

Judicial Independence in States That Have Undergone Unconstitutional Changes of Government with Specific Reference to Selected African Countries

Professor John C MUBANGIZI¹

Abstract

Judicial independence constitutes a cornerstone of constitutional democracy, the rule of law, and the protection of human rights. It is a fundamental element of constitutionalism, and it ensures that courts remain impartial arbiters in governance and protectors of constitutional order. This paper examines the institutional and constitutional dimensions of judicial independence in states that have undergone unconstitutional changes of government (UCG), focusing on selected African countries. The paper begins by outlining the conceptual foundations of judicial independence and its entrenchment in international, regional, and domestic legal instruments. It then turns to the phenomenon of UCGs in Africa, identifying their legal implications and institutional impact on the judiciary. Using case studies from Mali, Guinea, Sudan, and Chad, the analysis explores how UCGs have led to the suspension or abrogation of constitutions, the restructuring or dissolution of judicial bodies, and executive interference in judicial appointments. The discussion highlights the judiciary's dual role: on the one hand, as a guardian of constitutionalism and the separation of powers, and on the other, as an institution pressured to legitimise new regimes. The paper proceeds to assess the broader structural and contextual determinants of judicial independence in post-UCG settings and concludes by arguing that safeguarding judicial independence in states affected by UCGs requires a combination of entrenched constitutional guarantees, institutional resilience, and effective regional enforcement mechanisms. It contends that while constitutional provisions are necessary, they are insufficient without practical reforms and a sustained commitment to the separation of powers.

Keywords: *judicial independence, democracy, constitutionalism, government, African countries.*

JEL Classification: K42, K49

DOI: 10.62768/PLPA/2026/15/2/01

Please cite this article as: Mubangizi, John C, „Judicial Independence in States That Have Undergone Unconstitutional Changes of Government with Specific Reference to Selected African Countries”, <i>Perspectives of Law and Public Administration</i> 15, no. 2 (June 2026): 182-204.	Article History Received: 18 March 2026 Revised: 28 April 2026 Accepted: 10 June 2026
--	---

1. Introduction

Judicial independence is widely recognised as a foundational pillar of

¹ John C Mubangizi – Research Professor, Free State Centre for Human Rights, Faculty of Law, University of the Free State, South Africa, <https://orcid.org/0000-0002-1408-268X>, mubangizijc@ufs.ac.za.

constitutional democracy, the rule of law, and the effective protection of human rights. An independent judiciary ensures that legal disputes are adjudicated impartially, restrains the arbitrary exercise of political power, and upholds constitutional supremacy. In constitutional systems committed to democratic governance, courts serve not merely as dispute-resolution bodies, but as institutional guardians of legality and accountability. According to Shashvat Tiwari, ‘courts have the power to hold government bodies accountable and to mandate actions that protect individual rights, making the judiciary indispensable for the enforcement of democratic principles.’² Without judicial independence, constitutional guarantees and democratic principles risk losing their real meaning, and the separation of powers is reduced to a meaningless and hollow concept.

In Africa, the importance of judicial independence is firmly embedded in both international and regional legal instruments. The African Charter on Human and Peoples’ Rights³ obliges states to guarantee the independence of courts and tribunals,⁴ while the African Charter on Democracy, Elections and Governance⁵ proclaims the promotion and protection of the independence of the judiciary as one of its objectives.⁶ It also obliges member states to ‘strive to institutionalize good political governance through...an independent judiciary’, among other things.⁷ These commitments reflect a broader continental consensus that an independent judiciary is indispensable for democratic consolidation and sustainable governance. Yet the practical realisation of judicial independence across many African states remains fragile and uneven, particularly in countries that have been plagued by political instability.

One of the most significant threats to judicial independence in Africa arises from unconstitutional changes of government (UCGs). These include military coups d’état, the unconstitutional extension or removal of presidential term limits, manipulated electoral processes, and the suspension or abrogation of constitutions. Despite regional norms condemning such practices, UCGs continue to occur and recur across the continent, often justified by their perpetrators as necessary responses to corruption, insecurity, or governance failure.⁸ While much scholarly attention has focused on the political and security dimensions of UCGs, their institutional consequences, particularly for the judiciary, have received comparatively limited

² Shashvat Tiwari, “The Role of the Judiciary in Upholding Democratic Principles,” *International Journal of Law Management & Humanities* 7, no. 6 (2024): 539-555 at 540.

³ *African Charter on Human and Peoples’ Rights*, adopted June 27, 1981 by the Organisation of African Unity (OAU) Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) (entered into force October 21, 1986).

⁴ Article 26.

⁵ Adopted by the African Union on 30 January 2007, entered into force on 15 February 2012.

⁶ Article 2.

⁷ Article 32.

⁸ See Issaka K. Souaré, “The African Union as a Norm Entrepreneur on Military Coups d’État in Africa (1952–2012): An Empirical Assessment,” *The Journal of Modern African Studies* 52, no. 1 (2014): 69–94, <https://doi.org/10.1017/S0022278X13000785>. See also Solomon Ayele Dersso, “Unconstitutional Changes of Government and Unconstitutional Practices in Africa,” *African Politics, African Peace*, Paper No. 2 (World Peace Foundation, June 2016), <https://worldpeacefoundation.org/wp-content/uploads/2016/06/Unconstitutional-Changes-of-Government.pdf> (accessed January 29, 2026).

academic discourse.

Unconstitutional changes of government cause sudden breaks and ruptures in the constitutional order, placing exceptional strain on the judiciary.⁹ Courts may be dissolved, reconstituted, or subordinated to executive authority through emergency decrees, transitional charters, or ad hoc appointment processes.¹⁰ Judges may face direct intimidation, removal, or co-optation, while constitutional review mechanisms are often suspended or rendered ineffective. In such settings, the judiciary finds itself in a delicate position: it may uphold constitutional continuity, or it may, due to coercion or manipulation, lend legal legitimacy to the new unlawful and illegitimate regimes.

This paper examines the institutional and constitutional dimensions of judicial independence in African states that have undergone unconstitutional changes of government, with specific reference to Mali, Guinea, Sudan, and Chad. These case studies reflect diverse political trajectories but share common patterns of constitutional disruption and executive consolidation following UCGs. By analysing these experiences, the paper seeks to demonstrate how judicial institutions respond to moments of constitutional crisis, and the extent to which they are able to preserve autonomy, legality, and public legitimacy.

The paper adopts a doctrinal and comparative approach, drawing on constitutional texts, regional legal instruments, and relevant jurisprudence, supplemented by scholarly analysis of judicial behaviour in transitional and authoritarian contexts. It argues that while constitutional guarantees of judicial independence are indispensable, they are insufficient on their own. The paper concludes by arguing that safeguarding judicial independence in states affected by UCGs requires a combination of entrenched constitutional guarantees, institutional resilience, and effective regional enforcement mechanisms. It contends that while constitutional provisions are necessary, they are insufficient without practical reforms and a sustained commitment to the separation of powers.

2. Conceptual Context

In order to understand the institutional and constitutional dimensions of judicial independence in African states that have undergone unconstitutional changes of government, it is important to contextualize the concepts of judicial independence and unconstitutional changes of government.

2.1. Judicial Independence

As a concept, judicial independence is usually defined in various ways mainly

⁹ Wonotanzokan Nzeda Tagowa, John Moses Maikomo, Enoch Faira Annafa, “Democracy and Resurgence of Military Coups in West Africa (2010–2023),” *FUWUKARI Journal of Social Sciences (FUWJSS)* 4, no. 1 (2025): 388–402.

¹⁰ Charles Manga Fombad and Lukman Adebisi Abdulrauf, “Comparative Overview of the Constitutional Framework for Controlling the Exercise of Emergency Powers in Africa,” *African Human Rights Law Journal* 20, no. 2 (2020): 376–411, <https://doi.org/10.17159/1996-2096/2020/v20n2a2>.

because of its complexity and extensive nature. It is important to note that judicial independence exists at two distinct yet complementary levels: at the personal level and at the institutional level. In other words, there are two different dimensions of judicial independence: the individual dimension and the institutional dimension. In its individual dimension or at the personal level, it denotes the capacity and duty of individual judges to decide cases impartially, applying the law and the facts without improper influence, pressure, or inducement from internal or external actors. In other words, it 'aims to insulate individual judges from inappropriate influences that would undermine their impartiality or the appearance of it.'¹¹

In its institutional dimension, it refers to the structural and organisational autonomy of the judiciary as a branch of government, secured through guarantees relating to appointment, tenure, remuneration, and administrative control, which shield courts from interference by the executive and legislature.¹² At this institutional level, the judiciary has the autonomy over its internal administration, including the management and appointment of court staff.¹³ According to Huchhanavar, 'institutional judicial independence aims to insulate the judiciary from inappropriate influences emanating from outside the judiciary.'¹⁴

It should be pointed out that judicial independence is well recognised in international and regional legal frameworks. At the international level, the United Nations has outlined principles 'to assist Member States in their task of securing and promoting the independence of the judiciary.'¹⁵ These are contained in the Basic Principles on the Independence of the Judiciary.¹⁶ In the African regional context, Article 26 of the African Charter on Human and Peoples' Rights obliges States Parties to guarantee the independence of the courts. In addition, Article 2 of the African Charter on Democracy, Elections and Governance lists the promotion and protection of the independence of the judiciary as one of the objectives of the Charter. Moreover, the Charter urges States Parties to strive to institutionalize good political governance through... an independent judiciary...', among other things.¹⁷

2.2. Unconstitutional Changes of Government

Conceptually, by unconstitutional changes of government (UCGs) is meant the overthrow, replacement, or retention of a government through means that violate a

¹¹ Ibid.

