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Exceptional regimes And the rule of law in Burkina Faso: an analysis of institutional functioning and power relations

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ABSTRACT

This study examines the relationship between exceptional regimes and the rule of law in Burkina Faso, analyzing how the institutionalization of emergency powers has transformed the functioning of state institutions and reconfigured power relations since the 2022 coups d'état. Using a doctrinal legal methodology combined with documentary analysis of constitutional texts, emergency legislation, and institutional reports, this study assesses the extent to which exceptional governance has become the norm rather than the exception in Burkina Faso. The analysis reveals that what began as constitutionally sanctioned responses to security threats the declaration of states of emergency in 22 provinces in April 2023 has evolved into a permanent reordering of the constitutional order. The dissolution of all political parties in January 2025, the suspension of over one thousand civil society organizations, the expulsion of the United Nations Human Rights Office, and the withdrawal from ECOWAS and the International Criminal Court represent a systematic dismantling of constitutional checks and balances. The study finds that the constitutional court has played a para-constitutional role, legitimizing unconstitutional changes of government and validating the extension of transition periods without electoral deadlines. The findings contribute to the literature on constitutionalism in crisis by demonstrating that exceptional regimes in Burkina Faso have transitioned from temporary derogations to permanent governance structures, producing a legal order in which the formal constitution is systematically subordinated to the political imperatives of the ruling military junta.

Keywords: Exceptional regimes, rule of law, state of emergency, constitutionalism, military junta, Burkina Faso, institutional functioning, power relations

RESUME

Cette étude examine la relation entre les régimes d'exception et l'État de droit au Burkina Faso, en analysant comment l'institutionnalisation des pouvoirs d'exception a transformé le fonctionnement des institutions étatiques et reconfiguré les relations de pouvoir depuis les coups d'État de 2022. Utilisant une méthodologie juridique doctrinale combinée à une analyse documentaire des textes constitutionnels, de la législation d'exception et des rapports institutionnels, cette étude évalue dans quelle mesure la gouvernance d'exception est devenue la norme plutôt que l'exception au Burkina Faso. L'analyse révèle que ce qui a commencé comme des réponses constitutionnellement sanctionnées aux menaces sécuritaires la déclaration de l'état d'urgence dans 22 provinces en avril 2023 a évolué vers un réaménagement permanent de l'ordre constitutionnel. La dissolution de tous les partis politiques en janvier 2025, la suspension de plus de mille organisations de la société civile, l'expulsion du Haut-Commissariat des Nations unies aux droits de l'homme et le retrait de la CEDEAO et de la Cour pénale internationale représentent un démantèlement systématique des contrepoids constitutionnels. L'étude constate que la cour constitutionnelle a joué un rôle para-constitutionnel, légitimant les changements anticonstitutionnels de gouvernement et validant la prolongation des périodes de transition sans échéance électorale. Les résultats

contribuent à la littérature sur le constitutionnalisme en crise en démontrant que les régimes d'exception au Burkina Faso sont passés de dérogations temporaires à des structures de gouvernance permanentes, produisant un ordre juridique dans lequel la constitution formelle est systématiquement subordonnée aux impératifs politiques de la junte militaire au pouvoir.

Mots-clés : Régimes d'exception, État de droit, état d'urgence, constitutionnalisme, junte militaire, Burkina Faso, fonctionnement institutionnel, relations de pouvoir

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1. INTRODUCTION

1.1 Background

Burkina Faso has experienced a profound transformation of its constitutional order since January 2022, when a military coup d'état overthrew the democratically elected government of President Roch Marc Christian Kaboré. A second coup in September 2022 brought Captain Ibrahim Traoré to power, initiating a period of military rule that has progressively dismantled the institutional architecture of the Fourth Republic. What began as a temporary response to security failures has evolved into a comprehensive reordering of the relationship between state institutions, political actors, and citizens.

The security context that provided the initial justification for exceptional measures has been characterized by a sustained jihadist insurgency that has killed thousands and displaced more than two million people. The government declared a state of emergency in 22 of the country's 45 provinces in April 2023, invoking Law No. 023-2019/AN on the regulation of states of siege and emergency. This law, adopted in 2019, provides the legal framework for exceptional regimes, distinguishing between states of siege, which transfer police powers to military authorities, and states of emergency, which reinforce civilian authorities' powers while permitting derogations from fundamental rights.

