

## ARTICLES / ABHANDLUNGEN

## Constitutional Coup-Proofing

By *Melissa Crouch*\* and *Christoph Sperfeldt*\*\*

**Abstract:** The persistence of military coups in the Global South raises new questions in terms of how constitution-makers use constitutions to prevent, deter or resist a coup and to what effect. In this article, we examine how constitution-makers respond to the threat of future military coups. Building on and extending the literature on coup-proofing, we argue that coup-proofing is not only a political strategy but can also be a legal one. We define constitutional coup-proofing as constitutional design strategies that aim to both prevent coups and deter the future possibility of a coup. We further identify five strategies of constitutional coup-proofing. We illustrate these strategies through case studies. Contributing to calls for a military turn in comparative constitutional law, we outline an agenda for the study of constitutional coup-proofing. The coup-proofing function of constitutions is important but overlooked and requires greater sociological attention given the prevalence of this strategy by constitution-makers in countries with a history of military rule or unconstitutional overthrow of government by force.

**Keywords:** Constitutionalism in the Global South; Constitution-Making; Coup-Proofing; Constitutions in Authoritarian Regimes; Military

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\* Professor, University of New South Wales, Sydney (Australia), Email: melissa.crouch@unsw.edu.au.

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\*\* Associate Professor, Macquarie University, Sydney (Australia), Email: christoph.sperfeldt@mq.edu.au.

## A. Introduction

Constitution-making or amendment often takes place after coups and military coups remain a persistent feature in contemporary politics, especially in the Global South.<sup>1</sup> In the 21<sup>st</sup> century, successful coups have occurred in many countries, including in Bolivia, Burkina Faso, Ecuador, Fiji, Guinea, Honduras, the Maldives, Sudan and Venezuela. There have also been attempted coups in numerous countries. Military coups contribute to legal and constitutional instability and can have a devastating impact on democracy, the economy and society at large.

Yet, the aftermath of military coups is also often a catalyst for constitution-making. For example, in the 1990s in Myanmar, the military denied elected civilians the right to take office after the 1990 elections and instead drafted the 2008 Constitution to entrench its rule.<sup>2</sup> In Thailand, after the 2014 military coup, General Prayut Chan-o-cha established a new constitution to entrench the military's influence in politics.<sup>3</sup> In 2023, following a military coup three years earlier, Mali adopted a new constitution, while in the same year the coup in Niger has led to the dissolution of the constitution. In March 2023, Chilean constitution-makers considered a proposal to constitutionally empower the armed forces (after the failed 2022 referendum). Although rejected, the fact that the military made such a proposal demonstrates that it retains an active influence in politics in Chile, as it does across many other countries in Latin America. These examples are illustrative of the underexplored nexus between the military, coups and constitution-making.

A coup is the illegal overthrow of a government through violence or threats of violence, where the military or a faction within the military is often a central actor.<sup>4</sup> Coups may lead to regime change, elections and constitution-making.<sup>5</sup> The phenomenon of coups raises new questions for scholars of comparative constitutional law. This article contributes to the emerging agenda for the study of the military in comparative constitutional law<sup>6</sup> and the renewed attention of scholars to the role of constitutions in authoritarian regimes.<sup>7</sup> We

1 *John J. Chin / David B. Carter / Joseph G. Wright*, *The Varieties of Coups D'état: Introducing the Colpus Dataset*, *International Studies Quarterly* 65 (2021); *Barbara Geddes / Erica Frantz / Joseph Wright*, *Military Rule*, *Annual Review of Political Science* 17 (2014).

2 *Melissa Crouch*, *The Palimpsest Constitution: The Social Life of Constitutions in Myanmar*, Oxford 2025.

3 *Eugénie Mérieau*, *Constitutional Bricolage: Thailand's Sacred Monarchy vs. The Rule of Law*, Oxford 2021.

4 In this article, we exclude self-coups, that is, where an elected leader takes illegal or unconstitutional action in order to remain in power, as the Tunisian president did in 2021; although we acknowledge that in an era of populism, self-coups are becoming more common.

5 *Erica Frantz*, *Authoritarianism: What Everyone Needs to Know*, Oxford 2018, pp. 126-127.

6 *Melissa Crouch*, *The Military Turn in Comparative Constitutional Law: Constitutions and the Military in Authoritarian Regimes*, *Annual Review of Law & Social Science* 20 (2024), pp. 53-69.

7 See for example *Tom Ginsburg / Tamir Moustafa* (eds.), *Rule by Law: The Politics of Courts in Authoritarian Regimes*, Cambridge 2008; *Tom Ginsburg / Alberto Simpser* (eds.), *Constitutions*

begin by canvassing the literature on coup-proofing, which we characterise as political strategies that target the military for internal and external reforms. Extending and adapting this non-constitutional coup-proofing literature, we identify an underappreciated form of coup-proofing by law: constitutional coup-proofing.

We introduce the idea of constitutional coup-proofing as the inclusion of anti-coup provisions in a constitutional text in response to a coup or threat of a coup and with the intention of preventing or deterring future coups. An anti-coup provision is any written provision in a constitution that is included with the intention or function of preventing a future coup, reducing the incentives for the military to stage a coup or for the people to cooperate with coup leaders. Both democratising and authoritarian regimes engage in constitutional coup-proofing. We draw attention to five broad types of constitutional coup-proofing and explore their possible strengths and weaknesses, including: coup denunciations; inviolability clauses; the right or duty to resist; prohibitions on public service; and coup crimes.<sup>8</sup> Based on qualitative comparative analysis and case studies, we then illustrate these varieties of constitutional coup-proofing in states with current or former military authoritarian regimes, drawing primarily from the Global South where this is now most common, particularly across Latin America<sup>9</sup> and Africa.

We conclude by offering an agenda for the study of constitutional coup-proofing as one way of paying attention—sociologically and empirically—to the role of the military in comparative constitutionalism. Coup-proofing is not just a political strategy, as political scientists and security sector studies scholars have long argued, but it is also a legal and constitutional one.

## B. Coup-Proofing: Internal and External Reforms to the Military

The role of the military in coups and politics more generally, and the different coup-proofing strategies that states adopt, has drawn the attention of scholars of political science, international relations, civil-military relations and sociology. This scholarship has identified or recommended a range of potential coup-proofing strategies for states to adopt. Drawing on this literature, we identify two broad ways of conceptualising coup-proofing as reform to the military: internal reforms and external reforms (primarily counterbalancing). We discuss the features of coup-proofing, the strengths and weaknesses of internal and exter-

in *Authoritarian Regimes*, Cambridge 2014; *Tamir Moustafa*, *Law and Courts in Authoritarian Regimes*, *Annual Review of Law and Social Sciences* 10 (2014); *Roberto Barros*, *Constitutionalism and Dictatorship: Pinochet, the Junta and the 1980 Constitution*, Cambridge 2002; *David Landau*, *Abusive Constitutionalism*, *UC Davis Law Review* 47 (2013).

<sup>8</sup> We acknowledge that some coup-proofing strategies overlap with strategies to protect a right to a revolution.

<sup>9</sup> For a quantitative analysis of the military in Latin America, see *Gabriel Negretto*, *Authoritarian Constitution-making: The Role of the Military in Latin America*, in: Tom Ginsburg / Alberto Simpser (eds.), *Constitutions in Authoritarian Regimes*, New York 2014.

nal reforms, and demonstrate how these strategies are shared by both authoritarian and democratic regimes. These non-constitutional strategies demonstrate how regimes seek to prevent coups. We also highlight that the discussion on coup-proofing has to date primarily focused on political or policy-based reforms, overlooking the role of constitutional coup-proofing.

### *I. Political Coup-Proofing as Internal Reforms to the Military*

Internal reforms refer to coup-proofing measures taken by a regime that change, renew or diversify the military's internal composition and structure, and enhance its level of professionalism. Two main types of internal reform of the military are personnel reform and professionalisation. Personnel reform involves intentional recruitment strategies, or leadership change strategies, to reconfigure the composition of the military in terms of the individual identity of military officers to prevent coup.<sup>10</sup> Donald Horowitz has identified that such coup-prevention techniques replicate many of the discriminatory practises used by colonial powers in the recruitment of colonial forces, such as in Africa and South Asia.<sup>11</sup>

Authoritarian regimes may use personnel reform as a deliberate strategy to increase recruitment from one ethnic, kinship or religious group. Such reform skews the military composition in favour of a particular group to ensure loyalty to the regime,<sup>12</sup> or to prevent the military from being a threat to the regime such as by preventing the military from being united by ethnic or religious identity. A military dominated by personnel from one religious or ethnic group—who are sometimes majority groups but other times powerful minorities—may serve the interests of that group or worse oppress certain groups to ensure the dominance of the interests of that military group in politics. There are many examples, from the majority Sinhala Buddhist military in Sri Lanka to Myanmar's majority Bamar Buddhist military.

In democratic regimes, a government may undertake military personnel reform as a strategy to reduce the risk that the identity of a military officer may undermine their loyalty to the military as an institution that serves the civilian state. Democratic regimes may introduce ethnic, religious or kinship quotas to diversify the military corps and draw from a wide range of social groups, including minorities,<sup>13</sup> and to ensure that no one group dominates the military or certain (higher) ranks within the military. Democratic personnel reform may aim to eliminate military bias or the perception of bias based on the identity—

10 Donald Horowitz refers to personnel reform as compositional strategies because such strategies target the internal composition of the military: *Donald L. Horowitz*, *Ethnic Groups in Conflict*, Berkeley 2000, pp. 532-559.

11 See *Donald Horowitz*, *Coup Theories and Officers' Motives: Sri Lanka in Comparative Perspective*, Princeton 1980.

12 In Africa, see generally, *Philip G. Roessler*, *Ethnic Politics and State Power in Africa: The Logic of the Coup-Civil War Trap*, Cambridge 2016.

