

From Contemporary (Semi-Competitive) Authoritarian Regimes to Constitutional
Democracies in Africa: Lessons from The Gambia, Uganda and Zimbabwe

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Abstract

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Africa's political landscape is experiencing a period of flux, with long-standing authoritarian leaders stepping down. This dissertation explores how semi-authoritarian regimes in Africa manage these leadership transitions. Focusing on The Gambia's surprising upset in 2016, Uganda's controversial re-election of President Museveni, and Zimbabwe's Mugabe resignation, the study examines motivations behind holding elections in regimes lacking true democratic features and the potential for these elections to yield unexpected outcomes.

The research tackles four key questions. First, it investigates why authoritarian regimes choose to hold elections despite the inherent risks. Second, it explores the factors that influence regime stability or change. Third, the study examines the role that

constitutions play in facilitating transitions from authoritarianism. Finally, it analyzes the dual role of elections, both legitimizing regimes and potentially leading to their downfall.

The dissertation argues that authoritarian regimes strategically hold elections to bolster their legitimacy but face the risk of opposition mobilization and internal dissent. While these regimes manipulate legal frameworks to maintain control, the very constitutions they exploit can offer avenues for challenges, creating a precarious power balance. The dissertation acknowledges the contingency of electoral processes and examines the diverse outcomes across case studies. It explores how manipulating constitutions and concentrating executive power, as seen in recent Ugandan elections, can impact a regime's longevity.

The concept of 'constitutional authoritarianism' is introduced, arguing that regimes exploiting constitutions for control can be weakened by those very structures. Excessive authoritarian practices within a constitutional framework can backfire by galvanizing opposition movements and fracturing regime support. Employing a socio-legal approach, the research utilizes legal analysis, interviews, and archival research to understand the factors enabling successful transitions from authoritarianism to democracies. It contributes to broader scholarly discussions on competitive authoritarianism or electoral authoritarianism, comparative constitutionalism, the dynamics of elections in semi-authoritarian contexts, democratization and African politics.

Mam Mbye, Mahy and Zaina Mamo Cham. This is for you. I love you!



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Acronyms

ACDEG	African Charter on Democracy, Elections, and Governance
ACHPR	African Charter on Human and Peoples' Rights
APRC	Alliance for Patriotic Re-Orientation and Construction
AU	African Union
EC	Electoral Commission (Uganda)
ECOWAS	Economic Community of West African States
EU	European Union
FDC	Forum for Democratic Change
FPTP	First-Past-the-Post
GPA	Global Political Agreement (Zimbabwe)
GDC	Gambia Democratic Congress
IEC	Independent Electoral Commission (The Gambia)
IEC	Independent Electoral Commission (Uganda)
MDC-M	Movement for Democratic Change (of Oliver Mutambara)
MDC-T	Movement for Democratic Change (of Morgan Tsvangirai)
MDC-N	Movement for Democratic Change (of Welshman Ncube)
NIA	National Intelligence Agency
NRA	National Resistance Army
NRM	National Resistance Movement
PAP	Pan African Parliament
PEA	Presidential Elections Act
PIU	Police Intervention Unit

RECs	Regional Economic Communities
RC	Resistance Councils
SADC	Southern African Development Community
TDA	The Democratic Alliance
UDHR	Universal Declaration of Human Rights
UDP	United Democratic Party
UN	United Nations
ZANU-PF	Zimbabwe's African National Union-Patriotic Front
ZAPU	Zimbabwe African People's Union
ZDF	Zimbabwe Defense Forces
ZEC	Zimbabwe Election Commission
ZDF	Zimbabwe Defense Forces

Chapter One:

Introduction

1.1. Background

2016 and 2017 saw a period of significant change in African leadership, as several long-term authoritarian rulers left office. On December 1, 2016, The Gambia transitioned to democracy after twenty-two years of authoritarian rule by former dictator Yahya Jammeh. The opposition coalition candidate Adama Barrow won the elections.¹ On December 2, 2016, the Independent Electoral Commission (IEC) announced the election winner. Initially, Jammeh accepted the results but reversed his stance a week later, claiming the election was fraudulent and unilaterally nullifying the results.²

Figure 1.1 Image of Yahya Jammeh



Source: Gainako

I have decided today, in good conscience, to relinquish the mantle of leadership of this great nation with infinite gratitude to all Gambians.³

¹ 'Yahya Jammeh loses to Adama Barrow in Gambia election' *Aljazeera* (December 2, 2016).

² 'Yahya Jammeh, Gambian President, Now Refuses to Accept Election Defeat' *New York Times* (December 9, 2016).

³ 'Yahya Jammeh says he will step down in The Gambia' *BBC News*, January 21, 2017.

These were the words of former President Jammeh on January 20, 2017, following a last-minute diplomatic persuasion by the international community.⁴In many African countries, presidential incumbents are not prepared to accept an election defeat thereby, plunging their countries into political crisis and uncertainty.⁵ In the 2016 presidential elections, a unified opposition and massive citizens' movement successfully removed Jammeh from power, ending his 22-year rule.

Less than a year later, on November 21, 2017, across the sub-region, the Speaker of the Zimbabwean Parliament read a statement:

Figure 1.2 Image of Robert Mugabe



Source: NPR

⁴ See, Joint Declaration by the Economic Community of West African States, the African Union and the United Nations on the Political Situation of the Islamic Republic of The Gambia, January 21, 2017.

⁵ Three recent post-election coalitions in Africa are notable. In Kenya, Zimbabwe, and Ivory Coast (Côte d'Ivoire), the elections were marked by violence both during and after the voting process.

I, Robert Gabriel Mugabe, in terms of section 96, sub-section 1 of the Constitution of Zimbabwe, hereby formally tender my resignation as the President of the Republic of Zimbabwe with immediate effect.⁶

The long-standing leader's 37-year rule over the country came to an end. This was mainly due to the army's intervention, forcing Mugabe to step down. The announcement was made as Parliament launched proceedings to impeach the 93-year-old President. Zimbabwe's former Vice President came back to the country to assume the role of interim President, pledging to guide the nation into a "new and unfolding democracy."⁷

The ousting of these two authoritarian leaders, each through distinct methods yet grounded in the principle of constitutionalism, facilitated democratic transitions within their respective nation.

While Uganda continues to grapple with authoritarianism, the developments mentioned have not yet transpired. In the 2016 election, Yoweri Museveni was declared the winner for a fifth consecutive term, extending his 30-year rule.⁸ Attempts to amend the age limit in the Constitution were made, as Museveni's age would have rendered him ineligible to stand in the 2021 presidential election under the current constitutional provisions.⁹

⁶ 'Robert Mugabe's resignation letter in full' *Aljazeera*, November 21, 2017, <http://www.aljazeera.com/news/2017/11/robert-mugabe-resignation-letter-full-171121195448333.html>.

⁷ Angela Dewan, Ewan McKirdy and Dominique Van Heerdeens 'Zimbabwe's Mnangagwa returns to lead nation into 'new democracy' *CNN* (November 22, 2017) <http://www.cnn.com/2017/11/22/africa/zimbabwe-mnangagwa-mugabe-resignation/index.html>.

⁸ Julius Kaka 'Uganda's 2016 Elections: Another Setback for Democracy in Africa' *IPI Global Observatory* (February 24, 2016).

⁹ 'Uganda: Age Limit Bill Now Gazetted' *AllAfrica* (July 3, 2017).

Figure 1.3 Image of Yoweri Museveni



Source: Reuters

The three regimes are mixed regimes- that combine multiparty competition with authoritarian politics. They also share a common past: they are all former British colonies, and The Gambia and Uganda became independent States in the 1960s, while Zimbabwe gained independence from Britain in 1980 marking the end of racial segregation.¹⁰ As Bates points out, when colonizers departed Africa, they arranged their retreat by holding elections.¹¹ Poku and Mdee, in arguing that there is a continuity of the post-colonial era, observed that:¹²

The notion that authoritarianism was appropriate mode of rule were part of the colonial political legacy. Ironically, it was ultimately this curious identity of interest between new elites and the colonial oligarchy which facilitated the peaceful transfer of power to African regimes in most colonial Africa. What emerged from the postcolonial agreement, therefore, was above all an agreement between national elites and the departing colonizer to receive a succession state and maintain it with as much continuity as possible.

As Wakia succinctly puts it:

¹⁰ The Gambia gained independence on February 18, 1965; Uganda gained independence from on October 9, 1962; Southern-Rhodesia gained independence from the British, taking the name Zimbabwe on April 18, 1980.

¹¹ Robert H. Bates, *When Things Fall Apart: State Failure in Late-Century Africa* (2009), p. 34.

¹² Nana K. Poku and Anna Mdee, *Politics in Africa* (2011), p. 22.

We spend time adapting laws received from our colonial master. The new dispensation, a new mentality was buried in the old ways of doing things. Meanwhile, our society was changing, but the change was not reflected in our laws.¹³

In understanding the establishment of democratic trends in Africa, it is important to recognize the significance of colonial legacy in understanding post-independence erosion of democratic institutions.

1.2. Statement of the Problem

“Rule of law” is eroding in many African countries, replaced by “rule by law”.¹⁴ Contemporary authoritarian regimes in Africa present a more complex picture compared to the archetypal one-party states, personal dictatorships, and military juntas that characterized the 1990s. These earlier models have given way to a more fluid and hybrid form of authoritarian rule, often incorporating elements from various models or adapting to contemporary challenges.¹⁵ While a common feature of some African regimes is the presence of a dictator who clings to power through coercion and electoral fraud. however, recently, authoritarian leaders have adopted new strategies to maintain their grip on power. They manipulate legal frameworks, tilting the playing field in their favor. This can involve everything from rigging elections, controlling the judiciary, restrictions on free speech and media access, and weakening of the opposition.¹⁶ A regime can be considered non-democratic if it holds elections for executive and legislative positions, but the ruling party

¹³ Nyo’Wakai, *Under the Broken Scale of Justice: The Law and My Times* (2008), p. 91.

¹⁴ See, Kate Byom ‘African Authoritarianism 2.0’ *Freedom House* (August 1, 2014).

¹⁵ National Research Council, *Democratization in Africa: African Views, African Voices* (1992), p.12.

¹⁶ See Staffan I. Lindberg *Democracy and Elections in Africa* (2006); and Said Adejumobi *Democratic Renewal in Africa: Trends and Discourses* (2015).

never loses.¹⁷ In such a regime, there is essentially no alternation of power, which is a fundamental aspect of a true democracy.¹⁸

The Gambia, Uganda, and Zimbabwe can be categorized as electoral authoritarian regimes according to the classic sense in comparison to other countries like Russia and Singapore, as well as sub-Saharan nations, including Burkina Faso, Cameroon, Chad, Ethiopia, Gabon, Guinea, Mauritania, Tanzania, Togo, and Zambia.¹⁹ Electoral authoritarian regimes maintain a multiparty system and conduct regular elections, but they violate essential liberal democratic principles. In these regimes, elections often serve as tools of authoritarian control rather than upholding democratic standards.²⁰ As Schedler further enumerates, electoral authoritarianism entails “elections [that] are broadly inclusive... as well as minimally pluralistic..., minimally competitive..., and minimally open.”²¹

Freedom House scores and categorization of “not free” demonstrate that authoritarian rule has been the norm with remarkable consistency in The Gambia, Uganda, and Zimbabwe.²² On the Freedom House scale, which ranges from 0 (least free) to 100 (freest), The Gambia had an aggregate of 20,²³ Uganda at 35 and Zimbabwe at 32.²⁴

¹⁷ Adam Przeworski et al. (eds.) *Democracy and Development: Political Institutions and Wellbeing in the World, 1950-1990* (2000), p. 27.

¹⁸ *Id.* For a global account of the history and theory of non-democratic government over the past two centuries, see Avner Markez *Non-Democratic Politics: Authoritarianism, Dictatorship and Democratization* (2017).

¹⁹ Andreas Schedler *Electoral Authoritarianism: The Dynamics of Unfree Competition* (2006), p. 3.

²⁰ *Id.*

²¹ *Id.*, at p. 382.

²² Freedom House, *Freedom in the World* Populists and Autocrats: The Dual Threat to Global Democracy (2017).

²³ Freedom House, *Freedom in the World* 2017, The Gambia.

²⁴ Freedom House, *Freedom in the World* 2017, Zimbabwe.

Schedler notes that “electoral contests are subject to State manipulation so severe, widespread and systematic that they do not qualify as democratic.”²⁵ Elections in semi-competitive authoritarian present a paradox. In some instances, they serve as a catalyst for regime breakdown, unexpectedly ushering in opposition victories. However, in other cases, these elections seem to support the very dictatorships they were supposedly meant to oppose, helping to maintain their continued rule. Illustrative are the Gambian and Ugandan cases. In December 2016, The Gambia witnessed a significant election, where Jammeh, who had committed to indefinite rule (billion years), suffered defeat.²⁶ Over his twenty-two-year rule, Jammeh orchestrated five elections to bolster his regime and legitimize it. Through the use of state power and resources, Jammeh employed various authoritarian tactics to ensure electoral victories, but in the end, he was defeated.²⁷ Even though both incumbents and opposition candidates actively campaign in authoritarian elections, there are occasions when the opposition achieves an unexpected victory, which can pave the way for a democratic transition.

Most semi-competitive authoritarian regimes in Sub-Saharan Africa have managed to stay in power. Uganda is a case in point. Earlier in February 2016 in Uganda, the incumbent authoritarian leader of 31 years won the third general elections since the transition to a multiparty system in 2005.²⁸ It speaks to the general norm in authoritarian setting in which incumbents win rather than lose.²⁹ While Uganda holds regular elections,

²⁵ Schedler, *supra* note 19, p.3.

²⁶ ‘Gambia’s Yahya Jammeh ready for “billion-year rule” *BBC* December 12, 2011,

²⁷ *Id.*

²⁸ Julius Kaka ‘Uganda’s 2016 Elections: Another Setback for Democracy in Africa’ *IPI Global Observatory* (February 24, 2016).

²⁹ See Andreas Schedler *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism* (2013).

the public's confidence has diminished gradually, and the incumbent political party and president have maintained authority since 1986.³⁰ What may explain the variance found?

While constitutions in authoritarian regimes are viewed as “window-dressing” or “shams”, this may not always be true. In 2017, the unimaginable happened in Zimbabwe. With an uninterrupted ‘reign’ spanning 37 years, Mugabe resigned from office. Since achieving independence in 1980, Zimbabweans have only known Mugabe as their political leader – first as Prime Minister and later as President.³¹

This came as a consequence of the military *coup d'état*, which was partisan in nature, notwithstanding their efforts to paint it as “benevolent constitutional intervention.” The threat of impeachment of Mugabe came after and not before the coup, which was intended as a fallback: an advantageous constitutionalizing of what had already been achieved through the gun. For these reasons, Sub-Saharan Africa is primed for analysis.

These three varying situations are examples of the murkiness involved in classifying democratization trends in Africa. This paradoxical result unsettles the conceptual routines of electoral authoritarianism. Against this background, the study is interested in how authoritarian leaders lose power. Thus, this study adopts a conceptual strategy: “constitutional authoritarianism,” a term to connote the approach used by these three authoritarian regimes in which the constitution, its subsidiary legislation and safeguarding institutions are used before, during and after elections to advance both the

³⁰ See, Roger Tangri & Andrew M. Mwenda ‘President Museveni and the politics of presidential tenure in Uganda’ (2010) 28(1) *Journal of Contemporary African Studies*, pp. 31-49.

³¹ See, Eldred V. Masunungure ‘Zimbabwe’s militarized, electoral authoritarianism’ (2011) 65(1) *Journal of International Affairs*, pp. 47-64.

interests of the authoritarian government (such as continuing authoritarianism in Uganda) or instrumental in facilitating democratic transitions (e.g., The Gambia and Zimbabwe).

1.3 Objectives of the Research

This study aims to understand why dictators who seem to have the instruments of the State well in hand and influential backers (e.g., the military) bother with (potentially) competitive elections. Why do they honor constitutional obligations such as holding regular elections (illustrating the link between constitutional authoritarianism and elections)? The study further aims to develop an empirical understanding of the remarkable run of defeating dictators both for empirical and theoretical purposes.

This study presents a theoretical framework that sheds light on the ‘eventful developments’ that are part of a gradual transition from constitutional authoritarianism to constitutional democracy. Its primary objective is to make a significant contribution to the ongoing debate on the importance of law in political transitions.

1.5 Research Questions

The fundamental task of this dissertation is to evaluate *How are leaders replaced in contemporary (semi-competitive) authoritarian regimes?* In doing so, this dissertation seeks to answer four specific questions.

First, why do semi-competitive authoritarian regimes hold elections? Second, why do semi-competitive elections not usually produce democratic outcomes? In other words, how do elections produce continuity in authoritarian regime survival? Third, what and who is responsible for dictators losing elections—the dictator or the opposition? Finally, what is the role of constitutions in facilitating rapid transition from authoritarianism to democracy?

1.6 A Multi-Method approach

Considering the multi-disciplinary nature of this research, the study adopted a three-leveled approach. First, a desktop research and review of existing literature on the subject was undertaken followed by qualitative research through key informant interviews which was conducted for certain parts of the study to provide background and contextual information. Lastly, a detailed analysis of the data collected in line with strategies identified was done. The different forms of data are brought together to bear answer to the same research questions and establish a chain of evidence.

1.6.1. Research Design

This research generates and analyzes qualitative data with an in-depth case study on The Gambia, but through a comparative approach of Uganda and Zimbabwe.³² As noted by Yin, a case study is “an empirical inquiry that investigates a contemporary phenomenon (the “case”) in depth and within its real-life context, especially when the boundaries between phenomenon and context may not be clearly evident.”³³ A case study is utilized because the research questions are related to an empirical inquiry of why authoritarian leaders lose power. Understanding why dictators conduct elections and then lose, and through other means require looking at a broad range of data rather than treating outcomes as inevitable.

A. Case Study Selection

The Gambia, Uganda and Zimbabwe provide examples for the study of constitutional and democratic trends in Africa. The case selection combines differences

³² John Gerring *Case-study Research: Principles and Practices* (2007), p. 20. See also Henry E. Brady and David Collier *Rethinking Social Inquiry: Diverse Tools, Shared Standards* (2010).

³³ Robert Yin *Case Study Research: Design and Methods* (2014) p.16.

and similarities that make for instructive comparison. For one thing, The Gambian 2016 election is an anomalous case as it departs from when electorates are just voting without choosing which is encompassed in the denouncement of African elections as “choiceless elections.”³⁴ Specifically, it is an extreme case as it is selected on the dependent variable (outcome of the 2016 election), the purpose of which is to identify the causes of the outcome of the 2016 election.³⁵ In order to determine the causal factors, this study also looks at the 2016 Ugandan elections, which is similar to The Gambia on most dimensions (repressive actions by the two dictators are similar), but vary on one of the main causal variables (the coalition in Uganda disintegrated 3 months before the elections).³⁶

In addition, the Zimbabwean case provides grounds for insights into the use of other constitutional procedures, separate from elections, to defeat an authoritarian leader. This introduces sufficient variation in both the causes and consequences of defeating authoritarian leaders. The cases are not only treated as separate but also potentially related, given diffusion effects.

This selection of the three cases—The Gambia (West Africa), Uganda (East Africa), and Zimbabwe (Southern Africa)—offers a compelling opportunity to explore the removal of an authoritarian leader through constitutional means in diverse African contexts. Focusing on English-speaking, sub-Saharan nations with long-serving presidents (Mugabe, Museveni, and Jammeh) under presidential systems strengthens the comparability.

³⁴ Thandika Mkandawire ‘Crisis management and the making of “Choiceless democracies”’ in Richard Joseph (ed.) *State, Conflict and Democracy in Africa* (1990) pp.119-136.

³⁵ John Gerring and Lee Cojocaru ‘Selecting Cases for Intensive Analysis: A Diversity of Goals and Methods’ (2016) 45(3) *Sociological Methods & Research* pp. 493-525.

³⁶ Nicole Beardsworth ‘Challenging dominance: The Opposition, the Coalition and the 2016 Election in Uganda’ (2016) 10(4) *Journal of Eastern African Studies*, pp. 749-768.

Furthermore, the shared history of the three countries as former British colonies with similar common law frameworks and constitutional backgrounds provides valuable control for legal and institutional factors. This strategic case selection allows for the generation of rich empirical data to contribute to the theoretical development of ‘constitutional authoritarianism.’ The analysis can potentially yield valuable insights applicable to other authoritarian regimes in Africa and beyond. Further comparison is offered in table 1 below.

Table 1.1 Case studies: Central characteristics

Case study	Population	Constitution	State structure	Political system	Size
The Gambia	2, 705, 992	1997	Unitary republic	Presidential	10, 689 km ²
Uganda	47,249,585	1995	Unitary republic	Presidential	241.6 km ²
Zimbabwe	16,320,537	2013	Unitary republic	Presidential	390.8 km ²

Source: This table was compiled by the author, drawing on statistics from the World Bank (population: 2022) and World Population Review (country size).

B. Fieldwork in The Gambia, Zimbabwe, and Uganda

I conducted fieldwork in The Gambia, Uganda, and Zimbabwe. The qualitative fieldwork was guided and informed by the conceptual and theoretical frameworks of the study.³⁷ A non-random sampling was utilized to help in developing causal explanations.³⁸ I conducted semi-structured interviews with 30 key informants in The Gambia and 15 in Uganda. These key actors included the political elites: lawyers, judges, and politicians. I also conducted 12 off-the-record conversations and informal interviews in Zimbabwe that have increased my general understanding of the political situation.

³⁷ Yin, *supra* note 72, at 17 on the uses of interviews in social science research. See also Layla Mosley *Interview Research in Political Science* (2013), pp. 9-11.

³⁸ *Id.*, at pp. 18-20; 38-44.

The primary focus of the fieldwork was to explore the local dynamics of authoritarian leaders losing power. Specifically, I investigated the motivations behind dictators holding elections, the factors that can lead to their downfall at the ballot box, and the role that a country's constitution, supporting laws, and institutions play. Specifically, I examined how these elements can facilitate authoritarian control or transition toward democracy.

The interviews were also useful at triangulating with other methods. Interview data were used to “enhance internal validity and external validity of data gathered using other methods.”³⁹ The interview questions were tailored to answer my main research questions (interview guides maybe found in the Appendix). To understand how dictators lose power, I asked questions regarding divergent outcomes of elections, who is responsible for dictators losing elections, and what strategies were developed and used. I also asked to what extent the constitution, other laws and institutions played in ousting a dictator, or is currently playing in consolidating authoritarian power.

C. Qualitative Data Analysis

The data analysis is an integral part of the overall research design and is predominantly informed by the theoretical framework, and the research questions.⁴⁰ This study adopts a “thick” analysis and utilizes a particular type of evidence of process-tracing, textual and field research.⁴¹ The data analysis has two parts:

³⁹ Julia F Lynch ‘Aligning Sampling Strategies with Analytic goals’ in Mosley, supra note 37, p.37.

⁴⁰ The strategy for the data analysis is aimed at addressing the issue of internal validity.

⁴¹ John Gerring *Social Science Methodology: A Unified Framework* (2012), p. 17.

i. Authoritarian Power Dynamics

A desk study mapped theoretical frameworks on elections in authoritarian regimes, outcomes, and the role of constitutional law in both maintaining power and facilitating transitions. Semi-structured interviews and organizational documents provided additional background information.

ii. Context, Mechanisms, and Outcomes

To understand how leaders are replaced in contemporary semi-competitive authoritarian regimes, the study employed process tracing with multiple evidence sources to verify the causal mechanisms. This involved mapping events and mechanisms of change in specific country contexts. Independent variables and contextual conditions (legal framework, authoritarian practices, opposition groups, public opinion, institutions, internet access, diaspora, and donors) were identified through desk studies, media, interviews, and documents. Atlas.ti software facilitated the analysis by creating a case study database for reliability. The qualitative data underwent two phases: thematic coding guided by the theoretical framework and emergent themes from the data, followed by comparisons across participants and thematic categories to draw analytical generalizations. Finally, identified themes were analyzed for patterns and linkages across data sources and methods.

1.7 The Outline of the Dissertation

This dissertation has seven chapters. It commences by establishing the fundamental concepts and outlining the research objectives. Following the literature review in Chapter two, encompassing existing theories on constitutionalism, democracy, and authoritarianism, the research digs deeper into understanding the motivations behind

dictators holding elections. Chapter three explores the reasons and strategies employed by these regimes, drawing upon relevant academic perspectives to substantiate the arguments.

The analysis then shifts to specific case studies, starting with The Gambia in Chapter four. This Chapter provides an overview of Yahya Jammeh's rule, highlighting the mismanagement of power exemplified by the 'anti-Mandinka tirade' and internal party divisions. Subsequently, it contrasts this with the successful strategies employed by the opposition during the election. Chapter Five adopts a comparative approach, examining Uganda as a case of a failed transition and exploring the reasons for divergent outcomes. This is followed by an analysis of Zimbabwe, where a 'coup,' parliamentary impeachment, and subsequent regime change unfolded. Through these comparisons, the Chapter aims to illuminate the factors contributing to stability and instability in semi-competitive authoritarian contexts.

Moving beyond individual cases, Chapter Six makes a unique contribution by unpacking the concept of 'constitutional authoritarianism.' Here, the Chapter not only defines the term but also evaluates existing scholarly discussions and analyzes its key elements. It argues for the use of 'constitutional authoritarianism' over 'authoritarian constitutionalism' and explains its relevance to the research, particularly its role in potential authoritarian regime breakdowns. Finally, Chapter Seven serves as the culmination of the research, summarizing the key findings on how elections, constitutionalism, and other factors influence democratic transitions. The Chapter discusses the broader theoretical contributions the study makes to the understanding of political norms in Africa and research avenues stemming from this work.

Chapter Two:

Constitutionalism, Democracy and Authoritarianism

This Chapter reviews the literature related to key themes explored in this dissertation. Divided into two sections, it first establishes a clear understanding of the central concepts – constitutionalism, democracy, and authoritarianism. The second section then explores how this dissertation contributes to the established body of knowledge, highlighting the unique insights and theoretical advancements it aims to offer.

2.1 Key Organizing Concepts

2.1.1 Constitutionalism

Constitutionalism is a concept that is difficult to define. Constitutional law scholars, political scientists, and other social scientists have had great difficulties defining the concept of constitutionalism. It has been traditionally defined as a legal limitation on governments. Andrews defined it as “limited government,”¹ while Sigmund defines it as “an institutionalized system of effective regularized restraints on governmental action.”² Rosenbaum considered it as “legal limitations placed upon the rightful power of government in its relationship to its citizens.”³

Modern constitutionalism goes beyond the legal limitation of government. Rosenfeld defines it as a “three-faceted concept” based on the limitation of governmental

¹ William G. Andrews *Constitutions and Constitutionalism* (1968) p. 13.

² Paul Sigmund, ‘Carl Friedrich’s contribution to the theory of constitutionalism- Comparative government’ in Javier Couso et al. (eds.) *Constitutionalism* (1979) p.34.

³ Alan S. Rosenbaum *Constitutionalism: The Philosophical Dimension* (1988) p.4.

power, adherence to rule of law, and protection of human rights.⁴ Fombad, one of the leading African constitutionalism scholars gave it a legalistic definition that can be said to:

encompass the idea that a government should not only be sufficiently limited in a way that protects its citizens from arbitrary rule but also that such a government should be able to operate efficiently and in a way that it can be effectively compelled to operate within its constitutional limitations. In other words, constitutionalism combines the idea of a government limited in its actions and accountable to its citizens for its actions.⁵

Thus, Fombad acknowledges that the concept of constitutionalism in the African context emphasizes clear limitations on power and effective mechanisms to enforce these limits.⁶ Some core elements identified by scholars include the recognition and protection of fundamental rights and freedoms, the separation of powers, an independent judiciary for constitutional review, and control over constitutional amendments.⁷

Henkin expands on these principles by identifying nine essential elements, which also include additional elements such as sovereignty of the people with democratic governance, control of the police and civilian control of the military.⁸ His framework adds depth to understanding the comprehensive requirements for constitutional governance.

Constitutional scholars have engaged in differentiating between constitutionalism and constitutions, which are different concepts. Olson defines a democratic constitution as an “act whereby a nation is founded and a legal document resulting from that act.”⁹ The

⁴ Michel Rosenfeld ‘Modern constitutionalism as interplay between identity and diversity’ in Michel Rosenfeld (ed.) *Constitutionalism, Identity, Difference and Legitimacy: Theoretical Perspectives* (1994) pp.3-5.

⁵ Charles M. Fombad ‘Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa’ (2007) 55 (7) *American Journal of Comparative Law*, pp. 1-45.

⁶ See also *id.* for further discussion of the two pillars of constitutionalism.

⁷ Siri Gloppen *South Africa: The Battle Over the Constitution* (1997) pp 23-57.

⁸ Louis Henkin ‘Elements of Constitutionalism, Occasional paper series’ Center for the Study of Human Rights, Columbia University (1994).

⁹ Kevin Olson ‘Paradoxes of Constitutional Democracy’ (2007) 2 (51) *American Journal of Political Science*, pp. 330–343. See also, Tom Ginsburg and Alberto Simpser *Constitutions in Authoritarian Regimes* (2014).

main instrument of constitutionalism is the constitution,¹⁰ satisfying the requirement of limitation on government, emanating from the will of the power, and protecting and promoting human rights.¹¹

Constitution as a frame of government and protection of rights is the original US model transplanted in different parts of the world.¹² Elster has explained that constitution-making occurs in waves and went on to suggest that what we are witnessing is the seventh wave.¹³ He points out that the first wave of modern constitution-making began in the late eighteenth century, between 1780 and 1791, when the constitutions of the United States, Poland and France were written.¹⁴ However, from an African perspective, there are three generations of constitution-building namely: the colonial constitutions; the post-colonial or post-independence constitutions and the post-1990 constitutions.¹⁵

2.1.2 Democracy

Abraham Lincoln referred to democracy as government of the people, by the people, for the people. Democracy is a buzz word that has been subjected to a variety of interpretations.¹⁶ For Dahl, democracy means rule by people.¹⁷ He expands on this literal definition by specifying the requirements of decision-making in a democratic setting

¹⁰ Rosenfeld, *supra* note 4, at 14.

¹¹ Ben O. Nwabueze *Constitutionalism in the Emergent States* (1973) pp. 24-27.

¹² See Ugo mattie 'The New Ethiopian Constitution: First Thoughts on Ethnical Federalism and the Reception of Western Institutions' in Elisabetta Grande *Transplant Innovation and Legal Tradition in the Horn of Africa* (1995).

¹³ Jon Elster 'Forces and Mechanisms in the Constitution-Making Process' (1995) 45 *Duke Law Journal*, pp. 368-376.

¹⁴ *Id.*

¹⁵ For an analysis of the waves of constitution making in Africa, see Charles M. Fombad, 'Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects' (2011) 59 *Buffalo Law Review*, pp. 1007-1108.

¹⁶ Nwabueze, *supra* note 11, at 1.

¹⁷ Robert A. Dahl *Democracy and its Critics* (1989), p. 97.

including effective participation and voting equality at the decisive stage.¹⁸ He argues that the democratic process serves as “the most reliable means for protecting and advancing the good and interests of all persons subject to collective decisions.”¹⁹ Huntington also, following the procedural definition, claims that a political system is said to be democratic to the extent that periodic elections and citizen participation are present in choosing the most powerful decision makers.²⁰ Sanbrook defines democracy as:

A political system characterized by regular and free elections in which politicians organized into political parties compete to form the government, by the right of virtually all adult citizens to vote, and by guarantees of a range of familiar political and civil rights.²¹

This is a minimalist view of democracy, or “formal democracy” premised on multiparty democracy and elections.

Amin also argues that this form of democracy ignores the masses and privileges individual and political rights over collective and socio-economic rights.²² A broader concept includes the values of democracy, institutions, and a range of human rights. This is captured in Amartya Sen’s normative definition that:

We must not identify democracy with majority rule. Democracy has complex demands, which certainly include voting and respect for election results, but it also requires the protection of liberties and freedoms, respect for legal entitlements, and the guaranteeing of free discussion and uncensored distribution of news and fair comment... Democracy is a demanding system, and not just a mechanical condition (like majority rule) taken in isolation.²³

¹⁸ *Id.*, pp. 108-114.

