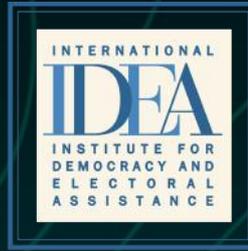




SAHEL

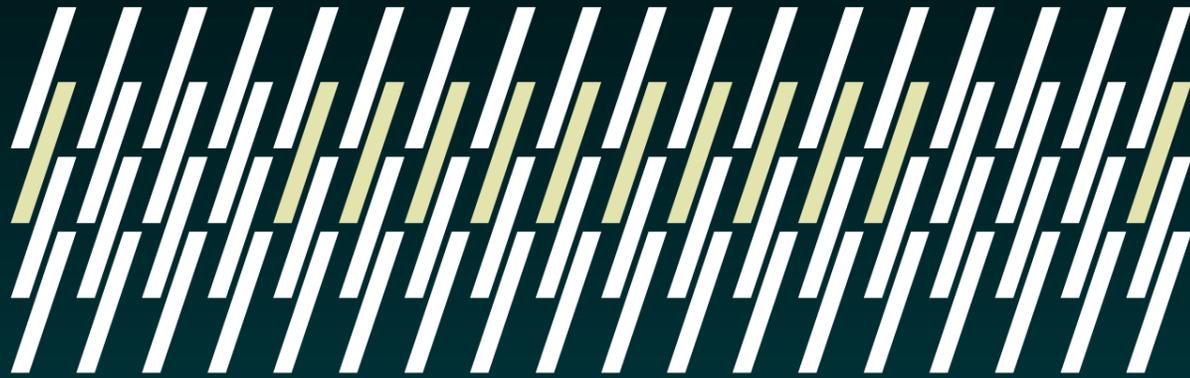


RESPECT FOR CONSTITUTIONS

As a Cornerstone
for Democratic
Governance

Non-Paper





Introduction



Constitutions have a number of functions which are crucial to democratic governance. First, constitutions outline the fundamental values, principles and standards for state and society, setting ground norms which should form the basis for how citizens are to be governed.

Second, they define the relationship among society, state, and government. In so doing, they should form the basis of a ‘social contract’ which at the same time both empowers and legitimates the state, whilst also establishing the duties of government to its citizens.

Third, constitutions define the scope, distribution, access to, exercise of and limits to government power, including through the delineation of different institutions. In this regard, they set expectations about where public power lies, how it can be used and by whom – thus providing as an important coordination mechanism among different organs of the state and members of society. They also allow for specialization through division of labour among different organs of the state and political institutions, which should lead to greater efficiency.

Fourth, by setting rules in advance for the making of laws and other procedures of government, constitutions can reduce transaction and agency costs which would be incurred by repeated negotiation of such rules.

Fifth, constitutions are the supreme law of the land and provide the foundations for the rule of law, including through establishing guarantees for the independence of the judiciary. They depersonalize power and provide for government ‘of laws, not of men’. In doing so, constitutions can provide the long-term stability and predictability necessary for the sound governance of society and the economy, as well as strengthening the legitimacy of government in the eyes of the governed.

Sixth, constitutions provide the mechanisms by which societal differences – which exist in all polities – are channeled through politics. In doing so, they should reduce incentives to resort to violent conflict, which is anathema to good governance.

In short, without broad respect for a workable and legitimate constitutional framework, it is difficult to

imagine peace, stabilization of fragilities, democracy, human rights, sustainable development, inclusion of women and other marginalized groups, and to address organized crime, terrorism and the climate crisis that is adding to the stress and widespread insecurity in the Sahel. Affirming the link between democratic governance and constitutions, the 2003 ECOWAS Declaration on a Sub-Regional Approach to Peace and Security calls on member states to ‘promote and strengthen good governance and a constitutional State’ (emphasis added).

However, constitutions are not self-enforcing, and the presence of constitutions does not necessarily lead to constitutionalism, i.e. the implementation of and respect for constrained government and the rule of law. To strengthen constitutionalism, firstly the constitutional design must be sound – including finding a delicate balance between empowering and constraining those in power. Secondly, the constitution must be ‘the only game in town’. That is to say, it must have broad-based support and compliance amongst political actors and society at large.