¹² Shivaraj S. Huchhanavar, "Conceptualising Judicial Independence and Accountability from a Regulatory Perspective," *Oslo Law Review* 9, no. 2 (2023): 110–148, <https://doi.org/10.18261/olr.9.2.3>.

¹³ Lunga Siyo and John Cantius Mubangizi, "The Independence of South African Judges: A Constitutional and Legislative Perspective," *Potchefstroom Electronic Law Journal* 18, no. 4 (2015): 817–846, <https://doi.org/10.4314/pelj.v18i4.03>.

¹⁴ Ibid.

¹⁵ Preamble to the Basic Principles on the Independence of the Judiciary.

¹⁶ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985).

¹⁷ Article 32.

country's constitutional processes.¹⁸ This typically includes military coups, civil uprisings, the refusal of incumbents to relinquish power after losing elections, or constitutional amendments designed to entrench power undemocratically.¹⁹ The concept has been defined in various African Union (AU) instruments and documents. In its 2000 Lomé Declaration,²⁰ the AU defined UCGs to include: '*i) military coup d'état against a democratically elected Government; ii) intervention by mercenaries to replace a democratically elected Government; iii) replacement of democratically elected Governments by armed dissident groups and rebel movements; [and] iv) the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.*'

Article 23(5) of the 2007 African Charter on Democracy, Elections and Governance, which calls for sanctions against perpetrators of UCGs, defines UCGs to include: '*1. Any putsch or coup d'état against a democratically elected government. 2. Any intervention by mercenaries to replace a democratically elected government. 3. Any replacement of a democratically elected government by armed dissidents or rebels. 4. Any refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections; or 5. Any amendment or revision of the constitution or legal instruments, which is an infringement on the principles of democratic change of government.*'

These very same acts are repeated under Article 28E of the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) which adds an additional act, namely that 'Any substantial modification to the electoral laws in the last six (6) months before the elections without the consent of the majority of the political actors' would constitute an unconstitutional change of government.

It is against the background of the above conceptual context that we now turn to a brief discussion on the legal and institutional implications of unconstitutional changes of government before focusing on judicial independence in post-UCG contexts of selected case studies.

3. Unconstitutional Changes of Government in Africa: Legal and Institutional Implications

Unconstitutional changes of government have profound legal and institutional implications for African states. This is because they disrupt constitutional governance, weaken institutional safeguards, and undermine the rule of law.²¹ Because modern

¹⁸ Chidi Anselm Odinkalu, "A Ruler's Shield? Re-evaluating the Norm against Unconstitutional Change of Government in Africa," *African Human Rights Law Journal* 25, no. 1 (2025): 1–36, <https://doi.org/10.17159/1996-2096/2025/v25n1a1>.

¹⁹ Ibid.

²⁰ Organization of African Unity, "Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government," AHG/Decl.5 (XXXVI), adopted at the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government, Lomé, Togo, July 12, 2000, <https://archives.au.int/handle/123456789/915>.

²¹ Lennon Monyae and Bhaso Ndzendze, "The Resurgence of Unconstitutional Changes of Government in

constitutional systems are premised on the orderly and lawful transfer of political authority, the seizure or retention of power outside constitutionally prescribed procedures fundamentally destabilises the legal architecture of the state. In the African context, where many states have undertaken significant efforts to consolidate democratic institutions since the 1990s, UCGs represent a serious setback to constitutionalism and institutional development.²²

One of the most immediate legal implications of an unconstitutional change of government is the disruption or suspension of the constitutional order. Constitutions provide the legal framework within which state authority is exercised. They define the structure of government, the allocation of powers among institutions, and the procedures for political succession. According to Shola Omotola, ‘unconstitutional changes of government also undermine the institutionalisation of power in Africa.’²³ When political actors assume power through unconstitutional means, the constitutional framework regulating public power is effectively displaced. In many African states that have experienced coups, military or transitional authorities have suspended or abrogated the constitution and replaced it with transitional charters or provisional constitutional arrangements. These instruments are typically adopted without democratic participation and lack the legitimacy associated with constitutionally enacted legal frameworks. The result is a breakdown in the normative hierarchy of the legal system, where the supremacy of the constitution is replaced by rule through executive decrees or military directives.

The suspension of constitutional governance also disrupts institutional continuity and undermines the principle of constitutional supremacy. In states such as Mali and Guinea, for example, the constitutions were suspended following military coups, and transitional authorities assumed extensive legislative and executive powers through provisional charters.²⁴ Such developments illustrate how unconstitutional regime changes fundamentally alter the legal foundation upon which state institutions operate.

Unconstitutional changes of government also have significant implications for the functioning of governance institutions. To ensure accountability and maintain a balance of power among branches of government, democratic constitutional systems rely on a network of institutions including legislatures, independent commissions, and oversight bodies. When an unconstitutional change of government occurs, these institutions are frequently dissolved, suspended, or subordinated to executive authority.²⁵ Legislatures are often among the first institutions to be dissolved following

Africa: Democratic Renewal in the Year of Elections,” *Conflict & Resilience Monitor* (ACCORD), March 28, 2024, <https://www.accord.org.za/analysis/the-resurgence-of-unconstitutional-changes-of-government-in-africa-democratic-renewal-in-the-year-of-elections/> (accessed March 12, 2026).

²² Ibid.

²³ J. Shola Omotola, *Unconstitutional Changes of Government in Africa: What Implications for Democratic Consolidation?*, Discussion Paper 70 (Uppsala: Nordiska Afrikainstitutet, 2011), <https://www.diva-portal.org/smash/get/diva2:478511/FULLTEXT01.pdf> (accessed March 12, 2026).

²⁴ See, for example, Freedom House, “Guinea: Freedom in the World 2025 Country Report,” 2025, <https://freedomhouse.org/country/guinea/freedom-world/2025> (accessed March 12, 2026).

²⁵ Musa Kika, *The People Demand a Working Social Contract: Responding to Unconstitutional Change of*

a coup, thereby eliminating parliamentary oversight of the executive. Electoral commissions and anti-corruption bodies may also be restructured or replaced with transitional bodies appointed by the new authorities.²⁶ These changes undermine the separation of powers and weaken institutional mechanisms designed to prevent the abuse of political authority.

Another important implication of unconstitutional changes of government is the creation of legal uncertainty and loss of citizens' confidence in democratic leadership. According to Maram Mahdi: *'There is a fundamental link between constitutional manipulation, coups and the erosion of citizens' confidence in democratic norms. When leaders exploit constitutional loopholes to extend their tenure, they undermine the bedrock of democracy and rule of law, leaving citizens disheartened and disenchanted. The very essence of democracy, which hinges on the peaceful transfer of power, is disrupted, creating profound disillusionment.'*²⁷

Transitional regimes often govern through emergency decrees, military orders, or provisional constitutional instruments. Because these frameworks operate outside established constitutional procedures, questions frequently arise regarding their legal validity and their relationship to existing laws. For instance, 'in post-coup environments, transitional authorities rewrite constitutions, redesign electoral laws, and manage political competition under highly asymmetric conditions.'²⁸ Courts and legal practitioners may face uncertainty regarding which legal norms should prevail. This uncertainty complicates the administration of justice and weakens the coherence of the legal system.

Another aspect for which unconstitutional changes of government have serious implications is the protection of human rights. Many constitutions typically provide for the protection of such rights and establish mechanisms through which individuals may seek judicial protection against violations.²⁹ When constitutional governance is disrupted, these protections may be weakened or suspended. Transitional authorities often invoke emergency powers or national security concerns to justify restrictions on human rights, including freedom of expression, assembly, and political participation.³⁰

Governments in Africa, Data for Governance Alliance Policy Brief No. 16 (Data for Governance Alliance, October 12, 2023), <https://dataforgovernance.africa/wp-content/uploads/2023/11/the-people-demand-a-working-social-contract-responding-to-unconstitutional-change-of-governments-in-africa.pdf>.