¹⁹ *Id.*, p. 323.

²⁰ Samuel P. Huntington *The Third Wave: Democratization in the Late 20th Century* (1003), p. 7.

²¹ Richard Sandbrook ‘Liberal democracy in Africa: A socialist-revisionist perspective’ (1988) 22(2) *Canadian Journal of African Studies / Revue Canadienne des Études Africaines*, 240-267 at p. 241.

²² Samir Amin ‘The issue of democracy in the contemporary third world,’ in Julius E. Nyang’oro *Discourses on Democracy: Africa in Comparative Perspective* (1996) pp.64-70

²³ Amartya Sen ‘Democracy as a Universal Value’ (1999) 10(3) *Journal of Democracy*, 3-17 at pp. 9 -10.

Such a holistic approach has been adopted by the United Nations (UN) which recognizes democracy based on fundamental and universally accepted principles, including participation, accountability, transparency, rule of law, separation of powers, subsidiarity, equality and freedom of the press.²⁴

The African Charter on Democracy, Elections and Governance (ACDEG)²⁵ also adopts a holistic understanding of democracy as the promotion of democratic institutions, elections, participatory democracy, and through cooperation and exchange of experiences between the States Parties at regional and continental levels.²⁶

Premised on the ideals of constitutionalism and the constitution, democracy is often reduced to elections and multiparty system. Thus, former UN Secretary General, Kofi Annan cautions us that:

Democracy is not just about one day every four or five years when elections are held, but a system of government that respects the separation of powers, fundamental freedoms like the freedom of thought, religion, expression, association and assembly and the rule of law... Any regime that rides roughshod on these principles loses its democratic legitimacy, regardless of whether it initially won an election.²⁷

The question of democracy goes beyond elections and entails democratic principles. Although democracy and elections are not synonymous, elections remain a fundamental component.

2.1.3 Authoritarianism

For the purposes of this study, authoritarianism is defined as:

²⁴ See, Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR).

²⁵ Adopted on January 30, 2007. Came into force on February 15, 2012.

²⁶ Arts. 14 -17 of the African Charter on Democracy, Elections and Governance (2007/2012), ratified by 30 states.

²⁷ Koffi Annan 'Are Elections giving Democracy a Bad Name?' (December 1, 2015) <https://www.kofiannanfoundation.org/supporting-democracy-and-elections-with-integrity/4696/>.

Political systems with limited, not responsible, political pluralism, without elaborate and guiding ideology, but with distinctive mentalities, without extensive nor intensive political mobilization, except at some points in their development, and in which a leader or occasionally a small group exercises power within formally ill-defined limits but actually quite predictable ones.²⁸

Authoritarianism centers on “political elites, popular support, and political mobilization, however limited, exclusionary and restrictive, but above all on specialized political structures and institutions.”²⁹

In the newer literature on authoritarianism, there is no definition of authoritarianism itself; it is rather the category of all regimes that are not democracies. A major implication of this is the increasingly blurred line between authoritarianism and democracy. There is a growing literature on the classification of authoritarian regimes such as hybrid regimes,³⁰ electoral authoritarianism,³¹ and competitive authoritarianism.³²

Under all the understudy three regimes, elections co-exist with weak rule of law and inadequate protection of human rights,³³ and opposition parties can campaign (although on unlevelled playing ground) and there is no massive fraud.³⁴

2.2 Contributions of this Dissertation

This dissertation adopts and expands on the analytical concept of constitutional authoritarianism. According to Lachmayer:

²⁸ Juan J. Linz and Alfred Stepan *Problems of Democratic Transition and Consolidation* (1996), pp. 38-39.

²⁹ Amos Perlmutter *Modern Authoritarianism* (1981) p.3.

³⁰ Larry J Diamond ‘Thinking About Hybrid Regimes’ (2002) 13(2) *Journal of Democracy*, pp. 21-35 (2002).

³¹ Schedler, supra note 19.

³² See, Steven Levitsky and Lucan A. Way ‘Elections without Democracy: The Rise of Competitive Authoritarianism’ (2002) 13(2) *Journal of Democracy*, pp. 51-65.

³³ Diamond, supra note 30, pp. 27-31.

³⁴ Steven Levitsky and Lucan A. Way *Competitive Authoritarianism: Hybrid Regimes After the Cold War* (2010) p. 8,

Constitutional authoritarianism is a conceptual category of authoritarianism, which uses constitutional law (not the normative concept of constitutionalism) to stabilize governments politically and which misuses and distorts certain constitutional institutions (without giving them full powers). It creates the semblance of constitutionalism while undermining the concept.³⁵

Thus, constitutionalism remains a substantial characteristic for (un)democratic regimes which affects the behaviors of institutions and political actors.³⁶

Building on these insights, this dissertation contributes to literatures on contemporary literatures on African politics, elections and democratization, constitutionalism, and authoritarianism.

2.2.1 African Politics, Elections and Democratization

Across Africa, calls for increased openness and democratic governance are steadily rising.³⁷ These demands for change are driven by a combination of internal and external factors, with citizens and activist groups challenging the grip of authoritarian regimes.

On contemporary literature on elections in Africa, Lindberg's *Democracy and Elections in Africa* serves as a comprehensive study of African elections and democratization.³⁸ On the significance of elections, Lindberg argues that repetitive elections lead to democratization in Africa.³⁹ While this may be true, this dissertation is mainly concerned with the overall issue of election and does not go so far as to examine the power of elections in furthering democratization. This dissertation does not share

³⁵Konrad Lachmayer 'Constitutional authoritarianism, not authoritarian constitutionalism!' *Völkerrechtsblog* (August 31, 2017). See also Konrad Lachmayer 'Counter-Developments to Global Constitutionalism' in Martin Belov (ed.) *Global Constitutionalism and Its Challenges to the Westphalian Constitutional Law* (2018) pp. 81–101.

³⁶ See, Mark Tushnet 'Authoritarian Constitutionalism' (2015) 100 *Cornell Law Review* pp. 391-461.

³⁷ National Research Council, *supra* note 15, at 3.

³⁸ Steffan I. Lindberg, *Democracy and Elections in Africa* (2006).

³⁹ *Id.*, at 2-3.

Lindberg's optimistic reasoning that manipulated elections could incite political uprisings, which can reshape the electoral landscape as illustrated in the Ugandan case, rather it looks at The Gambia's 2016 election as a mechanism than a catalyst, to oust a dictator.

Although we are critical of the fallacy of equating elections with democracy, the study acknowledges that elections do matter. As The Gambia departs from notions that African elections are purely ceremonial. Instead, in this scenario, they have functioned as a substantial tool for enacting leadership change and showcasing political determination.⁴⁰ Owing to the stunning opposition party victory in The Gambia, it speaks to Huntington very optimistic declaration that "elections are not only the life of democracy; they are also the death of dictatorship."⁴¹ However, this optimism might be misplaced.

Schedler's pathbreaking study, *Electoral Authoritarianism: The Dynamics of Unfree Competition* provides very useful insights into electoral authoritarianism and serves as groundwork for this study.⁴² However, it does not address under what conditions and what factors might result to an authoritarian leader losing his or her own elections. Thompson and Kuntz made an attempt in examining the conditions under which regimes lose elections, but their focus was specifically on what happens once it is obvious that the opposition is winning an election.⁴³ This dissertation expands on these works especially

⁴⁰ See, Larry Diamond 'The state of democracy in Africa,' paper presented to the conference on: Democratization in Africa: What progress towards institutionalization" (2007) organized by Centre for Democratic Development, Accra, Ghana, 4-6 October.

⁴¹ Samuel P. Huntington *The Third Wave: Democratization in the Late Twentieth Century* (1991), p.174. Some series of stunning opposition victories happened in places such as Chile (1998), Poland (1989), and Nicaragua (1990).

⁴² Schedler, at 19.

⁴³ Mark. R. Thompson and Philipp Kuntz 'After Defeat: When Do Rulers Steal Elections?' as cited in Schedler, supra note 19 at p.113.

within the context of proliferation of new technologies.⁴⁴ Herbst argues that “the massive expansion of the internet, social media, and the mobile revolution” are profound.⁴⁵ The internet is seen not as favorable or unfavorable, but rather a problem to be managed by African leaders.⁴⁶

2.2.2 Constitutionalism and Authoritarianism

This research aligns with the constitutional authoritarianism approach, which examines how constitutions and democratic institutions can be manipulated by authoritarian regimes. This study builds upon this framework by exploring how these very features may also contribute to leader turnover within such regimes. Applying the concept of constitutional authoritarianism to analyze authoritarian leader removal in The Gambia, Uganda, and Zimbabwe offers a fresh perspective on these specific cases. Chapter 6 focuses on this framework and its unique application to the study, building on existing scholarship in these three countries.

a. The Gambia

Following the 2016 Gambian election and eventual departure of Jammeh into exile, the study of constitutionalism and elections in the breakdown of a 22-year authoritarian regime becomes central. In his major work, *The Paradox of Third-Wave Democratization on Africa*, Saine explores the dilemma of third wave of democratization in The Gambia.⁴⁷ On the theme of the military and democratization, Ceesay in *The Military and*

⁴⁴ See for example, Ekaterina Zhuravskaya et al. ‘Political Effects of the Internet and Social Media’ (2020) 12(1) *Annual Review of Economics*; Maggie Dwyer and Thomas Molony (eds.) *Social Media and Politics in Africa: Democracy, Censorship and Security* (2019).

⁴⁵ *Id.* p. xxix.

⁴⁶ *Id.*

⁴⁷ Abdoulaye Saine *The Paradox of Third-wave Democratization in Africa: The Gambia under AFPRC-APRC 1994-2008* (2008) p.5.

Democratization gives an account of the fallacies of the democratization process by the military in post-coup Gambia.⁴⁸

Constitutionalism has attracted relatively little scholarly attention and publication. There is a dearth of published literature on the subject. However, Jammeh⁴⁹ made a serious effort in his book, *The Constitutional Law of The Gambia: 1965-2010*, to look at the issue of constitutional theory and practice in The Gambia.⁵⁰ He gave a historical analysis of constitutional making in The Gambia, and events that shaped the development of the constitutions of the Gambia, from the first Republic in 1970 to the second republican constitution, which came into force in January 1997.⁵¹

While Jammeh's work provides a historical perspective on constitutional development, Nabaneh, Abebe and Sowe's *The Gambia in Transition: Towards a New Constitutional Order* is a diverse collection of timely, rigorous, and insightful essays on human rights, constitutional reform, rule of law and democratic governance.⁵² This groundbreaking Book by a new generation of Gambian and African scholars, primarily legal and political experts, presents a meticulously crafted roadmap for the future of democracy in The Gambia. The text is comprehensive and eloquently written and significantly expands upon existing Political Science and legal literature concerning democratic transitions and constitution-building. While the Book focuses primarily on The Gambia, its comparative political and legal analysis offers valuable insights applicable to other nations grappling with similar challenges.

⁴⁸ See, Ebrima J. Ceesay *The Military and Democratization in The Gambia 1994-2003* (2006)

⁴⁹ Please note. Ousman Jammeh, not the same as former President Jammeh.

⁵⁰ Ousman A.S. Jammeh *The Constitutional Law of The Gambia: 1965-2010* (2012).

⁵¹ *Id.*

⁵² Satang Nabaneh, Adem Abebe and Gaye Sowe, *The Gambia in Transition: Towards a New Constitutional Order* (2022).

However, a crucial gap remains. There exists no comprehensive study that digs into the reasons behind Jammeh's electoral defeat in 2016. This lacuna presents a compelling opportunity for this research to explore the role and impact of constitutionalism and elections in facilitating the breakdown of Jammeh's authoritarian regime.

b. Uganda

Uganda's Museveni and the National Resistance Movement (NRM) came to power in 1986.⁵³ The adoption of the 1995 Constitution of Uganda brought high hopes of return to constitutional order.⁵⁴ The Preamble recalls the dark period of dictatorship and repression of the 1970s and 1980s.⁵⁵ This was followed by the introduction of multiparty politics in 2003.⁵⁶ Until recently, Yoweri Museveni was regarded as the darling of the West and of financial institutions such as the International Monetary Fund (IMF) and the World Bank.⁵⁷ He is now described as "an African success story turning sour."⁵⁸

Oloka-Onyango's *New-Breed Leadership, Conflict, and Reconstruction in the Great Lakes Region of Africa: A Sociopolitical Biography of Uganda's Yoweri Kaguta Museveni* gives insights into the personality better exemplified as the then 'new' breed of African leadership.⁵⁹

⁵³ Aili Mari Tripp 'The Changing Face of Authoritarianism in Africa: The Case of Uganda' (2004) 50(3) *Africa Today* 3-26, pp. 1-7.

⁵⁴ Constitution of the Republic of Uganda 1995.

⁵⁵ Preamble, *Id.*, at p. 21.

⁵⁶ 2005 referendum held on July 28, 2005.

⁵⁷ Joe Oloka-Onyango 'Constitutional Transition in Museveni's Uganda: New Horizons or Another False Start?' (2005) 39(2) *Journal of African Law* 156-172.

⁵⁸ Blake Lambert, 'An "African success story" gone sour' *Salon* (July 6, 2005),

⁵⁹ See Joe Oloka-Onyango 'New-Breed' Leadership, Conflict, and Reconstruction in the Great Lakes Region of Africa: A Sociopolitical Biography of Uganda's Yoweri Kaguta Museveni' (2004) 50(3) *Africa Today* 29-52. Also see Frederick Golooba-Mutebi and Sam Hickey 'The master of institutional multiplicity? The Shifting Politics of Regime Survival, State-building and Democratization in Museveni's Uganda' (2016) 10(4) *Journal of East African Studies*, pp. 601-618.

Museveni is often cited as a disappointing case regarding efforts to abolish constitutional presidential term limits.⁶⁰ In her book *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*, Aili Tripp explores how Uganda, under Museveni's rule since 1986, embodies the complexities of semi-authoritarian regimes. Tripp observes a pattern across Africa since 1990, where nations oscillate between democratic ideals and authoritarian control. She coins the term 'paradoxes of power' to describe the contradictory nature of such regimes, which both uphold civil rights and political liberties while simultaneously restricting them. Tripp suggests that studying Uganda provides insight into semi-authoritarian regimes in general.⁶¹

c. Zimbabwe

With independence in 1980, Zimbabwe began a new era marred by the political and economic inheritance that determined the direction of the country.⁶² With the goal of constitutional reform, a new constitution was adopted in 2013.⁶³

However, Zimbabwe's political evolution since independence is closely linked to the role of Mugabe.⁶⁴ Zimbabwe's first and only leader until now is too important to ignore.⁶⁵ In a dispatch to Washington released by WikiLeaks, the former U.S. Ambassador to Zimbabwe ascribes the regime's durability and the ruling party, African National Union Patriotic Front (ZANU-PF), to Mugabe himself. He wrote:

⁶⁰ Charles Fombad and Nathaniel A. Inegbedion 'Presidential Term Limits and their Impact on Constitutionalism in Africa' in Charles Fombad and Christina Murray *Fostering Constitutionalism in Africa* (2010), p.14.

⁶¹ Aili Mari Tripp *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime* (2010). Also see Tom Goodfellow 'Legal Manoeuvres and Violence: Law Making, Protest and Semi-Authoritarianism in Uganda' (2014) 45(4) *Development and Change*, pp. 753-776.

⁶² Jeffrey Herbst *State Politics in Zimbabwe* (1990) p.13.

⁶³ Constitution of Zimbabwe, Amendment No 20 of 2013.

⁶⁴ *Id.*, at 221.

⁶⁵ *Id.*, pp, 234-236.

[President] Robert Mugabe has survived for so long because he is more clever and more ruthless than any other politician in Zimbabwe. To give the devil his due, he is a brilliant tactician and has long thrived on his ability to abruptly change the rules of the game, radicalize the political dynamic and force everyone else to react to his actions.⁶⁶

This characterization underscores the complex dynamics of political longevity and strategy in Zimbabwean politics.

Bratton and Masunungure argued that the “ZANU-PF’s staying power hinges upon a destructive mix of ideology, patronage and violence.”⁶⁷ In maintaining authoritarian rule, Mugabe relied heavily on auxiliary structures to suppress deviant behavior from citizens and the opposition through the military.⁶⁸ The underlying problem was manifested in November 2017 when the military intervened, illustrating that when actors are empowered, they might act against the dictator. This is a clear manifestation of Machiavelli’s warning in *The Prince* when he stated how “rulers rely on the goodwill and fortune of those who have elevated them, and both of these are capricious, unstable things.”⁶⁹ This cautionary tale underscores the intricate balance of power dynamics in authoritarian regimes.

⁶⁶ Emily Smith ‘WikiLeaks: U.S. ambassador on Mugabe “The End is Nigh”’ *CNN* (November 29, 2010).

⁶⁷ Michael Bratton and Eldred Masunungure ‘Zimbabwe’s Long Agony’ (2008) 19 (4) *Journal of Democracy*, pp.41-55. See also Roger Tangri *The Politics of Patronage in Africa* (2005).

⁶⁸ *Id.*, at 41-5; See also, Michael Bratton and Eldred Masunungure “The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010” *DLP* (2011).

⁶⁹ Niccolò Machiavelli *The Prince* (1999) p. 22. (Original work published in 1532).

Chapter Three:

Elections in Semi-Competitive Authoritarian Regimes

Elections play a critical role in democratic societies. As explained by Lindberg, they are crucial “administrative, technical, and political processes essential to the sustenance of democracy.”¹ This is because elections allow people to participate in the selection of their preferred representatives, who are responsible for addressing their needs and interests. In essence, the democratic process entails the election of officials who are accountable to the people who elect them. Therefore, in a functional democracy, elections are the cornerstone of public participation and representation, and determinant of the legitimacy or otherwise of political leaders.

The debate surrounding whether elections stabilize or destabilize dictatorships has long been a topic of interest among political scientists.² Previous research suggests that elections can have two distinct roles in such regimes - one of regime-sustaining and the other of regime-changing.³ As the potential advantages and drawbacks of holding elections are well-established, it is unclear why authoritarian regimes would choose to do so. However, scholars have argued that authoritarian leaders may use elections as a strategic tool to legitimize their rule and create the perception that their regime is complying with

¹ Staffan I. Lindberg, *Democracy and Elections in Africa* (2006).

² See for example, Andreas Schedler *The Politics of Uncertainty: Sustaining and Subverting Electoral Authoritarianism* (2013); Michael Bernhard, Amanda B. Edgell and Staffan I. Lindberg, ‘Institutionalising Electoral Uncertainty and Authoritarian Regime Survival’ (2020) *European Journal of Political Research* 465-487.

³ Lindberg, *supra* note 1, at 1.

democratic norms.⁴ Although electoral authoritarianism has become a common phenomenon, there is still no agreement on the impact of multiparty elections on the resilience of authoritarian regimes.

Building on this previous research on the role of elections in authoritarian regimes, this dissertation takes a closer look at the concept of legitimation and argues that elections serve as a means for authoritarian regimes to legitimize their rule. Thus, elections serve as a tool for authoritarian regimes to enhance their legitimacy both domestically and internationally and portray themselves as responsive to the will of the people.⁵ The debate over the impact of multiparty elections on the durability of authoritarian regimes is an ongoing one, and by exploring the ways in which elections are used for legitimation, this dissertation seeks to contribute to this discourse.

To advance the idea of legitimation, it is argued that authoritarian regimes opt for elections for legitimizing the political system and to be seen by the international community as complying with minimum standards of democratic norms. The focus of this dissertation is on three hybrid regimes: The Gambia, Uganda, and Zimbabwe. These regimes have been selected because they all have a long history of electoral authoritarianism and have all held multiple multiparty elections in recent years.

In the sections that follow, I begin with a brief review of the literature on the role of elections in nondemocratic settings. The second section of this Chapter focuses on the theory of legitimation, which argues that authoritarian leaders hold elections as a means of

⁴ Michael Bernhard, Amanda B. Edgell and Staffan I. Lindberg, 'Institutionalising Electoral Uncertainty and Authoritarian Regime Survival' (2020) *European Journal of Political Research*, p. 467.

⁵ See Lee Morgenbesser 'Elections in Hybrid Regimes: Conceptual Stretching Revived' (2014) 62(1) *Political Studies*, pp. 21-36,

legitimizing their rule. I review the literature on this topic and highlight the key arguments that have been put forward. Drawing on this literature, it is argued that the theory of legitimation offers a new perspective on the role of elections in authoritarian regimes. Rather than only seeing elections as a tool for democratization⁶ or as a source of instability, this theory views them as a means of consolidating authoritarian rule. By providing a veneer of legitimacy, elections enable authoritarian leaders to maintain their grip on power and to resist challenges to their authority.

3.1 The Phenomenon of Personal Rule in Sub-Saharan Africa

Following the end of the Cold War, liberal democracy emerged as the prevailing political model. It emphasized the importance of popular consent and the rule of law, which were safeguarded by the Constitution.⁷ Today, these principles remain vital sources of power legitimation, even in times of ‘democratic recession.’⁸

In the 2016 *IEC v Mhlophe and Others*⁹ case, Justice Jafta of the South African Constitutional Court on the importance of elections and the right to vote in the South African constitutional system stated that:

These rights¹⁰ constitute a cornerstone of our democratic order and are pivotal to the creation and legitimacy of a government formed after elections. Without them democracy itself cannot exist. This is because they are the lifeblood of a democratic government and therefore a government whose existence does not flow from the exercise of these rights cannot be described as a government of and by the people. It cannot be said that such government is based on the will of the people.¹¹

⁶ See for example, Adam Przeworski *Democracy and Market: Political and Economic Reforms in Eastern Europe and Latin America* (1991) and Juan J. Linz *The Breakdown of Democratic Regimes* (1978).

⁷ Larry Diamond and Mark F Plattner (eds.) *Democracy in Decline?* (2015).

⁸ Steven Levitsky and Lucan A Way, ‘The Myth of Democratic Recession’ in Larry Diamond and Marc F Plattner (eds), *Democracy in Decline?* (2015).

⁹ [2016] ZACC 15.

¹⁰ The right to free, fair and regular elections for legislative bodies established by the Constitution; the right of every adult citizen to vote in such elections and the right to stand for public office (para 141).

¹¹ Supra note 9, para 142.

Justice Jafta emphasized that the right to vote is not only important for the individual citizen, but also for the overall functioning of a democratic government. Elections provide the means for the people to have a say in the formation of their governments and ensure that those in power are accountable to them.

In Sub-Saharan Africa, there is a recurring phenomenon known as ‘personal rule’, where leaders have complete control over the State and its resources, and institutions are weak or non-existent. This type of governance is characterized by a concentration of power in the hands of one individual, often facilitated by the suppression of opposition and the media, lack of rule of law, and disregard for democratic principles and values. Personal rule has been seen in many African countries, with leaders often using it to entrench their power and enrich themselves and their inner circle at the expense of the wider population.

Herbst’s book, *States and Power in Africa*, provides a comprehensive analysis of the continuities and changes in African governance and state power from pre-colonial to post-colonial and post-Cold War periods.¹² The central argument of the book is that the weakness of the state in Africa is a result of the failure of colonial powers to establish strong and effective institutions of governance. The Berlin Conference, which occurred in 1884-1885, marked the start of the ‘Scramble for Africa’ and led to the loss of African autonomy and self-governance.¹³ Only Ethiopia and Liberia remained as sovereign States on the continent.

¹² Jeffrey Herbst *States and Power in Africa: Comparative Lessons in Authority and Control* (2014).

¹³ Yolanda K. Spies ‘African Diplomacy’ in Gordon Martel (ed.) *The Encyclopedia of Diplomacy* (2018) pp. 1-14.

During the colonial era, African countries were ruled with the sole aim of extracting wealth through domination and imperialism.¹⁴ Mamdani argues that the end of slavery resulted in Europeans needing to colonize Africa in order to support the growth of cotton for “the Satanic Mills.”¹⁵ The colonizers did not believe that the African population was capable of rational or intelligent decision-making and therefore denied them any say in their own governance. However, after World War II, European powers realized that they could no longer maintain indefinite control over their colonies.¹⁶ As a result, most African countries were hastily granted representative government in the decade leading up to independence, primarily in former French and British territories. A decade later, in the mid 1950s, decolonization began, and African nations regained their independence from their former European colonial rulers.¹⁷

¹⁴ Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (1996). See also Crawford Young and Thomas Turner, *The Rise and Decline of the Zairian State* (1985), p. 36.

¹⁵ *Id.* p.37.

¹⁶ Herbst, *supra* note 12, p.90.

¹⁷ Adeyeri, Olusegun and Adejuwon, Kehinde David ‘The Implications of British Colonial Economic Policies on Nigeria’s Development’ (2012) (1)(2) *International Journal of Advanced Research in Management and Social Sciences* 1-16, p. 5.

Table 2.1 Africa's Decolonization¹⁸

Year of Decolonization	Country	Former Colonial Power
1956	Sudan	United Kingdom/Egypt
1957	Ghana	United Kingdom
1958	Guinea	France
1960	Nigeria	United Kingdom
	Somalia	United Kingdom
	Cameroon	France (Germany)
	Benin (Dahomey)	France
	Burkina Faso (Upper Volta)	France
	Chad	France
	Congo-Brazzaville	France
	Côte d'Ivoire	France
	Gabon	France
	Mali	France
	Senegal	France
	Mauritania	France
	Niger	France
	Togo	France
	Central African Republic	France
	Madagascar	France
	Democratic Republic of the Congo (Zaire, Congo)	Belgium
1961	Tanganyika (merged with Zanzibar to form Tanzania in 1964)	United Kingdom (Germany)
	Sierra Leone	United Kingdom
	British Cameroon (split to Cameroon and Nigeria)	United Kingdom
1962	Zambia (Northern Rhodesia)	United Kingdom
	Malawi (Nyasaland)	United Kingdom
	Uganda	United Kingdom
	Rwanda	Belgium (Germany)
	Burundi	Belgium (Germany)
1963	Kenya	United Kingdom
1965	Gambia	United Kingdom
1966	Botswana (Bechuanaland)	United Kingdom
	Lesotho	United Kingdom
1968	Swaziland	United Kingdom
	Mauritius	United Kingdom (France)
	Equatorial Guinea	Spain
1974	Guinea-Bissau	Portugal
1975	Comoros	France
	Angola	Portugal
	Mozambique	Portugal
	São Tomé and Príncipe	Portugal
	Cape Verde	Portugal
1976	Seychelles	United Kingdom
1977	Djibouti (French Somaliland)	France
1980	Zimbabwe (Southern Rhodesia)	United Kingdom (declared by settlers in 1965)
1990	Namibia (South West Africa)	South Africa (Germany)

Source: Freedom House, 2017.

The institutions that were created were primarily designed to serve the interests of the colonial powers, rather than the African people.¹⁹ As a result, when African countries gained independence, they inherited weak and ineffective institutions that were ill-equipped to meet the challenges of governance. Invariably, these governments centralized

¹⁸ For the three countries: Uganda became an independent country in 1962, The Gambia in 1965 and Zimbabwe in 1980.

¹⁹ Mamdani, *supra* note 14.

power and repressed dissent, often using laws enacted by the colonial powers to control the local population and to quell opposition in postcolonial states.

As a response to the weak institutional frameworks inherited from the colonial period, in the post-independence era, many African countries experienced a period of one-party rule, characterized by the consolidation of power in the hands of a single party or leader.²⁰ In the absence of strong institutions, personal rule became the norm, with leaders relying on their personal networks to maintain power. These regimes often relied on dominant-party structures, which were shaped by identity-based divisions and mobilization through patronage networks.²¹

Adejumobi outlines three waves of democratic renewal in Africa.²² The concept of a ‘wave of democratization’ as described by Huntington refers to “a group of transitions from non-democratic regimes to democratic regimes that occur within a specific time frame and that significantly outnumber transitions in the opposite direction.”²³ The first wave of democratic renewal in Africa (1960s) was characterized by political independence as a result of anticolonial struggles.²⁴ Here at this time, independence constitutions were remnants of colonialism. In former British colonies, the executive was divided into two: the Queen of England as head of state and the prime minister being the head of government, which mirrored the Westminster parliamentary system.²⁵ On the other hand, in

²⁰ Henry K Prempeh, ‘Presidential Power in Comparative Perspective: The Puzzling Persistence of Imperial Presidency in Post-Authoritarian Africa’ (2008) 35(4) *Hastings Constitutional Law Quarterly* 795.

²¹ Nicolas Van de Walle ‘Presidentialism and Clientelism in Africa’s Emerging Party Systems’ (2003) 41(2) *The Journal of Modern African Studies*, p.297.

²² Said Adejumobi ‘Democratic renewal in Africa: Trends and lessons learned,’ in Said Adejumobi *Democratic Renewal in Africa: Trends and Discourses* (2015), p.1

²³ Samuel P. Huntington, *The Third Wave: Democratization in the Late 20th Century* (1993) at 15.

²⁴ Adejomobi, *supra* note 22.

²⁵ See Charles M Fombad (ed) *Separation of Powers in African Constitutionalism* (Oxford University Press 2016).

Francophone Africa, however, the independence constitutions followed the French constitutional model by institutionalizing a strong executive president, specifically the 1958 French Constitution.²⁶

The second wave was marked by the introduction of multiparty politics and the shedding of military rule (late 1980s and 1990s).²⁷ During this period, personal rulers in Africa faced challenges as protests emerged driven by both political and economic grievances.

The third wave (1990s and beyond),²⁸ which is often referred to as “Africa’s third liberation”²⁹ encompasses current efforts for democratic change through the reclaiming of “politics and power by the people.”³⁰ Similar to what happened in Europe and Latin America,³¹ this wave presented a significant obstacle to the ambitions of Africa's long-serving leaders. As democratization gained momentum, a new paradigm emerged, the ‘transition paradigm.’³² This approach viewed democracy as a natural consequence of political change in transition countries, achieved through a process of opening, turning and consolidation.

According to this paradigm, the successful implementation of democracy relied more on formal or procedural aspects such as the regular holding of elections, rather than

²⁶ Victor T. Le Vine, ‘The Fall and Rise of Constitutionalism in West Africa’ (1997) 35 *The Journal of Modern African Studies*, pp.181, 184.

²⁷ *Id.*

²⁸ Huntington, *supra* note 23.

²⁹ See Greg Mills and Jeffrey Herbst, *Africa’s Third Liberation* (Penguin Global 2012).

³⁰ Adejomobi, *supra* note 22, at 1.

³¹ Thomas Carothers ‘The End of the Transition Paradigm’ (2002) 13(1) *Journal of Democracy* 5-21. See also Stephan Haggard and Robert R. Kaufman, ‘Democratization During the Third Wave’ (2016) 19(1) *Annual Review of Political Science* 125-144; Joe Foweraker and Roman Krznaric ‘The uneven performance of third wave democracies: Electoral politics and imperfect rule in Latin America’ (2002) 44(3) *Latin American Politics and Society*, pp. 29–60.

³² *Id.* p. 6.

substantial factors such as the historical, political or economic context of a country.³³ Thus, from 1990 to 1993, over half of African regimes were compelled by internal and external actors to hold competitive elections, while between 1990 and 2005, term limits were included in 33 African constitutions.³⁴ Therefore, upholding the constitution and protecting political and civil rights became significant elements in the conceptualization and justification of authority. The formalization of political authority was evident in the shift towards non-violent means, instead of relying on force, even among leaders who desired and were able to remain in office beyond their constitutional mandate.

Despite some progress made in the third wave, Diamond's observation highlights the limitations of the third wave of democratization in Africa. He notes that a significant feature of the "late period" of this wave is the rise of regimes that do not fit neatly into the categories of either democratic or authoritarian.³⁵ These hybrid regimes, sometimes referred to as "illiberal democracies" or "electoral authoritarianism," demonstrate that the path towards democratic consolidation in Africa is not a straightforward one.