Naturally, constitutions by their very nature contain general and vague standards that are continually interpreted, reinterpreted, and contested. Nevertheless, the systematic and repeated violations of constitutional standards without redress calls into question the authority and legitimacy of the framework, signifying a situation of constitutions without constitutionalism. The absence of constitutionalism in turn deprives the political system of relative balance and coordination, potentially generating incoherence, instability and even active conflict.

This non-paper outlines the critical context and insights within which constitutionalism operates in the Sahel. It then briefly covers the importance of establishing a legitimate constitutional and political settlement, and what such a settlement entails. The fourth section discusses the nature and manifestations of the absence of constitutionalism. The final section concludes and provides tentative recommendations to enable and contribute to the advancement of democratic governance through constitutionalism in the Sahel.



Respect for Constitutions as a Cornerstone for Democratic Governance Non-Paper

Copyright © 2022 United Nations Development Programme

UNDP is the leading United Nations organization fighting to end the injustice of poverty, inequality, and climate change. Working with our broad network of experts and partners in 170 countries, we help nations to build integrated, lasting solutions for people and planet.

United Nations Development Programme
Sub-Regional Hub for West and Central Africa
Point E, Complexe Citamil, Immeuble E
Dakar - Senegal



Context and Brief Overview of the State of Constitutionalism in the Sahel

The Sahel region has experienced different rhythms of progress, resilience, and regression with regards to constitutionalism. As in much of Africa, prior to the democratic wave of the early 1990s, the Sahelian context was characterized by extreme constitutional volatility where constitutions were frequently adopted and discarded. It was a period of practical absence or irrelevance of constitutions and constitutionalism, as well as democratic competition where formally or de facto one party-systems dominated.

- **Constitutions with authoritarian roots**

While the replacement and/or rate of amendment of constitutions slowed after the 1990s, constitutions in many Sahel countries were adopted and have been capriciously amended under the tutelage of dominant and authoritarian groups, and, in some cases, military regimes. This is not to disregard constitutional reforms and amendments that have advanced constitutionalism in some countries. Nevertheless, few constitutions and constitutional amendments have been adopted through inclusive and participatory processes.

- **Constitutions, state and society**

In many Sahelian countries there is a fundamental lack of an underlying political settlement, or social contract, on the form and nature of the state, and its relationship with society. This manifests itself in a number of ways. Firstly, there is a paradox between the reality of limited state presence and constitutions which provide for an extremely powerful executive. In large areas outside the capital city or major urban areas, the state tends to merely be 'one among several actors who compete for the role of effective, legitimate and, ultimately, sovereign authority that people abide by'. Under the formal constitution, presidents are often granted broad powers, but in reality the formal power of the state has limited presence in the lives of many citizens living outside major urban areas.

Secondly, constitutional and political frameworks do not sufficiently reflect the reality of societal diversity, which undermines the capacity of the framework to provide a shared social contract and vision of state, society and government.

Thirdly, the centralization of power in many constitutions contributes to a winner-takes-all political mentality, which generates electoral violence, grievances with the government and the state and constant instability, including in the form of protests, insurgencies, organized crime and terrorism. To address these challenges, governments increasingly re-direct significant public funds towards the security sector. Such pivot towards securitization of politics and distorted allocation of resources further undermines the ability of states to enhance their presence through establishment of relevant structures of governance and delivery of basic services, a vicious cycle undermining the social contract.

○ **Hyper-presidentialism, weak parties, weak checks and balances**

The constitutional centralization of power at the national level and its concentration in the executive weakens institutions critical for providing oversight and constraints on power - the legislature, judiciary and the bureaucracy, as well as opposition forces, civil society (including traditional/religious institutions), the media and the broader public. Notably, the concentration of power often structurally incentivizes personalization of power and the emergence of political 'Big Men', often supporting and supported by the richest businessmen in countries. Personalization of power obtains not only at the state and ruling party level, but also among opposition forces, leading to weak political parties (including ruling parties) that are often unable to survive leadership changes or guarantee internal party deliberation and democracy. Consequently, parties are unable to project and implement distinct, coherent and long-term policies and frameworks.

