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From constitutional capture to military rule in Francophone Africa: Rethinking the legitimacy paradox of unconstitutional changes of government through the right to development

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Abstract: *The resurgence of military coups in Francophone Africa since 2020 has renewed debate about constitutionalism, democracy and the legitimacy of military intervention. Existing legal approaches emphasise the prohibition of unconstitutional changes of government and the restoration of constitutional order. I argue that this approach, while indispensable, is incomplete when examined through African human rights law. The African Charter on Human and Peoples' Rights recognises not only political participation and self-determination, but also peoples' rights to natural resources, development, and peace and security. These rights raise a further question: whether the legitimacy of public authority can be assessed solely by the legality of its acquisition, or whether it must also be assessed according to the substantive purposes for which that authority is exercised. To*

contextualise this interrogation, I review recent developments in Mali, Burkina Faso and Niger. I distinguish constitutional legitimacy from developmental legitimacy, arguing that neither can simply replace the other. A military government cannot derive constitutional legitimacy from claims of sovereignty, resource control or developmental performance; equally, an elected government cannot treat electoral legitimacy as sufficient evidence of compliance with developmental obligations. Drawing on the African Commission's jurisprudence in Endorois*,* SERAC*,* Democratic Republic of Congo v Burundi, Rwanda and Uganda *and* Ogiek*, as well as the African Court's decision in* XYZ v Benin*, I develop a five-dimensional framework centred on participation, resource sovereignty, economic development, peace and security, and constitutional accountability. Consequently, I propose the right to development not as a justification for coups, but as a symmetrical standard through which the governments preceding coups, the military authorities that follow them, and the constitutional orders eventually restored can all be evaluated.*

Résumé : *La recrudescence des coups d'État militaires en Afrique francophone depuis 2020 a relancé le débat sur le constitutionnalisme, la démocratie et la légitimité de l'intervention militaire. Les approches juridiques existantes mettent l'accent sur l'interdiction des changements de gouvernement anticonstitutionnels et sur le rétablissement de l'ordre constitutionnel. Je soutiens que cette approche, bien qu'indispensable, est incomplète lorsqu'on l'examine à la lumière du droit africain des droits de l'homme. La Charte africaine des droits de l'homme et des peuples reconnaît non seulement la participation politique et l'autodétermination, mais aussi les droits des peuples aux ressources naturelles, au développement, ainsi qu'à la paix et à la sécurité. Ces droits soulèvent une question supplémentaire : la légitimité de l'autorité publique peut-elle être évaluée uniquement en fonction de la légalité de son acquisition, ou doit-elle également être appréciée à l'aune des finalités de fond pour lesquelles cette autorité est exercée ? Pour replacer cette interrogation dans son contexte, je passe en revue les développements récents au Mali, au Burkina Faso et au Niger. Je distingue la légitimité constitutionnelle de la légitimité en matière de développement, en soutenant qu'aucune ne peut simplement se substituer à l'autre. Un gouvernement militaire ne peut tirer sa légitimité constitutionnelle de revendications de*

souveraineté, de contrôle des ressources ou de performances en matière de développement ; de même, un gouvernement élu ne peut considérer la légitimité électorale comme une preuve suffisante du respect de ses obligations en matière de développement. En m'appuyant sur la jurisprudence de la Commission africaine dans les affaires Endorois*,* SERAC*,* République démocratique du Congo c. Burundi, Rwanda et Ouganda *et* Ogiek*, ainsi que sur la décision de la Cour africaine dans l'affaire* XYZ c. Bénin*, j'élabore un cadre à cinq dimensions axé sur la participation, la souveraineté sur les ressources, le développement économique, la paix et la sécurité, et la responsabilité constitutionnelle. En conséquence, je propose que le droit au développement ne soit pas considéré comme une justification des coups d'État, mais comme une norme symétrique à l'aune de laquelle peuvent être évalués tant les gouvernements précédant les coups d'État que les autorités militaires qui leur succèdent, ainsi que les ordres constitutionnels finalement rétablis.*

Key words: *coups d'état; right to development; constitutional legitimacy; sovereigntist reappropriation; natural resources; military rule*

1 Introduction

The resurgence of military intervention in Francophone Africa has unsettled the constitutional order that emerged across much of the continent after the end of the Cold War. Mali experienced military seizures of power in August 2020 and May 2021; Burkina Faso experienced two *coups* in 2022; and Niger's elected government was overthrown in July 2023. These developments followed a wider sequence of unconstitutional changes of government in Africa and occurred against a background of insecurity, poverty, governance deficits, political dissatisfaction and declining confidence in established political institutions. The return of military rule has generated two competing narratives. The first, dominant in the constitutional and regional legal order, treats military seizure of power as an unconstitutional change of government that must be reversed through constitutional restoration. The second, increasingly visible in political discourse in the Sahel, presents military intervention as a rupture with a political order perceived as unable to provide security, sovereignty and meaningful development. The latter narrative has

become particularly powerful where civilian governments have been associated with persistent armed violence, corruption, socioeconomic deprivation and external dependence.

The resurgence of military rule cannot, however, be understood solely through the immediate circumstances of military intervention. It must also be situated within the broader crisis of constitutionalism in Francophone Africa after 1990. The institutionalisation of multiparty elections and constitutional government did not necessarily eliminate the practices through which incumbents manipulated constitutional arrangements, weakened democratic accountability and restricted meaningful political competition. Constitutional capture thus exposed a fundamental tension within the post-Cold War constitutional order: The preservation of formal legality could coexist with the erosion of the substantive conditions of democratic legitimacy. In some contexts, this tension has become part of the political background against which military authorities present their interventions as ruptures with discredited civilian regimes. Such claims do not establish the legality of military rule, but they raise a question that a purely procedural account of unconstitutional changes of government may leave insufficiently examined: How should the legitimacy of constitutional government be assessed when its formal institutions fail to secure meaningful political participation and development?

The legal framework governing unconstitutional changes of government is relatively clear. The African Charter on Democracy, Elections and Good Governance (African Democracy Charter) condemns unconstitutional changes of government and expressly identifies *coups d'état* against democratically elected governments among the situations warranting sanctions.[1] This principle serves important constitutional purposes. It protects electoral government from forcible displacement, limits military involvement in political succession and seeks to prevent the normalisation of extra-constitutional transfers of power. Yet, the existence of a legal rule against *coups* does not exhaust the question of legitimacy in African constitutionalism. A government may obtain office through constitutionally recognised procedures while

1 African Charter on Democracy, Elections and Governance (adopted 30 January 2007, entered into force 15 February 2012) arts 23-25 (African Democracy Charter).

failing to provide effective security, equitable resource governance, meaningful participation or socioeconomic development. Conversely, a military authority may pursue policies presented as promoting economic sovereignty, resource redistribution or national security while remaining constitutionally illegitimate because its authority was acquired through an unconstitutional seizure of power.

