



ANNUAL REVIEW OF CONSTITUTION-BUILDING: 2025



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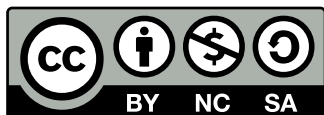
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Abbreviations

Chapter 1

BNP Bangladesh Nationalist Party

CRC Constitutional Reform Commission, Bangladesh

Chapter 2

BNP Bangladesh Nationalist Party

CRC Constitutional Reform Commission, Bangladesh

HTS Hay'at Tahrir al-Sham

MP Member of parliament

NCP National Citizen Party, Bangladesh

SDF Syrian Democratic Forces

Chapter 3

CAPSAT Administrative and Technical Services Personnel Administration Corps, Madagascar

RSP Rastriya Swatantra Party, Nepal

Chapter 4

AFPRC Armed Forces Provisional Ruling Council, The Gambia

Chapter 5

MPS Patriotic Salvation Movement, Chad

Chapter 6

ICCPR International Covenant on Civil and Political Rights

OSA Online Safety Act, Sri Lanka

OSC Online Safety Commission, Sri Lanka

PECA Prevention of Electronic Crimes Act, Pakistan

PTA Pakistan Telecommunication Authority

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INTRODUCTION

Kimana Zulueta-Fülscher

The *Annual Review of Constitution-Building*, published by the International Institute for Democracy and Electoral Assistance (International IDEA), examines constitutional reform processes around the world and identifies recurring themes across different contexts. Since its first edition in 2013, the review has monitored how these processes evolve in response to changing political, social, and institutional dynamics, while also seeking to capture emerging patterns.

In 2025, the global landscape shifted considerably, the result of more than a decade of profound changes in the nature of conflict and political transitions. Processes aimed at advancing democratic constitutionalism became less frequent. In contexts marred by uncertainty and high levels of polarization, constitutional reform was increasingly used to consolidate power in the executive and to neutralize checks and balances rather than to further entrench the rule of law and democratic governance.

The review examines a diverse set of contexts, including transitions unfolding during or after conflict, as in Palestine and Syria; transitions triggered by social uprisings, as in Bangladesh, Madagascar, and Nepal; and reform processes in comparatively stable democratic settings, including Ghana and Sri Lanka. Particularly striking is how comparable patterns recur across very different settings and how struggles over political authority, legitimacy, and effective governance underpin many reform efforts.

Several chapters focus on ongoing constitutional reform processes, illustrating both their potential and their limitations. In chapter 1,

In 2025, the global landscape shifted considerably, the result of more than a decade of profound changes in the nature of conflict and political transitions.

Adem Kassie Abebe reflects on interviews he conducted with constitution-makers in Bangladesh, Ghana, and Palestine. Each case follows a distinct trajectory, with Bangladesh seeing a post-authoritarian transition after a student uprising, Ghana seeking constitutional reform to enhance effective governance and reduce winner-takes-all politics, and Palestine using an interim constitution-drafting process for a possible transition toward statehood. One of the key issues explored in this chapter is the fact that expert bodies ultimately responsible for drafting the constitution have had to balance intra-elite negotiations with broader public consultation processes, aware that both elite and societal consent is necessary not only for reforms to pass but also to facilitate future implementation.

A closely related theme of political transition under conditions of uncertainty is explored in chapter 2. Examining Bangladesh and Syria, Kimana Zulueta-Fülscher shows how removing the incumbent government and starting a transition is often easier than addressing structural challenges. In Bangladesh, an ambitious reform agenda supported by an interim government remains stalled due to political resistance from the newly elected government. In Syria, following the collapse of a decades-long authoritarian system, the new authorities quickly adopted a transitional constitutional framework. In the absence of strong and independent institutions, however, power has been concentrated in the executive while the process for the adoption of a more permanent constitution remains unclear. Both cases show that transitions do not automatically lead to better governance or stronger rule of law.

Constitutional change and transitions in general in 2025 were increasingly influenced by new forms of political mobilization, particularly youth-led movements.

At the same time, constitutional change and transitions in general in 2025 were increasingly influenced by new forms of political mobilization, particularly youth-led movements. In chapter 3, Sharon Pia Hickey examines how Gen Z protests have shaped political trajectories in contexts such as Nepal and Madagascar. In Nepal, youth mobilization led to the resignation of the government, influenced the formation of an interim administration, and ultimately translated into electoral success for a reform-oriented political party. In Madagascar, by contrast, a fragmented protest movement created a power vacuum that enabled military intervention and the suspension of the constitution. The armed forces also played different roles in both contexts. In Nepal, the military's post-civil war reputation as a respected, apolitical institution positioned it as a facilitator in the transition, while in Madagascar, a history of military intervention made public attitudes more ambivalent (and sometimes accepting) of the army's role as political arbiter, which eventually led

to the military assuming power. But youth protesters also encounter other constraints from traditional elites who retain control over key institutions. Institutionalizing these youth movements, either by becoming, or more often, aligning with reform-oriented political parties, is one potential response, but risks diluting their original demands.

In chapter 4, Alexander Hudson draws attention to institutional and procedural constraints on constitutional change, particularly those embedded within constitutional design itself. The analysis of amendment thresholds in Fiji and The Gambia demonstrates how highly entrenched rules can inhibit reform. In Fiji, constitutional amendment thresholds were so high as to render reform nearly impossible, prompting an unusually bold judicial intervention in 2025 to reinterpret amendment requirements. In The Gambia, repeated failures to secure the necessary legislative supermajorities have stalled reform despite widespread recognition of the need for constitutional change. These cases illustrate how constitutional rigidity, especially in post-authoritarian contexts, may entrench constitutional frameworks and hamper efforts at their renewal.

Beyond formal rules, constitutional reforms in 2025 also reflected ongoing tensions concerning the use and misuse of constitutional change to shape and sometimes increase executive power. Chapter 5, by Alexandra Oancea, documents how incumbents in Chad, Djibouti, Guinea, El Salvador, and Nicaragua used constitutional reforms to entrench their personalized rule by evading presidential term limits, tilting the electoral playing field in their favor, and weakening checks on their power. These cases demonstrate that the impact of constitutional reform depends on broader political incentives and on who controls the process.

Finally, in chapter 6, Eva Montero Ibarra highlights the fact that constitutional change also occurs outside formal constitutional amendment processes. She analyzes how the regulation of digital speech in Pakistan and Sri Lanka changes the way constitutional rights, specifically freedom of expression, are conceived and protected. Online expression is subject to more stringent constraints than its offline counterpart, sometimes weakening constitutional protections and international human rights standards.

Given the changing global context, it is perhaps surprising that the number of active constitutional reform processes worldwide increased in 2025. Still, the trend continued to be one of weakening constitutional safeguards and human rights protections. This

Beyond formal rules, constitutional reforms in 2025 also reflected ongoing tensions concerning the use and misuse of constitutional change to shape and sometimes increase executive power.

Even where key actors understand that constitutional change is necessary to protect those institutions and processes from actors that may in the future want to undermine them, constitutional change should happen only after a sufficient level of agreement has been secured.

happened despite countries sometimes emerging from decades of autocratic governance only to enter a “political gray zone” (Carothers 2002: 9) where transformation stalls or evolves toward a form of hybridity where institutions and processes are ultimately captured by powerful new interests. Even where key actors understand that constitutional change is necessary to protect those institutions and processes from actors that may in the future want to undermine them, constitutional change should happen only after a sufficient level of agreement has been secured. Amid increasing polarization, however, securing such agreement is becoming more and more difficult. It is precisely in these contexts where International IDEA’s comparative knowledge and expertise can potentially be most valuable.

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Chapter 1

VOICES FROM REFORMERS: CONSTITUTIONAL REFORMS IN BANGLADESH, GHANA, AND PALESTINE

Adem Kassie Abebe

1.1. INTRODUCTION

The year 2025 saw several efforts at comprehensive constitutional reform. This chapter captures these efforts and draws tentative insights from three processes—in Bangladesh, Ghana, and Palestine. Each process represents a distinct context: (a) following the popular overthrow of a government (Bangladesh); (b) amid war and occupation (Palestine); and (c) a functioning electoral democracy (Ghana). The reform process in Bangladesh occurred under a technocratic interim government that sought to build institutional foundations for credible elections after almost two decades of authoritarian rule. Ghana represents a context where there is no noticeable crisis. The Palestinian process is occurring under a governing authority with only partial territorial and political control.

This chapter draws on interviews with key figures in constitutional review bodies in Bangladesh, Ghana, and Palestine. The author interviewed Professor Ali Riaz, who chaired the Bangladeshi Constitutional Reform Commission and was vice chair of the National Consensus Commission that authored the July National Charter 2025 ([National Consensus Commission 2025](#)); Professor Kwasi Prempeh, chair of the 2025 Ghanaian Constitution Review Committee; and Professor Sanaa Alsarghali, a member of the 2025 Drafting Committee for the Interim Palestinian Constitution.¹

¹ The interviews were conducted on 9 March (Professor Riaz), 13 March (Professor Prempeh), and 17 March (Professor Alsarghali) 2026.

The interviews focused broadly on the fundamental issues that the respective review processes sought to address, how the relevant bodies approached the issues, the vision behind key reform proposals, the value of comparative knowledge, key insights and thoughts on next steps, and prospects for implementation.

The rest of this chapter provides background to the reform processes in each respective jurisdiction, alongside a distillation of the insights from the interviews. The chapter ends with conclusions.

1.2. BANGLADESH

The Bangladesh reform process started under an interim government established following the July 2024 popular uprising that forced Prime Minister Sheikh Hasina (2009–2024) out of power just months after her party, the Awami League, claimed a landslide electoral victory. Hasina’s rule was characterized by oppression and effective capture of state institutions to advance partisan interests (Chowdhury 2025). During this period, the main opposition party, the Bangladesh Nationalist Party (BNP), boycotted the elections, instead demanding reforms, particularly to enable credible elections under a caretaker government.

1.2.1. Constitutional Reform Process

Led by Professor Muhammad Yunus, winner of the 2006 Nobel Peace Prize, the interim government embarked on a reform drive through the establishment of six expert commissions, including a nine-member Constitutional Reform Commission (CRC), chaired by Professor Riaz. The CRC was announced in October 2024 and delivered constitutional reform proposals in January 2025. The government then established a National Consensus Commission, chaired by Professor Yunus, with Professor Riaz as a deputy chair. The consensus commission discussed proposals from all six commissions and facilitated compromise among political parties on a number of reform issues that were adopted in October 2025 as the July National Charter 2025.

The CRC consulted civil society organizations, professional groups, prominent citizens, and tens of thousands of households through a survey and online submissions. The CRC also received written submissions from political parties but left direct discussion with parties to a later stage, which occurred through the consensus commission, initially with each party. The process resulted in a

The consensus commission discussed proposals from all six commissions and facilitated compromise among political parties on a number of reform issues that were adopted in October 2025 as the July National Charter 2025.

shortened list of issues, which were then discussed collectively with all political parties.

Following the adoption of the charter, the interim government commenced a process to generate agreement among political parties, to be followed by implementation. The interim government adopted proposals that did not require constitutional reform ahead of elections. On constitutional issues, the charter was submitted to a referendum to decide whether the post-transition government should pursue the reforms.

Accordingly, the reform process was more open at the start through the CRC, while the second part focused mainly on ensuring (elite) political consensus, alongside targeted inputs from civil society, experts, and citizens.

1.2.2. Fundamental Issues and Key Proposals

While the CRC recognized key constitutional themes based on historical and recurrent debates, it did not start from its own sense of the issues that needed to be addressed. Instead, Professor Riaz (2026) noted a “bottom-up approach” through the consultation process to identify the problems and proposed solutions. The consultations unveiled several issues, mainly focused on the concentration of power in the executive and prime minister, credible elections, inclusivity (including of parties and gender), and capricious constitutional amendments. The aspiration was to ensure that power should entail, in the words of Professor Riaz (2026), “a mandate to govern, not a license to rule.” Despite the resurgence of religion-based political parties, tensions around values were low-key, and reform deliberations focused on the “political economy of power” (Riaz 2026).

To address the concentration of power, the CRC recommended, among other reforms, a 10-year term limit for prime ministers, a rule prohibiting individuals from serving simultaneously as prime minister and the head of a party, the establishment of an inclusive appointments council to reduce the prime minister’s appointment powers, and measures to enhance judicial independence and the autonomy of the public service. Central to ensuring the credibility of elections is the proposed reestablishment of a technocratic caretaker government to organize elections whenever needed, alongside a more autonomous Election Commission. The proposals to ensure inclusivity focused on the establishment of a second legislative chamber with proportional representation and the inclusion of women in elected and appointed bodies. To preclude

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As the CRC realized, reform momentum and context are dynamic and public pressure can subside quickly, handing organized political parties the advantage.

instances of abusive constitutional amendments, the reforms call for approval in the proposed second chamber and, for some changes, in a referendum, in addition to current supermajority support in parliament.

Not all the reform proposals made it into the July National Charter. As the CRC realized, reform momentum and context are dynamic and public pressure can subside quickly, handing organized political parties the advantage. While most political parties recognized the need for change, smaller ones were more enthusiastic. By contrast, larger parties, including the BNP, were reluctant to simply be the vehicle for reform; they wanted reform on their own terms. Notably, the BNP, confident of its electoral victory, wanted to head to elections first, with as few constraints as possible. While there was broad agreement in support of more inclusion, notably on enhancing women's representation, the parties wanted to control how such reforms would be implemented.

Moreover, the interim government found itself busy governing alongside a bureaucracy that was not always coherent or cooperative, making the government more amenable to political parties, especially the major ones. Considering the challenges, the government adopted some reforms through ordinances, such as the establishment of an independent secretariat for the judiciary. It sought to increase the likelihood of the adoption of other reforms by ensuring broad consensus and requiring a referendum to approve the July National Charter.

1.2.3. Value of Comparative Knowledge

The CRC and the consensus commission addressed institutional issues based primarily on Bangladesh's experience and context. Comparative practice mainly helped in framing the issues and possible solutions. Notably, once the CRC identified the fundamental issues based on consultations with stakeholders, it drew on comparative experience, including from the work of the International Institute for Democracy and Electoral Assistance (International IDEA) and the collection of constitutions available through the Constitute Project. The inclusion of academics, including Professor Riaz, with comparative expertise on the CRC made it more likely that the commission would seek comparative insights. The CRC chose countries of interest depending on the specific theme, while tending to focus on neighboring countries, such as Nepal and Sri Lanka.

Professor Riaz (2026) emphasized that the CRC had no desire to emulate external systems. In addition, a deliberate attempt was

made to avoid comparative experience constraining, rather than expanding, imaginations. For instance, the CRC proposed term limits for prime ministers despite the fact that such limits are unusual in parliamentary systems.

1.2.4. Insights

The reform process combined both responsiveness to public aspirations and pragmatism. Accordingly, the CRC included robust reform proposals based on public aspirations. At the same time, proposals without broad support from key parties were dropped to avoid a situation where disagreement on those issues might block consensus on others. For instance, proportional representation for parliament was popular in the pursuit of political inclusivity. Given resistance from major parties, however, the CRC proposed setting up a second chamber that would be more inclusive and limit the dominance of the first chamber, elected through the first-past-the-post system, including, notably, in relation to constitutional amendments.

Another key insight was the sequencing of deliberation, first on reform proposals (what to change) and only then on the manner of implementation (how to change). As differences regarding implementation may undermine agreement on substantive reforms, the CRC and the consensus commission delayed discussion of implementation until after the parties agreed on reform proposals. Accordingly, the July Charter did not refer to implementation.

Moreover, the reform process considered downstream constraints. Notably, considering the judicial annulment of previous constitutional amendments passed through parliament, the consensus commission proposed that the first parliament would also act as a constitutional reform assembly for 180 working days to exercise a constituent power and incorporate reforms approved through referendum.

1.2.5. What Next

In the February 2026 elections, the BNP secured over two-thirds of the seats in parliament with just under 50 percent of the vote. The July Charter received over 68 percent support, far exceeding that of the BNP.

The CRC sought to use both the bottom-up consultative process and the political consensus achieved through the consensus commission to shore up the possibilities of implementation of reforms. However, considering the supermajority needed to amend the constitution, the fate of the reforms in the July Charter lies with the BNP.

The reform process combined both responsiveness to public aspirations and pragmatism.

While the BNP endorsed many of the proposals in the July Charter, it registered reservations regarding certain key aspects, notably including the proposed establishment of a second legislative chamber based on proportional representation. In this context, the pursuit of reforms may depend on the leadership and political cohesiveness of the BNP and, Professor Riaz (2026) emphasized, the emergence of a coalition for reforms capable of mobilizing and sustaining public pressure.