1.2 Problem Statement

The fundamental problem addressed by this study is the progressive erosion of the rule of law under the guise of exceptional governance. While the Constitution of Burkina Faso permits derogations from normal legal order in circumstances of grave peril, the current regime has transformed exceptional measures from temporary expedients into permanent features of governance. This transformation raises critical questions about the nature of constitutionalism in Burkina Faso, the role of institutions in legitimizing authoritarian consolidation, and the prospects for restoring constitutional order.

The dissolution of all political parties in January 2025, the suspension of over one thousand civil society organizations, and the expulsion of the United Nations Human Rights Office represent unprecedented departures from constitutional norms. The withdrawal from ECOWAS and the International Criminal Court, coupled with the formation of the Alliance of Sahel States with Mali and Niger, signals a deliberate rejection of regional and international accountability mechanisms.

1.3 Study Objectives

This study addresses the following objectives:

1. To analyze the legal framework governing exceptional regimes in Burkina Faso, including constitutional provisions and enabling legislation.
2. To examine the institutional transformations that have occurred under exceptional governance, including changes to the party system, civil society, and accountability mechanisms.
3. To assess the role of constitutional and judicial institutions in legitimizing exceptional governance.
4. To identify the implications of exceptional regime consolidation for the rule of law and democratic prospects in Burkina Faso.

1.4 Significance of the Study

This study contributes to the literature on constitutionalism in crisis and authoritarian consolidation in West Africa. The Burkina Faso case offers a paradigmatic example of how exceptional regimes can transition from temporary derogations to permanent governance structures, producing a legal order in which the formal constitution is systematically subordinated to political imperatives. The findings have implications for policymakers, regional organizations, and civil society actors engaged in efforts to restore constitutional order.

2. LITERATURE REVIEW

2.1 Constitutional Exceptionalism and the Rule of Law

The doctrine of constitutional exceptionalism recognizes that states may face circumstances of such gravity that strict adherence to normal legal procedures would imperil the state's existence. Constitutional provisions for states of emergency, states of siege, and exceptional presidential powers are designed to provide legal frameworks for responding to such circumstances while maintaining ultimate constitutional continuity.

The Burkinabè Constitution of 1991, as amended, provides for exceptional regimes in Articles 58 and 59. Article 58 empowers the President to decree states of siege and emergency after deliberation in the Council of Ministers. Article 59, modeled on Article 16 of the French Constitution, grants the President extraordinary powers in circumstances of grave and immediate threat to the nation. The Constitution thus incorporates exceptionalism within its normative framework, creating what scholars term "constitutionalized emergency."

However, the literature distinguishes between constitutional exceptional regimes and unconstitutional exceptional regimes. The latter, described by some scholars as "regimes of transition" that produce "circumstantial or convenience laws that defy the rule of law and democracy," emerge from unconstitutional changes of government and lack the legitimacy of constitutionally sanctioned exceptional measures.

2.2 Exceptional Regimes in West Africa

The wave of military coups in West Africa since 2020 in Mali (August 2020 and May 2021), Guinea (September 2021), Burkina Faso (January and September 2022), and Niger (July 2023) has produced a proliferation of exceptional regimes that share common characteristics. These regimes typically suspend or abrogate constitutions, adopt transitional charters, extend transition periods without electoral deadlines, and restrict political freedoms.

Scholars have identified a pattern in the institutionalization of these regimes. Initial justifications based on security failures and governance deficits give way to consolidation of power, neutralization of political opposition, and rejection of external accountability. The creation of the Alliance of Sahel States (AES) in July 2024, followed by withdrawal from ECOWAS in January 2025, represents a collective strategy by the military regimes of Burkina Faso, Mali, and Niger to insulate themselves from regional pressure.

