

The President in Sub-Saharan Africa: constitutional guardian or hyper-presidential drift?

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SUMMARY: 1. Introduction. – 2. The Presidential Role in Recent Sahelian History. – 3. Defining the Role of the President. – 3.1. The Powers of the President: Scope and Influence – 3.2. Emergency powers – 3.2.1. Burkina Faso: Navigating Crisis and Power – 3.2.2. Mali: Presidential Authority Amidst Security Challenges – 3.2.3. Senegal: Stability or Presidential Overreach? – 4. Conclusions

1. Introduction

Presidentialism and democracy have always been a subject of great interest among comparative law scholars¹. Eminent literature has, in fact, demonstrated that there is a definitive correlation between the organization of power within a state, which is referred to as the form of state, and the actual functioning of the institutions of that state, which is known as the form of government². More precisely, scholars suggest that parliamentary systems have historically demonstrated a greater capacity to enhance democratic governance³, and that a presidential⁴ or semi-presi-

¹ J.A. CHEIBUB, *Presidentialism, Parliamentarism, and Democracy*, Cambridge, 2007; S. Mainwaring and M.S. SHUGART, *Juan Linz: Presidentialism, and Democracy: A Critical Appraisal*, in *Comparative Politics*, vol. 29, n. 4, 1997; B. CARAVITA, *Il presidente della Repubblica nell'evoluzione della forma di governo: i poteri di nomina e di scioglimento*, in *Federalismi*, 2010, 3.

² As already noted by Mortati: «Il problema delle “forme di governo” non può essere considerato in maniera del tutto staccata da quello delle “forme di Stato” [perché] rappresentano i due aspetti di un unico fondamentale problema: quello che attiene al modo di essere del rapporto tra Stato-autorità e Stato-società», cf. C. MORTATI, *Le forme di governo. Lezioni*, Padova, 1973, 3.

³ S. MOESTRUP, *Semi-presidentialism in Africa: Patterns and Trends*, in *Semi-presidentialism and Democracy*, London, 2011. According to Mezzetti: «La forma di governo presidenziale denota rispetto alla forma di governo parlamentare una minore funzionalità ai fini del consolidamento democratico. Il novero dei poteri e delle funzioni di rilevante peso specifico normalmente attribuite al capo dello Stato in seno alle forme di governo presidenziali, fattore cui spesso si aggiunge -come si è visto- un fragile ovvero frammentato sistema politico partitico ha prodotto deriva autoritaria di tipo presidenzialista», cf. L. MEZZETTI, *Le democrazie incerte: Transizioni costituzionali e consolidamento della democrazia in Europa orientale, Africa, America Latina, Asia*, Torino, 2000, 137-272.

⁴ In a presidential system, the President is part of the executive but remains a

dential⁵ form of government, which by its very nature, favors a prevalence of the executive over the legislative power, can be less conducive to the flourishing of democratic institutions⁶. Indeed, in systems where the executive tends to concentrate a preeminent share of political authority, the institutional design must provide for robust mechanisms of checks and balances to ensure accountability and prevent authoritarian drift. The comparative experience of the United States and France, respectively embodying presidential and semi-presidential systems, offers a useful analytical framework to understand the consequences of different configura-

separate entity from the Government. The executive power is not collegial, as the President is both head of State and head of Government, independently elected and not accountable to Parliament. In a semi-presidential system, the executive is led by the Prime Minister, who is accountable to Parliament, while the President holds varying degrees of authority but is not formally part of the Government.

⁵ The category of semi-presidentialism was introduced by M. DUVERGER, *Institutions politiques et droit constitutionnel*, Paris, 1970, but is debated in literature. Some authors refer to a parliamentary form of government with a presidential tendency, cf. J.C. COLLIARD, *Les régimes parlementaires contemporains*, Paris, 1978, 280 ff.; B. FRANÇOISE, *Le régime politique de la Ve République*, Paris, 2011, 29 ff. Other scholarship refers to a presidential form of government, cf. C. ÉMERI, *L'ingénierie constitutionnelle de la Ve République*, 1996; C. Leclercq, *Droit constitutionnel et institutions politiques*, Paris, 1981; J. GICQUEL, *Droit constitutionnel et institutions politiques*, Paris, 2007, 565. Tarchi, for instance, introduces a distinction between forms of government “with presidential and parliamentary components”. In his opinion, in order to be classified as semipresidential, a form of government must not only provide for the direct election of the head of State, but also attribute important powers to him, cf. R. TARCHI, *Riflessioni in tema di forme di governo a partire dalla dottrina Mauro Volpi*, in *DPCE online*, vol. 49, n. 4, 2021. Indeed, this particular form of government diverges both from a parliamentary model, largely due to the direct election of the President of the Republic, and from a presidential model, due to the confidence relationship between the Parliament and the Government.

⁶ G. CONAC, *Semi-presidentialism in a Francophone Context*, in R. ELGIE and S. MOESTRUP (Eds), *Semi-presidentialism Outside Europe*, London, 2007, 78-91. Semi-presidentialism, in addition to potentially create a conflict between the two heads of executive power, can exacerbate the shortcomings of presidential systems, such as the rigidity of the relation among different powers and divided government, while simultaneously introducing shortcomings of parliamentary systems, such as the instability of governing coalitions, cf. R. ELGIE, *Divided Government in Comparative Perspective*, Oxford, 2001. In fact, semi-presidentialism «in paesi caratterizzati da un funzionamento, nel migliore dei casi, solo semi-democratico delle istituzioni, ha dato vita a situazioni fondate per lo più su un netto squilibrio tra i poteri a vantaggio di quello esecutivo e del Presidente eletto dal popolo», cf. G. MORBIDELLI, *Comparative Public Law*, Torino, 2016, 449.

tions of executive power⁷. The United States Constitution is emblematic of a system built upon the doctrine of checks and balances, wherein each branch of government is endowed with tools to limit the other branches⁸. The President and Congress are separately elected, possess distinct mandates, and are endowed with significant constitutional instruments to limit each other. This structure, rooted in Federalist thinking⁹, is designed to prevent the dominance of any single branch, particularly the executive. By contrast, the French Fifth Republic, reflects a more nuanced configuration¹⁰. It introduces a semi-presidential system combining a directly elected President with a Prime Minister responsible to Parliament. While this dual executive was meant to ensure both legitimacy and accountability, in practice the balance has tilted towards the primacy of the President, particularly when supported by a parliamentary majority¹¹.

A compelling dimension of this analysis lies in exploring how different countries have adopted such forms of government to align with their unique sociopolitical contexts and the strategic ambitions of their leader-

⁷ According to Sartori's distinction between strong and weak separation of powers, the U.S. model represents a case of strong separation, where the executive and the legislative branches are strictly divided and independently legitimized, while the French semi-presidential model reflects a hybrid or semi-separated system, with more fluid boundaries between powers, cf. G. SARTORI, *Ingegneria Costituzionale Comparata*, Bologna, 2013.

⁸ Article I, Section 1 of the U.S. Constitution vests legislative powers in the Congress of the United States, itself divided into a House of Representatives and a Senate. Article II, Section 1 vests executive authority in the President of the United States. Article III, Section 1 vests judicial authority in the Supreme Court of the United States.

⁹ The Federalist Papers, particularly No. 51, emphasize the idea that "*ambition must be made to counteract ambition*", meaning that each branch of government must have tools to check the powers of the others, cf. J. MADISON, *The Federalist Papers*, n. 47–51, 1788.

¹⁰ For an analysis of the French experience, see J. ABERG and T. SEDELIUS, *A Structured Review of Semi-Presidential Study: Debates, Results and Missing Pieces*, in *British Journal of Political Science*, vol. 50, n. 3, 2020, 1117 ff; M. VOLPI, *Forma di governo semipresidenziale e V Repubblica francese. Evoluzioni dottrinali e fattuali*, in *Diritto pubblico comparato ed europeo*, November 2024, 153-168.

¹¹ Although the 2008 constitutional reform promoted by President Nicolas Sarkozy aimed to rebalance powers, for instance by strengthening the role of parliamentary commissions and enhancing the rights of the opposition, its practical effects have remained limited. As noted by Rousseau, despite constitutional amendments, the imbalance between executive initiative and parliamentary control persists, cf. D. ROUSSEAU, *La démocratie continue*, Paris, 2012.

ship. Exploring the persistence of the Presidential role reveals intriguing insights. Indeed, as will be shown by the present work, the considerable authority vested in the presidency and the executive branch in these countries makes the establishment of a robust system of democratic institutions a significant challenge. This difficulty, therefore, amplifies the inherent risks that these forms of government hide, particularly regarding the separation of powers and adherence to the principles of the rule of law. Delving into the resilience of these models and their implications offers valuable perspectives on the political dynamics and challenges faced by democracy nowadays.

This analysis will focus on three selected countries in the Sahel region¹²: Burkina Faso, Mali, and Senegal. The choice to focus on these countries is not incidental. All three are former French colonies located in the Sahel region, and they share a significant historical and legal heritage shaped by the colonial administration and, later, by the constitutional and institutional models of the French Fifth Republic. This shared legacy provides a common baseline that facilitates comparative analysis. Yet, despite this common foundation, these countries have followed markedly different constitutional trajectories. Burkina Faso and Mali have experienced repeated authoritarian regressions and constitutional disruptions, often centered on the excessive concentration of power in the presidency, a phenomenon that can be seen as an extreme appropriation of the Gaullist legacy¹³. In contrast, Senegal has maintained a relatively stable

¹² The term Sahel comes from the Arabic word *sabil* (shore), comparing the Sahara to a sea surrounded by a coast, see O.J. WALTHER and D. RETAILLÉ, *Mapping the Sahelian Space*, in L.A. VILLALÓN (Eds), *The Oxford Handbook of the African Sahel*, Oxford, 2021, 15-31. Although there is no unique definition of the Sahel region, for the purposes of this study, we have selected the definition provided by the United Nations (UN) as part of the UN Support Plan for the Sahel Countries: “*the vast semi-arid region of Africa separating the Sahara Desert to the north and tropical savannas to the south, including Burkina Faso, Cameroon, Chad, The Gambia, Guinea, Mali, Mauritania, Niger, Nigeria and Senegal*”, cf. UN Support Plan for the Sahel Countries, May 2018, available online at https://www.un.org/africarenewal/sites/www.un.org.africarenewal/files/English%20Summary%20Report_0.pdf.

¹³ In both countries, the reception of the French model went beyond the formal transposition of constitutional provisions: it included the internalization of certain unwritten norms and executive-centered practices that had marked De Gaulle's presidency during the formative decade of the Fifth Republic. These included the personalization of presidential authority, a diminished role for parliament, and

constitutional order, with regular elections, functioning institutions, and a more balanced use of presidential powers. A comparative analysis of these nations provides therefore invaluable perspectives on their distinct trajectories toward constitutional development. It underscores the factors that have enabled significant democratic advancements in some cases while also illuminating the persistent obstacles that have hindered this progress in others¹⁴.

To this end, it seems essential to begin the work with a brief overview of the historical constitutional development of these countries¹⁵,

the consolidation of a presidential “*domaine réservé*”, a space of exclusive executive competence over critical matters such as defense, foreign policy, and national security, cf. O. DUHAMEL, J. PARODI, *La constitution de la Ve République*, Paris, 1988. The result was a form of hyper-presidentialism that echoed the Gaullist emphasis on executive primacy, but without the balancing mechanisms, such as a robust administrative state or independent judiciary, that in France helped contain presidential authority, cf. E. BERTOLINI, *La perenne transizione costituzionale della Françafrique tra rottura e continuità*, Milano, 2024.

¹⁴ As argued by Hirschl, comparing countries with a common background but divergent institutional trajectories allow to well isolate and examine the specific variables that account for different outcomes. This approach, known as controlled comparison, is particularly useful when studying postcolonial states that inherited similar legal and constitutional frameworks but evolved along different political paths, cf. R. HIRSCHL, *Comparative Matters: The Renaissance of Comparative Constitutional Law*, Oxford, 2014, 228–241. See also Saunders, who emphasizes the importance of selecting cases that share structural similarities to ensure analytical coherence, cf. C. SAUNDERS, *Towards a global constitutional gene pool*, in *National Taiwan University Law Review*, vol. 4, n. 33, 2009, and Tushnet, who underlines the value of studying similar systems to explain divergent constitutional outcomes, cf. M. TUSHNET, *The Possibilities of Comparative Constitutional Law*, in *Yale Law Journal*, vol. 108, n. 6, 1999, 1225–1309.

¹⁵ Scholars refer to this phenomenon as constitutional transition. In the book “*Le transizioni costituzionali: sviluppo e crisi del costituzionalismo alla fine del XX secolo*”, De Vergottini defines “constitutional transition” as «un processo, un succedersi di fasi il cui risultato è la democratizzazione: dal punto di vista giuridico tale processo si polarizza sulla adozione di una costituzione», cf. G. DE VERGOTTINI, *Le transizioni costituzionali: sviluppo e crisi del costituzionalismo alla fine del XX secolo*, Bologna, 1998, 169. This approach was then endorsed by a number of scholars. See, for instance, C.M. FOMBAD, *Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa*, in *American Journal of Comparative Law*, vol. 55, n. 1, 2007, 1–45; G.T. HESSEBON, *The Fourth Constitution-Making Wave of Africa: Constitutions 4.0*, in *Temple International and Comparative Law Journal*, vol. 28, 2014, 185; L. DIAMOND and M. PLATTNER, *Democratization in Africa*, JHU Press, 1999.

followed by an in-depth examination of the defining features of their political systems, with particular focus on the powers of the President of the Republic. This figure, in fact, can serve as a critical lens through which to explore the challenges associated with implementing constitutional and democratic principles in these nations. By analyzing the presidency within the context of Sahelian constitutions, and one of the most relevant powers related to it, namely emergency powers, it is possible to assess the extent to which these countries uphold the principles of democracy and the rule of law. Ultimately, this study aims to understand how these states navigate the tension between the formal adoption of democratic structures and the complex, often adverse, socio-political realities on the ground and, through this, it seeks to illuminate broader lessons about the potential for democratic and constitutional evolution in the Sahel region¹⁶.