The distinction is particularly important in the context of the right to development (RtD). The 1986 United Nations Declaration on the Right to Development (DRtD) describes development as an economic, social, cultural and political process directed towards the constant improvement of the well-being of the entire population and all individuals. It places active, free and meaningful participation at the centre of that process.[2] The African Charter on Human and Peoples' Rights (African Charter) goes further by placing development within a broader conception of peoples' rights. Article 20 protects self-determination; article 21 protects peoples' rights to freely dispose of their wealth and natural resources; article 22 recognises the right to economic, social and cultural development; and article 23 recognises the right of peoples to national and international peace and security.[3] These provisions complicate the conventional debate about *coups*. They require attention not merely to who holds constitutional office, but also to how public power affects the capacity of peoples to determine their political and economic future. My argument is therefore not that *coups* are legitimate when they produce development. Such a proposition would contradict the African constitutional framework concerning unconstitutional changes of government. My argument is also not that civilian governments are illegitimate because they fail to satisfy every developmental aspiration. Rather, I propose a distinction between constitutional legitimacy and developmental legitimacy. Constitutional legitimacy concerns the lawful acquisition and exercise of public authority. Developmental legitimacy concerns whether public authority is exercised in a manner that advances the substantive interests and agency of the people, including participation, self-determination, equitable resource governance, economic and social

2 United Nations Declaration on the Right to Development, GA Res 41/128 (4 December 1986) (GRtD) arts 1(1), 2(3).

3 African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) arts 20-23.

development, security and accountability. Developmental legitimacy is employed here as an analytical concept, rather than as an independently established legal status or an alternative basis for acquiring state power. It does not replace constitutional legality, nor does it permit developmental achievements to compensate for an unconstitutional seizure of power. Instead, it directs attention to the extent to which the exercise of public authority advances the people's agency and interests consistently with applicable human rights obligations. The distinction is not intended to establish two competing forms of government. It serves a different purpose. It makes it possible to ask whether the legal condemnation of a *coup* should exhaust the assessment of the government that was displaced, and whether constitutional restoration by itself is sufficient to address the structural conditions that generated support for political rupture in the first place. It also makes it possible to scrutinise the claims of military authorities that invoke development, sovereignty, security and popular dissatisfaction to justify their continued exercise of power. Neither formal constitutional legality nor claims of developmental achievement, considered in isolation, provide a complete assessment of the legitimacy of public authority. The RtD offers a framework for examining both without equating the constitutional position of an elected government with that of a military regime. In particular, economic growth, infrastructure provision or resource nationalisation cannot, on their own, establish developmental legitimacy where public participation is suppressed, human rights are violated or communities are excluded from decisions affecting their development.

This chapter forms the third part of a broader inquiry. In the first part, I examined the historical structures of constitutional coloniality in Francophone Africa, focusing on the interaction between constitutional institutions, post-colonial French influence, monetary and economic arrangements, military cooperation, resource extraction and political authority. In the second, I examined the transformation of unconstitutional transfers of power after 1990 and the emergence of what was termed sovereigntist reappropriation, particularly in Mali, Burkina Faso and Niger.[4] In the present chapter I develop the inquiry further by asking what these political transformations mean for the RtD. In so

4 The two parts are available in a special issue of the *Journal of Juridical Science* dedicated to unconstitutional transfer of powers.

doing, I shift the analytical focus from the historical and institutional transformation of unconstitutional transfers of power to a normative question: How can the RtD inform an assessment of public authority before and after a *coup*? My key interrogation is whether, and to w hat extent the RtD provides a legally meaningful framework for assessing the legitimacy of public authority before and after an unconstitutional change of government, particularly where constitutional capture has undermined the substantive legitimacy of civilian rule and military authorities invoke development, sovereignty and popular dissatisfaction to justify their continued exercise of power. My answer is affirmative. The RtD does not legalise *coups*. It does, however, provide a normative framework capable of evaluating both civilian and military authorities. Its importance lies precisely in its symmetry. This symmetry is analytical rather than a claim that civilian governments and military regimes occupy equivalent constitutional or legal positions. Both may be assessed against applicable human rights and development obligations, but the circumstances in which they acquire, and exercise, public authority remain legally distinct. My main premise is that constitutional legality must not be treated as the sole measure of legitimacy.

2 From constitutional coloniality to sovereigntist reappropriation

In this part I review the inherited constitutional order, developmental dissatisfaction and the politics of rupture and sovereigntist reappropriation.

2.1 The inherited constitutional order

Constitutional sovereignty and substantive sovereignty do not necessarily coincide. A state may possess a constitution, an elected government and formally independent institutions while operating within economic and security arrangements that significantly constrain the range of political choices available to it. I have examined this historical background in detail in the first two chapters of this trilogy and there is no need to repeat it here. In the same vein, I have previously reviewed and demonstrated the extent to which the colonial legal legacy, including the normalisation of exceptional powers, continues to shape the structures

through which political authority is exercised in the post-colony.[5] What is relevant for present purposes is that the legitimacy of constitutional government came to depend increasingly on its capacity to deliver security and development, capacities that were themselves constrained by the inherited political economy.

2.2 Developmental dissatisfaction and the politics of rupture

If constitutional government is evaluated only by whether it was established through elections, the conditions that produce support for political rupture remain outside the legal analysis. However, if development is treated as part of the substantive obligations of public authority, the question becomes more complex: What happens when a constitutionally established government repeatedly fails to provide the conditions associated with the rights recognised in the African Charter? My argument is not to replace elections with performance-based legitimacy. Such a model would be dangerous because almost any military intervention could be presented as an attempt to correct governmental failure. My point is that constitutional legitimacy cannot be detached from the substantive rights that constitutional institutions are supposed to protect.

2.3 Sovereigntist reappropriation

The military interventions in Mali, Burkina Faso and Niger did not merely interrupt constitutional government but articulated a distinctive claim about the relationship between political authority and national development. The political vocabulary emerging from the Sahel region represents an important shift. Military authorities have increasingly presented political rupture as part of a broader project of national reappropriation. This has involved rejecting particular forms of French military cooperation, restructuring external partnerships, increasing state involvement in natural-resource sectors and seeking alternative regional institutions. The creation of the Alliance of Sahel States and

5 GEK Kamga 'Technique of empire: Colonisation through a state of exception' (2019) 78 *African Studies* 1-19; see also GEK Kamga 'The origin and the development of emergency regimes in Cameroon' (2015) 21 *Fundamina* 289-312.

the withdrawal of Mali, Burkina Faso and Niger from the Economic Community of West African States (ECOWAS) on 29 January 2025 gave this process institutional form.[6] The withdrawal transformed the relationship between the three states and the established regional constitutional order from a dispute over individual *coups* into a broader disagreement about sovereignty, regional integration and the conditions under which regional institutions may respond to unconstitutional changes of government. That claim is captured by the concept of sovereigntist reappropriation. This refers to the attempt by political authorities to recover greater national control over the material and institutional conditions of development including natural resources, monetary arrangements, security partnerships and regional integration, and to reframe political legitimacy around that recovery. It is not a single policy but a cluster of claims: that the state should exercise more direct control over strategic resources, external economic and military influence should be reduced, and that political authority should be justified by its capacity to advance national sovereignty and development. This development should not be understood as a simple opposition between sovereignty and regionalism. The three states continue to participate in regional economic and political relationships, and their economies remain deeply connected to neighbouring countries. Sovereigntist reappropriation should also not be treated as synonymous with developmental success. Greater state ownership of resources may produce greater fiscal revenue, but it may also produce governance problems, inefficiency or uncertainty. Withdrawal from external security arrangements may increase strategic autonomy while simultaneously altering the state's capacity to respond to armed groups.