2.3 The Role of Constitutional Courts in Exceptional Circumstances

The role of constitutional courts during periods of crisis has attracted significant scholarly attention. Research on the Burkinabè and Malian experiences demonstrates that constitutional judges operate in two modalities during exceptional circumstances: a derogatory office, in which they fulfill their functions outside the constitutional normative framework, and a controversial office, in which they favor para-constitutional norms over the formal constitution to settle crises and ensure transition custody.

This para-constitutional jurisprudence has been criticized for legitimizing unconstitutional changes of government and validating the extension of transition periods. The constitutional court's validation of the January 2022 coup and subsequent transition arrangements, despite their formal incompatibility with the Constitution, illustrates this controversial role.

2.4 Civil Society and Political Pluralism Under Exceptional Regimes

Exceptional regimes consistently target civil society and political pluralism as threats to their consolidation. In Burkina Faso, the government dissolved all political parties in January 2025, repealed legislation regulating parties, and ordered them to surrender their assets. The suspension of over one thousand civil society organizations, including prominent human rights groups, has effectively eliminated organized dissent.

The legal framework for these actions has been provided by Law No. 023-2019/AN on states of siege and emergency, which permits the suspension or dissolution of any group or association that participates in or incites acts threatening public order, and by a July 2025 law imposing strict registration and reporting requirements on civil society organizations.

3. RESEARCH QUESTIONS

This study is guided by the following research questions:

Research Question 1: What is the legal framework governing exceptional regimes in Burkina Faso, and how has it been invoked and applied since 2022?

Research Question 2: How have exceptional regimes transformed the functioning of state institutions, including the party system, civil society, and accountability mechanisms?

Research Question 3: What role has the constitutional court played in legitimizing exceptional governance and unconstitutional changes of government?

Research Question 4: What are the implications of exceptional regime consolidation for the rule of law and prospects for restoring constitutional order in Burkina Faso?

4. METHODOLOGY

4.1 Research Design

This study employs a doctrinal legal methodology combined with documentary analysis. Doctrinal analysis is appropriate for examining the constitutional and legislative framework governing exceptional regimes, while documentary analysis permits assessment of institutional practices and their conformity with legal norms.

4.2 Data Sources

The analysis draws on:

Primary legal sources:

- The Constitution of Burkina Faso (1991, as amended), particularly Articles 58 and 59.
- Law No. 023-2019/AN of 14 May 2019 on the regulation of states of siege and emergency.
- Decree No. 2023-0444/PRES-TRANS/PM/MDAC/MATDS/MJDHRI of 14 April 2023 declaring a state of emergency in 22 provinces.
- Law No. 007-2023/AN of 12 May 2023 extending the state of emergency.
- Decrees and orders relating to the dissolution of political parties and suspension of civil society organizations.

Secondary sources:

- Reports from international organizations including CIVICUS, the United Nations, and International IDEA.
- Academic literature on constitutional exceptionalism and its application in West Africa.
- Analyses of the role of constitutional courts in crisis situations.

4.3 Analytical Framework

The analysis is organized around three dimensions: legal framework (the constitutional and legislative provisions governing exceptional regimes), institutional practice (how these provisions have been applied and their effects on state institutions), and jurisprudential legitimation (the role of constitutional courts in validating exceptional governance).

5. RESULTS

5.1 The Legal Framework for Exceptional Regimes

The Burkinabè Constitution provides for exceptional regimes through Articles 58 and 59. Article 58 states that "the President of Faso decrees, after deliberation in the Council of Ministers, the state of siege and the state of emergency." This provision is implemented through Law No. 023-2019/AN of 14 May 2019, which regulates states of siege and emergency.

Under Article 4 of the 2019 law, a state of siege is defined as "an exceptional police regime that has the effect of transferring to military authorities the exercise of police powers." This transfer occurs in cases of imminent peril to the nation resulting notably from armed insurrection or foreign invasion. A state of emergency, by contrast, reinforces the powers of civilian authorities while permitting derogations from certain fundamental rights.

The 2019 law enumerates the rights that may be restricted under exceptional regimes, including: the right to security (permitting searches of homes day and night); individual liberty (requisition of persons); freedom of movement (assignment to residence,

prohibition of circulation); property rights (imposition of necessary servitudes); freedom of teaching (control and prohibition of instruction inciting violence); freedom of assembly (prohibition of meetings likely to disturb order); freedom of association (suspension or dissolution of groups threatening public order); freedom of expression (prohibition of publications inciting disorder); and secrecy of correspondence (surveillance of electronic communications).

