



Rule of Law – Africa Integrity Indicators Findings

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The Rule of Law subcategory assesses the judiciary's autonomy from any outside control of their activities, the existence of unbiased appointment processes and security of tenure, and the production and transparency of well-grounded judicial decisions. It also measures the independence and transparency of a country's supreme audit institution. Rule of Law is one of the six components of the Transparency and Accountability category.

Judiciary Findings

- Significant executive influence on the judiciary is common whether there is *de jure* independence or not.** For instance, in The Gambia (2015), the research notes that two chief justices were removed in July 2013 and February 2014 without due process, thus warranting a low score. Similarly, while *de jure* judicial independence exists in Angola, in practice this is highly compromised due to executive and political influence. There, the researcher reported, “As an example of the MPLA influence over judicial appointment, Manuel Aragão was selected by the High Council of the Judicial Power as a Supreme Court justice. He has a long political career within the MPLA structure, is a former justice minister and a member of the National Assembly, but has no previous legal qualification or experience and has never been a magistrate or had a career in the judiciary.”
- Several venues support direct executive influence on the judiciary.** In many instances, the executive has a position on the supreme council of the judiciary, which is directly involved in judicial promotion and disciplinary decisions. For instance, the comment in Cameroon (2014) notes, “According to Article 1 of Law No. 82/14 / of 26 November 1982 establishing the organization and functioning of the Superior Council of Magistracy, the Supreme Judicial Council is chaired by the President of the Republic. This executive influence undermines the independence of the judiciary.” Thus, just under half of the countries surveyed earned a score of NO on the indicator about whether in law the independence of the judiciary is guaranteed.
- In many countries, the judiciary earns low scores on both the laws and the practice.** For instance, in Equatorial Guinea there is no legal independence and the executive wields considerable influence. The researcher reported that the President appoints judges of the Supreme Court without any parliamentary oversight, and also controls the judicial council. Furthermore, “Disciplinary measures continued to be arbitrary and mainly due to political motivations. The judge that was

Rule of Law Indicators

1. In law, the independence of the judiciary is guaranteed.
2. In practice, the independence of the judiciary is guaranteed.
3. In practice, national-level judges appointments (justices or magistrates) support the independence of the judiciary.
4. In practice, national-level judges give reasons for their decisions/judgments.
5. In law, there is a supreme audit institution.
6. In law, the independence of the supreme audit institution is guaranteed.
7. In practice, the independence of the supreme audit institution is guaranteed.
8. In practice, appointments to the supreme audit institution support the independence of the agency.
9. In practice, the supreme audit agency releases frequent reports that are accessible to citizens.



detained in Bata in 2013 due to a judicial decision that affected the president's son was released in December 2013 after being in prison for three months without charges.”

- **Does the judiciary have a role in reviewing laws?** Even in countries where the law guarantees that the judiciary operates independently, the judiciary does not necessarily have full jurisdiction to review laws in six of them. For instance, the researcher in Zambia reports, “There is no provision that explicitly enables the judiciary to review the constitutionality of legislation or review laws. In fact, Section 34 of the National Assembly (Powers and Privileges) Act expressly denies the judiciary the right to review actions of the legislature.”
- **The legal framework improved from 2013-2014 in many countries.** For example, Tunisia improved its in law score due to legal changes during the 2015 study period (Sept 2013-Sept 2014). In 2014's research, Tunisia scored a NO on indicator #1, as the new post-revolution law provided only general independence for the judiciary, and yet did not establish the judiciary's mandate to review laws. Tunisia then earned a YES in 2015, as the January 2014 passage of the new Tunisian Constitution provided such a mandate, along with more explicit provisions on judicial independence. Liberia also improved due to the introduction of constitutional protections from external intimidation.
- **In practice, judicial independence exists in different degrees in about half of the countries.** For instance, in Botswana, “There has been no evidence that shows that pressure is exerted on judges from the government. Judges have autonomy to interpret and review existing laws, legislation and policy. During the period of study, there were no incidents such as politics, nepotism or influence that transpired and trampled upon the power of the judiciary to perform as an independent entity.” There are also clear examples across the continent of merit-based appointment procedures being insulated from undue executive influence. For instance, in Cape Verde, “National-level judges are chosen through a merit-based selection system. Vacancies for Supreme Court judges are competitive and open by resolution of the Supreme Council of the Judiciary. The filling of vacancies of judges of the Supreme Court is by promotion through curricular public tender, open to associate judges.”
- **More judicial transparency is needed.** The lowest scoring indicator on the judiciary was #4 on the public availability of the rationale for judicial decisions. Several countries provide public access to judicial decisions through an online database and offline requests, but in many cases only litigants can access this information. In other cases, such a Malawi, databases are available, but they are significantly outdated (only cases through 2010 are easily accessible to the general public).