²⁶ See, for example, Associated Press, "Burkina Faso Ruling Junta Dissolves Independent Electoral Commission," *AP News*, July 17, 2025, accessed March 12, 2026, <https://apnews.com/article/burkina-faso-electoral-commission-910d22d0493e5302509782c7c18953c0>.

²⁷ Maram Mahdi, "Constitutional Manipulations Often Precede African Coups," Centre for International Governance Innovation, May 9, 2024, accessed March 12, 2026, <https://www.cigionline.org/articles/constitutional-manipulations-often-precede-african-coups/>.

²⁸ Michael Asiedu, "Guinea, Gabon, and the Judicial Certification of Post-Coup Rule in Africa," *The Loop*, January 21, 2026, accessed March 12, 2026, <https://theloop.ecpr.eu/guinea-gabon-and-the-judicial-certification-of-post-coup-rule-in-africa/>.

²⁹ United Nations Development Programme, *Protecting Human Rights in Constitutions* (United Nations Development Programme, 2023), accessed March 12, 2026, <https://www.undp.org/sites/g/files/zskgke326/files/2023-10/undp-protecting-human-rights-in-constitutions.pdf>.

³⁰ Elliot Bulmer, *Emergency Powers*, International IDEA Constitution-Building Primer 18 (Stockholm: International Institute for Democracy and Electoral Assistance, 2018), accessed March 12, 2026,

Without effective judicial oversight or functioning constitutional institutions, individuals may have limited avenues for challenging these restrictions. Empirical studies of recent coups in Africa have shown that periods of unconstitutional rule are frequently associated with increased restrictions on political freedoms and reduced protection of human rights.³¹ These developments highlight the close relationship between constitutional governance, institutional independence, and human rights protection.

Beyond their immediate legal consequences, unconstitutional changes of government also undermine the legitimacy of state institutions. As opined by Colón-Ríos et al, ‘At its core, the legitimacy of modern democratic states lies in the fact that they are structured around the principle according to which power belongs to, and springs from, the will of the people.’³² Accordingly, constitutional governance derives its authority from the people and from adherence to legally prescribed procedures for acquiring and exercising political power. When these procedures are violated, the legitimacy of governing institutions may be questioned by citizens and the broader international community. This legitimacy deficit can have lasting consequences for public trust in state institutions. Even after a return to constitutional governance, rebuilding institutional credibility may require extensive legal and political reforms. In this way, unconstitutional changes of government not only disrupt existing institutional arrangements but also weaken the broader culture of constitutionalism necessary for sustainable democratic governance.³³

In the context of the main theme of this paper, unconstitutional changes of government have serious implications for the independence and functioning of the judiciary. In constitutional democracies, the judiciary plays a critical role in upholding the rule of law and ensuring that governmental authority is exercised within constitutional limits.³⁴ However, when political power is acquired through unconstitutional means, judicial institutions often face pressure to legitimise the new regime or to refrain from scrutinising the legality of transitional arrangements. In fact, the judiciary may become ‘an instrument of political power, [and] be used to silence or discredit opposition, dissent, or critical voices.’³⁵ According to Yaşamış, ‘this might

<https://doi.org/10.31752/idea.2018.29>.

³¹ See, for example, Jonah Marawako, “Reflecting on the Impacts of the 2013 Coup in Central Africa Republic on Economic Security,” *International Journal of Scientific Research and Management* 10, no. 2 (2022): 940–958, <https://doi.org/10.18535/ijstrm/v10i2.sh02>. See also Christian Bjørnskov and Katharina Pfaff, “Differences Matter: The Effect of Coup Types on Physical Integrity Rights,” *European Journal of Political Economy* 69 (2021): 102027, <https://doi.org/10.1016/j.ejpoleco.2021.102027>.

³² Joel I. Colón-Ríos, Eva Marlene Hausteiner, Hjalte Lokdam, Pasquale Pasquino, Lucia Rubinelli, and William Selinger, “Constituent Power and Its Institutions,” *Contemporary Political Theory* 20, no. 4 (2021): 926–956, <https://doi.org/10.1057/s41296-021-00467-z>.

³³ Kika, *The People Demand a Working Social Contract*, 6.

³⁴ Rizine R. Mzikamanda, “Constitutionalism and the Judiciary: A Perspective from Southern Africa” (paper presented at the Conference for Law Reform Agencies for Eastern and Southern Africa, “The Role of Law Reform in Constitutionalism, Rule of Law and Democratic Governance,” Lilongwe, Malawi, November 7–11, 2011), https://www.justice.gov.za/alraesa/conferences/2011malawi/constitutionalism-and-the-judiciary_mzikamanda.pdf (accessed March 12, 2026).

³⁵ Firuz Demir Yaşamış, “Judicial Coups, Activism and Politicization,” *International Journal of Emerging*

include politically motivated prosecutions, selective enforcement of laws, or the targeting of opposition leaders and activists.³⁶ Hence, the judiciary ‘may play a key role in legitimizing the repression of political freedoms, such as free speech, assembly, and association.’³⁷ Other common consequences include restructuring or politicisation of judicial institutions, suspending constitutional courts, dismissing judges, or appointing new judicial officials perceived to be loyal to the ruling authorities. Such actions compromise both the institutional independence of the judiciary and the decisional autonomy of individual judges.

In several African states that have experienced unconstitutional changes of government, the judiciary has faced significant challenges in maintaining independence during transitional periods. In Mali, for example, the Constitutional Court became a focal point of political contestation during the events leading up to the 2020 coup, highlighting the vulnerability of judicial institutions during periods of political instability.³⁸ Similar challenges were observed in Sudan following the 2019 military takeover, where the restructuring of legal institutions raised concerns about the ability of courts to operate independently during the transition.³⁹ The erosion of judicial independence has broader implications for the rule of law. When courts are unable to exercise independent constitutional review, governmental actions may escape effective legal scrutiny. This weakens accountability mechanisms and undermines public confidence in the justice system.

It is clear from the foregoing discussion that unconstitutional changes of government in Africa have far-reaching legal and institutional implications. Understanding these implications is essential for assessing the broader impact of unconstitutional political transitions in African states. It is also essential for understanding the institutional and constitutional dimensions of judicial independence in specific African states that have undergone unconstitutional changes of government, an aspect to which we now turn our attention.

4. Judicial Independence in Post-UCG Contexts: Selected Case Studies

4.1. Mali

Mali’s post-colonial history of recurrent coups highlights the persistent challenges that unconstitutional changes of government pose to democratic consolidation. Although the country transitioned to multiparty democracy in the 1990s following earlier coups, entrenched governance failures, corruption, and insecurity,

Multidisciplinaries: Social Science 4, no. 1 (2025): 272–306, <https://doi.org/10.54938/ijemdss.2025.04.1.423>.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Deutsche Welle, “Mali’s President Dissolves Constitutional Court amid Unrest,” July 12, 2020, accessed March 13, 2026, <https://www.dw.com/en/mali-president-keita-dissolves-constitutional-court-amid-unrest/a-54142785>.

³⁹ Gwenaëlle Lenoir, “Sudan: A Coup against Justice,” *Justice Info*, January 28, 2022, accessed March 13, 2026, <https://www.justiceinfo.net/en/87063-sudan-coup-against-justice.html>.

exposed the fragility of its institutions.⁴⁰ This instability persisted, eventually leading to the August 2020 military takeover led by Colonel Assimi Goïta, which was precipitated by mass protests over electoral disputes, economic hardship, and deteriorating security conditions.⁴¹ Under international mediation, a civilian-led transitional government was established. However, in May 2021 Colonel Goïta carried out a second coup, removing the interim president and installing himself as head of state.⁴²

Mali's recent political trajectory provides a particularly instructive case for examining the vulnerability of judicial independence in the wake of unconstitutional changes of government. The crisis culminating in the August 2020 coup d'état was preceded by growing contestation over the legitimacy of judicial institutions, most notably the Constitutional Court. The Court's controversial decision to overturn the results of several parliamentary elections in early 2020 generated widespread public discontent and was perceived as favouring the incumbent executive.⁴³ This did not only undermined confidence in the judiciary but also exposed the extent to which judicial institutions could become entangled in political struggles.