2. *The Presidential Role in Recent Sahelian History*

In the countries of the Sahel region, the executive branch, particularly the President of the Republic, has historically played a dominant and influential role. Some scholars trace this preeminence back to the pre-colonial era when governance was centered around a “chief” figure, with limited public participation in decision-making¹⁷. After gaining independence

¹⁶ In particular, with regard to the «*gaps between the normative ideals represented in constitutions and the implications of the empirical realities*», see S.J. SAPPLETON, *Constitutional Development in Postindependence Francophone West Africa: A Comparative Case Study of Senegal and Côte d'Ivoire*, in N.F. AWASOM and H.P. DLAMINI (Eds), *The Making, Unmaking and Remaking of Africa's Independence and Post-Independence Constitutions*, Berlin, 2024, 187. See also the works of Jean-Pierre Olivier de Sardan, who has documented, through empirical work, the importance of state institutions in the African context, for their role in shaping the behavior of public officials and other state agents, cf. J.-P. OLIVIER DE SARDAN, *State, Bureaucracy and Governance in Francophone West Africa: An Empirical Diagnosis, a Historical Perspective*, in *Politique Africaine*, n. 96, 2004; J.-P. OLIVIER DE SARDAN, *The Construction of States and Societies in the Sahel*, in L.A. VILLALÓN (Eds), *The Oxford Handbook of the African Sahel*, Oxford, 2021, 51-65.; T. BIRSCHENK and J.-P. OLIVIER DE SARDAN, *States at Work: Dynamics of African Bureaucracies*, Leiden, 2014.

¹⁷ Gatti, for instance, links the strong role of the President to the «*contesto culturale africano [in cui il] Capo dello Stato è la derivazione e l'espressione diretta dell'antica concezione monarchica pre-coloniale*», cf. A. GATTI, *Fortuna E Declino Del Semipresidenzialismo nell'Africa Francofona Subsahariana*, in *DPCE Online*, vol. 57, n. 1, 2023. In Sacco's opinion, the

in the 1960s, most Sahelian countries embarked on constitution-making processes that fostered the emergence of a strong presidential figure, seen as essential for overseeing the transition of power and ensuring the unity of the newly born states. The independence of Sahelian countries is closely linked to the broader process of democratization. The first “wave”¹⁸ of democratization was characterized by the adoption of Constitutions inspired by the liberal-democratic model of the former colonial power, namely the French Fifth Republic¹⁹. In particular, following the 1962 French constitutional reform, this model endowed the presidency with strong powers, significantly expanding executive authority. This is strongly reflected in the constitution of Sahelian countries. In Senegal, for instance, after the collapse of the Mali Federation²⁰, a new Consti-

centralization of powers in the hands of the President can also be traced back to the colonial design in which the Governor was very often also head of the garrison, see R. SACCO, *Il diritto africano*, Torino, 1995.

¹⁸ Huntington defines “waves of democratization” as «a group of transitions from nondemocratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period of times». According to the author, the first two waves ran from 1828 to 1926 and from 1943 to 1962, the third from 1974 to 1990, see S. P. HUNTINGTON, *The Third Wave: Democratization in the Late Twentieth Century*, London, 1993, 13–33.

¹⁹ K. AHADZI, *Les nouvelles tendances du constitutionnalisme africain: le cas des Etats d'Afrique noire francophone*, in *Revue Afrique Juridique et Politique*, vol. 2, 2002, p. 35. The rationale behind this orientation lies in the roots of the decolonization process. French decolonization in the Sahel occurred in a relatively non-traumatic manner, largely through the devolution of power to local elites who had been selected by the colonial administration and were deemed capable of ensuring continuity of governance. As a result of their cultural and educational background, closely tied to the French system, and the overt vulnerability of these states in the immediate post-independence period, these new ruling elites readily embraced the institutional models of the former metropole. This was perceived not only as a way to consolidate domestic authority, but also as a strategic choice to maintain economic and political support from France. See G. KIEH, K. GEORGE, and P. AGBESE, *Introduction: The tragedies of the authoritarian state in Africa*, in K. GEORGE and P. AGBESE (Eds), *Reconstructing the authoritarian state in Africa*, London, 2014, pp. 1–17.

²⁰ The 1959 Constitution established the Mali Federation, comprising Senegal and Mali (then French Sudan), with Modibo Keita as Premier, and Mamadou Dia of Senegal as Vice-Premier. In December 1959, France began negotiations for the federation's independence, which culminated in the decision to grant independence on 20 June 1960. However, internal tensions between Senegal and French Sudan over power distribution led to Senegal's withdrawal from the federation. On 20 August 1960, Senegal declared independence. Both countries were recognized internationally and joined the UN by

tution was adopted in 1960, initially establishing a parliamentary system with Léopold Sédar Senghor as President and Mamadou Dia as Prime Minister. However, following Dia's failed coup attempt, President Senghor introduced constitutional amendments (*Loi n°63-22 du 7 mars 1963*) that abolished the parliamentary system, replacing it with a presidential regime that significantly strengthened executive power²¹. Similarly, in Mali, the 1960 Constitution established a presidential republic under a one-party system led by the *Union Soudanaise du Rassemblement Démocratique Africain* (US/RDA) with Modibo Keita as President. In Burkina Faso (then Upper Volta), the 1960 Constitution created a presidential system with some parliamentary elements, while Maurice Yaméogo assumed power in August 1960 as leader of the *Union Démocratique Voltaïque* (UDV), establishing a strong presidential government. In all these countries, the President quickly assumed an uncontested position of primacy over the legislative and judicial branches. Endowed with significant legitimacy through popular investiture, the President wielded extensive powers, including the authority to call elections, dissolve parliament unilaterally, hold the legislative initiative, exercise veto power over laws, and convene referendums. With few constitutional constraints, incumbents extended their tenures and repeatedly ran for election. Subsequent constitutional reforms further entrenched presidential dominance, fostering a system described as "African presidentialism"²². In

mid-September 1960, cf. W. FOLTZ, *From French West Africa to the Mali Federation*, New Haven, 1965.

²¹ After his election, President Senghor promptly initiated a campaign against the primary opponents within his government and declared the *Union Progressiste Sénégalaise* the country's sole political party. Following the attempted coup d'état by Prime Minister Mamadou Dia in 1962, Mr. Senghor abolished the office of the prime minister, transferring all executive powers to the presidency. Furthermore, he implemented restrictive censorship legislation and expanded the state security apparatus with the objective of closely monitoring political competitors.

²² "Presidentialism" is a degeneration of the "presidential system", whereby «à partir d'un schéma institutionnel mixte, le Président exerce une prépondérance de fait, au détriment du Premier ministre, instrumentalisé, et du Parlement, affaibli», see M. DE VILLIERS and A. LE DIVEILLEC, *Dictionnaire du droit constitutionnel*, Paris, 2013, 280. According to Edozie: «In essence, they became presidential systems with parliamentary roots (...). These were not presidents in the classic American manner of separation of powers and checks and balances, but frequently leaders who used the presidency to subvert and ultimately eliminate pluralist democracy», see R. K. EDOZIE, *Reconstructing the Third Wave of Democracy: Comparative African Democratic Politics*, Lanham, 2009, 59.

response to the need for national unity and stable governance, necessary to lead the countries towards economic and political development²³, Sahelian leaders introduced constitutional amendments that strengthened presidential authority²⁴, often through the removal of term limits, the creation of one-party states, and the centralization of power within the presidency. Within a short period, the very leaders who had benefited from political pluralism to rise to power moved to consolidate their authority, establishing autocratic regimes²⁵ while maintaining the facade of democratic governance²⁶.

Following periods of military rule in some Sahelian countries, includ-

²³ A. DIARRA, *Démocratie et droit constitutionnel dans les pays francophones d'Afrique noire: Cas du Mali depuis 1960*, Paris, 2010.

²⁴ In reference to the specific form of government that was established by these countries during this period, scholars have employed the term “*presidential absolutism*”, cf. L.S. E. ENONCHONG, *Constitution and Governance in Cameroon*, London, 2021, 36 or the term “*neo-presidentialism*”, cf. J. BUCHMANN, *La tendance au présidentielisme dans les nouvelles constitutions négro-africaines*, in *Civilisation*, vol. 12, n. 1, 1962, 46-74. Hyden uses the concept of the “*big man rule*”, cf. G. HYDEN, *African Politics in Comparative Perspective*, New York, 2013, 97-117.

²⁵ S.J. SAPPLETON, *Constitutional Development in Postindependence Francophone West Africa: A Comparative Case Study of Senegal and Côte d'Ivoire*, cit., 183-203.

²⁶ «Le costituzioni del cosiddetto secondo ciclo sono infatti caratterizzate dal mantenimento delle strutture precedenti, entro le quali vengono iniettati tali sgritolarne sistematicamente l'impianto (...). In quest'ultimo caso, infatti la costituzione diviene un utile schermo, vantaggioso sul fronte internazionale, per nascondere la realtà interna di autoritarismo illimitato», cf. L. MEZZETTI, *Le democrazie incerte: Transizioni costituzionali e consolidamento della democrazia in Europa orientale, Africa, America Latina, Asia*, cit., 255.

ing Burkina Faso²⁷ and Mali²⁸, the 1990s marked the beginning of a new constitutional era, often described by scholars as the third “wave” of

²⁷ Indeed, the inability of post-independence governments to provide for the needs of their countries gave rise to the increasing involvement of the armed forces within the governmental apparatus. Thus, a few years after independence, from 1965 to the early 1990s, through military coups, authoritarian military regimes were established in several countries in the Sahel region. The first regime to be overthrown was that of Maurice Yaméogo in Burkina Faso, in 1966, following a series of significant protests. The resulting power vacuum enabled the military to impose itself, with Lieutenant Colonel Sangoulé Lamizana in charge of the country. In 1978, open elections were held, resulting in Mr. Lamizana's victory and subsequent tenure as president of mixed civil-military governments until the end of the 1970s. On 25 November 1980, Colonel Saye Zerbo orchestrated a coup d'état, leading to Lamizana's ousting from power. He suspended the Constitution and established the *Comité Militaire de Redressement pour le Progrès National* (CMRPN) as the supreme governmental authority. A further coup was instigated on 7 November 1982 by Major Dr. Jean-Baptiste Ouedraogo, who proceeded to transform the CMRPN into the *Conseil du salut du peuple* (CSP). The CSP maintained its prohibition on political parties and organizations while pledging a transition to civilian rule and the drafting of a new Constitution. However, internal conflict emerged between the opposing factions within the CSP. In January 1983, Captain Thomas Sankara, the prime minister, was arrested. The initiative to secure his release, spearheaded by Captain Blaise Compaoré, culminated in a military coup on 4 August 1983, that brought Mr. Sankara to power. However, the austere measures introduced by Mr. Sankara encountered mounting opposition and dissent. Finally, on 15 October 1987, Mr. Sankara was assassinated in a coup d'état, which brought Captain Blaise Compaoré to power.

²⁸ Similarly to Burkina Faso, the instability in Mali can be attributed to the inherent difficulties faced by the regime of Modibo Keita in implementing the socialist development model. This ultimately resulted in the military coup led by General Moussa Traoré on 19 November 1968. The 1974 Constitution established a one-party state under the *Union Démocratique du Peuple Malien* (UDPM) and formally revoked the political rights of individuals who had been associated with the previous regime. However, the Constitution was designed to facilitate the transition to civilian rule in Mali. The first presidential and legislative elections held under the new Constitution took place in June 1979, with Mr. Traoré receiving 99% of the votes cast. However, in the 1980s, a series of demonstrations led by students against the government started to challenge the existing regime. Traoré's government therefore allowed certain reforms, including the establishment of an independent press and independent political associations, as well as a limited multipartyism (revision of Constitution, Art. 7, in 1977). In early 1991, new protests broke out, this time with the support of government workers. On March 26, 1991, a group of military officers arrested President Traoré and suspended the Constitution. They then formed a predominantly civilian, 25-member ruling body, the *Comité de transition pour le salut du peuple* (CTSP), which appointed a civilian-led government.

democratization²⁹. Widespread protests and civil unrest forced governments to acknowledge popular demands for reform and institutionalize their power within state structures³⁰. Indeed, the failure of national leaders to fulfill their promises of development, combined with unsuccessful economic reforms and the demand for further liberalization, fueled public discontent. This period of democratization took various forms³¹. In Mali, protests in 1991 led to a coup d'état and the establishment of a transitional government. The National Conference³², held in August 1991, produced a draft Constitution emphasizing human rights, multi-party politics, and democratic elections. In a national referendum in January 1992, the new Constitution was approved, and Alpha Oumar Konaré, the candidate of the *Alliance pour la démocratie au Mali* (ADEMA), was sworn in as President on June 8, 1992. In Burkina Faso, the constitutional evolution manifested

²⁹ S. P. HUNTINGTON, *The Third Wave: Democratization in the Late Twentieth Century*, cit. This phase is also called the “spring” or “second liberation” of Africa, see M. M. MUTUA, *Africa and the Rule of Law*, in *International Journal on Human Rights*, vol. 13, n. 23, 2016, 159–173.