The Arab Spring, with its citizen-led uprisings challenging entrenched regimes, sparked conversations about new participatory governance models.³⁶ This and the current discussions around evolving forms of democratic movements, particularly in Africa, could point towards a nascent fourth wave of democratization. This potential wave might go beyond traditional models of regime change and emphasize citizen empowerment and participation in shaping new forms of democratic governance.

³³ *Id.*

³⁴ Fareed Zakaria, 'The rise of illiberal democracy' (1997) 76(6) *Foreign Affairs* 22-43.

³⁵ Diamond, *supra* note 30, at 25.

³⁶ Ahmed I. Abushouk 'The Arab Spring: A Fourth Wave of Democratization?' (2016) 25(1) *Digest of Middle East Studies*, pp. 52-69.

3.2 Existing Explanations on Why Dictators Conduct Elections

To better understand this phenomenon in semi-competitive authoritarian regimes, we need to first explore the reasons why such regimes hold elections. Despite their undemocratic nature, virtually all contemporary dictatorships and hybrid regimes hold elections. However, the existing research provides varying explanations and expectations for this behavior. As to why authoritarian regimes hold elections, these reasons can be broadly categorized into three groups: gathering information, managing political elites, and sustaining neo-patrimonialism.³⁷

Firstly, authoritarian regimes may hold elections to gather information about political adversaries. By holding elections, these regimes can gauge the level of opposition support and identify potential threats to their rule. It has been argued that elections can serve as a source of information for authoritarian regimes to identify potential threats to their rule.³⁸ By allowing for a free and open contestation of power, elections provide authoritarian leaders with an opportunity to evaluate the popularity and strength of opposition movements. This can therefore showcase the ruling party's power and popularity while simultaneously highlighting the weakness of its opponents.³⁹

In addition, elections provide valuable information about the distribution of political support across different regions and demographic groups, which can be used to identify areas where regime support is weakest and where more resources need to be allocated to shore up support. As noted by Gandhi and Lust-Okar:

³⁷ See for example, William Muhumuza 'From Fundamental Change to No Change: The NRM and democratization in Uganda' (2009) 41 *The East African Review*, pp. 21-42.

³⁸ Jason Brownlee, *Authoritarianism in an Age of Democratization* (2007).

³⁹ Jennifer Gandhi and Ellen Lust-Okar, 'Elections Under Authoritarianism' (2009) 12 *Annual Review of Political Science* 404- 422, p. 14.

Armed with this information, they may target the latter, punishing them with less government largesse after the election, buying their support, or intimidating them into switching allegiances before the next election or staying at home on election day.⁴⁰

This strategic use of electoral data underscores elections' instrumental role in shaping political strategies and maintaining regime stability.

Secondly, elections can also be used by authoritarian regimes to manage political elites.⁴¹ By holding elections, these regimes can co-opt or neutralize potential challengers within the ruling party or military. This is achieved through various means such as distributing patronage, creating factions within the ruling party, and marginalizing potential rivals. Elections can also provide a platform for political elites to showcase their loyalty and obedience to the regime, which can increase their chances of being promoted to higher positions of power.

Lastly, elections can sustain neopatrimonialism, a system in which political elites and their supporters are rewarded with public resources and state-controlled rents in exchange for political loyalty. It has been argued that neopatrimonialism is connected to Africa's colonial past and the complicated legal systems that exist in many African countries.⁴² In the colonial era, European powers established patron-client relations with local elites, effectively co-opting them into the colonial system. This system persisted after independence and was reinforced by the introduction of Western-style legal and bureaucratic systems, which coexisted with traditional institutions and practices.⁴³ The

⁴⁰ *Id.*, p. 405.

⁴¹ *Id.*

⁴² Michael Bratton and Nicolas Van de Walle 'Neopatrimonial Regimes and Political Transitions in Africa' (1994) 46(4) *World Politics* 453.

⁴³ *Id.*

result was a mixed legal plural system that combined elements of Western-style governance with pre-colonial political structures and practices.

This system is characterized by the blurring of formal and informal power structures, the use of personal networks to secure access to resources and services, and the subordination of public institutions to the interests of the ruling elite. In such a system, elections can serve as a means of consolidating and legitimizing the ruling elite's control over the state, rather than a means of democratization or popular representation. Therefore, by holding elections, authoritarian regimes can create the perception of legitimacy and fairness in the distribution of resources, even if the election outcomes are predetermined or manipulated. This can help maintain support for the regime by creating a sense of accountability and responsiveness to the needs of the electorate.

Overall, while gathering information about political adversaries, managing political elites and sustaining neopatrimonialism are all potential reasons for authoritarian regimes to hold elections, this Chapter argues that the primary motivation for such regimes to do so is to legitimize their rule in the eyes of both domestic and international and regional actors. Based on the case studies of The Gambia, Uganda, and Zimbabwe, I argue that one of the primary motivations for holding elections is to legitimize the existing political system in the eyes of both domestic and international actors. By holding elections, authoritarian regimes can create the perception that they are complying with minimum standards of democratic norms, both domestically and internationally. This, in turn, can enhance the regime's legitimacy and portray the regime as responsive to the will of the people.

However, it is essential to note that these reasons are not incompatible with the idea of legitimation. In fact, authoritarian regimes can accomplish multiple goals

simultaneously by holding elections. Elections can provide information about political opponents and the distribution of support while also legitimizing the regime in the eyes of domestic and international actors. Therefore, multiple motivations may coexist for holding elections in semi-competitive authoritarian regimes.

3.3 Understanding Regime Legitimation - Power, Law and Legitimacy

Regime legitimation refers to the process by which a government gains and maintains the support of its citizens and the international community.⁴⁴ This process is essential for maintaining political stability and legitimacy. Schedler observes that:

By opening the peaks of state power to multiparty elections, electoral authoritarian regimes establish the primacy of democratic legitimation ... [electoral authoritarian] regimes institute the principle of popular consent, even as they subvert it in practice.⁴⁵

This dual nature of electoral authoritarian regimes highlights the tension between formal democratic processes and the realities of authoritarian governance, where legitimacy is sought through elections while actual democratic principles are undermined. Power plays a crucial role in regime legitimation. As Beetham, notes, “historical accounts are significant and contentious precisely because of their relationship to the legitimacy of power in the present.”⁴⁶

In the context of authoritarian regimes, power is often concentrated in the hands of a few individuals or groups, who use various tactics to maintain their hold on power.⁴⁷

⁴⁴ Christian von Soest and Julia Grauvogel ‘How Do Non-Democratic Regimes Claim Legitimacy? Comparative Insights from Post-Soviet Countries’ (2015) 277 GIGA German Institute of Global and Area Studies Working Papers 5.

⁴⁵ Andreas Schedler ‘The Logic of Electoral Authoritarianism’ in Andreas Schedler (ed.) *Electoral Authoritarianism: The Dynamics of Unfree Competition* (2006), p. 13.

⁴⁶ David Beetham, *The Legitimation of Power* (Palgrave Macmillan, 1991), p. 103.

⁴⁷ See generally, Milan W. Svolik, ‘Power Sharing and Leadership Dynamics in Authoritarian Regimes’ (2009) 53(2) *American Journal of Political Science* 477-494.

While authoritarian regimes may resort to various tactics to secure their hold on power, such as repression, propaganda, and manipulation of the electoral process, these tactics can only be effective up to a certain point. In the long run, the ultimate goal of regime legitimation is to gain and maintain legitimacy in the eyes of the governed population. A regime that lacks legitimacy faces the risk of losing its authority and control over the state.

These tactics may include repression, propaganda, and manipulation of the electoral process. However, these tactics can only go so far in securing the legitimacy of a regime. It is argued that legitimacy is the ultimate goal of regime legitimation. Legitimacy will signal the recognition of a government's right to rule by its citizens and the international community, which is essential for maintaining political stability and long-term governance. Without legitimacy, a regime may face significant challenges to its authority and may struggle to maintain power over the long term. According to Beetham, political power can be considered legitimate if it adheres to established norms and values that are recognized by both those in power and those who are subject to it.⁴⁸ This includes adhering to dominant and subordinate norms and being able to provide justification for actions taken. In other words, legitimacy is not simply about the exercise of power, but about how that power is exercised in relation to the norms and values of the society in question.

Legitimacy is a complex concept that encompasses both normative and symbolic dimensions.⁴⁹ On the one hand, it refers to the extent to which a regime's exercise of power is considered justifiable and acceptable based on established norms and values. This normative dimension involves a set of rules and principles that govern the exercise of political power, such as constitutionalism, the rule of law, and respect for human rights.

⁴⁸ Beetham, *supra* note 46.

⁴⁹ See for example, Rodney Barker, *Political Legitimacy and the State* (1990).

On the other hand, legitimacy also has a symbolic dimension that refers to the ways in which power is justified and represented through cultural symbols and practices. This symbolic dimension includes the use of ceremonies, rituals, and symbols to reinforce the legitimacy of those in power, as well as the incorporation of popular beliefs and values into the political system. When a regime is perceived as legitimate, citizens are more likely to accept its authority, comply with its laws and policies, and support its continued existence. Conversely, when a regime lacks legitimacy, citizens are more likely to resist its authority, challenge its legitimacy, and seek to overthrow it.

The prevailing discourse used to be that authoritarian regimes could not acquire legitimacy or did not require it to maintain power. This theory of democratic consolidation, as Przeworski argued, suggests that democratic regimes have a self-reinforcing mechanism of legitimacy.⁵⁰ According to his theory, democracies derive their legitimacy from the fact that they have free and fair elections, and they maintain their legitimacy by holding subsequent free and fair elections. In this sense, the act of holding elections itself is a source of legitimacy for democratic regimes. Przeworski also posited that authoritarian regimes, on the other hand, lack this self-reinforcing mechanism of legitimacy because they do not have free and fair elections. He further contends that authoritarian regimes maintain their grip on power through coercion and repression, rather than legitimacy. This suggests that authoritarian regimes cannot acquire legitimacy because they lack the ability to hold free and fair elections. Without the ability to hold free and fair elections, authoritarian regimes cannot derive legitimacy from the electoral process, and therefore must rely on coercion

⁵⁰ Adam Przeworski *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (1991).

and repression to maintain their hold on power. While Przeworski's theory is persuasive, it does not fully account for the resilience of authoritarian regimes in practice.

In many cases, authoritarian regimes have been able to maintain their hold on power through elections, even if they are not deemed free and fair, as in Uganda. The scope of this research is not to examine whether authoritarian regimes acquire legitimacy through elections, but rather their attempts to do so. The argument being made is that authoritarian regimes make deliberate efforts to create the appearance of legitimacy through various means, such as holding elections and conforming to international norms. The goal of these efforts is to project the image of a legitimate government to both domestic and international audiences, regardless of whether they achieve legitimacy in practice. By examining these attempts, this dissertation seeks to shed light on the ways in which authoritarian regimes operate and maintain power.

The shift in perspective on the acquisition of legitimacy by authoritarian regimes underscores the importance of studying the strategies that such regimes employ to gain legitimacy. One such strategy is the conduct of elections, which is a common tactic used by authoritarian regimes to demonstrate their conformity with established rules and to gain the support of their citizens. The following Section will focus on the domestic context of legitimacy, particularly how authoritarian regimes attempt to legitimize their rule through elections.

3.3.1 Domestic Level Legitimization through Elections and Popular Sovereignty

Dictators conduct elections to ensure legitimacy domestically, as the holding of elections shows that they conform to established rules as well as a shared belief with citizens. Within the domestic context, citizens are the source of legitimacy, and holding

elections is a way to make them believe that those in power have the right to do so. Feigning of conformity refers to the act of pretending to conform without doing so. In the context of authoritarian regimes and elections, feigning of conformity established rules or shared beliefs is evident in dictators holding elections to create the appearance of complying with democratic norms while simultaneously manipulating the electoral process to ensure their continued grip on power. This is often tied to the constitutions of countries, which recognize the principle of popular sovereignty.

For example, the Constitutions of The Gambia, Uganda, and Zimbabwe all state that sovereignty belongs to the people and that the people have the right to choose their leaders through free and fair elections. In Uganda, Article 1 of the 1995 Constitution states that all power belongs to the people, who shall exercise their sovereignty in accordance with the Constitution. Article 59 provides for regular, free, and fair elections, with universal suffrage and a secret ballot. Similarly, in Zimbabwe, Section 3 of the 2013 Constitution provides for the full participation of Zimbabwean citizens in the governance of the country through regular, free, and fair elections. Finally, in The Gambia, Section 1 of the 1997 Constitution states that The Gambia is a sovereign state, and sovereignty resides in the people of The Gambia, from whom all organs of government derive their authority and legitimacy.

In the domestic context, there are two main strands of legitimacy that authoritarian regimes seek to draw upon. The first is based on the constitution of the country. The constitution is often seen as the supreme law of the land, and authoritarian regimes may try to frame their rule as being in line with constitutional provisions, particularly those that relate to the conduct of elections and the peaceful transfer of power. The second strand of

legitimacy in the domestic context comes from the citizens themselves.⁵¹ Citizens may view the government as legitimate if they believe that the regime is responsive to their needs, protects their rights, and provides for their well-being. This strand of legitimacy is often tied to the government's ability to deliver public goods and services, and to its ability to maintain law and order. In the absence of free and fair elections, citizens may still view the government as legitimate if they believe that it is serving their interests.

Former President Robert Mugabe's statement in Zimbabwe's 2013 election exemplifies the two strands of legitimacy: the constitution and citizens. Mugabe declared that his Government was "delivering democracy on a platter. We say take it or leave it, but the people have delivered democracy."⁵² This statement suggests that the Government was adhering to the Constitution and the principle of popular sovereignty by allowing citizens to elect their leaders through free and fair elections. At the same time, Mugabe's statement also suggests that citizens themselves were responsible for delivering democracy, implying that they were the source of legitimacy. Thus, Mugabe's words reflect the two strands of legitimacy in the domestic context: adherence to the constitution and recognition of the people's role in delivering democracy.

Overall, the holding of elections can be an effective tool for authoritarian regimes to gain support and legitimacy both domestically and internationally. However, it is important to consider the motivations and methods behind such elections, particularly in the context of regional and international frameworks that seek to promote free and fair elections.

⁵¹ See Rodney Barker, *Legitimizing Identities: The Self-Presentations of Rulers and Subjects* (2001).

⁵² "Mugabe: 'We are delivering democracy on a platter,'" *BBC* (August 12, 2013).

3.3.2 Seeking Legitimacy on the Global Stage

Dictators also use elections to seek legitimacy at the international level, as compliance with democratic norms and values is often a prerequisite for access to resources and support from the international community. Walter states that such compliance “combines the rhetoric and outward appearance of compliance with international standards together with relatively hidden behavioral divergence from such standards.”⁵³ Thus, compliance with international standards is often seen as important for gaining support from the international community. However, the question that arises is who exactly constitutes the ‘international community,’ and what standards they use to judge compliance with democratic principles and norms. The international community can be broadly defined as the collection of States, international organizations, and non-state actors that operate across national borders and engage in global governance.⁵⁴ The former Secretary-General of the UN, Kofi Annan, in 1999, on the question of “What binds us into an international community?” stated:

In the broadest sense there is a shared vision of a better world for all people, as set out, for example, in the founding Charter of the United Nations. There is our sense of common vulnerability in the face of global warming and the threat posed by the spread of weapons of mass destruction. There is the framework of international law, treaties, and human rights conventions. There is equally our sense of shared opportunity, which is why we build common markets and joint institutions such as the United Nations. Together, we are stronger.

In the context of democratic governance, the United Nations (UN), and regional bodies such as the African Union (AU), the Economic Community of West African States

⁵³ Andrew Walter *Governing Finance: East Asia's Adoption of International Standards* (Cornell University Press 2008), p.5.

⁵⁴ Tod Lindberg ‘Making Sense of the “International Community”’ Council on Foreign Relations 2014, https://www.cfr.org/sites/default/files/pdf/2014/01/IIGG_WorkingPaper14_Lindberg.pdf.

(ECOWAS), and the Southern African Development Community (SADC) are key stakeholders.

In recent years, there has been a growing global consensus on the importance of democracy and the central role of elections in democratic governance. This consensus is reflected in the increasing number of countries that have adopted democratic systems of government, as well as the growing international support for democratic values and institutions. In the 2017 Supreme Court case of *Odinga v Uhuru*⁵⁵, the Kenyan Justices provided a summary of the constitutional significance, importance, and function of elections noting that:

[...] Elections are the surest way through which people express their sovereignty.... Therefore, whether it be about numbers, whether it be about laws, whether it be about processes, an election must at the end of the day be a true reflection of the will of the people, as directed by the Constitution, through its hallowed principles of transparency, credibility, verifiability, accountability, accuracy and efficiency.⁵⁶

The concept of democracy and constitutionalism has been highly valued by nations worldwide for many years.

The UN has been a leading force in promoting and protecting human rights and democratic governance worldwide, recognizing the critical role that free and fair elections play in consolidating democracy. Through its various bodies, including the General Assembly, Security Council, and Office of the High Commissioner for Human Rights, the UN has developed standards and norms for the conduct of democratic elections.

The Universal Declaration of Human Rights (UDHR) is a milestone document that was adopted by the United Nations General Assembly in 1948.⁵⁷ It outlines the

⁵⁵ *SCK, Coram: Maraga CJ&P et al – Raila Odinga v Uhuru Kenyatta and Others* 2017.

⁵⁶ *Id.* para 371.

⁵⁷ UN 'Universal Declaration of Human Rights' December 10, 1948.

fundamental rights and freedoms that are inherent to all human beings, regardless of their race, ethnicity, gender, or religion. The UDHR includes 30 articles that cover a wide range of civil, political, economic, social, and cultural rights, such as the right to life, liberty, and security of person, the right to education, and the right to freedom of expression and religion.

The International Covenant on Civil and Political Rights (ICCPR) was adopted by the UN General Assembly in 1966.⁵⁸ It expands on the principles enshrined in the UDHR and provides a legally binding framework for the protection and promotion of civil and political rights. The ICCPR includes provisions related to the right to life, freedom of expression and religion, the right to a fair trial, and the right to participate in public affairs, including the right to vote and to be elected. The UDHR, ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁵⁹, known as the ‘Bill of Rights’, are considered to be foundational documents in the promotion and protection of human rights and democratic governance. They serve as a basis for the development of national laws and policies, as well as for the evaluation of compliance by States with their human rights obligations. The principles outlined in these instruments have also been incorporated into regional and international human rights treaties and conventions.

Moreover, the UN has developed specific guidelines for the conduct of democratic elections, such as the Declaration of Principles for International Election Observation. These principles promote the integrity, transparency, and inclusivity of electoral processes

⁵⁸ UN General Assembly ‘International Covenant on Civil and Political Rights’ December 16, 1966.

⁵⁹ UN General Assembly ‘International Covenant on Economic, Social and Cultural Rights’ December 16, 1966.

and are used by international observers to assess the conduct of elections in different countries.

The UN has also established bodies that monitor compliance with these instruments, such as the Office of the High Commissioner for Human Rights (OHCHR) and the Human Rights Council. These bodies work to promote and protect human rights and democratic governance worldwide and hold authoritarian regimes accountable for their actions. In this way, the UN plays a crucial role in promoting and monitoring democratic governance and ensuring that elections are free and fair, inclusive, and transparent.

In addition, the UN's Declaration of Principles for International Election Observation, for example, outlines key principles for ensuring free and fair elections, such as equal access to media, freedom of assembly and expression, and the prohibition of intimidation and violence.⁶⁰ These principles are used by international observers to assess the conduct of elections in different countries.

Furthermore, regional bodies like the African Union (AU) and sub-regional bodies like the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) have also developed their own instruments and guidelines for democratic governance and the conduct of elections. The African regional frameworks on governance comprise several regional and continental legal instruments and guidelines that promote the conduct of regular, free, and fair elections. These frameworks are designed to ensure that electoral processes meet the minimum standards of democratic norms and principles.

⁶⁰ Adopted on October 27, 2005.

The African Charter on Human and Peoples' Rights (African Charter)⁶¹ guarantees the enjoyment of individual rights, including the right to participate in government through free and fair elections. This instrument emphasizes the importance of ensuring that elections are transparent, accountable, and participatory. The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa,⁶² also known as the Maputo Protocol, is a regional legal instrument adopted by the African Union in 2003. The Protocol aims to promote and protect the rights of women in Africa and to eliminate all forms of discrimination and violence against them. One of the key provisions of the Protocol is the promotion of women's political participation. The Protocol recognizes that women's participation in political decision-making is crucial for the promotion of gender equality and the empowerment of women. To this end, the Protocol requires States Parties to take measures to ensure that women have equal opportunities to participate in political life, including the right to vote and to stand for election. The Protocol also requires States Parties to promote women's participation in leadership positions and decision-making bodies at all levels of government.

The ECOWAS Protocol on Good Governance and Democracy⁶³ is a regional legal instrument that was adopted in 2001 by the Economic Community of West African States (ECOWAS) to promote good governance, democracy, and political stability in the region. The Protocol provides a comprehensive framework for promoting democratic governance, with an emphasis on the conduct of free, fair, and transparent elections. One of the key

⁶¹ African Charter on Human and Peoples' Rights, OAU Doc CAB/LEG/67/3/Rev 5, adopted by the Organization of African Unity (OAU), 27 June 1981, entered into force 21 October 1986.

⁶² Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) adopted 11 July 2003, entered into force 25 November 2005.

⁶³ Protocol on Democracy and Good Governance (A/SP1/12/01).

provisions of the Protocol is the requirement for the establishment of independent and impartial Electoral Commissions to manage electoral processes. These Commissions are responsible for overseeing the registration of voters, the conduct of elections, and the resolution of electoral disputes. The Protocol emphasizes the importance of ensuring that these Commissions are free from political interference and have adequate resources to carry out their functions effectively. The Protocol also calls for the creation of a conducive environment for the conduct of elections. This includes the need to ensure that political parties and candidates have access to the media and other resources to enable them to campaign effectively.

The Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections⁶⁴ were adopted in 2004 to provide a regional framework for the conduct of democratic elections in Southern Africa. The principles emphasize the importance of transparent and accountable electoral processes that are free from violence, intimidation, and other forms of electoral malpractice.

The AU adopted the African Charter on Democracy, Elections, and Governance (ACDEG) in 2007, which became effective on February 15, 2012. As of February 14, 2023, the Charter has been ratified by 38 African nations.⁶⁵ The ACDEG provides a comprehensive framework for the advancement and consolidation of democratic governance on the African continent, with a specific focus on the conduct of free, fair, and transparent elections. It recognizes democracy as a fundamental human right and an essential aspect of good governance, highlighting the importance of upholding democratic

⁶⁴ SADC 'Principles and Guidelines Governing Democratic Elections[Revised, 201 5] by the Ministerial Committee of the Organ (MCO Defense and Security Cooperation).

⁶⁵ Both The Gambia and Zimbabwe have ratified, while Uganda has only signed. AU 'African Charter on Democracy, Elections, and Governance: Status List' (February 14, 2023).

principles and ensuring political participation while maintaining the integrity of electoral processes.

The Charter mandates African States to protect and promote the right of all citizens to participate in government through free and fair elections. To this end, it advocates for the creation of independent and impartial electoral commissions, the provision of a favorable environment for conducting elections, and the safeguarding of electoral rights and freedoms. Furthermore, the ACDEG calls for the promotion of marginalized groups' participation, including women, youth, and other underrepresented groups, in the political process. It highlights the need for effective mechanisms to address the challenges these groups face, including discrimination and violence.

While elections have been employed as a tool for authoritarian regimes to enhance their legitimacy, the ACDEG emphasizes the importance of upholding democratic principles and promoting political participation to enhance legitimacy through free and fair electoral processes. The ACDEG recognizes that democratic governance is critical for Africa's sustainable development and encourages African States to strive towards this goal. As such, the Charter serves as a vital instrument for promoting and consolidating democratic governance in Africa.

An understanding of the governance and human rights framework is crucial for analyzing the role of external actors in promoting democracy in Africa. The majority of African countries rely on donor funding, making compliance with democratic principles and norms essential. However, donor countries and multilateral agencies have differing priorities regarding political reform. The international community presents a multifaceted approach to fostering a strong Africa. The United States prioritizes establishing democratic

systems, while Western Europe and the EU champion broader “good governance” practices. Human rights take center stage for Nordic countries, who view them as essential for a well-functioning state. France, however, focuses on maintaining strong economic, military, and cultural ties with its former African colonies. China stands out with its emphasis on infrastructure development and trade partnerships, often overlooking a nation’s internal political structure. Multilateral organizations like the World Bank and IMF, though unable to directly promote democracy, increasingly emphasize good governance as a requirement for receiving aid. The United Nations Development Programme (UNDP) offers a unique perspective, providing assistance without imposing political conditions. This diverse range of approaches from external actors creates a complex situation that significantly impacts the trajectory of democracy in Africa.

As a result of their significant role in providing aid to African countries, donor countries and multilateral agencies have the ability to impose conditions on aid packages. These conditions may include requirements for transparent and democratic governance, respect for human rights, and the rule of law to ensure that aid is used effectively for the benefit of the people. For instance, the European Union (EU) has been a significant donor to The Gambia, providing financial assistance to support various development projects. However, in 2015, the EU froze 33 million euros (\$37 million) in aid earmarked for development projects due to concerns over democratic governance and human rights violations in the country.⁶⁶ This demonstrates that authoritarian regimes may hold elections not only to gain domestic legitimacy but also to meet the demands of their international donors and secure access to resources.

⁶⁶ Emma Farage ‘EU to keep withholding aid from Gambia after expulsion: diplomats’ *Reuters* (June 17, 2015).

Furthermore, authoritarian regimes may use elections to demonstrate their commitment to democratic principles and gain recognition and legitimacy from the international community. This strategy is particularly significant for countries that face sanctions or diplomatic isolation due to their authoritarian practices. In the case of Zimbabwe, under the rule of Mugabe, the country faced sanctions and diplomatic isolation due to its human rights abuses, corruption, and electoral fraud.⁶⁷ In 2001, United States Congress passed the Zimbabwe Democracy and Economic Recovery Act (ZDERA), which directs the Secretary of the Treasury to review and recommend the cancellation or reduction of Zimbabwe's debt, or extension of loans, credit, or guarantees, provided certain conditions are met.⁶⁸ These conditions include the restoration of the rule of law, meeting certain election and land reform requirements, fulfilling the terms of the Lusaka Agreement, and ensuring Zimbabwe's armed forces and state security forces are subordinate to the elected civilian Government.⁶⁹ The purpose of ZDERA was to provide aid to Zimbabwe's democratic transition and economic recovery. However, the law also empowered the US President to impose travel restrictions and financial sanctions on individuals responsible for widespread political violence. Although ZDERA was not intended to be a sanction law, it was a policy that combined incentives and penalties, offering financial benefits while also keeping the option of targeted sanctions on the table.

⁶⁷ Jan Grebe 'And They Are Still Targeting: Assessing the Effectiveness of Targeted Sanctions against Zimbabwe' (2010) 45 (1) *Africa Spectrum*, pp. 3-29.

⁶⁸ Zimbabwe Democracy and Economic Recovery Act of 2001, S. 494, 107th Cong. (2001-2002) (enacted).

⁶⁹ *Id.* The Act was amended in 2018 removing some of the conditions during Mugabe's regime. See Zimbabwe Democracy and Economic Recovery Amendment Act of 2018, Pub. L. No. 115-231, 132 Stat. 915 (2018).

In conclusion, this dissertation will show that elections in African countries have often been used as a tool by authoritarian regimes to consolidate power and maintain legitimacy, rather than as a means of fostering democratic governance.

3.4 The Quest for Legitimacy: Case selection

The Gambia, Uganda and Zimbabwe provide examples for the study of constitutional and democratic trends in Africa. The selection of these cases is based on their similarities and differences, which allow for instructive comparison.⁷⁰ The Gambian 2016 election is an anomalous case as it departs from “choiceless elections” and is selected as the dependent variable to identify the causes of the election outcome.⁷¹ The 2016 Ugandan elections are similar to The Gambia on most dimensions but vary on one of the main causal variables, the outcome.⁷² The case of Zimbabwe also provides valuable insights into the use of constitutional procedures beyond elections to overthrow authoritarian leaders. This introduces enough variation in both the causes and consequences of defeating such leaders. Although the cases of The Gambia, Uganda and Zimbabwe are treated separately, they are also potentially related due to diffusion effects.

The geographical setting of the three cases, with The Gambia in West Africa, Uganda in East Africa, and Zimbabwe in Southern Africa, (as shown in figure 3.1 below), provides an opportunity to produce empirical data that can be used to develop a theoretical framework of constitutional authoritarianism. The fact that these three countries are all

⁷⁰ John Gerring and Lee Cojocaru, ‘Selecting Cases for Intensive Analysis: A Diversity of Goals and Methods’, (2016) 45(3) *Sociological Methods & Research* 493-525.

⁷¹ Thandika Mkandawire, ‘Crisis management and the making of “Choiceless democracies,”’ in Richard Joseph (ed), *State, Conflict and Democracy in Africa* (1999), pp. 119-136.

⁷² Nicole Beardsworth, ‘Challenging dominance: the opposition, the coalition and the 2016 election in Uganda’ (2016) 10 (4) *Journal of Eastern African Studies*, pp.749-768.

former British colonies with English as the official language and share a similar legal framework and constitutional history make them an ideal selection for this study. Furthermore, their leaders have all been in power for an extended period of time: Mugabe, 35 years; Museveni, 30 years; and Jammeh, 22 years, making them representative of the challenges of constitutional authoritarianism in sub-Saharan Africa.⁷³

Figure 3.1 Map of the three countries.



Source: Author's own illustration

The study of these cases provides an opportunity to examine how authoritarian leaders in Africa attempt to legitimize their rule, such as through elections. The Gambia, Uganda, and Zimbabwe are all countries where authoritarian leaders have attempted to

⁷³ All three countries have the presidential system.

legitimize their rule through various means, such as manipulation of elections, repression of opposition groups, and the use of state propaganda. By examining these cases, this dissertation attempts to address the question of whether an electoral process introduced by an authoritarian government can elevate democracy and lead to unexpected results. In The Gambia, the opposition won the 2016 election, in Uganda, however, the disintegration of the opposition coalition may have weakened their ability to challenge the legitimacy of the election. This approach also allows the analysis of how different constitutional procedures, beyond elections, can be used to defeat an authoritarian leader and potentially increase the legitimacy of a democratic transition.

Against this backdrop, this study takes a historical approach to gain insights into the process of replacing leaders in contemporary semi-competitive authoritarian regimes.⁷⁴ This approach emphasizes the importance of centralizing the country-specific peculiarities and nuances in order to comprehend how autocrats navigate confront challenges in consolidating control and the mistakes they make along the way.⁷⁵

3.5 Conclusion

This chapter has examined the concept of legitimation and its relevance to authoritarian regimes. It has argued that legitimation is a crucial tool that dictators use to maintain their grip on power and that elections are a key component of this process. The Chapter has further argued that authoritarian leaders use elections as a strategic move to enhance their regime's legitimacy, both domestically and internationally, rather than as a

⁷⁴ On process tracing, see John Gerring, *Social Science Methodology: A Unified Framework* (Cambridge University Press 2012).

⁷⁵ See also Dan Slater, *Ordering Power: Contentious Politics and Authoritarian Leviathans in Southeast Asia* (2010); Mai Hassan, *Regime Threats and State Solutions: Bureaucratic Loyalty and Embeddedness in Kenya* (2020).

genuine commitment to democratic principles or a desire to transition to a democratic system of governance. By holding elections, these regimes seek to create the impression that they are complying with minimum standards of democratic norms and are responsive to the will of the people. This is particularly important for authoritarian regimes that face pressure from their citizens and international actors to conform to democratic standards. However, it is important to note that the mere holding of elections does not guarantee legitimacy. Elections must be perceived as free and fair, and the results must be respected. Therefore, authoritarian regimes may resort to further tactics, such as controlling the media, intimidating opponents, and voters, and using state resources to their advantage, to ensure their desired outcome in the election.

The Chapter has also highlighted the importance of case selection in studying constitutional and democratic trends in Africa. The selection of The Gambia, Uganda, and Zimbabwe provides a unique opportunity to analyze the causes and consequences of defeating authoritarian leaders through constitutional means. By examining the similarities and differences between these cases, we can develop a theoretical framework of constitutional authoritarianism and offer generalizations about the remaining authoritarian regimes in Africa and elsewhere.