Following the coup, the National Committee for the Salvation of the People (CNSP) suspended the constitution and introduced a transitional charter, thereby displacing the constitutional order that had previously governed the judiciary.⁴⁴ While the transitional framework formally retained the judiciary as a separate branch of government, in practice, executive dominance became more pronounced. Judicial appointments and institutional arrangements were subject to the authority of the transitional leadership, raising serious concerns about the erosion of institutional independence.⁴⁵ Moreover, the judiciary's response to the unconstitutional seizure of power was marked by institutional silence. There was no meaningful judicial attempt to challenge the legality of the coup or the suspension of the constitution. This acquiescence can be attributed to a combination of factors, including political pressure, institutional fragility, and the absence of a strong tradition of judicial assertiveness. As Fombad observes, in contexts of constitutional rupture, courts often lack both the capacity and the political support necessary to uphold constitutional norms against powerful executive actors.⁴⁶

⁴⁰ See Susanna D. Wing, *Mali's Precarious Democracy and the Causes of Conflict*, Special Report 331 (Washington, DC: United States Institute of Peace, May 2013), accessed April 18, 2026, https://www.files.ethz.ch/isn/164172/SR331_Malis_Precarious_Democracy_and_the_Causes_of_Conflict.pdf.

⁴¹ Adeoye O. Akinola and Ratidzo Makombe, "Rethinking the Resurgence of Military Coups in Africa," *Journal of Asian and African Studies* 60, no. 5 (2025): 2847–2863, <https://doi.org/10.1177/00219096231224680>.

⁴² Ibid.

⁴³ See Andrey Korotayev and Alina Khokhlova, "Revolutionary Events in Mali, 2020–2021," in *New Wave of Revolutions in the MENA Region: A Comparative Perspective*, ed. Leonid Issaev and Andrey Korotayev, Perspectives on Development in the Middle East and North Africa (MENA) Region (Cham: Springer, 2022), 191–218, https://doi.org/10.1007/978-3-031-15135-4_9.

⁴⁴ International Crisis Group, *Saving Momentum for Change in Mali's Transition*, Africa Report no. 304 (September 21, 2021), <https://www.crisisgroup.org/rpt/africa/mali/304-saving-momentum-change-malis-transition>.

⁴⁵ Ibid.

⁴⁶ Charles Manga Fombad, "The Struggle to Defend the Independence of the Judiciary in Africa," in

The case of Mali also highlights the importance of public legitimacy as an essential dimension of judicial independence. Where courts are perceived as politically compromised, their ability to act as guardians of constitutionalism is significantly weakened. In this sense, the erosion of judicial independence in Mali was not entirely a consequence of the coup itself but was also rooted in pre-existing institutional weaknesses.

4.2. Guinea

Like Mali, Guinea's political history has been marked by recurring authoritarianism and unconstitutional power shifts. After decades of autocratic rule following independence, a 2008 military coup, triggered by President Lansana Conté's death and led by Captain Moussa Dadis Camara, was characterised by serious abuses, including the 2009 massacre of protesters.⁴⁷ A civilian transition in 2010 brought Alpha Condé to power, but his controversial third-term bid in 2020 sparked unrest, culminating in his ousting on September 5, 2021 by Colonel Mamady Doumbouya.⁴⁸ Guinea's experience following the September 2021 coup illustrates the complex relationship between unconstitutional regime change and judicial independence. Prior to the coup, the judiciary had already been criticised for its lack of independence, particularly in relation to the controversial constitutional amendment that enabled President Alpha Condé to secure a third term in office.⁴⁹ The Constitutional Court's endorsement of this amendment was widely viewed as indicative of executive influence over judicial processes.

The military takeover led by the National Rally and Development Committee (CNRD) resulted in the suspension of the constitution and the establishment of a transitional charter.⁵⁰ This development effectively removed the legal framework within which judicial independence had been formally guaranteed. As in Mali, the judiciary did not mount any significant challenge to the legality of the new regime. Instead, it continued to operate within the parameters set by the transitional authorities.

A particularly notable feature of the Guinean case is the phenomenon of what is referred to as 'judicial certification' of post-coup regimes.⁵¹ According to Michael

Challenged Justice: In Pursuit of Judicial Independence, ed. Shimon Shetreet, Hiram Chodosh, and Eric Helland (Leiden: Brill Nijhoff, 2021), 223–248, https://doi.org/10.1163/9789004421554_011.

⁴⁷ Cristina G. Stefan, "Lessons in Atrocity Prevention: A Closer Look at Guinea," *Journal of International Peacekeeping* 24, nos. 3–4 (2021): 367–401, <https://doi.org/10.1163/18754112-24030005>.

⁴⁸ Judd Devermont, "Guinea: The Causes and Consequences of West Africa's Latest Coup," Center for Strategic and International Studies, September 8, 2021, accessed April 18, 2026, <https://www.csis.org/analysis/guinea-causes-and-consequences-west-africas-latest-coup>.

⁴⁹ See Linda Mushoriwa, "An Africa of Good Governance, Democracy and the Rule of Law? Revisiting the Root Causes of Unconstitutional Changes of Government," *Law, Democracy & Development* 29 (2025): 224–249, <https://doi.org/10.17159/2077-4907/2025/ldd.v29.11>.

⁵⁰ Oumar Sankare, "African Union Moves to Lift Guinea's Suspension after Successful Transition to Constitutional Rule," *Anadolu Agency*, January 23, 2026, accessed April 20, 2026, <https://www.aa.com.tr/en/africa/african-union-moves-to-lift-guineas-suspension-after-successful-transition-to-constitutional-rule/3808418>.

⁵¹ Asiedu, "Guinea, Gabon, and the Judicial Certification of Post-Coup Rule."

Asiedu: *Following the 2021 coup that removed President Alpha Condé – who himself had controversially abolished term limits – General Mamady Doumbouya presided over a prolonged transition marked by repeated delays. The transition lasted over four years, far exceeding initial promises. Presidential elections were eventually held in December 2025. Official results showed Doumbouya winning more than 86% of the vote. On 5 January 2026, Guinea's Supreme Court validated the outcome, confirming Doumbouya's victory and clearing him to assume office for seven years. The court did not assess the broader political environment or electoral competitiveness.*⁵²

This is a clear case of courts explicitly or implicitly validating the authority of unconstitutional governments by recognising their legal acts or by failing to contest their legitimacy. While this may be justified as a pragmatic response to political realities, it raises important questions about the role of the judiciary in upholding constitutionalism. In the case of Guinea, the transitional authorities undertook reforms affecting judicial institutions, including changes in leadership and administrative structures. While these reforms were often framed as necessary for improving governance, they also created opportunities for political interference. The absence of transparent and merit-based appointment processes further exacerbated concerns about the politicisation of the judiciary.

The Guinean experience thus demonstrates how unconstitutional changes of government can reinforce existing patterns of executive dominance over the judiciary, rather than creating entirely new dynamics. It also underscores the difficulty of disentangling judicial reform from political control in transitional contexts.

4.3. Sudan

Sudan's post-independence history has been characterised by recurrent military coups and entrenched authoritarian governance, rendering it one of Africa's most coup-prone states. Significant coups occurred in 1958, 1969, 1989, 2019 and 2021.⁵³ Unlike conventional military takeovers, the 2019 coup that ousted President Omar al-Bashir emerged from a sustained popular uprising, during which the military ultimately sided with civilian protesters.⁵⁴ This culminated in the establishment of a hybrid civilian-military transitional administration under the August 2019 Constitutional Declaration. Following the 2019 coup, Sudan embarked on a transitional process aimed at dismantling authoritarian structures and establishing democratic governance. Central to this process were efforts to reform the judiciary, which had long been perceived as an instrument of executive under the previous regime.⁵⁵

⁵² Ibid.

⁵³ Gerrit Kurtz, *Power Relations in Sudan after the Fall of Bashir: From Revolution to War*, SWP Research Paper 2024/RP 05 (Berlin: Stiftung Wissenschaft und Politik, May 2024), accessed April 20, 2026, <https://doi.org/10.18449/2024RP05>.

⁵⁴ Ibid.

⁵⁵ Brooke Davies, *Sudan's 2019 Constitutional Declaration: Its Impact on the Transition* (Stockholm: International Institute for Democracy and Electoral Assistance, 2022), accessed April 20, 2026, <https://doi.org/10.31752/idea.2022.53>.