The analytical value of sovereigntist reappropriation lies elsewhere. It represents an explicit claim that political authority should recover greater control over the material conditions of national development. That claim can be assessed against article 21 of the African Charter, which provides that peoples shall freely dispose of their wealth and natural resources and that this right shall be exercised in their exclusive interest.[7]

6 ECOWAS 'Burkina Faso, Mali and Niger's withdrawal from ECOWAS is now a reality' (30 January 2025), https://www.ecowas.int/burkina-faso-mali-and-nigers-withdrawal-from-ecowas-is-now-a-reality/ (accessed 2 July 2026).

7 African Charter art 21.

The contemporary Sahelian emphasis on mining, energy and resource sovereignty therefore engages an existing African human rights norm rather than merely a political slogan. The crucial question is whether the process of reappropriation actually transfers greater developmental agency to the people.

3 The right to development in African human rights law

3.1 From development as policy to development as right

The RtD occupies a distinctive position in international and African human rights law. It emerged partly from dissatisfaction with approaches that treated development as primarily an economic objective rather than as a process connected to human dignity, participation and collective self-determination. The DRtD defines development as an economic, social, cultural and political process aimed at the constant improvement of the well-being of the entire population and all individuals. It further provides that every human person and all peoples are entitled to participate in, contribute to and enjoy development.[8] The African Charter incorporates this conception into a broader system of peoples' rights. Article 20 protects the right of peoples to existence and self-determination and recognises their freedom to determine their political status and pursue economic and social development according to policies they have freely chosen. Similarly, article 21 recognises rights over natural resources, while article 22 establishes the right to economic, social and cultural development. Finally, article 23 recognises peace and security.[9] Read together, these provisions create a distinctive conception of development. Development is not simply an increase in gross domestic product (GDP). It involves political agency, control over resources, material well-being and conditions of peace. This integrated character is especially important in the context of *coups* because military authorities frequently justify intervention through one or more of these dimensions: the restoration of security, recovery of sovereignty, protection of resources or correction of governmental failure. The African Charter permits these

8 DRtD (n 2) arts 1-2.
9 African Charter arts 20-23.

objectives to be assessed, but it does not permit them to be separated from participation and accountability.

3.2 *Endorois*: Participation, choice and equitable benefit

The African Commission's decision in *Endorois* provides the most developed African jurisprudential articulation of the RtD.[10] The Commission stated that the RtD has both constitutive and instrumental dimensions, or is simultaneously a means and an end. A violation of either its procedural or substantive element may therefore constitute a violation of article 22.[11] The distinction is fundamental, for the procedural dimension requires meaningful participation, consultation, accountability, transparency and choice. The substantive dimension concerns the actual benefits of development and the improvement of people's well-being. The Commission rejected the idea that development could be imposed upon a community simply because the state considered the resulting project beneficial. In *Endorois*, the community had been displaced from ancestral lands associated with the Lake Bogoria Game Reserve. The Commission found that the consultation undertaken by the Kenyan authorities was inadequate and that the community had not been given a genuine opportunity to shape the development process.[12] The Commission further concluded that the Endorois were entitled to an equitable distribution of benefits and that the state had an obligation to create conditions favourable to their development.[13]

This jurisprudence provides a particularly valuable framework for analysing the Sahel. A state cannot satisfy the RtD simply by claiming that its policies are undertaken in the national interest. The relevant inquiry must include whether the people affected have meaningful

10 *Centre for Minority Rights Development & Another v Kenya* (2009) AHRLR 75 (ACHPR 2009) (*Endorois*).

11 *Endorois* (n 10) para 277. The Commission expressly characterised the right to development as both constitutive and instrumental and held that violation of either the procedural or substantive element could violate art 22.

12 *Endorois* (n 10) paras 280-283. The Commission held that the consultation undertaken by the Kenyan authorities did not constitute effective participation and that the community had not been given an adequate opportunity to shape the development process.

13 *Endorois* (n 10) paras 283 & 298. The Commission held that the Endorois were entitled to equitable distribution of benefits and that the state bore responsibility for creating conditions favourable to their development.

opportunities to participate and whether the benefits are equitably distributed. It has been clearly demonstrated that *Endorois* marked a decisive departure from earlier African Commission's jurisprudence by clarifying the concept of 'peoples', identifying the beneficiaries of the RtD, and stressing the state's role as the primary duty bearer.[14] This principle has two implications for military government. First, popular support for a *coup* does not eliminate the requirement of continuing participation. Initial popular mobilisation cannot substitute indefinitely for institutional participation. Second, developmental achievements cannot compensate automatically for exclusion. A government may build infrastructure or increase state revenues while restricting political choice. Under *Endorois*, the procedural and substantive dimensions are complementary.

3.3 Natural-resource sovereignty

Article 21 of the African Charter provides a second major dimension. It recognises peoples' rights freely to dispose of their wealth and natural resources and provides that this right must be exercised in their exclusive interest. It also addresses foreign economic exploitation and the obligation of states to ensure that peoples benefit from their resources.[15] The significance of this provision for French-speaking Africa is considerable because natural-resource governance has historically been closely associated with questions of sovereignty and external economic influence. The *Endorois* decision connects resource governance directly to development. The African Commission recognised the relationship between traditional land, natural resources and community development. It held that the Endorois had rights concerning their natural resources and that they were entitled to equitable benefits from economic activities associated with their land.[16]

This jurisprudence provides a useful corrective to two approaches. The first is the assumption that foreign investment is inherently exploitative.

14 SAD Kamga 'The right to development in the African human rights system: The *Endorois* case' (2011) 44 *De Jure* 381.

15 African Charter art 21.

16 *Endorois* (n 10) paras 267-268, 297-298. The Commission recognised the community's interests in natural resources and linked resource rights with the distribution of development benefits.

The African Charter does not prohibit foreign participation in African economies. It requires that resource relations operate consistently with peoples' rights. The second is the assumption that state ownership automatically equals popular ownership; it does not. A state can control a mine while communities remain excluded from decision making and benefits. Conversely, a foreign company can operate within a regulatory framework that generates substantial public revenue, local employment, environmental safeguards and community benefits. A comprehensive study of the RtD in the African human rights system shows that the realisation of the RtD requires attention to the broader architecture of African governance institutions and the ways in which resource relations are structured.[17] The legal question, therefore, is not simply who owns the resource. It is: Who decides, who benefits, and under what conditions? That question is central to assessing the resource policies of Mali, Burkina Faso and Niger.