The next two Chapters that follow set the context for why elections have led to different outcomes. In Chapter Four, we focus on The Gambia's 2016 elections where there was change of government. In contrast to that, Chapter Five examines Uganda's 2013 election where there was continuity and Mugabe's ousting through constitutional means in 2017 in Zimbabwe.

Chapter Four:

The Talking Marbles: Voting out the ‘Billion-Year’ Dictator in The Gambia



For twenty-two years, Yahya Jammeh ruled the country, despite competitive elections taking place every five years. Due to uneven playing ground for political competition and a variety of techniques, the elections always led to his re-election.¹ Thus, elections were held not to democratize, but to maintain the status quo and legitimize his authoritarian regime.

After more than two decades of Jammeh’s authoritarian rule, Gambians voted him out of office during the elections held on December 1, 2016. On December 2, 2016, the opposition coalition candidate Adama Barrow was announced the winner of the Presidential elections.² The rare occurrence in which a dictator loses his own ‘window-dressing’ election to the opposition is unique. What happened in The Gambia is the first

¹ See Abdoulaye Saine, Ebrima Ceesay and Ebrima Sall (eds) *State and Society in The Gambia since Independence: 1965-2012* (2013).

² ‘Yahya Jammeh loses to Adama Barrow in Gambia election’ Aljazeera (December 2, 2016). Such elections have taken place in Mexico in 2000, Madagascar in 2001, and Ukraine in 2004.

time in post-colonial Africa's political history that a 'military-turned-civilian' dictator loses an election within a system of 'politics of permanent fear.'³

The 2016 Gambian Presidential election poses fascinating puzzles. Why and how did this breakthrough take place? Thus, this Chapter, based on primary data from interviews and secondary data collected from open and available sources, provides an analysis of factors that account for Jammeh's electoral defeat. As Brownlee has noted, "elections provide an arena for political contestation, but they are not an independent causal factor."⁴ In this respect, this Chapter situates the case study of The Gambia within a historical context to understand how to assess the underlying factors of breakthrough elections as a challenge to authoritarian rule.

This Chapter analyses how the Constitution, electoral laws and the electoral system were changed after the 22 July 1994 coup d'état to ensure continuity of the dictatorship. It also demonstrates how the Constitution and its institutional features were used to oust Jammeh out of power. It concludes by examining the role of external foreign forces in ensuring that unscrupulous rulers step down following an electoral defeat.

4.1. Constitutional and Legislative frameworks for Electoral Democracy in The Gambia

The legal rules relating to the National Assembly elections are to be found across a plethora of legal instruments, including the Constitution of the Republic of The Gambia 1997, the Elections Act Cap. 3:01 as amended, and several pieces of delegated legislation in the form of regulations, rules, notices, and orders.

³ Amos Perlmutter, *Modern Authoritarianism: A Comparative Institutional Analysis* (1981) p. 20.

⁴ Jason Brownlee, *Authoritarianism in the Age of Democratization* (2007), p.32.

4.1.1. The 1997 Constitution

The 1997 Constitution of The Gambia is the supreme law of the land, which espouses the fundamental principles of rule of law, separation of powers, democracy, and fundamental rights and freedoms. The Gambia has a tripartite legal system consisting of common law, customary law, and Islamic law as regards issues of marriage, inheritance, and divorce.

The Preamble recognises that “the fundamental rights and freedoms enshrined in this Constitution, will ensure for all time respect for and observance of human rights and fundamental freedoms for all, without distinction as to ethnic considerations, gender, language and religion.” The constitutional catalogue of rights and freedoms are provided in Chapter four, and which includes right to life, personal liberty, right to privacy and protection from discrimination. Section 25 guarantees freedom of speech which includes freedom of the press and other media, conscience, assembly, association, and movement. These freedoms and rights are subject to law of The Gambia which imposes on their exercise reasonable restrictions which are “necessary in a democratic society and are required in the interests of the sovereignty and integrity of The Gambia, national security, public order, decency or morality, or in relation to contempt of court.”

Section 26 of the Constitution guarantees citizens the right to make political choices, providing for free, fair, and regular elections, and permitting qualified citizens to vote and stand for public office. Under the Constitution every citizen of The Gambia who is 18 years or older is entitled to vote. However, the right to vote is not recognized in the case of prisoners who are serving a sentence. Prisoners on remand are also unable to vote even though they retain their right to vote. This is also applicable to persons with intellectual

disabilities.⁵

The three arms of government are set out in the Constitution: executive power vested in the president; the legislative power vested in the National Assembly; and judicial power vested in the Courts. Chapter 5 of the Constitution provides for the establishment of the National Assembly and defines its powers, procedures, and functions. The National Assembly is responsible for enacting laws for the order, security, and good governance of The Gambia. Members of the National Assembly are elected every five years.

Unlike the 1970 Constitution which had a hybrid system in which Cabinet Ministers were either elected or nominated members of Parliament, the 1997 Constitution under Part 6 provides for an executive presidential system. The Constitution vests executive power in the President. The President holds office for a term of five years,⁶ and he or she may be removed by the process of impeachment.⁷ Presidential elections take place every five years and within the three months preceding the expiry of the incumbent's term of office.⁸

The Constitution explicitly guarantees a space for political parties as provided in Part 7 of the Constitution. Political parties are eligible to contest in elections both in the National Assembly and general elections for Presidency. Section 60 prohibits the formation of a political party based on ethnic, sectional, religious, or regional bases and emphasises the need for the parties to conform to democratic principles. During the 2016 elections, there were at least nine registered political parties⁹, including the former ruling party APRC which

⁵ Lunatics Detention Act, 1917.

⁶ Sec. 63(1) of the Constitution.

⁷ Sec. 63(3) of the Constitution.

⁸ Sec. 46 of the Constitution.

⁹ These are Alliance for Patriotic, Reorientation and Construction (APRC), Gambia Democratic Congress (GDC), Gambia Moral Congress (GMC), Gambia Party for Democracy and Progress (GPDP), National Convention Party (NCP), the National Reconciliation Party (NRP), the Peoples Progressive Party (PPP),

had won four (1997, 2001, 2006 and 2011) out of the five elections amidst claims of unfairness by the opposition. However, the requirements to register a political party was extremely burdensome and financially exorbitant.

The Constitution makes no provision for the financing of political parties and election campaigning. Thus, campaign financing is unregulated and does not easily lend itself to equity, transparency, and accountability. Consequently, the dominance of the ruling political party over an extended period had given the APRC the advantage of incumbency. The Constitution under section 42 establishes the Independent Electoral Commission (IEC), which is responsible for the supervision of all public elections, registration of political parties, and the conduct and supervision of the registration of voters.¹⁰ In terms of this provision, the IEC is composed of a Chair and four other members, one of whom is elected Vice-Chair. The authority to appoint members of the IEC is vested in the Head of State in consultation with the Judicial Service Commission and the Public Service Commission. They are appointed for an initial term of seven years. The members may be re-appointed for one further term. The Constitution also provides the conditions under which the President may remove a member of the Commission from office.

The IEC's independence is constitutionally guaranteed and, in the exercise of its functions, is not subject to the direction or control of any person or authority. However, this does not provide strong measures against interferences by the state due to the lack of stringent and transparent process through which commissioners can be appointed and dismissed.¹¹ Furthermore, the independence of the IEC is threatened by the fact that the Commission's

United Democratic Party (UDP) and People's Democratic Organisation for Independence and Socialism (PDOIS).

¹⁰ Secs. 43-45 of the Constitution.

¹¹ Jammeh has in the past fired several members of the IEC including chairpersons of the IEC.

funding is determined and appropriated by the Executive and National Assembly.¹² The Constitution provides for the IEC to submit its annual estimates to the President which are subsequently tabled before the National Assembly with comments but without amendments. In practice, the Ministry of Finance negotiates the annual budget with the IEC and disburses funds in tranches, often late. The permanent IEC staff members are public servants whilst the temporary staff are paid by the IEC after receiving the funds from the national treasury.¹³ The functions of the IEC are prescribed by the Constitution and include registering voters and political parties, conducting elections and declaring the results of elections.¹⁴ Other issues are regulated by the election law.

One of the key constitutional amendments between 2001 and 2003 included the amendment to section 48 which stated that “No person shall be elected as President on a first ballot unless the votes cast in his or her favor at the election are more than fifty per cent of the total number of votes validly cast at that election.” The amended section 48 (3) provides that “No person shall be elected as President on a first ballot unless he or she receives the highest number of votes validly cast at the election,” meaning that whoever first passes the post wins.

Additionally, there are a number of constitutional provisions that consolidated authoritarian power through the military. This included the setting up of the National Security Council, a body composed of the President, Vice-President, other government Ministers and high-ranking military leaders, which could exercise control over the Government’s policy

¹² EU Election Observation Mission to The Gambia ‘Final Report: 2017 National Assembly Elections – April 6, 2017’ (2017) p. 5.

¹³ *Id.*, p.15.

¹⁴ Sec 43 of the Constitution.

relating to public order and security.¹⁵ The Constitution also allows the President to declare a state of emergency in the whole or any part of The Gambia,¹⁶ which gives the executive the power to suspend basic fundamental rights, including freedom of speech, assembly, association and movement and due process guarantees.¹⁷ If the President can effectively declare a state of emergency whenever he wishes, this subordinates the Constitution to the ruler. This effectively makes the Constitution a tool for the ruler's power.

In sum, the argument is that while the military did not staff all organs of Government, there existed mechanisms in the Constitution through which they could exercise control over the organs of government.

4.1.2. Legislative Framework for Elections

A. Election Decree of 1996 (Decree No. 78)

The AFPRC brought the Elections Decree¹⁸ into being on 2 January 1996. It covers all technical aspects of the electoral process including the registration of voters, nomination of candidates, the conduct of polls, election campaigns and registration of political parties. Regulations promulgated in terms of the law include Guidelines on Election Observations¹⁹ and the Election Media Rules.²⁰ In addition, the Code of Election Campaign Ethics (under section 92 (1) of the Elections Act) prescribes a broad catalogue of rules for candidates, political parties and supporters to follow during campaign activities. The Code does not provide the mechanisms as to how a complaint of non-compliance is to be made, nor is there any procedure as to how complaints are to be adjudicated upon. There is also an Inter-Party

¹⁵ Sec. 78 of the Constitution.

¹⁶ Sec. 34 of the Constitution.

¹⁷ Sec. 35 of the Constitution.

¹⁸ (Decree 78 of 1996).

¹⁹ IEC 'Election Observation Guidelines' <http://iec.gm/election-observation/guidelines/>.

²⁰ IEC 'Election Media Rules' <https://iec.gm/election-observation/elections-media-rules/>.

Committee which comprises all nine registered political parties. On 8 March 2016, the nine registered political parties agreed on a Memorandum of Understanding (MoU) on the conduct of the campaign, reflecting the terms of the Code on Election Campaign Ethics.²¹

Key amendments to the electoral law included the Elections (Amendment) Act of 2015 which was passed and signed by Jammeh on 20 July 2015. The number of signatures needed to register a political party was increased from 500 to 10,000 registered voters with at least 1,000 from each of the administrative areas, in addition to the requirement that a party makes a deposit of more than D 1 million (USD 24,000). Candidates for President were required to pay D 500,000 (approximately USD 12,500), which was previously D 10,000 (approximately USD 250); National Assembly was increased from D 5,000 (approximately USD 125) to D 50,000 (approximately USD 1,000) and candidates for local council office were to pay D 10,000 (about USD 200). In addition, the amendment stipulated the following:

- i. All executive members of the political party are resident in The Gambia;
- ii. Political party has a secretariat in each administrative region of the country;
- iii. The party holds a biennial congress; and
- iv. The submission of the party's annual audited accounts to the IEC.

In the context of The Gambia these requirements were unreasonable and excessive and greatly limited political rights guaranteed in the Constitution.

Opposition political parties not only regarded the increases as unreasonably high but also as a ploy by the government to drastically limit their participation in elections. The basis salary for an average Government employee in The Gambia is D1500. (approximately \$38). This, if taken in the light of the colossal requirements of financial deposits for candidates, is illogically inconceivable and thus intended to discourage multiparty

²¹ This was issued in 1996.

democracy as most people would not be able to contest without patronage and financial support from the ruling party.

It was clear that the new fees set by the Act would further shrink the political space, threaten ‘multiparty democracy’, and discourage people from vying for elected office, thereby further entrenching a de facto one-party system.²² Moreover, the provision that called for all executive members of political parties to reside in the country was seen as a strategy to disenfranchise diaspora Gambians.

This was reverted by the Barrow government. On 28 February 2017, the National Assembly passed the Elections (Amendment) Bill 2017 ‘to encourage the widespread participation of the ordinary citizenry in the new democratization dispensation.’²³ This was tabled by the Interior Minister on behalf of the Attorney General and Minister for Justice. The Interior Minister noted that salaries of most Gambians are low, and the revenue that is derived from commercial activities is equally very low. Thus, the 2017 amendment reduced the exorbitant fees to their initial amounts.

However, it is important to note that section 134 (3) of the Elections Act provides that the IEC shall not make any significant change to the rules relating to elections within the six months before an election. The National Assembly election was held in April 2017. While this might not be an explicit violation of the law as the amendment was effected by the National Assembly and not the IEC, it does contravene the spirit of the law.²⁴

²² Satang Nabaneh ‘New Gambia and the Remaking of the Constitution’ *International IDEA* (March 16, 2017) <https://constitutionnet.org/news/new-gambia-and-remaking-constitution>.

²³ ‘Gambia: Nams Amend Constitution, Elections Law,’ *The Point* (March 1, 2017)

²⁴ Article 2 of the ECOWAS Protocol on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, ratified by The Gambia, prohibits any substantial modification of electoral laws in the six months preceding an election, without the consent of a majority of political actors. Consent was forthcoming on this occasion so there was no conflict with the Protocol.

B. System of Local Government

The Constitution provides for local government administration in The Gambia that is based on a system of democratically elected Councils premised on local autonomy.²⁵ This provides the legal basis for decentralization of power through the establishment of local government administration.

The Local Government Act of 2007 provides for Municipalities and Area Councils, which complement the central government authorities including the Ministry of Local Government and Regional Governors. Members of the Local Government Authorities (LGA) are elected every four years. The residents of the area within the LGA elect the members of the council. Additional representation is through nomination of representatives of different sections of the society namely women, youth, private/business sector, as well as the district chiefs. The LGAs also elect the chairman of the Council or a Mayor. The Governors are appointed by the President.

There are currently five regional Area Councils, namely: North Bank Region (NBR), Central River Region (CRR), Upper River Region (URR), Lower River Region (LRR), and West Coast Region (WCR) headed by Chairpersons. Banjul City Council and Kanifing Municipal Council are the two municipalities which are headed by Mayors who are elected by the residents of those areas. A drawback of this system is that while people are empowered to elect their own local representatives, they are also disempowered through the control of these elected Councilors by unelected executive functionaries, including the Minister for Local Government and the Regional Governors. This invariably affects the autonomy and the ideals of decentralization.

²⁵ Sec. 193 of the Constitution.

A case in point is *Pa Sallah Jeng v. Minister for Local Government and Lands and the Attorney General*.²⁶ Pa Sallah, the former Mayor of the City of Banjul, received a letter of suspension from the Permanent Secretary (PS) in the Ministry of Local Government. The applicant alleged that this was beyond the legal power of the PS as provided in section 40(a) of the Local Government Act 2002 as amended, which empowers the Minister to suspend the Mayor. Justice Ahmed Belgore (as he then was) delivered the landmark ruling in which he declared the purported letter of suspension written by the PS as null and void and of no consequence.

The above case illustrates the contentious issue of the autonomy and status of elected local government officials. It is clear that on one hand, communities are empowered to elect their own representatives, while, on the other hand, the Executive retains the power to dismiss those elected officials, thereby undermining their autonomy.

4.2. Contextualizing authoritarian rule in The Gambia: Why did it last so long?

Any discussion of authoritarian rule in The Gambia would be incomplete without consideration of the role that Jammeh's actions played in shaping the political trajectory of his twenty-two years of rule. Put differently, it is imperative to understand how actions of Jammeh as a dictator provided a veritable foundation for continuity of his rule of twenty-two years.

On July 22, 1994, Jammeh, a then 29-year-old lieutenant in the army, seized power from Sir Dawda Jawara through a coup *d'état* which led to the suspension of the 1970 Republican Constitution.²⁷ Although military rule was short lived, it was the beginning of

²⁶ MSC App No 33005/MF/114/F/2005 (unreported).

²⁷ Abdoulaye Saine, *The Paradox of Third-wave Democratization in Africa: The Gambia under AFRPC-APRC 1994-2008* (Lexington books, 2008) 1.

the establishment of authoritarianism in The Gambia. Jammeh usurping power at an early age and without experience proved intoxicating.²⁸ Edie observed that while the continent was moving from authoritarianism to multi-party politics, The Gambia was moving from multiparty politics to authoritarianism.²⁹

Accordingly, Jammeh requested for the rewriting of a new Constitution which was approved in a referendum on August 8, 1996.³⁰ This is in line with the model of rewriting a constitution to design a system suitable for a new leader. Unlike the 1970 Constitution, which had a hybrid system in which cabinet ministers were either elected or nominated members of Parliament, the 1997 Constitution established an executive presidential system without the necessary checks and balances.

The Constitution did not provide for term limits even though when it seized power in 1994, the Armed Forces Provisional Ruling Council (AFPRC) did criticize the 1970 Constitution for lacking such a provision. The military junta claimed that the lack of a provision on term limits resulted in Jawara being in power for 30 years.³¹ A simple majority vote ('first-past-the-post') was introduced which meant the whole country effectively serving as a single constituency.³²

Authoritarian regime in The Gambia preserved the façade of democratic institutions and multiparty democracy. For instance, Before the passing of the 1997 Constitution, a

²⁸ See Abdoulaye Saine 'The Coup d'état in the Gambia, 1994: The End of the First Republic,' (1996) 23 (1) *Armed Forces and Society*, pp. 97-111; John A. Wiseman and Elizabeth Vidler 'The July 1994 Coup D'état in the Gambia: The End of an Era?' (1995) 333 *The Third World Quarterly*, pp. 53-63; Modou Loum, "Bad Governance and Democratic Failure: A Look at Gambia's 1994 Coup," (2002) 1 *Civil Wars*, pp. 145-74.

²⁹ Carlene J. Edie, "Democracy in The Gambia: The Past, Present and Prospects for the Future" (2000) XXV *Africa Development* 3-4, pp. 161-198.

³⁰ It entered into force on January 16, 1997

³¹ Saine, *supra* note 1, p.28.

³² Report of the Commonwealth Expert Team: The Gambia Presidential Election (2011).

presidential election was held in September 1996. The then ruling junta, the AFPRC, transformed itself into an official political party – the Alliance for Patriotic Reorientation and Construction (APRC) – to support Jammeh’s bid for the presidency.³³ Jammeh emerged as the winner of the 1996 election, subsequently ushering in civilian rule and becoming The Gambia’s second elected post-independence President. In rewriting the constitution and his subsequent victory in the election, he invoked electoral legitimacy in creating an authoritarian multiparty democracy, although some political parties were banned. The Gambia, under Jammeh’s rule became a nondemocratic country that combined elements of democracy and autocracy using multiparty elections.

For the purpose of power consolidation over the years, Jammeh had to rely upon three major institutional sources. First, the ruling party completely dominated the political sphere. Second, fractured and weak opposition was composed of alliances of parties with divergent ideologies and self-interested individuals. Third, the lack of judicial independence legitimized the regime’s structure and hold.³⁴

4.2.1 Ruling Party Oppression

Over the years, Jammeh made a giant public show of being governed by and governing within the law, changing the law and even the Constitution itself with legal (if illiberal) methods. Jammeh’s regime guaranteed the citizenry a wide array of human rights as provided in Chapter Four of the Constitution, although, these were severely constrained

³³ See Baba Galleh Jallow, *Defying Dictatorship: Essays on Gambian Politics, 2012-2017* (CENMEDRA, 2017)

³⁴ Attempts to mitigate the ability of the courts to act as a check against legislative and executive power can also be seen in the case of Poland and Israel. See for example, Allyson Duncan and John Macy ‘*The Collapse of Judicial Independence in Poland: A Cautionary Tale*’ (2020) 104 *Judicature*, pp. 40-50 and Israel judicial reform explained: What is the crisis about? BBC (September 11, 2023).

rights. In essence, he took advantage of the structural weaknesses and exploited contradictions that existed for his own benefit.

Jammeh had monopoly over The Gambia's major information channel, including the only national tv broadcaster. As a result, he deployed a wide range of propagandist information. Under Jammeh's rule, the environment in which the media operated was a precarious one characterized by draconian laws and arbitrary arrests, detentions, and physical assaults against journalists, as well as by closure and burning down of media houses.³⁵

As a dictator, Jammeh stifled the independent media. This was done through several changes which occurred, including amendment to section 52 of the Criminal Code (Amendment) Act 2004 making any written or verbal statement that was critical of the Government an offence; the offence of publishing false news with intent to cause fear or alarm to the public; the Information Act (amended) 2013 that provided a 15-year jail term for any person found guilty of using the internet to spread 'false news' about the regime or public officials. The amendment also imposed a fine of three million Gambian Dalasi (approximately USD 86,000) on persons found guilty of publishing 'false news' online against the regime or public officials.

Due to these repressive media laws, the independent media was driven underground with incidences of closures, which resulted to internet-based media mostly operated by Gambian political exiles in the diaspora.

³⁵ Satang Nabaneh, 'The Gambia: Commentary' in R Wolfrum, R Grote & C Fombad (eds) *Constitutions of the World* (2017) pp. 23-24.

4.2.2 Opposition Failure to Unite

Rather than annihilating all his opponents and in keeping with concerns of maintaining a legitimate public appearance, it was positively useful to appear to have some opposition. Consequently, Jammeh tolerated a weakened opposition to demonstrate that he had not completely smothered the political environment. Thus, during his twenty-two years of rule, Jammeh held five elections which cemented his regime and gave him a semblance of legitimacy.³⁶ There was, however, no genuine competitive political environment. The political reality in The Gambia was that the holding of periodic elections did not expand access to and use of power. The regime allowed weak opposition parties to operate to appease international pressures. This echoes Staffan Lindberg's argument who writes that "without political opposition there is no choice, and when there is no choice, the public cannot exercise its discretion to indirectly rule via representation."³⁷

The dilemma for opposition parties for elections held during Jammeh's regime was whether they should participate in elections that were largely unfair or boycott. Given the difficulties that opposition political parties faced in The Gambia, they had, over the past twenty-two years, adopted different strategies, including opposition collaboration and boycott of elections at local, parliamentary, and presidential levels at different times as a response to the regime.

The opposition parties have remained largely fragmented despite similar ideologies.³⁸ For example, the formation of the National Alliance for Development and

³⁶ Presidential elections were held in 1996, 2001, 2006, 2011 and 2016.

³⁷ Staffan Lindberg 'Tragic Protest: Why Do Opposition Parties Boycott Elections?' in Andreas Schedler, ed. *Electoral Authoritarianism: The Dynamics of Unfree Competition* (2006), p. 150.

³⁸ Andreas Schedler 'Election without Democracy: The Menu of Manipulation' (2002)13 (2) *Journal of Democracy* 36, p. 42.

Democracy (NADD) as a coalition of major political parties generated grand expectations for the 2006 elections. However, the coalition became weakened when some opposition parties withdrew from it. At the time of the 2006 elections, there emerged two coalitions: United Democratic Party (UDP), National Reconciliation Party (NRP) and Gambia Party for Democracy and Progress (GPDP) headed by Darboe; and NADD with three remaining political parties comprising the People's Progressive Party (PPP), the People's Democratic Organization for Independence and Socialism (PDOIS) and the National Democratic Action Movement (NDAM) headed by Halifa Sallah. In the end, Jammeh won with 67.3% of the votes.

Furthermore, all attempts to unite the Opposition behind a single figure also failed in 2011. This led to Jammeh winning his highest number of votes at 71.54%. This can be ascribed to an uneven playing ground and a splintered Opposition, like other previous elections. In addition, it is important to note that the Economic Commission of West African States (ECOWAS) boycotted elections observation as they found that The Gambia did not have a political environment that was conducive for holding free and fair elections.³⁹ In contrast, the African Union (AU) did send observers in 2011 and found the results to be credible.⁴⁰ Endorsing such unfair results was seen as subverting efforts to ensure democratization in The Gambia.

But why did the Opposition splinter into competing factions? The reasons have mainly been ascribed to the leadership. The Opposition leaders desired the presidency, where power is highly concentrated. They saw themselves more as competitors rather than partners. This led to a climate of distrust among them.

³⁹ "Gambia's Yahya Jammeh ready for 'billion-year' rule" *BBC* (December 12, 2011).

⁴⁰ 'African Union Observers Impressed with Gambia Election' *VOA* (November 23, 2011).

The strategy of boycotting elections also emerged as a major strategy that was adopted by the Opposition parties. For example, the UDP boycotted the January 2002 parliamentary elections in protest of the unfair nature of the 2001 presidential elections.⁴¹ The boycotting, especially of legislative elections, came at a cost for opposition parties. These included the loss of parliamentary seats and the platform to criticize the Government and attempt to hold it in check. Lindberg in his study of authoritarian elections in sub-Saharan Africa has found that Opposition parties participated in less than 50 percent of elections that were considered flawed compared to their participation rate at 90 per cent in elections that were considered free and fair.⁴² Michael Bratton further argues that boycotts are a tool of “protest [to] an incumbent’s efforts to bend electoral rules or monopolize electoral resources.”⁴³

At the same time there was an additional complication. Jammeh, through the dominance of his political party in the National Assembly, crafted electoral laws that favored him and his political party and limited opportunities for electoral competition from their opponents and hence the lack of political development and the building of a culture of political competition. For instance, a major shrinking of the political space occurred in 2015 when the Elections (Amendment) Act was passed by the National Assembly and signed into law by Jammeh on 20 July 2015.⁴⁴ Candidates for President were required to pay D 500,000 (approximately USD 12,500) raised from D 10,000 (approximately USD 250); the fee for candidates for the National Assembly was increased from D 5,000

⁴¹ David Perfect and Arnold Hughes ‘Gambian Electoral Politics: 1960- 2012’ in Abdoulaye Saine, Ebrima Ceesay and Ebrima Sall *State and Society Since Independence: 1965- 2012* (2013) p. 99.

⁴² Lindberg, *supra* note 37, p. 158

⁴³ Michael Bratton, “Second Elections in Africa” (1998) 9(3) *Journal of Democracy* 55, p. 61.

⁴⁴ Sec 43 of the Constitution.

(approximately USD 125) to D 50,000 (approximately USD 1,000) and candidates for local council office were to pay D 10,000 (about USD 200).

Opposition political parties not only regarded the increases as unreasonably high but also as a ploy by the Government to shrink the political space and drastically limit the participation of the opposition in elections. Mai Ahmad Fatty, of the opposition Gambia Moral Congress (GMC), criticized the changes as unconstitutional, citing section 26 of the Constitution. He stressed that the phrase ‘without unreasonable restrictions’ was inconsistent with the financial and other requirements of the amended law. He added that the amendment ‘introduce[d] feudalism into national politics – the haves against the haves-not – creating political dynasties of the rich and the powerful. It puts elected public office up for sale and beyond the reach of the ordinary citizen.’⁴⁵ The leader of the main opposition party, Ousainou Darboe, also argued that the change was designed to benefit the ruling party.⁴⁶

Moreover, members of the opposition were also harassed with nuisance criminal charges. For instance, in April 2010, Femi Peters, the Campaign Manager of the UDP was convicted for using a Public Address System at a political rally without a police permit. The Police alleged that Peters had ‘convoked a political meeting and used a loudspeaker without a permit issued by the Inspector General of Police, under section 5 of the Public Order Act Amendment of 2010’. He was sentenced to 12 months’ imprisonment and his appeal was rejected by both the High Court and the Court of Appeal.⁴⁷

⁴⁵ ‘GMC has strategic response to Elections Act amendment: Mai Fatty’, *The Point* (July 15, 2015).

⁴⁶ ‘Darboe Says He Will Challenge the Election Laws Amendment’, *Gambia Affairs* (July 14, 2015).

⁴⁷ *Peters (Femi) v. the State*, HC 195/10/CR/075/BO (Crim. Appeal).

4.2.3 Lack of Judicial Independence

As the main check on an Executive branch, a resolute Judiciary is one which ordinary citizens can look up to for the protection of their human rights.⁴⁸ Judicial independence is therefore a prerequisite for a society to operate on the basis of the rule of law and is essential for the purpose of maintaining public confidence in the Judiciary.⁴⁹ Fombad notes that an independent Judiciary is one that is:⁵⁰

free to render justice on all issues of substantial legal and constitutional importance, fairly, impartially, in accordance with the law, without threat, fear of reprisal, intimidation or any other undue influence or consideration.

This position underscores the critical role of judicial autonomy in upholding the rule of law and ensuring justice is administered without external interference, safeguarding the integrity of legal and constitutional processes.

Section 120(3) of the Constitution recognizes the widely acclaimed notion of judicial independence. In practice, the Courts were subjected to the control of Jammeh. He was known for his constant encroachment on the independence of the Judiciary for his personal and political goals. He intimidated and harassed Judges and pressured them to decide cases in one way or the other. This is better summed up by Justice Izuako, former acting Judge of the Gambia Court of Appeal for the Commonwealth Fund for Technical Co-operation (CFTC):⁵¹

the State resented ... lawyers appearing for parties it was prosecuting or who had cases against it. In the same way judges who were independent were treated shabbily while one

⁴⁸ *Ibid.*

⁴⁹ Sam Rugege, 'Judicial Independence in Rwanda' presented at the Judicial Independence and Legal Infrastructure: Essential Partners for Economic Development conference (October 28, 2005).

⁵⁰ Charles Fombad, 'A preliminary assessment of the prospects for judicial independence in post-1990 African constitutions' (2007) *Public Law*, pp. 1007-1108.

⁵¹ *Nkemdilim A Izuako* 'Walking the line of judicial independence: The case of Gambian government and moral integrity' 5 *West Africa Review*, p. 54.

judge known to carry out government wishes to the letter had several police guards following him among other perks.

Thus, Judges were at risk of being dismissed when they presided over political or sensitive cases.

For example, in 2003, Justice Hassan Jallow,⁵² a Supreme Court Judge, had his appointment terminated by the President under suspicious circumstances.⁵³ This move came after Justice Jallow presided over high-profile constitutional cases in the Supreme Court in which several provisions of controversial Acts of the National Assembly were invalidated for contravening the Constitution and the African Charter on Human and Peoples' Rights (Charter).⁵⁴ In 2015, then Chief Justice Chowhan, a Pakistani national, was removed from office with no reason advanced for his removal.⁵⁵ However, six days before his dismissal, a panel of five Judges headed by him, quashed the conviction of a commander of the naval staff, Rear Admiral Sarjo Fofana, who was acquitted and discharged on four treason-related charges.⁵⁶

Nigerian-born judge Justice Fagbenle replaced him.⁵⁷ Less than a year into his appointment, he became the fourth to be fired from a judicial role within 3 years. His dismissal was in connection with the 2015 trial of the then opposition leader, Darboe. Following the dismissal of then Chief Justice Fagbenle, Jammeh dismissed two judges of the Supreme Court, Raymond Sock and Gibou Janneh, which came on the heels of the

⁵² He is now the current Chief Justice of The Gambia.

⁵³ 'Gambia: Bar Association's Protest to Jammeh' *All Africa* (August 12, 2002).

⁵⁴ See Aboucar A. Senghore 'The judiciary in governance in The Gambia: the quest for autonomy under the second republic' 17 *Journal of Third World Studies*, pp. 215-148.

⁵⁵ 'Gambia's chief justice dismissed' *The Point* (May 13, 2015).

⁵⁶ 'Supreme Court passes verdict on Lang Tombong, Sarjo Fofana Appeal' *Foroyaa* (May 7, 2015).

