The Perception of the Independence of
the Judiciary Power in Burundian Law:

Crossed Views

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Abstract

Any person is always in search of social well-being. However, despite this aspiration, all people still face different problems. Some of these come from his fellow human beings and in modern States, everyone must be protected from acts that infringe his rights and freedoms. To avoid arbitrariness, States have long established various institutions to promote and protect human rights. Indeed, the judiciary is the keystone but to be effective, one of the conditions that it must fulfill remains independence. Despite both international and national instruments advocating the independence of the judiciary, this issue remains problematic in Burundi as elsewhere. This article has been prepared to analyze the Burundian population's perception of the independence of judiciary power by highlighting different points of view from the diverse representative sample. Intellectuals especially politicians, lawyers, and judicial practitioners fully understand the concept of the independence of the judiciary, the provisions that guarantee it, and their factors while Unintellectual people are less familiar with it. Nevertheless, all the people met doubt the effectiveness of the independence of the judiciary if they
see how some magistrates decide on the bias, often as a result of corruption, favoritism, and the influence of other people or powers.

**Keywords:** Perception- independence-judiciary power- Burundian law

1. **Introduction**

The issue of the independence of justice has been a hot topic for some time at the international and national levels. This concern was accentuated by the adoption of human rights conventions such as the 1948 Universal Declaration of Human Rights and the 1966 Pacts. Nevertheless, this concept is as old as the world and has been analyzed by thinkers and analysts like Aristotle, Tocqueville, and Montesquieu often confusing it with that of separation of powers or considering it as its corollary. The sources underline the place of the independence of the court and the judge in guaranteeing the rights of the litigants and consequently in the stability of the companies and their sustainable development.

Article 14, paragraph 1 of the International Covenant on Civil and Political Rights states that all are equal before courts and tribunals and confirms everyone has the right to a fair and public hearing by a competent, independent, and impartial tribunal.[1]

Unfortunately, the bitter conclusion is that in most legislations, despite the good intention of establishing text-based independence of justice, their judicial systems are criticized mainly because of the values of their members who are accused of corruption, partiality, or other misconduct. In most situations, this kind of behavior is due to pressure and interference from other powers, especially the executive. This is the point of view of the former president of the Burundi Bar in his study on the independence of justice in Burundi, a study by the Observatory of Government Action (OAG)[2].

Moreover, this point is shared by more than one author because according to the survey Burundi is characterized by the control of the executive power over the judiciary. Judicial independence refers to the set of institutional and other factors that, to a lesser or greater extent, allow judges autonomy from the preferences of other political actors when these judges issue legal opinions[3]. This state of affairs is an obstacle to respecting human rights because it would be foolish to believe in respect for rights and freedoms when their guardians are not independent.

The independence of justice continues to attract the attention of thinkers, politicians, and especially human rights defenders because of its importance in their guarantee. This is all the more so since almost all the nations of the world are devoting the principle of separation of power and the independence of the judiciary to their basic laws.

Nevertheless, this notion remains complex, and a lot of studies highlight values that are intimately linked to the judge's independence. It's about independence, impartiality, integrity, convenience, equality, competence, and diligence. The same situation is confirmed for Burundi, especially from the 1992 constitution, which
advocated a democratic regime based on the rule of law, a source of independent and competent courts[4]. Even under the colonial yoke, the colonizers undertook judicial reform initiatives. In 1947, the Colonial Council sent the Minister various wishes concerning the independence of the judiciary[5]. Innovations have arisen in the judicial organization of independent Burundi until the creation of a constitutional court that guarantees the constitutionality of laws. Important reforms were guided by the Arusha Peace and Reconciliation Agreement in Burundi, where the parties found among the seven solutions to the Burundi conflict, the adoption of constitutional provisions devolving the separation of powers as the fifth solution. It was to promote and establish impartial and independent justice[6].

It is the principles of this agreement that paved the way for the 2005 constitution and its article 209 states that the judiciary is impartial and independent of the legislature and the executive[7]. The spirit of these provisions has been taken up again in articles 214 and 215 of the June 2018 Constitution[8]. However, regardless of the effectiveness of all these bodies, as with other jurisdictions, the independence of the judiciary remains a concern for human rights. The central question to be addressed in this research concerns how Burundian law guarantees the independence of the judiciary. His analysis will focus on the relevant legal framework, emphasizing the constitutional provisions and the different texts of its application.