13 *Horowitz*, note 10, pp. 534-536.

religious, ethnic or otherwise—of individual military officers or the collective identity of certain military units or the military as a whole. In turn, such a strategy aims to prevent military-instigated violence or discrimination against certain minority groups that are not represented or underrepresented in the military. However, the literature emphasises that a democratic regime must take care how it undertakes personnel reform because it runs the risk of appearing to interfere in matters of internal military administration.<sup>14</sup> The challenge for a democratic regime is to justify personnel reform as within the boundaries of civilian authority, rather than military authority, otherwise they may risk backlash from the military. The boundary between civilian and military affairs depends upon the context.

Another key political strategy of internal reform identified in this literature is professionalisation, that is, the process of undertaking internal reform of the military to enhance the professional identity, efficiency and function.<sup>15</sup> The rise of professionalisation as a social process has been observed across a wide range of industries and institutions in the 20<sup>th</sup> century. Professionalisation of the military may include reforming army leadership, capacity building and training, and strengthening military discipline and loyalty.<sup>16</sup>

Sometimes coup-proofing as professionalisation may include downsizing the military in contexts where it has become too large. For authoritarian regimes, reducing the military may be a strategy to weaken it and minimise the risk that it may challenge the regime's power. In a democratic regime, downsizing the military may be necessary to subordinate the military to civilian control and reflect the military's role as one that is primarily focused on external security and not internal security. In addition, budgetary reforms and financial incentives can complement professionalisation by ensuring budgetary self-sufficiency and therefore prevent or end military efforts to generate alternative sources of income or engage in corruption. Similarly, provision of sufficient equipment; and raising the salaries and benefits of military officers, may reduce the likelihood of a coup.<sup>17</sup>

Regimes may undertake coup-proofing through professionalisation strategies to increase both the external image of the military and its internal functioning. Yet professionalisation and changing internal military culture can take time to become institutionalised and a state needs sufficient resources available to equip the military, including increasing wages. Budgetary increases may be possible for resource-rich governments such as in the Middle

14 Ibid., p. 559.

15 For an early characterisation of military professionalism as encompassing “expertness, social responsibility, and a corporate character” see *Samuel Huntington, The Soldier and the State: The Theory and Politics of Civil-Military Relations*, New York 1957, pp. 8-12; see also *Samuel Finer, The Man on Horseback*, London 1962, pp. 24-25.

16 For example, *Samuel Huntington, The Third Wave: Democratization in the Late Twentieth Century*, London 1993, pp. 251-253. On the military as a social institution, see *Morris Janowitz, The Professional Soldier*, Glencoe 1960.

17 Huntington refers to financial incentives and funding for the military as ‘spoiling’: *Huntington*, note 16, pp. 251-253. See also *James Quinlivan, Coup-Proofing: Its Practices and Consequences in the Middle East*, *International Security* 24 (1999); *Rita Brooks, Political-Military Relations and the Stability of Arab Regimes*, London 1998.

East but may be impossible in many other countries. Furthermore, the idea of the military as a professional institution has itself been the subject of debate.<sup>18</sup>

## II. *Political Coup-Proofing as External Reforms to the Military*

A second common coup-proofing strategy is external reforms, that is, changes that are external to the military itself that ensure military subordination to the executive and reduce the likelihood of a military coup.<sup>19</sup> The ability of a regime to control the military is not merely an administrative or organisational problem, but a political problem.<sup>20</sup> Like internal reforms, external reforms have often been a technique used by authoritarian regimes to retain control although they may also be strategies used by democratic regimes to refashion civil-military relations and prevent future coups. External reforms have an indirect effect on the military in that such provisions seek to change the external conditions or incentives that ensure the military remains subordinate to the government and less likely to stage a coup.

One example of external reform discussed in the literature is counterbalancing<sup>21</sup> Counterbalancing involves the creation of non-military or paramilitary forces that are independent from the traditional military to counter the force of the military and reduce its power.<sup>22</sup> Counterbalancing is intended to address the dilemma that a state needs a strong military, but not so strong that it rivals the government. The creation of a paramilitary unit may take a range of forms, from militarised police such as gendarmerie, to presidential guards, interior troops or civilian militias.<sup>23</sup> These armed units are usually external to the military although occasionally it may be a special unit within the military. The idea is that this special force provides a counter force to the military that is close to the government of the day and disincentivises the military from staging a coup.

Studies of counterbalancing as a form of coup-proofing have often been inspired by the interests of foreign powers, such as the interests of the United States in the Middle East.<sup>24</sup> Counterbalancing aims to increase the difficulty of coordination by the military to stage

18 See for example *Eric López*, *Latin America: Objective and Subjective Control Revisited* in: David Pion-Berlin (ed.), *Civil-Military Relations in Latin America: New Analytic Perspectives*, Chapel Hill 2001.

19 Horowitz uses the term non-compositional strategies, however, his conception is a catch-all idea that refers to anything other than internal reforms (or compositional strategies).

20 *Milan W Svobik*, *The Politics of Authoritarian Rule*, Cambridge 2012, p.132.

21 For an early discussion, see *Eric Luttwak*, *Coup D'Etat: A Practical Handbook*, New York 2016, pp. 141-148 with reference to Saudi Arabia, Syria and Iraq.

22 See for instance *Erica De Bruin*, *How to Prevent Coups d'État: Counterbalancing and Regime Survival*, Ithaca 2020; *Tobias Bohmelt / Ulrich Pilster*, *The Impact of Institutional Coup-Proofing on Coup Attempts and Coup Outcomes*, *International Interactions* 41 (2015).

23 See for example *De Bruin*, note 22; *Elise Forbes Pachter*, *Contra-coup: Civilian Control of the Military in Guinea, Tanzania, and Mozambique*, *Journal of Modern African Studies* 20 (1989), pp. 606-609.

24 See for example *Quinlivan*, note 17.

a coup, as well as ensure there is a separate force capable of organising armed resistance to a coup. Coup plotters may disband rival forces if the coup is successful;<sup>25</sup> only in rare instances has a special force supported a coup.<sup>26</sup> The weakness of counterbalancing is similar to personnel reform in that it is open to democrats and authoritarians alike. Autocrats frequently engage in counterbalancing for their own ends.<sup>27</sup> An authoritarian regime may create a paramilitary unit merely to reinforce its own political longevity, although it runs the risk that such a force may itself become a powerful political force that later challenges a regime via a coup. In this regard, counterbalancing is a high-risk strategy because it creates the conditions under which a coup may escalate to civil war.<sup>28</sup>

In democratic regimes, there are a range of external reforms other than counterbalancing that aim to enshrine civilian supremacy and control over the military, including accountability of the military to democratic institutions. These measures generally fall under the broader field of sector security reforms, and some may indirectly contribute to reducing the risk of coups.<sup>29</sup> This includes measures to limit the military's role in internal security matters through constitutional or legal parameters, and limit the powers of military courts by subordinating them to civilian judicial oversight. In times of emergency, such measures are designed to set limitations on the military through mechanisms such as executive or parliamentary oversight, reporting requirements and time limitations, as well as potentially permitting a civilian government to declare an emergency in response to a coup.<sup>30</sup> To prevent militaries from using coups to overthrow the constitutional order, external reforms may include constitutional provisions and safeguards regarding the replacement or amendment of constitutions. The role and independence of the courts may be enhanced as a body that can act as a check on the power of the military and the executive.

The above strategies—both internal and external reform—are all preventative, that is, regimes use them to prevent a coup from occurring. Another external reform strategy, criminalisation, is *ex post*, that is, after a coup has occurred to punish those involved and in doing so act as a deterrent for would-be coup leaders (as criminal offences are generally applied prospectively). Prosecuting coup leaders may occur after political transitions by an authoritarian regime or once a democratic government regains power and the forces supporting the coup have declined in strength to the point where there is little resistance

25 *De Bruin*, note 22, ch. 2.

26 *Ibid.*, p. 9.

27 Aaron Belkin / Evan Schofer, Toward a Structural Understanding of Coup Risk, *Journal of Conflict Resolution* 47 (2003); Jonathan Powell, Determinants of the Attempting and Outcomes of Coups D'état, *Journal of Conflict Resolution* 56 (2012).

28 *De Bruin*, note 22, ch. 6.

29 Zoltan Barany / Sumit Bisarya / Sujit Choudhry / Richard Stacey (eds.), *Considerations in Security Sector Reform During Constitutional Transition*, Oxford 2019.

30 Brian Loveman, *The Constitution of Tyranny: Regimes of Exception in Spanish America*, Pittsburgh 1993; Victor Ramraj / Arun Thiruvengadam (eds.), *Emergency Powers in Asia*, Cambridge 2009.

or backlash to bringing the coup leaders before the courts. While coup leaders or followers are generally prosecuted according to the criminal law, below we focus on constitutional crimes as a new form of crime that uses the higher status of the constitution to criminalise involvement with a coup.

Our list of external reforms is non-exhaustive, and it relates to a broader agenda of security sector reform. Our focus on constitutional coup-proofing builds on the idea of coup proofing as external reforms by looking at the role and function of constitutions in societies with a history of coups or contemporary experience of coups. Coup-proofing is not just a set of political strategies resulting in internal and external reforms to the military, but also often involves a range of legal and constitutional reforms targeting the military or other unconstitutional armed opposition to prevent a coup.

### C. Constitutional-Coup Proofing

Building upon the idea of coup-proofing discussed above, we develop the idea of constitutional coup-proofing. In broad terms, constitutional coup-proofing is the inclusion of anti-coup provisions in a constitutional text in response to a coup or threat of a coup, and with the intention of preventing or deterring future coups.