⁵⁷ 'Gambia gets new Chief Justice' *Daily Observer* (May 14, 2015).

Court's move to commute the death sentences of his former Chief of Defence Staff, Lieutenant General Lang Tombong Tamba, and six others to life sentences.⁵⁸

Jammeh's interference with the Judiciary was also extended to Magistrates of the subordinate courts. Notably, Magistrates were dismissed by orders or executive directives from Jammeh after they made judgments that did not go down well with him. In some cases, they were arrested and charged with the offence of 'abuse of office.' As I noted elsewhere, "If the executive has unfettered control over the appointment, promotion, and dismissal of members of the judiciary, it would be the unconstrained master of the State."⁵⁹

4.2.4 Other Factors

In short, while the 1996 Constitution of The Gambia contains democratic principles, establishes representative institutions, and protects civil liberties and political rights that not only are relevant but also essential for a competitive democratic system. Jammeh used a menu of 'authoritarian manipulation,' including state power and resources to ensure one outcome: to maintain the status quo which included winning elections. Elections were rigged in ways that were not obvious to observers, such as ballot-box stuffing mainly because of the lack of accountability that Jammeh promoted. Jammeh, as the incumbent, had access to more resources than the Opposition which was mainly divided.

Due to his very long tenure, coupled with the repeated failures by the opposition, Jammeh was able to build a large patronage network which had effect on how citizens viewed the regime, the Opposition, and elections. In ensuring his political survival, he

⁵⁸ 'Gambian President sacked Supreme Court judges: lawyer, *Yahoo News*, June 28, 2015.

⁵⁹ Satang Nabaneh 'Foreign Judges on the Gambian Bench: Implications for Judicial Independence and the Rule of Law' In: Dziedzic A, Young SNM (eds.) *The Cambridge Handbook of Foreign Judges on Domestic Courts* (2023) p.406

politicized the civil service, army, police, and intelligence services. He thus surrounded himself with people who managed the bureaucracy of the intelligence services and a military and police force that coerced the population into submission. However, due to such a large network, he was forced to squander state resources as direct payouts to regime supporters.

Citizens also lacked freedom of speech, assembly, and association; and civil society was circumscribed to non-political activities or ‘soft’ human rights issues such as children and women’s rights and not human rights issues such as death penalty, sexual minority rights and torture. Ultimately, Jammeh’s power was unaffected by elections as citizens were relatively supportive of the regime, and less likely to transfer their votes to the opposition as they had a record of strife and boycotts, thus, considered unworthy of support.

4.3. Elections in The Gambia: 1996-2016

Five presidential, parliamentary, and local government elections have been conducted in The Gambia since 1996 or after the July 22, 1994, coup *d’état*. These elections were in 1996, 2001, 2006, 2011 and 2016. This Section will focus only on presidential elections that Jammeh won, drawing common trends from these elections on how Jammeh used constitutional and political machinations, backed by the electoral body, to produce similar outcomes.

4.3.1. The 1996 Presidential Elections

The referendum on the new Constitution saw few innovations from the 1970 Constitution. The minimum age to contest as president was decreased from forty to thirty years, enabling Jammeh to stand for the presidential election held on 26 September 1996.

Other factors also included the disqualification of former public officers who were

terminated or dismissed or found liable of misconduct, negligence, or corruption by a Commission of Inquiry. This was an attempt to prevent interested people with political ambitions from contesting for the presidency.⁶⁰ These strategies illustrate flaws in the constitutional design to limit the political landscape and prevent potential opponents from competing. Consequently, three of the main opposition parties - the Peoples Progressive Party (PPP), the National Convention Party (NCP), and the Gambia Peoples Party (GPP)- and key political leaders, including ex-president Jawara and most of his ex-Ministers, were banned from political activities for periods ranging from five to twenty years.⁶¹ Then Chairman Jammeh retired from the army and declared his candidacy with the launching of the Alliance for Patriotic Reorientation and Construction (APRC). In addition to his party, three other political parties competed: People's Democratic Organization for Independence and Socialism (PDOIS) which was the only pre-coup party not banned, United Democratic Party (UDP), and National Reconciliation Party (NRP) led by Sidia Jatta, Ousainou Darboe and Hamat Bah respectively.

Due to monopoly of the media, using state resources for campaigning and poorly financed Opposition parties, the outcome was predictable- Jammeh emerged as the winner of the 1996 election, subsequently ushering in civilian rule and becoming The Gambia's second elected President in 31 years of independence.

Table 4.1 Results of Presidential Elections in The Gambia, 1996

Candidate	Party	Votes	%
Yahya Jammeh	APRC	220,011	55.76
Ousainou Darboe	UDP	114,387	35.84

⁶⁰ Abdoulaye Saine 'The Paradox of Third-Wave Democratization in Africa: The Gambia under AFPRC-APRC rule, 1994-2008' (2009), p.28.

⁶¹ Decree 89, August 12, 1996.

Hamat Bah	NRP	21,759	5.52
Sidia Jatta	PDOIS	11,337	2.87
Total Votes cast		394,494	100
Total Registered Votes	N/A	446,541	

Source: Independent Electoral Commission: www.iec.gm

4.3.2. The 2001 Presidential Elections

Prior to the Presidential elections held on 18 October 2001, due to domestic and international pressure, Jammeh lifted the ban on major pre-coup political parties and politicians on 22 July 2001. The Provisional Independent Electoral Commission (PIEC) was renamed the Independent Electoral Commission (IEC) which saw the reappointment of the Chairman, Gabriel Roberts, who was summarily dismissed after the 1996 elections for alleged incompetence. However, many believed that he was instrumental in Jammeh winning the 1996 elections, and thus, his reappointment was engineered to make Jammeh win again.⁶²

Furthermore, Jammeh rejected on the spot counting of ballots citing reasons of logistics, security, and finance. This was, however, perceived by the Opposition as an opportunity for Jammeh to stuff the ballot boxes. The argument against his rejection was that he did not have the right to do so as a candidate since this was rather a mandate of the IEC. The rules regarding voting changed on the eve of the elections when the Opposition demanded that only people whose names appear on the voter register should vote. The premise of this objection was that there were allegations of cross-border registration of Senegalese from the neighboring Casamance region who were people from the same ethnic group as Jammeh. Hence, this decision was not supported by Jammeh who wanted voters to

⁶² Commonwealth Secretariat 'The Gambia Presidential Election 2001: The Report of the Commonwealth Observer Group' (2001), p.6.

only show their cards. The Chairman of the IEC overturned that earlier on election day, allowing the voters to only show their identification. Consequently, Jammeh won 52.96 per cent of the votes.

Table 4.2 Results of Presidential Elections in The Gambia, 2001

Candidate	Party	Votes	%
Yahya Jammeh	APRC	242,302	52.96
Ousainou Darboe	UDP	149,448	33.67
Hamat Bah	NRP	35,671	7.80
Sheriff Mustapha Dibba	NCP	17,262	3.78
Sidia Jatta	PDOIS	13,841	2.86
Total Votes cast		458,524	90
Total Registered Votes	N/A	509,301	

Source: Independent Electoral Commission: www.iec.gm

During the 2001 campaign period, Darboe alongside his supporters were also accused of murdering a supporter of the ruling party. This controversial case of *The State v. Ousainou Darboe and others*,⁶³ which was seen by many as a “witch hunt,” was dismissed by the High Court. Even though it was a highly sensitive case, the High Court did not hesitate to dismiss it because the prosecution failed to establish a case against them.

4.3.3. The 2006 Presidential Election

Prior to the 2006 election, in September 2005, the High Court delivered a landmark ruling in the case of *Halifa Sallah and Three Others v. the State*,⁶⁴ which involved the leaders of four opposition parties in the country. The Court nullified the rule of the IEC which allowed voters whose names did not appear on the list of the main register of voters to vote

⁶³ *The State v. Ousainou Darboe & others* (2000) High Court Criminal Case No 14.

⁶⁴ *Halifa Sallah & Others v. State* (2003) SC No 1/2005.

at the by-elections if they came with valid voters' cards. The Court held that such a practice would not ensure a genuine election as guaranteed by section 26 (b) of the Constitution.

The formation of the National Alliance for Development and Democracy (NADD) as a coalition of major political parties generated high expectations for the 2006 elections. However, the coalition became weakened when some opposition parties withdrew. Then emerged two coalitions: UDP/ NRP/Gambia Party for Democracy and Progress (GPDP) headed by Darboe; and NADD with three remaining political parties comprising the PPP, PDOIS and the National Democratic Action Movement (NDAM) headed by Halifa Sallah. In the end, Jammeh won with 67.3%.

Table 4.3 Results of Presidential Elections in The Gambia, 2006

Candidate	Party	Votes	%
Yahya Jammeh	APRC	264,404	67.33
Ousainou Darboe	UDP/NRP/GPDP	104,808	26.70
Halifa Sallah	NADD	23,473	5.98
Total Votes cast		392, 685	59
Total Registered Votes	N/A	670,336	

Source: Independent Electoral Commission: www.iec.gm

But why did the Opposition splinter into competing factions? The reasons have mainly been ascribed to the leadership.⁶⁵ The Opposition leaders desired the presidency where power is highly concentrated. They saw themselves more as competitors rather than partners. This led to a climate of distrust among them. In addition, the use of ethnic discourse

⁶⁵ Abdoulaye Saine 'The Gambia's 2006 Presidential Election: Change or Continuity?' (2008) 51(1) *African Studies Review*, pp. 59-83

meant a candidate's power base was ethno-centric, thus, gaining support from among other ethnic groups proved impossible.

4.3.4. The 2011 Presidential Elections

In the 2011 presidential elections, due to uneven playing ground and a splintered opposition, like other previous elections, Jammeh won 71.54 per cent of the vote for the fourth consecutive time. All attempts to unite the opposition behind a single figure failed. This led to Jammeh winning his highest number of votes and consolidating his authoritarian rule.

Table 4.4 Results of Presidential Elections in The Gambia, 2011

Candidate	Party	Votes	%
Yahya Jammeh	APRC	470,550	71.54
Ousainou Darboe	UDP	114,117	17.36
Hamat Bah	NRP	73,060	11.11
Total Votes		657,904	83
Total Registered Votes	N/A	796,929	100

Source: Independent Electoral Commission: www.iec.gm

In addition, it is important to note that the Economic Community of West African States (ECOWAS) boycotted elections observation as they found that The Gambia did not have a political environment that was conducive for holding free and fair elections.⁶⁶ In contrast, the African Union (AU) did send observers in 2011 and found the results to be credible.⁶⁷ Endorsing such unfair results is seen as subverting efforts to ensure democratization in The Gambia.

⁶⁶ 'Gambia's Yahya Jammeh ready for "billion-year" rule' *BBC* (December 12, 2011).

⁶⁷ 'African Union Observers Impressed with Gambia Election' *VOA* (November 23, 2011).

The trend in all these elections illustrate the gap between constitutional promises and actual practices. The legal, policy and institutional environment in the Gambia advertently or inadvertently favors the incumbent than the opposition, thus do not generate a level playing field for a free and fair elections. Key political machinations included the following:

a. Campaign and unequitable access to the media

Jammeh used existing laws to limit the right of political parties to campaign. For instance, Femi Peters, the then Campaign Manager of the former main opposition party, was arrested in October 2009 for holding a UDP rally in Serrekunda without prior police authorisation. The police alleged that Peters had ‘convoked a political meeting and used a loudspeaker without a permit issued by the Inspector General of Police, under section 5 of the Public Order Act.’⁶⁸ He was eventually convicted in April 2010 for holding a political rally without a police permit to use a public address system and sentenced to 12 months’ imprisonment. His appeal was rejected by both the High Court and the Court of Appeal. Thus, opposition parties and their leaders were harassed and intimidated by the APRC regime.

Furthermore, the former President’s ‘Meet the People’ tour funded by the State, t which usually happens before the election, amounted to campaigning and gave him an undue advantage leading to the presidential election. In addition, his use of state resources and machinery during campaign periods amounted to serious violation of section 91(b) of the Elections Act which states that “A candidate or political party shall not, during an election campaign period...abuse or engage in the improper use of property of the Government for political propaganda.

⁶⁸ *Peters (Femi) v. the State*, HC 195/10/CR/075/BO (Crim. Appeal).

Over the past two decades, the media had been tailored in a way to serve the ruling party and silence independent voices. The existing legal framework for both traditional and online media reinforces an environment of self-censorship and gives power to the state, especially the President, with a wide range of instruments to have a tight hold on the media and citizens as well.

The Criminal Code equates criticism with defamation, libel and sedition, punishable with stiff penalties in the form of fines and imprisonment even for first-time offenders, and in some cases there is not even an option of a fine.⁶⁹ In response to the growing internet activism that was highly critical of Jammeh and his government, the National Assembly passed an amendment to the Information Act in April 2013 that provided a 15-year jail term for any person found guilty of using the internet to spread ‘false news’ about the regime or public officials.⁷⁰

The Constitution recognizes freedom of information and the media. In this regard, the state is obliged to ensure equitable access to state media by all political parties. While electoral law regarding media’s conduct during election lacks clarity, the IEC media rules try to fill this gap. The State broadcaster, Gambia Radio and Television Services (GRTS) is obliged to provide each candidate with five minutes of free airtime, to present his or her manifesto in the language of his or her choice. In practice, Jammeh monopolized GRTS and was always given more airtime than the rest of his opponents. For example, the news segments on GRTS were dominated by the presidential tour and government ministers’

⁶⁹ Sec. 52 of the Criminal Code (Amendment) Act 2004. For a comprehensive analysis of freedom of speech and the media, see Satang Nabaneh ‘The Future in Transition: Realizing Respect for Human Rights in the ‘New’ Gambia’ in Romola Adeola & Matua W Mutua (eds) *The Palgrave Handbook of Democracy, Governance and Justice in Africa* (2022) 295-318.

⁷⁰ Information (Amendment) Act 2013.

institutional activities distorting the fairness of the campaign coverage. Such allocation of time illustrated the state broadcaster's bias that affected their neutrality and ensuring separation between political actors' executive duties and campaigning. In addition, broadcast schedules are neither advertised nor published on the GRTS's website; the recordings not placed either on the GRTS's website or on its social media accounts.

As illustrated above, there was no equal access between the ruling party and the opposition parties in State owned media. The Jammeh incumbency ignored the provisions of the Constitution and had monopoly of the media for his campaigns with very limited access to opposition parties. The then ruling party enjoyed extensive and consistent media coverage of all its activities throughout the year, whether they relate to elections or not, or to national or partisan activities.

b. Political party and campaign financing

Individual Gambian citizens, civil society organizations and private entities may all make campaign contributions. There are no ceilings on donations or expenditure. Donations from corporations and unincorporated bodies, and from all foreign entities, are prohibited, while there are also no monitoring and enforcement mechanisms in place. Thus, the lack of regulatory framework on campaigning financing and expenditure provided Jammeh with undue advances. This unregulated space resulted to unequal playing ground for opposition political parties as they generally lacked adequate financial resources to engage in intensive campaigning. This greatly hindered transparency and fairness.

All the elections illustrated above show that presidential elections were not free and fair. Jammeh and the APRC had total control over national media, while security forces and civil servants as well as public enterprises were used for electioneering purposes in favor of

the APRC.⁷¹

4.3.5. The 2016 Presidential Elections

Jammeh exercised control over citizens, civil society organizations, the media and opposition parties. It can also be argued that citizens were predisposed to support Jammeh as they had no confidence in the opposition which did not have a track record of governing the country. Despite all these factors, the opposition coalition nonetheless won the 2016 elections. It is clear that Jammeh did not think he was going to lose as he even agreed on-the-spot counting of votes at each and every polling station with figures published instantly.

Table 4.5 Result of Presidential Elections, 2016

Candidate	Party	Votes	%
Adama Barrow	Independent	227,708	43
Yahya Jammeh	APRC	208,487	40
Mama Kandeh	GMC	89,768	17
Total Votes		525,867	59
Total Registered Votes	N/A	886,578	100

Source: Independent Electoral Commission: www.iec.gm

The central question that this section addresses is, why did Jammeh, an authoritarian leader of 22 years, lose the 2016 election? This dissertation lays out two sets of hypotheses to account for what happened: one focuses on growing authoritarianism through Jammeh's actions, which highlighted vulnerability in his regime; and second, the resultant opposition unity as potential explanations.

⁷¹CSO Coalition on Elections, The Gambia 'Final election observation report: November 24, 2011, President election observation report' (2011).

1. Jammeh's missteps

Generally, “rulers have to take some key decisions regarding their strategic behavior in the electoral arena.”⁷² Jammeh made wrong decisions as to what extent he needed to rely on authoritarian control (strategies for electoral manipulation); and persuasion of voters (strategies for electoral mobilization). Mama Kandeh’s expulsion from the APRC and the subsequent formation of the Gambia Democratic Congress (GDC) also had an impact on the internal dynamics of Jammeh’s party. By targeting APRC supporters rather than traditional opposition followers, Kandeh effectively fragmented the APRC’s voter base as shown in table 5. This strategy paid off in the presidential election, where he managed to garner 17 percent of the votes.⁷³

Authoritarian decisions and actions he took, which might have adverse effects, included manipulation of electoral rules through the reform and state control of the media. In addition, after the 30 December 2014 State House attack spearheaded by some diasporan Gambians in the United States of America, Jammeh’s response included arrests of family members of those involved and more repressive steps taken against anyone suspected of involvement.

a. Continued human rights violations

Jammeh had systematically violated fundamental human rights while using the Constitution and other laws to justify his actions. Fundamentally, Jammeh was the foremost exponent of this anti-media attitude and message, which appears to have been absorbed and acted upon by the rest of his Government, particularly by the security

⁷² Andreas Schedler, ‘Election without Democracy: The Menu of Manipulation’ (2002)13 *Journal of Democracy*, p.15.

⁷³ ‘APRC Expelled MP Mamma Kandeh Reminds Mayor Colley’ *The Standard* June 29, 2016).

agencies. Over the years, Jammeh issued several direct and veiled messages which have threatened freedom of the press and the lives of journalists and human rights defenders in the country. Reacting to the growing criticism of his newly imposed military regime in 1994, Jammeh stated that ‘journalists are the illegitimate sons of Africa. Citizens should not buy newspapers so that journalists can starve to death.’⁷⁴

Through multiplicity of laws regulating the media, journalists operated in a precarious environment characterized by draconian laws (many of which are still in existence); arbitrary arrests, detentions, and physical assaults against journalists, as well as the closure and burning down of media houses. It is estimated that during Jammeh’s rule, 3 journalists were killed in line of duty; more than a dozen attempts of murder on journalists; at least 89 cases of arrest and detention of journalists occurred, which were mostly arbitrary; an estimated 52 cases of violent attacks were recorded; 15 cases of torture;⁷⁵ 4 cases of arson attacks on media practitioners and media outlets; and 14 instances of arbitrary closure of media outlets.⁷⁶

Furthermore, under Jammeh’s rule, the right of people to protest peacefully and open opposition to the Government was met with a consistently repressive response over the years.⁷⁷ The right to freedom of assembly as guaranteed by the 1997 Constitution includes the right to take part in peaceful demonstrations. However, people were deterred

⁷⁴ Quoted by the Media Foundation for West Africa in its seminal report ‘Press Freedom Violations in the Gambia: 1994 – 2006.’

⁷⁵ See Gambia Press Union (GPU) ‘Submission to the Constitutional Review Commission in response to the Issues Document presented for the Constitutional Review Consultation (2018). (file with author).

⁷⁶ Some of these include the closure of Citizen FM Radio in 1998, The Independent newspaper in 2006, as well as The Standard and Daily News in 2012. It has also arbitrarily closed down Teranga FM radio station on at least two occasions without any legal authority. While the Standard and Teranga FM were later allowed to resume operations, The Independent and the Daily News are still closed down.

⁷⁷ See, *Gambia Student’s Association v. The Inspector General of Police & Anor.*, 26/04/2000; *Peters (Femi) v. the State*, HC 195/10/CR/075/BO (Crim. Appeal).

from organizing and participating in such demonstrations. Section 18 (4) of the Constitution provides:

Without prejudice to any liability for a contravention of any other law with respect to the use of force in such cases as are hereinafter mentioned, a person shall not be regarded as having been deprived of his or her life in contravention of this section if he or she dies as a result of the use of force to such extent as is reasonably justifiable in the circumstances of the case, that is to say —

- (a) for the defence of any person from unlawful violence or for the defence of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) for the purpose of suppressing a riot, insurrection or mutiny;⁷⁸
- (d) in order to prevent the commission by that person of a criminal offence, or
- (e) if he or she dies as a result of a lawful act of war.

This section outlines specific circumstances where the use of force resulting in loss of life may be deemed justifiable under the law, ensuring clarity on the permissible conditions for such actions.

The Public Order Act of 1961⁷⁹ constitutes a significant limitation on the right of assembly. The Act regulates the holding of public gatherings and demonstrations. In section 5(2), the Act requires any person who wants to form a public procession to first apply for a license to the Inspector General, the Governor of the Region or other appropriate Government official authorized by the President who will issue the license if he or she “is satisfied that the procession is not likely to cause a breach of the peace.”⁸⁰ This requirement

⁷⁸ Emphasis added.

⁷⁹ The 1961 Act came into force on 31 October 1961. It has since been amended by the Amendments Act, 2009 and 2010.

⁸⁰ During Jammeh’s 22 years of rule, it became impossible to obtain permission to have a public gathering. See for example, *Peters (Femi) v. the State*, HC 195/10/CR/075/BO (Crim. Appeal).

for prior application for a license is not in line with international best practice that requires only prior notification for a public procession.⁸¹

Additionally, requirement for the issuing of license on the basis that procession is not likely to breach the peace is unclear as it gives officials wide discretion. The lack of clear guidance to make restrictions on freedom of assembly be ‘in conformity with the law’ must be viewed as arbitrary. Section 5 allows Government officers to disperse unlicensed public processions, as well as hold individuals who participate in unlicensed processions liable to imprisonment for a term of three years. This accorded law enforcement officials immunity when a person dies while reasonable force was used.

The consequences of unlicensed public processions were dire. This was the case of Solo Sandeng on 14 April 2016. Sandeng, the then National Organizing Secretary of the then main opposition, United Democratic Party (UDP), alongside other members were arrested for leading a peaceful protest for electoral reforms and demanding for the resignation of President Jammeh.⁸² Two days after the arrest, senior members of the UDP, including the leader Ousainou Darboe, confirmed in a press conference the death of Solo Sandeng while in detention. Darboe also stated that two detained female protesters were also in a coma following their arrest and alleged brutal torture by the security agents. Angered by the harsh treatment meted on the detainees, Darboe and a group of UDP stalwarts led a protest march but were swiftly rounded up by Gambia's security force and arrested. Eyewitnesses said the security agents fired tear gas at the crowd to disperse it.⁸³

⁸¹ See, African Commission on Human and Peoples' Rights 'Guidelines on Freedom of Association and Assembly in Africa' (2017).

⁸² Human Rights Watch 'Gambia: Investigate Death in Custody, Free Protesters' (April 18, 2016).

⁸³ 'Gambian activist "died in detention"-Amnesty International' *BBC* (April 16, 2016).

Alarmed by the high-handedness of the authorities, the United Nations Secretary-General, Mr. Ban Ki-Moon, called ‘on the authorities to conduct a prompt, thorough and independent investigation’ into the circumstances surrounding the deaths.’⁸⁴ Rights groups such as Amnesty International, Human Rights Watch and ARTICLE 19 also called on the government to conduct an independent and impartial investigation into Sandeng’s death and to release the protesters. Darboe and his co- defendants were subsequently convicted and sentenced to three years imprisonment.⁸⁵ Perhaps, this was Jammeh’s biggest mistake as Darboe was regarded by some as being the main stumbling block to a united opposition bloc. With him out of the scene, the opposition were able to unite.

As Jammeh’s regime became more repressive in character, it should have resulted to more pessimism and made defections from his party too costly. However, the repressive practices encouraged allies and citizens to defect. The irony was that in going too far, Jammeh was viewed as desperate and thereby his regime regarded as vulnerable. This was evident in his expulsion of former APRC National Assembly member for Kantora, Mama Kandeh, which changed the internal dynamics of his own party.⁸⁶ Kandeh later formed his political party Gambia Democratic Congress (GDC) in 2016 few months before the election. Unlike the traditional opposition parties that maintained a following, Kandeh primarily targeted APRC supporters, especially the disgruntled militants. His political strategy of attracting APRC party members subsequently created political bickering.

⁸⁴ UN ‘Gambia: Ban calls for release of detained protesters after death of opposition members’, (April 17, 2016), available at <https://news.un.org/en/story/2016/04/526902-gambia-ban-calls-release-detained-protesters-after-death-opposition-members>.

⁸⁵ ‘Darboe & Co jailed’ *Standard Newspaper* (July 21, 2016).

⁸⁶ ‘APRC expelled ME Mamma Kandeh reminds Mayor Colley’ *The Standard*, June 29, 2016.

b. Declaration of The Gambia as an Islamic state

Other decisions and actions that Jammeh took which might have had a negative impact on voter persuasion, especially from the Christian voters, included the unilateral declaration of The Gambia as an ‘Islamic Republic’ on December 11, 2015.⁸⁷ It has been argued that the insertion of the word “secular” in section 1 of the Constitution was unconstitutional because it did not follow the procedure laid out in the Constitution for amendments. In this case, the Supreme Court invalidated a substantial part of the Constitution Amendment Act which aimed at amending several provisions of the Constitution. The procedural requirements for amending the Constitution as provided in section 226 (7) were not followed.⁸⁸ Nevertheless, one change stayed in the face of the Supreme Court judgment finding it unconstitutional. This was the insertion of the word “secular” in section 1 of the Constitution which states “The Gambia is a Sovereign Secular Republic.” The general sentiment and understanding in the country were that The Gambia was not a religious state. As Fish has noted, religiosity is the “ally of authoritarianism and secularism of democracy.”⁸⁹

Thus, in making the proclamation, Jammeh cited the wishes of the people and the need to distance the country from its “colonial legacy”.⁹⁰ However, there was no indication that people were consulted. On 4 January 2016, an executive order, leaked to the press, banned all female civil servants from leaving their hair uncovered during working hours. This was later rescinded. As noted elsewhere, “throughout his rule, Jammeh employed various tactics to gain political control and recognition in the Islamic world and among its

⁸⁷ ‘The Gambia: Africa’s new Islamic republic’ *BBC* (January 26, 2016).

⁸⁸ *Kemmeseng Jammeh v Attorney General* (2002) AHRLR 72 (GaSC 2001).

⁸⁹ Steven M. Fish ‘Islam and Authoritarianism’ (2002) 55(1) *World Politics*, 4–37, p. 21.

⁹⁰ ‘The Gambia fashions itself as a kind of Islamic state’ *The Economist* (January 11, 2016).

leaders, using anti-Western rhetoric.”⁹¹ This resonates with the ploy by African leaders who started using Islam as a political tool prior to colonization and after decolonization even in the case of The Gambia.⁹² For instance, Jammeh’s branding as a “pious Muslim” was exemplified in the way he dresses in a white Muslim gown with long prayer beads and a supposed holy Quran in his hands. He also built a mosque at State House grounds. He was described as ‘a master of manipulation of Islamic symbol’ in what is usually seen as a state with religious tolerance.⁹³ The Gambian context illustrates how Jammeh employed religious symbols and values to shape perceptions of state-building and leadership, enabling him to exert significant influence and control over the population with relatively few constraints. O’Brien observes that religious symbols frequently wield substantial influence in African politics, strengthening allegiances within religious groups and delineating interactions with the state.⁹⁴ Nyang has argued that the influence of Islam on West African politics dates to the early interactions between Islamic culture and traditional African political leadership during the medieval era.⁹⁵

Jammeh manipulated religious beliefs and sentiments intended to bolster his political objectives. This symbolism played a crucial role in his pursuit to prioritize religious values over Western ones. Consequently, he targeted homosexuality, human rights advocates, and any other ‘Western’ agendas perceived as a challenge to Islam.⁹⁶ As

⁹¹ Satang Nabaneh ‘The Gambia’s Political Transition to Democracy: Is Abortion Reform Possible?’ (December 2019) 21(2) *Health and Human Rights Journal*, p. 172.

⁹² Momodou Darboe, ‘Gambia,’ (2004) 47(2) *African Studies Review*, pp. 73-82.

⁹³ *Id.*

⁹⁴ Donal B Cruise O’Brien *Symbolic Confrontations : Muslims Imagining the State in Africa* (2003).

⁹⁵ Sulayman S. Nyang ‘Islam and Politics in West Africa’ (1984) 13 *Issue*, pp. 20–25. See also Jeffrey Haynes *Religion in Global Politics* (1998)

⁹⁶ Satang Nabaneh ‘From a ‘crusade to root out homosexuality like malaria’ to a ‘non-issue’: The absence of sexual minority lawfare in The Gambia’ in Adrain Jjuuko et al. *Queer lawfare in Africa: Legal strategies in contexts of LGBTIQ+ criminalization and politicization* (2022), pp. 341-375.

noted elsewhere, ‘throughout his rule, Jammeh employed various tactics to gain political control and recognition in the Islamic world and among its leaders, using anti- Western rhetoric.’⁹⁷

He championed the rhetoric that these were western imposed idea and neo-colonialist export to re-colonize Africa, a sentiment shared by other anti-gay African leaders, including the President of Uganda, Museveni.⁹⁸ In these actions, Jammeh aimed to forge strategic partnerships with Islamic republics for both protection and economic stability, as well as for his religious authority.

Although the Christian population, estimated at 4.2 per cent of the population (majority of whom are Roman Catholics),⁹⁹ having felt alienated over the years with a decline in influence of the community from the early 1990s, were less inclined to support him after his erratic announcement.¹⁰⁰ More importantly, the decision sparked fears of a growing authoritarian regime, with many citizens worried about stricter government control, heightened security measures, and limitations on their personal liberties. These anxieties were exacerbated by the history of political instability and religious violence in West Africa.¹⁰¹ Further fueling these concerns was the fact that Jammeh’s move was unconstitutional. By acting outside the legal framework, he solidified the perception of his unchecked power.

⁹⁷ Satang Nabaneh, ‘The Gambia’s Political Transition to Democracy: Is Abortion Reform Possible?’ (2019) 21(2) *Health and Human Rights Journal* 172

⁹⁸ ‘President Museveni’s full speech at signing of Anti-Homosexuality Bill’ *Daily Monitor* (February 24, 2014).

⁹⁹ United States Department of State, International Religious Freedom Report for 2018.

¹⁰⁰ ‘Gambia: Religious freedom at risk after Islamic state declaration’ *Evangelical Focus* (February 23, 2016).

¹⁰¹ See James Gow et al. *Militancy and Violence in West Africa* (2013).

c. Ethnic politics: Attacks on Mandinkas'

Jammeh, like most political leaders in Africa, has used ethnicity as a weapon to cement power.¹⁰² Ethnic consensus is evident during elections to show allegiance.¹⁰³ In the case of Kenya, it has been argued that politicians mobilize along the lines of ethnicity for both personal and political gain, which has served as the main crux of election violence as the issue transforms from merely a fight for political power but a competition for resources.¹⁰⁴

In The Gambia, Jammeh designed a system in which he channeled government resources mainly to his ethnic supporters to ensure his political survival. During his 2016 “Dialogue with the people tour,” Jammeh delivered one of his most controversial and vitriolic speeches. He threatened to eliminate the Mandinka ethnic group which forms more than 40 per cent of the population. Jammeh referred to the Mandinka as “enemies, foreigners” and threatened to kill them one by one and place them “where even a fly cannot see them.”¹⁰⁵ His speech was condemned by the UN Special Adviser on the Prevention of Genocide who called it irresponsible and extremely dangerous.¹⁰⁶

Jammeh’s targeting of the Mandinka community can be linked in part to the ethnic background of his predecessor, Dawda Jawara, who served as President of The Gambia from independence in 1965 until he was ousted by Jammeh in a coup in 1994. Despite the

¹⁰² Robert. H. Bates, ‘Modernization ethnic competition and the rationality of politics in contemporary Africa,’ (1974) 6(4) *Comparative Political Studies* 457-484.