1.3. GHANA

The current constitutional reform drive in Ghana emerged during the 2024 presidential election campaign. John Mahama, a former president who lost after his first term and the candidate for the opposition, was seeking a second and final term after two failed attempts, and campaigned on a promise to reset governance. The promise occurred in a regional context of military coups offering alternative forms of strongman governance and growing public openness to such regimes in Ghana.

Under the 1992 Constitution, Ghana has regularly delivered credible elections. Moreover, Professor Prempeh (2026) emphasized that the country has “crossed the bridge” of alternation in power between the two main political parties.

1.3.1. Constitutional Reform Process

In line with his campaign promise, Mahama—after assuming office in January 2025—established a Constitution Review Committee, chaired by Professor Prempeh. The committee drew on past reform efforts; consulted experts; deliberated with current and former presidents, chief justices, and other high-ranking officials; and consulted the public in 10 in-person gatherings held in zones around the country and virtual discussions with the diaspora. It also received written submissions in person and online.

In line with his campaign promise, Mahama—after assuming office in January 2025—established a Constitution Review Committee, chaired by Professor Prempeh.

The committee submitted recommendations for constitutional reform in December 2025, followed by the submission of a full report in January 2026 to the Office of the President ([Ghana Constitution Review Committee 2026](#)). The translation of the recommendations into constitutional amendments now depends on the incumbent government, which secured more than two-thirds of the seats in the National Assembly in the 2024 elections. With a legislative supermajority, the ruling party may adopt some constitutional

amendments, while other reforms will also require endorsement in a referendum. Turnout of at least 40 percent and 75 percent of votes in favor are needed for approval.

1.3.2. Fundamental Issues and Key Proposals

The committee did not begin from a clean slate. Considering past reform exercises, notably from 2010 to 2012, and the committee's assessment of constitutional controversies, Professor Prempeh (2026) emphasized that the committee had a sense of the fundamental issues to tackle. The committee therefore guided the consultations around these issues, while the broad consultations provided, in the words of Professor Prempeh (2026), "more dimensions" to help members understand and refine the issues.

In view of Ghana's success in delivering credible elections at regular intervals and in a peaceful manner and ensuring access to and transitions of power, the major issues concerned the exercise of power, particularly the winner-takes-all aspect, manifested in the extreme concentration of power in the presidency, and growing dissatisfaction with, and even mistrust of, political institutions. The core frustrations relate to good governance and inclusive development. In view of the coups that had taken place in the region, there was concern, even among the ruling elites from the major political parties, that politics needed to deliver, that without the fulfillment of political promises there was a high risk of a popular or military interruption of the political process. Accordingly, the goal was, according to Professor Prempeh (2026), and as reflected in the committee's report, to transform Ghana from an "electoral" into a "developmental" democracy.

In this regard, in addition to enhancing the inclusivity and legitimacy of politics, notably through public participation in policy- and lawmaking and stronger decentralization frameworks, the principal focus was on depoliticizing key institutions, including by reducing the executive's discretion in appointing a long list of officials, from the courts to the civil service, the election commission (and other fourth-branch institutions), and state-owned enterprises. Accordingly, the committee called for competitive and transparent processes to fill these key positions, alongside a requirement for National Assembly approval before the president formally makes final appointments.

The recommendations also call for the crafting of a national development plan through technocratic and relatively nonpartisan processes. Such a plan would shape government policy, whichever party comes to power, and any departure from the plan would be

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subjected to review by an independent national development planning commission.

1.3.3. Value of Comparative Knowledge

Comparative practice and insights, as well as regional standards, were crucial to the work of the committee, which actively sought to incorporate external experiences, notably from other parts of Africa. Moreover, key Ghanaian stakeholders drew on comparative experiences to strengthen their submissions to the committee. Professor Prempeh (2026) emphasized that this relative openness to comparative insights, particularly from Africa, reflected a recent change in Ghanaian political and constitutional imagination. Previous Ghanaian reform debates had tended to be “insular,” separated in particular from other African experiences, focusing, instead, if at all, on American or British models.

The committee also engaged institutions with experience supporting constitutional reform processes, including International IDEA. Nevertheless, comparative insights informed, rather than controlled, the committee’s work. Notably, the committee included unique solutions to respond to Ghana’s unique challenges. For instance, the idea of a constitutionally recognized national development plan is uncommon, but this was a central issue in Ghanaian discourse.

1.3.4. Insights

A key lesson from Ghana’s reform efforts—both ongoing and past efforts—concerns the criticality of organized interest groups. Reform debates do not operate, Professor Prempeh (2026) emphasized, within a “veil of ignorance.” Accordingly, while popular consultations reveal demand for a genuine “social contract” between the state and citizens, constitutional reform efforts tend to gravitate toward an “elite pact.” Unlike the entrenched groups, the people are less mobilized and organized and face significant collective action problems. In this context, there are concerns that the entrenched groups may either stall the reform drive or merely turn it into a limited elite pact.

Therefore, strong popular mobilization is necessary. Such mobilization, which would require nonstate actors, such as religious and traditional leaders, business leaders, and civil society organizations, to play a crucial role, could empower reformers within the major political parties and increase the chances that reforms would be adopted.

A key lesson from Ghana’s reform efforts—both ongoing and past efforts—concerns the criticality of organized interest groups.

In a related point, Ghana's two-party dominance helps to clarify the issues and positions, while also generating a binary system that is preventing the emergence of reform coalitions and compromise. Moreover, Professor Prempeh (2026) noted that expectations of regular alternation of power appear to reduce incentives to reform the winner-takes-all system, with each party preferring to control the system on occasion and suffer disadvantages while out of power rather than reform it.² In this context, even a committed president may struggle to push their dominant party toward reform.

1.3.5. What Next

Constitutional amendments to some provisions require two-thirds approval in the National Assembly, while others also require approval in a referendum, with a minimum 40 percent voter turnout and approval by 75 percent of voters. The 1992 Constitution has been amended only once, three decades ago.

The ruling party secured more than two-thirds of the seats in the National Assembly in the 2024 elections, the first time under the 1992 Constitution after competitive elections. Moreover, President Mahama is serving his second and final term and may therefore wish to leave a legacy. In combination, these factors increase the chances that some reforms will be adopted, even if they may be seen as unilateral.

Nevertheless, Professor Prempeh (2026) emphasized that one-party dominance does not guarantee reform success. Considering that key proposed reforms would reduce political discretion that empowers party operatives and the strength of the parties, the president may fail to convince members of parliament to support proposals detrimental to their political interests, especially as parliamentary votes on constitutional amendments are held through a secret ballot.

The president may fail to convince members of parliament to support proposals detrimental to their political interests, especially as parliamentary votes on constitutional amendments are held through a secret ballot.

² These insights align with experiences of the general difficulty of arriving at successful comprehensive constitutional reform efforts in relatively competitive and stable political systems without effective personalization of power (Zulueta-Fülscher 2023). In the African context, the last occasions where a comprehensive reform process led to the adoption of a new constitution were in Tunisia in 2014, in Zimbabwe in 2013, and in Kenya in 2010. In these three cases, a new constitution was necessary for the respective country to move away from interim arrangements. Reform was necessary, if insufficient, for the transition process. Ghana, in contrast, currently has a relatively functional constitution, and reform is a political decision, not a necessity for a transition.

1.4. PALESTINE

The ongoing constitutional drafting effort in Palestine emerged amid a wave of critical international recognition of Palestine as a state. Notably, France and the United Kingdom, two members of the United Nations Security Council, recognized Palestine in September 2025, joining China and Russia, which have recognized Palestine since 1988. Such recognition was reinforced through the September 2025 New York Declaration on the Peaceful Settlement of the Question of Palestine, which affirmed the desire to establish a sovereign Palestinian state ([United Nations 2025](#)).

1.4.1. Constitutional Drafting Process

The president of the Palestinian Authority, Mahmoud Abbas, appointed in August 2025 a 17-member committee (including two women, one of whom was Professor Sanaa Alsarghali) to draft an interim constitution to bridge the transition from Palestinian Authority institutions to state institutions. The committee consulted Palestinians, Palestinian Authority institutions, civil society organizations, and other stakeholders, including in the diaspora. The recent drafting effort is not the first initiative of this kind ([Alsarghali and Brown 2025](#)). Accordingly, the committee analyzed previous constitutional debates, reform proposals, and developments in the governance structure of the Palestinian Authority, including the 2003 and 2016 draft constitutions.

The committee submitted an initial draft constitution ([Constitution Drafting Committee 2026](#)) to Abbas on 5 February 2026, marking the beginning of a 60-day public consultation period, during which Palestinians provided comments on the draft provisions through an interactive platform. The committee also conducted meetings with diaspora Palestinian academics.

1.4.2. Fundamental Issues and Key Proposals

The reform process, Professor Alsarghali (2026) noted, serves the symbolic value of affirming “Palestinian agency” and the capacity of Palestinians to determine their constitutional destiny. At the same time, the process was designed to produce an interim constitution in view of the constrained “pre-sovereign” position, due to Israeli war and occupation, within which it is being developed ([Brown and Alsarghali 2024](#)). Moreover, one of the committee’s primary concerns was addressing why such a constitution is being drafted at this particular moment. As clarified in the preamble to the first draft, the focus was particularly on establishing the conditions for the transitional period.

The reform process, Professor Alsarghali (2026) noted, serves the symbolic value of affirming “Palestinian agency” and the capacity of Palestinians to determine their constitutional destiny.

Substantively, the committee sought to address deficiencies and ambiguities in the existing constitutional framework governing the Palestinian Authority, taking into consideration the dual executive authority that Palestine has maintained since the 2003 (Road Map) reforms.

Consequently, the committee sought to improve the functioning of the de facto semi-presidential system through clearer regulation of the relationship between the president and the prime minister, particularly in view of the political and constitutional crisis of 2007, following Hamas's electoral victory in Gaza. The committee also sought to strengthen the protection of fundamental rights, improve the regulation of states of emergency, and develop mechanisms for managing and resolving political deadlocks, including through the jurisdiction and structure of the Constitutional Court, as well as independent institutions for the future State of Palestine.

Questions around religious identity were not prominent during the drafting process, as Palestine has not experienced sharp divisions on this issue. Professor Alsarghali (2026) suggested that this may be because Palestinian identity is rooted in the shared political and cultural struggles of Palestinians. Religious acceptance and tolerance have long been central elements of the Palestinian social fabric. Consequently, the work of the drafting committee consistently focused on ensuring equal rights for all Palestinians regardless of their religious background. As Professor Alsarghali (2026) explained, the draft constitution was also consciously developed through a gender-sensitive lens.

1.4.3. Value of Comparative Knowledge

The content of the proposed draft constitution was grounded in Palestinian experiences, aspirations, and political realities. Nevertheless, the committee drew on comparative constitutional experiences for informative and illustrative purposes. These experiences provided valuable insights into both the design and potential consequences of different institutional arrangements, as well as alternative drafting techniques and styles. In particular, the committee studied constitutions from across the Middle East. It also welcomed feedback and comments from foreign experts and international organizations following the publication of the draft.

During the drafting process itself, however, the committee limited its consultations to Palestinians. This decision reflected a desire to maintain full Palestinian ownership of the process while also being mindful of practical time constraints.

The content of the proposed draft constitution was grounded in Palestinian experiences, aspirations, and political realities.

Thus, the combination of public consultations, educational activities, opportunities to comment on the initial draft, and plans to submit the constitution to a referendum reflects broader commitment to Palestinian ownership, participation, and democratic legitimacy.

1.4.4. Insights

Given Palestine's complex political and security environment, Professor Alsarghali (2026) emphasized that ensuring the legitimacy of the drafting process was of paramount importance. A deliberate decision was therefore made to draft an interim constitution rather than a permanent one.

Moreover, although Palestinian aspirations for statehood have long existed, questions arose regarding the timing of the exercise. In response, the committee sought to establish an open, consultative, and participatory process. While such principles are valuable in any constitutional context, they were considered especially important in Palestine. Public participation served consultative and educational functions, while also gradually building trust in constitutional reform and fostering broader public engagement with constitutional issues.

Finally, the committee, Professor Alsarghali (2026) noted, did not view itself merely as a technical drafting body. Rather, it remained conscious of the broader political circumstances that triggered the drafting process. Thus, the combination of public consultations, educational activities, opportunities to comment on the initial draft, and plans to submit the constitution to a referendum reflects broader commitment to Palestinian ownership, participation, and democratic legitimacy.

1.4.5. Next Steps

The committee will prepare a revised draft for submission to President Abbas, and the draft constitution will ultimately be submitted to a referendum. However, considering Israel's de facto control of Gaza and the West Bank, the practicalities of a referendum remain elusive (Magid 2026).

1.5. CONCLUSION

The experiences in the three countries reveal a range of key insights.

Expert bodies leading constitutional reform efforts do not consider their role to be merely technical. Accordingly, they seek to use popular participation as a form of insurance to increase the chances of political endorsement of their proposed reforms. While they aim to reflect popular demands for reform and their visions of the optimal institutional architecture, they pragmatically consider downstream political constraints. Such considerations tend to discourage

fundamental alterations of extant constitutional frameworks, notably the electoral system and the system of government, aspects that tend to be sticky.

In all three countries, the ruling party or group has the numbers necessary to push some reforms through. Leaders in Ghana and Palestine may also have a desire to leave a reform legacy. Nevertheless, ensuring commitment of the ruling political party or group is not always straightforward. Intraparty negotiations can be as demanding as securing cross-party compromises. Whatever the outcome, the participatory and inclusive reform processes may set a precedent for future governance, particularly in Bangladesh and Palestine, where the ongoing processes are unprecedented.

While democratic ideals permeated the processes in all three contexts, the fundamental issues seem to suggest an implied hierarchy or evolutionary need in state organization, first focused on agency and statehood (Palestine), credible democratic competition (Bangladesh), and effective governance and development (Ghana).

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Chapter 2

DEALING WITH THE FUTURE UNDER CONDITIONS OF UNCERTAINTY: BANGLADESH AND SYRIA

Kimana Zulueta-Fülscher

2.1. INTRODUCTION

Political transitions often unfold abruptly, even when they have long been expected or actively pursued. They also emerge under widely varying conditions. Breakthroughs in peace negotiations have, at times, led to structural reforms and transitions not only from conflict to peace but also from relatively closed to more open systems of government, as seen in Nepal after 2006 and South Africa in the 1990s. In other cases, governments have been toppled through mass demonstrations, as in Tunisia in 2011, or more recently in Bangladesh and Nepal, or overthrown in military coups. Foreign intervention has also driven political transitions, as in Iraq in the early 2000s. At times, nonstate armed groups, acting with or without external support, have removed incumbent governments and overtaken arguably fragile state institutions, as occurred recently in Syria.

Whatever the type of transition, the arrival of a new government can turn the established order upside down, introducing a period marked by uncertainty. It is often much simpler to remove the incumbent administration than to establish a new one capable of tackling the unresolved challenges left behind, such as ensuring accountability and responsiveness to the needs of the population. The difficulties associated with forming a government that genuinely addresses these issues highlight the complexities inherent in political transitions. Countries in transition often enter a “political gray zone” (Carothers 2002: 9).

It is often much simpler to remove the incumbent administration than to establish a new one capable of tackling the unresolved challenges left behind, such as ensuring accountability and responsiveness to the needs of the population.

Despite their very different starting conditions, both cases risk converging in Carothers's political gray zone of stalled or incomplete transformation in which formal transitions occur but substantive reforms remain elusive, leaving citizens still waiting for meaningful change.

This chapter examines two distinct cases of countries suddenly thrown into political transition—Bangladesh and Syria. In Bangladesh, an 18-month-old caretaker government organized elections in February 2026 that produced a new government with a parliamentary supermajority, but one that has shown limited appetite for advancing the reform agenda crafted by the interim government. In Syria, a five-year transition initiated under the 2025 Constitutional Declaration is formally underway, but progress in establishing new institutions has been slow, while political power has become concentrated in the presidency. Whether the transition will deliver meaningful reform remains uncertain. Despite their very different starting conditions, both cases risk converging in Carothers's political gray zone of stalled or incomplete transformation in which formal transitions occur but substantive reforms remain elusive, leaving citizens still waiting for meaningful change.