Audit Institution Findings



- **Are audit institutions independent?** All countries have a supreme audit agency – however, only 17 have what indicator #6 considers “legally guaranteed independence.” Oftentimes, the entity is an accounts chamber from a judicial branch that lacks sufficient independence, or it is formally independent but lacks a legal mandate to audit certain government accounts and/or refer cases to public prosecution. For instance, in Ghana the audit service has a wide mandate, but it cannot forward any of its findings to public prosecution. Instead, it may only issue recommendations in its report to parliament, where the Public Accounts Committee itself makes a determination on any potential response. However, laws give auditors independence in a third of the continent. For example, in Malawi, Section 16(2) of the Public Audit Act of 2003 provides the auditor general with the power to refer cases directly to the director of public prosecutions as necessary.
- **Audit institutions regularly display signs of lack of autonomy.** In Law, 17 countries (31%) completely guarantee the independence of the supreme audit institution, but in practice only four of them actually do it. There are significant examples of executive interference into audit operations through influence, restrictions from auditing certain accounts, and biased appointments. For instance, in Liberia, the 2014 research notes, “In practice, there are exemptions to agencies of government to be audited by the General Auditing Commission (GAC), Liberia's supreme audit institution. All national security institutions, including the Liberia National Police and the Ministry of Defense, are not subject to audits...” Furthermore, in 2015 Liberia’s researcher reported of the political nature of appointments, “The auditor general and the two deputies do not necessarily have to go through any selection process, merit or otherwise. The president nominates the three without due consideration for particular guideline or system, nor does the president consult anyone.” In Rwanda, while the entity is not legally restricted from auditing certain accounts, in practice it fails to do so, due either to lack of cooperation, lack of resources, or the influence of fear or favor. For instance, the 2015 research on Rwanda reports, “An official of the OAG, interviewed on Nov. 8, 2014, on the condition of anonymity, said that three public institutions are not audited: the Office of the President (for no apparent reason), the Rwanda Social Security Board (RSSB) and the National Bank of Rwanda (BNR)... Similarly, the expenditure for the military goes unaudited.”
- **Appointments are merit-based and insulated from politics only in 11% of the countries.** One of the better examples is South Africa, where the research notes, “The Auditor General is appointed according to a merit-based system. During the appointment process of the Auditor General, a list of nominees was made publicly available and hearings were held. These hearings were made public on the website of the parliamentary monitoring group. The law states that parliament has to vote for the appointment, thus through a multi-party scrutiny procedure. At least 60 percent of parliament (240 of the National Assembly's 400 MPs) has to support the appointment of an Auditor General. Advocate Paul Hoffman said that “a head of state can't appoint someone favourable to his/her party” and that “it is furthermore difficult to remove the Auditor General, almost as difficult to remove a judge.”



- **The independence of audit institutions is often undermined by the lack of protections from removal.** An example of removal during the period of study occurred in Tunisia, where the president of the Court of Accounts was dismissed by the Prime Minister. In Burkina Faso, the research reported flaws in the appointment system, where cabinet members make appointment and removal decisions.
- **Audit reports are rarely published and accessible to the public.** Indicator #9 on the publication of audit reports received the lowest average score of the subcategory, and the scores seem to have deteriorated from 2014 to 2015. In some countries, the supreme audit institution isn't active in producing reports – or it produces only a single report per year. In others, the institution is producing reports, but these are not readily accessible to the public. This indicator is highly responsive to changing publication patterns between research periods. For instance, while in 2014 Liberia's General Auditing Commission made a large number of reports available to the public, during the 2015 research period, no new reports were published (several were delayed or pending).