³⁰ R. IDRISSE, *The Dialectics of Democratization and Stability in the Sahel*, in L. A. VILLALÓN and R. IDRISSE (Eds), *Democratic Struggle, Institutional Reform, and State Resilience in the African Sahel*, Lanham, 2020, 191–210.

³¹ In this context, we borrow the concepts of liberalization and democratization as defined by Bratton and van de Walle, according to whom: «three concepts capture together the vital core and watershed events of a regime transition: political protest, political liberalisation and democratization», cf. M. BRATTON and N. VAN DE WALLE, *Neopatrimonial regimes and political transitions in Africa*, in *World Politics*, vol. 46, n. 4, 1995, 282 ff. For “liberalization” the authors identify the measures adopted by governing bodies to limit and democratize power. Conversely, “democratization” is understood as the actual implementation of these measures within the new constitutional order. Four models of liberalization are thereby identified: managed transitions, national conferences, rapid elections and pacted transitions. Among the countries analyzed in this work, Mali liberalized through a national conference, Burkina Faso experienced a managed transition, while Senegal had rapid elections. Similarly, four models of democratization are posited: precluded, blocked, imperfect and democratic. Thus, according to the authors, Senegal and Mali underwent a democratic transition, whereas in Burkina Faso, this transition was imperfect.

³² «Il modello della conferenza nazionale, unicum africano, oltre a guidare e orientare il processo di transizione, prelude alle istituzioni che dovrebbero reggere il nuovo regime. Coinvolgendo un ampio spettro di forze politiche, economiche, religiose e sociali del paese, impone la conciliazione degli opposti interessi e soprattutto delle visioni sui futuri assetti costituzionali e politici», cf. L. MEZZETTI, *Le democrazie incerte: Transizioni costituzionali e consolidamento della democrazia in Europa orientale, Africa, America Latina, Asia*, cit., 202 e 580.

as a “guided democratization”³³, where the leader of the uprisings played a central role in steering the transition while preserving his political and economic dominance. Indeed, after seizing power through a coup in 1987, Blaise Compaoré convened a Constitutional Commission, resulting in the drafting of a new Constitution, which was approved by referendum in June 1991. The lack of sovereignty and transparency of this commission was contested by the opposition, which boycotted the 1991 elections, allowing Mr. Compaoré to secure an uncontested victory and inaugurate his twenty-seven years of presidential power. In Senegal, multipartyism was partially restored only in the 1970s, when President Senghor initially permitted only three parties to participate in the political system (*Loi constitutionnelle n° 76-01 du 19 mars 1976*), then a fourth (*Loi constitutionnelle n° 78-60 du 28 décembre 1978*). Full multi-party democracy was reintroduced in 1981 with Senghor’s resignation³⁴, allowing his successor, Abdou Diouf, to remove these constitutional constraints (*Loi n°1981/17 du 6 mai 1981*) and implement further political and economic reforms.

Despite renewed democratic aspirations, fundamental challenges to governance in the Sahel remained unresolved. Indeed, these countries chose to adopt Constitutions largely inspired by the French semi-presidential model³⁵. Thus, while constitutional provisions emphasized sover-

³³ R. JOSEPH, *Democratization in Africa after 1989: Comparative and theoretical perspectives*, in *Comparative Politics*, vol. 29, n. 1, 1997, 363-382.

³⁴ Thus declaring the end of the “African holiday” (“*la fête africaine est finie*”), see R. IDRISSE, *The Dialectics of Democratization and Stability in the Sahel*, cit., 191-210.

³⁵ «Il modello francese della Quinta Repubblica è risultato particolarmente attrattivo nella terza ondata di costituzionalizzazione, quella che ha investito i paesi. Una possibile chiave di lettura di questa tendenza generalizzata può essere individuata nell’esigenza di qualificare l’organo presidenziale come elemento di identificazione e di unità nazionale», cf. R. TARCHI, *Riflessioni in tema di forme di governo a partire dalla dottrina Mauro Volpi*, in *DPCE Online*, vol. 49, n. 4, 2022. See also Solazzo: «Il regime semipresidenziale era l’unica effettivamente percorribile nel 1992 perché in grado di conciliare, con le sue “virtualità multiple”, il desiderio di avere un Presidente legittimato ad agire su più fronti, alla necessità di limitarlo per evitare di incappare nuovamente in situazioni dittatoriali», cf. M. SOLAZZO, *La quarta Repubblica maliana: analisi di una Costituzione divisiva*, in *DPCE Online*, vol. 65, n. 3, 2024.

eignty of people³⁶, a reinvigoration of electoral processes³⁷, and human rights³⁸, the President retained an overwhelming dominance³⁹ and the single-parties were transformed into dominant⁴⁰ and catch-all ones⁴¹. This

³⁶ See the Constitution of Mali, 1992, Art. 25: “*Le Mali est une République indépendante, souveraine, indivisible, démocratique, laïque et sociale*”; Constitution of Burkina Faso, 1991, Art. 31: “*Le Burkina Faso est un Etat démocratique, unitaire et laïc*”; Constitution of Senegal, 2001, Art. 1: “*La République du Sénégal est laïque, démocratique et sociale (...). Le principe de la République du Sénégal est : gouvernement du peuple par le peuple et pour le peuple*”.

³⁷ In the majority of cases, provisions pertaining to multipartyism were safeguarded by excluding them from subjection to constitutional review (e.g. Const. Mali, 1992, Art. 122, now Art. 185).

³⁸ As evidenced by the extensive catalogues of freedoms that also reflect the impact of international treaties and pacts on the protection of human rights, such as the Universal Declaration of Human Rights of 10 December 1948 and the African Charter on Human and Peoples’ Rights of 27 June 1981, to which each of the three countries is committed.

³⁹ «*The debate on the causes of such persistence oscillates between ‘cultural’ explanations, focused on the traditions and practices of African kingship, and ‘rationalist’ accounts, which point out that the pending tasks of national integration and socio-economic development, together with the lack of a liberal and parliamentary background that can be traced back to the colonial era, still support the centrality of the state and of executive administration as vehicles for development*», cf. M. ROSENFELD and A. SAJÓ (Eds), *The Oxford Handbook of Comparative Constitutional Law*, Oxford, 2012, 637 ff.

⁴⁰ Cabanis refers to “*anarchist multipartyism*” functional to support the ambitions of some people, cf. A. CABANIS and M. L. MARTIN, *Les constitutions d’Afrique francophone: évolution actuelles*, Paris, 1999, p. 26. Gatti speaks of “*partially competitive dominant party system*”: «*Si è in presenza di sistemi a partito dominante allorché un partito o una coalizione ottenga regolarmente un elevato numero di seggi, tale da consentirgli di governare da solo, mentre la presenza di altri partiti è tollerata solo nella misura in cui essi non rischino di divenire maggioranza di governo*», cf. A. GATTI, *Fortuna E Declino Del Semipresidenzialismo nell’Africa Francofona Subsahariana*, cit. According to Mezzetti the single-party system was replaced by «*sistemi di monopartitismo strisciante, non necessariamente imposti dalla coercizione, dalla manipolazione delle procedure elettorali, dal controllo manipolativo dei mezzi di comunicazione e dalla logica del clientelismo, ma anzi affermatesi con elezioni regolari libere e corrette*», cf. L. MEZZETTI, *Le democrazie incerte: Transizioni costituzionali e consolidamento della democrazia in Europa orientale, Africa, America Latina, Asia*, cit., 137-272.

⁴¹ Elischer clarifies that: «*[the catch-all party] aims to form a long-lasting political force in which two conditions are fulfilled: It bridges its country’s dominant ethnic cleavages (past or present) by incorporating influential community leaders from both sides of the cleavage into its leadership structure. Furthermore, the ethnic catch-all party is formed long before election day and survives electoral defeats as well as leadership contests without major changes (splits and mergers) in the groups that make up the party. By staying together as a united political force, it demonstrates that it has overcome the divisive logic of ethnic arithmetic*», cf. S. ELISCHER, *Political Parties in Africa: Ethnicity and Party Formation*, Cambridge, 2013, 29. According to Eizenga «*The prevalence of catch-all parties might also be an*

hindered the transformative impact of democratic reforms, as democratic institutions, in an increasingly fragile socio-political context, existed largely in form rather than substance, leading to what has been termed “constitutions without constitutionalism”⁴².

The initial momentum of democratization soon faded, leading to a “recession”⁴³ of the democratic process. Eminent literature refers to these new constitutional developments as a “third wave of autocratization”⁴⁴. In some countries, such as Mali, democratic transition gave rise to dominant political parties, though the early period seemed promising⁴⁵. Indeed, President Alpha Oumar Konaré, respecting the 1992 Constitution, after

artifact of the shared colonial history of these countries. Inspiration for the multiparty electoral systems in the Sabel was primarily derived from the French Fifth Republic», cf. D. EIZENGA, *Political Parties and Elite Resilience in Sabelian Politics*, in L.A. VILLALÓN (Eds), *The Oxford Handbook of the African Sabel*, Oxford, 2021, 405-416.

⁴² H.W.O. OKOTH-OGENDO, *Constitutions without Constitutionalism: Reflections on an African Political Paradox*, in D. GREENBERG and others (Eds), *Constitutionalism and Democracy: Transitions in the Contemporary World*, New York, 1992. Chen describes “constitution without constitutionalism” as follows: «*Just as in the daily life of individuals, it is relatively easy to say something or make a promise, but more difficult to translate what is said or promised into action and reality, so in the political and legal life of nations, it is relatively easy to make a constitution, but more difficult to put it into practice, to implement it and be governed by it – which is what ‘constitutionalism’ is about. There is therefore nothing surprising about the phenomenon or ‘syndrome’ of ‘constitutions without constitutionalism,’ particularly in developing countries to which Western ideas, theories and institutions of constitutionalism have been transplanted in the course of the last two centuries*», cf. A.H. CHEN, *The Achievement of Constitutionalism in Asia: Moving Beyond ‘Constitutions without Constitutionalism’*, Hong Kong, n. 2015/002, 2014. Riggs speaks of “*façades constitutitonnelles*”, cf. F.W. RIGGS, *Fragilité des régimes du tiers monde*, in *Revue Internationale des Sciences Sociales*, vol. 136, 1993, 235 ff. See also M. CARDUCCI, *Il costituzionalismo “parallelo” delle nuove democrazie. Africa e America latina*, Giuffrè, 1998, 3-7.

⁴³ As defined by Diamond, cf. L. DIAMOND, *Facing up to the Democratic Recession*, in *Journal of Democracy*, vol. 26, n. 1, 2015. See also Bleck and van de Walle: «*Multiparty elections have been institutionalized during this quarter-century. However, we do not observe broader democratic consolidation in most of these countries. Instead, the democratization of the early 1990s remains incomplete in much of the region*», cf. J. BLECK and N. VAN DE WALLE, *Change and Continuity in African Electoral Politics Since Multipartyism*, in *Oxford Research Encyclopedias*, 2019.

⁴⁴ A. LÜHRMANN and S.I. LINDBERG, *A Third Wave of Autocratization is Here: What Is New About It?*, in *Democratization*, vol. 26, n. 7, 2019, 1095-1113.

⁴⁵ According to Bratton and de Walle, Mali was a “competitive one-party system”, characterized by a democratic transition, cf. M. BRATTON and N. VAN DE WALLE, *Neopatrimonial regimes and political transitions in Africa*, cit.

his two-term tenure, accepted the resignation from his position, which resulted in a fair and fully multi-party election that brought Amadou Touré to power in 2002. However, Mr. Touré, bolstered by the prestige he had accrued as the leader of the third democratic “wave” in Mali, soon consolidated his power. This led the country back toward authoritarianism, albeit in a milder form, often described as “soft authoritarianism”⁴⁶. Although there was a certain degree of political participation and opposition had a space, the principles of democratic governance were not fully integrated into the broader political regime⁴⁷. While this system did not outright dismantle democratic institutions, it gradually undermined them, emerging as one of the key factors contributing to the following 2012 crisis⁴⁸. In contrast, in Burkina Faso, democratization never resulted in a true regime change. The 1991 Constitution, which prompted important legal and institutional reforms⁴⁹, was not genuinely implemented. President Compaoré maintained a firm grip on power through electoral manipulation, term extensions, and the erosion of institutional checks and balances. The country became a “hybrid regime”, namely a political system that integrates democratic principles with authoritarian features⁵⁰. The country was considered “*languishing in a limbo*” of “*competitive authoritarianism*” or “*electoral authoritarianism*”⁵¹. Indeed, even if formal elections were held, they ensured the continuation of the Compaoré regime, thus preventing the formation of a national consensus on the future trajectory of the country⁵². This system allowed Mr. Compaoré to rule and main-

⁴⁶ R. IDRISSE, *The Dialectics of Democratization and Stability in the Sahel*, cit., 191-210.

⁴⁷ S. ELISCHER, *The Sahel: Regional Politics and Dynamics*, in *Oxford Research Encyclopedia of Politics*, New York, 2019.

