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# **Constitutionalism and Transfer of Power in Central and West Africa**

Ambiliasia Mosha and Mnyako Karisti

Department of Leadership, Ethics and Governance, Faculty of Leadership and Management Sciences; The Mwalimu Nyerere Memorial Academy, Tanzania

Correspondence author's email: karisti.mnyako@mnma.ac.tz

## **Abstract**

One of the phenomena that Africa and the world are currently witnessing is a chain of military takeovers of countries' highest offices, the state, in Central and West Africa's states. This phenomenon symbolizes the abuse of constitutionalism, which would have warranted a smooth transfer of power through competitive elections. Additionally, instead of this phenomenon being welcomed by citizens with condemnation and demonstrations of dissatisfaction and defence of constitutionalism, the contrary is being witnessed. The citizens are seen celebrating and cheering on the coup leaders for their bravery, which is presumed to be ending the years of suffering from economic hardships allegedly induced by the constitutionally elected leaders. Examining the status quo in selected Central and West African countries, this paper assesses how constitutionalism seems to be being upheld. The authors conducted an online literature search, which included the purposefully selected literature regarding constitutionalism and power transition in Africa in general and in Niger, Chad, and Gabon in particular. Textbooks, journal articles, media news, and conference proceedings were selected from online search engines such as Google, Google Scholar, Google Advanced Search, and ePDF. Text-based news from news broadcast organizations' websites, including BBC, Africa news, and Voice of Africa, was also obtained. This paper establishes that the encroachment of constitutionalism in the understudied countries is the result of the presence of constitutions that cannot preside supreme, bad governance, disregard for the rule of law, and intractable military and anti-imperialism sentiments. Additionally, for constitutionalism to triumph, the constitution must be infallible and preside supreme, and any amendments should follow constitutional procedures, which include inclusion and by responsible institutions. The paper concludes that constitutionalism is a process that guides the relationship between the state and the people and therefore needs to be adhered to consistently. It warns that the phenomena witnessed in Central and West African countries might escalate to other parts of Africa as well, in which constitutionalism is disregarded.

**Keywords:** Constitutionalism, Constitution, Democracy, Elections, Military Coup, Africa, Niger, Chad, Burkina Faso

## **1. Background**

This paper assesses constitutionalism and how it is being upheld and adhered to in the selected Central and Western African countries, namely, Chad, Niger, and Gabon. It focuses on one element of constitutionalism, that is, the transfer of power as a unit of analysis. Urs (2021) defines constitutionalism as a condition in which the relationship between the state and the people is defined and the state's power is limited and controlled so that it does not encroach on the rights of the people. It thus entails a noble observance of the institutional functions and processes of the state towards maintaining a harmonious relationship with the people. For this to be practical, a country must have a constitution, written or unwritten, that provides structures and mechanisms that facilitate this relationship. Thus, a state that observes constitutionalism has all its institutions, whether civilian or military, preside under the constitution of that particular state. Ever since they gained their independence, the understudied countries have frequently undergone transfers of power that result in chaos and unharmonious relationships between the state and the people. As a result, these countries are among the poorest countries on the globe and are mostly affected by chaos and popular uprisings. As several factors might have contributed to the situation, the current study focuses on how constitutionalism is being upheld in these countries. The authors believe that a smooth transfer of power and harmonious relationships between the state and the people are the result of effective constitutionalism that is upheld by the entire society. Studying how constitutionalism is upheld in the selected countries therefore informs theory and practice on the subject matter.

Conceptualizing constitutionalism is fuzzy because different variants fall under it. Several conceptualizations are set forth by Kumado (2022). These include 'rule-of-law constitutionalism', in which the leader follows established laws in making decisions but is not under any law. Another conceptualization is 'absolutist constitutionalism', in which the head of state protects liberties but solely makes all decisions, and another is 'authoritarian constitutionalism', in which a leader follows all established laws and observes human rights but provides limited civil liberties and freedoms. 'Liberal constitutionalism' is another conceptualization that follows liberal democratic principles.

This paper adopts a liberal conceptualization of constitutionalism since it is closely associated with democracy. This means that constitutionalism requires

democracy to flourish, but it also allows democratic principles to flourish. According to Werner (2002), democracy needs constitutionalism to materialize since its principles need guidance offered by constitutionalism to be practical. Thus, it is correct to argue that constitutionalism, in this case, liberal constitutionalism, is complementary to democracy and that the abuse of democratic principles can be reflected as the abuse of constitutionalism.

Considering liberal constitutionalism, therefore, this paper borrows the conceptualizations by Kumado (2022), Corrigan (2016), and IDEA (2016), who characterize constitutionalism as a condition in which the constitution is honoured in terms of limiting the powers of the government (the political aspect), an effective legal system and preservation of people's rights (the legal aspect), and nurturing societal values and principles (the social and cultural aspect) for the benefit of the people. Hence, limiting state power by preventing its arbitrary exercise for the benefit of the people is one of the significant defining features of constitutionalism. According to these scholars, therefore, constitutionalism can be robust in the presence of a constitution. This idea is also proposed by Basheka and Auriacombe (2019), who view that at the centre of constitutionalism is the constitution that drives the management of state affairs, regulates the relationship between the state and its organs, and governs the relationship between the state and its people. Despite this, Corrigan (2016) warns that constitutional supremacy draws legitimacy from its significance, that is, how it manages to limit the powers wielded by the state and its apparatus; it defines the legal system that defines relations between state organs and the state and the people; the observance of people's rights; and the observance of cultural and societal values codified in it.

Kumado (2021) shows the supremacy of the Constitution as he links it to constitutionalism. He argues:

Constitutionalism is government according to pre-determined rules that restrain or limit governmental activity. These include the existence of rules before government actions and not rule by personal fiat. These rules must be designed to effectively restrain or prevent governmental activity. Restraints may be institutional, procedural, or substantive. They must also be legal to police and enforce governmental activity.

Kumado (2021) speaks on the rules that must be predetermined and effective enough to serve the intended purpose. He also presupposes that these predetermined rules must be legal. In this paper, these are regarded as two main features of constitutional supremacy: the effectiveness of the constitution and

its legality. Constitutional effectiveness draws from its rule's pre-determination, that is, how the constitutional rules are attained. According to Kpundeh (1992), the constitution should be effective enough to subject all members of the polity to its governance, and weak constitutions cannot effectively bear constitutionalism, resulting in anarchy. The pre-determination of rules that make a constitution forms the starting point for robust constitutionalism. The article by the National Research Council (1992) elaborated on factors to consider in this aspect, one of which included dedicating adequate time to the process. This is needed to ensure that all sections of society have been consulted and that the values and cultural aspects of a particular society are considered. It must also define the basic structures of the state and its power relations, as well as the fundamental rights and enforcement of the legal system.