¹⁰³ See Alex Thomson, *An Introduction to African Politics* (2010).

¹⁰⁴ See Westen K. Shilano, ‘Introduction: Ethnicity and Politics in Kenya’ in Westen K. Shilano, *Political power and tribalism in Kenya*, (2018, Palgrave Macmillan), pp. 1-28.

¹⁰⁵ Niklas Hutlin et al. ‘Briefing Autocracy, Migration, and The Gambia’s “unprecedented” 2016 election,’ (2017) 116(463) *African Affairs*, pp. 4.

¹⁰⁶ ‘Gambia: UN adviser condemns President’s reported threats against ethnic group’ *UN News* (June 10, 2016), <https://news.un.org/en/story/2016/06/531822#.V2HJKPkrLIU>.

Mandinka comprising approximately 40 percent of the Gambian population, ethnicity has not served as a unifying factor for collective action. It's ironic that Jammeh's manipulation of tribalism mirrors colonial divide-and-rule tactics. During the colonial era, the British employed a strategy of dividing the small colony in present-day urban Banjul (and Kombo St. Mary's) from the rural areas of the protectorate. With six months to the elections, Jammeh, with his derogatory remarks, managed to alienate the Mandinkas, the largest ethnic group in The Gambia. This angered and roused them to vow to vote for the opposition. This has been confirmed by the current leader of the opposition party, APRC, Fabakary Tombong Jatta (current Speaker of the National Assembly), who has admitted that former President Jammeh contributed to his own downfall after his tribal attacks on Mandinkas. He noted, "Yes, I have to admit that Jammeh's tribal attacks, especially on the Mandinkas, contributed dearly to his downfall and that of the APRC in the last Presidential election," because he was wrongly advised by some disgruntled people.¹⁰⁷

Consequently, it can be argued that the increasing repressive practices, Jammeh's erratic behavior, his irresponsible pronouncements, and assaults both on individuals, national and international institutions resulted to pushing away allies of the regime as well as citizens to support the opposition. Voting Jammeh out was the culmination of the outrage that people felt at the gross injustices and socio-economic hardships faced under his repressive regime.

¹⁰⁷ 'Jammeh's attack on Mandinkas caused his downfall' *The Standard* (November 21, 2017).

d. From a splintered opposition to a united one

Notwithstanding the unfair playing field, the inability of the opposition to form and remain a viable and effective coalition meant Jammeh's victory in four consecutive presidential elections. The decision for opposition parties to unify in 2016 stemmed from a culmination of factors, with increasing repression being a significant catalyst. Prior to this, internal divisions and differing agendas often hindered unity among opposition groups. However, the escalating repression under Jammeh's rule, exemplified by events such as the death of UDP National Organizing Secretary Solo Sandeng and subsequent arrests of opposition activists, created a sense of urgency and necessity for cooperation. The crackdowns on protests and the arrest of prominent opposition figures further underscored the need for solidarity in challenging Jammeh's regime. On May 17, as he began a national tour, Jammeh gave a speech in the North Bank Region (NBR) in which he said: "Let me warn those evil vermin called opposition. If you want to destabilize this country, I will bury you nine feet deep."¹⁰⁸ During an interview, Jammeh said: "[The opposition] they don't want reforms, they just say, 'This President must leave.' They have seen what happened in Tunisia, and they want to do the same thing. But they won't succeed. I won't tolerate it."¹⁰⁹

Against this background, opposition parties had to consider how to effectively compete against the incumbent dictator. The dire situation and the realization that

¹⁰⁸ 'Gambian President Yahya Jammeh vows to bury the opposition 9-feet deep,' West Africa Democracy Radio, May 2016, available at <https://soundcloud.com/westafricademocracyradio/gambian-president-yahya-jammeh-vows-to-bury-the-opposition-9-feet-deep>.

¹⁰⁹ Haby Niakate 'Gambie – Yahya Jammeh: 'Ban Ki-Moon et Amnesty peuvent aller en enfer!,' *Jeune Afrique*, (June 14, 2016).

collective action was imperative for effecting change were also significant drivers behind the unprecedented collaboration among opposition parties in 2016.

In contrast to the four previous elections, the opposition was able to unite behind a single presidential candidate leading to Jammeh's loss in the 2016 elections. The opposition's changed tactics: the formation of a cohesive coalition party which they had failed to achieve since 1996 provided a viable option to the citizenry.¹¹⁰ It is contended that a difference in opposition strategies might explain the differences in electoral outcomes in 2016 (when they won) and 1996, 2001, 2006 and 2011 (when they lost).¹¹¹ As argues, "while an opposition victory is not impossible in a hybrid regime, it requires a level of opposition mobilization, unity, skills and heroism far beyond what would normally be required for victory in a democracy."¹¹²

In essence, in the context of increasing repression, the repressive equilibrium may shift. Groups that had weak incentives to join the opposition or coordinate with others suddenly see greater safety in working together as the regime grows more repressive or erratic. As the American rebels put it in the context of the growing rebellion against George III: "hang together" or "hang separately."¹¹³ In sum, within the Gambian context, the state's ability to repress dissent decreases, and the cost of inaction is high.¹¹⁴

¹¹⁰ Strategy is here the overall plan to gain a particular objective, while tactics refer to the means used.

¹¹¹ See a similar study, Valerie J. Bunce and Sharon L. Wolchik, *Defeating Authoritarian Leaders in Post-Communist Countries* (2011).

¹¹² On social organization and the capacity for collective action, see, Stephan Haggard and Robert R. Kaufman, *Dictators and Democrats: Masses, Elites and Regime Change* (2016), pp. 79-88.

¹¹³ On how the dynamics of repression can unintentionally solve the free-rider problem among opponents, see, Stathis N. Salyvas, and Matthew Adam Kocher, "How 'Free' Is Free Riding in Civil Wars? Violence, Insurgency, and the Collective Action Problem." (2007) 59(2) *World Politics*, pp. 177-216.

¹¹⁴ Sidney G. Tarrow *Power in Movement: Social Movements and Contentious Politics*, 2nd ed., (1998).

Additionally, the opportunity structures which look at barriers and resources,¹¹⁵ shifted over time. These included the increased usage of the internet and social media which gave the diaspora a voice; provided an opportunity for networking, raising funds online and sending money easily; and attracted support from external factors due to heightened salience of government abuse. The actions of the diaspora are in line with the exit-voice theory which states that even when people leave the country, they are able to use their voices to shape and nudge politics back home towards a democratic path.¹¹⁶ Through the Gambia Democracy Fund (GDF), about 4 million Gambian Dalasis (approximately about \$102, 359) was sent to the coalition for the 2016 elections.¹¹⁷

The internet became a crucial platform as traditional avenues for political communication were often inaccessible or tightly controlled similar to other African countries.¹¹⁸ Traditional broadcast media functioned largely as a state and mainstream party mouthpiece. It also offered a crucial escape from state censorship. The internet provided a vital virtual space for continued communication and debate similar to what we saw in the Arab spring.¹¹⁹ Young people, who constitute a majority of population of The Gambia (about 60% is under the age of 25) took keener interest in politics and the 2016

¹¹⁵ See Elinor Ostrom 'Collective action and the Evolution of Social Norms' (2000) 14 *Journal of Economic Perspectives* 3, pp. 137-58.

¹¹⁶ For discussion on this theory, see, Steven Pfaff and Hyojoung Kim "Exit-Voice dynamics in collective actions: An analysis of emigration and protest in the East German Evolution" (2003) 109 *American Journal of Sociology* 2, pp. 401-444; Steve Pfaff *Exit-Voice Dynamics and the Collapse of East Germany: The Crisis of Leninism and the Revolution of 1989* (2006).

¹¹⁷ 'GDF Release Details of Funds Donated to the Coalition from Gambian Diaspora' *Gainako* (December 20, 2016).

¹¹⁸ Nanjala Nyabola *Digital Democracy, Analogue Politics: How the Internet Era is Transforming Politics in Kenya* (2018). See also Nkwachukwu orji 'Social Media and Elections in Nigeria' in Maggie Dwyer and Thomas Molony (eds.) *Social Media and Politics in Africa: Democracy, Censorship and Security*.

¹¹⁹ Philip N. Howard and Muzammil M. Hussain *Democracy's Fourth wave? Digital Media and the Arab Spring* (2013).

elections coupled with the availability of social media such as WhatsApp for rapid information dissemination. These triggers and subsequent informational cascades resulted to mobilization against Jammeh at the ballot box. These strategies yield payoffs for the opposition.

2. The Political Impasse: Looking Beyond the Polls

Following an initial acknowledgment of the election results, the former president later disputed them, alleging voter fraud and irregularities. This disagreement precipitated a six-week political deadlock, casting uncertainty over the nation's political landscape, leading to immediate reactions.

a. Judicial Resistance in the name of the Rule of Law

The respect for the rule of law and its procedural feature of safeguarding separation of powers figure prominently during the impasse. On 13 December 2016, Jammeh instituted an election petition to contest the validity of the election results.¹²⁰ However, the Gambian Supreme Court, the only court competent to deal with this matter, could not hear it due to a lack of a quorum.¹²¹ Five judges are required to constitute a quorum. At the time, there was one Supreme Court Justice in the country, the former Chief Justice from Nigeria.¹²² This situation arose because in 2015 President Jammeh sacked two Gambian judges of the Court after the full bench of the Court decided in favor of certain military

¹²⁰ Gaye Sowe and Satang Nabaneh 'The Gambia: The state of liberal democracy' in Albert, Richard and Landau, David and Faraguna, Pietro and Drugda, Šimon, *The I-CONNECT-Clough Center 2017 Global Review of Constitutional Law* (2018), pp. 97-98.

¹²¹ Sec. 12(1)(c) states: "The Supreme Court shall have an exclusive original jurisdiction on any question as to whether or not any person was validly elected to the office of President or was validly elected to, or vacated his or her seat in, the National Assembly."

¹²² 'Gambia Supreme Court judge declines to rule on president's election challenge' *Reuters* (January 17, 2017).

officers who were convicted of treason and sentenced to death, commuting their sentences to life imprisonment and acquitting and discharging Sarjo Fofana, the then naval commander. Although judges from Nigeria and Sierra Leone were earmarked for appointment to the Court, they never took office.¹²³

Additionally, the Gambia Bar Association (GBA) was quick to condemn Jammeh's actions publicly on 12 December 2016, thus blazing the trail for other civil societies to do the same. The GBA did not stop at that; they went on, in due course, to resolve as a professional body to stage a total boycott of all the courts.

b. Role of NGOs, Women, and Youth

The role of NGOs, women, and youth in shaping democracy in the Gambia crystallized in the 2016 elections when they rallied to elect a new leader that would pave the way for what would be the first democratic change of government in the history of the country since 1965. Jammeh's U-turn was denounced by different sectors of Gambian society. Some faculty and staff of the University of The Gambia boycotted exams and their work in solidarity with the president-elect. This was followed by various civil society organizations, ambassadors and ministers all issuing statements asking him to step down.

The engagement and participation of women and youth in this election was unprecedented and critical. Due to their frustration over the autocratic regime of Jammeh, they rallied behind the banners of opposition coalition to usher in democratic and constitutional change of government. In April 2016, following Solo's death, young people started the Global Movement for Justice and Democracy in Gambia with the motto

¹²³ 'Gambia: How Nigeria blocked Gambian Supreme Court from sitting for Jammeh' *Premium Times Nigeria* (January 11, 2017).

“#JammehMustGo.” This slogan was later adopted as the final demand of the diaspora and the political opposition during the elections and the impasse respectively. They released statements and attempted to organize a mass youth uprising like the Arab Spring. This failed.

During the impasse, “Gambia Has Decided” was a movement which arose in opposition to Jammeh’s decision to annul the results of the December 2016 election. The group was responsible for the erection of billboards in the Greater Banjul area with the inscription #GambiaHasDecided campaign slogan. Some of the groups’ members were arrested and released, while some were forced into exile to be neighboring Senegal.

c. When Things Go Really Wrong: The Role of External Forces

Having failed to constitute a court of his liking, the former President argued that he found a loophole provided for in section 34 of the Constitution in which the President may “declare that a state of emergency exists” in the whole or parts of the Gambia. Section 99(2) of the Constitution provides that when the President has declared a state of emergency, the National Assembly may adopt a resolution to prolong its own term for a period up to three months. Upon the adoption of this resolution, the term of office of the President is then prolonged for the same period. In line with these provisions, Jammeh declared a state of emergency on 17 January 2017 with the APRC dominated National Assembly approving it and extending the term of the Parliament and the presidency by 90 days.¹²⁴

Jammeh’s refusal to step down led to a political impasse. A delegation led by President Sirleaf was dispatched to Banjul on 13 December 2016 to broker an

¹²⁴ ‘The Gambia’s president declares State of Emergency’ *BBC* (January 17, 2017).

agreement. When this failed, ECOWAS convened emergency summit on 9 January 2017 that called on Jammeh to step aside. Both ECOWAS and the AU adopted the position that upon the swearing of Barrow on 19 January, they would cease to recognize Jammeh as president.¹²⁵ With Jammeh giving no indication that he would step down, ECOWAS sent the Mauritanian President, Mohamed Ould Abdel Aziz, to Banjul to persuade Jammeh to step aside.

As the January 19 deadline approached, there was no agreement in sight. Ground forces from Senegal, Nigeria, Ghana, Mali, and Togo, backed by Nigerian air and naval support and Senegalese field artillery, massed at the Senegal-Gambia border, declaring that they would move in if a political solution was not found. The troops entered The Gambia under the banner of the Economic Community of West African States Military Intervention in Gambia (ECOMIG), after Barrow was sworn in as President on January 19, 2017, in the Gambian Embassy in Senegal. This was after he was flown out of the country by ECOWAS to ensure his protection.¹²⁶ Jammeh, after having looted the state's coffers left The Gambia for Equatorial Guinea¹²⁷ with an agreement that "no legislative measures" would be taken against him or his family.¹²⁸ The Gambia's new president, Adama Barrow returned to the country amidst widespread celebrations.¹²⁹

¹²⁵ ECOWAS 'ECOWAS, African Union and UN statement on the political developments in the Gambia' (December 10, 2016).

¹²⁶ 'Adama Barrow sworn in as Gambia's president in Senegal' *Aljazeera* (January 19, 2017)

¹²⁷ 'Yahya Jammeh: Other leaders accused of looting the coffers' *BBC* (January 23, 2016)

¹²⁸ *See*, Joint Declaration by the Economic Community of West African States, the African Union and the United Nations on the Political Situation of the Islamic Republic of The Gambia.

¹²⁹ 'President Adama Barrow arrives in The Gambia, at last' *Aljazeera* (January 26, 2017)

In many African countries, presidential incumbents are not prepared to accept an election defeat which plunged their countries into political crisis and uncertainty.¹³⁰ The Gambia has neither influence nor the geo-strategic location to entice international political interests. This further begs the question of why the ECOWAS and the AU backed by the UN intervened to oust Jammeh after his defeat? The endurance and resistance of the opposition, civil society and people in The Gambia might have sent a strong signal to the international community that there was need for assistance.

This discussion carries an important implication that directs our attention to whether external forces are now ready to take 'all possible' measures to uphold the results of a validly conducted elections? The actions of African dictators, even in the face of negative consequences, can be countered through well devised strategies to enhance compliance. In this regard, it is essential that the AU and sub-regional bodies like ECOWAS are at the forefront of applying economic sanctions and in extreme cases, military interventions to such undemocratic regimes.¹³¹

The regional hegemons in Africa including South Africa, Kenya, Ethiopia and Nigeria have a key role to play as their political, military and economic resources are necessary to maintain security and order.¹³² In the case of The Gambia, Nigeria, despite grappling with several conflicts within its own borders, was instrumental with both diplomatic efforts, as well as, sending ground troops. ECOWAS leaders, key among them Nigeria's Muhammadu Buhari, Liberia's Ellen Johnson Sirleaf, and Ghana's Nana Akufo-

¹³⁰ Three recent post-election coalitions in Africa stand out. Kenya, Zimbabwe, and Ivory Coast (Côte d'Ivoire) were characterized by violent elections and more violence post the election.

¹³¹ ECOWAS intervened in Côte d'Ivoire to oust the defeated president Laurent Gbagbo and allow democratically elected leader, Alassane Ouattara, to take office.

¹³² Olusola Ogunnubi and Ufo Okeke-Uzodike 'Can Nigeria be Africa's hegemon?' (2016) 25 *African Security Review* 2, pp. 110-128.

Addo and his predecessor, John Dramani Mahama, launched a series of diplomatic initiatives to persuade Jammeh to step aside.¹³³ This was premised on the African Charter on Democracy, Elections and Governance (ACDEG)¹³⁴ under article 24(4) which states that, “[a]ny refusal by an incumbent government to relinquish power to the winning party or candidate after free, fair and regular elections” are considered “unconstitutional changes of government” that will trigger “appropriate sanctions” from the AU.¹³⁵

With Senegal surrounding Gambia on almost all sides, and given the fraught relationship with Jammeh, they were instrumental in ousting him. During the impasse, large number of Gambians fled to Senegal in fear of imminent violence. According to the UN High Commissioner for Refugees, 45,000 people fled to Senegal.¹³⁶ The representative of Senegal to the UN addressed the Security Council requesting authorization on behalf of ECOWAS to intervene which led to the unanimous adoption of resolution 2337 on 19 January 2017.¹³⁷ The Council further endorsed the decisions of the Economic Community of West African States (ECOWAS) and the African Union to recognize Mr. Barrow as President of the Gambia.

The decision was invoked under article 1(c) of the ECOWAS supplementary Protocol on Democracy and Good governance, which allows “zero tolerance for power obtained or maintained by unconstitutional means.”¹³⁸ Equally invoked was article 25 of

¹³³ ECOWAS ‘President Sirleaf Leads High-level ECOWAS Delegation to The Gambia’ (December 12, 2016).

¹³⁴ Adopted on 30 January 2007 and came into force on February 15, 2012.

¹³⁵ Although The Gambia signed the ACDEG on 29 January 2008, it has not ratified it.

¹³⁶ UNHCR ‘Senegal: Around 45,000 have fled political uncertainty in The Gambia’ (20 January 20, 2017) <http://www.unhcr.org/en-us/news/briefing/2017/1/5881deb74/senegal-around-45000-fled-political-uncertainty-gambia.html>.

¹³⁷ UN Security Council ‘Resolution 2337’ S/RES/2337 (2017).

¹³⁸ A/SP1/12/01. The supplementary Protocol was adopted in Dakar on 21 December 2001.

the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping, and Security, which authorizes military intervention in the event that “of an overthrow or attempted overthrow of a democratically elected government.” Thus, ECOMIG was mandated to facilitate Jammeh’s exit.

How can this be harnessed more effectively for other African countries using The Gambia’s case study? ECOMIG with codename ‘Operation Restore Democracy’ was additionally conceived and executed to enforce emerging regional and continental democratic norms including the ACDEG. There was a consensus that the region’s credibility was at stake if Jammeh was allowed to ignore the results and stay in power.¹³⁹ The Gambia and Togo were the only two countries in West Africa without a presidential term limit. When the matter was brought up in the ECOWAS Heads of State Summit in 2015 for adoption by all member states, the two countries stood against it leading to the abandonment of the idea by the sub-regional body.¹⁴⁰

ECOWAS took the lead (politically, financially, and militarily) with backing from both the AU and the UN to ensure timely and decisive response to the Gambian crisis. To act fast, the troop-contributing countries shouldered their own financial burdens without external assistance. This has wider implications when compared to the recent Burundi crisis in which the East African community was unable to mobilize sufficient regional support to halt Pierre Nkurunziza’s efforts to stay on past his mandated term limit. With Barrow in office, ECOMIG forces have transitioned into a technical advisory role to assist in key transitional requirements such as training and security sector reform in The Gambia.

¹³⁹ John L. Hirsch and Michael R. Snyder ‘Gambian Gamble: Rare Intervention a Win for African Democracy’ *IPI Global Observatory* (January 25, 2017)

¹⁴⁰ ‘Regionwide presidential term limit proposal dropped’ *The Economist* (August 5, 2015).

3. *Opportunity Structure and Framing*

The persistent repression under Jammeh's rule had been ongoing for an extended period without significant change. However, what prompted the shift in 2016 towards opposition unity and the strong reaction by civil society and other actors after the elections (as discussed above) despite the longstanding repression remains a central question. This critical gap in existing theorization can be found within the social movement discourse on framing.¹⁴¹ As pointed out by Snow et al. in their work on 'Frame Alignment Processes, Micromobilization, and Movement Participation,' there is an underestimation of how people interpret events and experiences. These interpretations significantly influence their decision to participate in social movement activities and campaigns.¹⁴² Social theorist Erving Goffman proposed the concept of 'frames' as mental structures that shape how we understand the world around us.¹⁴³ These frames, according to Goffman's 1974 book *Frame Analysis*, act as lenses that help us interpret and categorize events, both personal and social.¹⁴⁴ In essence, frames give meaning to experiences and guide our behavior, influencing both individual and collective actions. McAdam et al. argue that "at a minimum people need to feel both aggrieved about some aspect of their lives and optimistic that, acting collectively, they can redress the problem."¹⁴⁵

In essence, the death of activist Solo Sandeng and the harsh treatment of opposition leader Darboe and his supporters sparked international condemnation. Regional

¹⁴¹ See, Robert D. Benford and David A. Snow 'Framing Processes and Social Movement: An Overview and Assessment' (2020) 26 (1) *Annual Review of Sociology*, pp. 611-639

¹⁴² David A. Snow et al., 'Frame Alignment Processes, Micromobilization, and Movement Participation,' (1986) 51(4) *American Sociological Review*, pp. 474-481.

¹⁴³ Erving Goffman *Frame Analysis: An Essay on the Organization of Experience* (1974), p. 464.

¹⁴⁴ *Id.*

¹⁴⁵ Doug McAdam, John D. McCarthy, and Mayer N. Zald *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings* (1996) p. 5.

organizations like ECOWAS, human rights groups like Amnesty International and Human Rights Watch, and even UN Secretary-General Ban Ki-moon voiced their outrage. Jammeh's defiant response, including the dismissal of the UN leader, further strained relations. The regime responded with a crackdown, infiltrating, and disrupting demonstrations. While this initially stalled the momentum of dissent, it would be brief. The international pressure emboldened Gambians both inside and outside the country. Protests erupted worldwide,¹⁴⁶ demanding sanctions and an end to Jammeh's rule.¹⁴⁷ This viewpoint aligns with the argument that African protests erupt in response to actions taken by regimes seeking to prolong their grip on power. These actions often involve restricting fundamental civil liberties.¹⁴⁸

The extent to which collective actions were facilitated in The Gambia was partly contingent on how the framing of events leading to the 2016 elections was done. The anti-Jammeh movement gained momentum through a narrative that stressed the importance of Gambians opposing Jammeh's rule together. This reciprocal relationship between framing and mobilization was evident in the movement's rejuvenation and its development of a robust identity centered around the prospect of political change embodied by Adama Barrow. This framing created a powerful rallying point for mobilization, galvanizing support for Barrow as a candidate who symbolized liberation and the promise of economic improvement for The Gambia. This supports the argument that shifting attention to how

¹⁴⁶ On earlier protests: 'Protests against President Jammeh in New York,' All Africa, October 1, 2013; 'Gambians in USA Protest at President Jammeh's Hotel,' All Africa, September 27, 2013.

¹⁴⁷ On protest theory, *see for example*, Giovanni A. Travaglino 'Social Sciences and Social Movements: The Theoretical Context' (2014) 9(1) *Contemporary Social Science*; and Doug McAdam, "Conceptual Origins, Current Problems, Future Direction," in McAdam et al., *supra* note 145.

¹⁴⁸ Lewis Abedi Asante and Helbrecht Ilse 'Seeing through African Protest Logics: A Longitudinal Review of Continuity and Change in Protests in Ghana' (2018) 52(2) *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines*, 159–181.

alterations in political opportunity frameworks prompt political parties and activists to adapt their tactics.

4.4 Conclusion

Like other electoral authoritarian regimes, Jammeh set up an institutional landscape where the constitution and its institutional safeguards and elections were the handmaiden of its power. Manipulation of elections laws and political processes helped him keep a grip on power. What is new, however, and which makes The Gambia case study unique, is that these same procedures that he manipulated including the Constitution and elections served as catalyst to oust him out of power. Thus, elections are a double-edged sword as it serves the purpose for the rise or decline of authoritarian rule.

The case study of The Gambia through an electoral breakthrough is a depiction of deviation from “politics as usual.” It included decisions on the part of the opposition to form a coalition, both online and on the ground actions by civil society including youth movements, voter turnout and the reactions of the candidates, citizens, and the international community to the official results. Ultimately, ousting Jammeh and ending his dictatorship of twenty-two years saw an array of actors, activities, and organizations. These included both domestic, regional, and international actors and organizations. This dissertation suggests that the defeat of an authoritarian leader is not an isolated incident or random occurrence. Instead, there are likely underlying patterns and dynamics as explained above that explain why and how this defeat took place.

Chapter Five:

Electoral Stability and Regime Change: A Comparative Analysis of Uganda and Zimbabwe

In this Chapter, I present a comparative analysis of the cases of Zimbabwe and Uganda, examining the mechanisms for electoral stability and the occurrence of regime change in both countries. In doing so, this Chapter has two main parts. The first explores the factors contributing to Uganda's failed case of electoral stability and the divergent electoral outcomes experienced there. The second explores the events that unfolded in Zimbabwe, including the military coup, parliamentary impeachment, and subsequent resignation of former President Robert Mugabe.

Part I: Understanding Uganda's Electoral Instability: Factors and Implications



I'm not ready to hand over power to people or groups of people who have no ability to manage a nationWhy should I sentence Ugandans to suicide by handing over power to people we fought and defeated? It's dangerous despite the fact that the constitution allows them to run against me.... At times the constitution may not be the best tool to direct us politically for it allows wrong

and doubtful people to contest for power.- President Yoweri Museveni, addressing a rally in western Uganda (2001).¹

President Yoweri Museveni's remarks highlight his reluctance to transfer power to those he perceives as incapable, despite constitutional provisions. His stance underscores ongoing debates over democratic governance and leadership succession in Uganda.

5.1. Explaining Uganda's electoral instability

Uganda has had a tumultuous history since gaining independence from Britain in 1962.² The country has experienced several coups, dictatorships, and civil wars. In 1966, Milton Obote, the first Prime Minister of Uganda, suspended the Constitution and declared himself President. He ruled as a dictator until he was overthrown in 1971 by Idi Amin. In the decade spanning from 1971 to 1980, Uganda was subjected to a period of military rule, during which former President Idi Amin and other state agents committed grave human rights abuses. These acts of violence and repression were widely condemned by the international community and had lasting impacts on the country's social and political development.³ He was overthrown in 1979 by a coalition of Ugandan and Tanzanian forces. Obote returned to power in 1980, but he was overthrown in 1985 by a military coup.

¹ Human Rights Watch 'Uganda' (2001).

² This is captured in the preamble of the 1995 Constitution, which states that "Recalling our history which has been characterized by political and constitutional instability; recognizing our struggles against forces of tyranny, oppression and exploitation; committed to building a better future by establishing a socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress; exercising our sovereign and inalienable right to determine the form of governance for our country, and having fully participated in the Constitution-making process; [...] do hereby in and through this Constituent Assembly solemnly adopt, enact and give to ourselves and our posterity, this Constitution of the Republic of Uganda, this 22nd day of September, in the year 1995."

³ Ben Kiromba Twinomugisha 'The Role of the Judiciary in the Promotion of Democracy in Uganda' (2009) 9 *African Human Rights Law Journal* 2.

The coup was eventually defeated by the National Resistance Army (NRA), led by Yoweri Museveni.⁴

Subsequently, Uganda saw a surge in human rights violations between 1980 and 1985. In January 1986, after a prolonged five-year bush war, Museveni was inaugurated as the President of Uganda. During his inauguration, Museveni pledged that his political party, the National Resistance Movement (NRM), would bring about fundamental change and not just a mere rotation of power.⁵ In 1994, Uganda held constituent assembly elections aimed at adopting a new Constitution, which introduced the ‘Movement System,’ or the no-party system.’⁶

The system was based on the principles of participatory democracy and sought to decentralize power and decision-making. A key feature of the Movement system was the establishment of Resistance Councils (RCs) in every village. The RCs were responsible for a wide range of tasks, including local administration, security, and development. They were also responsible for electing representatives to higher levels of government.

While the Constitution allowed for the existence of political parties, they were not permitted to engage in political activities (art.71). Parties were not allowed to campaign or field candidates in elections. They were also not allowed to hold public rallies or demonstrations. The Constitution also provided for a referendum on the political system

⁴ On a personal account of his involvement in the NRA and the struggle to overthrow Obote, see Yoweri Museveni, *Sowing the mustard seed: the struggle for freedom and democracy in Uganda* (Macmillan, 1997). See also Joe Oloka-Onyango ‘New-Breed Leadership, Conflict, and Reconstruction in the Great Lakes Region of Africa: A Sociopolitical Biography of Uganda’s Yoweri Kaguta Museveni’ (2004) 50(3) *Africa Today*, pp. 29–52.

⁵ See, George W. Kanyeihamba *Constitutionalism and Political History of Uganda: From 1894 to the Present* (Centenary Publishing House, 2005).

⁶ See, Aili M. Tripp, *Museveni’s Uganda: Paradoxes of Power in a Hybrid Regime* (2010); Aili Mari Tripp ‘The politics of constitution making in Uganda’ in Laurel E. Miller (ed) *Framing the State in Times of Transition* (2010), pp. 158-175.

after a period of five years, as set out in Article 74. After holding power since 1986, the NRM interim government, led by Museveni, gave way to elections in 1996, one year after the adoption of the new Constitution.⁷ Supporters of the system argued that it was necessary to promote peace and stability after years of civil war.⁸ However, the Movement system was controversial from the start. Critics argued that it was a form of one-party rule and that it stifled political dissent,⁹ and severely limits civil and political rights.¹⁰ Invariably, Giovanni refers to this as a ‘hegemonic party-state system,’ which is defined as a political system:

That is, it is neither a fully fledged one-party state (or a situation of political monopoly) nor a three-party system (a pluralist political context), but a situation of political supremacy exercised by a single organization, with smaller opposition groups not able, so far, to put up any significant challenge.¹¹

This framework shows the complex dynamics of political power and opposition dynamics within such systems.

In the case of *James Rwanyarare and Others v Attorney General*,¹² the petitioners challenged various clauses in the Political Parties and Organizations Act of 2002. The primary contention was the definition of ‘political party’ and ‘political organization,’

⁷ John Ssenkumba, ‘The Dilemmas of Directed Democracy: Neutralising Ugandan Opposition Politics under the NRM’ in Adebayo O. Olukoshi (ed.) *The Politics of Opposition in Contemporary Africa* (1998), pp. 171–94.

⁸ Tripp, *supra* note 6, p. 159.

⁹ See, Joe Oloka-Onyango, (2000) ‘New Wine or New Bottles? Movement Politics and One-Partyism in Uganda’ in Justus Mugaju and Joe Oloka-Onyango (eds.) *No Party Democracy in Uganda. Myths and Realities* (2000).

¹⁰ Mahmood Mamdani ‘The politics of democratic reform in contemporary Uganda’ (1995) 2(1) East African Journal of Peace and Human Rights, pp. 91-101. See also, Human Rights Watch ‘Hostile to Democracy. The Movement System and Political Repression in Uganda’ (1999) https://www.hrw.org/reports/1999/uganda/Uganweb-02.htm#P290_17091.

¹¹ Giovanni M. Carbone ‘Political Parties in a ‘No-Party Democracy’: Hegemony and Opposition Under ‘Movement Democracy’ in Uganda (2003) 9(4) *Party Politics*, p.487.

¹² Constitutional Petition No 7 of 2002.

which excluded the ‘Movement’ since the provision did not consider the movement political system and its organs. The petitioners claimed that the Movement was a *political organization* and not a *system*. The Court ruled in favor of the petitioners, stating that there was ample evidence to show that the Movement supported political candidates, had a parliamentary caucus, and was no longer non-partisan.

