiateur du Faso (article 1)

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.

56. Is the national ombudsman effective?

91

56a. In law, the ombudsman is protected from political interference.

Yes

No

Comments:

The Ombudsman of Burkina Faso is an independent authority. Within the limits of its powers, it does not take instructions from any authority.

References:

Loi Organique n° 22/94/ADP du 17 Mai 1994 Portant Institution d'un Médiateur du Faso (article 2)

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:

No one may terminate the appointment of the Ombudsman before the expiry of his term only when absolutely prevented or permanently established by the Supreme Court on application by the President of Burkina Faso (article 6).

References:

Sophie Zagre, communication manager, Médiateur du Faso (National Ombudsman), 12 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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:

All former Ombudsmen have exercised their mandates without “non-conforming” interruption.

References:

Sophie Zagre, communication manager, Médiateur du Faso (National Ombudsman), 12 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Parfait Loure, magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

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

Comments:

The staff consists of 78 people.

References:

Sophie Zagre, communication manager, Médiateur du Faso (National Ombudsman), 12 October 2011, Ouagadougou

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

Comments:

The Ombudsman of Burkina Faso must be forty five (45) years or more at the date of appointment, have an experience of 20 years at least, have a high sense of responsibility, be of good moral character and have a strong awareness of the idea of public good and interest of the nation. The current Ombudsman meets these requirements. The other operating positions obey objective criteria.

References:

Sophie Zagre, communication manager, Médiateur du Faso (National Ombudsman), 12 October 2011, Ouagadougou

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:

The funds used by the institution come from the state budget. They spend around 400 million CFA francs every year.

References:

Sophie Zagre, communication manager, Médiateur du Faso (National Ombudsman), 12 October 2011, Ouagadougou

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:

A report is available every year.

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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

Comments:

As reported in the annual report 2010, the agency has implemented investigations (“Cas 9 : Dossier de monsieur B.P.”, pages 52 and 53) with the Mayor of Garango. Most actions involve investigations.

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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.

100 | 75 | 50 | 25 | 0

Comments:

The Ombudsman recommends solutions (corrective function) and proposes reforms (preventive function). But, it can not substitute for the competent authority which must issue the penalty.

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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).

100 | 75 | 50 | 25 | 0

Comments:

According to the 2010 report on 424 referrals (245 to the institutions and departments, with 63 Utilities, agencies and government-owned organization with a mission of public service, and 116 from local authorities) have received 295 responses (191 Institutions and departments, 40 Utilities, agencies and government-owned organization with a mission of public service, and 64 Local Authorities). That puts the response rate at 70%.

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Evariste Dabire program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

According to the 2010 report (p. 35), 392 cases (over 71%) were closed on 551 received during the year. Note, however, the degree of complexity of cases is used as a criterion in determining the duration of their treatment.

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Evariste Dabire program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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?

100

57a. In law, citizens can access reports of the ombudsman(s).

Yes

No

Comments:

The Ombudsman of Burkina Faso provides a progress report every year. This report is sent to the President of Faso, Head of Government, the President of the Assembly of People's Deputies, the President of the Representatives and the President of the Supreme Court. It is published and is subject to inclusion in the Official Journal.

References:

Loi Organique n° 22/94/ADP du 17 mai 1994, Articles 25

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

Comments:

The report is available as soon as it is presented to the Head of State (the same day).

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

They are available free of charge on the Internet.

References:

Sophie Zagre, communication manager, Médiateur du Faso, 12 October 2011, Médiateur du Faso-Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

5.2. Supreme Audit Institution

58. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

58a. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

Yes | No

Comments:

The "Cour des comptes" is the supreme audit institution in Burkina Faso

References:

Constitution, article 127

Loi organique n°014-2000/AN, Portant Composition, Attribution, Organisation, Fonctionnement de la Cour des Comptes et Procédure Applicable Devant Elle (article 1, 2)

Loi organique n°36-2000/AN, Portant Modificatif de la Loi Organique n°014-2000/AN, Portant Composition, Attribution, Organisation, Fonctionnement de la Cour des Comptes et Procédure Applicable Devant Elle

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.

59. Is the supreme audit institution effective?

59a. In law, the supreme audit institution is protected from political interference.