Barnett (2009) argues that constitutional rules should enable the realization of good and bad values in a prospective versus retrospective way. However, this is debatable since the values of a particular society are not static. Fuller (1958) and Raz (1977). The volatility of values has fueled debate against liberal constitutionalism concerning its failure to contain changes in societal values, hence a quest for 'international constitutionalism' (O'Donoghue, 2013). This means that developing constitutional rules ought to consider values agreed upon at the international level, such as good governance.

Concerning the legality of the constitution, this falls under the rule of law doctrine, which assesses the quality of the law rather than what the laws are. This is well explained by Kumado (2022) and Raz (1997). This aspect specifically speaks to how specific laws benefit society or how they protect state power for the benefit of society. According to Raz (1977), the rule of law is a yardstick for measuring the extent to which a legal system complies with the concepts of legality and constitutionalism. The rule of law holds that no one should be above the law. This canon presumes to surrender people's rights to the law, hence establishing a 'government of law' versus a 'government of men'.

However, liberal constitutionalism is not free from challenges. Inter alia, the association between liberal constitutionalism and democracy is debatable. Jackson and Danwood (2002) emphasize that it is important to note the difference between a state that upholds constitutionalism and one that observes democratic principles. He opines that constitutionalism is not the same as democracy because monarchical or authoritarian governments can uphold constitutionalism. Thus, it is not proper to check a state that observes democratic principles and pronounce that it observes constitutionalism. On the contrary,

constitutionalism is pronounced in a state where a particular polity agrees on the competencies and processes to be included in the constitution, whether monarchy, democracy, or autocracy. However, Basheka and Auriacombe (2019) opine that:

Countries that do not have a high regard for democracy and constitutional supremacy have more flexible procedures for changing their constitution. It has been argued that many of Africa's problems have been caused by the ease with which constitutional provisions are repealed, changed, suspended or ignored'

The authors imply that democracy and constitutional supremacy promote stability in a polity and prevent abuse of constitutionalism. Thus, as propounded by Fombat (2011), democracy and constitutionalism serve as the foundations of a peaceful and fair society. Making the association between democracy and constitutionalism plausible, Basheka and Auriacombe (2019) list the features of constitutionalism, which include the rule of law, checks and balances, fundamental rights and freedoms, separation of powers, an independent judiciary, constitutionality of the law, and constitutional amendments that are controlled by the constitution. All these work better in the presence of democracy.

One of the key aspects through which constitutionalism is manifested is through the subordination of law enforcement agencies to the law and civilian control. Hatchard, Ndullo and Slinn (2004) explain this phenomenon: military control should be subjected to civilian control, implying that the military should be kept away from politics or political decision-making. Although there are debates on this aspect, there is a consensus that the military should be separated from politics, and if unavoidable, then their interference should be justifiable constitutionally.

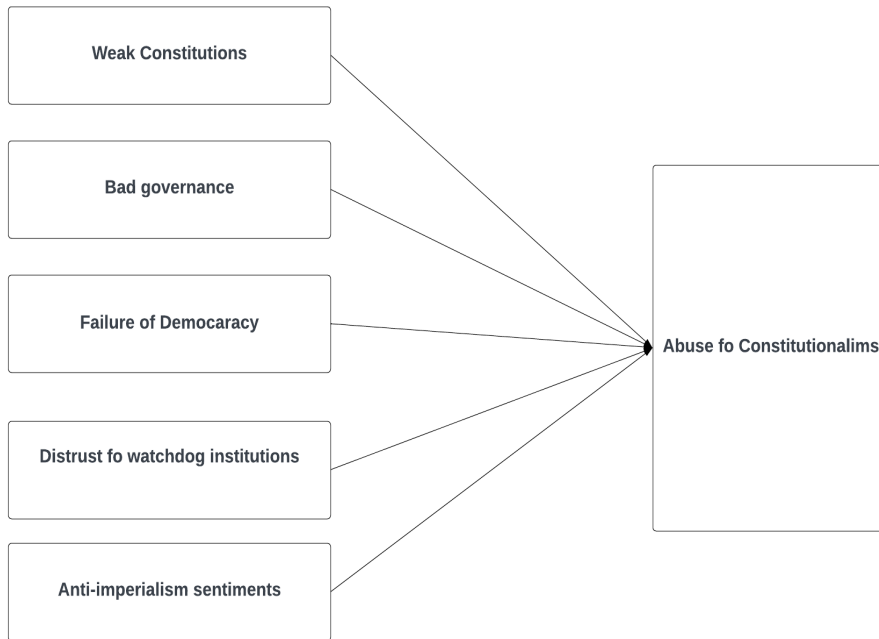
Africa, and especially Central and Western African countries, are experiencing an abrasive transfer of power whereby presidential terms defined in constitutions are cut short by military coups. This is happening despite the countries being democratic and operating under liberal constitutional principles. As reported by various sources such as Africa news (2023), BBC (2021a), BBC (2021b), and Diallo et al. (2021a), in less than three years, approximately six successful and two attempted military coups in which heads of state were forced to step down have taken place in the countries of Mali, Chad, Guinea, Burkina Faso, Niger, and Gabon. Rhetorically, though, while military forces are taking over the states in the name of restoring constitutionalism, they are being condemned by regional and international constitutionalism defenders, including the Economic

Community of West African States (ECOWAS) and the European Union (EU). The general objective of this study is therefore to revisit the doctrine of constitutionalism and assess how it is being upheld in the three selected countries of Chad, Niger, and Gabon from the point of view of the transfer of power in these countries. Specifically, it will first outline the status of the transfer of power in the selected case studies, then describe how constitutionalism is upheld as far as the transfer of power is concerned.

### **Conceptual Framework**

As expressed by Keith (2002), conceptual framework refers to the mental status of things being studied and their relationship to each other. In this regard, the conceptual framework is intended to develop awareness and understanding of the situation under study. A conceptual framework is a tool that assists the researcher in making meaning of findings.

This study was guided by the conceptual framework developed by authors based on the assumption that the modality of transfer of power in the selected case studies describes how constitutionalism is being upheld. The forces behind frequent coups that characterize the transfer of power in the selected countries and reveal the apparent abuse of constitutionalism are driven by several factors. These include weak constitutions, bad governance and maladministration, failure of democracy and its principles, anti-imperialism sentiments, distrust of watchdog institutions such as ECOWAS and the AU, and deprivation of African values and principles.