During the initial transitional period, significant steps were taken to restructure judicial institutions, including the removal of senior judges associated with the Bashir regime and the appointment of new judicial leadership. These measures were intended to restore public confidence in the judiciary and to enhance its independence. However, they also raised concerns about the transitional government's capabilities to rebuild the judiciary and the extent to which the executive was influencing judicial reform processes. As Davies notes: *'...it is undoubtedly clear that tasking the transitional government with rebuilding the judiciary from scratch was beyond its capabilities, given the breadth of its mandate and the demands on its already constrained resources.'*⁵⁶

The October 2021 military coup marked a turning point in Sudan's transition. The dissolution of civilian components of the transitional government and the consolidation of military control had immediate and adverse implications for judicial independence.⁵⁷ Courts were effectively sidelined in key political decisions, and the broader legal framework became increasingly uncertain. In addition, the judiciary faced significant constraints in exercising oversight over executive actions. Emergency measures and security considerations were frequently invoked to justify limitations on judicial intervention. The result was a reassertion of executive dominance over the legal system, undermining earlier reform efforts.⁵⁸

Sudan's experience highlights the inherent fragility of judicial independence in transitional contexts, particularly where political instability persists. It also illustrates the challenges of achieving meaningful judicial reform in the absence of sustained political commitment to constitutionalism.

4.4. Chad

Following independence in 1960, Chad experienced prolonged authoritarian rule and internal conflict, including a major coup in December 1990 in which Idriss Déby overthrew Hissène Habré and subsequently governed for more than three decades.⁵⁹ After Déby was killed in April 2021 while leading troops against a rebel offensive, the constitutional succession process was bypassed as military officers installed his son, Mahamat Idriss Déby, as head of state and suspended the constitution, precipitating a succession crisis.⁶⁰ The establishment of a Transitional Military Council (TMC), led by Mahamat Idriss Déby, involved the suspension of the constitution and the adoption of a transitional charter, thereby constituting a clear departure from

⁵⁶ Ibid.

⁵⁷ Lenoir, "Sudan: A Coup against Justice."

⁵⁸ Ibid.

⁵⁹ Daniel E. Agbiboa, "Life after Idris Déby: Quo Vadis, Chad?," *Conflict & Resilience Monitor* (ACCORD), May 19, 2021, accessed April 20, 2026, <https://www.accord.org.za/analysis/life-after-idris-deby-quo-vadis-chad/>.

⁶⁰ Ibtissem Guenfoud and Morgan Winsor, "Chad President Dies in Battle with Rebel Group, Nation's Army Says," *ABC News*, April 20, 2021, accessed April 20, 2026, <https://abcnews.go.com/International/chad-president-dies-battle-rebel-group-nations-army/story?id=77186842>.

constitutional procedures.⁶¹

The judiciary in Chad has historically operated within a system characterised by strong executive influence. Judicial appointments, promotions, and disciplinary processes have traditionally been controlled by the executive, limiting the scope for institutional independence. The transition did little to alter this structural reality. Instead, the concentration of power in the hands of the TMC further entrenched executive control over state institutions, including the judiciary. Unlike in some other contexts, there has been little evidence of judicial contestation or resistance in Chad. Courts have largely confined themselves to the routine application of laws within a framework defined by the executive.⁶² This reflects both the structural limitations of the judicial system and the broader political environment, which offers limited space for dissent or institutional autonomy.

The Chadian case highlights the importance of historical and structural factors in shaping judicial behaviour. Where judicial independence has been weakly institutionalised over a long period, unconstitutional changes of government are less likely to produce significant shifts in judicial dynamics. Instead, they may simply reinforce existing patterns of executive dominance.

4.5. Comparative Aspects

A comparative analysis of Mali, Guinea, Sudan, and Chad reveals both similarities and differences in the impact of unconstitutional changes of government on judicial independence. First and foremost, an overarching similarity is the erosion of judicial independence and accountability mechanisms. In each country, ‘coup authorities shielded themselves and their forces from scrutiny either by granting themselves legal immunities, conducting sham trials of protesters in remote courts, or sidelining investigations into security force abuses.’⁶³ The main consequence of such conduct is the disruption of constitutional frameworks, which removes the legal foundation upon which judicial independence is based. In all four cases, constitutions were either suspended or significantly altered, leading to a reconfiguration of institutional relationships.

Another shared feature is the increased influence of the executive over judicial institutions. Following coups in those states, transitional charters and military authorities exercised decisive influence over the composition and functioning of judicial institutions, including constitutional courts, thereby subordinating them to the political executive.⁶⁴ As with most unconstitutional changes of government across Africa, the

⁶¹ Agbiboa, “Life after Idris Déby.”

⁶² Remadji Hoinathy, “Chad’s Struggle for Democracy Is Far from Over,” *ISS Today*, Institute for Security Studies, July 31, 2025, accessed April 20, 2026, <https://issafrica.org/iss-today/chad-s-struggle-for-democracy-is-far-from-over>.

⁶³ John C. Mubangizi, “The Implications of Unconstitutional Changes of Government for Democracy and the Rule of Law in Africa: A Human Rights Perspective,” *Law, Democracy & Development* 30 (2026): 1–37, <https://doi.org/10.17159/2077-4907/2026/1dd.v30.1>.

⁶⁴ Johannes Socher, “Assistance to Constitutional Courts in Fragile Contexts: The Case of Mali, 2017–2022,” *Verfassung und Recht in Übersee / World Comparative Law* 56, no. 1 (2023): 241–256, <https://doi.org/10.1015/0043-7500-2023-00011>.

UCGs in the states under discussion were characterised by the suspension or restructuring of constitutional institutions, a process that weakens institutional checks and erodes the separation of powers.⁶⁵ This often results in the politicisation of the judiciary and the erosion of its autonomy leading to weakened accountability mechanisms, increased executive dominance, and the normalization of extra-legal authority.

However, important differences can also be observed. The four countries differ markedly in the mode through which unconstitutional rule has affected judicial independence. In Mali, the judiciary was drawn most visibly into the post-coup order through judicial certification of military authority. Following the May 2021 coup, the Constitutional Court endorsed Assimi Goïta's assumption of the presidency, illustrating how courts may be instrumentalised to confer formal legality on an extra-constitutional transfer of power.⁶⁶ This contrasts with Guinea, where the September 2021 coup was followed by the adoption of a Transitional Charter rather than an immediate, prominent judicial validation of the junta. Here, the erosion of judicial independence was more diffuse, occurring through the subordination of constitutional order to military-controlled transitional arrangements and the repeated postponement of a return to civilian rule.⁶⁷ In Sudan, by contrast, the challenge has been rooted in a fragile transitional constitutional framework. Although the 2019 Constitutional Declaration envisaged an independent judiciary, the October 2021 coup entailed the suspension of key provisions and the restructuring of governance in ways that entrenched executive dominance and undermined judicial autonomy.⁶⁸ Chad presents a distinct model altogether. The 2021 military takeover following Idriss Déby's death resembled a dynastic succession, in which a Transitional Military Council displaced the constitutional order without meaningful judicial involvement, thereby marginalising courts rather than co-opting them as instruments of legitimation.⁶⁹

A further difference lies in the depth and historical character of judicial erosion in each state. In Sudan, the weakening of judicial independence is embedded in a long trajectory of authoritarian and militarised governance, such that recent coups did not merely interrupt constitutionalism but exposed the structural incapacity of transitional arrangements to insulate courts from entrenched military influence and legacy

org/10.5771/0506-7286-2023-1-241.

⁶⁵ Lennon Monyae and Bhaso Ndzendze, "The Resurgence of Unconstitutional Changes of Government in Africa: Democratic Renewal in the Year of Elections," *Conflict & Resilience Monitor* (ACCORD), March 28, 2024, accessed April 23, 2026, <https://www.accord.org.za/analysis/the-resurgence-of-unconstitutional-changes-of-government-in-africa-democratic-renewal-in-the-year-of-elections/>.

⁶⁶ BBC News, "Mali Names Coup Leader Col Assimi Goïta as Transitional President," May 29, 2021, accessed April 24, 2026, <https://www.bbc.com/news/world-africa-57290761>.

⁶⁷ Mushoriwa, "An Africa of Good Governance," 236.

⁶⁸ Andrew E. Yaw Tchie and Mariana Llorens Zabala, "Consolidating Peace? The Inner Struggles of Sudan's Transition Agreement," *African Journal on Conflict Resolution* 24, no. 1 (2024), <https://doi.org/10.17159/ajcr.v24i1.17865>.