The push for a more democratic political space continued in Uganda,¹³ which resulted in the reintroduction of multi-party elections in 2003.¹⁴ The opening up of electoral competition for executive and legislative offices was partly due to the decline of institutional strength within NRM, particularly the significant decline in participation in local councils.¹⁵ The NRM’s dominant position in government, parliament, and the public sector enabled them to effectively oversee the transition process and reduce the risk of uncertainty and instability that typically accompanies a transfer of power.¹⁶

5.1.1. Constitutional and Legal framework

Uganda has ratified various international human rights treaties that recognize and protect the right to vote. In accordance with regional and international standards, Uganda’s legal framework guarantees the holding of regular elections. The country has six main laws that govern electoral processes, including the amended Constitution of 1995, the Electoral Commission Act of 1997 (amended in 2010), the Presidential Elections Act of 2005

¹³ For detailed discussion, *see*, Christopher Mbazira ‘From Military Rule and No Party State to Multi-Partyism in Uganda’ in Morris K. Mbondenyi and Tom Ojienda (eds) *Constitutionalism and Democratic Governance in Africa: Contemporary Perspectives from Sub-Saharan Africa* (Pretoria University Law Press, 2013), pp. 301-306.

¹⁴ NRM National Executive Committee ‘Report of the Ad Hoc Committee Set Up by the 6th Meeting of the National Executive Committee.’ (2002). *See also* Sabiti Makara, Lise Rakner and Lars Svåsand ‘Turnaround: The National Resistance Movement and the Reintroduction of a Multiparty System in Uganda’ (2009) 30 (2) *International Political Science Review*, pp. 185-204.

¹⁵ Tripp, *supra* note 6, p. 115.

¹⁶ Makara et al., *supra* note 12, p. 263.

(amended in 2015), the Parliamentary Elections Act of 2005 (amended in 2010), the Political Parties and Organizations Act of 2005 (amended), and the Local Government Act (amended).

The Ugandan Constitution enshrines fundamental human rights, including political rights such as the freedom of conscience, expression, assembly, and association, as well as the freedom of movement and protection against discrimination. Additionally, the Constitution guarantees other essential liberties, such as the right to life, the right to be protected from inhumane treatment, and the right to be safeguarded against arbitrary search or entry. The significance of elections in upholding the credibility of the government is emphasized in the Ugandan Constitution of 1995.¹⁷ At the time of adoption in 1995, article 72 of the Constitution guarantees the right to form a political party. However, it placed strict limitations on political parties and provided as follows in article 270 on regulation of political organizations:

On the commencement of this Constitution and until Parliament makes laws regulating the activities of political organizations in accordance with article 73 of this Constitution, political activities may continue except:

- (a) opening and operating branch offices;
- (b) holding delegates conferences;
- (c) holding public rallies;
- (d) sponsoring or offering a platform to or in any way campaigning for or against a candidate for any public elections;
- (e) carrying on any activities that may interfere with the movement political system for the time being in force.

¹⁷ Clause II of the National Objectives and Directive Principles of National Policy.

According to Makara, “the legal framework under the NRM tended to undermine the work and growth of political parties. The NRM on its part used the suspension of activities of parties to entrench itself politically.”¹⁸

The Constitution mandates that the election of a president must be carried out by universal adult suffrage through a secret ballot, requiring more than fifty percent of the total valid votes cast in the presidential election for a candidate to be elected president (art.103(1) and art.103(4)). If no candidate gets sufficient votes, a second election must be conducted within 40 days, and only the two candidates who obtain the highest number of votes will participate in it (art.103 (5)). Following the amendment to remove the two-term limits on the re-election of a president, a president can now be elected for more than two terms (art.105(2)). In order to qualify as a presidential candidate, one must be a citizen of Uganda aged not less than 35 years, but not more than 75 and also qualified to be a member of Parliament (article 61). To be eligible for membership of Parliament, candidates must be a registered voter, a citizen of Uganda, and have completed a minimum formal education of Advance Level Standard or equivalent (article 80(1)).

In accordance with this, the Electoral Commission (EC) is established as the official entity responsible for conducting elections, managing the voter registry, delimiting electoral districts, and registering political parties. The mandate, financing, and operations of the Electoral Commission are outlined in the Electoral Commission Act. The

¹⁸ Sabiti Makara ‘Deepening Democracy Through Multipartyism: The Bumpy Road to Uganda’s 2011 elections’ (2011) 45(2) *Africa Spectrum*, pp. 81–94. See also Sabiti Makara ‘Do party Strategies Really Matter in an Electoral Autocracy?’ in J Oloka-Onyango and Josephine Ahikire (eds.) *Controlling Consent : Uganda’s 2016 Elections* (2017).

Presidential Elections Act ¹⁹ and the Parliamentary Elections Act ²⁰ provide a comprehensive guide to the conduct of National Assembly and Presidential elections, including the nomination of candidates and election petitions. The Political Parties and Organizations Act (PPOA) regulates political parties and organizations' financing, functioning, and operation of political parties and organizations. The Local Government Act stipulates regulations for the conduct of municipal, county, and sub-county council elections held every five years.

Uganda is a presidential republic and a multiparty democracy, with the President serving as both the Head of State and Head of Government. The presidential election in Uganda employs the absolute majority system, with a 50% plus one vote threshold. In case none of the candidates reaches this threshold, a runoff election between the top two candidates is held within 30 days from the official declaration of the results of the previous election on a simple majority basis.²¹ The election of Members of the National Assembly follows the First-Past-the-Post (FPTP) electoral system, with MPs directly elected to represent 290 constituencies, one woman representative for each of the 112 districts, and 'special interest' groups such as the youth and the defense forces. The Constitution and Parliamentary Elections Act of 2005 mandate that each district be represented in parliament by at least one woman, along with representatives for various groups such as the army, youth, workers, and persons with disabilities, among others, as determined by Parliament. These candidates can contest elections as either party candidates or independent

¹⁹ No. 16 of 2005.

²⁰ No. 17 of 2005.

²¹ Art. 104 of the Constitution.

candidates. This information is critical for analyzing the functioning of Uganda's political system and assessing its democratic nature.

Uganda's political system is a unique blend of presidential leadership and multiparty competition. The President holds ultimate power, functioning as both the ceremonial head of state and the leader of the government. Elections for this powerful position require a candidate to secure a clear majority of votes, exceeding 50%. If no candidate achieves this feat, a tense run-off election between the top two contenders decides the victor.

The national assembly, a crucial pillar of democracy, is elected through a system known as First-Past-the-Post. Here, voters in each constituency directly choose their representative. However, Uganda's system goes beyond simple geographic representation. The constitution mandates that each district elects at least one woman representative, ensuring a voice for women in the legislative process. Additionally, special interest groups, such as the military, youth, and people with disabilities, have designated seats in parliament. These representatives can be affiliated with political parties or run as independent candidates, offering a wider range of voices and perspectives. Understanding this complex structure of elections and representation is vital for analyzing how Uganda's political system functions and assessing its true democratic nature.

According to the Constitution of Uganda, presidential candidates are required to obtain a document confirming that they have been nominated by at least one hundred voters in each of at least two-thirds of all districts in the country (article 103(2)). The Constitution also grants Parliament the power to establish a procedure for the election and assumption of office of the president (article 103(2)), as well as the procedure for challenging

presidential elections (article 104). If a presidential candidate is dissatisfied with the election results, they may challenge them by petitioning the Supreme Court (article 104(1)). Additionally, Parliament is authorized to pass laws concerning the conduct of presidential elections, including grounds for annulment and procedural rules (art.104(9)). The Parliament enacted the Presidential Elections Act (PEA) and the Electoral Commission Act (ECA) to operationalize these provisions. Section 59 of the PEA provides grounds for challenging presidential elections.

The Presidential Elections Act (PEA) Section 59(5) states that the Supreme Court has three options when presented with a petition challenging presidential elections. The Court may dismiss the petition, declare the validly elected candidate, or annul the election. The PEA Section 59(6) gives the Supreme Court the authority to nullify an election on three grounds. These include non-compliance with the provisions of the PEA, which substantially affected the outcome of the election (Section 59(6)(a)); a candidate who was not qualified for the presidency or disqualified (Section 59(6)(b)); or a candidate's personal commission of an offense or approval of an offense by their agents under the PEA Parts IX and X, such as voter bribery or intimidation and publication of false statements (Section 59(6)(c)). The Supreme Court also has the power to order a vote recount if it deems it necessary and practical under the PEA Section 59(8). Additionally, the Chief Justice, in consultation with the Attorney General, can create regulations for petitions challenging presidential elections under the PEA Section 59(11).²²

The multiparty system of government in Uganda is made operational by the Political Parties and Organizations Act (PPOA).²³ This Act enables registered political

²² These rules are detailed in the Presidential Elections Petitions Rules 2001, SI. No.13 2000.

²³ No. 18 of 2005.

parties to mobilize and organize voters across the country and transfers the responsibility of party registration to the Electoral Commission. It also establishes guidelines for party leadership elections and regulates party funding and provides a code of conduct for political parties.

The conduct of local government elections is regulated and governed by the Local Government Act.²⁴ The role of the media in the electoral process is also regulated by the Press and Journalists Act,²⁵ the Electronic Media Act,²⁶ and the Access to Information Act of 2005. However, their capacity to report on state institutions is constrained by the Penal Code and the Anti-Terrorism Act (2003) to some extent.²⁷

5.1.2. Institutional Framework

According to article 61 of the Constitution, the management of presidential, parliamentary, and local government elections is the responsibility of the EC. Under article 62 of the Constitution, the EC shall be independent and shall, in the performance of its functions, not be subject to the direction or control of any person or authority. The members of the Commission are appointed by the president subject to the approval of Parliament, as stated in article 60(1). The EC is constituted by seven persons, including the chairperson and deputy chairperson. Parliament has the power to reject the appointment in case of an unsuitable candidate. Furthermore, the Constitution requires that elections must be held within the first third of the last 90 days before the expiration of the presidential term, as per article 61(2). The Electoral Commission Act²⁸ further provides for the organization and

²⁴ Cap 243 as amended.

²⁵ Cap 105, 2000.

²⁶ Cap 104, 1996.

²⁷ Cap 120.

²⁸ Cap. 140.

general set-up of the EC. The mandate of the EC is to organize, conduct and supervise elections.

5.1.3. Political Context of the 2016 elections

Various explanations have been put forward by analysts to account for the continued electoral success of President Museveni and his NRM party, even after three decades in power. Some observers attribute the incumbent's victories to a lackluster and disorganized opposition, as well as improved economic growth and security.²⁹ Others suggest that the NRM's electoral wins are due to pre-election spending, vote-buying, and intimidation tactics, thereby resulting in an uneven playing field.³⁰ However, these explanations fail to address the underlying structures that allow the authoritarian incumbent to minimize the institutional uncertainty that multi-party elections pose. In fact, under Museveni's leadership, the NRM has consolidated its power and maintained its dominance through multi-party elections by manipulating the electoral playing field to its advantage. Part of the explanation may lie in the demographics of Uganda and the government structure factor which, established during a one-party era, have allowed NRM to maintain their dominant position through the strategic implementation of multiparty elections.

In Uganda, there have been several instances of laws being amended before elections. For example, in 2005, a constitutional amendment was passed that lifted term limits for the presidency. In September 2005, the Ugandan Parliament abolished article 105(2) of the Constitution, which had previously limited the serving president to a

²⁹ See for example, Jeffrey Conroy-Krutz and Logan Carolyn 'Museveni and the 2011 Ugandan Election: Did the Money Matter?' (2012) 50 (4) *The Journal of Modern African Studies*, p. 627; Richard Vokes and Sam Wilkins 'Party, patronage and coercion in the NRM's 2016 reelection in Uganda: imposed or embedded?' (2016) 10(4) *Journal of Eastern African Studies* 10, pp. 581-600.

³⁰ Angelo Izama and Michael Wilkerson 'Uganda: Museveni's Triumph and Weakness' (2011) 22(3) *Journal of Democracy*, pp. 64-78.

maximum of two five-year terms. This amendment thus removed the term limits for the presidency, allowing the incumbent, Museveni, to run for additional terms. To put this into effect, Parliament passed two pieces of legislation: Constitutional Amendment Acts.³¹ This amendment was assented to by the President two months before the 2006 elections.

Other laws were also amended in the lead-up to the 2006 elections. These amendments have raised concerns about the fairness of elections in Uganda. Critics argue that the amendments are designed to benefit the incumbent government and to make it more difficult for opposition candidates to win elections. They also argued that the amendments are a sign of a lack of respect for the rule of law in Uganda.³² The Government has defended the amendments, arguing that they are necessary to improve the electoral process. The government has also argued that the amendments align with the people's will.

The comments made by President Museveni emphasize his rationale for removing term limits, as he is quoted as stating: 'Why should I sentence Uganda to suicide by handing over to the people we fought and defeated? It is dangerous, even though the constitution allows them to run against me.'³³ A year later, he called for the removal of terms limits from the Constitution.

Similarly, in 2011, another constitutional amendment occurred. The Electoral Commission noted that after the general elections in 2011, it required a 12-month period to set up the relevant infrastructure to implement these changes fully. The same happened prior to the 2016 elections.

³¹ Constitutional Amendment Act, No.2 of 2005.

³² See Freedom House '*Countries at the Crossroads 2006 – Uganda*' August 3, 2006.

³³ Supra, note 1

A. 2001 and 2006 Presidential Elections

The first elections conducted under the Museveni administration occurred in 1996 through a ‘no-party’ system, which resulted in his landslide victory over his opponents. The 2001 general election in Uganda was the first multi-party election in the country since 1980. It marked the end of 20 years of ‘no-party democracy.’ The 2001 presidential election saw Dr. Kizza Besigye, leader of the main opposition party, the Forum for Democratic Change (FDC), emerged as Museveni’s primary adversary.³⁴

Table 5.1 Results of Presidential Elections in Uganda, 2001

Candidate	Party	Votes	Percentage
Yoweri Museveni	NRM	5,123,360	69.33%
Kizza Besigye	FDC	2,055,795	27.82%
Aggrey Awori	Independent	103,915	1.41%
Muhammad Kibirige Mayanja	Independent	73,790	1.00%
Francis Bwengye	Independent	22,751	0.31%
Karuhanga Chapaa	Independent	10,080	0.14%

Source: The Electoral Commission of Uganda: <https://www.ec.or.ug/>

³⁴ In 1994, Colonel Kizza Besigye, a veteran of the bush struggle and twice State Minister in the NRM cabinet, was one of ten army representatives to the Constituent Assembly (CA). He argued with two other army representatives that the NRM should be considered a transitional arrangement and that the ban on parties should be lifted before the 1996 elections. In 1994, Colonel Kizza Besigye, a seasoned fighter from the bush struggle and a two-time State Minister in the NRM cabinet, was one of ten army representatives at the Constituent Assembly (CA). He flagged the idea that the status of the NRM should be that of a transitional arrangement and pushed for the removal of the ban on parties before the 1996 elections. Besigye argued that the NRM ascension to power was through a military struggle and was, therefore, not a legitimate democratic government. He also argued that the ban on parties was undemocratic and that it prevented Ugandans from exercising their right to choose their own leaders. The NRM leadership rejected Besigye’s arguments, and he was subsequently dismissed from the army. See Kizza Besigye, K. (1999). ‘An Insider's View on How NRM Lost the “Broad-Base,”’ *Sunday Monitor* (November 5, 1999).

Subsequently, Museveni was declared the winner by the EC with 69 per cent of the total valid votes cast.³⁵

Besigye challenged the election by filing a petition with the Supreme Court in the case of *Col. Dr. Besigye Kizza v Museveni Yoweri Kaguta and the Electoral Commission*.³⁶ The petitioner lodged numerous complaints against the two respondents and their agents. He claimed that their actions and omissions amounted to non-compliance with the provisions of the PEA and the ECA and illegal practices and offenses under the same acts. The petitioner's main complaints against the second respondent, the Electoral Commission, included allowing multiple voting and vote stuffing in many electoral districts in favor of Museveni, which was against section 32(1) of the PEA.

Additionally, the Commission disenfranchised the petitioner's voters by deleting their names from the voter's register, which went against sections 19(3) and 50 of the PEA. The Commission also increased the number of polling stations on the eve of polling day, without sufficient notice to candidates other than Museveni, in contravention of sections 120(e) and 12(f) of the PEA. Furthermore, the Commission failed to ensure that the petitioner's polling agents were not chased away from polling stations and tallying centers, which interfered with the free exercise of the franchise. Lastly, the Commission allowed or failed to prevent agents of the first respondent from interfering with the electioneering activities of the petitioner and his agents.

The Supreme Court reached a unanimous decision that there were widespread violations of the PEA and the ECA due to intimidation, voter buying, problems with the

³⁵ Uganda Electoral Commission 2001, *Report of the Presidential Elections, Uganda Electoral Commission*.

³⁶ No. 1 UGSC 3 (PEP No.1 2001).

voter registration lists, spreading of misinformation, and improper voting.³⁷ It was also noted that the Electoral Commission did not adhere to the stipulations of relevant sections of the PEA.³⁸ The Court also determined that the principle of free and fair elections was violated in numerous regions of the country,³⁹ and there was evidence of irregularities in a polling stations.⁴⁰ Although, the Court concluded that this did not have a ‘significant impact on the election outcome.’⁴¹ Consequently, the election could not be annulled under section 59(6)(a) of the PEA. Additionally, the Court held that the President did not commit any offenses, nor was he aware of or did he consent to any such actions by individuals within his party.⁴²

In 2005, a constitutional amendment removed term limits for the presidency, allowing Museveni to continue running for office.⁴³

Table 5.2 Results of Presidential Elections in Uganda, 2006

Candidate	Party	Votes	Percentage
Yoweri Kaguta Museveni	NRM	4,109,449	59.26%
Kizza Kifeefe Besigye	FDC	2,592,954	37.39%
John Ssebaana Kizito	DP	109,583	1.58%
Abed Bwanika	Independent	65,874	0.9499%
Miria Kalule Obote	UP	57,071	0.82%

Source: The Electoral Commission of Uganda: <https://www.ec.or.ug/>

³⁷ *Id.* para. 99.

³⁸ *Id.* para 88.

³⁹ *Id.* para. 129.

⁴⁰ *Id.* para. 101.

⁴¹ *Id.* para 156.

⁴² *Id.* para 149.

⁴³ Afrobarometer ‘Gone but not Forgotten: Most Ugandans want Presidential Term and Age Limits Reinstated’ Dispatch No. 464 (2021).

Similarly with the 2001 election, the incumbent won with 59 per cent of the total valid votes cast against Besigye's 37 per cent.⁴⁴

After the presidential elections, Besigye filed a petition with the Constitutional Court alleging various electoral malpractices that took place prior to and during the election itself. In *Rtd. Col.Kizza Besigye v the Electoral Commission and Yoweri Kaguta Museveni*,⁴⁵ the petitioner contended that the election was marred by coercion, bribery, and various illegal practices committed by the incumbent and his agents. The petitioner accused Museveni of personally bribing voters and his agents of engaging in similar activities with his knowledge or approval before and during the election, thus violating section 64 of the PEA, which prohibits interference with the exercise of the right to vote. Additionally, the petitioner alleged that the Electoral Commission allowed non-compliance with result declaration procedures. This led to an absence of fairness in the electoral process.

Consequently, the petitioner argued that Museveni's victory was invalid, as the electoral illegalities that occurred compromised the legitimacy of the electoral process. Therefore, he requested the court to issue an order to nullify the election results. The Constitutional Court unanimously determined that the election was conducted without adhering to the provisions of the Constitution, PEA, and ECA. The Court additionally ruled that that the Electoral Commission deprived voters of their voting rights as their names was taken off the voters' list. It also declared that the election was not free and fair elections due to extensive bribery, intimidation, and violence across the country. Furthermore,

⁴⁴ Uganda Electoral Commission 2006, *Report of the Presidential Elections, Uganda Electoral Commission*. For more detailed discussion, see Siri Gloppen et al. 'Uganda's 2006 Presidential and Parliamentary Elections' (2006) CMI Report.

⁴⁵ No.1 UGSC 2 (PEP No.1 2006).

irregularities such as multiple voting, ballot stuffing, and inaccurate result calculation methods violated the principles of equal voting rights, transparency, and ballot secrecy.

However, the Court found that there was no proof of any illegal practices or offenses committed by Museveni personally or by his agents with his knowledge or consent. Thus, it declared it could not annul the election on the alleged violation of section 59(6)(c) of the PEA. The Court further held that the noncompliance with electoral laws did not ‘substantially affect the outcome of the election.’⁴⁶

In contrast to the majority opinion, Justice Kanyeihamba put forward the view that there was ample evidence presented to the Court to support the conclusion that the presidential election was marred by significant irregularities, and illegal practice, which substantially impacted the final results. He voiced his criticism of the Court for not annulling the election despite its unanimous finding of breaches of the electoral laws. He argued that such a decision is based on the personal biases of the judges and would be extremely unjust to the people of Uganda.⁴⁷

B. 2011 and 2016 Presidential Elections

The 2011 presidential election saw Museveni win the election with 69.5% of the votes as indicated in table below with Kizza Besigye coming second at 26.1%, down from the 37% he won in the previous election in 2006.⁴⁸

Table 5.3 Results of Presidential Elections in Uganda, 2011

⁴⁶ *Id.*, para 144. Also see also Siri Gloppen, Emmanuel Kazimbazi and Alexander Kibandama ‘Elections in Court: The Judiciary and Uganda's 2006 Election Process’ in in Julius Kiiza, Sabiti Makara and Lise Rakner (eds.) *Electoral Democracy in Uganda. Understanding the Institutional Processes and Outcomes of the 2006 Multiparty Elections* (2008), pp. 53-89.

⁴⁷ *Id.*, paras.19-20.

⁴⁸ See Ryan Gibb ‘Presidential and Parliamentary Elections in Uganda, February 18, 2011’ (2012) 31(2) *Electoral Studies*, pp. 458-461.

Candidate	Party	Votes	% of Votes
Yoweri Kaguta Museveni	NRM	5,436,639	68.57%
Kizza Besigye Kifefe	FDC	2,071,397	26.13%
Norbert Mao	DP	148,170	1.87%
Olara Otunnu	UPC	125,465	1.58%
Beatrice Namisango	UFA	52,935	0.67%

Source: The Electoral Commission of Uganda: <https://www.ec.or.ug/>

The 2016 elections were seen as the most contested in Uganda's history featuring multiple political parties, as the current officeholder aimed for re-election.⁴⁹

Leading up to the elections, the NRM faced internal division with its former Secretary-General and State Prime Minister, Mr. Amama Mbabazi, choosing to run for president as an independent candidate. Kizza Besigye of the FDC also made his fourth bid for the presidency. These two, alongside the incumbent, were the key figures in the political and campaign arenas in a competition that featured eight candidates. Other contenders included Gen. Benon Biraro from the Uganda Farmers Party (UFP), Abed Bwanika from the People's Development Party (PDP), and Maureen Kyalya. Venesius Bariyamureba and Joseph Mabirizi also took part in the elections as independent candidates.

Social media access was also restricted for a week during the election period. The government justified this measure as necessary for national security and to counter the dissemination of false information.⁵⁰

⁴⁹ Rita Abrahamsen and Gerald Bareebe 'Uganda's 2016 Elections: Not even faking it anymore' (2016) 115 (461) *African Affairs*, pp.751-765.

⁵⁰ 'Uganda shuts down social media; candidates arrested on election day' CNN (February 19, 2016).

According to the official results declared by the EC, President Museveni won with a 60.6 per cent of the valid votes cast margin, while the two strong challenges, Besigye attained 35 percent and Mbabazi polled at 1.5 per cent.⁵¹

Table 5.4 Results of Presidential Elections in Uganda, 2016

Candidate	Party	Votes	Percentage
Yoweri Kaguta Museveni	NRM	5,971,872	60.62%
Kizza Besigye Kifefe	FDC	3,508,687	35.61%
Amama Mbabazi	Independent	136,519	1.39%
Abed Bwanika	PDP	89,005	0.90%
Baryamureeba Venansius	Independent	52,798	0.54%
Maureen Faith Kyalya Waluube	Independent	42,833	0.43%
Benon Buta Biraaro	UFP	25,600	0.26%
Mabirizi Joseph	Independent	24,498	0.25%

Source: The Electoral Commission of Uganda: <https://www.ec.or.ug/>

The U.S State Department was quick to declare that:

Delays in the delivery of voting materials, reports of pre-checked ballots and vote buying, ongoing blockage of social media sites, and excessive use of force by the police, collectively undermine the integrity of the electoral process. The Ugandan people deserved better.⁵²

The statement emphasized that such conditions were unacceptable for the Ugandan people, who deserved a more transparent and fair electoral experience.

As per the report from the Commonwealth Observation Mission, despite the participation of multiple candidates in the presidential elections, the equity of the

⁵¹ Uganda Electoral Commission 2016, Presidential Election Report, Uganda Electoral Commission, pp. 2-3.

⁵² US Department of State ‘Press statement: On the Results of Uganda’s Presidential Elections’ (February 20, 2016).

opposition candidates' campaign was impeded by constraints on fundamental rights of assembly and movement.⁵³

In response, President Museveni pushed back against the foreign interference, stating that he did not appreciate 'foreigners giving [him] orders' on how to run Uganda. He asserted that Uganda belonged to the Ugandan people and that outsiders should focus on solving their own problems rather than meddling in Uganda's affairs. Museveni even brought up an incident in 1971 when foreign countries supported Idi Amin's rise to power in Uganda, implying that foreign interference had not worked out well for Uganda in the past.⁵⁴

Amama Mbabazi contested the validity of the 2016 presidential election in the case of *Amama Mbabazi v Museveni & Others*.⁵⁵ He alleged that the Uganda Electoral Commission, the second respondent, did not adhere to the provisions and principles of the PEA, ECA, and the Constitution. Mbabazi sought a ruling that President Museveni was not duly elected and asked that the election be nullified. He made specific allegations against the first respondent, President Museveni, regarding his conduct in the 2016 presidential election.

Firstly, he was accused of engaging in several illegal practices and electoral offenses, either directly or through his representatives with his knowledge or consent. Additionally, it was claimed that the Electoral Commission, as the second respondent, acted improperly by nominating the first respondent before he had received sponsorship from the NRM party, on whose ticket he was purportedly running. This action went against

⁵³ The Commonwealth 'Interim statement' (February 20, 2016).

⁵⁴ 'Museveni tells off donors on 2016 poll' *Daily Mail* (April 10, 2016)

⁵⁵ No.1 UGSC3 (PEP No.1 2016).

sections 8 and 10 of the PEA. Furthermore, it was contended that the Electoral Commission failed to invalidate the first respondent's nomination papers and extended the deadline, providing him with more time after all other candidates had submitted their documents, which was also a violation of section 11 of the PEA.

The petitioner also alleged that President Museveni's security forces abducted and arrested his agents and supporters for pressuring them to vote for the President or to abstain, contrary to section 76(b) of the PEA. In addition, the petitioner claimed there was a denial of access for his own polling agents concerning the counting process. Finally, it was argued that the second respondent did not adhere to his obligation of ensure that the presidential electoral process was free and fair, which led to interference with the petitioner's campaigns.

The Court determined whether the irregularities in the 2016 presidential election affected the will and consent of the people as stated in the Constitution's Article 1(4). It concluded that section 59(6)(a) of the PEA allowed the Court to assess whether irregularities affected the election's outcome and invalidated the voter's intent. The Court condemned the Electoral Commission for its significant ineptitude and failure to comply with electoral regulations. The Court found no evidence that President Museveni or his agents had committed any electoral violations, but it noted widespread electoral law breaches by the incumbent's supporters. Consequently, the Supreme Court unanimously upheld President Museveni's lawful election, but it observed that his use of state resources disadvantaged other candidates and expressed concerns about the unequal use of state-owned media.⁵⁶ The Court also noted that it had made significant suggestions and

⁵⁶ *Id.*

proposals on presidential electoral law reform in previous decisions, but the executive and the legislature had ignored these.

5.1.4. Changed Tactics

The 2016 presidential election in Uganda featured a notable increase in the number of contenders, with three main candidates vying for the position. These included the incumbent, Retired Gen Yoweri Museveni, as well as Retired Col Kiiza Besigye and former Prime Minister Amama Mbabazi.⁵⁷ Besigye, who had been detained on multiple occasions in the past, was arrested on a charge of treason, effectively preventing him and his supporters from taking to the streets.⁵⁸ This election was unique because all three contenders had military or security backgrounds and were heroes of the 1986 revolution that toppled former dictatorial regimes.

The entry of Amama Mbabazi into the race changed the political landscape and prompted Museveni to adopt new tactics. This included implementing counterintelligence on rival camps,⁵⁹ buying off rival strategists, availing more than one Member of Parliament per constituency, utilizing security agencies, freezing or blocking rival funding sources, and directly calling foreign leaders to express disappointment. In addition, Museveni's camp employed tactics to intimidate the electorate, such as threatening violence in case his opponents worked with the electoral commission to deny him victory.⁶⁰ Ballot boxes were

⁵⁷ Crisis Group 'Museveni's Post-election Politics: Keeping a Lid on Uganda's Opposition,' (August 8, 2016) <https://www.crisisgroup.org/africa/horn-africa/uganda/musevenis-post-election-politics-keeping-lid-ugandas-opposition>.

⁵⁸ Elias Biryabarema 'Ugandan opposition leader charged with treason,' *Reuters* (May 14, 2016)

⁵⁹ Frederic Musisi 'Why are campaigns taking a violent turn?' *Daily Monitor* (December 27, 2015).

⁶⁰ European Union Observer Mission' Final Report: Uganda Presidential, Parliamentary and Local Council Elections' (February 18, 2016), p. 17.

also compromised and not appropriately sealed.⁶¹ The opposition argued that there was vote rigging, including ballot stuffing.⁶²

Overall, the electoral process in Uganda is complex, and the increased number of contenders and the tactics employed by the incumbent makes it difficult to facilitate fair political contestation and promote democracy. In addition to the fracture opposition and their inability to effectively set up an effective coalition.⁶³ The Democratic Alliance (TDA) was formed to unify Uganda's opposition parties and field a single presidential candidate against Museveni. The effort was unsuccessful, partly because of an error in choosing Mbabazi over Kizza Besigye as the TDA's presidential nominee. Ultimately, Mbabazi fared poorly in the presidential race, securing only 1.3 percent of the votes in contrast to Besigye's 35 percent.⁶⁴

Overall, the Ugandan electoral process has been fraught with challenges, including limitations on basic freedoms, allegations of fraud, and a lack of transparency. Despite the country's transition to a multiparty system of government, the ruling NRM party has managed to maintain its hegemony through excessive use of state resources.⁶⁵ Attempts to unify opposition parties under a single presidential candidate have also faced obstacles, as was seen in the failure of TDA to field a successful candidate in the 2016 election. Nevertheless, opposition figures such as Kizza Besigye continue to question the state of

⁶¹ *Id.*, p.30.

⁶² *Id.*, p. 35.

⁶³ International Crisis Group 'Uganda's Slow Slide into Crisis' Report 256 (November 21, 2017) <https://www.crisisgroup.org/africa/horn-africa/uganda/256-ugandas-slow-slide-crisis>.

⁶⁴ Rita Abrahamsen and Gerald Bareebe 'Briefing: Uganda's 2016 Elections: Not Faking it Anymore' (2016) 115(461) *African Affairs*, pp. 756-757.

⁶⁵ Sabiti Makara, Lise Rakner, and Lars Svåsand 'Turnaround: The National Resistance Movement and the Reintroduction of a Multiparty System in Uganda' (2009) 30(2) *International Political Science Review*, pp. 185-204.

affairs and calls for electoral reforms persist among civil society organizations and international observers.