3.4 Development and positive state obligations

In *SERAC,*[18] the African Commission demonstrated that Charter rights cannot be understood solely as negative restrictions on state power. States must create conditions in which rights can be enjoyed. The principle of positive obligations is especially important in the context of *coups*: Development obligations are not suspended simply because a state faces insecurity. Indeed, insecurity may increase the importance of those obligations. This dimension is further developed below. The African Commission has also confirmed that Charter rights impose positive obligations on states. In *SERAC*, the Commission considered the effects of oil exploitation in Ogoniland and held that the state had failed in its duties to prevent pollution, protect the health of the affected population and ensure that resource benefits reached the communities concerned. The Commission articulated a four-tier typology of state obligations, namely, to respect, protect, promote and fulfil rights, and held that the duty to fulfil requires the state to take active measures to create conditions in which rights can be enjoyed.[19] The case establishes

17 SAD Kamga *The right to development in the African human rights system* (2018).
18 *Social and Economic Rights Action Centre (SERAC) & Another v Nigeria* (2001) AHRLR 60 (ACHPR 2001) (*SERAC*).
19 *SERAC* (n 18) paras 44-48.

that public authority must take positive measures to prevent harm to communities and to ensure that they benefit from resource exploitation.

This principle is important in the context of *coups*. It confirms that obligations under articles 21, 22 and 23 are not suspended by insecurity or political instability. A government facing armed insurgency remains bound to protect the population and to ensure that natural resources serve the people's interest. Insecurity may in fact intensify those obligations, because the population becomes more dependent on state action. Development obligations, therefore, bind public authority before, during and after a *coup*. This dimension is further developed in an upcoming part.

3.5 Development, constitutional change and *XYZ v Benin*

The African Court's decision in *XYZ v Republic of Benin* adds a further dimension.[20] The case concerned constitutional change and allegations that the process disrupted the country's constitutional and developmental order. The Court held that a non-consensual constitutional amendment could constitute a major disruption of economic, social and cultural development, and found a violation of article 22.[21] The Court's reasoning was relatively concise and has been criticised for not fully developing the relationship between constitutional change and development.[22] Nevertheless, the case is important because it confirms that constitutional instability may itself implicate the RtD. This is particularly relevant to *coups*. A *coup* is not merely a change in personnel. It disrupts constitutional institutions, administrative continuity and often regional economic relations. It can therefore affect development even before the substantive policies of the military authorities are considered. The RtD thus has both a pre-*coup* and post-*coup* relevance. Before the *coup*, it raises questions about whether constitutional government has created conditions favourable to development. After the *coup*, it raises questions about the

20 *XYZ v Republic of Benin* Application 10/2020 (AfCHPR, 27 November 2020), https://archives.au.int/handle/123456789/11051 (accessed 10 July 2026).

21 *XYZ* (n 20).

22 See, eg, the discussion of the African Court's reasoning in the assessment of its 2020 jurisprudence, noting that the Court's art 22 analysis in *XYZ* was relatively brief, https://www.pulp.up.ac.za/images/edocman/legal-compilations/2020_aclr/cases/XYZ%20v%20Benin%20judgment%202020%204%20AfCLR%2083.pdf (accessed 10 June 2026).

developmental consequences of military rule and the transition back to constitutional government.

4 Mali: Constitutional rupture and the reappropriation of economic sovereignty

4.1 Developmental background

Mali provides an important starting point because the 2020 *coup* occurred after years of political instability, armed conflict and dissatisfaction with the government. The immediate constitutional question was whether military intervention could lawfully replace an elected government. Under the African Democracy Charter, the answer is in the negative. The developmental question is different. Mali had experienced prolonged insecurity, particularly in northern and central regions. The conflict affected public administration, infrastructure, displacement and economic activity. These conditions formed part of the political environment in which the military intervention acquired popular resonance. The UNDP's broader research on *coups* is useful here. Its findings indicate that perceptions of government failure, insecurity and exclusion can create public demand for political change.[23] This does not mean that citizens necessarily prefer military rule. It means that formal democratic institutions may lose legitimacy when they are perceived as unable to deliver the substantive benefits associated with government. Mali therefore illustrates the difference between legal legitimacy and political legitimacy. The military takeover remained unconstitutional, but understanding why it attracted support requires attention to the developmental conditions preceding it.

4.2 Sovereignty and the mining sector

Gold occupies a central place in Mali's economy. The country's dependence upon gold exports creates a structural tension. On the one hand, mining provides major foreign exchange earnings and public revenue. On the

23 UNDP 'Soldiers and citizens: Military coups and the need for democratic renewal in Africa' (2023). The study drew on the perceptions of 8 000 citizens and identified correlations between *coup* risk, governance deficits, low development indicators and perceptions of governmental failure to deliver security and inclusive development.

other, dependence upon a capital-intensive extractive sector creates vulnerability to commodity prices, production disruptions and disputes with major mining companies. The military authorities have sought to strengthen state participation in mining and to increase the public share of resource benefits. The 2023 mining reforms were intended to increase state participation and government revenue.[24] The subsequent dispute with Mali's largest gold producer illustrates both the potential and the risks of such a strategy. The International Monetary Fund (IMF) reported that the dispute led to halted exports and the shut-down of the company's production in January 2025, with significant implications for growth and fiscal revenue.[25] The point is not to determine whether the government's position or the company's position was correct. The relevant issue for the RtD is whether the restructuring of mining governance ultimately improves the capacity of the Malian state and population to benefit from their resources. The answer cannot be inferred from nationalisation or renegotiation alone. Articles 21 and 22 of the African Charter respectively require that natural resources be used in the interests of the people and that development must be participatory and beneficial. A mining policy that increases public revenue but reduces employment or causes prolonged production losses raises difficult questions under both dimensions. The same is true of foreign investment. If investment generates jobs, public revenue, local procurement, technology transfer and community benefits, it can contribute to development. If contractual arrangements produce minimal public benefit and substantial external extraction, the developmental case becomes weaker. The RtD therefore avoids the false choice between foreign ownership and state ownership. It focuses instead on the distribution of power and benefits.

Mali's efforts to expand domestic gold processing, including plans to build a refinery, mirror the direction recently taken by Burkina Faso, but

24 'Mining legislation reform in Mali: Strengthening state intervention and participation' *ENsight* 27 August 2024, https://www.ensafrica.com/news/detail/9042/mining-legislation-reform-in-mali-strengtheni (accessed 11 June 2026).

25 IMF 'Mali: 2025 Article IV Consultation' (10 September 2025). The IMF reported that the dispute with Mali's largest gold producer led to halted exports and a production shutdown in January 2025, with consequences for growth and fiscal revenues, https://www.imf.org/-/media/files/publications/cr/2025/english/1mliea2025002-source-pdf.pdf (accessed 12 June 2026).

they remain at the planning stage and are therefore not treated here as an empirical basis for assessing developmental legitimacy.

4.3 Political participation and transitional government

Mali also demonstrates the limits of resource-centred assessments. Even where resource policies potentially enhance economic sovereignty, article 22 requires participation. The IMF's 2025 assessment noted that Mali's authorities had approved a renewable five-year presidential term without elections and had pursued significant changes to the political and institutional environment.[26] Such developments raise obvious questions concerning political participation and constitutional accountability. The issue is not that elections are the only possible mechanism of participation. The *Endorois* jurisprudence suggests a broader conception of meaningful participation. However, prolonged transitional government must provide credible mechanisms through which citizens can influence political decisions and hold authorities accountable. Otherwise, the argument that military rule represents popular sovereignty risks becoming paradoxical: Sovereignty is invoked in the name of the people while the people have fewer institutional means of exercising political choice.