The concentration of power in the presidency and executive and weak parties leads to weak checks and balances, which in turn precipitates failure to deliver on democratic governance and development.

In particular, chronic corruption, notably in public procurement and public service delivery, as well as mismanagement of resources in the security sector engenders dissatisfaction among citizens and security officials, which enhances the risks of abrupt and forceful regime changes. The failure to deliver democratic dividends, and lack of trust in governments and political parties means that military takeovers of power are not resisted, and are sometimes even welcomed, even in countries where the people have only a few years earlier sacrificed their lives to depose presidents-for-life and ensure democratic alternation of power (e.g. Burkina Faso).

○ **Constitutional minimalism**

In some Sahelian countries, dominant incumbents have used legislatures, courts and even the people to justify decisions and reforms undermining the spirit and sometimes the letter of constitutionalism. Such activities are partly enabled by the minimalism that is particularly a feature of constitutions in Sahelian Francophone countries. These constitutions tend to contain minimal provisions on key democratic issues and institutions,

deferring such issues to legislative regulation. This deferral often includes issues related to the electoral system (mainly for the legislature but also presidential elections); the status, rights and resources of political parties; the mandate and composition of the highest courts; the composition and mandate of election management bodies, judicial councils and other democracy protection bodies; and the status, powers and resources of regional and local governments.

Such minimalism leaves much for executive and legislative regulation in a context of dominant presidents and ruling parties. This creates possibilities for unilateral adoption and change of key democratic standards, which has proved contentious and at times capricious and destabilizing. Although constitutions often require the adoption of organic laws, which require relatively higher legislative majorities, such thresholds have been unable to constrain dominant presidents and parties implementing self-serving legislation.

In combination, these factors have produced a region characterized by a history of dictatorships and authoritarianism, and consequently a weak culture of constitutionalism. While some Sahelian states have recorded encouraging progress, the reality of constitutions without constitutionalism remains a profound challenge.

It is important to avoid fatalism in understanding and explaining constitutionalism and its importance to good governance in the Sahel, and elsewhere in Africa. Constitutionalism is a work in progress, a process, rather than a destination. In this regard, some countries have recorded significant achievements towards democratic constitutionalism in recent years, often through a combination of efforts of the people, civil society, the media as well as public institutions and courts. Nevertheless, progress in the region remains uneven and the overall record of democratic constitutionalism is poor. The Sahel (and Africa) is far from achieving a democratic critical mass and tipping point where the tide of constitutionalism and democracy becomes firmly established and difficult to reverse.



Constitutional Legitimacy and Constitutionalism



A key enabler for constitutionalism is the legitimacy of the overall constitutional framework among a critical mass of the people, and crucially among organized social, political, economic and security forces. **Without the acceptance or at least acquiescence of these critical actors, constitutionalism is likely to remain a fiction.** Legitimacy and acquiescence are enhanced by the extent to which the government is seen as routinely delivering on constitutional responsibilities and respecting constraints on government power.

○ Inclusive and participatory constitution making

The legitimacy and effectiveness of constitutions is partly a consequence of the level of inclusiveness and participation in the process through which they are made and the broad acceptance of the key substantive and institutional frameworks they establish. Such broad acceptance is necessary on the values and fundamental rights and their enforcement, the electoral system and political representation, the system of government, decentralization of power, and crucially mechanisms to address winner-takes-all politics and enhance the confidence and consent of electoral losers.

The performance of Sahelian countries in terms of inclusive and participatory constitution making and amendment processes has been weak. Constitutions have often been made, amended and in some cases abolished and replaced by dominant incumbents, with limited popular input and crucially without genuine deliberation and sufficient consensus among contending socio-political groups.

○ Technical v Political Constitution

In many cases, constitution making and replacement processes are top-down projects contrived in small circles within the ruling elite, and hurriedly assigned to small and unilaterally selected expert commissions, that are accountable to and report to the executive. The unilateral determination of the process of constitution making and its assignment to small, executive-appointed commissions shows the tendency to see constitution making and constitutions as mere technical exercises, rather than as inherently social and political processes to enable genuine deliberation and consensus among stakeholders with divergent constitutional visions, interests and passion, and to enhance popular understanding, consciousness and support for the idea of democratic constitutionalism and the specific constitution.