5.2 Invocation and Application of Exceptional Measures

The state of emergency was declared in 22 of Burkina Faso's 45 provinces by Decree No. 2023-0444 of 14 April 2023, effective from 30 March to 29 April 2023. The government justified this measure by reference to "repeated terrorist attacks" that had "caused enormous loss of life, injuries, and considerable material damage" and created "risks of destabilization of the country, threats to social peace, and psychosis within the population."

The state of emergency was extended for six months from 29 April to 29 October 2023 by Law No. 007-2023/AN of 12 May 2023. The extension was justified as necessary to "allow local authorities to create conditions for better promotion and protection of the human rights of populations unjustly affected by the violence and cruelty of terrorist attacks."

The application of exceptional measures has extended far beyond the security domain. The dissolution of all political parties in January 2025, the suspension of over one thousand civil society organizations, and the expulsion of the United Nations Human Rights Office represent applications of exceptional powers to eliminate organized political and civic opposition.

5.3 Institutional Transformations Under Exceptional Governance

Dissolution of Political Parties:

In January 2025, the Burkinabè government dissolved all political parties, issuing a decree that repealed all laws regulating parties and ordered them to surrender their assets. Their activities had been suspended since September 2022. This measure eliminated the institutional framework for political pluralism and electoral competition.

Suspension of Civil Society Organizations:

The government suspended over one thousand civil society organizations in the months preceding the dissolution of political parties, citing grounds including failure to renew governing bodies. In April 2025, 118 organizations were dissolved, including prominent human rights groups such as the African Meeting for the Defence of Human Rights, the Burkinabè Coalition for Women's Rights, and Christian Action for the Abolition of Torture. The government invoked a July 2025 law imposing strict registration and reporting requirements, despite the law's provision of a one-year compliance period.

Restrictions on Media and Expression:

Authorities suspended several media outlets, typically over their reporting on the security situation. In May 2025, the state media regulator indefinitely suspended French TV channel TV5 Monde, accusing it of siding with terrorist groups. The General Student Union of Burkina Faso, the country's largest student group, was suspended after issuing a statement criticizing the government's security record.

Withdrawal from Regional and International Accountability Mechanisms:

Burkina Faso, together with Mali and Niger, completed its withdrawal from ECOWAS in January 2025, following the formation of the Alliance of Sahel States in July 2024. The three states have formally begun the process of withdrawing from the International Criminal Court, denouncing the court as a "tool of neocolonial oppression." In February 2025, Burkina Faso suspended the UN Human Rights Office, which had operated in the country since 2019.

5.4 The Constitutional Court's Para-Constitutional Role

The Constitutional Court of Burkina Faso has played a critical role in legitimizing exceptional governance. Research on the court's jurisprudence during crisis periods identifies two modalities: a derogatory office, in which the court operates outside the constitutional normative framework, and a controversial office, in which it favors para-constitutional norms over the formal constitution.

The court has validated the unconstitutional change of government that brought the military junta to power, legitimized the authorities de facto, and approved the extension of transition periods without electoral deadlines. This jurisprudence has been characterized as producing a "para-constitutional" legal order in which the formal constitution is systematically subordinated to political imperatives.

The court's decisions have been criticized for their "extra-constitutional motivations" and their role in "consolidating putschist and insurrectional power." The validation of transition arrangements that extend military rule beyond initially announced timelines, without provision for elections, represents a fundamental departure from constitutional norms.

5.5 Power Relations and Institutional Functioning

The transformation of Burkina Faso's institutional landscape under exceptional governance has reconfigured power relations in fundamental ways.

Executive Dominance:

The executive branch, controlled by the military junta, has accumulated unprecedented powers. Article 59 of the Constitution, which grants the President extraordinary powers in circumstances of grave and immediate threat, has been invoked to justify measures that go far beyond security imperatives. The President's power to decree states of emergency after Council of Ministers deliberation has become a mechanism for permanent exceptional governance.