⁶⁹ Daniel Eizenga and Katie Nodjimbadem, "Chad's Constitutional Referendum Promises a Transition without Change—or Stability," Africa Center for Strategic Studies, November 28, 2023, <https://africa.center.org/spotlight/chads-constitutional-referendum-promises-a-transition-without-change-or-stability/>.

networks.⁷⁰ By contrast, Mali and Guinea exemplify more recent patterns of democratic backsliding in West Africa, where coups have capitalised on public dissatisfaction with corruption and insecurity. However, Mali remains distinctive for the repeated involvement of the judiciary in legitimising successive coups, whereas Guinea's trajectory reflects prolonged military management of a transition, with judicial institutions sidelined within an executive-dominated framework.⁷¹ Chad, in turn, demonstrates a more enduring pattern of personalised and security-driven rule, in which the judiciary has historically played a peripheral role. The 2021 transition thus reproduced, rather than disrupted, a system in which courts lack meaningful independence from executive authority.⁷² Accordingly, while all four countries reveal that unconstitutional changes of government have undermined judicial independence, they have done so through different mechanisms. Mali has done so through overt judicial legitimisation, Guinea through transitional constitutionalism under military control, Sudan through the collapse of a contested constitutional transition, and Chad through executive-military succession that have bypassed judicial structures almost entirely.

5. Concluding Remarks and Recommendations

This article has examined the institutional and constitutional dimensions of judicial independence in African states that have undergone unconstitutional changes of government (UCGs), with particular reference to Mali, Guinea, Sudan, and Chad. It began by situating judicial independence within its conceptual framework, highlighting its dual individual and institutional dimensions, and its firm entrenchment in international and regional legal instruments. It then explored the phenomenon of UCGs in Africa, demonstrating how such disruptions to constitutional order generate profound legal uncertainty, weaken institutional safeguards, and erode the rule of law. Building on this foundation, the article analysed the specific ways in which UCGs affect judicial institutions, before undertaking a comparative assessment of selected case studies. As reflected throughout the analysis, the central concern has been the extent to which courts in post-UCG contexts are able – or unable – to maintain autonomy, uphold constitutionalism, and protect fundamental rights.

A consistent theme emerging from the paper is that unconstitutional changes of government fundamentally reconfigure the relationship between law and political power. By displacing or suspending constitutional frameworks, UCGs undermine the legal foundations upon which judicial independence is premised. In all four case studies, the suspension or alteration of constitutional orders resulted in the weakening of institutional checks and balances, thereby facilitating executive dominance over judicial structures. In Mali and Guinea, this took the form of judicial involvement – directly or indirectly – in legitimising new regimes, particularly through the endorsement of

⁷⁰ Tchic and Llorens Zabala, "Consolidating Peace?"

⁷¹ Mushoriwa, "An Africa of Good Governance," 240.

⁷² Eizenga and Nodjimbadem, "Chad's Constitutional Referendum."

transitional arrangements or electoral outcomes.⁷³ In Sudan, the repeated interruption of transitional processes exposed the fragility of judicial reform efforts and the susceptibility of courts to shifting political dynamics.⁷⁴ In Chad, longstanding patterns of executive control over the judiciary were reinforced by a military-led succession that marginalised judicial institutions altogether.⁷⁵ Despite these contextual differences, the comparative analysis confirms that UCGs consistently erode both the institutional and decisional independence of the judiciary.

The findings of the article also highlight the fact that the erosion of judicial independence in post-UCG contexts is rarely an entirely new phenomenon. Rather, unconstitutional regime changes often exacerbate pre-existing structural weaknesses, including executive dominance, limited judicial capacity, and weak cultures of constitutionalism. In Mali, for example, the politicisation of the Constitutional Court prior to the 2020 coup had already undermined public confidence in the judiciary, thereby limiting its ability to resist executive interference during the transition.⁷⁶ Similarly, in Guinea, the judiciary's earlier acquiescence to controversial constitutional amendments facilitated its subsequent subordination to military authorities.⁷⁷ In Sudan and Chad, the persistence of authoritarian governance traditions further constrained the prospects for meaningful judicial independence. These observations suggest that UCGs should be understood not only as moments of rupture, but also as catalysts that deepen existing institutional vulnerabilities.

Against this backdrop, the article has argued that safeguarding judicial independence in states affected by UCGs requires a multidimensional and sustained approach. Central to this argument is the recognition that while constitutional provisions guaranteeing judicial independence are necessary, they are insufficient on their own. Constitutional texts, however robust, cannot by themselves withstand determined political interference in contexts where institutional safeguards are weak and political commitment to the rule of law is limited. As Fombad aptly observes, the effectiveness of constitutional guarantees ultimately depends on the broader political and institutional environment within which they operate.⁷⁸ It is in that context and against that background that the following recommendations are made.

First, there is a need to entrench and strengthen constitutional guarantees of judicial independence. Such guarantees should explicitly protect the autonomy, impartiality, and security of tenure of judges, as well as establish transparent and merit-based processes for judicial appointments and promotions.⁷⁹ In addition, constitutional provisions should include safeguards against arbitrary suspension or amendment, particularly during periods of political transition. Mechanisms such as supermajority

⁷³ Asiedu, "Guinea, Gabon, and the Judicial Certification of Post-Coup Rule."

⁷⁴ Tchie and Llorens Zabala, "Consolidating Peace?"

⁷⁵ See Eizenga and Nodjimbadem, "Chad's Constitutional Referendum."

⁷⁶ See Korotayev and Khokhlova, "Revolutionary Events in Mali," 200.

⁷⁷ Mushoriwa, "An Africa of Good Governance," 240.

⁷⁸ Fombad, "The Struggle to Defend the Independence of the Judiciary," 230.

⁷⁹ United Nations, *Basic Principles on the Independence of the Judiciary*, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, August 26–September 6, 1985, UN Doc. A/CONF.121/22/Rev.1, 59, <https://digitallibrary.un.org/record/114498>.

requirements for constitutional amendments, the entrenchment of judicial councils with independent composition, and clear limitations on executive authority can enhance the resilience of constitutional frameworks. However, as demonstrated in the case studies, these formal protections must be supported by broader institutional and political reforms if they are to be effective in practice.

Second, building institutional resilience within the judiciary is critical. Judicial independence depends not only on formal legal guarantees but also on the capacity of institutions to withstand political pressure and maintain professional integrity. This requires adequate resourcing of the judiciary, strengthened administrative autonomy, and the development of a robust judicial culture grounded in ethical standards and accountability.⁸⁰ Judicial training, peer support networks, and engagement with civil society and the legal profession can further reinforce institutional resilience. In contexts of UCGs, where formal protections are often weakened or suspended, resilient institutions can provide an important buffer against executive encroachment.

Third, practical and structural reforms are essential to operationalise constitutional guarantees. These reforms should address the systemic vulnerabilities that enable political interference in judicial processes. For instance, the establishment of independent judicial service commissions can help depoliticise appointment and disciplinary procedures, while clear and enforceable rules governing judicial review can strengthen the capacity of courts to scrutinise executive actions.⁸¹ According to Azeem Doger: ‘...the process of judicial appointments must be transparent, merit-based, and insulated from partisan politics, often involving judicial commissions with cross-branch representation. The judiciary must also possess the power of contempt to protect its dignity and authority from scurrilous attacks...’⁸²

Transitional authorities should also be constrained by legal frameworks that prevent unilateral restructuring of judicial institutions or the dismissal of judges without due process. Without such reforms, constitutional guarantees risk remaining largely symbolic, with limited impact on the actual functioning of the judiciary.

Fourth, the role of regional and international enforcement mechanisms must be enhanced. The African Union and regional economic communities have developed important normative frameworks condemning unconstitutional changes of government and promoting constitutional governance.⁸³ However, the effectiveness of these frameworks has been undermined by inconsistent enforcement and limited political will. Strengthening regional responses to UCGs requires more consistent application of sanctions, improved monitoring of judicial independence during transitional periods, and greater support for domestic reform processes. Regional judicial bodies, such as the African Court on Human and Peoples’ Rights, can also play a more proactive role in

⁸⁰ Azeem Dogar, “The Challenges of Independence of Judiciary,” *International Journal of Law and Policy* 3, no. 12 (2025): 49–67, <https://doi.org/10.59022/ijlp.466>.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Christopher Nyinevi and Richard Fosu, “The African Union’s Prohibition of Unconstitutional Changes of Government: An Uneasy Choice between Fidelity to Principle and Pragmatism,” *African Security* 16, no. 1 (2023): 95–119, <https://doi.org/10.1080/19392206.2023.2195748>.

adjudicating violations and providing remedies.⁸⁴ In this regard, effective regional enforcement mechanisms are indispensable for reinforcing domestic efforts to safeguard judicial independence.