Constitution making processes in many Sahelian countries have often been organized within a few months or even weeks, and the outcomes of such processes are often predetermined and are in any case submitted to incumbent presidents, who have on some occasions tinkered with drafts prepared after nominal popular and stakeholder engagement. Consequently, the legitimacy of the constitutional framework is based on a deficient socio-political foundation.



○ Unilateral and top-down constitution making

Because constitution making processes are often led by incumbents, on many occasions they are seen as capricious attempts by the ruling elite to aggrandize and entrench their rule – forms of soft ‘self-coups’. This includes the adoption of ostensibly new constitutions to bypass unamendable presidential term limits. On some occasions, citizens, civil society and opposition groups have rejected top-down constitution making initiatives, notably through the ‘Touche pas à ma constitution’ mobilizations in many Sahelian countries. These mobilizations are not necessarily a reflection of the sociological legitimacy of existing constitutions and preference for the constitutional status quo. They rather reflect widespread mistrust towards powerholders and their capricious ambitions that often undermine both the terms and spirit of the constitutional framework, and represent popular aspirations for a genuinely bottom-up constitution making effort to build a solid political settlement. Even in cases where constitutional reform was seen as necessary to implement peace agreements or otherwise enable peace, opposition to such reforms was partly inspired by lack of transparency and exclusion of the people and opposition forces in the processes that generate agreements necessitating reform, as well as addition of opportunistic reforms to benefit incumbents.

○ Democratically deficient constitutional framework

In addition to the deficient legitimacy arising from top-down constitution making processes, the content of constitutional frameworks in Sahelian countries have also fed frustrations and even rejection of key constitutional aspects. Notably, many constitutions are criticized for:

- Concentrating power at the national level with minimal, if any, decentralization of power and resources to lower spheres of government, which are often seen as agents and means of control for national officials. This subordination of local authorities to national-level officials precludes possibilities for democratic and governance experimentation, and leaves decision-making in governance distant from the governed. It also feeds rejection of the constitutional framework (and at times the state), including through armed insurgencies, especially in view of weak state presence in large peripheral areas;