**Figure 1:** Conceptual Framework  
**Source:** Authors, 2024

**2. Materials and methods.**

The design adopted by this desk review research is an integrative review that synthesizes literature from both theoretical and empirical studies to generate new perspectives and knowledge. The study is conducted by collecting, reviewing, and analysing relevant existing research and data from secondary sources. The scope of the review will cover literature from the 1960s, in which most African countries attained their independence, to the most recent ones, and the focus will be on the Sahel regions of Chad, Burkina Faso, and Niger. Regarding the inclusion and exclusion criteria, relevant studies on constitutionalism, transfer of power, and coup d'états were included. However, data on these aspects that are available from untrusted sources was excluded. The sources of data involved were academic databases, government reports, and non-governmental organization publications. Thus, data was collected from textbooks, journal articles, media news, and conference proceedings obtained from online search engines such as Google, Google Scholar, Google Advanced Search, and ePDF. In addition, text-based news from news broadcast organizations' websites, including BBC, Africanews, and Voice of Africa, was obtained. Analysis was conducted using Nvivo 12 software. The data were presented in the form of text.



This is a descriptive study that falls under the grounded theory design, to create a theoretical explanation of why constitutionalism seems to be abused in the selected case studies. The grounded theory explains the phenomenon or people's social interaction, and the researcher provides the interpretation based on the collected data. Thus, the events occurring in Niger, Chad, and Gabon were examined in light of upholding constitutionalism, and a thematic analysis was conducted to describe the status quo. An online search was conducted to collect the data necessary to address the study objectives. A systematic search strategy was adopted, with which a list of relevant keywords and phrases was identified and used to search in the identified databases and repositories. More relevant literature was obtained from citation tracking. Additionally, the relevance and reliability of the data sources were verified, and only literature from credible journals, expert presentations from social media, and trackable organization publications were employed.

Data analysis was conducted through thematic analysis, in which themes and patterns were identified across the collected data and compared and contrasted to pinpoint similarities, differences, and gaps. Findings are presented as a structured report that contains an introduction, materials and methods, findings, discussion, and conclusion.

## **4. Findings**

### **4.1 Constitutional provisions regarding transfer of power in the selected countries.**

As presented in the previous sections, the presence of a supreme constitution is central to facilitating constitutionalism in a country. The findings indicate that constitutions exist in all three countries under investigation, namely, Niger, Chad, and Gabon. These constitutions provide for the separation of powers among state organs, including the government, which is provided with limited power. In Niger's constitution, for instance, in cases of emergencies and disruption of the normal functioning of constitutional powers, the president is allowed to exercise exceptional powers after official consultation with the Prime Minister, the Legislature, and the Court. This is provided in Article 67, as further expressed below;

"When the institutions of the Republic, the independence of the nation, the integrity of the national territory, or the execution of international engagements are menaced in a grave and immediate manner and the regular functioning of the public constitutional powers is interrupted, the President of the Republic takes the exceptional measures demanded by these circumstances after official consultation with the Prime Minister,

the President of the National Assembly, and the President of the Constitutional Court. The National Assembly approves with an absolute majority of its members the duration of the exercise of emergency powers and terminates them in the case of abuse.”

Furthermore, the constitution protects civil rights and freedoms in all countries under study, which include the rights to live, vote, and be voted for, as well as the rights to own land and property, religion, freedom of speech, etc., as recognized by the Universal Declaration of Human Rights of 1948 and the African Charter of the Rights of Man and the Rights of Peoples of 1981. Article 12 of Chad’s constitution affirms that freedoms and fundamental rights are recognized and their exercise guaranteed to the citizens within the conditions and forms provided for by the Constitution and the law. In Niger’s Constitution, human rights and duties are provided in Articles 10 to 45, as illustrated by Article 30 below.

“Any person has the right to freedom of thought, of opinion, of expression, of conscience, of religion, and of worship [cult]. The state guarantees the free exercise of worship and the expression of beliefs [croyances]. These rights are exercised concerning public order, social peace, and national unity.”

As presented by the Mo Ibrahim Foundation (2022), regardless of these constitutional provisions in the countries under study and others in Central and West Africa, the region still witnessed massive violations of constitutional practices which ultimately led to grievances and hostilities among citizens against their government. Deceitful practices during elections in favour of certain leaders, as they were for President Keita in Mali in 2020, are one of the unconstitutional incidents that resulted in the military takeover of the government in the country.

Additionally, the constitutions in the understudied countries provide precise information on the tenure and terms of the presidency, regardless of whether violative incidents are committed by some of them. In Chad, the presidency is for a term of six years, renewable once through universal suffrage, while in Gabon, the tenure is for seven years with the opportunity of re-election. Similarly, Niger’s Constitution provides a five-year tenure for the presidency, which is renewable once through universal, free, direct, equal, and secret suffrage. Despite these provisions, the study found that some power-hungry leaders attempted to change the constitution so that they could continue to be in power, which ultimately led to a loss of peace and security as well as an

unconstitutional change of government. A good example can be provided by Omotola (2011), who clearly describes how a Nigerien case demonstrates this violation. President Momodou Tandja decided to dissolve the parliament following the legislature's refusal to amend the constitution for his third term in office, which in turn led to his arrest and detention by the army in February 2010.

On a military basis, the current study indicates that the constitutions in the countries under investigation stipulate and control their responsibilities, prohibiting them from taking power by force. Chad's constitution holds that the defence and security forces should be apolitical for the service of the nation, and they are subordinate to civil power. These provisions are in Articles 186 and 187, as presented below;

"The Defence and security forces are in the service of the nation. They are subject to Republican legality. They are subordinated to civil power." (Article 186). "The Defense and Security Forces are apolitical." (Article 187).

Furthermore, Article 63 of the Nigerian Constitution provides that the president of the republic is the supreme head of the armies, assisted by the Superior Council of National Defence and the National Council of Security. Article 66 of the constitution also affirms the role of the armed forces in Niger, which is to assure the defence of the integrity of the national territory against all external aggression and participate in the preservation of peace and security following the laws and regulations in force. In this regard, the coups witnessed recently in Central and West Africa depict unconstitutional changes of government and are a major threat to peace and security on the continent.

Thus, these provisions are clear enough to guide constitutionalism in the understudied countries. However, as observed, they are not observed as required. This implies that the weakness of the constitution is that cannot stand supreme, especially on separation of powers, which would have empowered the judiciary to hold the violators accountable.

#### **4.2 The status of transfer of power in Chad, Niger, and Gabon: A brief overview**

The surveyed literature on the transfer of power in Chad, Niger, and Gabon is based on several writings and reports, including those from the African Election Database, the University of Central Arkansas, news broadcast organizations such as Al Jazeera, the BBC, and other scholarly works. Election trends in these

countries are provided as they set the groundwork for the findings and discussion of this paper.