Yes | No

Comments:

The Constitution provides that the Court of Auditors is the national Supreme Audit Institution (Article 127). The Organic Law provides that the Court must consider the accounts of public accountants, sanctions and mismanagement attending the National Assembly monitoring the implementation of financial laws (Article 2).

References:

Constitution, article 127

loi organique n° 014-2000/AN, Portant Composition, Attributions, Organisation, Fonctionnement de la Cour des Comptes et Procédure Applicable Devant Elle (articles 1, 2, 3, 4)

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

Comments:

In principle, the first President of the Supreme Audit Institution (SAI) may be replaced on the advice of the “Conseil supérieur de la Magistrature” (CSM), under Article 20 of Organic Law No. 014-2000/AN.

However, because the head of the CSM is the President of Burkina Faso, and the vice-president of the CSM is the Minister of Justice, in practice the head of the SAI may be removed or be subjected to political interference. For example, the previous first President of the Court of Auditors has been replaced.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

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

Comments:

The Institution has a seat and a permanent administrative staff, but not enough. In addition, they are recruited after 15 years of service, so they come here often already tired. Added to this the mandate of five years service means they are exposed to really endless repetition.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

The appointments in the SAI are generally based on professional and objective criteria.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

The operating funds of the SAI come from the state budget. They were 578,000,000 FCFA (0.05% of State budget) for the year 2011.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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 State Audit Office makes reports every year.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

The rate of implementation by the Executive of recommendations made by the Court of Accounts is quite low. In addition, the recommendations are not always implemented the following year.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

Comments:

To achieve its mission of control of public funds, the Supreme Audit Institution regularly conducts investigations within the ministries, institutions, financial service companies, and state-owned companies.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Souleymane Sore , independent consultant, 07 January 2012, Ouagadougou

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?

67

60a. In law, citizens can access reports of the audit agency.

Yes

No

Comments:

The Supreme Audit Institution develops an annual report on the implementation of financial laws accompanying the general statement of compliance. The report is tabled together with the regulation law's draft on the office of the National Assembly. However, public availability is not guaranteed: the web site of the Institution is not updated, the paper report is difficult to obtain because of the procedure (request, copy, etc.).

References:

Loi organique n°014-2000/AN, Portant Composition, Attribution, Organisation, Fonctionnement de la Cour des Comptes et Procédure Applicable Devant Elle (Article 127)

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

Comments:

The current reports are not available on the website of the SAI. Reports can take two weeks or more to be obtained. Public availability is not guaranteed: the site of the Institution is not updated, the paper report is difficult to obtain because of the procedure (request, copy, etc.).

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

In reports are available, their cost is not low. Citizens must pay for the cost of making copies.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

81
5.3. Taxes and Customs: Fairness and Capacity

61. In law, is there a national tax collection agency?

61a. In law, is there a national tax collection agency?

Yes

No

Comments:

The agency is named "Direction générale des Impôts" (DGI). The DGI is one of the central departments of the Ministry of Economy and Finance. Its mission is the development and application of domestic tax law, state-owned, land and cadastral.

References:

Décret n° 2002 – 255/PRES/PM du 18 juillet 2002 (JO N°32 2002) Portant Attributions des Membres du Gouvernement (Article 9)

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.

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

Comments:

It is a part of the Ministry of Finance, which is adequately staffed.

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

The "Direction Générale des Impôts" (DGI) funds are from the State budget.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

63. In practice, are tax laws enforced uniformly and without discrimination?

50

63a. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Tax evasion occurs, although tax laws are generally enforced for the average citizen. Particular industries or individuals with personal connections are more likely to evade taxes. For example, companies that conduct considerable volume of trade (imports, exports) are less likely to be investigated or punished for not paying taxes or for not paying all taxes due, e.g. by declaring the business in a lower category than reality. Also, individuals close to the ruling party, to the president or his family, or to the tax collection officials are also more likely to evade taxes without repercussions.

References:

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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

64a. In law, is there a national customs and excise agency?

Yes

No

Comments:

The "Direction Générale des Douanes" (DGC) is responsible for the development and application of customs legislation and the collection of duties and taxes thereon. The DGD is responsible for implementing and enforcing the laws and regulations on movements of people, goods, transportation and capital at the entrance and exit. In this respect the customs carries out three types of mission: a mission tax, an economic mission and a mission to protect the interests of the state and citizens. This is one of the central departments of the Ministry of Economy and Finance.