4.4 Developmental assessment

Mali consequently presents a mixed picture. There are identifiable attempts to increase national control over resources and reduce external dependence. There are also continuing problems involving insecurity, electricity, displacement, investment uncertainty and political participation. The most recent IMF assessment indicates that Mali's economy remained resilient, with strong growth in parts of 2025 and a projected recovery in 2026, but also emphasises continuing insecurity, energy shortages and vulnerabilities associated with the gold sector.[27] The appropriate conclusion, therefore, is neither that military rule has

26 IMF (n 25). The IMF reported the approval of a renewable five-year presidential term without elections as one of the risks affecting Mali's political and economic environment.

27 IMF 'Mali: Second Review under the Staff-Monitored Program' (2026). The IMF reported 5,7% growth during the first three quarters of 2025 and projected approximately 4,9% growth for 2025, while identifying insecurity, fuel shortages

produced developmental success nor that it has produced developmental failure. The more useful conclusion is that developmental legitimacy is multidimensional. Mali may make progress on resource sovereignty while experiencing difficulties in participation. It may experience economic growth while continuing to face insecurity. It may reduce dependence upon particular foreign actors while remaining economically dependent upon commodity exports.

5 Burkina Faso: Security, resource nationalism and the limits of performance

5.1 The two *coups* of 2022

Burkina Faso experienced two *coups* in 2022. The political environment was dominated by escalating insecurity and criticism of the government's inability to protect communities and territory. This context matters because the military intervention was not presented primarily as an economic revolution. It was justified substantially through security. The developmental significance of security should not be underestimated. A population exposed to armed violence cannot effectively exercise economic, social and cultural rights. Schools close, markets are disrupted, agricultural production is interrupted, communities are displaced and public resources are redirected towards emergency security expenditure. Article 23 of the African Charter therefore provides a direct legal connection between security and development. The difficulty arises when security becomes the justification for indefinitely suspending political participation. The RtD does not permit such an automatic substitution.

Burkina Faso's experience illustrates the tension between insecurity and economic activity. The state depends heavily on gold revenues, while insecurity threatens gold production, and security expenditure competes with spending on education and health. Military authorities can plausibly argue that improving security is a prerequisite for development, but the effectiveness of the security strategy must ultimately be assessed according to whether it improves the conditions of the population. Security spending is an input, not itself a developmental outcome.

and mining disruptions as continuing risks, https://www.imf.org/-/media/files/publications/cr/2026/english/1mliea2026001.pdf (accessed 12 June 2026).

5.2 The 2024 Mining Code

Burkina Faso has simultaneously pursued greater state involvement in mining. The 2024 mining code increased state participation and mining taxation and created mechanisms intended to increase the domestic benefit derived from gold production.[28] The IMF notes that the state participation requirement was increased to 15 per cent, while royalty rates were also raised.[29] These reforms are important because they demonstrate that sovereigntist reappropriation is not merely rhetorical. The government has attempted to alter the institutional distribution of economic benefits. Yet, the developmental consequences require careful assessment. Higher state participation can increase public revenue, but the IMF has also warned that higher taxation and state participation can affect the attractiveness of investment.[30] This is not an argument against resource nationalism. It demonstrates the need to balance different components of the RtD. A state has an obligation to ensure that its resources serve its people, but sustainable resource governance also requires investment, technology, production capacity and institutional competence. The relevant question, therefore, is whether the new mining regime achieves a sustainable balance between public control and productive capacity.

5.3 Nationalisation, the gold refinery and popular benefit

The subsequent nationalisation of mining assets intensified the state's resource sovereignty strategy. From an article 21 perspective, nationalisation may be understood as an exercise of sovereign authority over natural resources, but the African Charter does not define popular benefit exclusively through ownership. If state-owned mines produce higher revenues that are invested in health, education, food security

28 IMF 'Burkina Faso: Second review under the Extended Credit Facility arrangement and financing assurances review' (2025). The IMF reported that insecurity had contributed to the closure of several large-scale gold mines and reduced industrial gold production, https://www.imf.org/-/media/files/publications/cr/2025/english/1bfaea2025001-print-pdf.pdf (accessed 12 June 2026).

29 IMF (n 28). The 2024 mining code increased the state's free participation to 15% and increased progressive royalty rates.

30 IMF (n 28). The IMF noted that the increased fiscal burden and state participation could reduce the attractiveness of Burkina Faso as a mining investment destination.

and infrastructure, the developmental argument becomes stronger. If state control produces lower production, patronage, opacity or revenue leakage, the developmental case becomes more difficult. This distinction is especially important in Burkina Faso because gold is central to the country's economy. The IMF reported in 2026 that high gold prices and mining reforms helped drive growth of approximately 5,3 per cent in 2025 and contributed to a major improvement in the external position.[31] These figures demonstrate that economic performance after a *coup* cannot simply be assumed to deteriorate. At the same time, economic growth cannot by itself establish developmental legitimacy. The same IMF assessment emphasised continuing security and humanitarian pressures and the need to protect health, education and social protection.[32] The lesson is therefore symmetrical with Mali. A military government should not be denied recognition of measurable economic achievements merely because it came to power through a *coup*, but those achievements should not be transformed into a legal justification for the *coup*.

The inauguration of Burkina Faso's first gold refinery in September 2026 marks a further stage in this resource sovereignty strategy. Named RAFFINOR-BF, the facility was financed by the state through the National Precious Substances Company (SONASP) and domestic private partners at a cost of more than 11 billion CFA francs (approximately US$19 million), with an initial refining capacity of 164 tonnes of gold per year and a projected eventual capacity of 515 tonnes (BSS/AFP 2026; Xinhua 2026). President Traoré framed the refinery as evidence of Burkina Faso's determination to 'refine all our metals on site' and to retain the 'entire value chain' within the country, while the Mines Minister described the inauguration as 'the day we take back the keys to our own house'.[33] From the perspective of article 21 of the African Charter, the refinery represents an attempt to exercise greater control over

31 IMF 'Burkina Faso: 2026 Article IV Consultation and Fifth Review under the Extended Credit Facility' (26 June 2026). The IMF reported real GDP growth of 5,3% in 2025, with mining activity supported by high gold prices and reforms, https://www.imf.org/en/publications/cr/issues/2026/07/27/burkina-faso-2026-article-iv-consultation-fifth-review-under-the-extended-credit-facility-578142 (accessed 13 June 2026).

32 IMF (n 31). The IMF nevertheless identified continuing security and humanitarian pressures and emphasised the protection of health, education and social protection spending.

33 'Burkina Faso inaugurates first gold refinery as Traoré pushes local processing' *TVCNEWS* 29 September 2026, https://www.tvcnews.tv/burkina-faso-

natural resources and to capture value historically lost through the export of unprocessed gold. However, the RtD framework requires a further inquiry: whether the refinery's benefits will reach the population broadly, whether its governance will be transparent, and whether it will operate at sufficient capacity to justify the investment. The refinery's theoretical capacity of 164 tonnes annually is significantly higher than Burkina Faso's 2025 production of 94 tonnes, suggesting that the government intends to process gold from elsewhere in the region, a potentially significant development for West African resource sovereignty.[34] Whether this ambition translates into equitable developmental outcomes, however, remains to be assessed against the procedural and substantive dimensions of article 22 of the African Charter.