#### **4.2.1 Transfer of Power in Chad**

Chad has experienced turbulent and more than 95% unconstitutional transfers of power since independence. The transfer of power in Chad is well documented by the University of Central Arkansas. Francois Tombalbaye was the first president to lead the country to independence in 1960. He turned the country into a mono party in 1962, dissolved the national assembly in 1963, exiled and imprisoned his opponents, and struggled to suppress the Muslim uprising that formed rebel groups in the northern and eastern provinces in 1969 with the help of France. His relationship with France became sour after he initiated the '*chaditude*' policy, demanding that the Chadians adopt Chadian names and replace French civil servants with the Chadians. He was assassinated by security forces led by General Noel Odingar in April 1975 because of deteriorating economic and political conditions following his failure to surrender willingly. A supreme military council was instituted on April 15, 1975, with General Felix Malloum as its chairman, who later formed a provisional government as Head of State and Prime Minister at the same time. In April 1976, President Malloum survived an attempted coup by military rebellion in the country's unwavering civil wars. Following several attempted coups and massive rebellions, in 1978, President Malloum signed a reconciliation charter, which formed a government of national unity and appointed the rebel leader General Hissene Habre as Prime Minister. This union was short-lived as Habre confronted Malloum. Malloum resigned in 1979. This created an interim government with a coalition between Habre and rebel leader Goukouni Oueddei, who became the president. Habre overthrew Oueddei in 1982 and became president. Habre, who resorted to a one-party dictatorship, was accused of undemocratic actions, including abuse of human rights offences that would hold him guilty by the International Tribunal in Senegal after his overthrow (Diallo & Takwa, 2008). With France's support, he survived in power for eight years until he was overthrown by Idriss Debby in 1990 and hid in Senegal.

Idriss Debby Itno took power with the help of Libya and Sudan after suspending President Hissene Habre, who became autocratic and perpetuated tribalism and xenophobia. Debby, who was a high-ranking commander and mentored by Habre, was of the ethnic group that was oppressed by Habre, whom he swiftly opposed. He eloped to Libya and was trained by Gadaffi to overthrow Habre in exchange for releasing Libya's prisoners in Chad. He successfully ousted Habre and led the country since 1990. He introduced multiparty elections and won in

the 1996 elections and all subsequent elections, that is, 2001, 2006, 2011, 2016, and 2021. He managed to govern for six terms since he eliminated the presidential mandate limit. In this era, allegations of corruption, embezzlement, cronyism, and patronage were rampant, as was the abuse of human rights (Human Rights Watch, 2009). In 2021, he was tragically killed in the war a few days after he won the elections, and the military-appointed his son Mahamat Debby as interim president instead of the parliamentary speaker, as the constitution provided. This stirred up a popular uprising, which was suppressed by the military forces (Enonchong, 2021). Debby's son promised to reconstitute democratic institutions after 90 days, but the time was extended to 24 months by the National Reconciliation Forum, which conceded that every Chadian who fulfilled the conditions set by law could vote or be voted for, including Mahamat Debby. This decision was heavily opposed by opposition members and their supporters. Thus, the country awaits the forthcoming general elections to determine what the future holds. The history of the transfer of power in Chad seems to leave civilian rule out of the picture. It is observed that the military or rebel leaders became the heads of state, and even when elections were held, as in the case of Idriss Debby, the same military leaders contested and won. The questions remain as to what happens to constitutionalism that demands that the military stay away from politics.

#### **4.2.2 Transfer of Power in Niger**

Niger has experienced a turbulent transfer of power since the first coups instigated to oust the first president, Hamani Diori, who led the nation to independence from French colonial powers in 1960 (Baltoi, 2023; Al Jazeera, 2023). The first coup was instigated in 1974 by Seyni Kountche, who led the military coup, suspended the constitution, and formed the supreme military council to oversee government affairs. President Hamani was imprisoned and later put under house arrest until 1987. Kountche led the government until he died in 1987, and Ali Seibou succeeded him until he died in 1992. In the first multiparty elections in 1993, Mahamane Ousmane became president. Ousmane was ousted in a military coup led by Colonel Ibrahim Bare Mainassara in 1996. Mainassara contested the election and was elected president, but was assassinated by soldiers in 1999, resulting in a third coup, and Daouda Wanke took over, promising a democratic election in 2000. In the 1999 elections, Mamadou Tandja won the elections and raised the hopes of the people as he promised democratic rule and resurrected the country's economy. However, his yearning for power tempted him to extend his presidential term and turned him into an autocratic leader who was hated by the people. Tandja was captured by a rebel group led by General Salou Djibo in 2010, who suspended the constitution

and dissolved the parliament in the name of restoring constitutional order and establishing the Supreme Council for the Restoration of Democracy. Elections were held in 2011, and a prominent opposition leader, Mahamadou Issoufou, won the elections, which were termed by observers as peaceful and democratic. Issoufou led Niger until 2021 when he lost the election to President Muhammad Bazoum. Bazoum led the country until July 2023, when he was detained in a coup led by Abdourahamane Tchiani, proclaiming himself the leader of the successful coup. This history shows that Niger's turbulent transfer was a mixture of democratic and military power transfer. It positions military forces as potential presidents.

#### **4.2.3 Transfer of Power in Gabon**

Gabon attained its independence from France in August 1960 under the leadership of Leon M'ba, who served as prime minister, and Paul Gondjout as president. The University of Arkansas has a good narration of the unfolding of events in Gabon. The coalition was short-lived as Gondjout disapproved of M'ba and wanted his removal. However, Mb'a retaliated and declared a state of emergency on November 6, 1960, which led to the arrest of President Gondjout and his imprisonment. This led to the general elections in February 1961, in which Mb'a won by 100%. Mb'a instituted constitutional rule but failed to live up to its principles and ended up dissolving the National Assembly in January 1964 among stiff opposition. Mb'a was ousted on February 18, 1964, in a coup led by Lt. Jacques Mombo and Valere Essone. The coup resulted in the appointment of Jean-Hillaire Aubame as the president of the interim government. On February 20, 1964, Mb'a was reconstituted as president with the help of the French military. After a coup, the judiciary held the coup leaders accountable through a trial, which resulted in imprisonment. Mb'a was elected in 1967, and Albert Bernard Bongo, also known as Omar Bongo, became the vice president. Upon Mb'a's death in 1967, Albert Bernard Bongo became the next president and declared Gabon a one-party state. Bongo was reelected in 1979, and 1986 (Tordoff and Young, 1999). In 1990, he allowed multipart in a constitutional reform that was approved by the national assembly (Encyclopedia Britannica, 2008). During this time, President Bongo proposed a government of national unity following stiff competition, but in vain. In the 1993 elections, Omar Bongo was elected in a contested election, leading to a state of emergency and multiple resignations and reappointments of the Prime Minister, Marie Mb'a. Opposition parties frequently boycotted the national assembly, demanding constitutional reforms and agreements between the government and the opposition. In 1998, Bongo was re-elected in an election accused of fraud by opposition members. He won in 2005 and ruled until his death in June 2009. An election followed in

August, in which Omar Bongo's son Ali Bongo won the elections with 42%, but was confirmed in October 2009 following demonstrations against him by the opposition. A vote recount was conducted, and Ali Bongo won with 41.79% and was sworn in as president afterwards. By committing to justice, fighting corruption, and reducing the size of government, he awakened people's hope.