2.2. BANGLADESH'S UNFINISHED TRANSITION

In Bangladesh, a constitutional amendment adopted in 1996 provided for a nonpartisan interim administration—the so-called caretaker government system—led by a chief adviser to take over from the previously elected government and oversee elections within 90 days. The 2008 elections, which were widely regarded as free and fair, were held under this arrangement and brought the Awami League, led by Sheikh Hasina, to power (Kenny 2024, 2026). The system was abolished in 2011. Subsequent elections in 2014, 2018, and 2024, all won by the Awami League, were increasingly characterized by electoral manipulation, violence, and repression by the ruling party (Kenny 2023). This gradual drift toward authoritarian rule ended with Hasina's forced resignation on 5 August 2024, after 15 years in power.

A few months after the January 2024 elections, students started to protest against a quota system for public sector jobs, widely seen as entrenching political patronage (Prakash 2024). These protests quickly became a broader anti-government movement against authoritarianism, corruption, and lack of political pluralism, and they were met with violent repression, including mass arrests and lethal force. As many as 1,400 people were killed (OHCHR 2025) as protesters stormed state buildings.

As Prime Minister Hasina resigned and fled the country, student leaders, the political opposition, and military leaders reached

an agreement to dissolve parliament and establish an interim government (ICG 2026b). Installed on 8 August 2024, the new government was made up of technocrats, civil society, and student representatives, who formed part of an Advisory Council led by Muhammad Yunus, winner of the Nobel Peace Prize, as chief adviser (Adler 2024; Hossain 2025: 2). However, Bangladesh's Constitution did not explicitly allow for an interim (or caretaker) government or a chief adviser to lead it (Ahmad 2024; Hossain 2025: 2). Because parliament had been dissolved, it was no longer possible to adopt a constitutional amendment reinstating the caretaker government. Accordingly, in November 2024, the Advisory Council approved a special ordinance to formalize its mandate, actions, and scope (Business Standard 2024).

The new interim government, however, differed significantly from the previously constitutionalized caretaker government. Originally, the caretaker government served for 90 days; now, the chief adviser's term was to last until he decided to call an election. While the caretaker government was permitted to have only a limited number of advisers, the actual number was to be determined by the chief adviser. Finally, and perhaps most notably, all powers and actions taken by the interim government would be legal and could not be invalidated (Mukul 2024). The powers of the chief adviser were almost unlimited, at least on paper, but so were public expectations. Structural reforms had to be undertaken.

Yunus immediately announced three priorities for the interim government, including reforms to prevent a return to autocracy, accountability for atrocities committed under Hasina's rule, and free and fair elections followed by a smooth transition of power (ICG 2024).

In October 2024, the government established several reform commissions to deal with critical issues related to the electoral system, the judiciary, anti-corruption, the public administration, the police, health, women's affairs, labor rights, local government, mass media, and constitutional reform. These commissions organized discussions with key stakeholders, and several of them undertook public surveys to gather inputs from the public. In January 2025, the Constitutional Reform Commission (CRC) submitted recommendations for a new constitution (Daily Star 2025).

In February 2025, the government established a National Consensus Commission, chaired by Yunus, to facilitate cross-party agreement and consolidate the reform agenda in what was to be called the July

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Charter. The Awami League was excluded from these negotiations and from political activities more broadly, but most other parties—33 in total—participated. After several rounds of consultations, 17 political parties signed the July Charter in October 2025. The charter included 47 reform proposals subject to constitutional amendment and 37 to be undertaken through acts or ordinances, rules, and executive orders. Overall, the charter’s aims include limiting executive power, strengthening accountability and the rule of law, and restoring the credibility of the electoral system (ICG 2026b). Most reform proposals included notes of dissent or disagreements by certain parties. Furthermore, the charter did not include a roadmap for implementation and hence had no (legal) binding force (Mahmud 2026).

Yunus had initially insisted that all reforms would be consensus-based, and he tried to strike a balance between pushing for institutional reforms and maintaining buy-in from as many political parties as possible. However, the looming electoral campaign was not conducive to parties compromising and rather incentivized them to differentiate themselves in terms of the reforms that would define their future role in government or in the opposition (Hossain 2025: 2).

Bangladesh’s political landscape was also highly fragmented, with parties holding divergent views on the length of the transition, as well as on the specific reform proposals.

Bangladesh’s political landscape was also highly fragmented, with parties holding divergent views on the length of the transition, as well as on the specific reform proposals (Hossain 2025: 2). The Bangladesh Nationalist Party (BNP), a major center-right political party, argued for immediate elections once the interim government was established. At the other end, Islamist parties and the student-led National Citizen Party (NCP) argued that the interim government needed time to implement the reforms and that those reforms, among others, needed to enact stronger safeguards to limit executive power. Ultimately, the NCP and a group of left-leaning parties decided to boycott the signing of the July Charter, partly because, in their view, the charter lacked a legal framework or binding guarantees for implementing the commitments made therein (Business Standard 2025).

The NCP, launched in February 2024, before the start of the mass protests, had become a powerful political actor, with a strong support base especially among youth and urban voters. It initially positioned itself as a centrist party that supported structural reforms aimed at preventing the resurgence of an autocratic regime. It also called for the convening of a constituent assembly. However, the party struggled to become a major electoral force and ultimately decided to join an alliance led by the Islamist party Jamaat-e-Islami. The NCP’s

embrace of conservative Islamist principles and the marginalization of liberal perspectives alienated key constituencies, including women (Hossain 2025: 6).

In any case, the parties that had signed the July Charter also signed an implementation order in November 2025 that authorized the Election Commission to hold a referendum on the charter at the same time as the general election (Haque and Bisarya 2025).³ If the charter were adopted, the newly elected members of parliament (MPs) would then serve as a constitutional reform assembly and would be mandated to implement the required constitutional reforms within 180 days. Members of the assembly would also simultaneously serve as lawmakers.

General elections and the referendum were held on 12 February 2026. The BNP won more than two-thirds of parliamentary seats. Also, 68 percent of voters voted “Yes” in the referendum. However, the question asked in the referendum was complex and difficult to understand, and it included four sub-questions to which voters were able to respond only once with either a yes or no (Hossain 2026). These sub-questions appear to refer to some, but not all, of the 84 proposals in the July Charter, and it remained unclear what would happen to the remaining proposals in case of approval.

At the time of writing, the new BNP government had refused to allow its MPs to join the yet-to-be-established CRC. In the party’s view, the establishment of such a body would require a constitutional amendment (Mahmud 2026). At the same time, the party has been slow in facilitating such an amendment, leaving the reform process in limbo with the implementation of the July Charter mired in uncertainty.

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2.3. SYRIA’S SLOW-START TRANSITION

A few months after the Bangladeshi prime minister fled the country, in December 2024, Syria’s Baathist regime under the authoritarian rule of Bashar al-Assad collapsed, and al-Assad and his family fled to Russia. Bashar al-Assad had been the president of Syria since 2000, when he replaced his father, Hafez al-Assad, who had been president from 1971 until his death in 2000. The Baathists had been at the helm since staging a military coup d’état in 1963 (Moubayed 2023).

³ The legality of the 2025 July Charter implementation order is currently being questioned in the courts (Saidy 2026).

Since March 2011, Syria had experienced a civil war that began with peaceful pro-democracy protests as part of the broader Arab Uprisings. The situation rapidly escalated into a full-scale armed conflict after a violent government crackdown against demonstrators, as well as jihadist groups already operating within Syrian territory (Kasimi 2010). The violence resulted in massive population displacement and territorial fragmentation, with numerous armed groups either controlling or contesting various regions throughout the country. On 27 November 2024, the militant Islamist group Hay'at Tahrir al-Sham (HTS), which had for years dominated the northern province of Idlib and was led by Ahmed al-Sharaa, launched a major offensive against the Syrian armed forces. Encountering minimal resistance, HTS and its allies moved south and captured the capital, Damascus, on 8 December 2024.

HTS was itself a relatively cohesive force but was part of a much larger coalition of armed factions with a history of bloody infighting. Al-Sharaa managed to consolidate his leadership of the coalition, and the different factions dissolved and integrated into the new national army in January 2025. While control over the country's myriad armed forces is still incomplete, "the government's integration of erstwhile rivals into a single military structure without triggering internal conflict ... is a considerable achievement" (Drevon and Hawach 2026). At the same time, decreasing resources and sectarian divides continue to affect the government's power to establish discipline within the newly formed army (Drevon and Hawach 2026).

Given that the 2012 Constitution had been suspended, and against the background of an impending legal vacuum, the new authorities launched a process to adopt a new, interim constitutional framework.

In parallel, the Baath Party and other political parties associated with it were dissolved. There is as yet no legal framework that would allow political groups to register as political parties and serve as formal opposition to the government. Given that the 2012 Constitution had been suspended, and against the background of an impending legal vacuum, the new authorities launched a process to adopt a new, interim constitutional framework. On 25 February 2025, 900 individuals took part in a National Dialogue Conference, which was the culmination of limited consultations at the local and governorate level led by a preparatory committee appointed by al-Sharaa, Syria's transitional president (Al-Assil 2025). While the conference was framed as being inclusive, many perceived the process as merely performative. The conference concluded with an 18-point final statement reflecting a series of general principles that were to structure future governance in Syria, as well as mark the formal start of the transition (Syrian Observer 2025).

On 2 March 2025, al-Sharaa appointed a seven-member technical committee to draft a Constitutional Declaration drawing on the 18-point final statement of the National Dialogue Conference (Houry 2025). However, the principles outlined in the final statement lacked sufficient detail to meaningfully guide the drafting process (see Zulueta-Fülscher and Noël 2025). The draft was immediately submitted to the president, without further public consultation, and al-Sharaa signed it on 13 March 2025.

The Constitutional Declaration established a governance structure for a five-year transitional period and maintained for the most part the strong presidential powers seen in both the 1973 and the 2012 constitutions. It also placed some constraints on the president's authority. For example, while the president could still appoint members of parliament (MPs) directly or choose members of electoral colleges responsible for selecting MPs, he no longer had the power to dissolve parliament. At the same time, even though the 23-member cabinet al-Sharaa appointed in March 2025 was relatively diverse—including al-Sharaa loyalists but also technocrats, civil society representatives, and even a Christian woman and activist, Hind Kabawat—actual power appears to be held by a small group of former HTS leaders (Drevon and Hawach 2026). There is also still some speculation over whether ultimate decision-making power rests with al-Sharaa and his circle of loyalists or with this group of HTS leaders, and over the extent to which these groups overlap.

Beyond the immediate power structures, the Constitutional Declaration provides no detail regarding a roadmap toward a final constitution, nor does it set out guiding principles, beyond those provided in the 18-point final statement of the dialogue conference, to constrain or steer a future constitution-making body. Ideally, the absence of a roadmap will provide time for parties to engage in wider consultations before negotiating the parameters of the process. However, this gap would also permit the current government to design a noninclusive process led by those who show loyalty to the government, and ultimately allow a small group of decision-makers to determine the content of the future constitutional framework. At the time of writing, however, the drafting of a permanent constitution does not appear to be a priority among decision-makers.

President al-Sharaa issued a presidential decree (no. 66) in June 2025 to appoint a higher committee to form electoral committees in each governorate. These committees were to be responsible for selecting MPs from limited lists of vetted candidates. Conducting free and fair elections where each voter is entitled to one vote was

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considered unfeasible due to the unstable security environment, the lack of a population census, and significant population displacement ([Al Achi 2025](#)). According to another presidential decree (no. 143), issued in August 2025, the new parliament was to include 210 seats, with two-thirds to be filled indirectly via the electoral committees and the remaining 70 seats to be directly appointed by al-Sharaa. The new parliament would likely have a role in drafting the permanent constitution. One hundred nineteen seats were filled on 5 October 2025, but the selection process was delayed in three key provinces—Hasakah, Raqqqa, and Sweida—allegedly because of security concerns. In May 2026, another 11 seats were filled from Hasakah and Raqqqa, with 10 seats remaining to be filled from the governorate of Sweida. The filled seats were ultimately not dominated by former HTS figures; instead, the members selected included professionals, technocrats, religious figures, ethnic representatives, and individuals with ties to armed factions. However, women are underrepresented—with only 7 women among 130 members ([Al Achi 2025](#)). While there were hopes that al-Sharaa's appointment of 70 members might offset the lack of representativeness in the assembly, in particular regarding gender balance, it is as yet unclear who he will appoint, as the official announcement has been delayed.

In the meantime, conflict between the Kurdish-led Syrian Democratic Forces (SDF) and the new authorities in Damascus initially led to the negotiation and signing of several ceasefires that were, however, never fully implemented. Conflict continued and eventually resulted in Syria's government forces taking over territory that the SDF had controlled for more than a decade. This, in turn, led to the signing of an agreement between the SDF and the government on 29 January 2026 that led to the integration of SDF forces into state institutions ([ICG 2026a](#)). Shortly after the signing of the agreement, the Syrian Democratic Council, the SDF's political wing, outlined its vision for a future state-building process in Syria, calling for a "comprehensive national charter" built on democracy, pluralism, decentralization, and the recognition of Syria's diversity and the rights of ethnic and religious minorities ([Ultra Syria 2026](#)). Whether the Syrian Government will in any way react to these requests is as yet unclear. While demands from different groups and the public at large will likely mount, the new government has also seen notable international support, especially from the United States Government, which sees the new government in Damascus as an important counterweight to the Iranian regime.

2.4. CONCLUSION

Bangladesh and Syria together underscore a basic point that the classic literature on democratic transition has long warned against: political transitions should not be understood as linear passages from one regime type to another, with a more democratic order as their presumed destination (Carothers 2002). Both cases illustrate this insight in different ways. In Bangladesh, a broad anti-authoritarian rupture brought to power a progressive, albeit technocratic, interim government with an ambitious reform agenda. Despite subsequent elections and a strong—if contested—mandate for reform, the newly elected government has yet to commit either to a process for implementing these reforms or to their substance, leaving the transition ongoing and at risk of either becoming protracted or stalling altogether. In Syria, the collapse of a long-standing authoritarian regime opened up political space, but power has quickly been recentralized even as the formal transition continues. In both settings, the decisive question is not whether transition has formally begun but who is able to define its pace and institutional end point.

The broader implication is that political transitions are better seen not as bridges to a known destination but as struggles to govern under conditions of profound uncertainty. Recent scholarship similarly suggests that outcomes depend less on the fact that a transition is taking place and more on the forms of inclusion and sequencing that shape it. The challenge, then, is to determine whether transitional arrangements can actually change the way power is distributed and managed, whether they can create credible constraints, and whether and how they may leave room for those previously excluded to shape the new order.

The broader implication is that political transitions are better seen not as bridges to a known destination but as struggles to govern under conditions of profound uncertainty.

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Chapter 3

GEN Z MOBILIZATION AND PATHWAYS TO POLITICAL, CONSTITUTIONAL, AND INSTITUTIONAL REFORM IN 2025

Sharon Pia Hickey

Corruption is the root wound.

—Hanifa Safia Adan, Gen Z protester from Kenya

3.1. INTRODUCTION

Over the past three years, youth-driven protests have emerged seemingly almost spontaneously, toppling governments, forcing early elections, and securing political concessions, legislative changes, and policy reorientations. These movements have been led predominantly by Gen Z, a cohort with a median age of just 21, coming of age in a world shaped by geopolitical upheaval, economic precarity, democratic backsliding, climate crisis, political polarization, and deepening distrust in political institutions (Bisarya and Rogers 2023).

Gen Z mobilization echoes earlier waves of protest—from the Arab Uprising to Occupy and Fridays for Future—though it is distinguished by its digital nativeness. These movements operate through online platforms and networks, are often decentralized and leaderless, and draw on a shared cultural repertoire. Protesters see themselves as a global generation and consciously use shared language, memes, and symbols that predated the movement. The widespread adoption of a manga series flag—a skull-and-crossbones with a straw hat symbolizing rebellion against corrupt authority—has been seen across Gen Z protests in Indonesia, Madagascar, Mexico, Morocco, Nepal, Peru, and other countries. Across continents and contexts, these protests are driven by strikingly similar grievances—frustration

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with endemic corruption, worsening inequality, limited social and economic opportunities, and exclusion from meaningful political participation. But their outcomes are divergent and still unfolding. What they consistently reveal, however, is a disconnect between demands for accountability and the current institutional pathways of securing it.

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This chapter contends that Gen Z protests do not uniformly translate into constitutional reform. Even where demands are not explicitly framed in constitutional terms, they are often constitutional in character. Where constitutional language does emerge, the trajectory of reform is shaped—and often constrained—by existing institutions and processes. Across recent youth-led protests, demands have been channeled (and sometimes redirected) down different paths—toward governance reform, as in Morocco and Nepal; into intensified calls for executive accountability amid a wider crisis of presidential turnover, as in Peru; into regime change without a clear constitutional future, as in Madagascar; or crystallized into a formal process of constitutional refoundation, as in Bangladesh (see chapters 1 and 2).