Despite the relevance of this issue concerning the independence of the judiciary, research has been done. They are related to the rule of law which can only be ensured if the judge is not subject to any instruction or pressure in the exercise of his office, both from the parties to the dispute and the third parties, including (especially) political authorities[9]. Their results can advance the respect of human rights in Burundi and elsewhere because an impartial and independent judicial system guarantees the good administration of justice and consequently individual and collective rights and freedoms. Ferruccio Ponzano asserts that the European Union is based on respect for several fundamental values, including democracy, the rule of law, and human rights[10]. In particular, the rule of law implies respect for the separation of powers and, hence, the independence of the judiciary from the executive power applied in all Western democracies. In addition, US research on appointments largely confirms that the ideology of the Supreme Court justices can be predicted by a function of the president’s and the Senate’s ideologies, although other factors such as patronage, interest groups, and public preferences also play a role[11]. Daniel M. Brinks and Abby Blass talk about the independence of justice through formal autonomy, the formal process of appointment (what we will call "ex-ante autonomy"), and after the judges have been seated, by formal means of punishing or rewarding judges("ex-post autonomy")[12].

Other authors analyzed the independence of judicial power with the concept of accountability. He said that instead, like judicial independence and accountability, law and judicial politics are different sides of the same coin. They are not opposites but rather complements[13]. Many authors focused on the independence of judicial
power in various ways because it is a great concern for the respect of human rights which are guaranteed by an independent judge.

2. Materials and Methods

This study was carried out through descriptive design by focusing on a documentary approach that allowed the verification of hypotheses. These documents are dominated by manuals, theses, and various articles that were flipped through to identify and deepen the subject. In this respect also, official documentation composed of legal and regulatory texts, among others, was carefully analyzed starting with the Burundi constitutions and the various international conventions. The purpose of the sampling was used to obtain key information[14].

This documentation was supplemented by the analysis of national, regional, and international case-law cases to the extent possible. We also used an electronic questionnaire sent via google form to lecturers of faculties of law in different universities in Burundi, lawyers, magistrates, and doctoral students as far as it is possible to do research online[15]. We also used focus group interviews with litigants to inquire whether there should exist victims of the lack of independence of justice. We considered randomly 30 respondents in each category.

3. Results

3.1. Appreciation of the justice independence in Burundian law by respondents

Victims of the dependence on the justice

*Figure 1: Respondents who have been victims of the lack of independence of justice in Burundi*

![Pie chart showing 61.9% of respondents confirmed to have already been victims of the lack of independence of justice.]

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3.2. Respondents who witnessed victims of the dependence on justice

*Figure 2: Respondents who have witnessed victims of lack of independence of justice*

![Pie chart showing 85.7% of respondents already witnessed different cases in which people are victims of the lack of independence of justice and only 14.3% did not.]

85.7% of respondents already witnessed different cases in which people are victims of the lack of independence of justice and only 14.3% did not.
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These graphs show that the majority of respondents have been victims and have witnessed the victims of independence of the justice

4. The legal framework adopted in application of the Burundi Constitution as guardian of the independence of the justice

Figure 1: Existence of framework protecting the independence of justice

The majorities of all categories of respondents converge that in Burundi, the independence of justice is not effective. Hence, taking into account the level of education, illiterate litigants show a short rate of disagreement on the non-effectiveness of the independence of justice, which means 19 out of 30 while literate ones show 24 out of 30 which is nearby the rate given by doctoral students, 23 out of 30. All of our respondents from the category of lecturers at the faculties of law in different universities in Burundi confirm there is no effective independence of justice at all. Respectively, lawyers and magistrates esteem the non-effectiveness of the independence of justice at 27 and 26 out of 30 in each category.
Discussion

Results from the online questionnaire denote that the majority of respondents agree that they have been victims (61.9 %) of the dependence on justice in Burundi. Such a situation had been confirmed that the frequency of justice violations is proposed to influence aggression, such that justice perceptions lead to workplace aggression and finally violate the perception of independent and distributive justice[16]. No one can stand insensible in front of injustice in court[17]. 85.7% argue that they have witnessed cases of the victims of the dependence on justice. This is fairly felt by 3rd party in the court of justice to witness cases of violation of the independence of justice and it is not easily forgotten [18]. The non-effectiveness of the independence of justice is known and became common in Burundi according to the points of view of respondents to our questionnaire. Such results meet the ones found by research conducted by Saudi Arabian public universities[19]. Such a statement does not vary depending on the intellectual status of respondents.

Conclusion

This paper is aimed to analyze the problem of the independence of justice in Burundian law. It focused on the constitution and its legal framework adopted in the application of that fundamental law. The fulfillment of the study required the collection of data through an online questionnaire and the majority of respondents agree that the legal texts guarantee theoretically the independence of the justice. Results confirm however the non-effectiveness of the independence of justice, of which over 66% of them have been victims and 80% witnessed it happening.

References


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Received: September 17, 2022; Published: May 7, 2023