Ali Bongo's regime was haunted by social and economic challenges, including unemployment, poor health care, and recurrent power cuts. Despite this, he was re-elected in 2016 in an election that was reported to be marred by rigging, fraud, corruption, mass arrests, and many other irregularities. In 2019, a failed coup was attempted. In the 2023 elections, anomalies such as changes in voting procedures, delays, restricting election observers, and curfews were pronounced. The results declared Bongo a winner by 64.27%. This was followed by military coups immediately after the announcement of the results, in which Bongo's regime was ended (Jessie, 2023). The usurpers organised as the Committee for the Transition and Restoration of Institutions declared among the reasons for the coups 'irresponsible, unpredictable governance that had led to a continuous degradation of social cohesion, pushing the country into chaos' (George and Kathryn, 2023). The committee denounced the election results, dissolved state institutions and the constitutional court, and closed country borders. After arresting allies, the president was upheld for embezzlement, corruption, and drug trafficking (The Guardian News, 2023). Following the coup, Brice Oligui was appointed interim president.

Studies that examined constitutionalism in Africa show that of the 54 countries on the continent, 45 have suffered coups (Chin and Kirkpatrick, 2022; Dulani and Tengtanga, 2019). Of these, most of the coups were recorded in the early years of independence. Among the causes of the coups were the autocratic leadership of the 'founding fathers of the nations, rampant poverty, low economic growth, and embezzlement of limited public resources by a few ruling elites (Roessler, 2011; Harkness, 2018). The 'founding fathers' took advantage of African traditions rooted in the cultural belief of respecting elders and rulers and turned out to be autocratic, provided that they were considered 'big men' with charisma (Munene, 2009; Schatzberg, 2021). However, civilian support for these leaders began to wane, resulting in military takeovers in the name of restoring constitutional rule that was abused by the said leaders. Thus, the early years of abuse of constitutionalism described some of these coups as 'good coups' because they intended to remove autocratic leaders, rescue the people from impoverished life and restore constitutionalism (Chin and Kirkpatrick, 2022). However, not all coups in this era can be termed as such since some were driven

by ambitious motives and turned out to be more autocratic. A good example can be cited from Chad, which has experienced a chain of coups.

Another reason is malpractice in general elections (Mchomvu, 2011; Makoa, 2011; Marian, 2011; Adejumobi, 2002). These authors portray that elections in Africa are full of malpractices such as corruption, rigging, brigandage, abuse of human rights, vote stealing, and involvement of security forces to manipulate the election. In most cases, contested elections result in mass riots and harmful demonstrations, which often cause military interventions that overthrow constitutionally elected presidents and institute military rule (Felter and Bussemaker, 2020; Maclean, 2020a). The Mali, Niger, and Chad general elections can be mentioned as examples.

Although some studies have been conducted to study the conundrum of endless military coups in central and West Africa, the current study has chosen a different focus. This study assesses the apparent abuse of constitutionalism, focusing on the recent military coups in Benin, Chad, and Gabon. Specifically, the study examines what constitutionalism practically entails in those countries and why it is being abused.

#### **4.3 Transfer of Power and Its Impact on Constitutionalism**

The findings give a general impression that military coups are welcomed with different perceptions. On the one hand, Soure (2023), Samake (2023), and Omotola (2023) seem to unanimously opine that for the citizens, they are considered proper since they intend to restore constitutionalism that has been abused by the regime in power, and they are welcomed cheerfully. A case in point is the military coups that occur after prolonged protests against the ills of a constitutional regime, such as insecurity, economic hardships, and constitutional abuse of the ruling elites. As could be seen from various news media in the days following a coup in the 2020 coups in Niger, for instance, where a military coup led by General Abdourahamane Tchiani intervened by deposing President Mohamed Bazoum after citizen riots against bad governance and deteriorating security, this was welcomed warmly by citizens. The same happened in Burkina Faso when Ibrahim Traore overthrew Paul Henri Sandaogo Damiba in September 2022. Rhetorically, though, as declared by Ignibador (2023), the cheers do not merely show support for the coup but an opposition to the regime in power. UNDP (2022) has put it clear that;

“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”

On the other hand, coups are condemned by constitutionalists who oppose such transfers of power, which abrogate the constitution. This is the case since the first thing the usurpers do when they hold power is to suspend the constitution, as in the case of Gabon in 2023, when President Ali Bongo was removed from office by a group of military officers. Additionally, this is contrary to the constitutional provisions of these countries (Africa News, 2023). The consequence of these is condemnation by both national and international organizations, including those that stand for peace and stability. Regional integration groups like the ECOWAS and AU are among the champion pessimists. Regarding upholding constitutionalism in the understudied cases, however, it is obvious that military coups abuse it, as presented next.

A study by Hatchard, Ndulo, and Sims way back in 2004 explained how this happened. In most cases, when the usurpers take over state power, the second thing they do after suspending the constitution is create other laws that protect their interests, mostly those that will protect them from prosecution when they hand over the presidency to a civilian government. This becomes possible since they are the ones to enforce these laws because they subject all key decision-making institutions, such as the legislature and parliament, to their command. This scenario indicates the weakness of the constitution, which cannot hold the usurpers accountable after the coup. Whereas the ideal is to restore a constitution after the coup and hold those concerned accountable, this barely happens. A good example, as reported by African News (2023), is Chad, where Mahamat Idriss Deby was declared interim president by the junta leaders in April 2021 after a successful coup. He was to allow elections after 18 months, but he added two more years, projecting to hold elections in 2024 and reinstate the constitution and civilian government. The move was protested by the people but suppressed heavily by mass arrests and torture. In this case, he and his allies abrogated the constitution, and the judiciary could not call them into account. Rhetorically, though, upon handing over the government to civilian rule, the constitution is restored and assumed to preside supreme, but it is vulnerable to being suspended once again upon another coup.

A study by the UNDP (2022) has clearly stated that a constitution, being the supreme law of the land, is the foundation for the rule of law, in which the

independence of the judiciary must be respected. However, the lack of checks and balances that were to be guaranteed by the constitution has strengthened the executive, weakening the judiciary, legislature, and other institutions. This results in a toothless judiciary that cannot hold the usurpers accountable and prevents the creation of strong political and democratic institutions.