Nepal and Madagascar have been selected as case studies because they illustrate contrasting pathways in events that are still unfolding. These divergent pathways cannot be explained by the presence or absence of constitutional demands, but more likely by how those demands interact with existing institutions, elite interests and incentives, and the organizational structure of the movements themselves. The key question explored in this chapter is not whether Gen Z protests succeeded or failed; it is the role of the respective constitution itself in each case, including how it is invoked or bypassed and how constitutional demands are translated—faithfully or otherwise—into reform processes.

3.2. NEPAL—CONSENSUS AND “DISCORD”

On 4 September 2025, the Government of Nepal abruptly banned 26 social media and messaging platforms, including Facebook, WhatsApp, and YouTube. Officially, the ban was in response to the platforms’ failure to comply with registration requirements introduced as part of levying a new digital services tax. Critics claimed, however, that the real impetus was an attempt to curb growing online frustration about politicians and “nepo babies” displaying lavish lifestyles in a country where one in five people live below the national poverty line ([Adhikari 2026](#); [World Bank 2026](#)). Set

against a youth unemployment crisis—estimated at 21 percent, the highest rate in the region ([Reuters 2026](#))—students and other young Nepalis took to the streets. The protest against the social media ban morphed into broader grievances about corruption, clientelism, and the mismanagement of public funds. The government response escalated: security forces opened fire on demonstrators, resulting in deaths ([Atrocity Prevention Lab 2025](#)).

As protests intensified, mobilization quickly reconstituted online despite restrictions. More than 100,000 people joined the Youths Against Corruption Discord server, which became a forum for debating the country's political future and coordinating protest demands ([García de Viedma 2025](#)). Within roughly 30 hours of the peak in protests, Prime Minister KP Sharma Oli resigned, conceding that stepping down was necessary “to initiate further efforts for a constitutional political solution” ([Setopati 2025](#)). Hami Nepal—a youth-oriented nongovernmental organization established to provide direct aid in the wake of the 2015 earthquake—had a founding role in the protests. It served as an intermediary between the protesters, the president, and the army, taking part in dialogue on who should lead the interim government ([AsiaNews 2025](#); [Pandey 2025a](#)).

In a remarkable example of online organizing—deemed a radical experiment in transparent and participatory democracy by some—young people held “elections” for the interim prime minister on the Youths Against Corruption Discord server, moderated by Hami Nepal. More than 10,000 people took part in debates leading to the recommendation that former Chief Justice Sushila Karki should serve in this position. Her reputation for integrity, including in several high-profile corruption rulings against politicians, made her a unifying figure ([Pandey 2025b](#)). Upon appointment, she promised to ensure quick elections, within six months. In her first address to the nation, the interim prime minister stated that “[w]e have to work according to the thinking of the Gen Z generation,” including to fulfill their demands of ending corruption and increasing good governance and economic equality ([Thomas 2025](#)).

The demands of the Nepali Gen Z protesters were not explicitly articulated as against the 2015 Constitution, which was the product of a decade-long constitution-making process spanning two constituent assemblies (2006–2015) ([International IDEA 2015](#); [International IDEA and PeaceRep n.d.](#)). Protesters also did not appear to be overly inclined toward abrogating the constitution ([Ahmed and Mukherjee 2025](#)). Nevertheless, some demands had direct constitutional implications, including proposals for a directly

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elected executive with a two-term limit, a merit-based civil service, and broader institutional overhauls to address endemic corruption (Mulmi 2025; [Speak Up Nepal 2025](#)). At the same time, there was a proliferation and fragmentation of the protest movement into groups advancing divergent and at times contradictory agendas—from the preservation of the existing constitutional framework to the abolition of federalism, and even the restoration of the monarchy ([Bhandari 2025](#)).

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In late 2025, the interim government began negotiating with Gen Z activists, reportedly over key cabinet positions. Members of Hami Nepal indicated that “the process is being carefully carried out, so that it consists of skilled and capable youth” ([Ahmed and Mukherjee 2025](#); [Hami Nepal 2025](#)). Some of these activists, however, vowed not to take up formal political roles, preferring instead to remain “the voice of the nation” ([Thomas 2025](#)). The interim prime minister assembled a small cabinet featuring ethnic and gender diversity, including several ministers under 40 and at least one protest-linked figure ([Sullivan et al. 2025](#)). She later stated that the Gen Z leaders exerted significant influence, and indeed pressure, to appoint particular people ([People’s Review 2026](#)).

During this time, the government also signed an accord with some leading Gen Z protesters that stressed, in its preamble, how the protest movement was inspired by the values of the Constitution. The 10-point agreement also recognized the Gen Z movement as a politically and culturally significant “people’s movement,” and proposed forming a commission to recommend constitutional reforms, reforms to the judiciary and public administration, and reforms aimed at addressing corruption ([Giri 2025](#)). The agreement also positioned elections on 5 March as a conduit to channel the protesters’ demands. This process exposed a split over whether elections should go ahead as the preferred political resolution of the protests, as well as wider questions on who could legitimately speak for and negotiate on behalf of the movement. Another Gen Z leader, Miraj Dhungana, and his allies rejected elections as the first step in the transition, stating that the interim government lacked such a mandate, and called instead for an all-party government, constitutional amendments to address governance weaknesses, and renewed street protests against the Karki government. Ajay Soraadi of Gen Z Movement Nepal publicly tore up the agreement, rejecting it for failing to capture the “spirit and sentiment” of the movement, and criticizing those who signed the agreement as having been co-opted into a diluted state-led process ([People’s Review 2025](#)). Leaders of other groups—Gen Z Front, Gen Z Movement Alliance, and Council

of Gen Z—argued that elections were the only viable route out of the interim period, with some willing to support candidates from their ranks to contest (Kaphle 2025).

In March 2026, early elections were held, framed as a referendum on the old political order versus Gen Z demands. The old guard, consisting of the Nepali Congress, the Communist Party of Nepal (Unified Marxist–Leninist), and the Maoists, was positioned as defending the 2015 constitutional framework with incremental reform; the Rastriya Swatantra Party (RSP), founded in 2022, positioned itself as the political expression of Gen Z demands for systemic change (Ellis-Petersen 2026). The RSP was not the organizational continuation of the signatories to the 10-point agreement or of the dissenting Gen Z groups that rejected it. But it successfully converted the movement’s overall anti-corruption and anti-establishment demands into an electoral mandate. With voter turnout of approximately 60 percent, the RSP won by a landslide, taking 182 of 275 seats. This constituted a rare mandate in Nepal’s multiparty system, although not enough for unilateral constitutional reform, which requires a two-thirds majority of both houses of parliament under section 274 of the Constitution (Sharma 2026). The new prime minister, Balendra Shah, is the country’s youngest ever, at 35 years old, and comes to the position with a political background as a former mayor and with a music career in anti-establishment hip-hop. Shah’s 16-member cabinet has been described as notably inclusive, with six women in key portfolios, representation of ethnic minority groups, and many members with backgrounds in law, engineering, economics, social work, and other technical fields (Neupane 2026; Ratopati 2026). In parliament, around 25 percent of members are aged 40 or under, a big shake-up that points to the impact of Gen Z at the polls (Aryal 2026). In fact, in the lead-up to the elections, 915,000 new voters registered, with more than two-thirds from the Gen Z age group (Fong 2026).

Having campaigned on a platform of governance reform, including improving the functioning of federalism, introducing merit-based appointments, and strengthening institutional independence, the RSP moved quickly to operationalize these commitments once in office. Among its first steps was the partial implementation of the recommendations from the committee charged with investigating the suppression of the Gen Z protests, including through arrests and the launch of investigations (Kathmandu Post 2026). The government also announced a 100-point action plan at the end of March 2026. The plan set out time-bound reforms—spanning 15 to 100 days—with performance indicators focused on service delivery, anti-corruption,

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and administrative efficiency. Constitutional reform was kept on the agenda as part of the 100-point roadmap, with a task force appointed in March 2026 to prepare a discussion report on constitutional amendment. Gen Z representatives refused an invitation to participate in constitutional reform talks, arguing that the government had not fully implemented the previous 10-point agreement and that a consultation invitation was not sufficient to honor the commitment for a commission that included youth representatives ([Dudraj 2026](#)). The legitimacy of the government-managed review process was therefore contested by Gen Z representatives, revealing the widening procedural gap between the promise of a reform process inclusive of the movement that incited it and what was in fact delivered as a state-managed consultation.

3.3. MADAGASCAR—A CLOSING WINDOW OF OPPORTUNITY

As in Nepal, social media amplified public resentment, where lavish displays of wealth by the president's family and ruling circle became a rallying point for anger.

In Madagascar, the September-October 2025 protests did not ignite from a powder-keg event in the same way as the social media ban in Nepal. Rather, they emerged from an accumulation of grievances. Power and water cuts had become common across the capital city, Antananarivo, and beyond ([CIVICUS Lens 2025](#)). At the same time, the priorities and lifestyles of the political class appeared increasingly out of touch in a country with a median age of 20 and where three-quarters of people live in poverty ([Cocks 2025](#)). Public frustration was stoked further by President Andry Rajoelina's support for a multi-million-dollar cable-car project in the capital. Supported by France, the cable car was intended to lower congestion in the city. With a fare six times the price of a bus ticket, however, it would price out most people ([Razafimanantsoa 2024](#)). As in Nepal, social media amplified public resentment, where lavish displays of wealth by the president's family and ruling circle became a rallying point for anger.

What started as a protest by two opposition politicians from the Antananarivo city council—demanding accountability for water and electricity shortages from the legislature—quickly morphed into mass mobilization by high school and university students across several cities ([Tétaud 2025](#)). A Facebook group called Gen Z Madagascar ballooned to over 100,000 followers in five days. The president attempted to defuse the situation by making concessions, proposing a national dialogue, dissolving the parliament, and firing the energy minister, but these measures were rejected by protesters as “cosmetic” ([Rabary 2025](#)).

During the protests, demonstrators adopted the skull-and-crossbones flag, echoing other Gen Z movements worldwide (Bhandary 2026). Yet, despite these transnational connections, the movement did not have a leader; unlike in Nepal, where Hami Nepal channeled demands, the protesters did not coalesce around a shared vision of who should (or should not) govern. Interviews and reporting around the time suggested that protesters were united in demanding the president's resignation and were not opposed in principle to the military stepping into a power vacuum (Cocks 2025).

The tide turned decidedly against the president when an elite unit of the military, the Administrative and Technical Services Personnel Administration Corps (CAPSAT), sided with the protesters, escorting them to May 13 Square, the central meeting point of past uprisings (Al Jazeera 2025; Africanews 2026). Notably, this same unit had supported President Rajoelina's accession to power in a 2009 coup d'état. The president fled the country, decrying the attempt to seize power and calling for respect for the Constitution (Africanews 2026).

As the crisis escalated, lawmakers, ignoring the president's dissolution order, assembled and voted to impeach Rajoelina (Ozkan and Rabearisoa 2025). Following the president's flight from the country, CAPSAT's commander, Colonel Michael Randrianirina, announced on national radio that the military had taken power, declaring the establishment of a transitional government. The military's alignment with the protest movement—and its role in bringing about the president's downfall—appears to have been broadly accepted, and by many celebrated, at least initially (Guardian 2025; Savage 2025). This stood in contrast to the regional and international response, with the African Union suspending Madagascar, condemning the events as an unconstitutional change of government, and calling for a rapid return to constitutional order (African Union 2025; see also Mishra 2025).

Randrianirina's junta issued an ordinance suspending the 2010 Constitution and key state bodies, including the Senate, various courts, and the electoral commission, while leaving the lower house of parliament in place (Ozkan and Rabearisoa 2025). A two-year transition was declared, including a referendum on a new constitution. In his inaugural address as interim president, Colonel Randrianirina explicitly thanked the Gen Z protesters. Despite this, no protesters were named in the transitional government: the 28-member cabinet, announced at the end of October, was instead a mix of opposition actors, technocrats, and individuals linked to established political and economic elites. Gen Z activists reported

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that they had not been meaningfully included in discussions, with one spokesperson stating, “We were no more consulted on the composition of this government than we were on the choice of the prime minister We do not endorse any of the appointments” ([Caramel 2025](#)).

Despite precipitating the fall of the president, Malagasy Gen Z protesters—like their counterparts in Nepal and unlike those in Bangladesh—did not seek to institutionalize themselves as a political party or formal political actor. Instead, they positioned themselves as observers and watchdogs of the country’s “refoundation.” This is reflected in the objectives of the Madagascar Generation Z Charter, which focuses on institutional reform, citizen empowerment, respect for fundamental rights, youth involvement, transparency, and good governance ([Génération Z Madagascar 2025](#)). While these demands were not initially framed in explicitly constitutional terms, they underscore the demand for a systemic political and institutional transformation. As the preamble to the charter states, “[c]hanging the leadership without changing the rules will solve nothing” ([Génération Z Madagascar 2025](#)).

In December 2025, the interim authorities launched a nationwide consultation. Framed as an inclusive, bottom-up process progressing from the local to the national levels, the consultation’s stated aim was to gather input across society and culminate in the drafting and adoption of a new constitution ([African Center for Consultancy 2025](#)). Even prior to its launch, however, civil society organizations had raised concerns about the trajectory of the transition. In November 2025, a coalition of civil society groups warned that early actions, including the formation of the government without consultation and seemingly arbitrary application of the law, signaled “governance that ignores the principles of consultation and transparency.” The organizations called for a credible, inclusive transition with a shared framework for governance and reform, warning that a transition “without a framework can only lead to a dead end” ([Le Journal de l’île Rouge 2025](#)).

It is clear that initial civil society enthusiasm—followed by guarded optimism—for military involvement in the transition has soured. Early signs of this shift emerged in the formation of the transitional government, where protesters were neither meaningfully consulted on cabinet appointments nor represented within it, and where the selection of a prime minister with ties to established political and economic elites was widely perceived as falling short of a genuine break with the past ([Caramel 2025](#)). Disillusionment has

deepened further in 2026. Those associated with the former regime have faced searches, arrest, and detention under broadly framed offenses relating to threats to national security (wa Nciko 2026). In April 2026, several protest leaders were arrested after participating in demonstrations demanding a clear timetable for elections, facing charges including criminal conspiracy and, in some cases, undermining state security (Savage 2026). These charges—widely criticized as vague and unsubstantiated—have been condemned as a pretext for suppressing democratic protest (Amnesty International 2026; Savage 2026).

3.4. CONCLUSION: THE POLITICAL, INSTITUTIONAL (AND PERHAPS CONSTITUTIONAL) ACCOUNTABILITY GAP

Gen Z mobilization has followed a recognizable pattern, marked by digitally enabled rapid escalation from localized grievances to a large-scale systemic critique of political malfeasance, articulated through a shared symbolic vocabulary, anti-corruption framing, and cross-border generational solidarity. Differences in constitutional outcomes are not explained simply by whether demands are couched as explicitly necessitating constitutional reform. Constitutional texts and their promises have never been absent from these movements but instead operated as both the objects and normative grounds of critique. In all cases, the claims advanced by protesters are, at their core, constitutional. Even where not framed in explicit constitutional language or demands for constitutional reform, they engage questions about limits on power, accountability, representation, equity, and justice.

One may posit, therefore, that the differing constitutional trajectories can be better explained by how protesters' demands were channeled by the movement and the administrations that encountered them. In Nepal, Gen Z activists retained momentum, exerted pressure on the army, president, and interim government, including threatening renewed mobilization, and ultimately saw elements of their agenda taken up in a formal political process that enjoyed electoral success, although not through a political party that was a direct successor to the movement. The presidency in this case acted as a constitutional anchor, and institutional continuity was preserved even through transition. In Madagascar, the protesters' lack of cohesive political vision and insistence on maintaining the character of civil society

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actors contributed to a vacuum, allowing the military to more easily define the terms of transition.

The role of the military is also a critical point of divergence, shaped by different histories of civilian–military relations. In Nepal, the 2006 peace agreement ending the civil war placed the military under the civilian control of the Interim Council of Ministers, which was charged with preparing an action plan for “right-sizing, democratic restructuring reflecting the national and inclusive character and imparting training to the Nepali Army on the values of democracy and human rights” ([PeaceRep 2006](#)). The 2015 Constitution then embedded a variety of mechanisms and safeguards to ensure civilian control ([Federal Democratic Republic of Nepal 2015: articles 266–267](#)). According to a 2022 survey, the Nepali Army emerged as the most trusted institution (91 percent), over courts, police, and local governments, among others (Kathmandu University School of Arts et al. 2023: 40–41). The army’s reputation is largely that of an apolitical institution, highly regarded for its role in infrastructure development, disaster relief, and international peacekeeping missions, despite criticism of its commercial activities ([Niraula 2020](#); [Upreti 2021](#)). With this background, the military assumed a more managerial and facilitatory role during the transition, with Army Chief General Ashok Raj Sigdel stating that the army must remain politically neutral and neither interfere with nor exert pressure on the interim government ([Karki 2025](#)).

