

The Worldwide Governance Indicators (WGI) ranked Kenya 24th in the dimension of control of corruption (0 being the lowest rank) and 35th in terms of the rule of law index in 2019, a trend worsening since 2014. Government effectiveness also declined, from 43rd in 2015 to 28th in 2019. Additionally, the 2020 Transparency International's Corruption Perceptions Index ranked Kenya 124th out of 180. Furthermore, the 2019 Global Corruption Barometer showed that 67 % of Kenyans believed corruption to have increased in the previous 12 months. Among the surveyed population, 45 % had paid a bribe to public officials over the previous 12 months.

The 2020 Ibrahim Index of African Governance showed a decline in both Rule of Law and Justice since 2010. The indicator for Accountability and Transparency in 2020 ranked Kenya 15th out of 54 countries, showing a significant decline since 2010. The country's overall score under the 2020 Rule of Law Index of the World Justice Project (WJP) remains in the bottom half of the index (0.45), with a global rank of 102nd out of 128 countries. In the WGI indicator of Rule of Law, the ranking of Kenya remained in the bottom half in 2019, with a slight downward trend from a percentile rank of 28th place in 2014.

Gender-based violence has reached alarming levels, with the spike in such offences during the COVID-19 pandemic highlighting an issue that has not been sufficiently prioritised within the criminal justice system. This is partly owed to the non-consideration of gender based violence services as essential during the initial phases of health restrictions. It can be further gathered from a judgment of the High Court of Kenya issued on 10 December 2020 in favour of four female survivors of Sexual and Gender Based Violence (SGBV) committed during the 2007-2008 post-election violence. The judgment was held against the Government for failing to conduct independent and effective investigations and prosecutions of SGBV committed by state agents. Correspondingly, 2014 World Bank data show that 25.5 per cent of women of age 15-49 reported to have been subjected to physical and/or sexual violence in the last 12 months. More generally, Kenya is ranked to be the 11th best out of the 54 African countries in the 2019 Ibrahim Index of African Governance (IIAG) on gender balance.

In the same vein, prison congestion remains a critical human rights issue. It translates into prisoners having a poor diet, degrading clothing and beddings, poor sanitation, and a high risk of exposure to infectious diseases – as highlighted during the COVID-19 pandemic. Yet, it has been repeatedly recognised that most offenders in Kenyan prisons are imprisoned for petty offences. Prisons are at the same time becoming fertile breeding grounds for radicalisation as well as recruiting grounds for organised crime, and thus posing a high risk to the safety of the citizens in the long term. In contrast, alternatives to imprisonment offer a proven way to facilitate the social reintegration of offenders and reduce recidivism. The overuse of custodial sentences also holds true in the case of children in conflict with the law.

Following the reforms of the 2010 Constitution, the historically under-resourced justice sector has seen a redirection of public resources to the Judiciary and prosecution services. Other key actors in the justice chain, such as legal aid, probation and prisons, have continued to receive modest allocations. However, public resource allocation to the Judiciary has become politically contentious in the context of numerous judgements, including ones touching upon elections, which have been unfavourable to the Executive, undermining judicial independence, a central principle of democracy and the rule of law.

All the same, the Kenyan criminal justice system has been making ever more use of technology, as it entails opportunities for improvement and the realisation of its values, such as accountability, transparency and access to justice. It also offers favourable circumstances for urgently needed efficiency gains and cost savings in the currently resource-starved system. The use of technology in the justice sector has demonstrated its value in a significant way by mitigating the impact of COVID-19, and it is foreseen that its continued uptake will significantly improve access to justice in the coming years.

Policy Framework

The action will support Kenya's effort to adhere to international norms and standards on anti-corruption, criminal justice and human rights. These include the United Nations Convention against Corruption (UNCAC), which Kenya was the first country to sign and ratify in 2003, and the United Nations Standard Minimum Rules (Mandela Rules, Bangkok Rules, Tokyo Rules, Beijing Rules). The action will also address the recommendations of the Committee of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Committee on the Rights of the Child, and the Convention on the Rights of Persons with Disabilities, with regards to the implementation of Kenya of the rights of these respective conventions and other fundamental human rights conventions ratified by the Government of Kenya, in particular the International Convention on Civil and Political Rights (ICCPR) and the International Convention Against Torture (CAT).