5.4 Participation and prolonged transition

The participation dimension remains the most difficult. Military authorities have postponed elections and extended the transition. This creates an obvious tension with constitutional restoration. Yet, a legal assessment should not stop at the observation that elections have been delayed. The deeper question is whether alternative mechanisms provide citizens with meaningful influence over the direction of the transition. The *Endorois* principle of effective participation is useful here. Participation must not be reduced to consultation after decisions have already been made. People must have a genuine opportunity to shape policies affecting them. If a transition is justified by security conditions, its developmental legitimacy should therefore depend partly upon the existence of credible mechanisms of participation and accountability during the transition. This is particularly important where military authorities undertake major structural changes to mining, public finance, regional integration and foreign relations. These decisions may have consequences extending far beyond the transitional period. The longer the transition lasts, the more difficult it becomes to characterise such decisions as merely temporary.

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inaugurates-first-gold-refinery-as-traore-pushes-local-processing/ (accessed 13 June 2026).

34 'Burkina Faso opens gold refinery in push to retain more value' *Mining.com* 28 September 2026), https://www.mining.com/web/burkina-faso-opens-gold-refinery-in-push-to-retain-more-value/ (accessed 13 June 2026).

6 Niger: Constitutional rupture, resource sovereignty and economic reorientation

6.1 The 2023 *coup*

Niger's July 2023 *coup* produced perhaps the sharpest confrontation between a military government and the established regional constitutional order. ECOWAS imposed sanctions and demanded the restoration of constitutional government. The *coup*, therefore, immediately became both a domestic constitutional crisis and a regional institutional conflict. The developmental consequences were significant, because Niger is deeply integrated into regional trade and depends upon cross-border infrastructure. This makes Niger particularly useful for testing the relationship between constitutional enforcement and development. Sanctions intended to protect constitutional government can generate economic costs for populations. That does not mean that sanctions are necessarily unlawful or inappropriate. It means that the developmental effects of regional enforcement should form part of the assessment. The RtD requires attention to both the objective pursued and the means through which it is pursued.

6.2 Uranium and the politics of resource sovereignty

Niger's dispute with France over uranium illustrates the relationship between political rupture and resource sovereignty. In June 2025, Niger announced the nationalisation of Somair, a uranium joint venture previously operated by France's Orano, after escalating disputes over the company's operations and the terms governing the venture. Orano subsequently pursued legal and arbitral avenues.[35] The political significance is obvious. Uranium has long been central to the economic relationship between Niger and France, while the military government has sought to redefine that relationship. From the perspective of article 21, Niger unquestionably possesses a legitimate interest in ensuring that its

35 IMF 'Niger: Ninth Review under the Extended Credit Facility Arrangement' (5 August 2026). The IMF estimated 2025 real GDP growth at 6,9%, driven substantially by oil production and exports and agricultural production, https://www.elibrary.imf.org/view/journals/002/2026/220/article-A001-en.xml (accessed 14 June 2026).

natural resources contribute to national development. However, the RtD again requires a second question: What does the Nigerien population receive from this sovereignty? If greater control increases public revenue, employment, infrastructure and social investment, it may contribute to the substantive dimension of article 22. If the restructuring produces prolonged production losses, litigation, uncertainty or declining revenue, the developmental outcome becomes more complicated.

6.3 Oil and the changing structure of the economy

Niger's economic trajectory also demonstrates why developmental analysis must remain empirical. The country's economic performance improved markedly in 2025, driven substantially by oil production and exports. The IMF estimated real GDP growth of 6,9 per cent in 2025 and linked the performance to oil exports and agricultural production.[36] This evidence complicates narratives that military rule necessarily produces economic collapse. At the same time, the IMF notes continuing security challenges, significant security expenditure and risks associated with attacks on oil infrastructure.[37] The developmental assessment, therefore, has to recognise both economic expansion and continuing insecurity. Niger's new development strategy, the Programme for the Refoundation of the Republic for 2025-2029, identifies four broad priorities: security and social cohesion; good governance; economic sovereignty through productive capacity; and social reform.[38] The strategy is significant because it explicitly combines sovereignty with development. Its implementation, however, must still be assessed against article 22 of the African Charter. A development programme cannot satisfy the RtD merely because it is nationally designed. Participation, accountability and equitable benefit remain necessary.

36 IMF (n 35). The IMF reported continuing security challenges and security spending of 2,7% of GDP in 2025.
37 IMF (n 35).
38 IMF (n 35). The Nigerien authorities' Programme for the Refoundation of the Republic for 2025-2029 identifies security and social cohesion, good governance, economic sovereignty and social reform as its four principal strategic areas.

6.4 Nationalisation and state-owned enterprises

The expansion of state control also creates a governance problem. The IMF's 2026 assessment warns that the nationalisation of strategically important companies poses fiscal risks and requires stronger governance of state-owned enterprises.[39] This observation is important for the RtD framework. State ownership can enhance sovereignty, but poorly governed state enterprises can reduce the resources available for development. The issue, therefore, is not whether nationalisation is good or bad in the abstract. It is whether institutional arrangements ensure that state-controlled assets are managed transparently and efficiently for public benefit. Article 21 of the African Charter should consequently be read together with article 22. Resource sovereignty is a means of securing development, not its automatic achievement.

6.5 Regional withdrawal and development

Niger's withdrawal from ECOWAS, together with Mali and Burkina Faso, adds another dimension. Regional integration can support development through trade, mobility, infrastructure and security cooperation. ECOWAS itself recognised that the withdrawal created implications for market access, peace and security, sectoral development and human development.[40] At the same time, the Alliance of Sahel States (AES) have framed withdrawal as an assertion of sovereignty. Both claims can be true simultaneously. Regional institutions can constrain national policy autonomy while also creating collective goods that individual states cannot easily produce alone. The RtD therefore requires a more nuanced understanding of sovereignty. Sovereignty should not be equated with isolation. Article 22 of the African Charter recognises

39 IMF (n 35). The IMF specifically noted that recent nationalisation of strategically important companies poses fiscal risks and requires stronger state-owned-enterprise governance.

40 ECOWAS 'Extraordinary Session of the ECOWAS Council of Ministers on the Contingency Plan and Modalities on the Withdrawal of Burkina Faso, Republics of Mali and Niger from ECOWAS' (2025). ECOWAS identified market access, economic integration, peace and security, sectoral development, education and health as areas affected by the withdrawal, https://www.ecowas.int/extraordinary-session-of-the-ecowas-council-of-ministers-on-the-contingency-plan-and-modalities-on-the-withdrawal-of-burkina-faso-republics-of-mali-and-niger-from-ecowas-holds-in-accra/ (accessed 15 June 2026).

an individual and collective dimension to the RtD. The challenge for the AES is therefore to demonstrate that alternative regional arrangements preserve or improve the developmental benefits that regional integration previously provided.