References:

Décret n° 2002 – 255/PRES/PM du 18 juillet 2002 (JO N°32 2002) portant attributions des membres du Gouvernement (article 9)

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.

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

Comments:

The DGD is a central management of the Ministry of Finance and it has a permanent staff. But the staff is insufficient to cover the need for human resources of the DGD.

References:

Victor Ilboudo, customs officer, Customs Branch, February 3, 2012, Ouagadougou

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

Comments:

As a part of the Ministry of Finance, the Directorate General of Customs receives regular, adequate funds from the State budget.

References:

Victor Ilboudo, customs officer, Customs Branch, February 3, 2012, Ouagadougou

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.

66. In practice, are customs and excise laws enforced uniformly and without discrimination?

66a. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

The customs and excise laws are unequally applied. Some groups of citizens are consistently more likely to evade customs and excise laws than others. For example, some groups of traders import goods without paying tariffs.

References:

Victor Ilboudo, customs officer, Customs Branch, February 3, 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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.

5.4. Oversight of State-Owned Enterprises

67. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

0

67a. In law, is there an agency, series of agencies, or equivalent mechanism overseeing state-owned companies?

Yes | No

Comments:

No specific agency

References:

No source

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.

68. Is the agency, series of agencies, or equivalent mechanism overseeing state-owned companies effective?

0

68a. In law, the agency, series of agencies, or equivalent mechanism overseeing state-owned companies is protected from political interference.

Yes | **No**

Comments:

No agency

References:

No specific law

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**

Comments:

No specific agency

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

No specific agency

References:

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

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:

There is no agency solely dedicated to oversee state-owned companies. The Ministry of Finance oversees state-owned

companies in addition to its other functions. In practice, the Ministry of Finance has limited interaction with the companies. It meets with the heads of state-owned companies once a year and provides financial support (subsidies) to the state-owned companies, which the companies need to survive. Given its other functions, the Ministry of Finance does not dedicate the time or resources investigate violations committed on behalf of the state-owned companies.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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.

100 | 75 | 50 | 25 | 0

Comments:

No specific agency

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Frederic Nikiema, deputy executive director, CGD, Ouagadougou

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?

25

69a. In law, citizens can access the financial records of state-owned companies.

Yes | **No**

References:

No specific law

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:

They must be audited every year.

References:

Thomas Ouédraogo, researcher, 10 october 2011, Ouagadougou

Frederic Nikiema , deputy executive director, CGD, Ouagadougou

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.

100 | 75 | 50 | 25 | 0

Comments:

Financial records of state-owned companies are regularly audited, but exceptions exist. Some companies use flawed or deceptive accounting procedures. For example, in its “RAPPORT SUR LE RESPECT DES NORMES ET CODES (« RRNC/ROSC »)” (page 31) published in 2010, the World Bank Institute states the following for Burkina Faso [Translated by researcher]:

“The bundles of financial statements submitted by the small and medium enterprises contain inconsistencies on the balance sheet, income statement and TAFIRI, including cases of mismatches of the amounts on the various documents. The financial statements are signed and errors are identified mainly in the TAFIRI. Property taken under finance lease are stated at some companies, but noted a lack of adjustments in the statement annexed. Many companies have not recorded provisions for severance pay upon retirement. When these provisions are included in accounting, there is no mention in the notes or if they are mentioned, no reference is provided with respect to valuation methods.”

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

World Bank Institute, “RAPPORT SUR LE RESPECT DES NORMES ET CODES (« RRNC/ROSC »)” page 31, 2010, http://www.worldbank.org/ifa/rosc_aa_bdi_fre.pdf

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.

100 | 75 | 50 | 25 | 0

Comments:

Records take more than a month to acquire. And there may be persistent delays in obtaining politically sensitive records.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

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

Comments:

When they are available to citizens, they may need to pay for the cost of photocopying. In general these data are not obtained.

References:

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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 NGOs. 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 NGOs trying to access this information.

8 5.5. 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

Comments:

The law grants the right to productive investment contributing to economic and social development of Burkina Faso (article 3). The natural or legal persons of whatever nationality regularly established in Burkina Faso are provided and guaranteed by the general common law system of this Code.

References:

Loi n° 62/95/ADP du 14 décembre 1995 portant Code des Investissements au Burkina Faso (articles 3, 5, 8, 9, 10, 12, 13)

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

Comments:

The settlement of disputes arising from the provisions of this Code to the approved firms and determination of the compensation due to ignorance or violation of the obligations, commitments made or guarantees granted may, irrespective of the remedies in the administrative court of Burkina Faso, be settled in arbitration.