Drawing from contemporary case studies, we set out to identify and analyse common coup-proofing provisions found in contemporary constitutions. Given our specific focus on coup-proofing, we excluded from our focus general constitutional provisions addressing security sector reform, such as the separation of the military from the police, the external mandate of the military or general forms of civilian oversight on the military. We narrowly focused on constitutional provisions that specifically seek to prevent a coup from occurring. We followed established practices of qualitative coding to develop a codebook based on initial coding of a sample of constitutions and then undertook more focused coding of contemporary constitutions.<sup>31</sup> Our initial coding of provisions included direct references to coups, usurpation of power, the right to resist and prohibitions on overthrowing government, and was then expanded to include provisions concerning unconstitutional change of government, rebellion, mutiny, treason, and the inviolability or irrevocability of a constitution.

From our iterative qualitative coding of contemporary constitutional texts, we identified 64 constitutions with coup-proofing provisions. Given the overlap between countries experiencing a military coup and those dealing with other forms of unconstitutional takeover of government (such as fascism or totalitarianism), we reviewed the history of each of these countries and identified 51 constitutions with a history of military rule. We undertook iterative qualitative coding of these constitutions, analysed the scope and wording of constitutional coup-proofing clauses, and reviewed these constitutions for trends and patterns.

31 *Kathy Charmaz*, *Constructing Grounded Theory*, London 2014, pp. 108-161 (on initial and focused coding).

We sought to overcome limitations of translation into English by cross-checking against original texts in languages available to us, such as French and Spanish.<sup>32</sup> We then identified and developed case studies and undertook a review of all past constitutions of that country to identify when and under what conditions coup-proofing provisions first emerged.<sup>33</sup>

From this review of contemporary constitutions, we identify five varieties of constitutional coup-proofing, namely: denunciations of past coups; inviolability clauses to protect the constitution; citizens' right or duty to resist a coup; prohibitions on public service, that is, preventing coup leaders assuming public office; and coup crimes, including criminalising coups, coup attempts and/or collaboration with coup instigators.<sup>34</sup> In this section we explain the characteristics of each strategy.

Before we explain these five strategies, we also consider the ways that coup-proofing strategies vary in expression from soft to hard.<sup>35</sup> Soft constitutional coup-proofing strategies include clauses that condemn coups in declaratory terms or those that seek to enhance the resilience of the constitutional order by declaring its survival when faced with a coup. They may also include clauses that empower citizens in a limited set of circumstances to disobey or even resist coups. We characterise these provisions as soft due to the limited or narrow scope of the clause, including its more passive nature and lack of consequences, that conditions its ability to facilitate coup-proofing. As we will show below, examples include inviolability clauses; a narrow, reactive and non-violent right to resist clauses (including civil disobedience); an implicit or explicit public condemnation of past coups or attempts to overthrow a constitutional government that does not attract a constitutionally enshrined criminal sanction.

By contrast, harder strategies involve coup-proofing clauses that empower citizens to be proactive and take a wide range of actions against coups and casting a wide net in terms of criminalising behaviour of anyone who aides and abets a coup. Examples of hard coup-proofing provisions include constitutional prohibitions on coup leaders serving in public office as well as various constitutional coup crimes, from treason and sedition to general offences that make it a crime to participate in a coup. Hard strategies attract clear

32 In this article, references to or quotes from non-English language constitutions are unofficial translations from the French or Spanish.

33 We developed these case studies drawing on contemporary scholarship, including with reference to past constitutions found in the Oxford Constitutions of the World database, as well as to materials on the Hein Online World Constitutions Illustrated, and The Oxford Encyclopedia of the Military in Politics (2022).

34 This is intended as non-exhaustive, and we acknowledge there is a broader suite of provisions that attempt to prevent a longer-term role for the military, such the definition of the role of the military or police, the scope of military justice, and provisions that restrict military participation or deliberation in politics. See for example, *Julio*, The "new militarism" and the rule of law in Latin American democracies, in: Rachel Sieder / Karina Ansolabehere / Tatiana Alfonso (eds.), Routledge Handbook of Law and Society in Latin America, New York 2019, pp. 433-446.

35 Our emphasis here is simply on the *expression* of the written text, not on assessing the impact of the constitutional text.

consequences such as a criminal sanction, although the actual punishment may be specified in law. The right to resist may be hard where it permits all means necessary to resist a coup, including sanctioning violent resistance and the use of weapons. The right is even stronger where citizens are granted immunity for exercising their right to resist. We will also show in the case studies later that constitutional coup-proofing measures are frequently combined in mutually reinforcing ways, such as inviolability clauses with coup crimes.

But before we turn to the case studies, an explanation of the five strategies is in order. The first coup-proofing strategy is for a regime to denounce coups in the preamble to the constitution. General statements in the preamble to the constitution may acknowledge and/or explicitly denounce past coups or similar illegitimate takeovers of power. Generally, preambles may represent the real, projected or aspirational character, history and identity of a nation.<sup>36</sup> Declaratory statements against coups in preambles are a soft coup-proofing strategy because preambles are non-justiciable. While they seek to diminish the legitimacy and authority of those who seek to usurp power through coup d'états, no criminal sanction attaches to the acknowledgement of past coups or of opposition to any form of coup or violent takeover of the state. Condemnation of past coups signals that such actions are no longer accepted or tolerated. The acknowledgement of past coups in the preamble may be a means for the current regime (whether democratic or authoritarian) to protect its rule and distinguish itself from a past regime.

The second form of coup-proofing is inviolability clauses. During or after a coup, a regime may suspend or amend a constitution. In the face of such attempts, inviolability clauses insist on the endurance or survival of the constitution.<sup>37</sup> These clauses aim to protect the constitution itself and ensure its survival or resilience in situations of overthrow of the government by force, or where its authority may be contested. Inviolability clauses declare the irrevocability of the constitution often based upon the supremacy of the constitution as a higher law and as an expression of the will of the people. The clauses are sometimes framed as seeking to retain the “force and effect” of the constitution. Inviolability clauses have been referred to as Snow White clauses because they attempt to ensure the constitution remains in force, or is revived, after a coup, in the same way that in the fairy tale of Snow White and the Seven Dwarfs, Snow White did not die but was revived by the prince.<sup>38</sup> An inviolability clause attempts to ensure that the constitution is indestructible by making explicit the permanence of a constitution and mitigating against its amendment or demise by unconstitutional means.

In addition to the claim to protect the existing constitutional order, another claim of inviolability clauses is to actively declare null and void any attempts to alter the constitu-

36 See *Liav Orgad*, *The Preamble in Constitutional Interpretation*, *International Journal of Constitutional Law* 8 (2010).

37 *John Hatchard / Muna Ndulo / Peter Slinn*, *Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective*, Cambridge 2004, pp. 247-248.

38 *Ibid.*

tional order such as the abolition of the constitution and introduction of a new constitution. In addition, inviolability clauses often declare the acts of coup leaders or those who have usurped government as invalid or it presumes the non-recognition of coup leaders. We distinguish this declaration from the criminalisation of specific acts related to a coup (discussed below). Some inviolability clauses instruct citizens to continue to follow the constitution even during an attempt to overthrow the government. Inviolability clauses may range in expression from soft to hard. Soft expressions declare that the constitution is the source of legitimacy and that it is inviolable, targeting any claims to legitimacy that coup leaders make. Harder strategies of inviolability declare that any acts amounting to a coup are void and instruct the people to continue to follow the constitution.

The third form of coup-proofing is a citizens' right or duty to resist a coup. We acknowledge that there is a longer tradition of militant democracy<sup>39</sup> and history of constitutional right to resist provisions emerging from experiences of totalitarianism and authoritarian rule in Europe.<sup>40</sup> Our focus is on how such provisions are also part of constitutional design in military regimes or countries with a former history of military rule. While the right applies to all citizens, a primary motivation is to encourage military officers and civil servants to resist a coup staged by military leaders, denying the coup popular support. Sometimes the provision is framed as a constitutional right to disobedience and non-cooperation with coup leaders,<sup>41</sup> which has a broader history in response to a range of authoritarian regimes or foreign domination, not only coup d'états.<sup>42</sup> Such constitutional clauses recognise that coup leaders generally need collaboration with the bureaucracy and the military to succeed; empowering citizens to disobey or resist a coup is a mean of undermining the success of a coup. The rationale is that if would-be coup leaders know that the people have a right or duty to resist during a coup, then they may be less likely to stage a coup due to the risk of failure. The right to resist is a soft expression of coup-proofing when it is framed as a reactive right and only narrowly permits citizens to engage in civil disobedience in limited circumstances through non-violent resistance. By contrast, many right to resist provisions are in fact hard expressions of coup-proofing because they permit citizens to be proactive and use violence, take up arms or any other means necessary to resist a coup. Such a clause may even declare that a person who has exercised the right to resist has not committed a crime, when in other circumstances such action may be punishable by law.

39 *Karl Loewenstein*, *Militant Democracy and Fundamental Rights I*, *American Political Science Review* 31 (1937).

40 *Tom Ginsburg / Daniel Lansberg-Rodriguez / Mila Versteeg*, *When to Overthrow your Government: The Right to Resist in the World's Constitutions*, *UCLA Law Review* 60 (2013).

41 See for example *Gene Sharp / Brian Jenkins*, *Against the Coup: A Guide to Effective Action to Prevent and Defeat Coups d'Etat*, New York 1994.

42 Take for instance the right to resist provisions in the 1992 Constitutions of the Czech Republic and Slovakia, as well as the 2011 Constitution of Hungary following the experiences of communist authoritarian rule and Soviet domination.