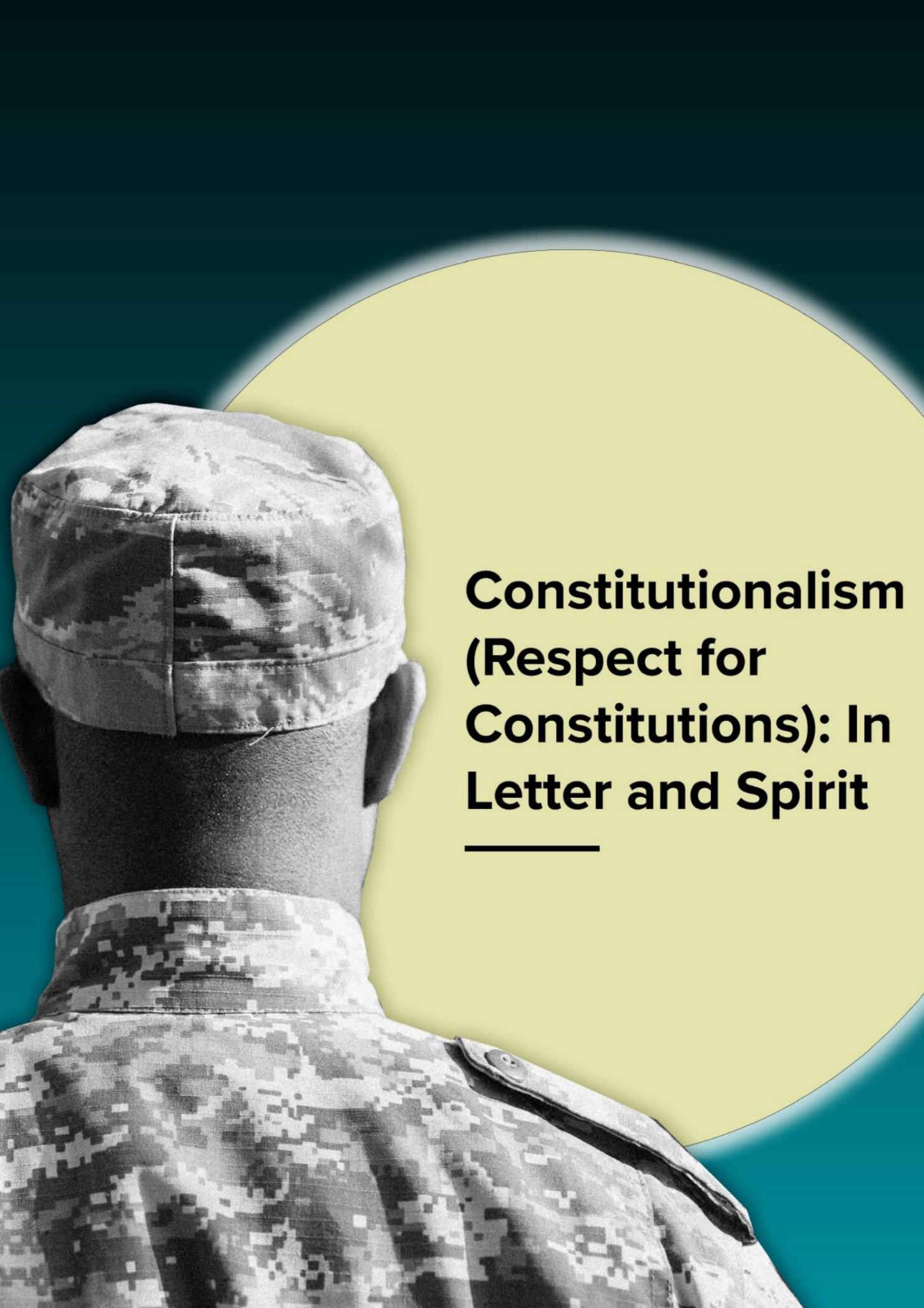
- Establishment of powerful presidencies with limited effective checks and balances. Often the constitutional text provides a superficial separation of powers, but closer examination reveals a single pyramid of power with the president at the apex;

- Winner-takes-all politics, with systemic patronage and corruption for the party in power and failure to recognize and empower opposition forces to play effectively their roles in creating and sustaining a vibrant democratic dispensation;

- Insufficient mechanisms to shield independent democracy enabling, protection and promotion bodies (such as election management bodies, human rights commissions, constitutional courts), and the civil service/ bureaucracy (including law enforcement bodies, the prosecution and the police) from political control and ensure the effective autonomy and political neutrality of the army. The lack of autonomy of the bureaucracy, the security sector and other critical bodies often generates mismanagement and corruption, turning them into arenas of illicit rent-distribution, further exacerbating persistent failings arising from capacity constraints and scarce resources;

- Limited opportunities for popular participation in policy making and implementation – particularly for women and youth.





Constitutionalism (Respect for Constitutions): In Letter and Spirit

When constitutional frameworks are commonly violated, without redress and with impunity, trust in the idea of democratic constitutionalism is eroded.

In Sahelian countries, violation of the constitutions is manifested in crucial areas, which call into question the viability of the constitutional framework. Frequent violations mean that constitutions don't even play a minimal coordination role for political leaders and institutions. Such coordination, if it exists at all, is often provided through parallel non-state structures, notably through the ruling party, which naturally excludes coordination with critical stakeholders including the broader society.

The manifestations of constitutional breach are many and blatant:

- **Rigged elections and referendums**

At the core of democratic constitutionalism is the organization of regular, free, fair and credible elections. In many Sahelian countries, electoral processes are heavily contested and ruling parties not only enjoy incumbency advantages, but actively seek to undermine opposition voices before, during and after elections. Only a handful of incumbents have ever lost elections in the region since the establishment of multiparty democracy. In fact, many Sahelian countries have never seen democratic alternation of power between different parties, and only a few have witnessed alternation within the same party due to presidential term limits. Incumbents are rarely expected to lose elections they organize. Combined with the high-stakes that elections involve in the context of 'winner-takes-all' constitutions, elections generate tremendous tension and even violence.