References:

Loi n° 62/95/ADP du 14 décembre 1995 portant Code des Investissements au Burkina Faso, article 30.

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

Comments:

Licenses are required and can be obtained within 2 weeks.

References:

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

Licenses can be obtained for all the process at cost less than 350 000 FCFA.

References:

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

The law is available. One of the main objectives of the protection and health promotion should be given to the individual and the community a level of health that enables him to lead a socially acceptable and economically productive life. These are (i) the protection of the individual, family and community against diseases and risks, (ii) the promotion of health of the individual, family and community by improving living and working conditions.

References:

Loi n° 23/94/ADP portant Code de la Santé publique (articles 2, 4, 5, 6)

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

Comments:

The law is available publicly and aims to (i) to establish basic principles for managing and protecting the environment against all forms of degradation, to enhance natural resources, (ii) to fight against various pollution and nuisances and improve living conditions of people in respect of the environment.

References:

Loi n°002/94/ADP du 19 janvier 1994 portant Code de l'environnement (articles 2-6)

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

Comments:

They are available on the Internet.

References:

Loi n° 23/94/ADP portant Code de la Santé publique (article 1).

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?

50

72a. In practice, business inspections by government officials to ensure public health standards are being met and are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

Comments:

Business inspections by the government to ensure public health standards are generally carried out in an even-handed way. However, bribes are occasionally paid to extract favorable treatment or expedited processing. For example, cases of permanent chemical pollution are regularly exposed, without the Government taking appropriate measures, including a company processing animal skins and a soap factory.

References:

Evariste Dabire, Program Officer, Réseau africain des droits de l'homme (RADHO), 13 January 2012, Ouagadougou

Aboulaye Diallo , Manager, National Centre of Press Norbert Zongo (CNPNZ), 11 October 2011, Ouagadougou

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

Comments:

Many exceptions exist in the process and bribes are occasionally paid by users in order to obtain favorable treatment or expedited processing. Inspection missions are fairly well done; the concern is with the implementation of the outcome of the missions.

References:

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Evariste Dabire, Program officer at the "Réseau africain des droits de l'homme" (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Frédéric Nikiema , deputy executive director of the "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, Manager, National Centre of Press Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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

Comments:

Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way. But sometimes, bribes are paid by users in order to extract favorable treatment or expedited processing. There are still attempts to bribe inspectors. Often it drags a little in judicial decisions.

References:

Souleymane Sore, independent consultant, 07 January 2012, Ouagadougou

Evariste Dabire, Program Officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Aboulaye Diallo, Manager of the National Centre of Press Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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.

Category 6. Anti-Corruption Legal Framework, Judicial Impartiality, and Law Enforcement Professionalism

6.1. ~~77~~ Anti-Corruption Law

73. Is there legislation criminalizing corruption?

100

73a. In law, attempted corruption is illegal.

Yes

No

Comments:

Crimes of theft, fraud, embezzlement, abuse of blank check, receiving stolen things, misappropriation of public funds or seized, extortion, swindling, corruption, extortion, and offenses related to the check offenses society are considered the same offense. They are liable to imprisonment and a penalty, an official of the administrative or judicial, all military or similar, any agent or employee of the Authority, any person with an electoral mandate which approved offers or promises, receiving gifts or presents, to an act of office or employment, even right, but not subject to salary.

According to the second law cited above, public servants shall not solicit or accept from others, directly or indirectly, gifts, gratuities or other benefits for any services that were required to make in the course of their duties or relationship therewith.

References:

Loi n° 043/96/ADP du 13 novembre 1996 portant Code Pénal (articles 85, 156, 239, 422)

Loi n° 013/98/AN du 28 avril 1998 régime juridique applicable aux emplois et aux agents de la Fonction Publique (article 19).

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

Comments:

Anyone will be punished by imprisonment if, by force, violence or coercion, he/she extorts a signature or delivery of a writing, an act, a title or any part containing or operating obligations, provisions or discharge. Although corruption is not explicitly defined by law, the Penal Code refers to it.

References:

Loi n° 043/96/ADP du 13 novembre 1996 portant Code Pénal (articles 85, 449-476)

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

Comments:

Bribe is not explicitly defined by law, but this law refers to it.