In Madagascar, conversely, there has been a pattern of military intervention in political crises. This was established early, when mass protests in 1972 led to the transfer of power to General Gabriel Ramanantsoa, and it reappeared in later crises in 1991, 2002, and especially 2009, when CAPSAT’s mutiny helped bring Andry Rajoelina to power. In this way, the military has directly assumed power or been a decisive actor in political transition since independence in 1960. As such, public perception has been more ambivalent or accepting of military intervention, with repeated transitions normalizing the role of the military as a political arbiter. An Afrobarometer study in 2024, for example, showed that while the majority of people opposed military rule, 60 percent found it legitimate for the military to intervene if elected officials were seen to abuse their power ([Afrobarometer 2025](#)). So in Nepal there was a clear insistence and agreement that the army should not assume a governing role. In Madagascar, by contrast, the trajectory shifted decisively once the military intervened. The die was effectively cast at that point: rather than stewarding a civilian transfer of power as in Nepal, the military assumed it.

There is, however, also a noticeable process of translation—and sometimes substitution or dilution—from constitutional to governance reform in both cases. This reflects, in part, the priorities of the movements themselves—many sought to make the state function better, agnostic to constitutional reform as a goal in itself. At the same time, this process can be read as a form of political mediation, through which more disruptive demands are reframed into governance reforms that are more legible, accessible, acceptable (and in the future amendable) for existing elites. In Nepal, constitutional review has been initiated and mediated through a government-managed process whose legitimacy is contested by Gen Z representatives. In Madagascar, constitutional refoundation was announced, but under military tutelage and without Gen Z representation. In both cases, the question of whether constitutional reform would occur has been detached from the momentum of the protesters and left to institutions to determine the parameters, limits, and process of reform.

What these movements expose, more fundamentally, is a gap between demands for accountability and the ability of existing legal and institutional frameworks to deliver it. As Hanifa Safia Adan, a Gen Z protester from Kenya, put it, “young people are angry because they see billions being looted while graduates sell sweets on the streets and patients die in public hospitals” (Ahmed 2025). As the protests played out into transitional processes, there seemed to be a growing recognition that the problem may lie not only in how power is exercised but also in how it is structured.

This realization brings with it a second constraint: meaningful legal or constitutional change typically requires the consent—or at least acquiescence—of those already in power. Because of this, Gen Z movements encounter a structural paradox. They mobilize against political elites but must ultimately rely on those same elites, or the institutions they control, to translate demands into binding reform. Or protesters can seek to institutionalize their movement by creating a political party and gaining electoral success, which initially appears to offer the most direct mode of translating demands into the formal political process. But as illustrated in Bangladesh, where an apparent misstep—allying with an Islamist party—led to significant electoral loss, this pathway is far from straightforward. Institutionalization often exposes trade-offs that can dilute the clarity or ambitiousness of movements’ original demands and splinter their support base. Yet, in all cases, the protests reveal not the irrelevance of constitutions but the imperative to carefully consider design features and implement fundamental values, guarantees, and safeguards more

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quickly, more inclusively, and more credibly, including demands for accountability from a generation unwilling to accept impunity.

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Chapter 4

THRESHOLDS FOR APPROVING CONSTITUTIONAL CHANGE: RECENT EVENTS IN FIJI AND THE GAMBIA

Alexander Hudson

4.1. INTRODUCTION

The relative difficulty of amending constitutions is a matter of vital importance to constitution-makers and constitutional advisers worldwide.

The relative difficulty of amending constitutions is a matter of vital importance to constitution-makers and constitutional advisers worldwide. In many cases, the intention in a constitution-building process is to work within the amendment process provided for in the current Constitution. Therefore, understanding what will be required to ratify and promulgate amendments or replacements is a key first step before the more substantive matters can be addressed.

It is also a growing area of interest for scholars of constitutional law, including vigorous debates about both the measurement of amendment difficulty and the normative virtues of high thresholds for amendment. More recently, “eternity clauses” (explicit provisions that foreclose amendment of some parts of a constitution) and the broader question of “unconstitutional constitutional amendments” (procedurally valid amendments that are judged to be invalid due to their effects in undermining core features of the Constitution) have captured academic interest.

The issue has significant political importance in countries where parliamentary majorities wish to amend the constitution but are faced with unusually high thresholds for amendment. During 2025, the issue came up in different ways in two small countries whose constitutions have some authoritarian connections—Fiji and The Gambia. Both countries were covered in the 2024 edition of this annual review, and reform processes continued in notable ways in

2025. In Fiji, the government was unable to pass a constitutional amendment in parliament but has been helped by an unusual ruling from the Supreme Court that revised the thresholds for constitutional amendment. Meanwhile, in The Gambia, successive efforts to replace the Constitution have fallen short of the high threshold required by the current Constitution.

This chapter first provides a short review of the scholarly literature on amendment thresholds. The subsequent sections recount the recent events in Fiji and The Gambia and the comparative lessons that can be drawn from these two countries.

4.2. AMENDMENT DIFFICULTY

The question of how difficult it should be to amend a Constitution has been of interest to scholars and politicians for centuries. In the English-language literature, influential comparative work began by comparing the multitextual and “flexible” Constitution of the United Kingdom with the more “rigid” constitutions of other countries (Bryce 1901; Dicey 1915; Albert 2023). The distinction turned on whether the constitution could be changed through ordinary legislative processes or required a higher threshold for approval. Since then, it has become commonplace to consider special legislative procedures for amendment to be one of the defining features of a constitution (Wheare 1951: 7). Wittily encapsulating the idea of rigid constitutions, Jon Elster (2012: 149) suggested that there is a cliché definition of a constitution as “chains imposed by Peter when sober on Peter when drunk.”

The normative question behind this empirical distinction concerns the justifiability of limiting democracy. Entrenching a constitution so that its provisions are beyond the reach of legislative majorities limits the power of democratic choice. Lawrence Tribe (1988: 10) characterized this as the “antimajoritarian difficulty,” asking “why a nation that rests legality on the consent of the governed would choose to constitute its political life in terms of commitments to an original agreement—made by the people, binding on their children, and deliberately structured so as to be difficult to change.” Reflecting on the same problem, Elster (1979: 94) characterized entrenchment of a constitution as a “paradox of democracy” in which “each generation wants to be free to bind its successors, while not being bound by its predecessors.”

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The question of amendment difficulty has become more expansive in recent years as scholars have explored the complexity of the constitutional arrangements for entrenchment that exist across the world. For example, the concept of “unconstitutional constitutional amendments” has appeared in diverse contexts, including India, Kenya, and Taiwan ([Roznai 2017](#)). This concept refers to a judicially enforced limitation of the amendment power that stems not from the procedures provided for in the constitutional text, but from the argument that a constitution has a set of core commitments (sometimes called a basic structure) that cannot be violated by amendments ([Roznai 2013](#)). The different levels of entrenchment across provisions within single constitutions have also been noted—for example, in so-called eternity clauses that are simply beyond the reach of the amendment process ([Suteu 2021](#)).

There are, of course, arguments in favor of high amendment thresholds. One compelling line of argument concerns the possibility that a single party may amend the constitution without the support of opposition parties. Recent events in Hungary illustrate this dynamic, as the Fidesz party replaced the constitution unilaterally ([Halmai 2019](#)), and the new government under Tisza that took office after the 2026 election achieved a similar mandate and quickly began to pass amendments to that constitution ([Spirk and Bitá 2026](#)). By contrast, W. Elliot Bulmer ([2025](#)) has argued that supermajority rules should encourage consensus across parties. In a similar way, Adem Kassie Abebe ([2024](#)) has noted the challenges of supermajority rules in practice, arguing instead for a requirement for cross-party approval regarding core constitutional frameworks fundamental to political pluralism.

An autocratic regime may impose a constitution with such high thresholds for amendment that the future democratic system will be unable to change the constitution without fresh resort to an original expression of constituent power or a break in legal continuity.

In practical terms, the democratic paradox that Elster described has important manifestations in countries that have transitioned from an autocratic regime to a democratic one without replacing the constitution. In such contexts, the problem of “dead hand control” persists as the constitution created in an autocratic context is entrenched against change by the new democratic polity, effectively depriving the current generation from governing themselves ([Jefferson 1789](#)). Where this scenario is the result of the intent of an outgoing autocratic regime, one might see this as a variation on the “insurance model of judicial review” formulated by Tom Ginsburg ([2003](#)). An autocratic regime may impose a constitution with such high thresholds for amendment that the future democratic system will be unable to change the constitution without fresh resort to an original expression of constituent power or a break in legal continuity.

The controversy about the correct measurement or specification of amendment difficulty should also be noted (Lutz 1994). The same amendment procedure may actually produce different levels of amendment difficulty in practice in different contexts (Ginsburg and Melton 2015). For example, as Mariana Velasco-Rivera (2025) shows, Mexico and the United States have almost identical constitutional amendment procedures, but the actual practice of politics in the two countries has produced remarkably different rates of constitutional amendment. Even so, when the cases of Fiji and The Gambia are considered, it is clear that the amendment threshold is high both in abstract terms and as applied in the current politics of these countries.

4.3. FIJI IN 2025: THE SUPREME COURT WEIGHS IN

As noted above, the ongoing process of constitutional change in Fiji also featured in the 2024 edition of this annual review (Bulmer 2025). At that time, the analysis focused on the action in the legislature, wherein the support of the opposition party was required for the proposed constitutional reform to pass that stage (it would still have required a referendum). The government had introduced a bill to amend the Constitution that would have lowered the threshold required for future constitutional amendments. It transpired that an insufficient number of opposition parliamentarians supported the bill, and that particular aspect of the process failed in parliament. However, the government decided to continue to pursue constitutional change and approached the Supreme Court for an advisory opinion that could move the process forward.

The longer-term historical context in Fiji is important to consider in weighing the benefits of high amendment thresholds. Fiji has had four constitutions since its independence in 1970 (Regan et al. 2024). The country has also experienced at least four coups d'état in that time (Ratuva 2019), most recently in 2006. Coups and replacements of constitutions are linked in Fiji, as they often are in other contexts. Romitesh Kant and Eroni Rakuira (2014: 4) have argued that “In some ways, Fiji’s coups have not only been coups against governments but also coups against constitutions and constitutional arrangements.”

The current Constitution was promulgated in 2013, in a constitution-making process that followed a coup, albeit with an interval of six years. It is worth highlighting the break in legality in this case: the 1997 Constitution was abrogated by the post-coup regime in

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2009, and the 2013 Constitution was not introduced through the amendment procedures provided for in the 1997 Constitution. Despite this, the 2012–2013 participatory constitution-making process was generally quite positive ([Kant and Rakuita 2014](#)). However, the draft that the process produced was ultimately replaced by one prepared by a small group under the leadership of the attorney general, rendering the earlier participation of little effect ([Saati 2020](#)). The Constitution was ultimately promulgated by decree following further changes produced in an opaque process ([Regan et al. 2024](#)).

The 1997 Constitution had provided for amendment through majorities in the erstwhile two chambers of the parliament, with a two-thirds majority in each chamber (section 191[2]). A referendum was not required to pass an amendment. However, the 1997 Constitution also provided for special (higher) thresholds to amend the distribution of seats between ethnic groups provided for in section 51 (section 192).

Achieving both supermajorities would require near consensus at both mass and elite levels across a deeply divided society and a very high level of turnout in the referendum.

The 2013 Constitution that replaced it provided for a significantly higher threshold to approve all amendments—a three-fourths supermajority in the unicameral parliament followed by a three-fourths supermajority in a referendum. Note that in the case of the referendum, the fraction relates to “the total number of the registered voters,” not of those who voted (section 160). Achieving both supermajorities would require near consensus at both mass and elite levels across a deeply divided society and a very high level of turnout in the referendum. That level of support in a referendum is unusual outside of deeply autocratic contexts ([Elkins and Hudson 2019](#)).

The current constitutional reform process stems from the 2022 election manifesto (and coalition agreement) of the current governing People’s Alliance, led by Prime Minister Sitiveni Rabuka. Rabuka and his party characterized the 2013 Constitution as having been “imposed” on the people of Fiji ([Rovoi 2024](#)), not an unfair assessment given the constitution-making process behind it. As documented in the 2024 annual review, the first step that the People’s Alliance and its coalition partners (the Social Democratic Liberal Party and the National Federation Party) took to change the Constitution was to attempt to amend the amendment rule ([Bulmer 2025](#)). Legislation was introduced to this effect in early 2025. However, on 11 March, the bill fell one vote short of the required three-fourths majority ([Radio New Zealand 2025](#)). Even if the bill had been successful in parliament, receiving affirmative votes from three-fourths of all the registered voters in the country was unlikely ([Kirkby and Martyn 2025](#)).

Beyond the difficulty of the amendment threshold itself, Fiji was one of a small group of countries whose constitutions provided special protection for the amendment provisions (Albert 2015; Kirkby and Martyn 2025). Per section 159(2)(c) of the 2013 Constitution, an amendment to change the amendment threshold would be an unconstitutional constitutional amendment (Roznai 2017). If such an amendment had been duly passed, it would have provided its opponents with clear grounds for a legal challenge to its validity.

Nevertheless, this setback in parliament posed an interesting legal problem for the government. It had already advanced a political argument that the 2013 Constitution was imposed and lacking in political legitimacy, but this claim had no firm legal connection. To move the constitutional reform process forward, the Cabinet requested an advisory opinion from the Supreme Court. The Cabinet's request listed five questions, which in essence raised two points: (a) whether the 2013 Constitution was legally in force; and (b) if so, whether a remedial interpretation of the amendment thresholds was possible.

The court recognized in its opinion that asking it to rule on the validity of the constitution that gives it its jurisdiction created a procedural difficulty. It could only reach the other questions posed to it if it found in the first place that the 2013 Constitution was valid.⁴ The court's opinion explored Fiji's legal history in order to develop a rule of recognition that would settle whether the 1997 Constitution or the 2013 Constitution should be recognized as legally valid.

On the basis of a four-part test of "(a) efficacy; (b) popular acceptance and support; (c) length of time in which the government has been in control; (d) elections," the court recognized the 2013 Constitution as legally effective.⁵ However, the court did not recognize the legal validity of certain sections of the 2013 Constitution that related to amendments. Specifically, the court did not extend recognition to the provision that made the amendments section unamendable (section 159[2][c]), effectively striking that provision. The court did recognize the validity of the provisions on the amendment process but dramatically lowered the necessary thresholds.⁶ The court's remedial interpretation of these provisions lowered the threshold for approval of amendments in parliament from three-fourths to two-thirds. But perhaps more significantly, it lowered the practically unobtainable referendum threshold from

Beyond the difficulty of the amendment threshold itself, Fiji was one of a small group of countries whose constitutions provided special protection for the amendment provisions.

4 Supreme Court of Fiji, *Miscellaneous Case no. 1 of 2025*, 7.

5 Supreme Court of Fiji, *Miscellaneous Case no. 1 of 2025*, 161 and 240.

6 Supreme Court of Fiji, *Miscellaneous Case no. 1 of 2025*, 240.

three-fourths of the registered voters to a simple majority of those who voted.⁷

The court's reasoning in its 66-page decision drew upon national precedent in the 2001 decision in *Republic of Fiji v. Prasad*, but also referenced precedents from across the British Commonwealth. Nevertheless, it was a strikingly bold ruling to render the protected unamendability of the amendments provision to be of no effect, thereby establishing dramatically lower thresholds for the approval of constitutional amendments.

The court's ruling threw open the door for constitutional reform in Fiji, and a constitution once thought to be unamendable (Kirkby and Martyn 2025) now has thresholds that are much more in the mainstream of contemporary constitutional practice.

The court's ruling threw open the door for constitutional reform in Fiji, and a constitution once thought to be unamendable (Kirkby and Martyn 2025) now has thresholds that are much more in the mainstream of contemporary constitutional practice. The governing coalition acted quickly to move the process of constitutional reform forward. Prime Minister Rabuka gave constitutional reform a prominent mention in his address to the United Nations General Assembly in September 2025 (Chand 2025). The government later introduced legislation in December 2025 that would establish regulations for the holding of a referendum—such as may be required to approve constitutional amendments (Ravuwai 2025). Some political commentators expect constitutional amendments in 2026 to facilitate changes to the electoral system before the next parliamentary elections (Waqavakatoga 2026).