Fifth, and perhaps most importantly, there must be a sustained commitment to the principle of separation of powers. Judicial independence cannot be secured in isolation; it is intrinsically linked to the broader constitutional architecture of governance. In UCG contexts, where executive authority is often concentrated and unchecked, restoring a functional balance between the branches of government is essential. This requires not only legal and institutional reforms but also a broader political and societal commitment to constitutionalism. Civil society organisations, the media, and academic institutions have a vital role to play in promoting accountability, advocating for judicial independence, and fostering a culture of respect for the rule of law.⁸⁵ As opined by Bhanye and Ngwenya, ‘...the pivotal role played by civil society, media, and education as bulwarks against authoritarian proclivities indicates the indispensable role of these sectors in the democratisation process.’⁸⁶

Finally, the protection of judicial independence must be understood as integral to the broader human rights framework. As the article has demonstrated, the erosion of judicial autonomy in post-UCG contexts has direct and significant implications for the protection of fundamental rights. Where courts are unable to function independently, individuals are deprived of effective remedies for rights violations, and the rule of law is weakened. As stated by Margeret Satterthwaite: ‘...an independent judiciary is vital to the protection of all human rights. It's absolutely essential to resisting undue influence, ensuring equality, and providing remedies for justice problems. It's easy to understand why judicial independence is important.’⁸⁷

A human rights-based approach to judicial reform, grounded in principles of accountability, transparency, participation, and non-discrimination, can enhance both the legitimacy and effectiveness of efforts to strengthen judicial independence.⁸⁸

In conclusion, this article has shown that unconstitutional changes of government pose a profound and multifaceted threat to judicial independence in African states. While constitutional guarantees remain an essential foundation, they are insufficient in the absence of institutional resilience, practical reforms, and effective

⁸⁴ See Linda Mushoriwa, “The African Court’s Jurisdiction over the Crime of Unconstitutional Change of Government and the African Union’s Sanctions Regime: A Comparative Analysis,” *Comparative and International Law Journal of Southern Africa* 57, no. 1 (2024), <https://doi.org/10.25159/2522-3062/11635>.

⁸⁵ Johannes Itai Bhanye and Bonginkosi Ngwenya, “African Democracy under Siege? A Review of the Surge in Military Coups in Africa,” *Africa Insight* 53, no. 3 (2023): 84–99, https://doi.org/10.10520/ejc-afrins_v53_n3_a6.

⁸⁶ Ibid.

⁸⁷ Margaret Satterthwaite, “The Role of an Independent Judiciary in Protecting Rule of Law,” remarks delivered at the opening session of the Asia Pacific Justice Forum, December 8–9, 2022, published by the World Justice Project, January 3, 2023, accessed April 26, 2026, <https://worldjusticeproject.org/news/role-independent-judiciary-protecting-rule-law>.

⁸⁸ John Motsamai Modise, “Strengthening Judicial Independence, Accountability Enhancing, International Cooperation on Justice and Human Rights,” *International Journal of Innovative Science and Research Technology* 9, no. 10 (2024): 2040–2050, <https://doi.org/10.38124/ijisrt/IJISRT24OCT592>.

regional enforcement mechanisms. Safeguarding judicial independence in such contexts requires a holistic approach that combines legal, institutional, and political strategies, supported by a sustained commitment to the separation of powers and the rule of law. Only through such an integrated and context-sensitive approach can the judiciary fulfil its role as a guardian of constitutionalism and a protector of human rights in states emerging from unconstitutional disruptions of governance.

Bibliography

1. Agbiboa, Daniel E. "Life after Idris Déby: Quo Vadis, Chad?" *Conflict & Resilience Monitor* (ACCORD), May 19, 2021. Accessed April 20, 2026. <https://www.accord.org.za/analysis/life-after-idris-deby-quo-vadis-chad/>.
2. Akinola, Adeoye O., and Ratidzo Makombe. "Rethinking the Resurgence of Military Coups in Africa." *Journal of Asian and African Studies* 60, no. 5 (2025): 2847–2863. <https://doi.org/10.1177/00219096231224680>.
3. Asiedu, Michael. "Guinea, Gabon, and the Judicial Certification of Post-Coup Rule in Africa." *The Loop*, January 21, 2026. Accessed March 12, 2026. <https://theloop.ecpr.eu/guinea-gabon-and-the-judicial-certification-of-post-coup-rule-in-africa/>.
4. Bhanye, Johannes Itai, and Bonginkosi Ngwenya. "African Democracy under Siege? A Review of the Surge in Military Coups in Africa." *Africa Insight* 53, no. 3 (2023): 84–99. https://doi.org/10.10520/ejc-afriins_v53_n3_a6.
5. Bjørnskov, Christian, and Katharina Pfaff. "Differences Matter: The Effect of Coup Types on Physical Integrity Rights." *European Journal of Political Economy* 69 (2021): 102027. <https://doi.org/10.1016/j.ejpoleco.2021.102027>.
6. Bulmer, Elliot. *Emergency Powers*. International IDEA Constitution-Building Primer 18. Stockholm: International Institute for Democracy and Electoral Assistance, 2018. <https://doi.org/10.31752/idea.2018.29>.
7. Colón-Ríos, Joel I., Eva Marlene Hausteiner, Hjalte Lokdam, Pasquale Pasquino, Lucia Rubinelli, and William Selinger. "Constituent Power and Its Institutions." *Contemporary Political Theory* 20, no. 4 (2021): 926–956. <https://doi.org/10.1057/s41296-021-00467-z>.
8. Davies, Brooke. *Sudan's 2019 Constitutional Declaration: Its Impact on the Transition*. Stockholm: International Institute for Democracy and Electoral Assistance, 2022. <https://doi.org/10.31752/idea.2022.53>.
9. Dersso, Solomon Ayele. *Unconstitutional Changes of Government and Unconstitutional Practices in Africa*. African Politics, African Peace, Paper no. 2. World Peace Foundation, June 2016. Accessed January 29, 2026. <https://worldpeacefoundation.org/wp-content/uploads/2016/06/Unconstitutional-Changes-of-Government.pdf>.
10. Devermont, Judd. "Guinea: The Causes and Consequences of West Africa's Latest Coup." Center for Strategic and International Studies, September 8, 2021. Accessed April 18, 2026. <https://www.csis.org/analysis/guinea-causes-and-consequences-west-africas-latest-coup>.
11. Dogar, Azeem. "The Challenges of Independence of Judiciary." *International Journal of Law and Policy* 3, no. 12 (2025): 49–67. <https://doi.org/10.59022/ijlp.466>.
12. Eizenga, Daniel, and Katie Nodjimbadem. "Chad's Constitutional Referendum Promises a Transition without Change—or Stability." Africa Center for Strategic Studies, November 28, 2023. <https://africacenter.org/spotlight/chads-constitutional->

- referendum-promises-a-transition-without-change-or-stability/.
13. Fombad, Charles Manga, and Lukman Adebisi Abdulrauf. "Comparative Overview of the Constitutional Framework for Controlling the Exercise of Emergency Powers in Africa." *African Human Rights Law Journal* 20, no. 2 (2020): 376–411. <https://doi.org/10.17159/1996-2096/2020/v20n2a2>.
14. Fombad, Charles Manga. "The Struggle to Defend the Independence of the Judiciary in Africa." In *Challenged Justice: In Pursuit of Judicial Independence*, edited by Shimon Shetreet, Hiram Chodosh, and Eric Helland, 223–248. Leiden: Brill Nijhoff, 2021. https://doi.org/10.1163/9789004421554_011.
15. Guenfold, Ibtissem, and Morgan Winsor. "Chad President Dies in Battle with Rebel Group, Nation's Army Says." *ABC News*, April 20, 2021. Accessed April 20, 2026. <https://abcnews.go.com/International/chad-president-dies-battle-rebel-group-nations-army/story?id=77186842>.
16. Hoinathy, Remadji. "Chad's Struggle for Democracy Is Far from Over." *ISS Today*. Institute for Security Studies, July 31, 2025. Accessed April 20, 2026. <https://issafrica.org/iss-today/chad-s-struggle-for-democracy-is-far-from-over>.
17. Huchhanavar, Shivaraj S. "Conceptualising Judicial Independence and Accountability from a Regulatory Perspective." *Oslo Law Review* 9, no. 2 (2023): 110–148. <https://doi.org/10.18261/olr.9.2.3>.
18. Kika, Musa. *The People Demand a Working Social Contract: Responding to Unconstitutional Change of Governments in Africa*. Data for Governance Alliance Policy Brief no. 16. Data for Governance Alliance, October 12, 2023. <https://dataforgovernance.africa/wp-content/uploads/2023/11/the-people-demand-a-working-social-contract-responding-to-unconstitutional-change-of-governments-in-africa.pdf>.
19. Korotayev, Andrey, and Alina Khokhlova. "Revolutionary Events in Mali, 2020–2021." In *New Wave of Revolutions in the MENA Region: A Comparative Perspective*, edited by Leonid Issaev and Andrey Korotayev, 191–218. Perspectives on Development in the Middle East and North Africa (MENA) Region. Cham: Springer, 2022. https://doi.org/10.1007/978-3-031-15135-4_9.
20. Kurtz, Gerrit. *Power Relations in Sudan after the Fall of Bashir: From Revolution to War*. SWP Research Paper 2024/RP 05. Berlin: Stiftung Wissenschaft und Politik, May 2024. <https://doi.org/10.18449/2024RP05>.
21. Lenoir, Gwenaëlle. "Sudan: A Coup against Justice." *Justice Info*, January 28, 2022. Accessed April 20, 2026. <https://www.justiceinfo.net/en/87063-sudan-coup-against-justice.html>.
22. Mahdi, Maram. "Constitutional Manipulations Often Precede African Coups." Centre for International Governance Innovation, May 9, 2024. Accessed March 12, 2026. <https://www.cigionline.org/articles/constitutional-manipulations-often-precede-african-coups/>.
23. Marawako, Jonah. "Reflecting on the Impacts of the 2013 Coup in Central Africa Republic on Economic Security." *International Journal of Scientific Research and Management* 10, no. 2 (2022): 940–958. <https://doi.org/10.18535/ijssrm/v10i2.sh02>.
24. Modise, John Motsamai. "Strengthening Judicial Independence, Accountability Enhancing, International Cooperation on Justice and Human Rights." *International Journal of Innovative Science and Research Technology* 9, no. 10 (2024): 2040–2050. <https://doi.org/10.38124/ijisrt/IJISRT24OCT592>.
25. Monyae, Lennon, and Bhaso Ndzendze. "The Resurgence of Unconstitutional Changes of Government in Africa: Democratic Renewal in the Year of Elections." *Conflict &*

