

Constitutional Governance: From Compliance to Constitutional Stewardship

The role of a Governance Committee in the sports governance architecture

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Introduction

Over the past three years, I have conducted a series of interviews and engaged in lengthy discussions with football administrators across South Africa to better understand the governance and administrative capacity required to manage football as a modern sports institution. These engagements have also provided an opportunity to reflect on the numerous governance frameworks available internationally and to consider which of them are genuinely suited to the particular character, structure and realities of a sporting organisation such as the South African Football Association.

The descriptive model of the Governance Committee developed in this article is therefore not conceived in isolation. It is informed by these conversations with practitioners, by the constitutional work undertaken in developing the governance frameworks for other sporting federations, and by the evolution of FIFA's own governance architecture since 2016. It is an attempt to draw these strands together into a more coherent conception of governance — one that moves beyond narrow legal compliance and recognises governance as the protection of an institution's constitutional, ethical, democratic and philosophical foundations.

The article consequently asks a broader question: What should a Governance Committee actually do if its purpose is to protect the integrity and sustainability of a sports organisation, rather than simply to administer a set of rules?

There is a tendency within sports organisations to regard a Governance Committee as another committee in a long list of committees: a body that considers compliance questions, checks eligibility, reviews documents and occasionally advises the executive. That understanding is just too narrow.

A properly constituted Governance Committee is one of the most important institutional safeguards in a modern sports organisation. Its purpose is not simply to determine whether a particular decision complies with a particular rule. Its deeper purpose is to protect the governance system itself — the constitutional architecture, distribution of power, institutional independence, ethical foundations and democratic legitimacy upon which the organisation depends.

This distinction becomes especially important in South Africa, where sports organisations are increasingly expected to demonstrate not merely administrative competence, but credible systems of accountability, transparency, ethical leadership and democratic governance.

The question, therefore, is not simply *what does a Governance Committee do?* The more important question is: *what is the Governance Committee there to protect?*

My answer is that it is there to protect the integrity of the institution against the gradual erosion of the principles upon which that institution was founded.

That proposition lies at the heart of the constitutional and governance work I have undertaken in recent years, including the development of constitutional frameworks for other sporting codes. It also builds upon the framework I articulated during my appearance on the Robert Marawa Show on 27 August 2026, where I described governance development as a layered process beginning well before one reaches the political or administrative questions that usually dominate constitutional debates.

A constitution does not begin with politics

One of the most persistent mistakes in constitutional development is to begin with politics:

- Who has the votes?
- Who occupies the Presidency?
- What powers does the current leadership want?
- What problem does the organisation want to solve today?
- Which faction is likely to benefit?

These are political questions. They may be relevant to constitutional development, but they should not be its foundation.

A constitution should not be written around the personality of the person currently occupying the highest office. Nor should it be repeatedly amended to accommodate the preferences, ambitions or perceived vulnerabilities of a particular leadership.

That is how constitutions become personalised. And once a constitution begins to reflect the personality of its leader rather than the principles of the institution, constitutionalism begins to give way to constitutionalism in appearance only.

The constitutional framework I have previously articulated consists of interconnected layers:

Philosophical → Moral → Ethical → Constitutional → Political → Executive → Administration

The order matters. The political layer should not dictate the philosophical layer. The executive should not dictate the constitution. Administration should not determine governance. And the personality of an incumbent should certainly not determine the enduring architecture of the institution. The layers are not seven unrelated compartments. They form a hierarchy of institutional reasoning.

1. The philosophical layer: What is the institution for?

Every constitution ultimately rests upon a philosophical proposition about the organisation itself.

- Why does it exist?
- Whom does it serve?
- Where does legitimate authority come from?
- What conception of human dignity, participation, equality, justice and collective endeavour informs its existence?

In sport, these questions are sometimes dismissed as abstract. They are not. If a sports federation exists to serve its members, develop athletes and advance the sport, then its governance structures must reflect that purpose.

If democratic participation is part of its institutional philosophy, then members cannot become merely spectators of decisions made by a small executive. If fairness is a foundational value of sport, then fairness must also inform the governance of the organisation.

This is where Aristotle's conception of the telos — the purpose or end toward which an institution is directed — becomes useful.

A constitution should help the organisation become what it is supposed to be. The constitution is therefore not merely a manual for distributing offices. It is the institutional expression of the organisation's purpose.

2. The moral layer: What ought the institution to stand for?

Philosophy asks what an institution is and what it is for. Morality asks a different question: **What ought it to do?** This introduces concepts such as justice, fairness, equality, dignity, honesty and responsibility.