4.4. THE GAMBIA IN 2025: CONSTITUTIONAL CHANGE LACKS VOTES IN PARLIAMENT

The Gambia is another interesting case of redemocratization without constitutional change. Like that of Fiji, the Constitution of The Gambia also provides for a very high amendment threshold. Moreover, the current Constitution of The Gambia was also enacted after a military coup d'état. Unlike in Fiji, the Constitution of The Gambia was amended after redemocratization (2017), in 2018. However, more recent attempts at broader constitutional reform have been unable to meet the levels of support that the constitutional amendment process requires. In the case of The Gambia, the recent constitutional reform process has also been impeded by a lack of broad political support for the reform, making the high threshold itself a secondary problem.

7 Supreme Court of Fiji, Miscellaneous Case no. 1 of 2025, 240.

The Gambia has had three Constitutions since its independence in 1965. The current constitution was drafted following the 1994 coup that removed long-serving independence leader Dawda Jawara from power. The coup was led by Yahya Jammeh, who initially governed as part of an Armed Forces Provisional Ruling Council (AFPRC). In 1995, the AFPRC appointed a Constitutional Review Commission that prepared the first draft of the constitution, but some provisions were further altered by the AFPRC before the constitution was approved by Gambian voters in a referendum in August 1996 (Sanyang and Camara 2017). The fact that the referendum took place in a context of military rule that had banned political parties meant that there was no real possibility for organized campaigns against ratification (Edie 2000). The Constitution entered into force in January 1997.

That Constitution had some elements that reflected the interests of the AFPRC and especially Jammeh himself (Perfect 2022), who went on to win election to the presidency and remained in power until he lost the presidential election of 2016. The most relevant point for this chapter is that the Constitution was ratified in a referendum with the support of 70.4 percent of the voters and with a turnout of 86.9 percent (Perfect 2022: 28). Changing the Constitution thereafter would potentially require a higher threshold. Section 226 allows for amendments to the Constitution with the support of three-fourths of the members of parliament and the assent of the president. Lack of assent from the president can be overridden by a referendum in which more than three-fourths of the voters support the amendment and the turnout level is greater than 50 percent of the registered voters. However, section 226(7) entrenches many provisions at a higher level (including presidential term limits), requiring a referendum to approve amendments. Under Jammeh, the Constitution was amended 52 times through the process provided for in section 226 (Jammeh 2011), but without resort to a referendum (Perfect 2022).

Constitutional reform was a key issue in the 2016 election that allowed The Gambia to remove Jammeh from office and redemocratize (Helal 2018). The new president, Adama Barrow, appointed a new Constitutional Review Commission in 2017, and a process of wide consultation on the content of a new constitution began (Houlihan 2020). The commission completed a new draft constitution, which was published in May 2020 and introduced in the National Assembly in September 2020. The draft constitution would have limited presidents to a maximum of two five-year terms (with retroactive effect), thereby limiting President Barrow to one more term after the potential ratification of the constitution (Perfect 2022).

Section 226(7) entrenches many provisions at a higher level (including presidential term limits), requiring a referendum to approve amendments.

Following the amendment requirements of the 1997 Constitution, the 2020 draft constitution would have required three-fourths support in the National Assembly to move forward to a referendum, in which three-fourths of the voters would also have needed to support ratification. In the event, the draft failed to gain the necessary level of support in the second reading in the National Assembly ([Houlihan 2020](#)). Later attempts to revive the draft in 2020 and 2021 were unsuccessful ([Nabaneh et al. 2022](#)).

Although the constitutional issues remained unresolved after the 2020 failure, there was still demand for constitutional change. A new drafting process began in 2024, with the involvement of the International Institute for Democracy and Electoral Assistance (International IDEA) ([Saho 2024](#)). This process was shorter and less participatory than the process that culminated in the 2020 draft ([Nabaneh 2025a](#)). The text that this process produced was a disappointment to some, who observed that the level of rights protection was lower under the 2024 draft than under the 2020 draft ([Jallow 2024](#)). Presidential term limits remained a key point of contention in the 2024 draft, as they had been when the 2020 draft had failed in the National Assembly. However, a key difference between the drafts is that while the 2020 draft applied term limits with retroactive effect (thus limiting President Barrow), the 2024 draft did not ([Gambia Participates 2024](#)). This change led to a different coalition of support for the two draft constitutions. While the retroactive application of the term limit was previously a “poison pill” for one political group ([Zulueta-Fülscher 2023](#)), its absence may have been similarly interpreted by another.

By the end of 2025, there was an understandable divide between those who were discouraged by the two failed attempts at constitutional reform and those who still found the current Constitution to be sufficiently unsatisfactory to continue pushing for change.

The 2024 draft constitution was first introduced in the National Assembly in December 2024 ([International IDEA 2025](#)). The second reading of the bill was originally planned for March 2025 but was delayed until July to allow for more time for consultation ([Touray 2025](#)). The second reading and vote took place on 7 July 2025. At that point, the bill received support from only 35 of the 56 members of the National Assembly ([Okogba 2025](#)), 7 short of the three-fourths needed to move forward. It should be noted that this was even short of the more manageable two-thirds threshold, which is most common ([Bucur and Rasch 2018](#)). Even if it had passed at that stage, the bill would have needed to pass a third reading and then get three-fourths support in a referendum. By the end of 2025, there was an understandable divide between those who were discouraged by the two failed attempts at constitutional reform and those who still found the current Constitution to be sufficiently unsatisfactory to continue pushing for change ([Nabaneh 2025b](#)).

4.5. COMPARATIVE LESSONS

As noted earlier, the cliché about a constitution is normally that it is Peter sober binding Peter drunk (Elster 2012). That may apply in the case of a constitution drafted in a period of democratic opening that seeks to limit the potential for an autocratic shift in the future. But the reverse can be true in cases like Fiji and The Gambia, where the constitution made during an autocratic period is now limiting the democracy that has emerged after it. Now we have Peter drunk binding Peter sober. Cases like these add a new dimension to the familiar debate about the ideal threshold for constitutional amendment.

In the current era of concern about democratic backsliding, preventing unilateral (single party) constitutional amendments is wise (Abebe 2024; Bulmer 2025). The emerging duel of constitutional amendments in Hungary between the former Fidesz government and its Tisza successor is not a model to be emulated. However, the argument that high thresholds should provide opportunities for cross-party collaboration has serious limitations in practice. The cases of Fiji and The Gambia illustrate the danger that democratic change may be held back by an overly high amendment threshold. As Satang Nabaneh (2025b) put it, this high threshold may “limit the nation’s capacity to adapt its basic law to the changing will of the people.”

The ambitious ruling by the Supreme Court of Fiji is startling. It is audacious for a court to claim for itself the power to read down the amendment threshold in such a way. Yet, in the Fijian context, it is difficult to see how any constitutional amendment would be possible otherwise, absent a new claim to an original exercise of constituent power or a break in legality, with the damage to legal certainty and constitutional legitimacy that the latter option would entail. In the case of The Gambia, the amendment threshold is almost as high (at least for entrenched provisions), but the most recent constitutional reform process has lacked a breadth of support that would make the threshold itself determinative.

Taken together, the two cases illustrate the difficult choice that confronts a country that democratizes under a departed autocrat’s constitution. Where the amendment threshold is so high, constitutional change following the constitution’s amendment rules may not be possible. In Fiji, the Supreme Court has provided a way out for the government. In The Gambia, the reform process failed in the National Assembly for a second time.

The cases of Fiji and The Gambia illustrate the danger that democratic change may be held back by an overly high amendment threshold.

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Chapter 5

(MIS)USING CONSTITUTIONAL REFORMS TO PRESERVE PERSONALIZED PRESIDENTIAL RULE

Alexandra Oancea

5.1. INTRODUCTION

Alternation of political power has long been regarded as a defining feature of democracy, and attempts to extend or manipulate term limits have traditionally provoked significant domestic and international backlash. Yet this principle now appears increasingly eroded, as global powers retreat from democracy promotion and countries reinterpret, weaken, or selectively circumvent norms governing the alternation of power.

In 2025, a number of countries relied on constitutional reforms to evade presidential term limits, restrict electoral competition, and weaken institutional checks on presidential authority, often with the effect, if not the explicit aim, of preserving the personalized rule of incumbents and preventing meaningful rotation in office (Oancea 2025: 481–82, 2026). As Bisarya and Rogers (2023) argue, many of these practices constitute characteristic tactics of democratic backsliding.

Notable examples included Guinea, Chad, Djibouti, Nicaragua, and El Salvador. In Guinea, the new constitution adopted in September 2025 that marked the end of the transition opened the door for transitional leader Mamady Doumbouya to run for the presidency, extended the duration of presidential terms, granted immunity to former presidents, and expanded presidential influence over the legislature. In October 2025, Chad enacted a package of constitutional amendments that, among other things, extended the duration of presidential terms,

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abolished the maximum of two consecutive terms for presidents, and lifted the ban preventing presidents from holding partisan positions. In Djibouti, a constitutional revision adopted in November 2025 changed the eligibility requirements for presidents, removing the upper age limit and requiring all presidential candidates to have been resident in the country for at least five consecutive years. In Nicaragua, sweeping constitutional amendments entered into force in February 2025, introducing the notion of co-presidency and designating President Daniel Ortega's wife as co-president, extending the length of (co-)presidential terms, and centralizing state powers in the presidency. In El Salvador, the constitutional amendments adopted in July 2025 extended the duration of presidential terms, removed presidential term limits, and abolished the second-round requirement for presidential elections.

This chapter examines how these examples reflect a broader pattern in which authorities have used constitutional reforms to preserve or enhance personalized—sometimes even dynastic—forms of presidential rule and restrict power alternation. The first section argues that incumbents' control over the constitution-making process enabled these reforms to pass in the first place. The remaining sections analyze the substance of the adopted reforms, which, cumulatively, contribute to consolidating personalized presidential rule.

5.2. CONTROLLING THE CONSTITUTION-MAKING PROCESS

In Chad, Djibouti, Nicaragua, and El Salvador, president-led ruling parties dominate parliaments, allowing them to comfortably meet the thresholds required to pass constitutional amendments.

In Chad, Djibouti, Nicaragua, and El Salvador, president-led ruling parties dominate parliaments, allowing them to comfortably meet the thresholds required to pass constitutional amendments. In addition, in Chad and Nicaragua, incumbents framed sweeping constitutional changes in ways that enabled their passage through simplified amendment procedures. These reforms were therefore adopted in contexts where incumbents and their parliamentary majorities exercised sufficient control over the constitution-making process to easily advance, and pass, controversial changes without many constraints.

In Chad, President Mahamat Idriss Déby Itno's ruling party, the Patriotic Salvation Movement (MPS) introduced the amendments, which were subsequently labeled a "technical revision" by the presidency, that allowed the government to bypass the referendum

requirement of Chad's constitutional amendment procedure ([Leubnoudji Tah 2025](#); [Présidence de la République du Tchad 2025](#)). Under article 281 of the Constitution, while any constitutional revision must be approved in a referendum, technical revisions can be adopted if approved by a three-fifths majority in the National Assembly and the Senate voting in a joint session. Nevertheless, the Constitution does not define what constitutes a "technical revision." Following this procedure, the National Assembly approved the amendments (171 representatives in favor with 1 abstention) on 15 September 2025, and both chambers approved them in a joint sitting (236 in favor with 3 abstentions) on 3 October 2025 ([Republic of Chad 2025](#)), before they were promulgated by President Itno on 8 October 2025. The ruling party holds 124 out of 188 seats, and allied parties hold an additional 32 after controversial and disputed legislative elections held in December 2024. In addition, only 5 of the 69 members of the Senate belong to the opposition, including 3 appointed by the president. During the joint sitting, members of the opposition boycotted the final vote, describing the process as unconstitutional and illegitimate ([Human Rights Watch 2025](#)).

In Djibouti, according to article 91 of the Constitution, constitutional amendments must first be approved by an absolute majority in the National Assembly. The amendments then become definitive either after approval by referendum or, if the president decides to dispense with the referendum, after being adopted by a two-thirds majority of the members of the assembly. In this case, the amendments were unanimously approved by the National Assembly at first reading on 26 October 2025 and, upon decision of President Ismaïl Omar Guelleh, proceeded to a second parliamentary vote instead of a referendum. The National Assembly readopted the amendments unanimously on 2 November, and the president promulgated them on 6 November 2025 ([Osman 2025](#); [Republic of Djibouti 2025](#)). In a context where the ruling coalition holds 58 of the 65 seats and effectively controls the entirety of the National Assembly following the main opposition's boycott of the previous elections, unanimity was easily reached.

In Nicaragua, the Constitution distinguishes between "partial" and "total" constitutional reforms. A total reform may be initiated by half plus one of the members of the National Assembly. Once approved by two-thirds of the total membership of the National Assembly, a constituent assembly responsible for drafting and approving the new constitution must be convened. Partial reforms, by contrast, may be initiated by the president or by one-third of the members

of the National Assembly. Such reforms must be discussed in two legislative sessions and require approval by 60 percent of the deputies. Even though the 2025 constitutional reform amended 148 out of 198 provisions and eliminated 37 altogether ([Chamorro 2025](#)), President Ortega introduced the reforms under the partial procedure, hence avoiding the requirement to establish a constituent assembly. These reforms were passed unanimously by a National Assembly dominated by Ortega's Sandinista National Liberation Front at first reading in November 2024 and at second reading on 30 January 2025, before entering into force on 18 February 2025 ([Republic of Nicaragua 2025](#)).

In El Salvador, while article 248 of the Constitution originally required the approval of two successive legislatures (one for adoption and one for ratification) for constitutional amendments, in 2024, the Nuevas Ideas ruling party, led by President Nayib Bukele, introduced an amendment to article 248 allowing a single legislature to do so ([Olmedo 2025](#)). In July 2025, the Legislative Assembly was therefore able to adopt and ratify controversial amendments introduced by Nuevas Ideas in a process that remarkably lasted just under four hours ([Asamblea Legislativa 2025](#); [Legislative Assembly of El Salvador 2025](#); [Olmedo 2025](#)). Once again, the required three-quarters majority to ratify amendments that were approved within the same legislature was easily reached, with 57 deputies in favor and only 3 opposed.

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In Guinea, although President Doumbouya organized a referendum to adopt a new constitution, marking the end of the transition from military rule ([Republic of Guinea 2025](#)), it happened in a context where the opposition—including suspended and exiled parties—boycotted the vote, arguing that political restrictions created an uneven playing field. The referendum results announced by the authorities were also largely disputed ([International IDEA 2025](#)). While Doumbouya did not exercise direct control over the constitution-making process, formally leaving the fate of the new constitution to the electorate, the conditions under which the vote took place suggest that he nonetheless exerted indirect influence over the process, shaping the political environment in ways that constrained genuine competition and participation.

5.3. EVADING PRESIDENTIAL TERM LIMITS

In all the cases examined, authorities used constitutional reforms to evade presidential term limits and allow incumbents to extend their stay in office. While often framed in the interest of continuity or stability, evading (or extending) term limits has in the past allowed incumbents to avoid political alternation.

In Guinea, although the presidential term remains renewable only once, the new constitution extends the duration of each term from five to seven years. The authorities justified this extension on economic grounds, citing the need for stability and the desire to reduce political polarization (Fofana 2025; Randrianarimanana 2025). Coupled with the fact that the new constitution omitted any prohibition on transitional leaders to run (section 5.4), this reform extends transitional leader Doumbouya's stay in office after the official end of the transition period.

In Chad, while the original version of the 2023 Constitution provided that "the President of the Republic is elected by direct universal suffrage for a five-year term" and is "eligible for reelection once for a consecutive term," the 2025 amendments provide that "the President of the Republic is elected by direct universal suffrage for a term of seven years." The amendments also provide that the president is eligible for reelection, therefore extending presidential terms from five to seven years and abolishing the maximum of two consecutive terms. This paves the way for the indefinite reelection of incumbent President Itno, consolidating the personalized and dynastic regime of his late father, former President Idriss Déby (Human Rights Watch 2025).

In Djibouti, under the previous article 23 of the Constitution, presidents had to be at least 40 and no more than 75 years old on the date of filing for candidacy. However, as Guelleh is 78 years old at the time of writing, his only option to secure a sixth term was to remove that restriction, which the amendments adopted in November 2025 did precisely by removing the upper age requirement. The revised article 23 allowed Guelleh to run, and win, the April 2026 presidential elections—despite his earlier assurances in the media that he would not seek reelection (BBC Afrique 2022)—and opened the door for his indefinite reelection (Le Monde Afrique 2025; Al Jazeera 2026).