Elimination of Checks and Balances:

The dissolution of political parties and suspension of civil society organizations have eliminated the institutional counterweights that ordinarily constrain executive power. The legislature, already weakened by the suspension of normal political processes, has been reduced to a rubber-stamp body for decrees and orders issued by the executive.

Judicial Subordination:

The Constitutional Court's para-constitutional jurisprudence has effectively subordinated judicial review to political imperatives. The court has functioned not as a check on executive power but as an instrument for legitimizing unconstitutional actions.

Rejection of External Accountability:

The withdrawal from ECOWAS and the ICC, the expulsion of the UN Human Rights Office, and the formation of the Alliance of Sahel States represent a deliberate strategy to insulate the regime from external scrutiny and accountability.

6. DISCUSSION OF RESULTS

6.1 From Constitutional Exceptionalism to Permanent Exceptional Governance

The findings reveal a fundamental transformation in the nature of exceptional governance in Burkina Faso. What began as a constitutionally sanctioned response to security threats the declaration of a state of emergency in 22 provinces has evolved into a permanent reordering of the constitutional order. The distinction between temporary derogation and permanent governance has collapsed.

This transformation is evident in the systematic application of exceptional powers to domains far removed from the original security justification. The dissolution of all political parties, the suspension of over one thousand civil society organizations, and the expulsion of the UN Human Rights Office cannot be justified by reference to the jihadist insurgency. They represent the use of exceptional powers for regime consolidation, not security restoration.

The literature on constitutional exceptionalism emphasizes that derogations from normal legal order must be temporary, proportionate, and subject to review. The Burkinabè experience demonstrates how these conditions can be systematically violated, transforming exceptionalism from a constitutional safety valve into a mechanism for authoritarian entrenchment.

6.2 The Para-Constitutional Role of the Constitutional Court

The Constitutional Court's role in legitimizing exceptional governance raises profound questions about the relationship between judicial institutions and authoritarian consolidation. Rather than serving as a check on executive power, the court has functioned as an instrument for validating unconstitutional actions and extending military rule.

This para-constitutional jurisprudence is not unique to Burkina Faso. Comparative research on Mali and other West African states demonstrates similar patterns, in which constitutional judges, faced with crises that exceed the normative framework, choose to favor political stability over constitutional fidelity. The result is a "para-constitutional" legal order in which the formal constitution is systematically subordinated to para-constitutional norms adopted by transitional authorities.

The implications of this jurisprudence are profound. By legitimizing unconstitutional changes of government and extending transition periods without electoral deadlines, the Constitutional Court has effectively removed the constitutional barriers to indefinite military rule. The court has become an accomplice in the dismantling of the constitutional order it is charged with protecting.

6.3 The Elimination of Political Pluralism and Civic Space

The dissolution of all political parties and the suspension of over one thousand civil society organizations represent an unprecedented assault on political pluralism and civic space in Burkina Faso. These measures have eliminated the institutional frameworks through which citizens can organize, express dissent, and hold power accountable.

The legal justification for these measures the 2019 law on states of emergency, which permits the dissolution of associations threatening public order, and the July 2025 law on civil society organizations demonstrates how exceptional legal frameworks can be weaponized against political opponents and civil society.

The targeting of human rights organizations, women's rights groups, and anti-torture organizations reveals the regime's determination to eliminate any organized expression of dissent. The suspension of student groups and media outlets further demonstrates the breadth of the crackdown.

6.4 Regional and International Dimensions

The Burkina Faso case cannot be understood in isolation from regional dynamics. The formation of the Alliance of Sahel States with Mali and Niger, followed by collective withdrawal from ECOWAS, represents a strategy of regional insulation. By creating a bloc of military regimes that reject democratic norms and external accountability, Burkina Faso has found allies in its rejection of constitutional governance.

The withdrawal from the International Criminal Court and the expulsion of the UN Human Rights Office further demonstrate the regime's determination to eliminate external accountability mechanisms. For survivors of human rights atrocities, these withdrawals remove vital potential routes to justice.