A constitution may technically permit something that is morally questionable. That distinction matters. The legitimacy of governance cannot always be reduced to the question: “Can we legally do this?” A better question is: **“Is this consistent with the values that justify our institution's existence?”** This is one of the reasons constitutions should not be drafted merely by asking what powers leaders want to possess.

Power must be subjected to moral purpose. The governing body must continually ask whether its decisions strengthen or diminish the institution's moral legitimacy.

3. The ethical layer: How should power be exercised?

Ethics takes the question further. If morality concerns what is right, ethics concerns the standards by which conduct is judged. This is particularly important because governance is ultimately about the exercise of power. A person may have the legal power to make a decision and nevertheless exercise that power improperly. This is why modern governance frameworks emphasise ethical and effective leadership.

South Africa's King V, which replaced King IV and became applicable for financial years beginning on or after 1 January 2026, places ethical and effective leadership at the centre of governance.

The principle is particularly relevant to sporting organisations. A sports leader should not ask merely: *“Do I have the power to do this?”* The better question is: *“Would a responsible steward of this institution use the power in this way?”*

That is the difference between power as entitlement and power as stewardship.

4. The constitutional layer: How do we restrain power?

Only after the philosophical, moral and ethical foundations have been considered should we arrive at the constitution itself. These principles form the **basic structure** of the constitution.

The constitution translates principles into institutional architecture. It answers:

- Who possesses authority?
- From where does that authority derive?
- What are its limits?
- Who appoints whom?
- Who can remove whom?
- Who interprets the rules?
- Who resolves disputes?
- Who conducts elections?
- Who controls the finances?
- Who supervises management?
- Who holds the executive accountable?
- What powers belong exclusively to Congress or the General Assembly?
- What powers must remain institutionally independent?

This is where the principle of **separation of powers** becomes indispensable. The constitutional architecture developed in governance work deliberately distinguishes between:

- **Congress** — democratic and legislative authority;
- **the NEC** — strategic executive authority;
- **Management** — administrative and operational authority;
- **Independent Constitutional Bodies** — oversight and assurance;
- **Judicial Bodies** — adjudicative authority.

That separation is not bureaucratic decoration. It is a defence against institutional capture. No single organ should simultaneously make the rules, administer the rules, interpret the rules and adjudicate disputes concerning its own conduct.

The Governance Committee and the Legal Committee are not the same thing

This is where the distinction in a constitutional model becomes particularly important. A **Legal Committee** and a **Governance Committee** may work closely together, but they perform fundamentally different functions in a sports organisation:

The Legal Committee asks questions such as:

- What does the law mean?

- What does the Constitution provide?
- What are the organisation's legal obligations?
- What legal risks arise from a proposed decision?
- How should contracts, regulations or legal proceedings be handled?
- Is the organisation complying with applicable legislation?

The Governance Committee asks broader institutional questions:

- Is the constitutional architecture working?
- Are powers properly distributed?
- Are checks and balances functioning?
- Is the organisation being governed in accordance with its founding principles?
- Is there an appropriate separation between governance and management?



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- Are independent institutions genuinely independent?
- Are conflicts of interest appropriately managed?
- Is the organisation's electoral system credible?
- Does the constitution adequately prevent concentration of power?
- Is the organisation's governance framework evolving with contemporary standards?
- Are amendments strengthening the institution or merely strengthening those currently in power?

The Legal Committee protects the organisation from **legal error**. The Governance Committee protects the organisation from **governance failure**.

The distinction can be expressed simply:

The Legal Committee asks whether something is lawful. The Governance Committee asks whether the institution is being governed properly.

The two questions overlap, but they are not interchangeable.

A decision can be legally permissible and still be poor governance. Conversely, good governance must obviously operate within the law. The relationship should therefore be complementary rather than competitive.

The Governance Committee is the custodian of institutional architecture

A Governance Committee should therefore have a standing responsibility to examine whether the organisation's constitutional architecture remains fit for purpose. This includes constitutional review and reform, governance policies, institutional independence, conflicts of interest, election governance, ethical governance structures, accountability mechanisms and the relationship between the various organs of the organisation.

This is consistent with international football practice. FIFA's Governance Committee was established as a body dealing with and advising the executive on all FIFA governance matters. Its functions have included monitoring elections, eligibility and admissibility of candidates, conflicts of interest, governance reforms and compliance with the FIFA governance framework.

Importantly, FIFA's experience demonstrates why governance oversight cannot be reduced to legal interpretation. The FIFA Governance Committee has considered issues including election monitoring, eligibility standards, political neutrality, government interference, gender representation and governance reform.

These are fundamentally questions about the **health of the institution**.