In Nicaragua, in addition to establishing the notion of co-presidency (see 5.4: Restricting Electoral Competition), the new article 135

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retroactively extends the terms of co-presidents Ortega and Rosario Murillo from five to six years.

In El Salvador, the Supreme Court's Constitutional Chamber ruled in 2021 that consecutive reelection was permitted for sitting presidents, despite constitutional provisions that then prohibited it, allowing President Bukele to run in the 2024 presidential elections and secure a second term ([Inter-American Commission on Human Rights 2025](#)). However, while the Constitutional Chamber's ruling allowed Bukele to run for a consecutive term, he was still barred from running for a third term. In addition to extending presidential terms from five to six years, the 2025 amendments filled that gap by removing article 152(1), which prohibited candidacy for anyone "who has filled the Presidency of the Republic for more than six months, consecutive or not, during the period immediately prior to or within the last six months prior to the beginning of the presidential period," effectively removing any term limit for presidents. This paves the way for Bukele to run for a third term in the 2027 presidential election and be reelected indefinitely. Importantly, this amendment runs counter to article 258 of the Constitution, which provides that "under no circumstances, may the articles of this Constitution, which refer ... to the principle that a President cannot succeed himself [*alternabilidad*], be amended."

5.4. RESTRICTING ELECTORAL COMPETITION

The reforms have also tilted the electoral playing field in favor of the incumbent by reengineering the rules governing presidential candidate eligibility (Chad, Djibouti, Guinea) or those governing presidential elections.

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Starting with Guinea, by remaining silent on the issue, the new constitution superseded article 46 of the Transitional Charter, which had prohibited transitional leaders from running in national and local elections organized to mark the end of the transition, including presidential elections ([Republic of Guinea 2021, 2024](#)). This omission paved the way for Doumbouya to submit his candidacy in November 2025 and win the (highly contested) December 2025 presidential election.

In Chad, President Itno was appointed as president of the MPS, the ruling party, in January 2025, in violation of article 77 of the 2023 Constitution, which prohibited presidents from engaging in partisan

activities. However, the amendments adopted in October 2025 lifted this prohibition, thereby allowing presidential leadership of political parties ([Leubnoudji Tah 2025](#)). While it is not unusual for a president to be affiliated with or even lead a political party, in Chad's context, where the presidency already exercises a strong grip on power, leadership of the MPS may provide Itno with additional access to political resources and organizational leverage, potentially further tilting the electoral playing field and making it even more difficult for opposition candidates to compete in upcoming presidential elections.

In Djibouti, the new article 23 adds another criterion for presidential candidates: namely, they must have "resided [in the country] continuously for at least five years on the date of filing their candidacy, except in the case of a mission carried out on behalf of the State or an international organization." At a time when the opposition is facing unprecedented obstacles—including forced exile, repression, and arbitrary party dissolutions—leaving the few remaining dissenting voices largely confined to the Djiboutian diaspora, barring exiled opposition figures from running for office further reduces the chances for meaningful opposition against Guelleh in future elections ([Osman 2025](#)).

In Nicaragua, the new article 133 establishes the notion of co-presidency, whereby the presidency is to be composed of a male co-president and a female co-president elected by universal, equal, direct, free, and secret suffrage. This institutional design facilitated the elevation of Murillo, the former vice president and wife of President Ortega, as co-president alongside him. In addition, whereas under the previous framework the vice president was elected jointly with the president, the revised constitution grants the co-presidents the authority to appoint vice presidents without a separate electoral process, enabling them to choose loyal successors, such as their own children, and retain direct control over who would assume the presidency if either co-president were unable to serve ([Chamorro 2025](#)).

In El Salvador, the amendments abolish the second round of presidential elections under article 80, meaning that presidential candidates with the most votes in the first round would be elected even if they do not secure a 50-percent-plus-one-vote majority. This undermines the possibility of opposition parties consolidating their support in a runoff, once again favoring the incumbent. The amendments also synchronize elections for the president, the legislature, and municipalities, which, arguably, could further

advantage Bukele's ruling party and remove the promotion or support for presidential reelection as grounds for loss of citizenship rights under article 75, reducing legal barriers to openly campaigning for Bukele's reelection.

5.5. WEAKENING CHECKS ON PRESIDENTIAL POWERS

Constitutional reforms have also strengthened the ability of already powerful heads of state—Guelleh, Doumbouya, and Ortega–Murillo—to operate with fewer constraints on their powers.

In Djibouti, Guinea, and Nicaragua, the constitutional reforms have also strengthened the ability of already powerful heads of state—Guelleh, Doumbouya, and Ortega–Murillo—to operate with fewer constraints on their powers.

In Guinea, the new constitution grants former presidents both civil and criminal immunity for acts performed in the exercise of their duties, thereby insulating Doumbouya from judicial scrutiny once he leaves office and raising concerns about the risk of impunity. It also establishes a new Senate to complement the National Assembly, one-third of whose members are to be appointed directly by the president, and which cannot be dissolved. This creates a loyal bloc within the legislature capable of influencing or blocking legislative initiatives based on the interests of the presidency.

In Nicaragua, the legislative and judicial branches (now referred to as bodies or institutions instead—*órganos*) are no longer considered equal and independent, but are rather subordinate to the executive branch. In fact, under the new article 8, “The people exercise the power of the state through the Presidency of the Republic, which directs the Government and coordinates the legislative, judicial and electoral, public administration oversight bodies, as well as the autonomous entities.” This coordination role is also reiterated in the new article 132, which stipulates that the presidency “coordinates the legislative, judicial, electoral, control and oversight, regional and municipal institutions.” This effectively consolidates state power in the Ortega–Murillo co-presidency, deepening its dominance over the other branches.

In Djibouti, the constitutional revision amended articles 93 and 94 of the Constitution to remove the requirement of a popular referendum for the adoption of a new Constitution. In a context where the president and the ruling coalition exercise strong control over the National Assembly, this change strengthens the ability of Guelleh

and the parliamentary majority to steer controversial constitutional changes without popular approval.

5.6. CONCLUSION

Amid broader processes of democratic backsliding and authoritarian consolidation observed across the cases examined, the constitutional reforms presented in this chapter cumulatively contribute to dismantling the pillars of constitutional governance by preserving the personal rule of incumbents, thereby undermining prospects for democratic renewal.

Incumbents and their parliamentary majorities have leveraged their control over constitution-making processes to remain in and consolidate power by relying on several strategies—evading or extending presidential term limits, reengineering the rules governing presidential candidate eligibility and presidential elections, and weakening checks on presidential powers.

In Guinea, such measures opened the door for transitional leader Doumbouya to run and win in the December 2025 elections and be granted greater influence over the legislative branch while being insulated from judicial scrutiny after leaving office. In Chad, Itno will be able to run indefinitely—and potentially with more political resources—consolidating the personalized and dynastic regime of his late father. In Djibouti, Guelleh secured another term and will be able to run in future presidential elections with an opposition less likely to compete. In Nicaragua, the amendments extended the terms of Ortega and Murillo, now co-presidents, while granting them the power to appoint their loyal successor and subordinating the judicial and legislative branches to their co-presidency. In El Salvador, despite potential constitutional challenges to the amendment extending his term, Bukele will be able to seek another term with no restriction on his reelection and with more favorable rules in place governing future presidential elections.

These developments raise the question of whether constitutions can truly serve as safeguards against the abusive power ambitions of incumbents and about what kind of constitutional mechanisms could help prevent such abuses, ensuring effective checks and balances and genuine alternation of power. As similar reforms continue to emerge in 2026, the issue remains both timely and pressing.

The constitutional reforms presented in this chapter cumulatively contribute to dismantling the pillars of constitutional governance by preserving the personal rule of incumbents, thereby undermining prospects for democratic renewal.

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Chapter 6

STRUCTURAL RECONFIGURATION OF CONSTITUTIONAL FREE-SPEECH RIGHTS IN PAKISTAN AND SRI LANKA

Eva Montero Ibarra

6.1. INTRODUCTION

Over the past two decades, social media platforms have transformed public discourse by expanding its scale, accelerating its pace, and amplifying its reach, while also emerging as central intermediaries of speech in the public sphere. This new communicative environment has generated both significant opportunities and serious challenges.

Throughout 2025, many jurisdictions continued, and in some cases intensified, the implementation of regulatory frameworks aimed at addressing online harms. In some cases, these frameworks appear to have substantially reconfigured the boundaries of freedom of expression in the digital environment. This chapter examines two such cases in which online regulatory frameworks arguably amount to something far more consequential than ordinary regulatory intervention. Framed as ordinary legislation and regulatory governance, these interventions have the potential to reshape, or even dismantle, traditional understandings of the scope and limits of fundamental civil liberties, including freedom of expression, without formally altering the constitutional text.

Using Pakistan and Sri Lanka as case studies, the chapter illustrates this broader trend through two core areas of regulation affecting freedom of speech: (a) the expansive criminalization of online expression through the creation of new, exclusively digital speech offenses; and (b) the reconfiguration of platform liability regimes toward increasingly interventionist and punitive models of state

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control. It then contrasts these online regulatory frameworks with their offline counterparts, showing that the former impose much more stringent constraints and risk falling short of established constitutional and international human rights standards. Together, these cases suggest that the regulation of the digital public sphere has the potential to restructure our understanding of freedom of expression and become a central site of contemporary constitutional transformation.

The chapter then situates these trends within a broader comparative context, drawing parallels with similar legislative drift in other jurisdictions. Crucially, these trends are not limited to the region of South Asia but are also present in multiple jurisdictions around the globe. The chapter ends by highlighting some encouraging developments.

6.2. ONLINE REALITIES, OFFLINE CONSTITUTIONAL FRAMEWORKS

Most contemporary constitutions were born before the online revolution or were somewhat dismissive of it. Constitutional doctrine evolved in a context where media systems were organized around identifiable publishers and broadcasters, which acted as filters for the production and distribution of information, where the state's regulatory role was directed primarily at traditional media institutions, and the scale and speed of communications were limited by physical infrastructure ([Chemerinsky 2025](#)).

Certain transformations, particularly those that fundamentally alter the conditions under which rights are exercised, place significant strain on existing constitutional frameworks and their modes of implementation.

Constitutions are made to endure. However, certain transformations, particularly those that fundamentally alter the conditions under which rights are exercised, place significant strain on existing constitutional frameworks and their modes of implementation. The technological revolution and the emergence of a digital public sphere represent precisely such a moment. The Internet has not merely extended existing forms of communication but fundamentally altered them ([Chemerinsky 2025](#)). This transformation is characterized by two interrelated features: (a) the scale and immediacy of communication, particularly user-generated content not filtered by traditional gatekeepers such as the press ([Dahlgren 2005](#)); and (b) the emergence of privately controlled infrastructures, such as social media platforms, which structure public discourse through algorithms ([van Dijck et al. 2018](#)).

The scale and immediacy of communication have expanded opportunities for participation but also introduced significant challenges. For example, due to the increased accessibility and permanence of information, removing harmful or misleading content is becoming increasingly difficult, if not impossible (Metzger 2007). Additionally, the global nature of digital communication allows information flows to transcend state control.

With the emergence of private actors as intermediaries of public discourse, social media platforms serve as key infrastructure through which individuals form and express opinions, encounter information, and engage in debate (Jørgensen 2019). The filtering power of traditional media institutions has diminished, shifting from a system structured around gatekeepers to one organized around communication networks (Castells 2009). Platforms shape, through norms and algorithms, the discourse that guides the actions of social actors, such as individuals and institutions (Castells 2009). Furthermore, countries are turning to private actors to enforce speech norms through content moderation, giving them challenging responsibilities that make thorough rights-based evaluation difficult for content moderators.⁸ In that sense, social media platforms increasingly perform the functions traditionally associated with the public sector (Jørgensen 2021). However, when privately owned, they are ultimately governed by shareholder interests and revenue generation rather than the public good. This creates a fundamental tension: the spaces in which core democratic rights are exercised are controlled by actors that are neither democratically elected nor always directly bound by human rights obligations (Jørgensen 2019). This radically different communication environment generates problems at a scale that traditional constitutional doctrines did not anticipate.

It is against this backdrop that the following case studies must be understood. The chapter examines two primary examples, Pakistan and Sri Lanka, focusing on two core areas of regulation affecting the right to freedom of expression. The first is the expansive and disproportionate criminalization of online expression through the creation of new, exclusively digital speech offenses. The case studies analyze how these offenses are structured, paying particular attention to the types of speech they criminalize, whether they require intent, and the harms they are designed to address. The second is the reconfiguration of so-called platform liability regimes toward

The spaces in which core democratic rights are exercised are controlled by actors that are neither democratically elected nor always directly bound by human rights obligations.

⁸ See, for example, the United Kingdom's 2023 Online Safety Act in Europe, Australia's 2021 Online Safety Act in Oceania, and India's 2025 amendments to its Information Technology Rules in Asia.

increasingly interventionist and punitive models of state control. Platform liability refers to the legal responsibility placed on online services, such as social media platforms, for the content posted or shared by their users. It can comprise legal obligations on online platforms to monitor, remove, or otherwise control user-generated content, and civil or criminal liability for noncompliance. While there is ongoing debate under international human rights law about the permissibility of holding intermediaries criminally liable for user content ([Webb et al. 2024](#)), the feasibility of such obligations, the proportionality of sanctions, and the incentives they create provide a useful framework for assessing whether these regimes protect or undermine rights.

The chapter then contrasts these online regulatory frameworks with their offline counterparts, showing how the former impose arguably more stringent constraints on the same fundamental right and potentially fall short of established constitutional and international human rights standards. Together, these cases illustrate how the regulation of the digital public sphere has the potential to restructure our understanding of freedom of expression and become a central site of contemporary constitutional transformation.

6.3. PAKISTAN

Pakistan's 2016 Prevention of Electronic Crimes Act (PECA), significantly expanded by 2025 amendments, is a paradigmatic example of an interventionist and punitive state-centric model of digital speech regulation.

Pakistan's 2016 Prevention of Electronic Crimes Act (PECA), significantly expanded by 2025 amendments, is a paradigmatic example of an interventionist and punitive state-centric model of digital speech regulation ([Human Rights Watch 2026](#)). Even before the 2025 amendments, PECA was characterized as a legal instrument for the institutionalization of censorship and the consolidation of state control over speech ([Khan 2024](#)). Pakistan's 2025 PECA amendments were passed through parliament by the center-right coalition government led by Prime Minister Shehbaz Sharif through a highly contentious and accelerated legislative process, triggering nationwide protests by journalists, civil society groups, and opposition parties, many of whom denounced the reforms as an attack on freedom of expression and a tool to suppress dissent ([News International 2025](#)). The framework combines broad, vaguely defined speech offenses with a coercive platform liability regime, empowering authorities to remove content and compel intermediaries to comply with limited judicial oversight. In practice, it exposes both individuals and platforms to significant legal risk,

creating an environment in which political dissent, journalism, and ordinary expression may be increasingly surveilled and suppressed.

6.3.1. Expansive and Disproportionate Criminalization of Online Expression

The 2016 version of PECA already criminalized certain forms of online speech through broadly defined provisions such as section 20 (offenses against dignity), grounded in ambiguous notions of harm. However, the introduction of section 26A (false information) through the 2025 amendments marks a qualitative shift in the regulation of online speech in Pakistan. Section 26A further expands liability by criminalizing the dissemination of information deemed false where it may cause “fear” or “unrest,” without requiring proof of actual harm to any particular person. In doing so, it detaches criminal liability from concrete harm and extends it to speech based solely on its perceived falsity and potential effects, significantly expanding the scope of punishable expression.

This expansion is further reinforced by the introduction of the notion of “aspersions” (section 2[iii][a]), defined as the spread of false and harmful information damaging reputation. This concept now extends to aspersions against any person, including members of the judiciary, the armed forces, parliament, and provincial assemblies (section 2R[1][h]). Crucially, public authorities, including political institutions and the armed forces, are now explicitly included as potential victims of these speech-related offenses. At the same time, the framework attaches severe penalties to these offenses, often combining fines with prison sentences of up to three years. Taken together, these provisions have had immediate and tangible consequences. Human Rights Watch (2026) reports that 689 cases were registered under PECA between January and August 2025, including dozens involving journalists.