Showing the importance of a constitution in promoting good governance, democracy, and development, for instance, a study by UNDP (2022) cites the ECOWAS Declaration on a Sub-Regional Approach to Peace and Security that called all member states to promote constitutional states. The study suggests that the constitutions of the Sahel have been susceptible to frequent amendments since 1990 to suit the needs of the usurpers. It states that “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’

In this line of thinking, it can be argued that a supreme constitution is one that limits state power, meaning that state power has to be recognized, directed, and protected by the constitution, then prevented from encroaching on the rights and freedoms of citizens. However, the state power in the understudied countries is nearly invisible, and the state has become one of the groups that fight for this power. The implication is that the government spends more resources trying to reclaim power than on development, leading to a vicious cycle of poverty and insecurity.

Generally, a weak constitution cannot guarantee constitutionalism. What guarantees a weak constitution, among other factors, as explained by UNDP (2022), is a lack of legitimacy, which would have been gained from the participation and inclusion of all citizens in its making or amendment. UNDP (2022) states that,

“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 ... the legitimacy and effectiveness of constitutions are 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.”.

Abuse of constitutionalism is also demonstrated by the fact that when constitutions are abrogated in understudied countries, they are rarely restored by constitutional means. Constitutionalism is a means to an end, rather than an end in itself. It is a process that needs to be observed daily by the established legal and institutional frameworks. UNDP (2017) claims that a constitution contains ‘the basic principles of the state, the structures and processes of government, and the fundamental rights of citizens in a higher law that cannot be unilaterally changed by an ordinary legislative act’. As provided earlier, amending the constitution should be inclusive and participatory for all sections of society. Any other unconstitutional body or unconstitutional mechanism that intends to change the constitution is illegitimate. Surprisingly, the frequent changes to the constitutions of the three countries under study have been unconstitutional. In all understudied cases, after military takeovers, the usurpers change the constitution without due procedure or legitimized institutions. The amendments to the constitution are rarely debated in the constitutional parliament, as proposed by Matlosa and Zounmenou (nd). In some cases, however, the judiciary does ‘bless’ the unconstitutional coup changes, especially when the interim government becomes successful and wins popular support. This can best be exemplified by the case of Chad elaborated below.

As reported by Eizenga and Nodjimbadem (2023), when Mahmat Derby was erected to power by the military in 2021 as interim president of Chad, he suspended the constitution and declared 18 months for allowing an inclusive nationwide dialogue deliberating on making a new constitution and a political transition that was to be culminated by an election in October 2022. This did not happen as planned since the process was chaired by Derby himself and a few of his men, who ended up prolonging the transition term for two more years. The citizens' challenge to this was harshly suppressed by the armed forces, leaving fatalities and many imprisoned. However, Debby established a National Commission Charged with the Organization of the Constitutional Referendum (CONOREC) to administer a countrywide constitutional referendum. The Commission, however, is comprised of Debby’s close affiliates, which reflect his control of the process and lust for power. This example gives the impression that when the constitution cannot warrant a peaceful transfer of power through controlling and warranting respect by established institutions, civilians, and the military, it leads to a vicious cycle of abrogation.

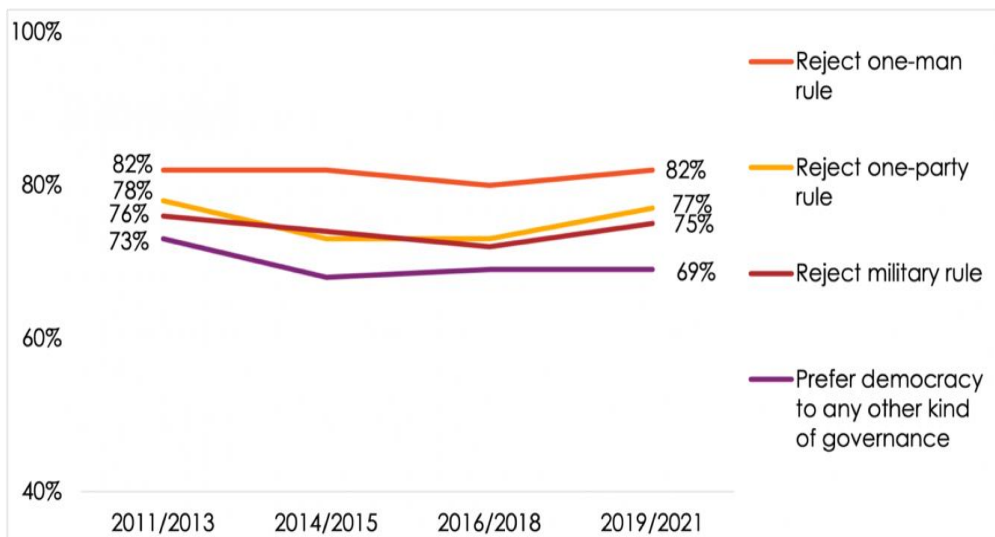
Another aspect demonstrating the abuse of constitutionalism is bad governance. In all the studied cases, this is one of the key factors in the abrasive transfer of power through military coups. Allegations of corruption, the lavish lives of the president's families, and a few privileged elites, while the majority are suffering from extreme poverty, unemployment, insecurity, and the inability to protect the country's resources that are taken away by imperialists, and the president's attempt to change the constitution to extend their office terms, demonstrate bad governance (Global Corruption Barometer for Africa, 2019). When leaders become unethical, they use public office for private gain and forget the noble duty of serving the people. A good example of such a leader, as reported by France 24, (2023), is the former president of Gabon, Ali Bongo, who was overthrown by a military coup in August 2023 because of allegations of rampant corruption and the creation of a monarchical government within the Gabon democratic government. In this case, self-accumulation of wealth can be exemplified by Bongo's collection of wealth, which includes 66 bank accounts, over 180 luxurious vehicles, approximately 30 properties in France, apartments and villas in Paris, billions of dollars, and personal oil reserves. A typical behaviour demonstrated by such leaders is detaining, torturing, and arresting anyone who criticizes their malevolence. Actions such as holding as political prisoners anyone who criticizes them, including activists, media, labour union leaders, and opposition party members, have been reported in Chad, Mali, and Gabon by the people and international communities. Under such circumstances, the abuse of constitutionalism is vivid.