5. The political layer: Politics must operate within the Constitution

Politics is inevitable in sport. Anyone who has worked in sports governance knows this. There are competing interests, constituencies, personalities, ambitions and ideas about the future. The answer is not to eliminate politics. The answer is to constitutionalise politics. Politics must therefore operate within rules that prevent political power from becoming absolute.

This is one of the great achievements of constitutional democracy: it accepts that people will compete for power but creates institutional boundaries around that competition.

The danger begins when politics moves in the opposite direction – when political interests reshape the constitutional framework to serve the political interests of the moment. Then the constitution ceases to be the referee of political competition and becomes one of its instruments.

That is precisely what a Governance Committee should be designed to prevent.

6. The executive layer: The constitution must survive its leaders

The NEC or Board is necessary; Strong leadership is necessary; Strategic direction is necessary. But the executive is a constitutional organ, not the constitution itself. This distinction is essential:

- A leader is temporary.
- The institution should endure.
- A President may serve four years, eight years or even longer depending on the constitution. The organisation may exist for fifty or a hundred years.

It would therefore be irrational to design the constitution around the requirements of one particular leader. A good constitution should be capable of surviving its founders.

- It should be capable of surviving its strongest President.
- It should be capable of surviving its weakest President.
- It should be capable of surviving political disagreement.
- It should even be capable of surviving leaders who would prefer that it did not constrain them.

That is the real test of constitutional durability.

7. The administrative layer: Governance is not management

The final layer is administration. This is where governance becomes operational:

- Management implements strategy. It administers programmes.
- It manages staff.

- It executes approved policies.
- It keeps the machinery functioning.

But administration should not become a substitute for governance. Nor should management acquire powers merely because it has operational control over information, systems or processes. This distinction is particularly important in sports organisations, where the same individuals can sometimes become deeply embedded in both political and administrative processes. A well-designed constitution establishes boundaries:

- Congress governs the organisation constitutionally.
- The executive governs strategically.
- Management administers operationally.
- Independent bodies provide oversight.
- Judicial bodies adjudicate.

And the Governance Committee helps ensure that these boundaries remain intact.

The basic structure of a sports constitution

This brings us to a proposition that has underpinned much of my constitutional work. Every serious sports constitution should possess a basic structure. The language is familiar from constitutional jurisprudence: there are certain foundational features of a constitutional order that cannot simply be destroyed while claiming that the constitution remains fundamentally the same.

For a sports organisation, that basic structure should ordinarily include:

- 1. Constitutional supremacy:** No office bearer or organ is above the constitution.
- 2. Sovereignty of the membership:** The ultimate authority must remain with the General Assembly or Congress, subject to the constitutional framework.
- 3. Separation of powers:** Legislative, executive, administrative, oversight and adjudicative functions must be appropriately separated.
- 4. Institutional independence:** Electoral, judicial, ethics and oversight bodies must be protected from political interference.
- 5. Democratic participation:** Members must have meaningful opportunities to participate in determining the leadership and direction of the organisation.
- 6. Accountability:** Those entrusted with power must remain answerable to the institution and its membership.

7. **Transparency:** Decisions, finances, elections and governance processes must be sufficiently transparent to permit meaningful accountability.
8. **Ethical leadership:** Office bearers must exercise authority as stewards rather than proprietors.
9. **Equality and fairness:** Comparable members and candidates should be treated consistently.
10. **Checks and balances:** No institution should possess unchecked authority. Power must check power.
11. **Succession and institutional continuity:** The organisation must not depend upon one individual for its survival.
12. **Protection against constitutional capture:** The constitution must contain safeguards against amendments designed principally to concentrate power.

These principles are not just theoretical. They are the structural foundations upon which sustainable governance rests.

International sports governance frameworks similarly emphasise democracy, transparency, integrity, accountability and checks and balances as mechanisms for protecting sports organisations from corruption, wrongdoing and loss of trust.

The greatest constitutional danger: the leader who becomes the constitution

Perhaps the most dangerous development in any organisation is the emergence of a leader whose personality begins to shape the constitution:

- At first, the amendments may appear reasonable.
- A new power is needed because the organisation has become inefficient.
- A new appointment mechanism is required because the existing one is cumbersome.
- A new voting right is introduced for “inclusivity”.
- A new executive power is created to “strengthen accountability”.
- An existing check is removed because it causes “delays”.

Individually, each amendment may appear defensible. But constitutional erosion often occurs incrementally. The cumulative effect can be profound. The constitution begins to resemble its leader. Eventually, the institution is no longer asking: “What does the constitution require of the leader?” The question becomes: “*What does the leader allow the constitution to do?*”

That is a profoundly troubling inversion. The constitution should constrain the office. The office should never become the author of its own constitutional constraints.