Similarly, incumbents also resort to self-serving constitutional referendums, which have been used to justify bypassing unamendable presidential term limits and institutional resistance, either from courts and/or parliament. This is particularly the case in Francophone Sahelian countries due to the historical appeal of the idea of the constituent power, which has been invoked to justify the adoption of ostensibly new constitutions without following the amendment procedure. Because they are driven by incumbents, constitutional referendums in Sahelian countries have never been defeated. As elections, referendums often also generate significant tension and insecurity.

- **Coups d'état and constitutional coups**

The Sahelian region has also been home to the most frequent coups d'état and constitutional coups in Africa. This notably includes tinkering with presidential term limits, often through ostensibly legal processes to undermine the spirit of alternation of power underlying democratic constitutionalism. More than half of Sahelian countries have witnessed coups and/or constitutional coups in the last 15 years alone, and four of them in the last couple of years, some of them repeatedly. As we speak, almost half of the ten countries in the Sahel are led by presidents who came to power through coups d'état or without election.

Leaders of coups d'état have often justified their actions on the inability of civilian regimes to ensure security and reign in corruption. But the rupture in constitutional order often creates a cycle of political instability and enhanced insecurity from which it is difficult to escape.



○ **Militarization of politics**

Another key manifestation of non-respect for constitutionalism lies in the relations between security and civilian authorities. Despite lofty principles of separation of the army from political power and subjection of security actors to duly constituted civilian authorities, including in the ECOWAS Protocol on Democracy and Governance (Article 1(e) and 19-23), Sahelian political and security arrangements are often characterized either by military loyalty to the ruling regime rather than the constitution and the law, and/or the lack of effective civilian control over armed forces.

Military/police/intelligence services loyalty to incumbents leads to an oppressive political apparatus, militarization of politics and the public sphere, while the lack of civilian control can create conditions for military takeovers – both of which are antithetical to democratic constitutionalism. In this regard, to ensure loyalty, incumbents sometimes appoint members of their region or group into prominent military positions, measures which can increase dissatisfaction among political and military officials from other groups, which enhances the chances of coups.

○ **Violation of rights and states of emergency**

Constitutionalism is also undermined through systemic, routine and at times brutal suppression of fundamental rights. Notably, protests are often denied permission and/or violently suppressed. Opposition groups, the media, and civil society face intimidation and at times outright attacks and restrictions on their operation and resources, as well as incumbent attempts to capture these institutions, or weaken them. Publicly-owned and/or -funded media serve as mouthpieces of the incumbent party, rather than platforms to inform the public, identify and reflect popular sentiment on important issues, hold the government to account and offer alternative ideas to improve governance and development.

In connection with the rampant violation of rights, some Sahelian states also operate under de jure or de facto states of emergency, where the security apparatus (and their foreign and international backers) effectively operates without political, public, media and supranational scrutiny, particularly in interior and peripheral areas where the (civilian) state presence is weak. States of emergency often lead to human rights violations that further undermine the standing and legitimacy of the state and its institutions, therefore feeding a vicious cycle of disillusionment, rejection and violence.

○ **Limited African and sub-regional framework**

Supranational organizations, such as ECOWAS and the African Union, have largely been absent in publicly seeking to rein in incumbent-led and capricious constitution making processes and abuse of constitutions, instead almost exclusively focusing on the overthrow of incumbent presidents and constitutions. The condemnation and sanctions in some cases and tolerance in others generates perceptions of double standard, skepticism and distrust among the broader public, seeing these regional and continental bodies as clubs of incumbents, rather than unions of norms and standards.

One reason for this is the lack of sufficient normative clarity on the role of these institutions in monitoring and intervening in important constitutional and legislative reform processes affecting the framework and practice of democratic constitutionalism. To ensure better normative clarity, the ECOWAS and AU are

considering reforms to their standards on constitutionalism and democratic governance. While commendable, a robust understanding and application of existing sub-regional and continental frameworks could already provide justifications to critically engage in constitutional reform processes. For instance, the ECOWAS Protocol on Democracy and Governance provides a crucial foundation for monitoring, assessing and critiquing constitutional practice and reforms.