References:

Loi n° 043/96/ADP du 13 Novembre 1996 portant Code Pénal, article 19

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

Comments:

Civil servants shall, under any circumstances, solicit or accept third party, directly or through intermediaries, gifts, gratuities or other benefits whatsoever for the services they are required to report under their functions or in connection therewith.

References:

Loi n° 043/96/ADP du 13 Novembre 1996 portant Code Pénal, article 19

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

Comments:

No law specially defines corruption, but corruption is addressed by the Penal Code.

References:

Loi n° 043/96/ADP du 13 Novembre 1996 portant Code Pénal (articles 85, 156, 239, 422)

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

Comments:

The provision applies to any civil servant or soldier and makes it a crime to act on an illegitimate interest in a case which he is responsible for authorization, liquidation or payment.

References:

Loi n° 043/96/ADP du 13 novembre 1996 portant Code Pénal (articles 85, 154, 161)

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

Comments:

Any public servant who, directly or indirectly, takes or receives any interest whatsoever in the acts, auctions, companies, or authorities which he has or had the time of the act, in whole or in part, the administration, control or supervision. The public servant can be doing this by themselves or through intermediaries, of any description whatsoever, interest in a company they had or the administration, management or control.

References:

Loi n° 013/98/AN du 28 avril 1998 portant Régime juridique applicable aux emplois et aux agents de la Fonction publique, article 16

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

Comments:

Whoever forged, falsified or altered banknotes and coins of legal tender in Burkina Faso or abroad is punishable by life imprisonment. Burkina Faso has criminalized money laundering by voting the law above. But the country does not yet handle the fight against terrorist financing. In addition, the freezing disposal, seizure and forfeiture for offenses related to money laundering has not been implemented.

The implementation of preventive measures of the law above, by financial institutions is still nascent. Due diligence obligations established by law 026-2006 are incomplete and often inaccurate.

References:

Loi n° 026-2006/AN du 28 novembre 2006 relative à la lutte contre le blanchiment de capitaux (article 1)

Code des drogues (article 55).

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

Comments:

Many penalties are set by the Penal Code, according to the different cases of complicity proven.

References:

Loi n° 043/96/ADP du 13 novembre 1996 portant Code Pénal (articles 65 and following)

Yes: A YES score is earned if organized crime is illegal.

No: A NO score is earned if this is not illegal.

6.2. Anti-Corruption Agency or Equivalent Mechanisms

74. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

74a. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

Yes

No

Comments:

The functions of the ASCE cover both the general administrative supervision (conformity, consistency and performance) and the fight against corruption, economic and financial crime.

References:

Loi n° 032-2007/AN du 29 novembre 2007 portant création, attributions, composition et fonctionnement d'une Autorité Supérieure de Contrôle d'Etat (ASCE), article 3

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.

75. Is the anti-corruption agency effective?

61

75a. In law, the anti-corruption agency (or agencies) is protected from political interference.

Yes

No

Comments:

The Supreme State Auditor is subordinated to the Prime Minister.

References:

Loi n° 032-2007/AN du 29 novembre 2007 portant création, attributions, composition et fonctionnement d'une Autorité Supérieure de Contrôle d'Etat (ASCE)

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 ASCE is a unit of the Prime Minister. It is therefore not immune from political interference.

References:

Maxime Nikiema, Program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Souleymane Sore, Independent consultant, 07 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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:

The director(s) can in some cases be removed through a combination of official or unofficial pressure: intervention of the executive can force the president to resign. However, from its establishment in 2007 through June 2011, the Executive of ASCE was not replaced.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

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

Comments:

The Supreme Audit Authority of the State (ASCE) is hosted by the State Controllers. Professional criteria for appointing the staff of the ASCE are provided in the Act and these criteria are quite met. However, individuals appointed have clear party loyalties.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director, “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

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

Comments:

The ASCE (“Autorité supérieure de contrôle de l’Etat”) has a staff with necessary qualifications to fulfill its basic mandate but their number is insufficient according to the needs.

References:

Maxime Nikiema, Program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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

Comments:

The Autorité supérieure de contrôle de l’Etat (ASCE) has a predictable source of funding that is fairly consistent from year to year and from the State budget. Political considerations are not a major factor in determining agency funding.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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:

Under Article 3 of the Law ASCE, the agency produced a report each year, the 2010 Report is available (http://www.lefaso.net/IMG/pdf/Rapport_2010_de_l_ASCE.pdf).