Why governance must be bigger than the politics of the day

The contemporary governance environment is constantly changing:

- New legislation emerges.
- International standards evolve.
- Athletes demand greater representation.
- Technology changes transparency and participation.
- Safeguarding becomes more sophisticated.
- Financial risks change.
- Environmental and social responsibilities expand.
- Governance must therefore evolve.

But evolution is not the same as political improvisation. King V's principle-based approach is instructive in this respect. It emphasises ethical and effective leadership while recognising that governance should be adaptable and proportionate rather than reduced to mechanical compliance.

The constitutional task is therefore to distinguish between:

- progressive constitutional development, and
- politically expedient constitutional alteration.

The first strengthens the institution. The second strengthens whoever happens to control the institution at that moment.

A Governance Committee must be able to tell the difference.

The Governance Committee as the institution's conscience

I have deliberately avoided describing the Governance Committee as the “police” of the constitution. That would be too narrow. Nor should it become a parallel executive.

- Its role is closer to being the institutional conscience of the governance system.
- It should be able to ask uncomfortable questions before a crisis occurs.
- It should identify structural weaknesses before they become scandals.
- It should challenge constitutional amendments that create disproportionate concentrations of power.
- It should insist upon independent electoral processes.
- It should examine whether the organisation's governance arrangements remain consistent with its values.

And it should have sufficient independence and authority to tell the executive: *“this may be politically convenient, but it is not good governance”*.

That is precisely why its composition matters. A Governance Committee cannot be genuinely independent if it is merely populated with political loyalists. Nor can it perform its constitutional function if its members believe that their primary responsibility is to protect the interests of the executive that appointed them. Independence is therefore not simply a criterion written into a constitution. It is a culture of institutional courage.

From compliance to constitutional stewardship

The future of sports governance in South Africa requires a movement away from compliance-based thinking. The question should no longer be: *“Have we complied with the rule?”* It should be: *“Have we governed the institution in a manner consistent with its purpose, values and constitutional architecture?”* That is a much higher standard.

- It requires philosophical reflection.
- It requires moral judgement.
- It requires ethical leadership.
- It requires constitutional discipline.
- It requires political maturity.
- It requires executive restraint.
- And it requires administrative professionalism.

That is why I continue to regard the seven-layer model — philosophical, moral, ethical, constitutional, political, executive and administrative — as a useful way of thinking about constitutional development.

Every layer informs the next. But no lower layer should be permitted to destroy the foundations above it. Politics cannot destroy constitutionalism. The executive cannot destroy democratic authority. Administration cannot replace governance. And personalities cannot replace principles.

A constitution should outlive its authors

The ultimate test of a sports constitution is not whether it works for the current leadership. It is whether it will still be considered fair and legitimate by the leadership that comes after them. That is the test of constitutional statesmanship.

A constitution should be written with an awareness that today's majority may become tomorrow's minority; today's President will eventually become a former President; today's executive will eventually hand power to another executive.

The constitution must therefore be designed for the institution we leave behind, not merely the institution we currently control. This is perhaps the most important responsibility of a Governance Committee. It is not simply to interpret governance. It is to protect the possibility of good governance for those who come after us. And that is ultimately the purpose of the progressive governance model that I have sought to develop through the constitutional work and related governance projects.

The objective is not to produce a perfect constitution. No constitution can anticipate every future circumstance. The objective is to build a constitutional system with enough principle, independence, resilience, accountability and institutional memory to withstand circumstances that its authors could never have anticipated.

A good constitution should therefore not ask: *“What does the leader of today need?”* It should ask: *“What must this institution remain, regardless of who leads it tomorrow?”* That is where governance begins. And that is where a genuinely independent and properly conceived Governance Committee finds its *raison d'être*.

A final proposition

Perhaps the most useful way to distinguish governance from law is this:

Law tells an institution what it must not do. Governance asks what kind of institution it ought to become.

The Legal Committee helps ensure that the organisation does not cross the legal boundary. The Governance Committee should help ensure that the organisation does not lose its constitutional, ethical and institutional direction while remaining technically within the law.

The two functions are complementary. Neither is subordinate to the other. And when they work properly together, they create something more important than compliance: institutional integrity. That, ultimately, is the standard to which South African sport should aspire:

- Not constitutions designed around personalities.
- Not governance designed around political expediency.
- Not committees designed merely to process paperwork.

But institutions in which power is constitutionally restrained, leadership is ethically exercised, members remain sovereign, independent bodies remain genuinely independent, and the constitution serves the institution rather than the institution serving those who temporarily control it.

That is the difference between having a constitution and having constitutional governance.

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