⁴⁸ R. IDRISSE, *The Dialectics of Democratization and Stability in the Sahel*, cit., 191-210.

⁴⁹ «Important institutions such as the High Council on Communications, the Independent Electoral Commission, the Office of the Mediator (Ombudsperson), and others were established during this period», cf. B. S. TRAORÉ, *Burkina Faso: A Bird's-Eye View of the Legal System*, cit.

⁵⁰ The term was coined by T.L. KARL, *The Hybrid Regimes of Central America*, in *Journal of Democracy*, vol. 6, 1995, 72-86. The literature on the topic is vast. See C.M. FOMBAD and N. STEYTILER, *Democracy, Elections, and Constitutionalism in Africa*, Oxford, 2021, 22; G. WALKER, *The Mixed Constitution After Liberalism*, in *Cardozo J. Int'l & Comp. L.*, vol. 4, 1996, 315; W. MERKEL, *Embedded and Defective Democracies*, in *Democratization*, vol. 11, n. 5, 2004; W. MERKEL and A. CROISSANT, *Conclusion: Good and Defective Democracies*, in *Democratization*, vol. 11, n. 5, 2004.

⁵¹ R. IDRISSE, *The Dialectics of Democratization and Stability in the Sahel*, cit., 191-210.

⁵² «Compaoré's system was very flexible in the sense that a local patron could himself be a client

tain order in the country; however, it has also contributed to weakening the position of the President and fueled the forces that would lead to his overthrow in 2014, following massive protests against constitutional reforms aimed at further extending the president's term⁵³. In the case of Senegal, despite the country's historical tradition of peaceful transfer of power, which commenced with the conclusion of President Diouf's tenure in March 2000, significant challenges emerged in its pursuit of democratic consolidation. This refers, in particular, to President Wade's attempts to enhance his power through a number of controversial initiatives. Both the proposed constitutional reform in 2011 to reduce the electoral threshold for the presidential election and the candidacy for the 2012 presidential elections prompted significant public outcry, ultimately leading to his loss of the presidential position and the transfer of power to President Macky Sall, elected in February 2012.

A pivotal moment in Sahelian history occurred in 2012 with the fourth Tuareg rebellion in Mali⁵⁴, which exacerbated existing ethnic, religious, and security tensions in the region⁵⁵. The emergence of terrorism,

*to some district patron who, in turn, could support a regional or national figure. The state did not have to provide services directly to everyone, nor did it need their direct support since everything flowed through intermediaries. Those holding central state office could utilize the patronage system to acquire local patrons, which extended their influence into areas they would otherwise not be able to penetrate. In this way, the central government was indirectly but firmly connected to the peripheries», cf. V. HAAVIK, M. BØÅS and A. IOCCHI, *The End of Stability – How Burkina Faso Fell Apart*, in *African Security*, vol. 15, n. 4, 2022, 317-339.*

⁵³ R. IDRISSE, *The Dialectics of Democratization and Stability in the Sabel*, cit., 191-210.

⁵⁴ The Tuareg are an ethnic group that have long claimed the independence of the northern Malian territory, between Mali, Niger and Algeria, known as "Azawad". In line with the previous insurrections, which took place in 1963-64, 1990-95 and 2007-09, the 2012 rebellion had the objective of achieving the autonomy of northern Mali from the central government.

⁵⁵ The year 2012 was shaped by three significant upheavals. The first was the outbreak of the fourth Tuareg rebellion in January. Led by the *Mouvement National de Libération de l'Azawad* (MNL) and supported by terrorist groups such as *Ansar Dine* and the *Mouvement pour l'Unité et le Jihad en Afrique de l'Ouest* (MUJAO), the rebellion resulted in the capture of three northern cities—Gao, Tombouctou, and Kidal—from the Malian army. Simultaneously, on 21 March 2012, discontented Malian troops, frustrated by the army's defeat in the north, staged a coup d'état under the leadership of General Amadou Sanogo. The coup deposed President Amadou Touré, and Sanogo declared himself the head of the *Comité National pour le Redressement de la Démocratie et la Restauration de l'État* (CNRDRE), suspending the Constitution. By June 2012, Islamic militias, initially allied

coupled with ongoing instability, led to a deterioration of the situation in the Sahel region⁵⁶. Terrorism significantly impacts both human rights and constitutional stability of the countries in this region⁵⁷. Indeed, governments have responded to the terroristic threat with emergency measures that have strengthened executive power at the expense of democratic norms. The military effectively suspended the Constitutions or complemented them with transitional charters⁵⁸, introduced emergency states,

with the Tuareg rebels, turned against them and took control of the three regional capitals in northern Mali, worsening the already fragile security situation. This instability culminated in the 2020 coup d'état against President Keita, who had been elected in 2013 and re-elected in 2018. Colonel Assimi Goïta emerged as the new leader. Mali's crisis had also a ripple effect on neighboring Burkina Faso. In 2015, President Michel Kafando, elected in November 2014 following the ousting of Blaise Compaoré's regime, was removed from power by a military junta. Although subsequent elections brought President Kaboré to office, he was overthrown in January 23, 2022 in a coup d'état, which saw Colonel Paul-Henri Sandaogo Damiba assume leadership. However, this solution proved temporary, as Captain Ibrahim Traoré led a further coup in September 30, 2022, deposing Damiba.

⁵⁶ According to Villalón, this crisis stems from the «rising “violent extremism” and the proliferation of religious radicalisms in the face of waning state capacity to channel or control social dynamics from beyond the region, producing an increasingly complex “geography of conflict”», cf. L.A. VILLALÓN, *Editor's Introduction Framing the Sabel: Spaces, Challenges, Encounter*, in L.A. VILLALÓN (Eds), *The Oxford Handbook of the African Sabel*, Oxford, 2021, 1-12.

⁵⁷ It is incontestable that terrorism constitutes a significant and tangible threat to the region. The Sahel region accounts for 40% of Islamic militant terrorist activity in Africa and 60% of all violent extremist-related casualties in Africa, more than any other African region. Specifically, in 2022, the Sahel experienced a 36% increase in terrorist incidents, with 978 attacks, and a 49% increase in casualties, with a total of 7,899 victims. The data were compiled by the Africa Center for Strategic Studies, *Africa's Active Militant Islamist Groups*, February 2023, available online at <https://africacenter.org/wp-content/uploads/2023/03/MIG-highlights-2023.pdf>.

⁵⁸ «The legal status of the Transitional Charter is more than uncertain. They aim to address specific legal and institutional concerns about the transition period. In that sense, they can be considered functionally (or substantially) constitutional in nature», cf. B. S. TRAORÉ, *Burkina Faso: A Bird's-Eye View of the Legal System*, cit. A recent decision of Mali's Constitutional Court seems recognizing a superior value of these charters. On March 27, 2024, the *Référence syndicale des magistrats* (REFSYMA) and the *Association malienne des procureurs et poursuivants* (AMPP), respectively the national Magistrates' union and association of Prosecutors and Pursuers, filed a petition with the Constitutional Court, requesting acknowledgment of an “institutional vacuum” following the expiration of the transitional presidency on March 26, 2024, and calling for a civilian-led transitional government. The Constitutional Court declared the petitions inadmissible, stating that the associations “n'ont pas qualité

and imposed severe restrictions on fundamental rights⁵⁹. Coups, initially justified as necessary to combat terrorism, have instead led to prolonged military rule, weakening constitutional guarantees and fundamental rights. In this sense, terrorism represents a significant obstacle to the constitutional development of states. In fact, prolonged transitional governments have served primarily to entrench military dominance rather than facilitate genuine constitutional reforms⁶⁰, with no discernible improvements in the fight against terrorism nor in the well-being of the people⁶¹.

à saisir la Cour pour faire constater la vacance de la Présidence de la Transition". Additionally, the Court deemed itself incompetent to rule on the suspension of political activities, referring the matter to the Supreme Court's administrative division (Arret n°2024-02/CC du 25 Avril 2024, available online at <https://sgg-mali.ml/JO/2024/mali-jo-2024-11-sp.pdf>), cf. *La Cour constitutionnelle déclare "irrecevables" les requêtes sur la vacance du pouvoir*, in *aa.com*, April 29, 2024, available online at <https://www.aa.com.tr/fr/afrique/mali-transition-la-cour-constitutionnelle-declare-irrecevables-les-requetes-sur-la-vacance-du-pouvoir/3204832>.

⁵⁹ *Freedom House* in its annual *Freedom of the World Survey*, which covers the condition of political and civil rights in the world, reports that "*chronic problems such as corruption and misgovernance, combined with the economic impacts of the COVID-19 pandemic and the war in Ukraine, have left African states more vulnerable to irregular seizures of power by military or executive officials*". The data is available online at <https://freedomhouse.org/report/freedom-world>.

⁶⁰ In Burkina Faso, after the coup in 2022, that resulted in Mr. Kaboré being replaced by a military junta led by Colonel Paul-Henri Sandaogo Damiba, the 1991 Constitution was suspended. It was restored on 31 January, and a transitional charter was adopted on 1 March, providing for a three-year transitional period prior to elections. However, the Constitution was again suspended on 30 September after the transitional President was deposed by junior members of the military, Captain Ibrahim Traoré. Originally, according to the transition charter adopted in October 2022, shortly after the coup d'état that brought Traoré to power, the transition had been due to end on 1 July 2024, where election should have been held. However, on 25 May 2024 national consultation that included army officers, civil society groups and traditional and religious leaders brought to a new charter extended the country's military-led transition to democracy by up to five years. In Mali, in July 2023, a new Constitution was adopted. The first presidential election under this new Constitution had been due to held in February 2024 and the transition end on 26 March 2024. However, in September 2023 military authorities had announced that it would postpone the elections planned for February for technical reasons. Moreover, after suspending indefinitely in April 2024 the activities of all political parties and associations, on 10 May 2024, a national dialogue aimed at establishing peace in Mali recommended extending the military-led transition to democracy to five years. Many political parties had boycotted the dialogue and strongly rejected its recommendations.

⁶¹ «Undoubtedly, violence such as electoral violence or coup d'états indicate the regression of

It is within this context that the divergence in the constitutional and democratic trajectories of Sahelian countries becomes apparent. While Mali and Burkina Faso have suffered a regrettable regression in democratic governance, Senegal has stood out as a pillar of stability in the region, though concerns about its political and institutional developments are emerging. President Macky Sall, in office since 2012, respected term limits – with minor uprising in February 2024⁶² – and stepped down before the 2024 elections, which saw Bassirou Diomaye Faye, member of the *Patriotes Africains du Sénégal pour le Travail, l'Éthique et la Fraternité* party (PASTEF), elected as the new President. However, Faye's calls for "systematic change" and increased national sovereignty have raised fresh uncertainties about Senegal's political trajectory, including its future relations with France and Western allies⁶³.

democratic standards, which may reflect a neglected civil society. This may be also manifested by the fact that the vast majority of the population is left on the political and economic margin with few chances for social advancement, access to proper education, health and promising work opportunities. Alternatively, it may reflect the fact that governing actors tend towards political patronage, crony capitalism, kleptocracy, neopatrimonialism and rent-seeking», cf. C. VLAMIS, Political and Economic Transitions in Sub-Saharan Africa, Dissertation University of the Peloponnese, October 2023.

⁶² On 3 February, 2024, former President Macky Sall announced the postponement of the 25 February presidential election, citing alleged corruption within the Constitutional Court. On 5 February, the National Assembly voted to delay the election until 15 December, effectively extending the President's term in office. However, on 15 February, Senegal's Constitutional Council ruled that both Sall's decree and the parliamentary vote were unconstitutional (*Décision n°1/C/2024 du 15 février 2024*, available online at <https://conseilconstitutionnel.sn/docs/36461/>). The Council instructed the President to schedule the elections at the earliest possible date and confirmed that his presidential term would end on 2 April. This crisis posed a significant risk to the constitutional balance of one of West Africa's few stable democracies, already under strain from internal pressures. However, as analysts have noted, in the context of this region, where military leaders have taken power through coups and elected civilian rulers have sought to remain in office by manipulating Constitutions, a transparent election in Senegal that led to an uncontested opposition victory has been a positive and encouraging development for the entire region, see *Senegal: From Constitutional Crisis to Democratic Restoration*, in *Carnegie Endowment for International Peace*, April 1, 2024, available online at <https://carnegieendowment.org/research/2024/04/senegal-from-constitutional-crisis-to-democratic-restoration?lang=en>.

⁶³ *Le président sénégalais annonce "la fin de toutes présences militaires étrangères dès 2025"*, January 1, 2025, available online at <https://www.voaafrique.com/a/sénégal-fin-de-toutes-présences-militaires-étrangères-dès-2025-dans-le-pays-annonce-le-président/7920871.html>

3. *Defining the Role of the President*

The Sahelian countries analyzed in this study exhibit significant contrasts in their political and security landscapes. While Mali and Burkina Faso continue to grapple with profound security crises and political turbulence, Senegal enjoys a comparatively higher degree of stability. Despite these differences, a shared constitutional feature emerges across these countries: the central and dominant role of the President of the Republic. This dominance shapes governance structures, often placing the presidency at the core of political decision-making and national leadership, regardless of the varying degrees of democratic progress in each country. Despite the cyclical nature of constitutional development in these states, characterized by alternating phases of authoritarianism and democracy, their constitutional evolution consistently appears to preserve institutions and mechanisms that grant the President of the Republic a central role. Having reviewed these recent political developments, it is now pertinent to delve deeper into their prominent constitutional features of these countries. Indeed, the figure of the President of the Republic well encapsulates the broader challenges associated with constitutional governance in the Sahelian region and their implications for democratic development.