Moreover, these organizations are constrained by structural bias in favor of incumbents, as decisions often require consensus, which naturally is unlikely in cases where one or more of the incumbents is the potential target of criticism and admonition. Indeed, attempts to fill gaps through amendments to the ECOWAS Protocol have so far been unsuccessful. Regional and continental organizations also lack effective political and other leverage to nudge incumbents, alongside capacity and resource constraints.

○ **Rays of hope**

It is not all doom and gloom, and some countries in the Sahel have developed important experiences that foster the spirit of democratic constitutionalism and alternation of power. The quality of elections in some countries are showing slow but steady progress. Moreover, overall governance (as captured by the 2010-2019 Mo Ibrahim Governance Index) has improved. Nevertheless, based on performance on key areas of security and rule of law, and rights, participation and inclusion, the Sahel has either declined or stalled. The recent spate of coups will reverse much of the gain in overall governance and further worsen performance on security, rule of law and rights, at least in the short term.

Election management bodies and courts have on occasions affirmed constitutional standards, although some continue to enable or legitimize weakening of constitutionalism. Crucially, as Afrobarometer has noted in the Sahelian countries it has surveyed, the public remains a steady supporter of democratic constitutionalism. Even as disillusionment pushes some to welcome the blatant overthrow of elected governments, such support is primarily an indictment of the failures of incumbents, rather than a normative preference for military regimes. Coups receive support only as means to an end, i.e., as a release mechanism towards constitutional democracy that delivers peace, equitable development and freedom free fear and want. The constitutional convention in Nigeria on the regular alternation of the presidency between residents of the north and south of the country, which is generally upheld, has provided a formidable anchor for the Nigerian state, home to more than half of the population of the entire West Africa and Sahel region.

The challenge remains on how to build on these improvements, establish a culture of constitutionalism; democratize political parties and practice; ensure an apolitical bureaucracy and security apparatus; energize and manage popular expectation on the unparalleled capabilities of democratic dispensations to deliver peace and development over the long term; and address the legitimacy, compliance with and sedimentation of the idea of constitutional democracy and constitutional frameworks. Without progress in constitutionalism, democratic governance and sustainable, and even peace and stability, would remain a pipe dream.



Concluding Remarks and Recommendations

Without progress in constitutionalism, democratic governance and sustainable, and even peace and stability, would remain a pipe dream. Securing respect for constitutions as cornerstones of democratic governance requires concerted efforts to entrench the hegemony of the idea of constitutional democracy, and establish legitimate constitutional frameworks through inclusive and participatory processes. It also needs building the popular, institutional and cultural foundations and mechanisms to ensure constitutional violations are the exception rather than the rule, and such violations are addressed timely and through known, predictable and trusted processes. While there are rays of hope, democratic constitutionalism in the Sahelian region remains a work in progress, and in some cases has collapsed and needs to be completely (re)built. While the primary responsibility lies with domestic forces, regional and continental organizations can offer crucial support in turning the tide in favor of constitutionalism and democratic governance.

This section outlines some proposed ideas and interventions at the national, regional and continental level to support the establishment, survival and thriving of the seeds of democratic constitutionalism. Beyond these proposed ideas, ultimately a society and state mired in poverty has at best a shaky foundation to shoulder constitutional democracy. While constitutional democracy was historically imagined to address core political issues, the social/economic question in the form of a democracy that is choiceful and delivers must remain a persistent preoccupation for all stakeholders supporting democratic constitutionalism. Accordingly, addressing the chronic poverty and unemployment in the Sahel must part be of the core objectives of good governance and constitutionalism.

○ Recommendation for national stakeholders

National stakeholders may consider regularly convening constitutional dialogues (perhaps at both national and local levels) to enable collective reflection on the state of democratic constitutionalism and ensure higher mobilization of attention and acceptability of the foundations, logic and institutions of the constitutional framework. These dialogues could allow a redemptive endorsement of existing constitutional frameworks, some of which were adopted by militaries or unilaterally by dominant parties. The dialogues could also generate ideas for constitutional reform.

- International IDEA, UNDP and other institutions with comparative experience in enabling constitutional dialogues and reform processes could support the operationalization of the dialogues.