References:

Maxime Nikiema, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

(http://www.lefaso.net/IMG/pdf/Rapport_2010_de_l_ASCE.pdf).

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:

The agency has powers to gather information with some exceptions. Sensitive issues (e.g. relating to customs) are not treated with as much rigor as ordinary businesses.

References:

Maxime Nikiema, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

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:

In general, the work of the ASCE begins at the time of termination. However, if irregularities are detected, the agency carries out extensive investigations in services or undertakings concerned. The Report of 2010 required 30 inspection missions.

References:

Maxime Nikiema, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Frédéric Nikiema, deputy executive director of the "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

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?

76a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The agency acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Although the resolution time may vary, it generally is no more than 1 year.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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

Comments:

Sometimes whistle-blowers may be threatened for disclosing, either through official or unofficial means, unless they disclose anonymously. Any person can report cases of irregularity through the hot line of the Agency.

References:

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager of the National Centre of press – Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

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.

75

6.3. Judicial Independence, Fairness, and Citizen Access to Justice

77. Is there an appeals mechanism for challenging criminal judgments?

50

77a. In law, there is a general right of appeal.

Yes

No

Comments:

We have the “Cour d’appel” and, above it, the “Cour de cassation.”

References:

Constitution (articles 126, 127)

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:

Most of the appeals are not resolved in a timely fashion. The 2011 Report is not yet ready, but according to the 2010 report of the Agency (p. 10), the general recommendations addressed to heads of government departments have all been implemented.

References:

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

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

Comments:

The Agency is engaged by the complainant. It makes its investigations and draws its conclusions. If a crime / offense requires judicial intervention, the costs of the proceedings become more accessible to the middle class.

References:

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, National Centre of Press Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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

78a. In practice, do judgments in the criminal system follow written law?

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

Comments:

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. The laws are followed, but interventions are not excluded or ignored.

References:

Evariste Dabire, program officer at the "Réseau africain des droits de l'homme" (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

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?

79a. In practice, are judicial decisions enforced by the state?

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

Comments:

Judicial decisions are generally enforced by the state. Most of the time, the police will enforce prison sentences or fines that judges have ordered. Sometimes there are gaps in enforcement if the person who has a judgment made against him/her is connected to people with political influence. More often, though, gaps exist in actually pursuing investigations. Thus, once a case has made it to court and been decided by a judge, it usually is enforced by the state.

References:

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, National Centre of Press Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

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

Comments:

The article above states that judges are independent. Except as provided by law and subject to the exercise of disciplinary authority, the magistrates may not be disturbed in any way, for acts performed in the course of their duties or in the course of this year. No account may be asked to judges linked with the decisions they make or which they participate.

References:

LOI ORGANIQUE N° -036-2001/AN PORTANT STATUT DU CORPS DE LA MAGISTRATURE, article 4

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

Comments:

National-level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. In practice, the composition of the Supreme Council of Magistracy is politicized; (ii) there are obstacles to removing judges (in Burkina Faso, assignments of all judges are demanding that the amount of moving expenses are ridiculous); and (iii), prosecutors have interference that jeopardizes their independence (prosecutors also lead the police investigation).

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Arnaud Ouedraogo, cabinet chief of the President of High Communication Council (CSC), 10 October 2011, Ouagadougou

Albert Traore, president of Supreme Audit Institution, 06 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Centre for Democratic Governance (CGD), "Rapport sur la Justice et l'Etat de droit au Burkina Faso" (Report on Justice and the rule of law in Burkina Faso), p. 27, in September 2011

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

Comments:

The law is reinforced by the Strategic Axis Four of the National Policy of Justice which mandates improving the psychological accessibility and credibility of justice. Its first component concerns transparent procedures, and the second component deals with the prevention of corruption.

References:

Loi Organique N° -036-2001/AN Portant Statut du Corps de la Magistrature, Article 3

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

Comments:

Article 5 of the law above states that judges cannot be removed.

References:

Loi Organique N° -036-2001/AN Portant Statut du Corps de la Magistrature, Article 5

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

Comments:

Cases of judges being assaulted because of their involvement in a corruption are not reported for the study period.