When examining the three Constitutions, the most striking observation is their clear resemblance to the French Constitution of 1958. Adopted on October 4, 1958, the French Constitution of the Fifth Republic marked a significant shift with the previous Constitution of 1946, since it aimed at strengthening executive power and ensuring greater governmental stability. To achieve this, it granted the President specific powers that could be exercised without requiring countersignature⁶⁴. The President's pivotal role, while outlined in the Constitution, was further enhanced in 1962 with the introduction of direct universal suffrage for presidential elections (*Loi n° 62-1292 du 6 novembre 1962*). This intervention established a semi-presidential system of governance in France, where the President of the Republic serves as one of the two “heads” of the Executive. The legitimacy of the President is derived from direct election by the people

⁶⁴ These interventions were based on two clear political visions: those of Michel Debré, inspired by the British model with a strong Prime Minister, and that of General de Gaulle, who aimed to transform the President of the Republic into the protector of the institutions, cf. *The Constitution of The Republic*, in *elysee.fr*, available online at <https://www.elysee.fr/en/french-presidency/constitution-of-4-october-1958>

in two rounds, and his role can be more or less influential depending on the parliamentary dynamic at play. Article 5 of the French Constitution assigns to the President of the Republic the role of guarantor (“*arbitrage*”) of the regular functioning of public authorities and the continuity of the State, while Article 20 establishes that the Government “determines and conducts the policy of the Nation”.

This system, which granted the President significant discretionary powers, served as the constitutional model that inspired the Constitutions of Sahelian countries. However, this did not lead to a direct transposition or uniform application of the French governance model. Instead, semi-presidential systems in the region evolved in ways that diverged markedly from the French framework, often pushing the provisions of the 1958 French Constitution to their practical or ideological limits⁶⁵. Indeed, the Constitutions of the three Sahelian countries demonstrate a contrasting approach to the French model. In these countries, the power of political direction is reserved either entirely for the President (Constitution of Senegal Art. 42, Mali Art. 44) or with some limitations (Constitution of Burkina Faso, Art. 36.2 which specifies that the President “*fixe les grandes orientations de la politique de l'État*”), while the power of the Prime Minister is largely restricted to implementing these policies (Constitution of Senegal Art. 53, Burkina Faso Art. 61, Mali Art. 76)⁶⁶.

The implementation of semi-presidentialism in the Sahel illustrates

⁶⁵ Cabanis notes that: «*The leadership role of the head of state is clearly asserted. In this respect, the fundamental charters of French-speaking Africa differ from the French constitution which, no doubt to allay the fears of the members of the political staff of the Fourth Republic, showed extreme caution, to the point of appearing to contradict the practice established from the outset by General de Gaulle*», cf. A. CABANIS and M. L. MARTIN, *Les constitutions d'Afrique francophone: évolution actuelles*, Paris, 1999, 72.

⁶⁶ Indeed, the introduction of the figure of the Prime Minister was regarded as one of the key achievements of the third constitutional “wave” in the Sahel region. Conceived as the other “head” of the Executive, he was expected to play a fundamental role in limiting the power of the President, which previous regimes had made practically absolute. As Conac points out, the function of the prime minister was to avoid «*qu'un seul homme, le chef de l'Etat ait juridiquement tous les pouvoirs ou puisse agir comme s'il disposait pratiquement de tous. Le choix fondamental (...) a été de savoir s'il fallait opter pour un exécutif unitaire de type américain ou un exécutif bicéphale de type français. La plupart des Constitutions ont préféré la deuxième solution*», cf. G. CONAC, *Le processus démocratique en Afrique*, in *L'Afrique en transition vers le pluralisme politique*, Paris, 1993, 112-113.

the constrained role of the Prime Minister⁶⁷, who effectively function as mere executor of policies determined by the President. As a result, these systems have been defined as “hyper-presidenzialized” systems⁶⁸, namely semi-presidential forms of government with pronounced presidential features. Furthermore, Mali’s recently adopted Constitution further diverges from this model. Indeed, the 2023 Constitution, while ensuring an important role for the military⁶⁹, impacts greatly the distribu-

⁶⁷ «Le Premier ministre reste dans une situation de dépendance politique par rapport au chef de l’État», cf. A. BOURGI, *L’évolution du constitutionnalisme en Afrique: du formalisme à l’effectivité*, cit., 732. According to Konabeka: «Le Président de la République du simple fait de sa condition d’élection, jouit d’une plus grande crédibilité et d’une plus grande autorité par rapport au Premier ministre qui est un collaborateur qu’il choisit pour réaliser sa promesse de politique de la Nation faite au peuple pendant la campagne électorale. Le Président de la République est élu sur un programme déjà existant, défini pendant la campagne électorale (...). Le Premier ministre étant nommé et ayant en face de lui, un Président de la République élu au suffrage universel direct, ne peut pas incarner le partage du pouvoir mais plutôt une simple déconcentration du pouvoir», cf. L.D. KONABEKA, P. LIONEL, D. KONABEKA, AND E. APETO, *Le Premier Ministre dans le Renouveau du Constitutionnalisme Africain: cas du Congo, du Gabon et du Togo*, in *Revue Réflexions constitutionnelles*, 2020, 299. The author notes that: «Le Premier ministre perd son rôle politique au profit du Président de la République, il n’est plus qu’un rouage technique voire purement administratif de coordination interministérielle. On dit que le Premier ministre devient un super directeur de cabinet servant de relais entre le Président de la République et ses ministres (ministres du Président)». See also J. GICQUEL, *Essai sur la pratique de la Ve République*, Paris, 1977.

⁶⁸ Hyper-presidentialism is a political concept that refers to a system in which the executive branch holds excessive influence and control over the other branches of government, as well as over the system of checks and balances, cf. P.F. DIALLO, *L’hyper-présidentialisme vs le renforcement de la séparation des pouvoirs : quelles réponses pour la démocratie ?*, in *academy.africtivistes.org*, March 2024 available online at <https://academy.africtivistes.org/blog/les-recherches-3/1-hyper-presidentialisme-vs-le-renforcement-de-la-separation-des-pouvoirs-queelles-reponses-pour-la-democratie-10>. For further considerations on this topic, see R. ELGIE, *Semi-presidentialism: concepts, consequences and contesting explanations*, in *Political Studies Review*, vol. 2, n. 3, 2004; S. ROSE-ACKERMAN, and D. A. DESIERTO, *Hyper-presidentialism: Separation of powers without checks and balances in Argentina and Philippines*, in *Berkeley J. Int’l L.*, vol. 29, 2011.

⁶⁹ The entire Title III of Chapter V of Mali’s Constitution is dedicated to the role of the armed forces. The Constitution provides that the armed and security forces “participate in the economic, social, cultural and environmental development of the country” (art. 89.2) and “the State ensures that the armed and security forces have at all times the human and material resources necessary to carry out their missions” (art. 93). Moreover, Article 63.2 provides the President with a further important power: “Le Président de la République ordonne la mobilisation générale et détermine les modalités de participation des citoyens à la défense de la Patrie lorsque la situation sécuritaire l’exige”. A similar intervention has also regarded

tion of power among branches, strengthening President's authority over both the executive and legislative branches. Article 78 stipulates that the Prime Minister and the Council of Ministers are politically accountable only to the President removing the previous constitutional requirement of parliamentary accountability (1992 Constitution, Art. 53)⁷⁰. Moreover, according to the new Article 44 the President "*shall determine the policy of the Nation*", a responsibility previously held by the Government, while the Prime Minister and the Government merely implement it (Art. 76).

3.1. *The Powers of the President: Scope and Influence*

In the Constitutions of the three countries examined, the President

Burkina Faso, where some constitutional provisions were revised in 2024. Some of these amendments are indeed a reflection of the ongoing security crisis. Worth of note is the constitutionalisation of the *Conseil National de Securite d'Etat* (TIT. XIV bis), which has to coordinate and plan the activities of the intelligence. Scholars wonder on the possible risks of these provisions: «*One can assume that it will exercise broad power concerning the collection of intelligence information. It may also serve as a critical factor in a context where the Government is, in practice, derogating from specific human rights standards for security reasons. One can expect that intelligence operations by this body are likely to clash with the right to privacy*», cf. B. S. TRAORÉ, *Burkina Faso: A Bird's-Eye View of the Legal System*, cit.

⁷⁰ Following this change, which realized a true concentration of powers in the hands of the President, it has been observed that the Malian form of government is actually now presidential in nature, although it still retains the role of prime minister: «*In other words, the President will have regulatory power, will be able to exert considerable influence over the legislative process (even though the executive is no longer politically accountable to parliament), will be involved in the management of the judiciary, and will have discretionary power to appoint much of the civilian and military administration. Thus, the draft constitution establishes a system of government that does not seem to ensure effective accountability between the different branches of government*», cf. F. DOUMBIA, *Towards the Fourth Republic of Mali: Analysis of the Draft Constitution*, in *ConstitutionNet*, 2023. According to Solazzo: «*Il Mali rimane una Repubblica semipresidenziale il cui potere esecutivo è bicefalo, condiviso da Presidente della Repubblica e Primo Ministro, e con il potere legislativo, invece, che conserva un ruolo di controllo ridimensionato alla luce della sua nuova struttura*», cf. M. SOLAZZO, *La quarta Repubblica maliana: analisi di una Costituzione divisiva*, cit. However, as it has been pointed out by the author, since the counter-power of control of the National Assembly did not target the person who effectively determined the country's political direction, namely the President, but the Prime Minister which was its mere executor, this modification can indeed be beneficial. In fact one potential advantage could be the obligation now binding the President to implement the proposed political programme, in accordance with the commitments made to the electorate.

of the Republic is vested with extensive powers. The President of the Republic performs the traditional function of guarantee of the State, presides over the Council of Ministers, appoints the Prime Minister, and oversees the selection of senior civil and military officials (Constitution of Mali, Art. 67; Burkina Faso, Art. 55, Senegal, Art. 42). Additionally, the President has the authority to grant pardons, command the armed forces, and accredit ambassadors, as well as ratify international treaties. However, there are some important constitutional powers that capture the scope and essential role of the President in these countries.

The President holds considerable legislative authority. These prerogatives include legislative initiative in Senegal and Mali, as well as the ability to return bills to Parliament (the National Assembly) for further review (Constitution of Mali Art. 59.3, Burkina Faso Art. 48.2, Senegal Art. 73). In terms of the legislative initiative, Constitutions display different approaches, with varying degrees of responsibility allocated to the Prime Minister, members of Parliament or the President. Senegal's Constitution grants initiative power to the three of them (Art. 80 of the Constitution), the one of while Mali reserves it for the President and Parliament members (Art. 119 of the Constitution), and Burkina Faso grants it to deputies and the Government (Art. 97 of the Constitution)⁷¹. The Constitution of Mali, in particular, envisages a strong participation of the President in the legislative power. Article 119 of the Constitution states that "the initiative of laws belongs simultaneously to the President of the Republic and to the members of Parliament", and no longer, as in the Article 75 of the 1992 Constitution, to the Government and the National Assembly. Another significant legislative power vested in the President is the ability to call a referendum⁷². Constitutions typically offer broad discretion in

⁷¹ Furthermore, certain texts posit the possibility of a popular initiative in the form of a petition. For example, Burkina Faso requires 15,000 signatures in order to present a petition (art. 98).

⁷² In the majority of Sahelian legal systems, this power is exercised in a considerably more extensive manner than is permitted by the French Constitution. In accordance with Article 11 of the French Constitution, the President can submit to a referendum only a "*projet de loi portant sur l'organisation des pouvoirs publics, sur des réformes relatives à la politique économique, sociale ou environnementale de la nation et aux services publics qui y concourent, ou tendant à autoriser la ratification d'un traité*" (Art. 11 of the French Constitution). An exception to this trend is Mali's new Constitution, which, in Article 60, closely resembling the French wording, allows the President to submit to referendum: "*toute question d'intérêt national, tout projet de loi portant sur l'organisation des pouvoirs publics, l'approbation d'un accord d'union ou*

this area. Many Constitutions do not specify which matters can be subjected to a referendum, allowing for significant presidential flexibility. For example, the Constitutions of Senegal (Art. 51) and Mali (Art. 60) contain the broad formulation “*tout projet de loi*”, while the Constitution of Burkina Faso (Art. 49) introduces a minor restriction with the phrase “*tout projet de loi qui lui paraît devoir exiger la consultation directe du peuple*”. The President also plays a key role in constitutional revision. In these countries, the President often shares the power to initiate constitutional amendments with Parliament and, in Burkina Faso, the population (via petitions with 30,000 signatures). In Mali, constitutional revisions require two-thirds parliamentary approval and a referendum; however, they cannot alter fundamental principles such as territorial integrity, secularism, or presidential term limits (Constitution of Mali, Art. 184, 185). Burkina Faso requires a three-fourths parliamentary majority to bypass a referendum and prohibits amendments altering core issues such as presidential terms and territorial integrity (Constitution of Burkina Faso, Art. 161-165). Senegal forbids revisions affecting the republican state, electoral system, or presidential term limits and requires an absolute parliamentary majority and a referendum for approval (Constitution of Senegal, Art. 103).