6.3.2. Platform Liability Framework

PECA established in 2016 the requirement to comply with government orders without the protection of intermediary “safe harbor” rules. Safe harbor is a legal rule that shields platforms from being held responsible for what users post so long as they follow specified procedures, typically including responding to takedown requests. In practice, a lack of safe harbor rules means that platforms must remove or restrict content when instructed to do so by authorities and may face sanctions if they fail to do so, even where the illegality of the content is unclear.

The 2025 amendments significantly tighten this framework, increasing both the scope of obligations and the consequences of noncompliance. Under section 37, platforms must now comply with removal and blocking orders issued by the Pakistan Telecommunication Authority (PTA). The PTA's chairman and members are all appointed by the executive (section 8) and are bound by the government's policy directives. Hence, the PTA lacks guarantees of independence (Butt et al. 2022). The 2025 amendments introduce mandatory registration requirements (section 2B) and further expand the scope of intermediaries subject to regulation (section 2, as amended). Noncompliant platforms face severe consequences, including legal action, blocking of access for users (to reach specific content, accounts, or entire platforms) (section 37), or restrictions and operational shutdowns for failure to meet registration requirements (section 2B), amounting to effective expulsion from the market.

The 2025 amendments also expand the regulatory ecosystem through the creation of the Social Media Protection and Regulatory Authority, alongside social media tribunals, establishing a parallel adjudicatory structure outside the ordinary courts. In practice, this produces a dual system: while the criminal liability of users remains formally within the criminal courts, platform regulation and content governance are primarily handled by administrative and quasi-judicial bodies. As a result, the most consequential decisions regarding the visibility and removal of speech are therefore displaced from the judiciary to executive-controlled institutions.

This framework not only displaces relevant decision-making on the legality of speech to platforms, private entities that often face less scrutiny than public institutions, but also generates strong incentives for overcompliance and over-removal.⁹ The result is an opaque system in which platforms are structurally incentivized to remove lawful speech and to adopt increasingly restrictive moderation practices to avoid confrontation with the state.

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⁹ See, for example, how similar arguments have been raised by reference to the UK's comparable yet milder 2023 Online Safety Act by Ellen Judson, Beatriz Kira, and Jeffrey W. Howard, "The Bypass Strategy: Platforms, the Online Safety Act and the Future of Online Speech," *Journal of Media Law* 16, no. 2 (2024): 336–57, <https://doi.org/10.1080/17577632.2024.2361524>. To learn more about the phenomenon of proxy censorship and how governments attack free speech by exploiting "weak" links in the online communication chain (such as platforms) rather than speakers themselves, see Seth F. Kreimer, "Censorship by Proxy: The First Amendment, Internet Intermediaries, and the Problem of the Weakest Link," *University of Pennsylvania Law Review* 155, no. 11 (2006), <https://ssrn.com/abstract=948226>.

6.3.3. Comparison with Offline Speech and International Standards

Pakistan's offline criminal law regulates speech through distinct offenses, such as defamation, incitement, and criminal intimidation, each generally anchored in identifiable harms to individuals or public order. These provisions typically require intent or a clear likelihood of harm. They are subject to judicial interpretation and proportionality constraints, providing at least a formal framework of legal safeguards.

By contrast, PECA departs from this structure in several respects, criminalizing mere “false” information, lowering the threshold for intervention by focusing on potential rather than demonstrable harm, and extending protection beyond individuals to state institutions, thereby exposing political speech to heightened scrutiny ([Webb et al. 2024](#)). Although Pakistani constitutional jurisprudence on freedom of expression has developed unevenly ([AGHS Legal Aid Cell n.d.](#)), this approach sits uneasily with the particular importance the Supreme Court has afforded to political speech in cases such as *Pakistan Broadcasters Association v. Pakistan Electronic Media Regulatory Authority*.¹⁰ At the same time, the amendments shift responsibility for enforcement away from the courts and onto private entities, with platforms required to remove content under conditions of legal uncertainty and significant sanctions. As a result, PECA reconfigures the online speech regulatory framework into a broader, more indeterminate, and more coercive system, affording less protection to online speech than to its offline counterpart. In doing so, it has the potential to lower the standards of protection associated with freedom of expression under article 19 of the Constitution.

This divergence becomes even more pronounced when assessed against international human rights standards, particularly article 19 of the International Covenant on Civil and Political Rights (ICCPR). Restrictions on speech must be clearly defined, pursue a legitimate aim, and be strictly necessary (see [United Nations Human Rights Committee 2011](#)). Although Pakistan's offline framework has been criticized for being overly broad in this regard, PECA exacerbates these concerns by relying on vague categories, lowering the harm threshold, extending protection to state institutions, enabling content restrictions without prior judicial oversight, and creating hostile conditions for platforms that incentivize over-removal of content. As a result, the framework risks failing all three parts of the test.

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¹⁰ *Pakistan Broadcasters Association v. Pakistan Electronic Media Regulatory Authority* (PLD 2016 SC 692).

Sri Lanka's OSA combines an even more expansive and punitive framework for speech-related offenses than its Pakistani counterpart, with a formally less intrusive, yet functionally comparable, system of platform regulation.

6.4. SRI LANKA

Sri Lanka's Online Safety Act (OSA) was passed in January 2024 under the previous conservative United National Party-led administration of President Ranil Wickremesinghe, on the grounds that existing legal frameworks were inadequate to address digital harms. The act was adopted following intense domestic and international backlash, including protests by opposition parties, journalists, human rights organizations ([OHCHR 2023](#); [Human Rights Watch 2025](#)), human rights defenders ([Srinivasan 2025](#)), and legal practitioners ([International Commission of Jurists 2025](#)), who warned that the legislation could be used to stifle political dissent and restrict democratic debate online ([Hattotuwa 2025](#)), protected under article 14(1)(a) of the Constitution and international law. Despite preelection promises to revise or repeal the act, the current left-wing administration of President Anura Kumara Dissanayake continued its implementation throughout 2025. Sri Lanka's OSA combines an even more expansive and punitive framework for speech-related offenses than its Pakistani counterpart, with a formally less intrusive, yet functionally comparable, system of platform regulation.

6.4.1. Expansive and Disproportionate Criminalization of Online Expression

The OSA establishes broad and indeterminate online speech criminal offenses, structured around the umbrella category of "prohibited statements" and the subcategory of "false statements." The central offense of "communication of false statements" (section 12) proscribes speech that poses a threat to national security, public health, or public order, or that promotes "ill-will" between groups, punishable by up to five years' imprisonment. This provision functions as the anchor for a wider set of offenses, including the communication of false statements likely to provoke rioting (section 14), outrage religious feelings (section 16), or induce offenses against the state or public tranquility (section 19).

Rather than requiring demonstrable or imminent harm, the act lowers the threshold by focusing on potential harms. In doing so, it substantially broadens the scope of punishable expression. As in Pakistan, these provisions rely on vague and open-ended concepts. However, the Sri Lankan framework goes further by significantly expanding the range of potential harms that may trigger criminal liability.

The breadth of these offenses raises serious concerns about selective enforcement and their broader chilling effects on

public discourse (see [Bisarya and Rogers 2023](#)). As noted by the International Commission of Jurists (2025) and the United Nations special rapporteur on the protection and promotion of freedom of opinion and expression (United Nations 2023; also see [Freedom House 2025](#)), the act creates a framework that can be used to target journalists, political opponents, and civil society actors, particularly where speech challenges official narratives. These concerns are not merely hypothetical. In January 2025, a court issued a gag order under the OSA against the online media outlet News Center, prohibiting it from publishing allegedly false or defamatory statements concerning Hiru ([Freedom House 2025](#)), a politically connected media group ([Media Ownership Monitor n.d.](#)). Although the order was later overturned on appeal, the case illustrates the ease with which the act can be used to restrict speech critical of the government or state actors, the very type of political speech that warrants the highest level of protection in international law (United Nations Special Rapporteur on the Protection and Promotion of Freedom of Opinion and Expression et al. 2021; Milanovic and Webb 2024). More broadly, the significance of such cases extends beyond their immediate outcome: the mere possibility of legal action, and even the existence of such provisions, can function as powerful deterrents, discouraging journalists and other actors from engaging in critical expression.

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6.4.2. Platform Liability Framework

The OSA complements its criminal regime with a restrictive, state-led, centralized system of platform regulation, anchored in the creation of the Online Safety Commission (OSC). The members of the commission are appointed by the president, subject to approval by the Constitutional Council (section 5).

The OSC is endowed with extensive powers. Under section 11, it may issue directives to individuals, Internet service providers, and intermediaries; order the removal of content or disable access to content; investigate suspected offenses; issue binding codes of practice; and require platform registration. These powers operate through a quasi-notice-and-takedown system that, while appearing milder in comparison with its Pakistani counterpart, is very similar in its operation. Complaints may be submitted by individuals to the commission (section 23), which can order removal within 24 hours and, in cases of noncompliance, direct intermediaries to disable access. Notably, judicial oversight is optional rather than mandatory, as the commission may act without prior court authorization. Additionally, the act grants broad investigative powers to commission-appointed “experts” (section 33), including the

ability to search premises, access data, and examine individuals, raising significant privacy concerns. These powers are reinforced by immunity provisions (section 45) shielding the commission and its agents for actions taken “in good faith,” further weakening accountability.

The framework further extends to systemic platform control through the designation of “declared online locations” (section 28). This mechanism allows the commission to identify online locations that have repeatedly hosted “prohibited statements,” triggering obligations to restrict access and prohibiting their promotion or financial support, backed by severe penalties. Although formally framed as content-based regulation, the breadth of the concept of “online location” means that, in practice, these measures may apply to entire platform domains rather than discrete pieces of content. As a result, while the act does not explicitly authorize platform bans, it potentially creates the legal conditions for functionally equivalent outcomes (Liyanarachchi 2024).

The overall effect is a stark shift from judicial to administrative control over speech, with platforms acting as extensions of the state’s enforcement apparatus.

While the act formally provides a limited safe harbor (section 27), this is conditional on strict compliance with commission directives and codes of practice. In practice, this creates a system of coercive co-regulation, where platforms face strong incentives to over-remove content proactively to avoid liability. The overall effect is a stark shift from judicial to administrative control over speech, with platforms acting as extensions of the state’s enforcement apparatus (Global Network Initiative 2024).

6.4.3. Comparison with Offline Speech and International Standards

Sri Lanka’s offline legal framework already regulates certain forms of harmful speech through offenses such as defamation, incitement, and religious insult. However, the categories of speech captured by these offenses remain relatively narrow, typically requiring intent or a clear connection to public harm and remaining subject to judicial interpretation. By contrast, the OSA collapses these distinctions into a broad category of “false statements,” tied to potential harm and applied across a wide range of expression.

Despite Sri Lankan authorities historically engaging in restrictive practices in the offline sphere, constitutional doctrine has remained protective of the core features of freedom of expression. The OSA represents a qualitative jump from offline speech offenses, marking a significant departure from established constitutional principles. In

the landmark case *Channa Pieris v. Attorney General*,¹¹ the Supreme Court emphasized that even ideas widely considered false must remain protected in order for truth to emerge, reflecting a robust understanding of freedom of expression. Similarly, in *Deshapriya v. Municipal Council, Nuwara Eliya*,¹² the court underscored the importance of protecting political dissent in a democratic society. The OSA appears to stand in tension with this jurisprudence by treating falsity as a basis for criminal liability and exposing political speech to heightened restriction.

From an international law perspective, the act raises serious concerns under article 19 of the ICCPR (OHCHR 2023). As outlined above, restrictions on speech must be clearly defined, pursue a legitimate aim, and be necessary and proportionate. The OSA's vague terminology arguably fails the requirement of legality, and its reliance on criminal sanctions and administrative enforcement has the potential to undermine necessity and proportionality. Moreover, it creates conditions that incentivize platforms to over-remove content, potentially resulting in the erasure of lawful speech at scale.

6.5. CONCLUSION

Legislators across jurisdictions appear to be increasingly subjecting online expression to more stringent forms of regulation through both expanded criminal liability and punitive platform governance regimes. While the structural features of the digital environment, particularly amplification, scale, and speed, may justify some degree of differentiation and robust forms of regulation, the examples studied in this chapter show that certain jurisdictions may have gone too far. Rather than adapting existing standards, they seem to mark a qualitative rupture with established constitutional and international human rights law standards regarding freedom of expression.

Given the new informational paradigm, it is crucial to question whether the same substantive standards should apply equally to offline and online speech, or whether the distinct features of the digital communication environment, and the increasing role of private intermediaries within it, justify the development of new standards and doctrines (see Müller 2025).

While the structural features of the digital environment, particularly amplification, scale, and speed, may justify some degree of differentiation and robust forms of regulation, the examples studied in this chapter show that certain jurisdictions may have gone too far.

¹¹ *Channa Pieris v. Attorney General* [1994] 1 Sri LR 1.

¹² *Deshapriya v. Municipal Council, Nuwara Eliya* [1995] 1 Sri LR 362.

If the task were merely to extend existing offline limits on speech into the digital sphere, little of constitutional significance would follow: the exercise would amount to straightforward transposition rather than substantive transformation. However, this is not the path many jurisdictions, including the ones explored in the chapter, are taking. Instead, legislators around the globe are creating distinct regulatory regimes for offline and online speech and treating the features of the online public sphere as sufficient justification for notably more stringent regulation. Concerns about the online sphere, such as the threat of misinformation to sustained democratic governance, have been invoked to justify these increasingly punitive and expansive regulatory frameworks for online speech. While these concerns are undeniably reasonable, they are increasingly used to legitimize regulatory responses that risk undermining the very democratic values they seek to protect.

This shift has profound implications. Packaged as ordinary legislation, these interventions are reshaping the institutional conditions under which speech is exercised in the digital public sphere without formally altering the constitutional text. As such, the developments analyzed in this chapter are best understood not as incremental regulatory change but as a form of constitutional transformation.

While Pakistan and Sri Lanka provide particularly stark examples, similar dynamics can be observed in jurisdictions all around the globe.

Importantly, this trend is not limited to the region of South Asia. While Pakistan and Sri Lanka provide particularly stark examples, similar dynamics can be observed in jurisdictions all around the globe. The United Kingdom's 2023 Online Safety Act, for instance, illustrates how good-faith legislators can sometimes produce frameworks dismissive of human rights approaches ([Bechtold 2024](#)). Through a combination of broadly framed offenses and a framework of platform governance that encourages over-removal ([Judson et al. 2024](#)), the United Kingdom model suggests there may be a global trend toward more restrictive standards of online speech.

At the same time, it is important to recognize that the governance of the digital public sphere presents genuinely difficult and highly technical challenges. Legislatures often have to respond to real risks that are not easily addressed through existing legal frameworks. This chapter does not dismiss these regulatory efforts; instead, it highlights their constitutional stakes and aims to encourage a more deliberate and principled approach.

Encouragingly, some jurisdictions have begun to engage more directly with the need to rethink the relationship between rights and

the digital environment. Brazil's 2014 Civil Rights Framework for the Internet (Marco Civil da Internet), often described as a "Digital Bill of Rights," represents one such attempt (Müller 2025). By explicitly recognizing the distinct features of the online sphere while grounding regulation in constitutional principles, it reflects a more transparent and democratically grounded effort to adapt fundamental rights to the digital age. While far from perfect, it illustrates that alternative regulatory paths are possible.

If the digital public sphere is to remain compatible with democratic values, regulation must be guided by clear standards, robust safeguards, and a conscious awareness that what is at stake is not merely policy design but the future shape of constitutional rights. Without such an approach, the risk is not only overregulation but the gradual erosion of the very freedoms that regulation is intended to protect.

If the digital public sphere is to remain compatible with democratic values, regulation must be guided by clear standards, robust safeguards, and a conscious awareness that what is at stake is not merely policy design but the future shape of constitutional rights.

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The International IDEA Annual Review of Constitution-Building examines global constitutional reform efforts around the world. The 2025 review covers cases from Africa, Asia, Latin America, the Middle East, and the Pacific, highlighting the challenges facing democratic constitutionalism amid political transitions, polarization, and weakening constitutional safeguards. Topics include constitutional reform processes in Bangladesh, Ghana, and Palestine; political transitions in Bangladesh and Syria; Gen Z mobilization and its constitutional implications in Nepal and Madagascar; barriers to constitutional change in Fiji and The Gambia; the use of constitutional reform to entrench personalized rule in Chad, Djibouti, El Salvador, Guinea, and Nicaragua; and the impact of digital speech regulation on freedom of expression in Pakistan and Sri Lanka. While the global picture remains troubling, the report highlights the importance of inclusive constitution-building processes, broad political agreement, and effective safeguards against the concentration of power, particularly at a time of growing polarization and pressure on constitutional rights.

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