7 Comparative analysis: Towards a right to development test

7.1 Beyond the civilian-military binary

The three cases demonstrate why the conventional binary between democratic government and military government is insufficient for analysing developmental legitimacy. The constitutional distinction remains necessary. Military *coups* violate the regional constitutional framework, but developmental analysis produces a more complicated picture. Mali has pursued greater state control over gold while experiencing persistent insecurity and institutional uncertainty. Burkina Faso has strengthened state participation in mining while facing severe security and humanitarian pressures. Niger has expanded resource sovereignty and experienced substantial oil-driven economic growth while continuing to face security and governance challenges. None of these cases can therefore be reduced to the proposition that *coups* either destroy development or create it. The more useful approach is to assess specific dimensions of governmental performance.

7.2 The five dimensions

The RtD framework proposed here consists of five dimensions: participation; resource sovereignty; economic development; peace and security; and constitutional restoration and accountability. These dimensions should be treated as interconnected rather than hierarchical.

7.2.1 Participation

Participation asks whether individuals and peoples can meaningfully influence decisions affecting their political and developmental future. The principle comes directly from article 2(3) of the UN Declaration and from *Endorois*. For elected governments, participation includes elections but extends beyond them. For military governments, the question is more demanding because the initial seizure of power removes

the ordinary constitutional mechanism of political choice. A transition therefore requires alternative mechanisms of participation, consultation and accountability. The *Endorois* jurisprudence is instructive because it rejects the idea that consultation after a decision has effectively been made amounts to meaningful participation.[41] Applied to the Sahel, the question is whether populations are able to influence decisions concerning mining, constitutional reform, foreign military partnerships, regional integration and public expenditure.

7.2.2 Resource sovereignty

The second dimension asks whether the people exercise meaningful control over natural resources and receive equitable benefits from them. This is where article 21 of the African Charter becomes central. The recent policies of all three AES states demonstrate an increased emphasis on state participation, nationalisation or renegotiation of resource relationships. However, resource sovereignty should be evaluated through measurable indicators: state revenue, community revenue, employment, local procurement; domestic processing, technology transfer, environmental protection, transparency, community participation, and long-term sustainability. This prevents the substitution of state ownership for popular benefit.

7.2.3 Economic development

The third dimension asks whether governmental policy improves material conditions. Gross domestic product growth is relevant but insufficient. The RtD requires attention to poverty, food security, education, health, employment, infrastructure and distribution. This dimension is especially important because the three countries have experienced different economic trajectories. Niger's strong 2025 growth, Burkina Faso's growth supported by mining and Mali's continued economic resilience demonstrate that military rule does not produce a uniform economic outcome.[42] At the same time, the existence of growth does not

41 *Endorois* (n 10) paras 277-283.
42 IMF Burkina Faso: 2026 Article IV Consultation (n 31); IMF Niger: Ninth Review (n 35); IMF Mali: Second Review (n 27).

demonstrate equitable development. The question must therefore be: growth for whom, generated by what, and distributed how?

7.2.4 Peace and security

Article 23 of the African Charter establishes peace and security as a peoples' right. Security therefore, forms part of developmental legitimacy but the relevant measure is not the volume of military expenditure or the number of security partnerships. The question is whether civilians are safer, whether territory is effectively governed and whether people can resume ordinary economic and social activity. This dimension also introduces temporal complexity. A military government may inherit a deteriorating security environment. It should not be held responsible for every condition existing before its accession, but neither should it receive indefinite exemption from accountability because it inherited insecurity. The appropriate assessment should therefore examine trends over time.

7.2.5 Constitutional restoration and accountability

The fifth dimension preserves the constitutional distinction. The RtD cannot legitimise a *coup*. Military governments must therefore retain an obligation to restore constitutional order and establish accountable institutions. The longer a military transition continues, the stronger the justification required for continuing restrictions on political participation. This does not mean that a fixed timetable can be mechanically imposed irrespective of circumstances. It means that transitional authorities should demonstrate why continuation is necessary, what institutional objectives remain unfinished, how citizens participate in the transition, what safeguards exist against permanent military rule, and how constitutional authority will ultimately be restored. This fifth dimension prevents developmental performance from becoming a substitute for constitutional legitimacy.

8 The symmetry of developmental accountability

The principal contribution of this framework is its symmetry. Much of the current debate is asymmetrical. Military authorities are asked whether they have violated constitutional rules. Civilian governments are often

evaluated primarily according to whether they have won elections. The RtD disrupts this asymmetry.

8.1 Civilian government

A civilian government may satisfy the requirements of constitutional accession while failing substantively in relation to development. Consider a government that conducts elections, maintains constitutional institutions, permits formal political competition, but simultaneously fails to protect communities from severe insecurity, permits large-scale corruption, excludes affected populations from resource decisions, fails to distribute resource benefits equitably, and permits socio-economic deprivation to persist. Such a government remains constitutionally legitimate in the narrow sense of lawful accession, but it may face serious questions concerning developmental legitimacy. This distinction matters because developmental failure can itself weaken constitutional stability.

8.2 Military government

A military government presents the reverse problem. It may renegotiate mining agreements, increase state revenue, build infrastructure, pursue economic sovereignty, improve particular economic indicators, or adopt policies that enjoy substantial public support. None of these achievements cures the unconstitutional seizure of power. The military government therefore faces dual accountability. It must answer both whether it acquired power lawfully and whether it exercises power consistently with human and peoples' rights. This is a more demanding standard than either unconditional condemnation or unconditional acceptance.

8.3 The importance of the distinction

The distinction is important because otherwise the *coup* debate becomes trapped in a false choice. If *coups* are condemned solely because they are unconstitutional, the structural grievances that make them politically attractive remain unaddressed. If *coups* are defended because they respond to those grievances, the constitutional prohibition becomes meaningless. The RtD allows the two propositions to coexist. On the one hand, a *coup* can be unconstitutional while the government it

replaces can nevertheless have failed developmentally. On the other, a military government can pursue developmental policies while remaining constitutionally illegitimate. There is no contradiction. Indeed, recognising both propositions produces a more coherent African constitutionalism.

9 Regional enforcement and the developmental rights of affected populations

ECOWAS sanctions were designed to pressure military governments towards constitutional restoration. The legal basis for regional opposition to *coups* is substantial. The African constitutional framework expressly rejects military seizure of elected governments. Yet, sanctions themselves can have developmental consequences. This is not an argument that sanctions are prohibited, nor does it establish that ECOWAS acted unlawfully in imposing them. It establishes a different proposition: Constitutional enforcement should remain attentive to the developmental rights of populations affected by enforcement measures. This follows from the collective structure of the African Charter. If article 22 protects peoples' right to development and article 23 protects peace and security, regional institutions should consider how enforcement measures affect those rights. The problem becomes particularly significant when sanctions restrict trade, financial transfers, movement, access to essential goods, development programmes, cross-border employment or humanitarian assistance.

The regional constitutional order, therefore, faces a difficult balancing problem. On one side is the need to deter *coups*. On the other is the need to avoid making civilian populations bear disproportionate developmental costs for decisions taken by military authorities. The withdrawal of Mali, Burkina Faso and Niger from ECOWAS in January 2025 illustrates the consequences of this tension. ECOWAS itself has acknowledged that the withdrawal has implications for market access, peace and security, sectoral development, education and health. The emergence of the AES consequently cannot be understood only as a rejection of ECOWAS. It also represents an attempt to construct an alternative regional institutional framework. Whether that framework ultimately enhances or restricts development remains an empirical question.