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, National Centre of Press Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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

Comments:

Case of judges being killed because of their involvement in a corruption were not reported for the study period.

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Aboulaye Diallo, manager, National Centre of Press Norbert Zongo (CNP-NZ), 11 October 2011, Ouagadougou

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 judicial decisions generally are not affected by racial or ethnic bias. Judges do not consider origin or race. Judges uphold strict professional standards and receive professional training at the Ecole Nationale d'Administration et de Magistrature (National School of Administration and the Judiciary).

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Frédéric Nikiema, deputy executive director of the "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Thomas Ouedraogo, researcher at "Centre pour la Gouvernance Démocratique" (CGD), 10 October 2011, Ouagadougou

Maxime Nikiema, program officer of "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

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

Comments:

Women generally have use of the judicial system, with some exceptions. Women are often under social, economic and other gender constraints. Recent efforts of judicial reform include the construction of additional courts of justice and drastic reduction of costs of access to justice.

References:

Thomas Ouedraogo, researcher at “Centre pour la Gouvernance Démocratique” (CGD), 10 October 2011, Ouagadougou

Maxime Nikiema, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Parfait Loure, magistrate to High Court of Ouagadougou, 05 January 2012, Ouagadougou

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

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

Comments:

All Burkinabè and anyone living in Burkina Faso receive equal protection under the law. All are entitled to have their case heard by an independent and impartial court. However, the government does not provide legal counsel.

References:

Constitution, article 4

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.

Comments:

The report written by the Center for Democratic Governance (CGD) says:

“The status of the lawyer only makes sense for the rights of defense enjoyed by citizens facing justice. But in a context of poverty, it is essential that the State is involved in support of legal expenses to facilitate access to a lawyer. Until then legal aid is really ensured only in cases such as enough residual enforcement of court decisions in favor of the worker, the accused with the criminal division. Openness to people because of their impoverished circumstances is not effective, so that recourse to the lawyer is still seen as an opportunity for the rich. It is important to note the amount of compensation in file tracking cases for assignment, as these rates are quite derisory.”

References:

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Centre for Democratic Governance (CGD), “Rapport sur la Justice et l’Etat de droit au Burkina Faso” (Report on Justice and the rule of law in Burkina Faso), page 31, September 2011

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.

Comments:

The cost of engaging the legal system sometimes prevents middle class citizens from filing suits. Attorney fees are high enough to discourage many citizens from bringing a case. Despite significant progress, the costs are still high for some middle-income citizens.

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, “Réseau National de Lutte Anti-corruption” (REN-LAC), 10 October 2011, University of Ouagadougou

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

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

Comments:

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.

There is now a special case of improving access to justice: the cost of the order for payment rose from 4% of the amount in question to 0% now. The laws are more flexible and recourse for free.

References:

René Bagoro, judge, Administrative court, 07 October 2011, Ouagadougou

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Mathias Gnamba, judge, vice-president of Commercial Court in Ouagadougou, February 2, 2012, Ouagadougou

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.

100 | 75 | 50 | 25 | 0

Comments:

The low geographical density of the courts is a real obstacle to their access. With regard to regional courts, the judicial organization of texts they provide must be located in each province, which amounts to a total of forty-five courts. From the perspective of this ideal, we can say that the road is still long to complete a mesh of the national territory, as they today number 24 instead of 45 (completion rate of 53.33%).

References:

Thomas Ourdraogo, researcher, and Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Maxime Nikiema and Bruno Kere, program officer of “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Evariste Dabire, program officer at the “Réseau africain des droits de l’homme” (RADHO), 13 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Centre for Democratic Governance (CGD), “Rapport sur la Justice et l’Etat de droit au Burkina Faso” (Report on Justice and the rule of law in Burkina Faso), p. 48, in September 2011

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.

6.4. Law Enforcement: Conflicts of Interest Safeguards and Professionalism

83. Is the law enforcement agency (i.e. the police) effective?

50

83a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

Comments:

Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties, especially toward the ruling party.

References:

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Centre for Democratic Governance (CGD), "Rapport sur la Justice et l'Etat de droit au Burkina Faso" (Report on Justice and the rule of law in Burkina Faso), September 2011

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.