Observations

- Of the nine indicators, seven showed an average increase, one remained constant (#5), and only one deteriorated (#9). The most substantial improvements were found in the two appointment indicators (#3 and #8).
- In 2015, the five highest scoring countries in this category were South Africa, Cape Verde, Kenya, Namibia, and Mauritius. South Africa's score held constant, but took the top position from Cape Verde, which saw a score decrease of 5.6 between 2014 and 2015. Cape Verde's score deterioration followed lower scorings in the audit section – indicators 7 (independence) and 8 (appointments).
- Namibia showed the most significant movement among the top five, moving from 7th position in 2014 to 4th position in 2015 with an improvement of 5.6. Notably, part of this increase followed a higher scoring on audit agency report accessibility (#9), an indicator where an average deterioration was experienced overall.
- In 2015, the lowest scoring countries were Mauritania, Equatorial Guinea, and Cameroon. Swaziland, Sudan, Somalia, Central African Republic, and Burundi were all tied in the fourth to lowest position. While four of these countries showed no score movement between 2014 and 2015, Sudan and Swaziland's scorings deteriorated, while CAR's improved slightly.



Regional Trends¹

- There is a wide divergence in regional performance in this subcategory. The spread between the highest and lowest regional averages is 28.70, substantially larger than all other Transparency & Accountability subcategories.
- Southern Africa was the strongest performer, with Central and North Africa as the lowest. No region exhibited deterioration between 2014 and 2015.
- Central Africa improved by 2.65 and West Africa improved by 2.5. North Africa showed the least movement between 2014 and 2015.

| 1.1 Rule of Law | 2014 Ave | 2015 Ave | Change |
|------------------------|----------|----------|--------|
| Overall | 38.75 | 40.28 | 1.52 |
| East Africa | 36.80 | 37.90 | 1.10 |
| Central Africa | 30.13 | 32.78 | 2.65 |
| North Africa | 25.86 | 26.20 | 0.33 |
| Southern Africa | 46.03 | 46.74 | 0.72 |
| West Africa | 43.68 | 46.18 | 2.50 |

It is important to note that aggregate scores mask very substantial - and very informative – country-level differences that can be found in the disaggregated data. An interested user benefits from exploring the data in detail, focusing on individual indicators and the country context described in the researcher's comment and sources. The indicators are designed to be granular in order to provide actionable information for each country covered, so they should be viewed individually for the clearest view of each country's performance - and opportunities for improvement.

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¹ Regions are here defined as:

- **Central Africa:** Cameroon, Central African Republic, Chad, Republic of Congo, Democratic Republic of Congo, Equatorial Guinea, Gabon, Sao Tome and Principe
- **East Africa:** Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, South Sudan, Tanzania, and Uganda
- **North Africa:** Algeria, Egypt, Libya, Mauritania, Morocco, Sudan, and Tunisia
- **Southern Africa:** Angola, Botswana, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe
- **West Africa:** Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo



| 1.1 Rule of Law | 2014 | | 2015 | | 2014-15 Change | |
|-----------------------|-------|------|-------|------|----------------|-------------|
| | Score | Rank | Score | Rank | Score Change | Rank Change |
| South Africa | 86.1 | 2 | 86.1 | 1 | +0.0 | +1 |
| Cape Verde | 88.9 | 1 | 83.3 | 2 | -5.6 | -1 |
| Kenya | 77.8 | 3 | 80.6 | 3 | +2.8 | +0 |
| Namibia | 72.2 | 7 | 77.8 | 4 | +5.6 | +3 |
| Mauritius | 77.8 | 3 | 75.0 | 5 | -2.8 | -2 |
| Ghana | 75.0 | 5 | 72.2 | 6 | -2.8 | -1 |
| Tanzania | 75.0 | 5 | 72.2 | 6 | -2.8 | -1 |
| Benin | 58.3 | 14 | 69.4 | 8 | +11.1 | +6 |
| Uganda | 63.9 | 11 | 66.7 | 9 | +2.8 | +2 |
| Congo DRC | 36.1 | 32 | 63.9 | 10 | +27.8 | +22 |
| Malawi | 66.7 | 9 | 63.9 | 10 | -2.8 | -1 |
| Rwanda | 66.7 | 9 | 61.1 | 12 | -5.6 | -3 |
| Nigeria | 58.3 | 14 | 61.1 | 12 | +2.8 | +2 |
| Lesotho | 50.0 | 19 | 61.1 | 12 | +11.1 | +7 |
| Botswana | 61.1 | 12 | 61.1 | 12 | +0.0 | +0 |
| Seychelles | 69.4 | 8 | 61.1 | 12 | -8.3 | -4 |
| Liberia | 61.1 | 12 | 58.3 | 17 | -2.8 | -5 |
| Mali | 47.2 | 23 | 58.3 | 17 | +11.1 | +6 |
| Zimbabwe | 52.8 | 17 | 58.3 | 17 | +5.6 | +0 |
| Mozambique | 55.6 | 16 | 55.6 | 20 | +0.0 | -4 |
| Togo | 50.0 | 19 | 55.6 | 20 | +5.6 | -1 |
| Zambia | 52.8 | 17 | 52.8 | 22 | +0.0 | -5 |
| Tunisia | 38.9 | 27 | 52.8 | 22 | +13.9 | +5 |
| Sierra Leone | 50.0 | 19 | 50.0 | 24 | +0.0 | -5 |
| Sao Tome and Principe | 50.0 | 19 | 50.0 | 24 | +0.0 | -5 |
| Egypt | 33.3 | 34 | 47.2 | 26 | +13.9 | +8 |
| Ethiopia | 33.3 | 34 | 44.4 | 27 | +11.1 | +7 |
| The Gambia | 38.9 | 27 | 44.4 | 27 | +5.6 | +0 |
| Senegal | 38.9 | 27 | 41.7 | 29 | +2.8 | -2 |
| Guinea-Bissau | 38.9 | 27 | 41.7 | 29 | +2.8 | -2 |
| Cote d'Ivoire | 33.3 | 34 | 41.7 | 29 | +8.3 | +5 |
| Niger | 33.3 | 34 | 38.9 | 32 | +5.6 | +2 |
| Chad | 16.7 | 50 | 38.9 | 32 | +22.2 | +18 |
| Angola | 38.9 | 27 | 38.9 | 32 | +0.0 | -5 |
| Comoros | 41.7 | 25 | 36.1 | 35 | -5.6 | -10 |
| Congo Brazzaville | 41.7 | 25 | 36.1 | 35 | -5.6 | -10 |
| South Sudan | 36.1 | 32 | 36.1 | 35 | +0.0 | -3 |
| Algeria | 44.4 | 24 | 36.1 | 35 | -8.3 | -11 |
| Gabon | 33.3 | 34 | 33.3 | 39 | +0.0 | -5 |
| Djibouti | 25.0 | 42 | 30.6 | 40 | +5.6 | +2 |
| Burkina Faso | 22.2 | 45 | 27.8 | 41 | +5.6 | +4 |
| Morocco | 25.0 | 42 | 27.8 | 41 | +2.8 | +1 |
| Guinea | 30.6 | 39 | 27.8 | 41 | -2.8 | -2 |
| Eritrea | 25.0 | 42 | 27.8 | 41 | +2.8 | +1 |
| Madagascar | 19.4 | 48 | 25.0 | 45 | +5.6 | +3 |
| Libya | 16.7 | 50 | 25.0 | 45 | +8.3 | +5 |
| Burundi | 22.2 | 45 | 22.2 | 47 | +0.0 | -2 |
| CAR | 19.4 | 48 | 22.2 | 47 | +2.8 | +1 |
| Sudan | 27.8 | 40 | 22.2 | 47 | -5.6 | -7 |
| Swaziland | 27.8 | 40 | 22.2 | 47 | -5.6 | -7 |
| Somalia | 22.2 | 45 | 22.2 | 47 | +0.0 | -2 |
| Cameroon | 16.7 | 50 | 16.7 | 52 | +0.0 | -2 |
| Eq. Guinea | 13.9 | 53 | 13.9 | 53 | +0.0 | +0 |
| Mauritania | 11.1 | 54 | 11.1 | 54 | +0.0 | +0 |