10 Developmental sovereignty and the problem of distribution

The analysis developed in this chapter has an important implication for the meaning of sovereignty. Sovereignty has at least two dimensions: external sovereignty (the capacity of a state to determine its foreign and economic relations without external domination) and internal developmental sovereignty (the capacity of a population to influence and benefit from the decisions through which national resources and public authority are organised). The first without the second can produce a paradox: A state may become more autonomous from foreign governments while remaining highly unequal internally. Article 21 of the African Charter speaks of peoples, not merely states, and requires that natural resources be used in their interest. Resource sovereignty, therefore, is not simply sovereignty of the state against foreign actors; it is sovereignty of peoples over the conditions of their collective development. This interpretation places the RtD at the centre of contemporary debates about resource nationalism.

11 From performance to accountability

A further implication concerns the use of economic performance as a measure of political legitimacy. Recent evidence demonstrates why caution is necessary. Burkina Faso recorded growth of approximately 5,3 per cent in 2025, supported substantially by mining and high gold prices.[43] Niger recorded estimated growth of 6,9 per cent in 2025, driven substantially by oil production and exports.[44] Mali's economy also demonstrated resilience, with growth projected around 4,9 per cent in 2025 and stronger performance anticipated in 2026.[45] These figures matter as they demonstrate that the relationship between military government and development cannot be established through an assumption of automatic economic decline, but they also demonstrate why GDP is an insufficient measure. A commodity-driven increase in GDP does not establish equitable development. Similarly, increased state mining revenue does not establish that affected communities participate in decisions or receive equitable benefits. Indeed, a recent

43 IMF (n 31).
44 IMF (n 35).
45 IMF (n 27).

study demonstrates how resource extraction and financial flows can undermine developmental outcomes even where aggregate economic indicators appear positive.[46] The RtD, therefore, requires a movement from performance to accountability. The relevant question is not simply whether GDP has grown, but whether developmental gains are broadly distributed, whether vulnerable groups are protected, whether communities participate, whether resource revenues are transparently managed, and whether citizens can challenge governmental decisions. This is where African human rights jurisprudence adds value to conventional economic analysis: The *Endorois* principle of participation and equitable benefit prevents development from becoming a purely technocratic exercise; the *SERAC* principle of positive obligations prevents states from treating rights as merely abstract constraints; and the *XYZ* principle demonstrates that constitutional disruption itself can have developmental consequences. Together, these principles support a broader conception of developmental accountability.

12 Conclusion

The resurgence of *coups* in Francophone Africa has reopened a constitutional question that appeared to have been largely settled after the end of the Cold War: whether military intervention can ever acquire political legitimacy in circumstances where constitutional government has failed to deliver security, sovereignty or development. The answer I propose in this chapter is deliberately neither categorical nor permissive. The legal prohibition of unconstitutional changes of government remains essential. Military seizure of power cannot become a lawful mechanism of political succession simply because the government being displaced has failed to satisfy important political or developmental expectations. At the same time, the legitimacy of constitutional government cannot be reduced to the fact of electoral accession. The African Charter establishes a broader normative framework. Peoples have rights to self-determination, natural-resource sovereignty, development and peace and security. These rights impose substantive obligations upon public authority.

46 GEK Kamga, SD Kamga & A Kwesiga (eds) *Right to development and illicit financial flows from Africa: Dynamics, perspectives, and prospects* (2024).

The jurisprudence of the African Commission is especially important in this respect. *Endorois* demonstrates that the RtD has both procedural and substantive dimensions. Development requires participation, choice, accountability, transparency and equitable benefit. *SERAC* demonstrates that the African Charter imposes positive obligations upon states to protect rights and create conditions in which they can be enjoyed. The jurisprudence concerning the Democratic Republic of the Congo (DRC) confirms the collective dimension of development in conditions of conflict. *Ogiek* reinforces the importance of participation and community interests in development decisions. *XYZ v Benin* establishes that constitutional disruption itself can affect the right to economic, social and cultural development. These principles provide an appropriate framework for understanding Mali, Burkina Faso and Niger. The three countries demonstrate that the developmental consequences of *coups* cannot be captured by a simple binary. Mali has pursued greater state control over gold and economic sovereignty while continuing to face insecurity, energy problems and political-accountability questions. Burkina Faso has pursued increased state participation in gold and experienced strong economic growth, while continuing to face major security and humanitarian pressures. Niger has pursued resource sovereignty and experienced substantial oil-driven growth while confronting continuing security challenges and governance questions. The evidence, therefore, does not support a universal proposition that military government inevitably destroys development, nor does it establish that military governments necessarily provide developmental solutions.

The appropriate conclusion is more demanding. Developmental legitimacy must be assessed dimension-by-dimension, and I have unpacked five dimensions, namely, meaningful popular participation, sovereignty over natural resources for the benefit of peoples, economic and social development, peace and security, and constitutional restoration and accountability. The first four dimensions ensure that constitutional legitimacy does not become purely formal. The fifth prevents developmental performance from becoming a justification for unconstitutional seizure of power. This produces a form of symmetrical accountability. Civilian governments must answer not only for whether they were elected, but also for whether they govern in accordance with the substantive rights of their populations. Military governments must

answer not only for whether they pursue popular or developmental objectives, but also for the unconstitutional manner in which they acquired power and the absence or weakness of ordinary democratic accountability.

The distinction between constitutional legitimacy and developmental legitimacy, therefore, does not weaken constitutionalism. It strengthens it by reconnecting constitutional authority to the substantive purposes for which constitutional government exists. It also provides a more adequate way of understanding sovereigntist reappropriation. The central issue is not simply whether Mali, Burkina Faso or Niger has reduced French influence, increased state ownership or established new external partnerships. The deeper question is whether these transformations enlarge the capacity of their peoples to determine their political and economic future. That question is ultimately the essence of the RtD, which consequently should not be invoked to justify *coups*, nor should it be ignored in the assessment of the governments that *coups* displace. It offers a common standard. A constitutionally elected government that fails to provide meaningful participation, equitable resource governance, development and security cannot regard electoral victory as the end of its obligations. A military government that claims to restore sovereignty cannot regard resource nationalisation, economic growth or security policy as the end of its obligations either. Both remain accountable to the people. The resulting conception of constitutional legitimacy, therefore, is neither purely procedural nor purely performance based. It is constitutional, participatory and developmental.

Such an approach does not resolve the political controversy surrounding *coups* in Francophone Africa. It does something more useful. It changes the question. Instead of asking only whether a government came to power constitutionally, or whether a military government has delivered more or less than its predecessor, African constitutionalism can ask a deeper question: Does the exercise of public power enable peoples to participate meaningfully in determining their political future, exercise effective sovereignty over their resources, enjoy the benefits of development and live in conditions of peace and security, while remaining subject to accountable constitutional institutions? The answer to that question cannot be supplied by the military or by the ballot box alone. It is the combined demand of constitutionalism and the right to development.

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