The fourth constitutional coup-proofing strategy is prohibitions against coup leaders from holding public office. Again, we note that prohibitions and disqualifications on holding public office may not only target coup leaders, but our focus here is on military leaders.<sup>43</sup> Constitutional prohibitions on holding public office seek to prohibit those involved in a coup, primarily coup leaders, from being appointed to key governing roles, particularly positions of high office such as the president or vice-president, members of parliament in the legislature or the public service more broadly. Prohibitions on public service or elected office attempt to deter would-be coup leaders from staging a coup by limiting the person's future career prospects. These prohibitions differ in the scope of who is prohibited and what office they are prohibited from holding. For example, a soft prohibition may only prohibit coup leaders from holding key executive posts, such as president. In contrast, a hard prohibition may prohibit not only coup leaders but also coup collaborators, any person who financially supports a coup and active or former military officers (regardless of whether they have been involved in a coup in the past). An even stronger prohibition is one that applies to all public service or elected office roles. Finally, another characteristic of prohibitions is that they may have a time limit, after which the prohibition no longer applies, so holding office is a privilege delayed but not denied. Soft prohibitions include a short time limit; hard expressions contain prohibitions with a longer time period, or an indefinite prohibition.

Finally, coup-proofing includes coup crimes, that is, provisions in a constitution that criminalise support for or participation in a coup or coup attempt. Coup crimes are a deterrent for military coup plotters because there is the prospect that they will eventually be punished and lose any financial or other gains made from their actions. While crimes such as treason and sedition have longer histories in criminal law,<sup>44</sup> the emergence of coup crimes targeting the military in a written constitution is a modern phenomenon. Coup crimes are distinct from, and dependent upon, ordinary criminal law in one key respect: the crime is drafted in general terms without reference to the form of punishment and relies upon the general criminal law for the relevant sanction. Softer coup crimes contain limitations on the scope or application of the crime, such as only applying to acts prior to the introduction of the constitution.

Hard coup crimes broadly criminalise coup d'états and/or impose criminal liability for unconstitutional change of government, including treason and sedition.<sup>45</sup> The criminal laws

43 Tom Ginsburg / Aziz H Huq / David Landau, *Democracy's Other Boundary Problem: The Law of Democratic Disqualification*, *California Law Review* 111 (2023).

44 *Tayyab Mahmud*, *Jurisprudence of Successful Treason: Coup d'Etat and Common Law*, *Cornell International Law Journal* 27 (1994).

45 On sedition, see *Constitution of Argentina 1853* (reinstated in 1983, with amendments through 1994), art. 22; *Constitution of Bangladesh 1972* (reinstated 1986, with amendments through 2014), art. 7A; *Constitution of Costa Rica 1949* (with amendments through 2020), art. 3-4; *Leonard A. Bird*, *Costa Rica: The Unarmed Democracy*, London 1984, pp. 24–28.

of many states already contain relevant provisions dealing with treason.<sup>46</sup> Yet there is a difference between criminal offences in ordinary law and criminal offences in the constitution. Constitutions are generally considered harder to amend, more so when combined with inviolability clauses, so there is less of a risk that a new regime can abrogate the offence. Further, the constitution has higher symbolic status compared to the ordinary criminal law and is potentially more widely known than the general criminal law. The idea of including crimes in a constitution also departs from the understanding of a constitution as a minimal document that should only include the essentials as a higher law.<sup>47</sup> Constitutional coup crimes seek to bring coup leaders to justice to break cycles of coups and eradicate a culture of coups.<sup>48</sup>

We turn now to illustrate these constitutional coup-proofing strategies across regions and drawing on country case studies of examples from former or current military regimes.

## D. Case Studies of Constitutional-Coup Proofing

### I. *Denouncing Coups: Preambles*

Seven contemporary constitutions denounce coups in their preamble: Benin, Chad, Central African Republic, Côte d'Ivoire, Niger, Republic of Congo and Suriname. Most of these are francophone African countries. In the early 1990s, as expectations grew for multiparty democracy, these regimes in Africa used preambles to condemn coups and affirm commitments to democracy and changes of regime via elections.

One example of a democratic regime that introduced a preamble to condemn coups is the Republic of Congo. Since 1979, the president, Denis Sassou Nguesso, has ruled the country for all but five years.<sup>49</sup> In 1992, after he lost power, a democratically elected government passed the 1992 Constitution that “condemn the coup d’État, the tyrannical exercise of power and the use of political violence, under all its forms, as a means of ascension to power or to its conservation”.<sup>50</sup> In 1997, after ousting the elected government and signing a subsequent peace deal, Denis Sassou Nguesso returned to power and appointed a constitutional committee. The 1992 preamble was carried over into the 2002 Constitution and then the current 2015 Constitution, which was primarily drafted to allow Sassou to

46 For example, the offence of high treason in the Penal Codes of former British colonies: Indian Penal Code, s 124A; Pakistan Penal Code, s 124A; Myanmar Penal Code, s 124A, see *Mahmud*, note 44, pp. 51-53.

47 See for example *KC Wheare*, *Modern Constitutions*, Oxford 1966.

48 *John Hatchard / Tunde I. Ogowewo*, *Tackling the Unconstitutional Overthrow of Democracies: Emerging Trends in the Commonwealth*, London 2003, pp. 12-14, 166-168.

49 *Joshua Shaw / Brett Carter*, *The Republic of Congo: The Colonial Origins of Military Rule*, in: William R. Thompson / Hicham Bou Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

50 Constitution of the Republic of Congo 1992, preamble.

run for another term in office.<sup>51</sup> Even where the condemnation of coups is introduced by a democratic regime, later authoritarian regimes may leave it intact.

Another example of the use of preambles to express opposition to coup d'états by both democratic and authoritarian regimes in the same country over time is the Central African Republic (CAR). After independence from France in 1960 up until 1982, the CAR experienced four coups.<sup>52</sup> In 1993, democratic elections installed Ange-Félix Patassé as president and his government introduced the 1994 Constitution, which declared in the preamble that the Central African people were “firmly in opposition by any means to conquest of power by civil or military forces and to any dictator forces”.<sup>53</sup> Throughout the 1990s, the risks of coups and counter-interventions by France remained real. In 2003, former armed forces chief François Bozizé seized power through a military coup and enacted the 2004 Constitution, which maintained a similar anti-coup declaration in the preamble.<sup>54</sup> The CAR is an example of a government that gained power through a coup, despite the pre-existing coup declaration, and retained a declaration in the preamble. After yet another coup followed by international intervention, a new democratically elected regime introduced the 2016 Constitution, maintaining the same anti-coup statement in the preamble as the 2004 Constitution and introducing additional provisions, as will be explained later.<sup>55</sup> Even in the most recent 2023 constitution, adopted in a contested referendum, the anti-coup statement was maintained.<sup>56</sup>

The preambles of the constitutions of Benin (1990), Togo (1992), Chad (1996, maintained in 2018 Constitution) and Niger (2010) pronounce their opposition to any political regime founded in authoritarianism, illegality, and the absence of electoral democracy. For example, Niger’s preamble states that the people “...reaffirm our absolute opposition to any political regime based on dictatorship, arbitrariness, impunity, injustice, corruption, concussion, regionalism, ethnocentrism, nepotism, personal power and cult of personality.”<sup>57</sup> This statement in the preamble is the first of its kind in Nigerien constitutions, although it mirrors the language of its francophone peers. Implicitly, the preamble refers to the history of coups, personalist military rule and constitution-making in Niger. Since gaining independence from France in 1960, Niger has experienced five successful coups between 1974 and

51 Constitution of the Republic of Congo 2015, preamble.

52 *K Neldjingaye*, *The Central African Republic: Introductory Note*, in: *Oxford Constitutions of the World*, Oxford 2018; *Timothy Stapleton*, *Central African Republic: Coups, Mutinies, and Civil War*, in: William R. Thompson / Hicham Bou Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

53 Constitution of the Central African Republic 1994, preamble.

54 Constitution of the Central African Republic 2004, preamble.

55 Constitution of the Central African Republic 2016, preamble.

56 Constitution of the Central African Republic 2023, preamble.

57 Constitution of Niger 2010, preamble.

2023 and had seven constitutions.<sup>58</sup> The nature and motives of these coups differed, but constitution-making frequently followed. In 2010, the military intervened on the pretext of ending an authoritarian shift by the democratically elected president Mamadou Tandja that had prompted a constitutional crisis. The military empowered a *Comité des textes fondamentaux* to draft a constitution to ensure political stability and prevent future attempts to undermine democracy.<sup>59</sup> The Constitution included the above quoted anti-coup declaratory statement into the preamble, along with affirmation of adherence to international human rights and the African Charter.<sup>60</sup> In July 2023, another military coup d'état led to the ousting of the elected President Mohamed Bazoum and the suspension of the constitution, making this the eighth military coup within the three years prior to 2023 in the Sahel region.<sup>61</sup>

Some countries have been influenced by treaties of the African Union (AU) condemning an unconstitutional change of government.<sup>62</sup> One of the most stable countries in West Africa until the 1990s, Côte d'Ivoire has a recent history of constitutional instability and amendment due to coups.<sup>63</sup> After the extended rule of Félix Houphouët-Boigny (1960-1993) and the introduction of a multi-party system during the early 1990s, in 1999 the country experienced its first military coup. In 2016, Côte d'Ivoire introduced a new constitution in which the preamble expressly “condemn[s] any unconstitutional change of government and declare that perpetrators of this crime be subject to the full force of the law”<sup>64</sup>. This draws upon the language of an “unconstitutional change of government” as used in regional coup-proofing mechanisms of the AU.<sup>65</sup>

From the case studies above, coup declarations in preambles involve a range of different messages, including denouncing past coups and affirming opposition to coups generally. Preambles generally do not define what counts as a coup and much contention arises over

58 *Virginie Baudais*, Niger: Armed Force Politics and Counterterrorism, in: William R. Thompson / Hicham B. Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

59 *Ibid.*, pp. 13-14.