The President’s influence extends to the judiciary, particularly through appointments to the *Conseil Supérieur de la Magistrature* (CSM) and Constitutional Courts. In Burkina Faso, the President originally chaired the CSM, controlling key judicial appointments. However, following the 2014 uprising, a 2015 reform transferred the chair to the heads of the *Cour de Cassation* and *Conseil d’Etat*. In 2024, the transitional government amended the Constitution, introducing non-magistrate members into the CSM and stipulating that its chairperson would be elected by its members (Constitution of Burkina Faso, Art. 132). Moreover, the new Article 134 places the state prosecution magistrates (*magistrates du parquet*) under the hierarchical authority of the Ministry of Justice, with evident implications in terms of respect of the principle of separation of powers and the independence of justice⁷³. In Mali, the President is deeply integrated into the judicial

l'autorisation de ratification d'un traité qui, sans être contraire à la Constitution, aurait des incidences sur le fonctionnement des institutions”.

⁷³ B. S. TRAORÉ, *Burkina Faso: A Bird's-Eye View of the Legal System*, cit. Minister of Justice Edasso Rodrigue Bayala addressed the issue, saying that there was no rationale for discussing an alleged assault on the impartiality of the judicial system: «*Il était totalement absurde de parler d'indépendance d'un magistrat du parquet parce que le magistrat du parquet est déjà*

system, chairing the CSM during its regular sessions for appointing magistrates (Art. 1 of the *Loi organique n°03-033 du 07 octobre 2003 fixant l'organisation, les attributions et le fonctionnement du Conseil Supérieur de la Magistrature*). The CSM comprises eight ex officio members and thirteen magistrate members, who are elected in three colleges by the vote of their peers for a period of three years. The list of members of the CSM is determined by decree of the President of the Republic (Art. 5). Judges are appointed by presidential decree upon recommendation from the Minister of Justice and after consulting the CSM (Art. 12). For disciplinary cases, the chair changes depending on the type of magistrate involved: the Supreme Court's President in cases involving judges and the Public Prosecutor for prosecutors (Art. 14). The Constitution of Senegal makes a brief reference to the CSM in Article 90, that stipulates that all magistrates, with the exception of those serving on the Constitutional Court, are appointed by the President of the Republic, following the CSM's recommendation and in accordance with an organic law (*Loi organique n° 2017-11 du 17 janvier 2017 portant organisation et fonctionnement du Conseil supérieur de la Magistrature*). While originally comprising only ex officio members, since 1992 the CSM also includes magistrates elected by the various colleges of magistrates for a three-year term, with the possibility of a single renewal. The President chairs the CSM during judicial appointments, though the Minister of Justice may assume the chair with the President's approval (Art. 8). In the case of disciplinary functions, the chair is assumed by the First President of the Supreme Court in instances pertaining to judges (*magistrat du siège*) and by the Attorney General at the Supreme Court in cases involving a magistrate from the public prosecutor's office (*magistrat du parquet*). Another important role of the President in relation to the judiciary concerns the Constitutional Court. Indeed, the President of the Republic plays a strong role in the appointment of the members of this body. For example, in Senegal, the members of the Constitutional Court are appointed entirely by the President of the Republic (Constitution of Senegal, Art. 89). In Burkina Faso, of ten members, seven are appointed by the President of

sous ordre hiérarchique. Vous êtes dans un parquet, le Procureur du Faso peut vous donner des ordres sur la gestion d'un dossier et l'ensemble des procureurs du Faso d'un ressort donné sont sous la coupe hiérarchique du Procureur général», see Conseil Supérieur de la Magistrature : Plusieurs innovations dans la nouvelle loi organique votée par les députés burkinabè, in faso7.com, April 4, 2024, available online at <https://faso7.com/2024/04/26/faso7-conseil-superieur-de-la-magistrature-plusieurs-innovations-dans-la-nouvelle-loi-organique-votee-par-les-deputes-burkinabe/>.

the Republic (Constitution of Burkina Faso, Art. 153). In Mali, the three branches of government are well represented by the members of the Constitutional Court, who are chosen “*deux, par le Président de la République; un, par le Président de l’Assemblée nationale; un, par le Président du Sénat; deux, par le Conseil supérieur de la magistrature; deux enseignants-chercheurs de droit public désignés par un Collège constitué par les recteurs des universités publiques de droit; un, par l’Ordre des avocats*” (Constitution of Mali, Art. 145).

3.2. Emergency powers

In addition to the insights already provided on the constitutional framework of semi-presidential regimes in Sahelian countries, which grants the President substantial influence, one crucial institution merits further attention for a deeper understanding of the President’s authority. Specifically, the emergency powers granted to the President play a significant role in shaping the influence and authority of the President.

These powers are a key instrument in responding to national threats⁷⁴, but their scope and application have often led to an expansion of presidential authority. In framing the “*pouvoirs exceptionnels*” of the President of the Republic, the Constitutions of the Sahelian countries analyzed have largely adopted the wording of Article 16 of the French Constitution, though they sometimes broaden the activation criteria and include additional conditions⁷⁵. In Burkina Faso, Article 59 of the Constitution echoes the two conditions for activating emergency powers found in the French Constitution (a serious and immediate threat to the institutions of the Republic, the independence of the Nation, the integrity of its territory or the fulfilment of its international obligations; disruption of the

⁷⁴ The literature concerning emergency powers is vast. See J. FEREJOHN, P. PASQUINO, *Emergency Powers*, in J.S. DRYZEK, B. HONIG, A. PHILLIPS (Eds), *The Oxford Handbook of Political Theory*, Oxford, 2008; B. ACKERMAN, *The Emergency Constitution*, in *The Yale Law Journal*, 2004, 5, 24.; E. GROSSO, *Quello che resta. La forma di governo dopo l'emergenza: post hoc ergo propter hoc?*, in *DPCE Online*, vol. 57, n. 1, 2023.

⁷⁵ The French legal framework for addressing emergencies has already been the subject of scrutiny by eminent scholars. One of the most vocal critics is Bruce Ackerman, who dismisses the French approach, which, in his view, “*in the worst case, it provides the means for a would-be dictator to bootstrap his way to permanent power; in the best, an open-ended grant of authority is in tension with the overriding aim of presenting the emergency regime as a temporary and limited exception to the principles of limited governments*”, cf. B. ACKERMAN, *The Emergency Constitution*, in *The Yale Law Journal*, 2004, 5, 28.

normal functioning of the constitutional public authorities) but presents them alternatively (“*et/ou*”). It also requires, as further conditions, the deliberation of the Council of Ministers (and not the simple consultation of the Prime Minister, as well as the Presidents of the Chambers and the Constitutional Court), an information to the Nation, the prohibition of using foreign armed forces in internal conflicts, the prohibition of dissolving Parliament during the exercise of these powers. This provision has been amended on four occasions, most significantly in 2012. This amendment required that the President of the Senate be formally consulted and that a plenary session of Parliament be held before activating the mechanism. However, this amendment was repealed by *Loi constitutionnelle n°072-2015/CNT du 5 Novembre 2015*, reverting to the previous version. The Senegalese (Art. 52) and Malian (Art. 70) Constitutions, in addition to the aforementioned conditions, require an information to the Nation, the prohibition of the dissolution of the Parliament (in Senegal) or of all the institutions of the Republic (in Mali), the “*de plein droit*” meeting of the Parliament, the obligation to invest within 15 days (in Senegal) or 90 days (in Mali) the Parliament which must ratify the emergency measures adopted, under penalty of their forfeiture. There is also a prohibition on constitutional revision during the exercise of emergency powers (Constitution of Senegal, Art. 52.3) or of the *état de siege* and *état d’urgence* regimes (Constitution of Burkina Faso, Art. 165.2), and if emergency powers are used after Parliament’s dissolution, elections cannot be postponed (Constitution of Senegal, Art. 52.6).

Although the Constitution explicitly provides for managing emergencies, it is noteworthy that these provisions have often been superseded by legislative or governmental measures enacted in response to exceptional threats. In Burkina Faso, the regulation concerning emergency is delineated by the *Loi n°023-2019/AN portant réglementation de l’état de siege et de l’état d’urgence au Burkina Faso*, which repealed the *Loi n°14/59/AL, organique sur l’état d’urgence*. In Mali the legislation is codified in the *Loi n° 2017-055 du 06 novembre 2017 relative à l’État de Siège et à l’État d’Urgence*, which repealed the *Loi n° 87-49/AN- RM du 10 août 1987 relative à l’État de Siège et à l’État d’Urgence*. Finally, in Senegal the provisions are included in the *Loi n° 69-29 du 29 avril 1969 relative à l’état d’urgence et à l’état de siege*, modified by the *Loi n°2021□ 18 du 19 janvier 2021*, which adds a Title 4 concerning the “*Gestion des catastrophes naturelles ou sanitaires*”. The emergency legislations

introduced by these countries share similar traits, as they, once again, draw upon the French model⁷⁶. Firstly, there is a distinction between the *état de siège* and the *état d'urgence*. The *état de siège* is an exceptional police regime that is activated in case of an imminent danger to the Nation resulting from an armed insurrection or a foreign invasion (Art. 4 Burkina Faso's Law) or an imminent danger for the internal or external security of the state (Art. 1 Mali's Law, Art. 15, Senegal's Law). It implies the conferral of police powers to the military authorities. Conversely, the *état d'urgence* may be proclaimed on all or part of the territory in the event of an imminent danger resulting from serious threats to public order, in the event of an occurrence that presents, by its nature or gravity, the character of a public calamity (Art. 10 Burkina Faso's Law), or in the event of subversive activities compromising internal security (Art. 4 Mali's Law, Art. 1 Senegal's Law). It grants the administration a set of powers for the period deemed necessary to overcome the exceptional circumstances. The fundamental difference between the *état de siège* and the *état d'urgence* concerns the military involvement, with the latter conferring exceptional powers solely upon civil authorities. All the three legislations, moreover, establish a system of mutual exclusivity between the two regimes (Art. 2 Burkina Faso's Law, Art. 1 Mali's Law and Art. 15 Senegal's Law).

The procedures to activate the two institutions are similar, with the President of the Republic granted the authority to declare the *état de siège* or the *état d'urgence* by decree. The Constitutions generally stipulate that the declaration must be approved by decree of the Council of Ministers (Constitution of Mali, Art. 118), Presidential decree adopted after the deliberation of the Council of Ministers (Constitution of Burkina Faso, Art. 58), or simply by Presidential decree adopted after a "*de plein droit*" meeting of the Parliament (Constitution of Senegal, Art. 69). The decree in question must delineate the geographical scope and timeframes of the aforementioned regimes. In Burkina Faso, *état de siège* cannot exceed 15 days, while *état d'urgence* cannot exceed 30 days (45 days if Parliament is not currently in session). However, the Parliament may grant authorization for an extension of these regimes (Art. 6 and 11 Burkina Faso's

⁷⁶ For the state of emergency in France, see the *Loi n° 55-385 du 3 avril 1955 instituant un état d'urgence et en déclarant l'application en Algérie*. The regulation of *état de siège* can be found in Article 36 of the Constitution and in articles L2121-1 a L2121-8 of the *Code de la Défense* (Ordonnance n. 2004- 1274, 20 décembre 2004, Title II).

Law). In Senegal, Article 69 of the Constitution provides that the decree proclaiming a state of emergency is automatically revoked after 12 days unless the National Assembly, at the President's request, authorizes its extension. Whereas in Mali, Article 118 of the Constitution states that any extension beyond 15 days must require Parliament's authorization by an absolute majority.

3.2.1. *Burkina Faso: Navigating Crisis and Power*

Following the intensification of terrorist activity in Burkina Faso⁷⁷, on December 31, 2018, President Kaboré, by *décret n°2018-1200/PRES*, activated the provisions of *Loi n°14/59/AL organique sur l'état d'urgence*. In accordance with these provisions, the President, following consultation with the Council of Ministers, was empowered to proclaim a state of emergency in the event of a grave and imminent threat to the Nation's security⁷⁸. Applied to six regions, the state of emergency authorized measures to address repeated terrorist attacks, including movement prohibitions, searches at all hours, weapon surrender orders, and bans on publications and meetings inciting violent extremism. The decree also gave military justice jurisdiction over crimes during the state of emergency, regardless of perpetrators' status.

After the September 2022 coup, the military junta, led by Captain Traoré, proclaimed a state of emergency in eight regions, extended several times since March 2023. The regulatory framework that was invoked was that of the new legislation adopted in 2019, namely the *Loi n°023-2019/AN portant réglementation de l'état de siège et de l'état d'urgence au Burkina Faso*⁷⁹. According to the 2019 Law, during the *état de siège* (Art. 9), military authorities can take exceptional measures infringing on certain freedoms,

⁷⁷ In the wake of the 2012 crisis in Mali, jihadist activity intensified across the region, raising serious concerns about its potential spread to neighboring countries. By 2015, the threat had extended into Burkina Faso, ultimately manifesting in a series of deadly terrorist attacks, including those in Ouagadougou in 2016, 2017, and 2018.

⁷⁸ S. DABIRE, *Etat d'urgence au Burkina Faso : Régime juridique actuel et écueils à éviter*, in *lefaso.net*, January 19, 2019, available online at <https://lefaso.net/spip.php?article87574>.