Comments:

The agency has a limited budget that is insufficient to fulfill its basic mandate. The obvious lack of human resources is a disability that prevents justice to properly fulfill its mission. The Report of the Centre for Democratic Governance (CGD) states: "In 2010, the proportion of the State budget devoted to justice was 0.7%, so there is still a need for funding if we want to attain the ideal of 1%. To this, we must add the paradox of the low absorption rate of funds allocated to the Justice. Therefore, efforts should primarily aim to improve financial management to strengthen the absorption capacity. This requires the training of all staff in the chain of expenditures for administrative and technical programming budget."

References:

Claude Wetta, research professor of Economics at the University of Ouaga 2, Executive Secretary, "Réseau National de Lutte Anti-corruption" (REN-LAC), 10 October 2011, University of Ouagadougou

Centre for Democratic Governance (CGD), "Rapport sur la Justice et l'Etat de droit au Burkina Faso" (Report on Justice and the rule of law in Burkina Faso), September 2011

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 agency is typically independent, yet is sometimes influenced in its investigations or enforcement actions. For instance, political powers are left to decide whether to prosecute. The prosecutor is often accused of trying to stifle certain cases, when it is not arranged so that the case be heard or tried by judges who are known to be very accommodating or with whom political loyalty is assured.

Moreover, the Supreme Council of Magistracy (CSM) remains largely under the influence of executive power, which even manages the careers of judges, members of right, or appointed directly by the authority having the majority. On the other hand, the flexibility of judges seems particularly narrow because they feel vulnerable in terms of their career.

References:

Bruno Kere, juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Centre for Democratic Governance (CGD), "Rapport sur la Justice et l'Etat de droit au Burkina Faso" (Report on Justice and the rule of law in Burkina Faso), in September 2011

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

Comments:

Although no law establishes a formal mechanisms, citizens can make complaints about the police to the Gendarmerie. As the police are part of the Ministry of Security, and the Gendarmerie are part of the Ministry of Defense, the subject of the complaint (police) is separate from the investigator/enforcer of the violation (Gendarmerie). The Gendarmerie has jurisdiction over the police force and conducts many investigations at the request of citizens.

References:

Based on desk research, no law exists.

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

Comments:

The 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. The complainant is free to enter the public prosecutor to file a petition.

References:

Thomas Ouedaogo, researcher, and NIKIEMA Frédéric, deputy Executive Director of the "Centre pour la Gouvernance Démocratique" (CGD), 11 October 2011, Ouagadougou

Bruno, Kere juriste at the "Réseau National de Lutte Anti-corruption" (REN-LAC), 12 January 2012, Ouagadougou

Centre for Democratic Governance (CGD), "Rapport sur la Justice et l'Etat de droit au Burkina Faso" (Report on Justice and the rule of law in Burkina Faso), September 2011

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

Comments:

The law above on the establishment of the ASCE (“Autorité supérieure de contrôle de l’Etat”) mandates this agency (ASCE) to deal with cases of alleged corruption.

References:

Loi n° 032-2007/AN (articles 2, 3)

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

Comments:

All cases of alleged corruption are likely to be treated by the ASCE, regardless of the defendant. Except, of course, cases of “sensitive issues.”

References:

Thomas Ouedraogo, researcher, and NIKIEMA Frédéric, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Maxime Nikiema, program officer, “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Bruno Kere, juriste at the “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Centre for Democratic Governance (CGD), “Rapport sur la Justice et l’Etat de droit au Burkina Faso” (Report on Justice and the rule of law in Burkina Faso), September 2011

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

Comments:

The criminal law applies to offenses committed on national territory regardless of the nationality of its author.

References:

Code Pénal, Article 4

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:

In practice, law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution. They are responsible for their actions before the law, like any citizen.

References:

René Bagoro, judge, Administrative Court, 07 October 2011, Ouagadougou

Thomas Ouedraogo, researcher, and Frédéric Nikiema, deputy executive director of the “Centre pour la Gouvernance Démocratique” (CGD), 11 October 2011, Ouagadougou

Bruno Kere, juriste, and Maxime Nikiema, program officer, “Réseau National de Lutte Anti-corruption” (REN-LAC), 12 January 2012, Ouagadougou

Julien Natielse, research professor in the Law Faculties in the Universities of Ouagadougou and Bobo-Dioulasso, January 31, 2012, Ouagadougou

Centre for Democratic Governance (CGD), “Rapport sur la Justice et l’Etat de droit au Burkina Faso” (Report on Justice and the rule of law in Burkina Faso), September 2011

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.