60 Constitution of Niger 2010, preamble.

61 *Kamissa Camara / Susan Stigant*, Countering Coups: How to Reverse Military Rule Across the Sahel, United States Institute of Peace, 3 August 2023, <https://www.usip.org/publications/2023/08/countering-coups-how-reverse-military-rule-across-sahel> (last accessed on 11 December 2025). In 2025, the Niger junta had replaced the constitution with a transitional charter.

62 See generally *Oisin Tansey*, The Fading of the Anti-Coup Norm, *Journal of Democracy* 28 (2017); *Frederick Cowell*, Preventing Coups in Africa: Attempts at the Protection of Human Rights and Constitutions, *International Journal of Human Rights* 15 (2011).

63 For an assessment since the end of the Second Ivorian Civil War in 2011, see *Philip A. Martin*, Security Sector Reform and Civil-Military Relations in Postwar Côte d'Ivoire, *African Affairs* 117 (2018).

64 Constitution of Cote d'Ivoire 2016, preamble.

65 First introduced through a declaration by the Organisation of African Unity in 2000, and then further developed by the African Union, then through the 'Accra Declaration on Unconstitutional Changes of Government in Africa' (2022).

whether events constitute a coup. As a result, coup leaders have often seen it as expedient to retain such provisions.

## II. *Inviolability Clauses*

Inviolability clauses are found in 12 constitutions, including four in Latin America, six in Africa and also in Fiji and Egypt. One example is Mexico, beginning with its 1857 Constitution,<sup>66</sup> which was introduced during a period of liberal reforms after the Santa Anna dictatorship ended in 1855. This clause was retained in the 1917 Constitution of Mexico until today.<sup>67</sup> In Honduras, a similar inviolability clause appeared in its 1982 Constitution, after the end of two decades of military rule marked by multiple coups.<sup>68</sup>

Another example occurred after the end of military rule in Paraguay. In 1954, military officer Alfredo Stroessner came to power through a coup and ruled the country until 1989. Most of his rule was under a state of siege characterised by the suspension of constitutional rights—a power carried over from the 1940 Constitution to the 1967 Constitution.<sup>69</sup> By the 1990s, as part of broader reforms to place the country on a democratic path after the long dictatorship of Stroessner, the National Constituent Assembly inserted an inviolability clause in the 1992 Constitution.<sup>70</sup>

The case of Argentina also demonstrates the use of inviolability clauses in the transition from authoritarianism to democracy. Argentina's 1853 Constitution is the country's third and the oldest Latin American constitution still in force.<sup>71</sup> For half a century, between 1930 and 1976, the country was repeatedly interrupted by military interventions and coup d'états. During this time, none of the democratically elected heads of state were able to complete their terms of office, and military officers often assumed the role of head of state; 11 of the 16 presidents were military generals.<sup>72</sup> So pervasive were coups in Argentina that

66 Constitution of Mexico 1857, art. 128.

67 Constitution of Mexico 1917, art. 136.

68 Constitution of Honduras 1982, art 375; *Kristina Mani*, Honduras: All-Purpose Militarization, in: William R. Thompson / Hicham B. Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

69 *Daniel Mendonca / Juan Carlos Mendonca*, Paraguay, in: Conrado Hubner Mendes / Roberto Gargarella / Sebastian Guidi (eds.), *The Oxford Handbook of Constitutional Law in Latin America*, Oxford 2022, p. 228.

70 Constitution of Paraguay 1992, art. 137.

71 *Juan F. Gonzalez Bertomeu*, The Constitution of Argentina, in: Conrado Hubner Mendes / Roberto Gargarella / Sebastian Guidi (eds.), *The Oxford Handbook of Constitutional Law in Latin America*, Oxford 2022, p. 119; *David Pion-Berlin*, Argentina: The Journey from Military Intervention to Subordination, in: William R. Thompson / Hicham B. Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

72 *Ibid.*, pp. 1-2.

the country was described as an “institutionalised coup model”.<sup>73</sup> From 1976 to 1983, the country experienced a particularly violent period of state terror.

In 1983, military rule finally met its demise with the election of Alfonsín as president. Alfonsín instituted a range of democratic and human rights reforms and established the Council for the Consolidation of Democracy to consider constitutional reform.<sup>74</sup> From 1993, under the Menem government, the Council’s work informed the efforts of a constitutional convention in 1994 to amend the Constitution. Three strong constitutional coup-proofing provisions were inserted: an inviolability clause, a prohibition from public office, and a right to resist.<sup>75</sup> The inviolability clause insists that the constitution remains in force despite any violent disruptions to the constitutional and democratic system and declares any such acts as “irrevocably void”. In 1983, since the end of military rule, there have been no further coups notwithstanding a few revolts in the late 1980s. This uninterrupted period of democratic rule has been attributed to a new respect for democracy and the subordination of the military to civilian control, including trials of military officials, enacting laws that restrict the role of the military in internal security and strengthening the defence ministry.<sup>76</sup> The 1994 constitutional amendments, including its coup-proofing measures, are part of the wider consolidation of democratic civilian rule in Argentina.

The second feature of inviolability clauses, namely, to declare null and void any attempts to alter the constitutional order or to declare the acts of coup leaders or those who have usurped government as invalid, is also used in Latin American constitutions either as a stand-alone clause or in concert with the protective feature of inviolability. For instance, the Dominican Republic employed such a clause at least since the end of the three decades of military dictatorship of Rafael Trujillo (1930-1961), through four constitutions from 1963 to 2002.<sup>77</sup> The slightly expanded clause in the 2010 Constitution, carried over into the current 2015 Constitution, provides: “Acts that are issued from usurped authority, actions or decisions of public powers, institutions or persons that alter or subvert the constitutional order and any decision made by requisition of armed force are null of full right.”<sup>78</sup> Several Latin American states have similar provisions in their constitutions declaring null and void acts by usurpers, including Honduras, Paraguay, Peru, Venezuela and the earlier mentioned case of Argentina.

Inviolability clauses also exist in many African constitutions. Faced with the unambiguous language of an inviolability clause, coup leaders may be unable to veil their action in constitutional legitimacy and instead be forced to suspend or abolish an existing constitu-

73 Ibid.

74 Ibid.

75 See Chapter II on New Rights and Guarantees, art. 36.

76 *Pion-Berlin*, note 71, pp. 13-14.

77 Constitution of the Dominican Republic 1963, art. 8; Constitutions of the Dominican Republic 1966, 1994 and 2002, art. 99.

78 Constitution of the Dominican Republic 2015, art. 73.

tion through unconstitutional means. One example is Burkina Faso (formerly Upper Volta until 1984), a country that has experienced alternating periods of coups and constitutional disorder after its independence from France in 1960. The fifth post-independence coup brought about the revolutionary rule of Captain Thomas Sankara (1983-1987).<sup>79</sup> In 1987, a coup was carried out by Captain Blaise Compaoré, removing Sankara from power and ultimately leading to Sankara's assassination. In the context of the end of the Cold War, Compaoré oversaw a political transition to civilian rule and multiparty elections.<sup>80</sup> The Commission tasked to draft the 1991 Constitution included the following inviolability clause: "The source of all legitimacy follows from this Constitution. All power which does not derive its source from this Constitution, notably that resulting from a coup d'état is illegal."<sup>81</sup> In 2014, Compaoré sought to alter the constitutional presidential term limits—considered a form of unconstitutional change of government by the African Union—and in response a popular insurrection ousted Compaoré from power.<sup>82</sup> In 2022, ongoing political instability culminated in two successive coups, with a junta led by Captain Ibrahim Traroré eventually taking charge and suspending the Constitution.<sup>83</sup> In 2024, Traroré, as interim president, introduced an extended transition period for another five years.

Compaoré's 27-year rule in Burkina Faso is indicative of another trend, namely that while inviolability clauses frequently emerge in regimes that seek to break cycles of military coups, they do not necessarily mean a break with authoritarian rule. Authoritarian leaders find it expedient to retain or adopt constitutional coup-proofing measures against an overthrow of government by force. For instance, in 1995, constitution-makers in Uganda aimed to break with a long history of coups, though not with authoritarian rule. From 1971 to 1979, Uganda was ruled under the notorious and violent coup regime of Idi Amin. In the late 1970s, Amin was finally removed by a Tanzanian-led military intervention. In 1986, a period of political instability ended with Yoweri Museveni taking over the government and several years later embarking on a constitution-making process.<sup>84</sup> The resulting 1995 Constitution included a comprehensive "Defence of Constitution" section—combining multiple coup-proofing measures and prevalent in many anglophone African

79 *Daniel Eizenga*, Burkina Faso: Military Responses to Popular Pressures, in: William R. Thompson / Hicham B. Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

80 *Ibid.*

81 Constitution of Burkina Faso 1991, art. 167.

82 *Eizenga*, note 79.

83 African Center for Strategic Studies, *Understanding Burkina Faso's Latest Coup*, Spotlight, 28 October 2022, <https://africacenter.org/spotlight/understanding-burkina-faso-latest-coup/> (last accessed on 11 December 2025). At the time of writing, the junta was considering constitutional amendments.

84 *Chin / Carter / Wright*, note 1, p. 316.

countries—but the Constitution also further entrenched Museveni’s one-party rule.<sup>85</sup> Even if a takeover of government by force occurs, the 1995 Constitution does not lose its “force and effect”.<sup>86</sup> In addition, once the people regain their liberty after a coup, the Constitution is taken to be back in force and those who participated in the takeover of government will face criminal sanction.<sup>87</sup> Since the entry into force of this Constitution, there have been no further coups in Uganda, although Museveni remains as president.

Inviolability clauses attempt to reduce the space for post-coup constitutional legitimisation of coup regimes or other forms of constitutional manipulation. They may strengthen the hand of an independent judiciary where the constitutional order is put into question or when confronted with ruling on the constitutionality of coups. Inviolability clauses are frequently paired with other constitutional coup-proofing measures to strengthen their combined deterrent effect.