⁷⁹ The legislation is noteworthy for the introduction of a distinct regulatory framework pertaining to the *état de siège*, which had previously been absent. Moreover, with regard to the *état d'urgence*, the law modifies the framework set forth in the *Loi n°14/59/AL organique sur l'état d'urgence*.

including requisitioning individuals, goods, and services; movement restrictions; searches and seizures at any time; weapon surrender orders; restricting or banning disruptive publications and broadcasts; regulating or stopping educational programs, religious teachings, or activities promoting violence, hatred, or extremism; prohibiting public gatherings and demonstrations likely to cause unrest; monitoring electronic communications; and taking measures to restore public tranquility. Under *état d'urgence* (Art. 13), public authorities can, in addition to these measures, place under house arrest anyone inciting or maintaining disorder; suspend or dissolve groups or associations participating in or inciting acts undermining public order; and block communication means inciting terrorism, advocating it, or disclosing information or military strategies that could expose or compromise Defense and Security Forces (Art. 14). Measures under the state of emergency are subject to administrative judge control, and Parliament is informed (Art. 14).

Despite Article 3 of the 2019 Law stating that “*Les citoyens continuent, nonobstant l'état de siège ou l'état d'urgence, d'exercer leurs droits dont la jouissance n'est pas suspendue en vertu de la présente loi*”, the application of emergency powers has significantly deteriorated human rights in Burkina Faso, increasingly reinforcing the presidential authority. A key area that demonstrates these regimes' potential dangers is the limitation or attack on judicial power. Indeed, in the context of emergency powers, the authority of the judiciary is of paramount importance in order to prevent the potential abuse of emergency measures. However, the judicial authority has been significantly undermined in Burkina Faso. Among the various instruments employed by the regime to restrict the activities of the judicial branch, compulsory conscription is of particular significance. In August 2024, Human Rights Watch reported that military authorities conscripted at least seven magistrates, including prosecutors and a judge, into the army as punishment for open proceedings against junta supporters⁸⁰. The con-

⁸⁰ «*Les autorités militaires du Burkina Faso utilisent de façon abusive une loi d'urgence afin d'enrôler illégalement des magistrats – procureurs et juges – qui ont lancé des procédures judiciaires à l'encontre de partisans de la junte*», cf. *Burkina Faso : La conscription est utilisée pour punir des procureurs et des juges*, in *hrw.org*, August 21, 2024, available online at <https://www.hrw.org/fr/news/2024/08/21/burkina-faso-la-conscription-est-utilisee-pour-punir-des-procureurs-et-des-juges>. Among the individuals subjected to conscription orders, there is the prosecutor of the High Court of Ouagadougou, who had directed the police to examine allegations of enforced disappearances, and the prosecutor of the High Court

scription program, targeting not only judges but also perceived opponents like union leaders, activists, and journalists, was justified by President Traore's "general mobilization" announcement in April 2023⁸¹. As a consequence, the implementation of emergency measures has resulted in the suppression of any voice that was not aligned with the regime's rhetoric, including that of the judicial power, which, according to the Constitution, is supposed to be the "guardian of individual and collective liberties" (Constitution of Burkina Faso, Art. 125).

Furthermore, even when judges rule on an emergency measure, the decision is rarely implemented. For example, on December 6, 2023, the Ouagadougou administrative court ruled that the conscription orders concerning two members of the *Balai Citoyen* movement, Rasmané Zinaba and Bassirou Badjo, and the director of the newspaper *L'Opinion*, Issaka Lingani, were illegal and ordered their suspension. The court stated that the detention violated the detainees' rights to freedom of expression and movement and posed a risk to their physical integrity⁸². Nevertheless, this decision was ignored, and these individuals were compelled to comply with the directives⁸³.

of Boromo, in Balé province, who had instructed the police to investigate the purported theft of cattle by an associate of the junta and civilian auxiliaries of the Burkinabé armed forces.

⁸¹ See the *Décret No 2023/0475 portant mobilization générale et mise en garde*, which allows for the conscription of any citizen in the armed forces to "défendre l'intégrité du territoire national, de restaurer la sécurité sur l'ensemble du territoire et d'assurer la protection des populations et de leurs biens, contre la menace et les actions terroristes". Article 8 states that "Les droits et libertés individuels et collectifs garantis par les lois et règlements, peuvent, dans certains cas, être restreints ou limités conformément à la loi. Toutefois il ne peut être dérogé aux droits fondamentaux notamment le droit à la vie, le droit à ne pas être soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants, ou à une expérience médicale ou scientifique sans son libre consentement, le droit de ne pas être tenu en esclavage ou en servitude". Nevertheless, the decree explicitly authorizes the government to "requérir les personnes, les biens et les services; soumettre à contrôle et à la répartition les ressources au ravitaillement et, à cet effet, d'imposer aux personnes physiques ou aux personnes morales en leur biens, les sujétions indispensables; le droit d'appel à l'emploi de défense, à titre individuel ou collectif" (Art. 2).

⁸² Ordonnance n° 2023-045/TAO du 06 décembre 2023.

⁸³ Burkina Faso. *Il faut libérer le défenseur des droits humains Daouda Diallo et cesser de recourir à la conscription pour faire taire les voix indépendantes*, in *amnesty.org*, January 22, 2024, <https://www.amnesty.org/fr/latest/news/2024/01/burkina-faso-free-human-rights-defender-daouda-diallo-and-end-discriminatory-conscription-of-independent-voices/>

3.2.2. Mali: Presidential Authority Amidst Security Challenges

In Mali, a national state of emergency, first introduced by President Keïta after the 2015 Radisson Blu hotel attack in Bamako, was repeatedly extended by the National Assembly. The legislation was implemented according to the *Loi n° 87-49/AN- RM du 10 août 1987 relative à l'État de Siège et à l'État d'Urgence*, then replaced by the *Loi n° 2017-055 du 06 novembre 2017 relative à l'État de Siège et à l'État d'Urgence*. Under *état d'urgence*, the law permits regulating or prohibiting the movement of people, vehicles, or goods in specific locations and times. It also allows establishing security zones where individual presence is regulated or prohibited. Furthermore, the Government is empowered to prohibit any person's stay in a district or part of a district if deemed to hinder public authorities. The Government can also prohibit all processions, parades, gatherings, and public demonstrations (Art. 6). The administrative authority may order house arrest in a territorial district or specific locality for anyone whose activity threatens public security and order (Art. 8); order temporary closure of public places and prohibit public or private meetings likely to cause disorder (Art. 9); conduct searches and seize weapons, private radio transmitting/receiving stations, and vehicles whose drivers evade police control (Art. 10); requisition individuals, goods, and services (Art. 12); control the press and all publications, social networks, radio and television broadcasts, film screenings, and theatrical performances (Art. 13); pronounce administrative internment of individuals whose activity endangers public safety (Art. 14); and control postal, telegraphic, electronic, and telephone correspondence (Art. 15). Finally, the state of emergency decree may expressly grant the competent administrative authority power to transfer or suspend any civil servant or any other agent of the State or of the Territorial Authorities whose activity threatens public safety (Art. 16). Finally, Article 3 states that if *état de siège* is declared, the military authority is vested with all the powers listed in Articles 7 to 12.

In March 2020, President Keïta proclaimed a new state of emergency in response to the COVID-19 pandemic, “in addition to the state of emergency that already prevails in this country due to the security context”⁸⁴. The state of emergency in force since 2015 was effectively repealed

⁸⁴ Declaration of President Keïta of the March 25, 2020, see *Lutte contre le covid-19 : Etat d'urgence sanitaire et couvre-feu nocturne au Mali*, in *bbc.com*, March 26, 2020, available online at

after the August 18, 2020, coup. However, the military reinstated it in December 2020, along with a “*état d’alerte sanitaire*”, prolonging it until June 2021. Measures enforced included prohibiting individual movement, closing public spaces, and prohibiting demonstrations and public gatherings.

Of particular concern was the authorization on public authorities to take all necessary measures to control the press and all publications, social networks, as well as radio and television broadcasts, film screenings and theatrical performances⁸⁵. Indeed, a striking example of the impact of emergency measures in Mali is the crackdown on media freedom, which has intensified since 2022. On April 2, 2022, the High Authority for Communication (HAC) suspended France 24 and Radio France Internationale (RFI) and imposed stricter limits on foreign media. The clampdown continued into 2023 and 2024. On August 23, 2024, the HAC suspended French news channel LCI for two months, accusing it of broadcasting “false accusations” against the Malian armed forces and their Russian allies during coverage of the Battle of Tinzaouatène⁸⁶. Subsequently, on September 11, 2024, TV5 Monde was suspended for three months for alleged bias in reporting a drone strike in Tinzaouatène that killed 15 civilians. The HAC criticized the outlet for not adequately representing the Malian army’s perspective⁸⁷.

<https://www.bbc.com/afrique/region-52043239#:~:text=Un%20couvre%2Dfeu%20est%20également,et%20au%20transport%20de%20marchandises%22>.

⁸⁵ *Coronavirus au Mali : le retour de l’état d’urgence inquiète les médias*, in *jeuneafrique.com*, December 20, 2020, available online at <https://www.jeuneafrique.com/1093710/politique/coronavirus-au-mali-le-retour-de-letat-durgence-inquiete-les-medias/>. In the wake of the heated debate surrounding the decree, which has been perceived as an assault on freedom of expression and the media, the Ministry of Territorial Administration and Decentralisation released a statement asserting that the update is justified by «*la nécessité d’exécuter correctement le Décret n° 2020-0317 /PT-RM du 18 décembre 2020 déclarant l’état d’urgence sur le territoire national et le besoin d’adaptation de la nouvelle instruction avec les dispositions de la Loi n°2017-055 du 06 novembre 2017 relative à l’état de siège et à l’état d’urgences*» and, in particular article 13 of the 2017 legislation.

⁸⁶ *Mali suspends French news channel LCI for two months*, in *rfi.fr*, August 25, 2024, available online at <https://www.rfi.fr/en/africa/20240825-mali-suspends-french-news-channel-lci-for-two-months>.

⁸⁷ *Mali junta suspends French-language channel TV5 Monde for lack of ‘balance’*, in *france24.com*, September 11, 2024, available online at <https://www.france24.com/en/africa/20240911-mali-junta-suspends-french-language-tv-station-tv5-monde-for-lack-of-balance>.

3.2.3. Senegal: Stability or Presidential Overreach?

In Senegal, *état d'urgence* was activated in March 2020 in response to the COVID-19 pandemic. The legislation applied was the *Loi n° 69-29 du 29 avril 1969 relative à l'état d'urgence et à l'état de siège*, modified by the *Loi n°2021 18 du 19 janvier 2021*.

The provisions of this law are greatly similar to that already analyzed of the 2017 Malian Law, to which we refer. However, a peculiarity of this legislation is the introduction of a specific discipline concerning the natural or sanitary catastrophes. Indeed, the 2021 Law introduced “Title 4” concerning the “*Gestion des catastrophes naturelles ou sanitaires*”. Article 24 states that “in the event of natural or public health disasters, the competent administrative authority shall be empowered, without the declaration of a state of emergency or state of siege, to take measures to ensure the normal functioning of public services and the protection of the population. These measures may include, in particular, the establishment of a curfew and the limitation of movement across all or part of the national territory for a period of one month, renewable once”. Therefore, in the event of a natural disaster, the *état d'urgence* and *état de siège* framework can be set aside, and exceptional powers are directly granted to the “competent administrative authority”. Furthermore, additional exceptional measures may be implemented, including curfews and movement restrictions. As outlined in Article 25, these measures are exercised by the President or, by delegation, the Minister of the Interior, other Ministers whose intervention is necessary, governors, and prefects. Thus, the *Décret n° 2020-830 du 23 mars 2020*, allowed administrative authorities to regulate or prohibit the movement of individuals, vehicles, and goods in specific areas and times; impose general or specific bans on public processions, parades, gatherings, and demonstrations; order temporary closure of public places and meeting venues; and prohibit public or private meetings of any kind that may provoke or sustain disorder. These measures were accompanied by a nationwide curfew⁸⁸. The *état d'urgence*, extended several times, ended in March 2021⁸⁹.

⁸⁸ See the Declaration of the President Sall of March 23, 2020, available online at <https://www.sante.gouv.sn/sites/default/files/Discours%20Président%20de%20la%20République%20%20état%20d%27urgence%20COVID-19.pdf>

⁸⁹ The *Loi n° 2020-13 du 2 avril 2020* granted the President of Senegal exceptional powers to extend the state of emergency for a maximum period of three months. The

Although Senegal's exceptional measures were driven by different circumstances compared to those in Mali and Burkina Faso, the limitations imposed have sparked similar concerns. The regulation regarding natural or health disasters is a matter of particular note. Firstly, a criticism has been levelled at the regulation itself for being excessively generic. Secondly, it has been asserted that the legislation has effectively eliminated the National Assembly's residual control role, granting the President, or delegated authorities, substantial power to limit freedoms and rights⁹⁰. The opacity surrounding these measures' adoption, without sufficient transparency regarding legislative documents or government initiatives, has also been criticized. The government has been denounced for failing to provide any meaningful assessment of the state of emergency's impact on Senegalese society, and neither the police nor the gendarmerie published any quantified evaluation of its effects⁹¹. Furthermore, the decree adopted in March 2020 by the Minister of the Interior (*Arrêté N° 007782 du 13 mars 2020*) was contested for severely restricting fundamental freedoms, namely freedom of assembly and expression, without a precedent declaration of a state of emergency, which was adopted only on April 2. Moreover, the implementation of this emergency legislation has been accompanied by violence against journalists, occurring during the enforcement of curfews. In March 2020, following the declaration of the

Décret n° 2020-925 du 3 avril 2020 extended the state of emergency for a period of 30 days, while the *Décret n° 2020-1014 du 3 mai 2020* extended the state of emergency for an additional period of 30 days. On June 29, 2020 President Sall announced the lifting of the curfew and state of emergency imposed against Covid-19. However, on January 5, 2021, another *état d'urgence* was introduced in the capital Dakar and its surroundings (*décret n° 2021-01 du 5 janvier 2021*), that lasted until March 2021.