- Resilience Monitor* (ACCORD), March 28, 2024. Accessed March 12, 2026. <https://www.accord.org.za/analysis/the-resurgence-of-unconstitutional-changes-of-government-in-africa-democratic-renewal-in-the-year-of-elections/>.
26. Monyae, Lennon, and Bhaso Ndzendze. "The Resurgence of Unconstitutional Changes of Government in Africa: Democratic Renewal in the Year of Elections." *Conflict & Resilience Monitor* (ACCORD), March 28, 2024. Accessed April 23, 2026. <https://www.accord.org.za/analysis/the-resurgence-of-unconstitutional-changes-of-government-in-africa-democratic-renewal-in-the-year-of-elections/>.
27. Mubangizi, John C. "The Implications of Unconstitutional Changes of Government for Democracy and the Rule of Law in Africa: A Human Rights Perspective." *Law, Democracy & Development* 30 (2026): 1–37. <https://doi.org/10.17159/2077-4907/2026/ldd.v30.1>.
28. Mushoriwa, Linda. "An Africa of Good Governance, Democracy and the Rule of Law? Revisiting the Root Causes of Unconstitutional Changes of Government." *Law, Democracy & Development* 29 (2025): 224–249. <https://doi.org/10.17159/2077-4907/2025/ldd.v29.11>.
29. Mushoriwa, Linda. "The African Court's Jurisdiction over the Crime of Unconstitutional Change of Government and the African Union's Sanctions Regime: A Comparative Analysis." *Comparative and International Law Journal of Southern Africa* 57, no. 1 (2024). <https://doi.org/10.25159/2522-3062/11635>.
30. Mzikamanda, Rizine R. "Constitutionalism and the Judiciary: A Perspective from Southern Africa." Paper presented at the Conference for Law Reform Agencies for Eastern and Southern Africa, "The Role of Law Reform in Constitutionalism, Rule of Law and Democratic Governance," Lilongwe, Malawi, November 7–11, 2011. Accessed March 12, 2026. https://www.justice.gov.za/alraesa/conferences/2011malawi/constitutionalism-and-the-judiciary_mzikamanda.pdf.
31. Nyinevi, Christopher, and Richard Fosu. "The African Union's Prohibition of Unconstitutional Changes of Government: An Uneasy Choice between Fidelity to Principle and Pragmatism." *African Security* 16, no. 1 (2023): 95–119. <https://doi.org/10.1080/19392206.2023.2195748>.
32. Odinkalu, Chidi Anselm. "A Ruler's Shield? Re-evaluating the Norm against Unconstitutional Change of Government in Africa." *African Human Rights Law Journal* 25, no. 1 (2025): 1–36. <https://doi.org/10.17159/1996-2096/2025/v25n1a1>.
33. Omotola, J. Shola. *Unconstitutional Changes of Government in Africa: What Implications for Democratic Consolidation?* Discussion Paper 70. Uppsala: Nordiska Afrikainstitutet, 2011. Accessed March 12, 2026. <https://www.diva-portal.org/smash/get/diva2:478511/FULLTEXT01.pdf>.
34. Organization of African Unity. "Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government." AHG/Decl.5 (XXXVI). Adopted at the Thirty-Sixth Ordinary Session of the Assembly of Heads of State and Government, Lomé, Togo, July 12, 2000. <https://archives.au.int/handle/123456789/915>.
35. Organization of African Unity. *African Charter on Human and Peoples' Rights*. Adopted June 27, 1981. OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). Entered into force October 21, 1986.
36. Sankare, Oumar. "African Union Moves to Lift Guinea's Suspension after Successful Transition to Constitutional Rule." *Anadolu Agency*, January 23, 2026. Accessed April 20, 2026. <https://www.aa.com.tr/en/africa/african-union-moves-to-lift-guineas-suspension-after-successful-transition-to-constitutional-rule/3808418>.

37. Satterthwaite, Margaret. "The Role of an Independent Judiciary in Protecting Rule of Law." Remarks delivered at the opening session of the Asia Pacific Justice Forum, December 8–9, 2022. World Justice Project, January 3, 2023. Accessed April 26, 2026. <https://worldjusticeproject.org/news/role-independent-judiciary-protecting-rule-law>.
38. Siyo, Lunga, and John Cantius Mubangizi. "The Independence of South African Judges: A Constitutional and Legislative Perspective." *Potchefstroom Electronic Law Journal* 18, no. 4 (2015): 817–846. <https://doi.org/10.4314/pelj.v18i4.03>.
39. Socher, Johannes. "Assistance to Constitutional Courts in Fragile Contexts: The Case of Mali, 2017–2022." *Verfassung und Recht in Übersee / World Comparative Law* 56, no. 1 (2023): 241–256. <https://doi.org/10.5771/0506-7286-2023-1-241>.
40. Souaré, Issaka K. "The African Union as a Norm Entrepreneur on Military Coups d'État in Africa (1952–2012): An Empirical Assessment." *The Journal of Modern African Studies* 52, no. 1 (2014): 69–94. <https://doi.org/10.1017/S0022278X13000785>.
41. Stefan, Cristina G. "Lessons in Atrocity Prevention: A Closer Look at Guinea." *Journal of International Peacekeeping* 24, nos. 3–4 (2021): 367–401. <https://doi.org/10.1163/18754112-24030005>.
42. Tagowa, Wonotanzokan Nzeda, John Moses Maikomo, and Enoch Faira Annafa. "Democracy and Resurgence of Military Coups in West Africa (2010–2023)." *FUWUKARI Journal of Social Sciences (FUWJSS)* 4, no. 1 (2025): 388–402.
43. Tchie, Andrew E. Yaw, and Mariana Llorens Zabala. "Consolidating Peace? The Inner Struggles of Sudan's Transition Agreement." *African Journal on Conflict Resolution* 24, no. 1 (2024). <https://doi.org/10.17159/ajcr.v24i1.17865>.
44. Tiwari, Shashvat. "The Role of the Judiciary in Upholding Democratic Principles." *International Journal of Law Management & Humanities* 7, no. 6 (2024): 539–555.
45. United Nations Development Programme. *Protecting Human Rights in Constitutions*. 2023. Accessed March 12, 2026. <https://www.undp.org/sites/g/files/zskgke326/files/2023-10/undp-protecting-human-rights-in-constitutions.pdf>.
46. United Nations. *Basic Principles on the Independence of the Judiciary*. Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, August 26–September 6, 1985. UN Doc. A/CONF.121/22/Rev.1, 59. <https://digitallibrary.un.org/record/114498>.
47. Wing, Susanna D. *Mali's Precarious Democracy and the Causes of Conflict*. Special Report 331. Washington, DC: United States Institute of Peace, May 2013. Accessed April 18, 2026. https://www.files.ethz.ch/isn/164172/SR331_Malis_Precarious_Democracy_and_the_Causes_of_Conflict.pdf.
48. Yaşamış, Firuz Demir. "Judicial Coups, Activism and Politicization." *International Journal of Emerging Multidisciplinaries: Social Science* 4, no. 1 (2025): 272–306. <https://doi.org/10.54938/ijemdss.2025.04.1.423>.