### III. *The Right to Resist*

In former, or current, military regimes, the right to resist a military coup can be found in the constitutions across Latin America (Argentina, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Paraguay, Venezuela) and Africa (Benin, Burkino Faso, Central African Republic, DRC, The Gambia, Ghana, Mozambique, Sierre Leone, South Sudan, Togo, Uganda, Zambia).

Our focus on military regimes or former military regimes draws our attention to the right to resist, also referred to as constitutional defence provisions, in constitutions of countries in Latin America and Africa.<sup>88</sup> In addition to military regimes, the constitutions of some former totalitarian and fascist regimes of Europe also contain such provisions.

Some states frame this coup-proofing strategy as a citizen’s positive *right* to resist, others frame the strategy as a *duty* to resist, and some stress both a duty and a right. Other states use obligatory language by framing resistance also as a “duty” or “obligation”. Togo’s 1992 Constitution, introduced by the country’s long-term ruler Eyadéma Gnassingbé (1967-2005) during Africa’s period of democratisation in the early 1990s, provides “in case of coup d’état” that “for any Togolese, to disobey and to organize themselves to resist the illegitimate authority constitutes the most sacred of the rights and the most

85 See for example *Aili Mari Tripp*, *The Politics of Constitution Making in Uganda*, in: Laurel E Miller (ed.), *Framing the State in Times of Transition: Case Studies in Constitution Making*, Washington 2010, p. 158.

86 Constitution of Uganda 1995 (with amendments through 2017), art 3(3). See also *Hatchard / Ndulo / Slinn* note 37, p. 247.

87 Constitution of Uganda 1995, art. 3(3). The Constitutional Commission justified this provision with reference to the risk of coups: see Uganda Constitutional Commission, *The Report of the Uganda Constitutional Commission* (1993), p. 745 (Copy on file with the authors).

88 *Ginsburg / Lansberg-Rodriguez / Versteeg*, note 40, p. 1221.

imperative of the duties”.<sup>89</sup> While there has been no military coup since, in 2024, the regime passed major constitutional amendments that were condemned by civil society and opposition groups as a constitutional coup. By mid-2025, the appointment of Faure Gnassingbe to the new role of president of the Council of Ministers, was seen as a move to perpetuate his family’s rule (which dates back to 1967).<sup>90</sup>

Right to resist provisions come in a range of soft to hard expressions. On the soft end, some states permit a limited right to civil disobedience and qualify, restrict or limit the scope or circumstances of the exercise of this right. A constitution may only permit a right to (civil) disobedience, that is, forms of passive and non-violent resistance such as a refusal to obey orders. Burkina Faso’s above-mentioned 1991 Constitution provides for a right to “civil disobedience” for citizens. In Mali, the 1992 Constitution contains a similar right that can be exercised “for the preservation of the republican form of the State”<sup>91</sup>. Mali’s 1992 Constitution was introduced during a time of democratic transition after the 1991 coup and popular protests had ended the previous coup regime of General Moussa Traoré (1968-1991).<sup>92</sup> This clause was maintained in the more recent 2023 Constitution, adopted by referendum.<sup>93</sup> Other constitutions limit how the right is exercised, for example, the CAR’s 2016 and 2023 Constitutions limit the right to being exercised “in a peaceful manner”<sup>94</sup>. Finally, the right may be qualified as a means of last resort, such as “to the extent reasonably justifiable in the circumstances” (The Gambia),<sup>95</sup> “if no other means are available” (Estonia)<sup>96</sup>.

Conversely, other constitutions are a harder expression of coup-proofing against coup plotters by framing the scope of the right as proactive and in more permissive terms. The right to resist may be framed widely to allow citizens to do everything possible, which includes the use of force. Examples can be seen in Greece’s 1975 Constitution (“by all possible means”),<sup>97</sup> introduced after the end of the military junta regime (1967-1974), and

89 Constitution of Togo (with amendments through 2007, subsequently amended), art. 150.

90 Reuters, Togo leader gets new role without term limits, opposition calls it a coup, 5 May 2025, <https://www.reuters.com/world/africa/togo-leader-gets-new-role-without-term-limits-opposition-calls-it-coup-2025-05-05/> (last accessed on 11 December 2025).

91 Constitution of Mali 1992.art. 121.

92 *Florina Cristiana Matei*, Mali: The Hot and Cold Relationship Between Military Intervention and Democratic Consolidation, in: William R. Thompson / Hicham Bou Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022; Constitution of Burkina Faso 1991 (with amendments through 2015), art. 167; Constitution of Mali 1992. art. 121.

93 Constitution of Mali 2023., art. 186.

94 Constitution of the Central African Republic 2016, art. 29; Constitution of the Central African Republic 2023., art. 6.

95 Constitution of the Gambia 1996 (with amendments through 2018), art. 6(2).

96 Constitution of Estonia 1992 (with amendments through 2015), art. 54.

97 Constitution of Greece 1975 (with amendments through 2008), art. 120(4).

Paraguay's 1992 Constitution ("through every means at their reach").<sup>98</sup> The constitutions of other Latin American countries, such as El Salvador, Honduras and Peru, even grant a "right to insurrection" in defence of the constitutional order.<sup>99</sup>

Some constitutions in francophone Africa, such as those of Benin, the CAR and Togo, not only empower citizens with the right to resist but also allow recourse to existing military or defence cooperation agreements in cases of a coup d'état, presumably alluding to bilateral defence agreements with France or regional defence agreements such as with the Economic Community of West African States.<sup>100</sup>

As with other constitutional coup-proofing strategies, we find that right to resist provisions are frequently bundled with other anti-coup measures in mutually reinforcing ways. One of the most prominent examples are the earlier mentioned comprehensive "Defence of Constitution" sections in many anglophone African countries, widely employed during the push for democratisation in Africa following the end of the Cold War. Ghana is an example of a country that combines a right to resist provision with a wider defence of the constitution section. In 1966, after the first post-independence government under Kwame Nkrumah was disposed by a coup d'état, the country descended into a long period of political instability and military rule with a high frequency of military coups and coup attempts.<sup>101</sup> In the 1970s, after a coup by military officer Jerry Rawlings and a brief period of political reform, a right to resist was included in the 1979 Constitution.<sup>102</sup> After second coup by Rawlings in 1981, the government embarked on a process of military professionalisation and institutional reform to restore civilian control, culminating in the 1992 Constitution.<sup>103</sup> The 1992 Constitution provided an expanded "Defence of Constitution" section which outlawed coup d'états and included rights and duties for all citizens to defend the Constitution and to do all in their power to resist any attempt to overthrow the Constitution and to restore the Constitution after it has been abrogated unconstitutionally.<sup>104</sup> Despite its broad mandate, some scholars question whether the right to resist in Ghana's Constitution

98 Constitution of Paraguay 1992 (with amendments through 2011), art. 138.

99 Constitution of Peru 1993 (with amendments through 2021), art. 46; Constitution of Honduras 1982 (with amendments through 2013), art. 3; Constitution of El Salvador 1983 (with amendments through 2014), art. 87.

100 Constitution of Benin 1990, art. 66; Constitution of the Central African Republic 2016, art. 29 (maintained in art. 6 of the 2023 Constitution); Constitution of Togo (with amendments through 2007, subsequently amended), art. 150.

101 *Eboe Hutchful / Humphrey Asamoah Agyekum / Ben Kunbour*, Ghana: The Military in Transition from Praetorianism to Democratic Control, in: William R. Thompson / Hicham Bou Nassif (eds.), *The Oxford Encyclopedia of the Military in Politics*, Oxford 2022.

102 Ghana's 1979 Constitution stated under Article 1(3).

103 *Ernest Lartey / Kwesi Aning*, Constitutional Reform and Security Sector Reform in Ghana, in: Zoltan Barany / Sumit Bisarya / Sujit Choudhry / Richard Stacey (eds.), *Considerations in Security Sector Reform during Constitutional Transition*, Oxford 2019.

104 Constitution of Ghana 1992, art. 3(4).

can protect a person who exercises their right against an abusive government.<sup>105</sup> Yet, the combination of broader political and institutional reforms with constitutional coup-proofing in Ghana have produced one of the more stable and robust political systems in West Africa, with no coups recorded since the early 1980s.<sup>106</sup>

The right to resist provision also appears as part of the defence of the constitution section of the Ugandan Constitution. In the early 1990s, around the time Ghana passed its constitution, the Uganda Constitutional Commission considered a similarly comprehensive “Defence of Constitution” section during its constitutional reform process.<sup>107</sup> The Commission commented on the duty to defend the constitution by noting that the people “...should be encouraged to do all in their power to prevent its undemocratic overthrow and its violation in other ways.”<sup>108</sup> As a result, the 1995 Constitution of Uganda features an almost identical provision on the right and duty to resist.<sup>109</sup>

Further bolstering the right to resist, the constitutions of Uganda, as well as Ghana and The Gambia, provide that a person who resists the overthrow of the constitution is deemed to have committed no offence.<sup>110</sup> Uganda’s Constitutional Commission explained that if the constitution reserves a right to resist, “it follows that whoever takes part in any activities for resisting any person or group attempting to overthrow the Constitution should be absolved of any guilt and may be compensated for any punishment he or she may have suffered”<sup>111</sup>. Such a provision provides constitutional reassurance to citizens that their actions will not be punished. The constitutions of Ghana and Uganda also declare that if a regime hands down a punishment for someone who resists a coup, the punishment is in fact void and they are absolved from all liabilities arising from the punishment. Ghana’s Constitution goes one step further allowing a person to apply for compensation to the Supreme Court for any harm or loss incurred because of punishment under a coup regime.<sup>112</sup>

The widespread use of disobedience or resistance clauses in constitutions is a coup-proofing strategy and acts as a bulwark against an unconstitutional overthrow of government or the constitutional order.<sup>113</sup> A constitutional right or duty of citizens, or specifically of civil servants, not to cooperate with or serve under a coup regime is a potential deterrent

105 *Lydia A Nkansah*, *The Right to Resistance and the Defence of Ghana’s Fourth Republic Constitution*, *KNUST Law Journal* 6 (2014); *Lydia A Nkansah*, *The Call to Citizens of Ghana to Defend Ghana’s Fourth Republican Constitution: A Death Trap?*, *Commonwealth Law Bulletin* 41 (2015), p. 618.