The consequence of bad governance, as translated by corruption by several scholars, is growth stagnation in the understudied countries. A study by Hammad et al. (2019) found a positive correlation between bad governance, which they conceptualized as corruption and poor growth. Transparency International's Corruption Perceptions Index ranks Chad as 167th out of 180 countries, which explains its per capita income of \$590 in 2023, equivalent to what it was in 2014, despite being endowed with oil. This also leaves more than 40% of the entire population in humanitarian need. Basheka and Auriacombe (2019) opine that bad governance that is reflected by the abuse of office and maladministration extrapolates the abuse of constitutionalism. Similarly, Paquette (2020a), Felter and Bussemaker (2021), and Maclean (2020a) examined constitutionalism in Africa about how leaders uphold or abuse the constitution. They concluded that leaders' abuse of power has caused misery to the people, including unemployment, failure to get medical care, social services, enough food, education, and others. These studies affirm that a good administrative system is

a product of constitutionalism, while the opposite is true. When constitutionalism is abused, the chances of military coups are highly elevated to restore constitutionalism (Barca and Ncube, 2002). Captain Thomas Sankara of Burkina Faso is one such usurper whose reasons for launching a coup included the maladministration of the civilian president, among other reasons. In such cases, military intervention becomes the mouthpiece of the people. It is noticed that the military responds to people's demands for change, and since the people do not have the physical power to remove bad leaders, this is done by the military. In his promise to restore constitutionalism, for instance, the leader of the Chadian military junta of 2021 developed a new election code, an independent electoral commission, and reinstated the limit to presidential power that was manipulated by President Tandja. These were indeed the demands of the people. The abuse of democracy and its principles, which is portrayed as people.

A failure of democracy is another vivid indicator of constitutionalism abuse in this study. Although this is also an indicator of bad governance, it is worth special attention. As elaborated by Obiezu (2023), The Forum of Political Parties, the Media, and Civil Society in West Africa (2005), and Dulani and Tengtenga (2019), most African states, and specifically those understudied, are democratic in the sense that they resorted to democratic principles under liberalism ideology after the Cold War. However, various studies show that democratic principles such as popular participation, control of abuse of power, equality, accountability, and transparency have all been proven to fail in Africa and specifically in the understudied countries.

While highly debatable, there is consensus among most scholars that the problem is not democracy itself but rather leadership, as seen in the elaborations above. According to research by Afrobarometer in the period 2011–2021, Africans still prefer democracy to authoritarianism. The report demonstrates the following statistics, as shown in Figure 2:



**Figure 2:** Preference for democracy and rejection of authoritarian alternatives | 30 countries | 2011-2021

**Source:** Afrobarometer, 2021.

As depicted in Figure 2, although the statistics show a decline in preference from 2011 to 2021, the majority are still in favour of democracy. In addition, the report says that 7 out of 10 countries prefer democracy to any other form of government. Although the abuse of democratic principles causes riots, popular uprisings, and military coups, as was the case in the selected case studies, the abuse of general elections, as explained below, is a vivid example.

Abuse of presidential elections, which are supposed to be periodic, free, and fair, is among the indicators of constitutionalism abuse (Bratton, 2013). In essence, democratic elections are meant to give power to the people and create legitimacy for the government of the day. The power of the people is demonstrated by their willingness to surrender their power to the elected leaders and revoke it or hold the leaders accountable when they feel that they are not living up to their promises (Bratton, 2013). However, sometimes trusted leaders tend to betray the people by manipulating elections. In understudied countries, elections are marred with fraudulent activities, harassment, torture, cheating or results, and inhumane activities towards opposition members. The presidential elections that gave Ali Bongo another term and resulted in riots culminating in a coup violated all the principles of democratic elections, as reported by Africa News (2023). Cases such as arresting opposition members, rigging, and vote-holding were mentioned. This is a vivid abuse of constitutionalism, despite the international observers' reports that have stated that the elections are 'generally free and fair' without specifying what 'generally' actually means.

Another tendency is to have elections championed by the military after a coup. In the worst case, the military institutes a candidate of their preference. This can be termed an unconstitutional transfer of power. A case of Chad and Niger has already been presented and reveals that coup leaders can also become presidents and lead a military state until the terms they set for themselves expire.

Anti-imperialism sentiments further demonstrate that constitutionalism in understudied countries is abused. This particularly speaks of French imperialism in the selected cases. These sentiments reveal that leaders who are supposed to be the guardians of the Constitution are not living up to this role. As reported by Al Jazeera (2023), popular uprisings supporting the coups in the understudied countries, which are former French colonies, are against continued French imperialism, which is allegedly nurtured by the leaders. Being former colonies, the Sahel countries are still suffering from the French colonial legacy, and having them around accentuates the feeling. Taking Niger as an example, a report by Akrimi (2023) says that the French have been mining uranium in the country for nearly 50 years. The uranium mined from Niger and used to run France's military nuclear power plants has made France the world's leading producer of nuclear. Sadly, while this precious resource is enriching France, Niger remains among the third poorest countries in the world, only benefiting 12% of the market value of the produced uranium. This exploitation is accompanied by disasters that have affected living and non-living things. Radioactive, chemical, air, water, and soil pollution are among the calamities that the locals are harvesting from the malicious activities of French uranium mining companies. This indeed stirs anti-French sentiment in the country.

During the 2023 Niger coup, citizens demonstrated in the streets, stoned the French Embassy, and attacked French troops demanding them to leave (Al Jazeera, 2023; Africa News, 2023). Failure to suppress terrorism and other armed groups in the region that the French promised, bring their intention to question. Popular dislike by the people is demonstrated by actions such as carrying coffins covered with French flags, women hitting utensils to make noise, and thousands demonstrating and condemning the French for disrespecting their sovereignty and plundering their resources. An activist was recorded claiming:

“The French have to leave. This is our home. We will stay here, even if it takes us a century. We are determined, and France will leave”.

Additionally, French imperialists are blatantly supporting the regimes in power, despite strong accusations of bad governance and maladministration. Omotla

(2023) presents that in Chad, the president of France attended in person to witness the swearing-in of General Mahamat Idriss Deby, who was instituted by the military unconstitutionally. This caused riots, with people asking questions as to when a Western president attended the swearing-in of an African president.

Another reason for the anti-French sentiments is the long-standing tendency of demanding Francophone countries, including these understudied, to store their reserves in the French Central Bank and get them out piecemeal if they want to get them, among other undesired and unacceptable tendencies. Africanews (2023) says that the countries that have their fortunes stored in the French central bank include Benin, Burkina Faso, Ivory Coast, Mali, Niger, Senegal, Togo, Cameroon, the Central African Republic, Guinea-Bissau, Equatorial Guinea, Chad, Congo-Brazzaville, and Gabon. Despite the French National Assembly banning this in May 2020, it persists. The magnitude of this extended colonialism goes as follows: the 'colonies have to put up to 65% of their foreign currency reserve in the French Central Bank, 20% for financial liabilities, leaving them with only 15%. This fortune, which has amounted to a collection of \$500 billion annually in this bank, is not accessible save as a loan, which is accessible at commercial rates.