- States should also seek to understand and address the scourge of winner-takes-all politics which makes elections do-or-die affairs. In this regard, some ideas include the implementation of reforms to:
 - Ensure genuine decentralization of political and administrative powers and financial resources;
 - Enhance the autonomy of the bureaucracy (including judicial and law enforcement institutions) to reduce rent-seeking and preclude enablers and incentives to undermine rule of law;
 - Provide due recognition to and enable the opposition, for instance, through the official establishment of offices of the leader of the opposition; recognition of democracy as a public good and therefore state provision of resources, privileges, continuous access to public media (rather than simply during election periods) to the opposition; and ensure the effective representational role of the opposition through weighted participation in governance, e.g. in appointing members of the judiciary and democracy and rule of law institutions, rather than merely serving their accountability and government-in-waiting functions;
 - Enable popular participation in setting the agenda, and formulating and implementing socio-economic policies.

Many of these ideas are already incorporated in the ECOWAS Protocol on Democracy and Governance.

- States could also consider organizing crash courses on democratic constitutionalism and the relevant constitutional frameworks to all newly appointed high-level officials. The courses could involve experience sharing from outgoing officials to identify bottlenecks and ponder pathways forward. Such an initiative would not only enhance understanding and moral responsibility of newly minted officials to comply with constitutional frameworks, but also anchor the constitution as the principal coordination mechanism in achieving public objectives.
 - International IDEA and UNDP could support national intellectuals and practitioners in designing and delivering these courses.
- To strengthen the popular foundations of democratic constitutionalism, states could also consider incorporating constitutional literacy lessons on democratic constitutionalism and government in civic education programs for all students, civil servants and perhaps also political party leaders. Such literacy program could also be considered and adapted for members of security sector institutions.
 - International IDEA and UNDP could support national intellectuals and practitioners in designing and delivering these courses.

Recommendations for sub-regional and continental stakeholders

- To aid efforts at dialogue and reform at the national level, regional and continental organizations (notably ECOWAS and AU) should consider conducting a baseline analysis of the constitutional frameworks of Sahelian countries to identify their strengths and weak points and to propose areas for further dialogue among national stakeholders with a view to strengthen the legitimacy and effectiveness of the constitutional framework. Such a process would also allow these institutions to monitor and test the level of constitutional convergence on fundamental institutional aspects in line with the ECOWAS Protocol on Democracy and Governance (Article 1). These organizations could also establish mechanisms to monitor and deploy comparative African experts to inform and support constitutional reform processes as they happen, including to ensure familiarization of national stakeholders with regional and continental standards.
 - UNDP, International IDEA and other institutions with comparative experience in conducting research and generating knowledge on the design and content of democratic constitutionalism could support the operationalization of this proposed action.
- Regional and continental organizations (notably ECOWAS and AU) may also consider organizing regular Summits on Constitutional and Democratic Governance at the ECOWAS/Sahel level. The Summit would ensure the continuous maintenance of democratic constitutionalism on the agenda, and enable cross-border learning. Ideally, the Summit would include both incumbent and opposition leaders. To avoid a summit-fatigue, the Summit could be conducted every three years and hosted on a rotational basis by each member state.
 - The Summit could be preceded by gatherings of civil society organizations to inform its deliberations.
 - UNDP, International IDEA and other institutions with experience in enabling high level conversations on democratic constitutionalism could support the operationalization of this proposed action.

- To remove the excessive politicization and selective application of regional and continental norms and standards, and ensure the legitimacy and quality of constitution reform processes, mechanisms to enhance the powers of the technical arms of such organizations to actively monitor and identify systemic threats to constitutionalism, proactively engage the relevant country, ensure awareness of and offer advice and technical support to stakeholders about continental and sub-regional standards may be critical. Such an approach would create a productive form of separation of powers between the political organs that set the standards and the technical arms that ensure their application. A proactive engagement by the technical and independent bodies could not only enhance prospects of respect for the terms and spirit of constitutionalism, but also address criticisms of double standard of regional organizations as Big Men's club.





United Nations Development Programme
Sub-Regional Hub for West and Central Africa
Point E, Complexe Citamil, Immeuble E
Dakar - Senegal

Connect with Us

 @UNDPWACA
www.undp.org/africa

© UNDP 2022