106 *Hutchful / Agyekum / Kunbor*, note 101, pp. 18-23.

107 *Tripp*, note 85.

108 Uganda Constitutional Commission n. 106, 731, 737.

109 Constitution of Uganda 1995., art. 3(4).

110 Constitution of The Gambia 1996 (with amendments through 2018), art. 6(3); Constitution of Ghana 1992 (with amendments through 1996), art. 3(5); Constitution of Uganda 1995, art. 3(5).

111 Uganda Constitutional Commission n. 106, 737.

112 Constitution of Ghana 1992 (with amendments through 1996), art. 3(7).

113 See also *Hatchard / Ndulo / Slinn*, note 37, pp. 259-261.

to would-be coup leaders. Such clauses enable, encourage and legitimise the mobilisation of civil society against a coup or other unconstitutional change of government, thereby denying coup leaders the semblance of popular support. The right to resist is often employed in concert with other constitutional coup-proofing measures, especially inviolability clauses, with non-cooperation, disobedience or even outright resistance being a logical consequence.

#### *IV. Prohibitions on Public Office*

Prohibitions against coup leaders or their supporters from serving in public office is a constitutional coup-proofing strategy evident in the constitutions of Argentina, Guatemala, Paraguay, Central African Republic and Nicaragua.

An example of a soft expression of constitutional coup-proofing that prohibits coup leaders from becoming president or vice-president is Guatemala. In 1921 there was a civil uprising and military coup, leading to a period of great political instability. In 1927, amendments were made to the 1879 Constitution, including the prohibition on holding the office of president.<sup>114</sup> Until the early 1990s, military coups remained a persistent feature in Guatemalan politics. Despite this, the prohibition on coup leaders assuming the role of president or vice president was retained in various constitutions.<sup>115</sup> Guatemala's prohibition not only bars coup leaders from the presidency who have taken over the country, but also bars relatives of coup leaders, and military officers, unless they resigned at least five years prior to the election.<sup>116</sup> For example, in 2019, Zury Ríos was barred from running for elections on the grounds that she was the daughter of former dictator (and coup leader) Efraín Ríos Montt, although she later contested this in court.<sup>117</sup> In June 2023, she again ran for president and when she lost, she filed a case arguing that the elections were fraudulent.

Also in Latin America, Nicaragua is an example of how such provisions can also be introduced as part of authoritarian constitution-making. In 1936, during the early years of Somoza's rule, a Constituent Assembly was convened to consolidate his dictatorial rule and give the appearance of constitutional legitimacy.<sup>118</sup> The 1939 Constitution introduced the prohibition on coup leaders becoming president or vice president, written in identical

114 Constitution of Guatemala 1879 (amended 1927). art. 65(1) and (2).

115 Constitution of Guatemala 1945; art. 131(1) and (2); Constitution of Guatemala 1956, art. 161(1) and (2); Constitution of Guatemala 1965, art. 184(1) and (2); Constitution of Guatemala 1985, art. 186(a) and (b).

116 Constitution of Guatemala, art. 186 (a), (c) and (e).

117 *Pamela Ruiz*, *Barred Candidates Cast a Shadow over Guatemala's Polls*, International Crisis Group, 21 June 2023, <https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/barred-candidates-cast-shadow-over-guatemalas-polls> (last accessed on 11 December 2025).

118 *Kai M. Thaler / Eric Mosinger*, *Nicaragua: Doubling Down on Dictatorship*, *Journal of Democracy* 33 (2022).

terms to that of Guatemala.<sup>119</sup> Unlike Guatemala, constitution-makers wrote the provisions in and out of the Nicaraguan constitutions depending on who oversaw the constitutional amendments. The prohibition was written out of the Nicaraguan Constitution of 1948, reintroduced in 1950, written out in 1987 and then re-introduced in 1990.<sup>120</sup> The prohibition on holding public office requires military officers to have retired at least one year prior to the election; however, a coup leader or anyone who finances a coup is ineligible for the office of president or vice-president. In 2025, in the most recent rewriting of the Constitution which firmly embedded authoritarian rule under the Ortega regime, a similar provision was maintained.<sup>121</sup>

Other regimes have developed hard expressions of coup-proofing that expand the prohibition on coup leaders holding public office to any public office, not just the office of president or vice-president. For example, the 1992 Constitution of Paraguay introduced a prohibition on coup leaders (either civilian or military) holding any public office, although ineligibility is limited to two consecutive constitutional periods.<sup>122</sup> Paraguay's prohibition is therefore wider in scope than Guatemala and Nicaragua but limited in time.

Another hard expression of coup-proofing is found in Argentina. In 1994, Argentina introduced its prohibition on coup leaders holding public office through an amendment to the 1853 Constitution with the earlier mentioned article 36. Similar to Paraguay, the prohibition extends to all positions of public office. Coup instigators are permanently banned from public office, a person can be convicted for their role in a coup at any point in time in the future, and the person is rendered ineligible for a pardon or commutation of sentence.<sup>123</sup> Such an absolute and permanent prohibition on holding public office with no time limit, allowing for the endless possibility of prosecution without hope of pardon, is intended as a hard deterrent to would-be coup leaders and has to be seen in the context of Argentina's long-history of military coups pre-1990s.

Overall, prohibitions on holding public office come in a variety of soft to hard expressions, with stronger expressions coup-proofing applying to all public office at any time in the future, with the ongoing risk of prosecution and no hope of pardon.

119 Constitution of Nicaragua 1939, art. 205(6) and (7); Constitution of Guatemala 1879 (amended 1927), art. 65(1) and (2); Constitution of Nicaragua 1987 (with amendments through 2017), art. 147(b).

120 Constitution of Nicaragua 1948, art. 171(2) and (3); Constitution of Nicaragua 1950, art. 186(6) and (7); Constitution of Nicaragua 1974, art 185(6) and (7); Constitution of Nicaragua 1986, art. 147.

121 Constitution of Nicaragua 2025, art. 134.

122 Constitution of Paraguay 1992 (with amendments through 2011), art. 236.

123 Constitution of Argentina 1853 (reinstated in 1983, with amendments through 1994), art. 36.

## V. *Coup Crimes*

Constitutional coup-crimes are found in 15 constitutions with a history of military rule, including Bangladesh, Benin, Brazil, Burkino Faso, Cuba, Costa Rica, Central African Republic, DRC, Fiji, Ghana, Honduras, South Sudan, Uganda, Togo, Pakistan.

A contemporary example of the use of constitutional coup crimes to prosecute would-be coup leaders is in Brazil. Brazil's Constitution declares that "actions of civilian or military armed groups against the constitutional order and the Democratic State are non-bailable crimes for which the statute of limitations never runs",<sup>124</sup> From 2010s, a group of generals worked proactively to enhance the political role of the military,<sup>125</sup> contrary to the prevailing assumption by scholars that the military was a reactive force. In 2022, President Bolsonaro lost the presidential race, although only narrowly. On 8 January 2023, when his rival Lula was sworn in as president a week later, supporters of Bolsonaro took to the streets calling for the military to reinstate Bolsonaro and vandalising numerous government institutions in the capital, including the Congress, the presidential palace and the Supreme Court.<sup>126</sup> Since then, numerous people, including Bolsonaro's relatives, have been investigated. In September 2025, the Brazilian Supreme Court found Bolsonaro guilty of plotting a military coup and not only sentenced him to jail but prohibited him from holding public office for the next 35 years, or until 2060.<sup>127</sup> This landmark case constitutes the first conviction for an attempted coup. A number of Latin American countries also have constitutional provisions criminalising the usurpation of power or unconstitutional overthrow of government, including Argentina, Honduras, Mexico and Paraguay.

Other states frame constitutional coup crimes in the language of treason and/or sedition as a hard expression of coup-proofing. Pakistan has a constitutional treason clause, although it has been amended and expanded over time.<sup>128</sup> In 1947, the violence of partition was the impetus for the military taking a leading role in the post-colonial state. Pakistan experienced successive periods of military rule under the 1956 Constitution and the 1962 Constitution, combined with periods of martial law without a constitution from 1958-62,

124 Constitution of Brazil 1988 (with amendments through 2017). art. 5 (XLIV).

125 *Karabekir Akkoyunlu / Jose Antonio Lima*, Brazil's Stealth Military Intervention, *Journal of Politics in Latin America* 14 (2022).

126 Al Jazeera, Bolsonaro supporters storm key government buildings in Brazil, 8 January 2023, <https://www.aljazeera.com/news/2023/1/8/bolsonaro-supporters-storm-government-buildings-in-brazil> (last accessed on 11 December 2025).

127 *Emilio Peluso Neder Meyer / Thomas da Rosa de Bustamante*, The Bolsonaro Trial Has Far-Reaching Consequences for Democracy, *Lawfare*, 26 September 2025, <https://www.lawfaremedi.a.org/article/the-bolsonaro-trial-has-far-reaching-consequences-for-democracy> (last accessed on 11 December 2025); The case rested upon articles 359-L and 359-M of Brazil's Criminal Code, which had been revised in 2021.