⁹⁰ «C'est excessif, c'est donner trop de pouvoir à l'exécutif sans un contrôle parlementaire», protests Sadikh Niass, secretary general of RADHHO (*Rencontre africaine pour la défense des droits de l'homme*), see *Sénégal: le texte sur les «catastrophes naturelles ou sanitaires» adopté par les députés*, in *rfi.fr*, January 12, 2021, available online at <https://www.rfi.fr/fr/afrique/20210112-sénégal-le-texte-sur-les-catastrophes-naturelles-ou-sanitaires-adopté-par-les-députés>. «En d'autres termes, la nouvelle loi normalise le recours à des mesures potentiellement draconiennes à l'entière discrétion de l'exécutif. À notre avis, cela constitue une violation des critères de légalité, de nécessité et de proportionnalité prévus par le droit international des droits de l'homme», cf. *Sénégal : la réponse à la COVID-19 constitue une violation des droits*, in *article19ao.org*, September 21, 2021, available online at <https://article19ao.org/senegal-la-reponse-a-la-covid-19-constitue-une-violation-des-droits/>.

⁹¹ *État d'urgence au Sénégal : nécessaire transparence gouvernementale*, in *apc.org*, June 15, 2020, available online at <https://www.apc.org/node/36498>

state of emergency, two journalists were reportedly attacked by police in Touba for allegedly violating the curfew. On June 2, 2020, demonstrators expressing discontent with the restrictions and curfew attacked Radio Futurs Médias in Mbacké. Subsequently, on June 24, 2020, a 7TV cameraman was brutally attacked by unidentified assailants while reporting⁹².

4. *Conclusions*

This study explored the challenges and limitations of implementing democratic institutions in sub-Saharan Africa, focusing on the Presidency institution. A comparative analysis of the Constitutions of Burkina Faso, Mali, and Senegal highlighted the central role of the President, whose authority extends across all three branches of government. After a historical overview of constitutional developments, the research concentrated on specific presidential powers embedded in these Constitutions, particularly emergency powers. This institution clarifies the potential consequences of granting such extensive powers to this figure. The study concludes by evaluating the constitutional provisions' implications for democratic progress, offering a nuanced understanding of their role in shaping political trajectories within the region.

Indeed, the Sahelian countries analyzed, that embarked upon the process of independence and nation-building during the 1960s, have pursued a form of government that favored the role of the President over the other constitutional bodies. This model has persisted during all the different constitutional cycles that followed, with the President gradually accumulating important prerogatives and tasks, that reinforced his authority. The 1990s marked a pivotal shift, as a renewed democratic spirit began to permeate the ruling elites. This revival led to the drafting of new democratic Constitutions with stronger provisions safeguarding constitutional guarantees and the rule of law. However, despite the influence of the “third wave” of democratization, the examined Constitutions largely preserved the original structure, maintaining the President's central and dominant role. Facing contemporary challenges, such as terrorism and demands for political change, this figure remains indispensable and central. Nevertheless, in a number of instances, there were clear indications

⁹² *Sénégal : la réponse à la COVID-19 constitue une violation des droits*, cit.

that these systems were heading towards a degeneration into what has been termed “authoritarian presidentialism”⁹³, namely systems in which the pre-eminence of the President is combined with the weakness of Parliament⁹⁴.

The President, while holding uncontested power within the executive branch, also exerts significant influence over the other two branches. In the legislative domain, the President has substantial normative powers, shaping the constitutional and legislative framework. Regarding the judiciary, presidential influence is primarily through appointing judges to the highest courts, which raises concerns about judicial independence. Finally, emergency powers represent a significant domain in which to discern the pivotal role of the President within these countries. These powers, whether enacted through presidential emergency powers or legislative provisions, enable the head of state to bypass or override certain institutional checks and balances with the pretext of addressing pressing crises, ranging from security threats to public health emergencies. While these frameworks are designed to be flexible, recognizing the unpredictable nature of emergencies, their wide scope also carries the inherent risk of facilitating the arbitrary exercise of power. This concern is particularly acute in regions like the Sahel, where the separation of powers is already fragile and democratic institution struggle to assert their authority. Indeed, Sahelian countries face a fundamental dilemma⁹⁵. Their structural weaknesses require extraordinary measures to maintain territorial control. However, this recurring reliance on exceptional powers traps them in a perpetual state of emergency, inhibiting a stable socio-economic context to address the root causes of their fragility. Consequently, these countries are caught in a paradox: while strong, often authoritarian measures are essential to preserve the state, their use undermines the authorities’

⁹³ They are «régimes qui se sont inspirés du système des Etats Unis mais qui n’ont pas respecté ce qui en fait le mérite essentiel, le partage équilibré des pouvoirs et ont laissé le chef de l’Etat accaparer toute l’influence politique», cf. B. JEANNOT, *Droit constitutionnel et institutions politiques*, Paris, 1991, 120.

⁹⁴ As Lijphart highlights, in these systems, the President is «even more powerful than in most pure presidential systems», see A. LIJPHART, *Constitutional Design for Divided Societies*, in *J. Democracy*, vol. 15, n. 2. 2004, 96-109.

⁹⁵ Edozie speaks of the “dilemma” between democracy and security, cf. R. K. EDOZIE, R. KIKI, *Reconstructing the Third Wave of Democracy: Comparative African Democratic Politics*, cit., 149.

legitimacy, weakening them and exposing them to greater destabilization risks. However, this “permanent state of exception”⁹⁶, while seemingly ineffective in combating the targeted threat (as evidenced by frequent coups justified by the previous ruling class’s inability to ensure citizen security), has instead led to a clear compression, if not violation, of the very citizens’ human rights it sought to protect.

Despite the various challenges faced by countries in the Sahel region, the role of the President remains pivotal. Beyond the essential centrality of this figure, however, lies the question of its potential positive contributions to democratic development. Does the concentration of extensive powers in the President hinder democratic progress, or can it, at times, serve as a catalyst for economic growth and stability? Ultimately, are democracy and strong executive authority inherently at odds, or can they be meaningfully reconciled? This pervasive role has, in fact, prompted a number of concerns regarding the respect for the principle of the separation of powers in these countries and the very existence of a democratic state. This opens the door to multiple interpretations, partly shaped by the evolving realities within these countries.

On one hand, Mali and Burkina Faso’s experiences, where military juntas control the state while invoking constitutional texts ultimately aligned with the traditions of previous regimes, cast doubt on presidential or semi-presidential systems’ potential to advance democracy. These countries show regressions in fundamental democratic principles, especially human rights and constitutional safeguards. Moreover, this backsliding appears driven, or at least facilitated, by their constitutional frameworks, which concentrate extensive powers in the President’s hands. Such cases highlight the dangers of unchecked presidential authority, which can exacerbate authoritarian tendencies and destabilize governance.

Conversely, Senegal presents a contrasting scenario. While confronted with significant challenges, primarily economic, these have not given rise to the same kind of political upheaval observed in other African nations. Instead, general discontent has revitalized civil society and polit-

⁹⁶ On the “normalization of the emergency”, which aims at stabilizing the exceptional regime within the legal system, thereby depriving it of its non-ordinary nature, see T. SÁNCHEZ, *Constitución y legislación antiterrorista*, in *Revista de Derecho Político*, vol. 71-72, 2008, 553-605; G. DE VERGOTTINI, *La difficile convivenza tra libertà e sicurezza*, cit., 1185-1211; M. CAVINO, *Sécurité, égalité, fraternité. La fragilità costituzionale della Francia. (osservazioni a un mese dagli attentati di Parigi)*, in *Consulta online*, vol. 3, 2015, 832.

ical parties as vehicles for democratic expression. Recent protests, while reflecting dissatisfaction with the ruling party, also signal the resilience of Senegal's democratic fabric. The recent change in governance—marking the end of decades-long rule by the *Alliance pour la République* (APR) and the rise of the populist *Patriotes Africains du Sénégal pour le Travail, l'Éthique et la Fraternité* (PASTEF) party—is indicative of this democratic vigor. Although the motivations behind the Senegalese population's pivot toward populism must not be underestimated, and opposition parties, if they hope to regain the trust of the electorate, must critically examine the causes of their decline in popularity, this shift highlights a dynamic and engaged democratic system.

This divergence raises questions about the interplay between constitutional design and practical governance in the Sahel⁹⁷. Nevertheless, the difference is striking, especially given the relatively shared constitutional traditions. This disparity, between constitutional structures and their implementation, underscores the central premise of this paper: the gap between formal constitutional provisions and their application. Closing this gap requires not only reforming Constitutions but also fostering political cultures and institutions prioritizing accountability, inclusivity, and the separation of powers. By addressing the root causes of gover-

⁹⁷ Scholars have identified several reasons why Senegal has emerged as an example of stability in the region. One is the Sufi Islam tradition. Indeed, «*Senegal is 94% Muslim and Sufi Islam dominates culturally, economically, and sometimes politically. Sufis – Islamic mystics – seek divine love and knowledge through self-discipline, [so that] religious minorities have long been accepted and given the freedom to practice their religion*», cf. M. LEICHTMAN, *The Exception: Behind Senegal's History of Stability*, in *The Conversation*, March 14, 2019, available online at <https://theconversation.com/the-exception-behind-senegals-history-of-stability-113198>. Worth of consideration is also the importance that Senegal had during French colonization. In addition to being the first French colony in Africa, Senegal was also linked to France by the establishment of four communes along its coast. Such territories were governed as integral parts of the French Republic, rather than as mere colonial possessions. In accordance with this system of governance, the metropolis held unquestionable authority over the territories and their inhabitants; however, individuals from these communes had accorded the status of French citizens, along with the right to vote and elect a representative to the National Assembly. Furthermore, Senegal served as the administrative capital of the *Afrique Occidentale Française* initially placed in Saint-Louis (1895-1902) and subsequently in Dakar (1902-1960). This French influence has provided Senegal with an history of fostering global intellectual, diplomatic, and financial connections, cf. S.J. SAPPLETON, *Constitutional Development in Postindependence Francophone West Africa: A Comparative Case Study of Senegal and Côte d'Ivoire*, cit., 183-203.

nance failures, the region can chart a course toward stability and democratic consolidation. For policymakers, this analysis offers a valuable lens to navigate the complex interplay of constitutional structures and political realities, paving the way for more effective support for democratic governance.

Abstract

In the period following the attainment of independence, the majority of countries in the Sahel region opted to adopt a system of government that favored the role of the President of the Republic. However, while these nations introduced presidential or semi-presidential form of government, their implementation have often resulted in “hyper-presidential” governance, centralizing authority in the executive branch. The supremacy of the President of the Republic, as enshrined in these Constitutions, was considered by many to be essential to promoting the unity of the newborn countries. However, it has also been characterized the entire constitutional path of these countries, leading to a considerable debate regarding the respect for the separation of powers and the rule of law in these countries. This debate has intensified in recent years due to rising security threats in the region, which have further bolstered calls for a strong presidential role to safeguard the state. The Constitutions of Sahelian countries reflect both common strategies and distinct approaches to managing these challenges. A comparative analysis, with a focus on emergency powers, underscores the similarities in their responses and highlights the varied efforts made to navigate the balance between authority and democratic governance. By highlighting these dynamics, the paper sheds new light on the tensions between the necessity of strong leadership in addressing pressing security crises and the risks of authoritarian overreach.

Nel periodo successivo all’ottenimento dell’indipendenza, la maggior parte dei Paesi della regione saheliana ha scelto di adottare un sistema di governo che privilegiava il ruolo del Presidente della Repubblica. Tuttavia, sebbene questi Stati abbiano formalmente introdotto forme di governo

presidenziali o semipresidenziali, nella pratica ciò si è spesso tradotto in un modello di governo “iper-presidenziale”, con una forte concentrazione del potere nell’esecutivo. La supremazia del Presidente della Repubblica, sancita nelle rispettive Costituzioni, è stata considerata da molti come elemento necessario per promuovere l’unità dei nuovi Stati. Tuttavia, essa ha anche caratterizzato l’intero percorso costituzionale di questi Paesi, sollevando un ampio dibattito sul rispetto del principio di separazione dei poteri e dello stato di diritto. Negli ultimi anni, tale dibattito si è intensificato a causa dell’aggravarsi delle minacce alla sicurezza nella regione, che hanno rafforzato le richieste di un ruolo presidenziale forte come garanzia della stabilità statale. Le Costituzioni dei Paesi del Sahel riflettono al contempo strategie comuni e approcci distinti per far fronte a queste sfide. Un’analisi comparata, con un focus specifico sui poteri di emergenza, mette in evidenza le analogie nelle risposte istituzionali adottate e mostra i diversi tentativi di trovare un equilibrio tra autorità presidenziale e governance democratica. Evidenziando tali dinamiche, il contributo propone una lettura rinnovata delle tensioni esistenti tra la necessità di una leadership forte per affrontare crisi di sicurezza urgenti e i rischi di una deriva autoritaria.