Giffard (2023) opined that the tendency to restrict visas to Western and Central African nationals is also spurring anti-French sentiments in this region. These and the role of Pan-Africanism activists who are against neo-colonialism and French foreign policy are enough to ignite the citizens when they hear about the French presence in their countries.

Constitutionalism cannot be supervised by leaders who abuse the Constitution. The presence of such leaders has reduced the role of watchdog institutions such as ECOWAS to that of making empty threats and propaganda. This is primarily dependent on how ECOWAS, for instance, responds to the uprisings in the region. Some commentators and observers criticize its lack of consistency in its response to the coups (The Centre for Africa-Europe Relations, 2023). The distrust is also fueled by the allegations that ECOWAS, for instance, is made up of tyrannical leaders who have overstayed in office and some who have manipulated the constitutions to extend their terms in office. How can it help hold the rest of their fellow power mongers accountable? Moreover, ECOWAS is termed a 'toothless bulldog' that has failed to suppress the coups. Additionally, ECOWAS has been accused of being inconsistent in its response to the coups. Its reactions to Chad and Niger are good examples. Rhetorically, ECOWAS



chairman President Bola Tinubu of Nigeria has warned against "autocratic contagion" and called for constitutional democratic governance.

The Centre for Africa-Europe Relations (2023) has reported that,

"Beyond its lack of success in stopping unconstitutional changes of government, ECOWAS also failed to limit presidential mandates and to call out problematic re-elections of leaders and cases of alleged corruption. In other words, it has been selective in enforcing democratic norms and has focused primarily on attempting to protect elected heads of state from coups".

The Sahara Reporters (2023) have shown that concerning the unconstitutional change of governments in the studied cases, various regional integration groupings responded to military takeovers. The Sahara Reporters (*ibid.*) indicate that the African Union condemned the coups in Chad and Gabon as they violated its legal and political instruments, including the African Charter on Elections, Democracy, and Governance. Additionally, findings indicate that the AU not only condemned the coups but also suspended some countries, including Gabon until they gave priority to peaceful political avenues and returned to democratic constitutional order. This is also expressed by Maluleke (2022). However, the study further indicated that the AU decided not to sanction or suspend Chad for an unconstitutional change of government in April 2021, while the coup violated the AU's Lome Declaration of 1999 and the African Charter on Democracy, Elections, and Governance. This aspect has made commentators think that these watchdog organizations (the AU and ECOWAS) cannot confidently hold the violators accountable since they are seated by leaders who stir coups in their own countries.

## **5.0 Discussion and Conclusions**

This study shows that the understudied countries have constitutions that provide for citizens' rights and freedoms, separation of powers among state organs, tenure or terms of the presidency, and control of military duties and operations, which would have warranted constitutionalism. From one perspective, ideally, in particular, these states seem to follow principles of constitutionalism by having the said provisions in their constitutions, which, in one way or another, portray democracy, the rule of law, and good governance. Similarly, the Media and Governance Series (2022) supports this view of having and abiding by constitutional norms to strengthen the rule of law, democracy, and good governance, as exemplified by term limits and elections in constitutions, which

aid in constructing effective democratic institutions by regularly and peacefully replacing underperforming leaders.

However, the studied countries do not abide by the constitution's provisions, which in turn has resulted in citizens' grievances to their leaders, retarded peace and security in the communities, poor growth, and military takeovers. Thus, the military coups witnessed recently in Gabon, Niger, and Chad were an indication of the failure of these nations to adhere to the principles of constitutionalism (Jawo, 2022; Media and Governance Series, 2022; MO Ibrahim Foundation, 2022).

Not only that, but also weak constitutions that cannot stand supreme, bad governance, failure of democracy and its principles, unconstitutional transfer of power, anti-imperialism sentiments, and distrust of watchdog institutions such as ECOWAS and the AU are the main reasons for the abuse of constitutionalism in the understudied countries. These findings relate to those provided by the Media Foundation for West Africa (2022), which include a lack of credibility in the electoral processes and leader legitimacy, unconstitutional changes to extend term limits, the inaction of ECOWAS, violations of democratic principles, social-economic distress, and the rise of terrorist groups as indicators or abuses of constitutionalism. A study by Pryce and Time (2023) also correlates with the findings of this study, as they found weaker political and institutional structures and economic hardships as the reasons for constitutionalism abuse and the rise of military takeovers in West Africa. Eight (8) recent successful military takeovers in the region, including those of Niger (2021), Chad (2021), and Gabon (2023), clearly depict deteriorating constitutionalism and weakening the rule of law. It is high time that these countries return to constitutionalism and constitutional norms that safeguard democratic principles, participation, free and fair elections, separation of powers, and observance of human rights. ECOWAS and the AU should enhance the rule of law, good governance, democracy, and stability in Central and Western African countries by mobilizing international support for strengthening peace agreements and enhancing socioeconomic resilience in the region.

The paper aimed at revisiting constitutionalism and assessing how it is being upheld in the selected countries, namely Niger, Chad, and Gabon. Specifically, it had two specific objectives: to assess the transfer of power in the selected countries and to assess how constitutionalism is upheld in the process. On the transfer of power, the study shows that it is abrasive and violates constitutional principles. The usurpers suspend the constitution once they hold power. This

clearly shows that the constitutional provision that the armed forces should be apolitical is also abused. The study also shows that constitutions are created and amended unilaterally by the usurpers, which is contrary to constitutional principles that demand constitutional means of amending the constitution and an inclusive process. As far as upholding constitutionalism is concerned, the findings clearly showed that the states under study have constitutions that stipulate separation of powers among state organs, human rights and freedoms, and the role of the armed forces, which is to ensure defence, peace, and security in these countries. The study, however, reveals that constitutionalism is upheld abusively. Weak constitutions, bad governance, failure of democracy and its principles, unconstitutional transfer of power, anti-imperialism sentiments, and distrust of watchdog institutions such as ECOWAS and the AU show constitutionalism abuse. Given all these, the study warns that the phenomena witnessed in West Africa might escalate to other parts of Africa as well, in which constitutionalism is disregarded. It can therefore be concluded that constitutionalism is a process that continuously defines the relationship between the state and the people and demands adherence to constitutional provisions by all individuals, structures, and institutions of a country. It also needs to be correctly upheld daily. The armed forces, including the military, should be subject to the constitution, which has to preside supreme. For this to be realized, making or amending the constitution has to be carried out constitutionally. Once the constitution is in place, it has to preside supreme and serve as the main law of the land that limits the power of the people, that state, and the state's apparatus. These solidify the argument that constitutionalism is a process, a means to an end that demands consistency in its observance.

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