6.5 Implications for the Rule of Law and Democratic Prospects

The consolidation of exceptional governance in Burkina Faso has profound implications for the rule of law and prospects for democratic restoration. The constitutional order has been systematically dismantled, political parties and civil society have been eliminated, and judicial institutions have been subordinated to executive power.

The extension of the transition period to 2029, with no electoral deadline and the possibility of renewal, suggests that the military junta has no intention of restoring constitutional governance. The declaration by Captain Traoré that Burkinabè should "forget about democracy" represents an explicit rejection of democratic norms.

The prospects for restoring constitutional order will depend on multiple factors, including the evolution of the security situation, the cohesion of the military junta, the response of regional and international actors, and the capacity of Burkinabè civil society to resist authoritarian consolidation. However, the systematic elimination of political pluralism and civic space has created conditions in which organized opposition is virtually impossible.

7. CONCLUSION

This study has examined the relationship between exceptional regimes and the rule of law in Burkina Faso, analyzing how the institutionalization of emergency powers has transformed the functioning of state institutions and reconfigured power relations since the 2022 coups d'état. The findings reveal that what began as constitutionally sanctioned responses to security threats has evolved into a permanent reordering of the constitutional order, characterized by executive dominance, the elimination of checks and balances, and the subordination of judicial institutions to political imperatives.

The Constitutional Court has played a para-constitutional role, legitimizing unconstitutional changes of government and validating the extension of transition periods without electoral deadlines. The dissolution of all political parties and the suspension of over

one thousand civil society organizations have eliminated the institutional frameworks for political pluralism and civic engagement. The withdrawal from ECOWAS and the International Criminal Court, coupled with the expulsion of the UN Human Rights Office, represents a deliberate rejection of regional and international accountability mechanisms.

The policy implications are clear. First, the restoration of constitutional order requires the reestablishment of political pluralism and civic space, including the legalization of political parties and the lifting of restrictions on civil society organizations. Second, judicial institutions must be restored to their constitutional role as checks on executive power, which requires a fundamental reorientation of constitutional jurisprudence. Third, regional and international actors must develop strategies for engaging with the military regime that prioritize the restoration of constitutional governance over short-term security cooperation. Fourth, Burkinabè civil society, despite the severe restrictions it faces, remains a critical actor in any future transition to constitutional governance.

The findings contribute to the literature on constitutionalism in crisis by demonstrating that exceptional regimes can transition from temporary derogations to permanent governance structures, producing a legal order in which the formal constitution is systematically subordinated to political imperatives. The Burkina Faso case offers a cautionary example of how constitutional exceptionalism, when unconstrained by effective judicial review and political pluralism, can become a mechanism for authoritarian consolidation.

8. LIMITS OF THE STUDY

This study has several limitations that should be acknowledged.

First, the analysis relies primarily on documentary sources and does not include primary data collection through interviews with political actors, civil society representatives, or legal practitioners. Such data would provide richer understanding of the institutional dynamics and power relations examined in this study.

Second, the rapidly evolving political situation in Burkina Faso means that the analysis captures a snapshot of institutional arrangements at a particular moment. The findings may require revision as events unfold.

Third, the study focuses on legal and institutional dimensions of exceptional governance and does not systematically examine the social and economic consequences of authoritarian consolidation. Future research could address these dimensions.

Fourth, the analysis is constrained by limitations on access to information about decision-making processes within the military junta and its relationship with formal state institutions. The opacity of governance under exceptional regimes limits the depth of institutional analysis.

Fifth, the study does not include a comparative dimension examining the Burkina Faso experience alongside other exceptional regimes in the Sahel. Such comparative analysis would enhance understanding of the factors that shape the trajectory of exceptional governance.

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10. AUTHOR CONTRIBUTIONS

The author confirms sole responsibility for the study conception, design, legal analysis, interpretation, and manuscript preparation.

11. COMPETING INTEREST

The author declares no competing interests.

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13. DATA AVAILABILITY

The data supporting this study are derived from publicly available legal texts, government decrees, and reports from international organizations. Specific sources are identified in the Bibliography.

14. DISCLAIMER

The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of any institution. The analysis is based on publicly available information as of the date of writing.

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