128 See *Tayyab Mahmud*, Praetorianism and Common Law in Post-Conflict Settings: Judicial Responses to Constitutional Breakdowns in Pakistan, *Utah Law Review* 1225 (1993).

and again from 1969 to 1973.<sup>129</sup> The National Assembly convened in April 1972, electing Zulfikar Ali Bhutto as president and paving the way for a new Constitution, which came into force in August 1973. According to the report of the Constitution Committee presented on 31 December 1972, the National Assembly introduced a provision on high treason into the Constitution “to eliminate any possibility, in the future, of the Constitution being abrogated”<sup>130</sup>. The Parliament has amended the Constitution of 1973 fourteen times since its entry into force.<sup>131</sup> Many of these amendments took place in the context of military rule, first in 1977 under General Zia-ul-Haq who led a military coup, and then in 1999 under General Musharraf who led a coup.<sup>132</sup> The courts subsequently validated the military take-over and had granted legislative powers to the military leaders to amend the constitution.<sup>133</sup> In 2005, an attempt to prosecute General Musharraf under the high treason clause was dismissed.<sup>134</sup> In 2010, the Parliamentary Committee on Constitution Reform sought to strengthen constitutional safeguards to prevent future military takeovers and coups.<sup>135</sup> In response to the past complicity of the courts in coups, the Committee constitutionally prohibited the courts from validating constitutional changes brought about by use of force or other unconstitutional means.<sup>136</sup> In 2022, after a series of political and constitutional crisis, the National Assembly voted to remove the president from office, which was said to have averted a civilian coup by the president. There have, however, been no coups nor cases of article 6 since 2010.

Some anglophone African countries with “defence of constitution” provisions also contain elaborate provisions on the crime of treason that amount to a hard expression of coup-proofing. For instance, the Constitution of Uganda in article 3(2) provides

*“Any person who, singly or in concert with others, by any violent or other unlawful means, suspends, overthrows, abrogates or amends this Constitution or any part of it or attempts to do any such act, commits the offence of treason and shall be punished according to law.”*

129 See generally *Maryam S. Khan*, What’s in a Founding? Founding Moments and Pakistan’s Permanent Constitution’ of 1973, in: Richard Albert / Menaka Guruswamy / Nischchal Basnyat (eds.), *Founding Moments in Constitutionalism*, Oxford 2019, p. 201.

130 *Faisal Siddiqi*, Much Ado about Article 6, Dawn, 2 July 2022, <https://www.dawn.com/news/1700983>; Constitution of Pakistan 1973.

131 *Sadaf Aziz*, *The Constitution of Pakistan: A Contextual Analysis*, Oxford 2018.

132 *Chin / Carter / Wright*, note 1, pp. 82, 88-89.

133 *Pakistan Lawyers Forum v Federation of Pakistan – CP No 13/2004 [2005] PKSC 2 [16]* (‘the Syed Zafar Ali Shah case’).

134 *Ibid* [92].

135 Constitution of Pakistan 1973 (reinstated 2002, with amendments through 2018), art. 6; *Farhan Hanif Siddiqi*, Rescuing the Agency and Resilience of Civilian Political Actors, in: Tarunabh Khaitan / Swati Jhaveri / Dinesha Samararatne (eds.), *Constitutional Resilience in South Asia*, Oxford 2023.

136 Constitution of Pakistan 1973, art. 6(2A).

Similar provisions on high treason exist in the constitutions of Ghana, which attracts a mandatory death penalty, as well as The Gambia and South Sudan.<sup>137</sup> The constitutions of Ghana and The Gambia also criminalise not just coup leaders but the actions of people who aid and abet a coup. In some countries, coups are deemed an “imprescriptible” crime, that is, it cannot be removed or revoked in any way, to be sanctioned in accordance with the law, including in the Democratic Republic of Congo, the CAR, Mali, Mauritania and Togo.

Some constitutional coup crimes have expansive and serious ramifications, such as denying coup leaders and their associates any financial benefit from their actions, with any property or financial gains being appropriated by the state, as in Honduras.<sup>138</sup> Some constitutions exclude authors of coups from pardons and commutation of sentences, such as in Argentina.<sup>139</sup> In some countries, coup crimes are specified as non-bailable offences.<sup>140</sup>

Some constitutions limit coup crimes to acts committed prior the entry into force of its constitution, such as in Mauritania, which is arguably not a deterrent clause as its only role is to prosecute past offenders. Other constitutions only criminalise the role of the military or security forces (not civilians), as in Benin.<sup>141</sup> A similar provision also exists in the constitution of Togo, in addition to its general provision, highlighting the specific threat of coups posed by the military.<sup>142</sup>

The Central African Republic has one of the strongest constitutional coup crimes. The earlier mentioned 2016 Constitution also incorporated provisions criminalising coups. Kameldy Neldjingaya has argued that “the prohibition of *coups d’état* by the Constitution of March 2016 was an attempt to find a lasting solution to the problem of unconstitutional changes of government, which has characterised politics in the CAR since the early days of its independence”<sup>143</sup>. The 2016 Constitution declares usurping the state an inviolable crime amounting to a declaration of war against the people and the prohibition extends to any person who supports a coup attempt.<sup>144</sup> This clause was also maintained in the 2023 Constitution.<sup>145</sup>

Despite the stated severity of coup crimes, these clauses are challenging to implement, especially in times of transition when the goal is for the military to relinquish its powers peacefully. Coup crimes may be difficult to execute if the courts lack independence and because they generally require a new regime to be in place before prosecutions can

137 Constitution of Ghana 1992 (with amendments through 1996), art. 3(3); Constitution of The Gambia 1996 (with amendments through 2018), art. 6(1); Constitution of South Sudan 2011 (with amendments through 2013), art. 4(2).

138 Constitution of Honduras 1982, art. 375.

139 Constitution of Argentina 1853 (reinstated in 1983, with amendments through 1994), art. 36.

140 Constitution of Brazil 1988, art. 5.

141 Constitution of Benin 1990, art. 65.

142 Constitution of Togo 1992 (with amendments through 2007), art. 148.

143 *Neldjingaye*, note 52.

144 Constitution of the Central African Republic 2016, art. 28.

145 Constitution of the Central African Republic 2023, art. 6.

feasibly be brought. Judiciaries have a mixed track record in applying these provisions when confronted with power realities, as seen in the example of Pakistan.<sup>146</sup> In many countries, amnesties and presidential pardons are used to facilitate post-coup transitions, thereby potentially entrenching impunity for coups. In some countries, coup leaders have introduced coup crimes as forward-looking to preserve their rule while also including an immunity clause for coup leaders either in constitution or in law.<sup>147</sup> Such a combination is indicative of authoritarian use of constitutional coup-proofing.

### **E. Conclusion: A Future Agenda for Constitutional Coup-Proofing**

In military authoritarian regimes, or democratic regimes that have transitioned (or are transitioning) from military authoritarian rule, constitution-makers seek to prevent the threat of a future coup by means of constitutional-coup proofing. The emergence and spread of constitutional coup-proofing has gained prominence over the past three to four decades.

We showed that the scholars of political science and security sector studies have developed the concept of coup-proofing as a set of political strategies that may impose internal or external reforms on the military. We added to this by arguing that coup-proofing should also be understood as a legal and constitutional strategy by both authoritarian regimes seeking to prolong their rule or by democratic regimes aiming to prevent future coups.

From our preliminary qualitative study, we found that constitutional coup-proofing is a common strategy of constitution-makers in countries with a history of coups and attempted coups, especially in Africa and Latin America. We find that most states or regimes that use constitutional coup-proofing include at least two or three varieties of constitutional coup-proofing. Regimes that include more than one type of coup-proofing frequently combine the right to resist with coup crimes, simultaneously empowering citizens to resist a coup and criminalising those who attempt a coup. Many regimes pair an inviolability clause with a right to resist in the constitution, declaring acts of usurpers unconstitutional and encouraging disobedience. The more frequent combinations of constitutional coup-proofing suggests that when a state does use constitutional coup-proofing, it almost always uses multiple strategies in mutually reinforcing ways, combining both soft and hard strategies. Longer histories of coups and repeated constitutional breakdown can also lead to a strengthening of constitutional coup-proofing over time, as observed in the cases of Ghana and the CAR.

Our study opens up a new research agenda for the study of constitutional coup-proofing. Building on the focus on the military in comparative constitutional law,<sup>148</sup> this study offers a preliminary analysis for an agenda for the study of constitutional coup-proofing.

146 See *Farooq Hassan*, *A Juridical Critique of Successful Treason: A Jurisprudential Analysis of the Constitutionality of a Coup d'Etat in the Common Law*, *Stanford Journal of International Law* 20 (1984); *Mahmud*, note 128.

147 Fiji Constitution of 2013, art. 155, 157.

148 *Crouch*, note 6.

This agenda requires country-specific studies of the constitution in action, including but not limited to how courts have interpreted and applied coup-proofing provisions. Scholars could also examine the ways that some regimes use legislation instead of, or in addition to, constitutions to introduce similar coup-proofing strategies.

Given that our case studies indicate intraregional learning and exchange, particularly in Latin America but also francophone and anglophone Africa, there is also a need for region-specific studies. Scholars could examine the ways in which regionalism and intra-regional exchanges influence constitution-makers in their coup-proofing efforts. Conversely, scholars could consider why countries across Asia with a history or contemporary period of military rule have not included coup-proofing provisions in their constitutions. Further, the phenomenon of coups raises urgent questions for scholars of comparative constitutional law in terms of when, why and how coups influence constitutional design. Specifically, there is a need to explore in more detail what happens when regimes adopt constitutional strategies to prevent, deter or resist a coup, not only for its impact and effect on politics but on society at large.

In sum, the persistence of military coups and the violent overthrow, or attempted overthrow, of an (un)elected government should capture the attention of legal scholars. We have drawn attention to constitutional coup-proofing in order to inform an agenda for understanding contemporary constitution-making efforts after coups or attempted coups, as we have seen in countries around the world, from Mali to Thailand. In doing so, we demonstrated that coup-proofing is not just a political strategy, but also often a legal and constitutional one.



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