Part II: The Fall of Mugabe: Examining the ‘Coups,’ Impeachment, and Resignation



5.2. Explaining Mugabe’s Exit

After the 1980 parliamentary election, Robert Mugabe assumed the role of Zimbabwean Prime Minister, taking charge of the newly independent nation. Later, in 1987, Mugabe was appointed as the President when the premiership was abolished. From 1990 onward, his leadership has been subject to direct popular votes. This Chapter will explore Mugabe’s political ascendancy, examining the circumstances surrounding his appointment as Prime Minister and subsequent rise to the presidency. The Chapter will also explore Zimbabwe’s political and social climate during his leadership tenure, subsequent parliamentary impeachment, and resignation that led to regime change.

5.2.1. Historical and Political Context

The administration in Southern Rhodesia created an interventionist government to uphold the interests of a racially defined ruling minority against the majority black population and international capital. White settlers had privileges in senior positions, preferential property and marketing laws, and subsidies for agriculture, mining, and manufacturing. The Rhodesian Front government led by Ian Smith suppressed black political and economic aspirations with arbitrary powers, leading to a state of emergency in 1965.⁶⁶ Zimbabwe's new African leaders were faced with an unequal state, deeply entrenched in both the economy and society, complete with tools for maintaining repressive control.⁶⁷

Robert Mugabe and Zimbabwe's African National Union-Patriotic Front (ZANU-PF) did not achieve power through a military victory despite their years-long guerrilla campaign from 1972-1979. Instead, they reached a negotiated political settlement with the departing colonial authority, which included legal constraints such as reserved parliamentary seats for whites, guaranteed civil service pensions, and protection of private property rights, including land.⁶⁸

The agreement reached at Lancaster House in London on December 21, 1979, created a compromise: black leaders would assume political leadership while white ownership of the means of economic production would remain intact.⁶⁹ This Agreement envisioned a political and economic power division, but it failed to address the economic

⁶⁶ Michael Evans 'The wretched of the empire: Politics, ideology and counterinsurgency in Rhodesia, 1965–80' (2007) 18(2) *Small Wars & Insurgencies*, pp.175–195.

⁶⁷ Michael Bratton and Eldred Masunungure 'The Anatomy of Political Predation: Leaders, Elites and Coalitions in Zimbabwe, 1980-2010' (2011) *Development Leadership Program* Research Paper No 9, p.8.

⁶⁸ *Id.*

⁶⁹ *Id.*

inequalities that persisted among black Zimbabweans. Additionally, as power was unevenly shared, the pact did not endure over time.⁷⁰ The Agreement also had rigid constraints on the policies, with Mugabe in his words noting that:

We think the British were just unfair on this one, very unfair to insist that certain clauses can be amended only by 100 percent vote. That is really saying that the whites, with their entrenched parliamentary seats, can hold the rest of the population at ransom and that we must submit to the will of the whites. It is a racist provision in the constitution, and we cannot have that lasting for all time. True, we will struggle through during the first five years, but during the second term of office, it just has to go, and the will of the people must be reflected in the constitution.⁷¹

In general, the negotiated settlement that ended the white minority rule in Zimbabwe created a fragile power balance that failed to address the aspirations of the country's black population fully.

After the expiry of the Lancaster House agreement in April 1990, Zimbabwe's ruling coalition was no longer constrained by legal limitations and could legally establish a one-party state. The idea of a one-party state was supported at ZANU-PF's National Congress in December 1989 and was also included in the Unity Accord.⁷²

The justification for the one-party state in Zimbabwe was based on several arguments presented by the country's leaders.⁷³ They contended that it was in line with African traditions and that it was suitable for a 'unified' and 'classless' African society.⁷⁴

⁷⁰ *Id.*, p.9.

⁷¹ Robert Mugabe 'Interview' *Africa Report* (September-October, 1982), pp. 7-8, available at, <https://www.aionline.org/wp-content/uploads/2017/11/Africa-Report-Scanned.pdf>.

⁷² *Id.*, p. 16.

⁷³ See William. H. Shaw 'Towards the One-Party State in Zimbabwe: A Study in African Political Thought' (1986) 24(3) *The Journal of Modern African Studies*, 373–394.

⁷⁴ Chris Gregory 'Zimbabwe: The One Party State issue' (1986) Background Briefing No. 27 South African Institute of International Affairs.

Furthermore, they argued that it was necessary for coherent development planning and provided an alternative to imported multi-party models. Mugabe claims that:

[The one-party system] stems from our tradition that we had only one society in any particular geographical area, coming under a single chief. Under the political leadership that was offered, although it might have been traditional or feudal in some cases, our people were given the opportunity in their various areas to assemble, to express their views on fundamental issues before decisions were implemented.⁷⁵

The proponents of the one-party state also claimed that it was internally democratic, although some critics disputed this.⁷⁶ Notably, Mugabe himself emphasized that Zimbabweans did not require Britain to teach them about democracy and that the country would chart its own course.⁷⁷

Zimbabwe was initially considered to have a better potential for economic and political development than many other African countries. In fact, in the first decade of its independence, the country showed promise in fulfilling some of these expectations.⁷⁸ From 2000 to 2008, Zimbabwe experienced a period of economic downturn, referred to as the ‘crisis decade’ by Bratton and Masunungure.⁷⁹ The country faced various challenges during this time, including shortages of fuel and basic consumer goods, which resulted in long queues.⁸⁰

In contrast, multinational companies, such as Lever Brothers, scaled down operations or relocated due to the strained relations between the ZANU PF government

⁷⁵ Mugabe, *supra* note 71, p.5

⁷⁶ Gregory, *supra* note 74.

⁷⁷ Mugabe, *supra* note 71, p.5

⁷⁸ Lloyd M. Sachikonye ‘Whither Zimbabwe? Crisis & Democratisation’ (2002) 29(91) *Review of African Political Economy*, pp.13-20.

⁷⁹ Bratton & Masunungure, *supra* note 67, p.21.

⁸⁰ Sachikonye, *supra* note.

and the West.⁸¹ Zimbabwe faced sanctions from both the European Union (EU) and the United States of America (USA), which were mainly prompted by the country's land reform program and allegations of human rights violations.⁸² The land reform program involved the redistribution of land from white farmers to black Zimbabweans, which drew criticism from some quarters, especially in the West.⁸³ The sanctions were meant to pressure the Zimbabwean government to change course, and they included travel bans and asset freezes on some top officials and businesses. The sanctions were controversial, with some arguing that they were counterproductive and hurting ordinary Zimbabweans more than the intended targets. As a result, Makumbe notes that Zimbabweans then migrated to South Africa, Botswana, the USA, Britain, Australia, and other countries.⁸⁴ In 2008, Zimbabwe's representative to the UN noted that the "current sanctions are basically an expression of imperialist conquest, and no amount of propaganda or denial can ever wish this away."⁸⁵

5.2.2. Constitutional and Legal Framework

In 2013, Zimbabwe adopted a new constitution that significantly expanded the country's bills of rights compared to the 1980 Constitution.⁸⁶ The adoption of the new constitution was a result of the Global Political Agreement (GPA) that was signed in

⁸¹ Treda Mukuhlanzi 'Zimbabwe's Government of National Unity: Successes and Challenges in Restoring Peace and Order' (2014) 2(2) *Journal of Power, Politics & Governance*, pp. 169-180.

⁸² *Id.*, p. 171.

⁸³ See Ian Scoones et al (2011) 'Zimbabwe's Land Reform: Challenging the Myths' (2011) The 38 (5) *Journal of Peasant Studies*, pp. 967-993.

⁸⁴ John Makumbe 'The impact of democracy in Zimbabwe-Assessing political, social and economic developments since the dawn of democracy' (2009) Centre for Policy Studies, Research Report 119, p. 6.

⁸⁵ 'Security Council Fails to Adopt Sanctions against Zimbabwe Leadership as Two Permanent Members cast Negative Votes' Security Council SC/9396, July 11, 2008.

⁸⁶ Constitution of Zimbabwe (Amendment) Act 2013.

2008.⁸⁷ The Southern African Development Community (SADC) facilitated the GPA and aimed to end the political crisis that followed the disputed 2008 elections. The agreement saw then President Mugabe of ZANU-PF sharing power with two opposition leaders, Morgan Tsvangirai of the Movement for Democratic Change (MDC-T) and Arthur Mutambara of the splinter Movement for Democratic Change (MDC-M) group.⁸⁸

The power-sharing deal facilitated by SADC was necessary due to the political violence that followed the 2008 election, which resulted in the deaths of hundreds of people and the displacement of thousands of others. The power-sharing deal helped to stabilize the country, but it was not without its challenges.⁸⁹ The three leaders faced numerous disagreements and power struggles, and there were accusations of sabotage and lack of cooperation from the ZANU-PF side.⁹⁰

The adoption of Zimbabwe's new constitution marked a momentous achievement for the country, despite facing various challenges. The Constitution offers robust protection of fundamental human rights, including the right to vote, participate in political activities,⁹¹ and engage in peaceful efforts aimed at supporting or challenging government policies and political parties.⁹² These fundamental rights are bolstered by a guarantee of freedom of

⁸⁷ 'Agreement between the Zimbabwe African National Union-Patriotic Front (ZANU-PF) and the two Movement for Democratic Change (MDC) formations, on resolving the challenges facing Zimbabwe' (September 15, 2008)

⁸⁸ Bratton & Masunungure, *supra* note 67 above, p.32.

⁸⁹ Michael Bratton 'Zimbabwe: Power Sharing Deal Under Stress,' (2010) *USIP Peacebrief*, No. 66, 1-4.

⁹⁰ See International Crisis Group 'Zimbabwe: The Road to Reform or Another Dead End' (2011) Crisis Group Africa Report, No.173.

⁹¹ Sec. 67 of the Constitution of Zimbabwe.

⁹² Sec. 67(1)(d) of the Constitution of Zimbabwe.

expression and media,⁹³ the freedom to demonstrate and petition,⁹⁴ as well as freedom of association and assembly.⁹⁵

The 2013 Constitution not only safeguards the fundamental rights of its citizens but also lays down the foundation for a fair and just electoral system. The Constitution mandates that elections must be conducted regularly and without any forms of violence or unlawful practices, thereby ensuring a peaceful democratic process.⁹⁶ Additionally, it guarantees equal access to election-related materials for all political parties involved, promoting a level playing field.⁹⁷ Section 157 of the Constitution outlines the need for an electoral law to be put in place to regulate and govern the electoral process in the country.

Zimbabwe has a two-chambered parliament comprising the National Assembly and the Senate.⁹⁸ The lower chamber, the National Assembly, consists of 210 members being elected through a first-past-the-post system where each constituency elects one member.⁹⁹ For the life of the first two Parliaments after the effective date, National Assembly will be made of 270 members, with an additional 60 women members elected through proportional representation.¹⁰⁰ On the other hand, the upper chamber, the Senate, is composed of 80 seats, of which six members are elected from each of Zimbabwe's 10 provinces through proportional representation. The provincial assembly of chiefs indirectly elects another 16 senators, while two seats are reserved for people with disabilities and two for traditional

⁹³ Sec. Sec. 61 of the Constitution of Zimbabwe.

⁹⁴ Sec. 59 of the Constitution of Zimbabwe.

⁹⁵ Sec. 58 of the Constitution of Zimbabwe.

⁹⁶ Sec. 155 of the Constitution of Zimbabwe.

⁹⁷ Sec. 155(2)(c) of the Constitution of Zimbabwe.

⁹⁸ Sec. 118 of the Constitution of Zimbabwe.

⁹⁹ Sec. 124 (1)(a) of the Constitution of Zimbabwe.

¹⁰⁰ Sec. 124 (1)(b) of the Constitution of Zimbabwe.

chiefs, specifically the President and Deputy President of the National Council of Chiefs.¹⁰¹ Members of both houses of parliament serve a five-year term.

5.2.3 Institutional Arrangements

The Zimbabwe Electoral Commission (ZEC) is established under Chapter 12, Section 238 of the Constitution. Establishing ZEC as a constitutional body serves to oversee and maintain the integrity and fairness of electoral processes and safeguard the citizens' democratic right to vote. The primary mandate of ZEC is to oversee and manage the registration of voters and to conduct and supervise all public elections and referenda held in the country. This constitutional provision ensures that the ZEC is the sole authority responsible for administering and implementing Zimbabwe's electoral processes in a transparent, impartial, and credible manner.

The Constitution guarantees the independence of the ZEC in the execution of its functions and responsibilities. As per section 235 of the Constitution, the Independent Commissions are constitutionally independent and not subject to the control or direction of any individual. The Commission must act in accordance with the Constitution and carry out its duties without fear, favor, or prejudice.

The ZEC is required to submit an annual report of its work program to Parliament through the appropriate minister.¹⁰² It is also further required to submit a report to Parliament on the conduct of every election and every referendum.¹⁰³ Although the Commission is accountable to Parliament,¹⁰⁴ the Minister of Justice oversees its portfolio.

¹⁰¹ Sec. 120 of the Constitution of Zimbabwe.

¹⁰² Sec. 323 of the Constitution of Zimbabwe.

¹⁰³ Sec. 241(1) of the Constitution of Zimbabwe.

¹⁰⁴ Sec. 235(1) of the Constitution of Zimbabwe.

Despite this, the State is obligated to ensure the ZEC's independence, impartiality, integrity, and effectiveness in carrying out its responsibilities.¹⁰⁵

The ZEC is composed of a Chairperson and eight other Commissioners. The Chairperson must be a Judge, a former Judge, or someone qualified for appointment as a Judge. The President makes the appointment of the Chairperson after consulting with the Judicial Services Commission and the Parliamentary Committee on Standing Rules and Orders. The other eight Commissioners are also appointed by the President, but from a list of nominees proposed by the Committee on Standing Rules and Orders. Commissioners serve a six-year term and may be reappointed for another term, but no individual can serve for more than 12 years.¹⁰⁶ The President has power over the appointment of Commissioners.

The ZEC has a Secretariat, led by a Chief Electoral Officer to handle the operational aspects of elections. The ZEC appoints the Chief Electoral Officer, who serves as the Commission's Chief Executive and oversees the Commission's affairs and property.¹⁰⁷ Furthermore, the Chief Electoral Officer serves as the Commission's Accounting Officer.

The independence of the ZEC is compromised to some extent by the fact that the Minister of Justice has the authority to administer the Electoral Act. This administrative power infringes on the ZEC's independence in several ways. According to section 192(6) of the Act, the Minister of Justice must approve any regulations enacted by the ZEC must be approved by the Minister of Justice. Despite a legal challenge questioning the constitutionality of this approval process,¹⁰⁸ the Constitutional Court upheld the provision.

¹⁰⁵ Sec. 235(2) of the Constitution of Zimbabwe.

¹⁰⁶ Sec. 238 of the Constitution of Zimbabwe.

¹⁰⁷ Sec. 9(1) of the Electoral Act.

¹⁰⁸ *Mavedzenge v Minister of Justice, Legal and Parliamentary Affairs*, CCZ 05-18

5.2.4 Elections

Zimbabwe's electoral system is based on the majoritarian or first-past-the-post system, where the candidate with the highest number of votes wins the election. Elections take place every five years, and recent amendments to the constitution have made provisions for 'harmonized' elections, where local government and national level elections are held simultaneously, including presidential elections.

A. 2002 Presidential Elections

Since independence, the ruling ZANU-PF party has won almost all the elections. However, the formation of the MDC in 1999 brought about a significant change. In 2000, the MDC nearly defeated ZANU-PF in the parliamentary elections, winning 57 of the 120 seats.¹⁰⁹ The previous Constitution allowed the President to appoint 20 legislators, including 10 provincial Governors and 10 traditional chiefs, which gave the ruling party a 30-seat advantage during elections. The recent amendments have limited the President's appointments to only five senators and 10 provincial governors in the Upper House, the Senate, with 18 traditional chiefs also sitting in the senate.¹¹⁰ In the 2002 presidential elections, Mugabe received 56.2% of the votes as outlined in Table 5.5.

Table 5.5 Results of Presidential Elections in Zimbabwe, 2002

Candidate	Party	Votes	% of Votes
Robert Mugabe	ZANU-PF	1,685,212	56.2%
Morgan Tsvangirai	MDC	1,258,401	42.0%
Wilson Kumbula	ZANU-Ndonga	31,368	1.0%
Shakespeare Maya	NAGG	11,906	0.4%

¹⁰⁹ Zimbabwe Election Support Network (ZESN) '2000 Parliamentary Elections' June 2000.

¹¹⁰ See generally, Susan Booysen 'Multi-Stage Monitoring and Declaring Elections 'Free and Fair': The June 2000 Zimbabwe Election' (2002) *Journal of African Elections*, pp. 27-54.

Paul Siwela	N/A	11,871	0.4%
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Source: IFES

B. 2008-2013 Presidential Elections

Zimbabwe's first 'harmonized' elections were held on March 29, 2008, which meant that elections were held for all levels of government (local, National Assembly, Senate, and presidential) simultaneously. The 2008 parliamentary and presidential elections in Zimbabwe took place in a highly constrained political environment, with the ruling ZANU-PF facing its first real challenge to power from the MDC, led by Morgan Tsvangirai, who by then had also suffered a split in the party. In the first round of the Presidential Election, none of the parties achieved the 50 per cent plus one threshold required for an outright victory, and the MDC-T (led by Tsvangirai) emerged as the winner, defeating Mugabe's ZANU-PF for the first time since the country's independence in 1980 (table 11).

However, this outcome was met with violence, allegedly orchestrated by Mugabe and ZANU-PF, against MDC-T's members and supporters.¹¹¹ The situation resulted in a highly contentious runoff election, which Tsvangirai withdrew from to try and stop the violence.¹¹² Mugabe ultimately won by default, but his victory was hollow, as allegations of vote rigging, and violence marred it.

Table 5.6 Results of presidential elections in Zimbabwe, 2008

Candidate	Party	First Round Votes	% of votes	Second Round Votes	% of votes
Morgan Tsvangirai	MDC	1,195,562	47.87%	233,000	9.78%
Robert Mugabe	ZANU-PF	1,079,730	43.24%	2,150,269	90.22%
Simba Makoni	Independent	207,470	8.31%		

¹¹¹ See Eldred Masunungure, *Defying the Winds of Change: Zimbabwe's 2008 Elections* (2009).

¹¹² 'Tsvangirai Affidavit Explaining Presidential Election Petition Withdrawal' (August 16, 2013) <https://www.veritaszim.net/node/497>.

Langton Towungana	Independent	14,503	0.58%		
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Source: IFES

The international community refused to recognize the result of the second round of the election, which allowed President Mugabe to remain in power.¹¹³ The African Union (AU)

Observer Mission noted that:

The prevailing political environment throughout the country was tense, hostile and volatile as it was characterized by an electoral campaign marred by high levels of intimidation, violence, displacement of people, abductions, and loss of life.¹¹⁴

The Pan African Parliament (PAP) has recognized that the country's political climate was fraught with tension, hostility, and volatility throughout the electoral campaign period. The elections were marked by elevated levels of coercion, unrest, forced displacement, kidnappings, and loss of life.¹¹⁵ Considering these circumstances, PAP concluded that the prevailing atmosphere in the country was not conducive to the conduct of free, fair, and credible elections.

As noted earlier, after months of intensive negotiations overseen by former South African President Thabo Mbeki in his capacity as the SADC facilitator, the GPA was eventually signed. The GPA saw the formation of a unity government with Mugabe retaining his position as President and Morgan Tsvangirai assuming the role of Prime Minister. The agreement aimed to end the political crisis in Zimbabwe and create a framework for political and economic reforms.¹¹⁶

¹¹³ Cris Chinaka 'Mugabe Defies Mounting Pressure to Stop Vote' *Reuters* (July 2, 2008).

¹¹⁴ AU 'Preliminary Statement of the African Union Observer Mission to the Presidential Run-Off and House of Assembly By-Elections in Zimbabwe' (June 30, 2008).

¹¹⁵ AU 'The Pan-African Parliament election observer mission to the presidential run-off and parliamentary by-elections in Zimbabwe' (July 1, 2008)

¹¹⁶ See Brian Raftopoulos (2010) 'The Global Political Agreement as a 'Passive Revolution': Notes on Contemporary Politics in Zimbabwe' (2010) 99(411) *The Round Table*, 705-718

In the lead-up to the 2013 elections, a citizen approached the Constitutional Court in the case of *Mawarire v Mugabe and Others*,¹¹⁷ alleging that the President violated his right to legal protection by not announcing the election date in a timely manner. Consequently, the Constitutional Court held that the President did not fulfil his constitutional duties and also violated applicant's right to protection of the law by not announcing the date of the elections upon dissolution of Parliament on June 29, 2013.¹¹⁸ The Court ordered the President to declare elections no later than July 31.¹¹⁹ Although the Court's ruling was a relief for some, it resulted in the elections being held prematurely. This allowed insufficient time for the necessary preparations and implementation of electoral reforms, as outlined in the GPA.

Mugabe won his seventh term in office during the Harmonized Elections in July 2013 with 60.6 per cent of the vote. Tsvangirai of the MDC-T came in second with 34.9 per cent of the vote.¹²⁰ The election was the first to be held under the new constitutional framework. Mugabe's party, ZANU-PF, also won three-quarters of the parliamentary seats.¹²¹

Table 5.7 Results of Presidential Elections in Zimbabwe, 2013

Candidate	Party	Votes	% of Votes
Robert Mugabe	ZANU-PF	2,110,434	61%
Morgan Tsvangirai	MDC- T	1,172,349	34.37%
Welshman Ncube	MDC- N	92,637	2.72%
Dumiso Dabengwa	ZAPU	25,416	0.75%
Kisnot Mukwazhi	ZDP	9,931	0.29%

¹¹⁷ *Mawarire v Mugabe and Others* CCZ 1/13.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ ZEC '2013 Harmonized Elections' (2013), p. 66.

¹²¹ *Id.*, p. 62.

Source: IFES

The AU Election Observation Mission reported that the election was conducted peacefully, without any incidents of violence, harassment, or disruption. However, the mission also noted that the political events preceding the post-election violence of 2008 remained a matter concern.¹²² The report indicated that the 2013 elections were an improvement compared to the 2008 elections.¹²³

The ZEC faced widespread criticism for its handling of the 2013 elections, both in the run-up to the poll and on the day of voting itself. The ZEC was accused of failing to register voters, providing adequate polling stations, and ensuring that the voting process was transparent and fair.¹²⁴ Mugabe, in reacting to the expression of concern about the many irregularities, noted, “Those who cannot accept defeat ... can even go hang if they want. Even if they die, dogs will not sniff their carcasses.”¹²⁵ In response to Western critics who questioned whether the elections were free and fair, he said, “We voted democratically. We brought democracy. We have delivered democracy on a platter. If they do not want to take it, let it be, but the people have delivered.” The opposition for their part pursued the case of *Morgan Tsvangirai v Chairperson of the Electoral Commission & Others*¹²⁶ pertained to relief sought regarding directing the ZEC to provide materials related to the disputed 2013 elections. The Constitutional Court dismissed the application,

¹²² AU ‘Preliminary Statement of the African union Observer Mission to the Harmonized Elections of 31 July 2013 in the Republic of Zimbabwe’ (August 2, 2013).

¹²³ *Id.*, p. 2.

¹²⁴ *Id.*

¹²⁵ Thomas Chiripasi ‘Mugabe Tells Tsvangirai “Go Hang” in First Speech After Poll’ *VOAZimbabwe* (August 12, 2013); Godfrey Marawanyika and Brian Latham ‘Mugabe Says Vote Delivered Democracy, Opponents Can Hang’ *Bloomberg* (August 12, 2013).

¹²⁶ *Morgan Tsvangirai v Chairperson of the Electoral Commission & Others* CC 71/2013.

citing the impracticality of opening 9000 ballot boxes and the lack of urgency for such action.¹²⁷

In another case of *Tsvangirai v Mugabe & Others*,¹²⁸ Morgan Tsvangirai filed a petition asking the court to invalidate the 2013 election because of lack of fairness and freedom, which resulted in the disenfranchisement of eligible voters who were unable to register on time.¹²⁹ The opposition MDC-T party also alleged that the voters' roll was not provided to them in a timely manner by the ZEC,¹³⁰ and that there were duplicated names in the roll, resulting in double voting. Furthermore, many people were turned away from polling stations on the grounds that they were registered in a different ward, and the special vote system was abused. The lack of transparency in the voting process was also a major point of contention, as the ZEC refused to disclose the identity of the party responsible for printing the ballot papers. Thus, the elections were conducted without the opposition knowing who printed the ballot papers.¹³¹ The voters' roll was only released to the public two days prior to the election, which was considered inadequate for thorough inspection and verification by voters, political parties, and candidates. This action contravened sections 20 and 21 of the Electoral Act, which stipulate that the ZEC must provide a copy of the Voters' Roll within a 'reasonable' timeframe.

Instead of relying on overt violence, the ruling party in Zimbabwe deployed a less confrontational approach to secure electoral victory in the 2013 elections. This approach, as Schedler often referred to, 'menu of manipulation,'¹³² involved various tactics such as

¹²⁷ *Id.*

¹²⁸ *Tsvangirai v Mugabe & Others* CC 71/2013.

¹²⁹ 'Affidavit of Morgan Tsvangirai Affidavit,' August 16, 2013, para 20(1).

¹³⁰ *Id.*, para 21(8).

¹³¹ *Id.*

¹³² Andreas Schedler 'The Menu of Manipulation (2002) 13 (2) *Journal of Democracy*, pp.36–50.

restricting opposition parties' access to media, selectively disenfranchising citizens by rigorously enforcing voter registration procedures and using donations during rallies to coerce voters through vote-buying.¹³³ In addition to the measures as mentioned above, the opposition MDC party rejected the election results and claimed that they were fraudulent. Specifically, they alleged that the ruling party had inflated the vote count in favor of the incumbents.¹³⁴

The ZEC's management of the elections was widely criticized, exacerbated by the government's refusal to accept foreign funding to conduct the elections. This lack of adequate funding further undermined the credibility of the elections, raising questions about the ZEC's capacity to carry out its mandate impartially and effectively.

It should be noted that the 2013 elections were conducted under an electoral framework that had not been reformed. Despite the adoption of the new Constitution, there was not enough time to implement the electoral reforms demanded by the Opposition and other stakeholders due to a Supreme Court ruling in May 2013, which ordered the Government to hold elections by 31 July of the same year.¹³⁵

5.2.5. November 2017: Contextualizing the 'Non-Coup' *Coup D'état*

Late 2017 witnessed a series of political events in Zimbabwe that resulted in the resignation of longtime President Mugabe and the rise of Emmerson Mnangagwa to the presidency. Mugabe, who had been in power since 1980, had made several controversial moves regarding his succession plan, including appointing his wife, Grace Mugabe, as the

¹³³ See also Andreas Schedler (ed.), *Electoral Authoritarianism: The Dynamics of Unfree Competition*. (Lynne Rienner Publisher, 2006), p. 3.

¹³⁴ Morgan Tsvangirai 'President Morgan Tsvangirai's Press Briefing on Elections' *MDC Zimbabwe* (August 1, 2013) <https://www.facebook.com/notes/3592931574062064/>.

¹³⁵ *Id.*

leader of the women's wing of the ruling party, ZANU-PF, in 2014. This fueled speculation that she was being groomed to succeed him as President.¹³⁶

In the meantime, Mnangagwa was appointed as Vice President, replacing Joice Mujuru. However, some met his appointment with concern due to his past role as the Minister responsible for state security during the massacre of the 1980s. Reports suggested a power struggle between factions aligned with Grace Mugabe and Mnangagwa within the party, with Mnangagwa eventually being fired.¹³⁷

The process of removing Robert Mugabe from the presidency of Zimbabwe took place over the course of one week. On November 15, 2017, the Zimbabwe Defense Forces (ZDF) took control of the Zimbabwe Broadcasting Corporation and key areas of Harare, raising concerns of a *coup d'état*.¹³⁸ However, the ZDF issued a statement asserting that it was not a coup and that President Mugabe was safe.¹³⁹ On November 19, Mugabe, accompanied by members of the uniformed forces and his negotiating team, delivered a national address in which he made the following statement:

The operation (Restore Legacy which was undertaken by the military force Mugabe to resign) I have alluded to did not amount to a threat to our well-cherished constitutional order, nor was it a challenge to my authority as head of state and government, not even as commander in chief of the Zimbabwean Defence Forces. To the man, the commend element remained respectful and comported themselves with diktats and mores of constitutionalism. True, a few incidents may have occurred here and there, but they are being corrected. I am happy that throughout the short period the pillars of state remained functional. Even happier for me and arising from today's meeting is a strong sense of

¹³⁶ Kyra Ward 'The Woman behind Mugabe' *The SAASUM Review* (November 21, 2017).

¹³⁷ See Blessing-Miles Tendi 'State Intelligence and the Politics of Zimbabwe's Presidential Succession, (2016) 115 (459) *African Affairs*, 203-222; Sabelo Ndlovu-Gatsheni 'Patriots, Puppets, Dissidents and the Politics of Inclusion and Exclusion in Contemporary Zimbabwe' (2008) 24(1) *Eastern Africa Social Science Research Review*, p. 81.

¹³⁸ Chipso Dendere 'To Understand the Coup in Zimbabwe, You Need to Know More About Grace Mugabe' *Washington Post* (November 15, 2017).

¹³⁹ Nomahlubi Jordaan 'This is an historic moment for Zimbabwe' *TimesLive* (November 15, 2017).

collegiality and comradeship now binding the various arms of our security establishment.¹⁴⁰

In addition, on November 19, Mugabe was expelled as the leader of ZANU-PF, and Emmerson Mnangagwa was selected to take his place. Lawmakers initiated the impeachment process on November 21. The articles of impeachment put forth also addressed Grace Mugabe's actions, alleging that:

Mugabe is accused of allowing his wife to assume his constitutional mandate, access classified and privileged documents, abuse state resources, insulting the new leader Vice President Mnangagwa and threatening to kill him. He is also said to have let Grace Mugabe cause disaffection within the country's defense forces by spreading reckless and false allegations against the army.¹⁴¹

Mugabe resigned while the impeachment motion was still under discussion.¹⁴²

In considering the lawfulness of the removal, it was held that the military's actions were lawful, as Mugabe had ceded control of the Government and nation to his unelected wife, Grace, in *Joseph Evurath Sibanda and Leonard Leonard Chikomba v President of the Republic of Zimbabwe–Robert Gabriel Mugabe N.O.: Minister of Defence, Commander of the Defence Forces. of Zimbabwe and the Attorney-General of Zimbabwe*.¹⁴³ A Zimbabwean High Court Judge, Justice George Chiweshe, legitimized Mugabe's removal through a legal ruling, stating that:

Whereupon after reading documents filed of record and hearing counsel, it is declared that: The actions of the second respondent (ZDF) in intervening to stop the take-over of first respondent's (Mugabe) constitutional functions by those around him are constitutionally

¹⁴⁰ Jake Wakkis Simons 'You and I have work to do. Thank you and goodnight: Mugabe's rambling 20-minute speech in full, which ended not with a resignation but with a vow to fight on' *Daily Mail* (November 19, 2017).

¹⁴¹ Jake Wakkis Simons et al 'Mugabe Awaits his Fate: Deposed Tyrant Holes up in his 'Blue Roof' Mansion with his Reviled Wife 'Gucci' Grace as Thousands Take to the Streets of Zimbabwe,' *Daily Mail* (November 21, 2017).

¹⁴² Norimitsu Onishi and Jeffrey Moyo 'Robert Mugabe is Ousted from His Ruling Party in Zimbabwe' *The New York Times* (November 21, 2017).

¹⁴³ HC 10820/17.

permissible and lawful in terms of section 212 of the Constitution of Zimbabwe in that; (a) they arrest first respondent's abdication of constitutional function, and (b) they ensure that non-elected officials do not exercise executive functions which can only be exercised by elected constitutional functionaries.¹⁴⁴

This legal ruling by marked a significant decision in Zimbabwe's political landscape, addressing the constitutional implications of executive authority and intervention by the military.

Subsequently, the Constitutional Court of Zimbabwe upheld the decision of the High Court in *Liberal Democrats and Others v President of the Republic of Zimbabwe E.D. Mnangagwa N.O. and Others*,¹⁴⁵ ruling that the resignation of Mugabe on November 21, 2017, was voluntary. The Court found that Mugabe had attempted to resign by telephone and was then advised of the proper procedures, which he followed. These facts were taken as evidence of the president's free will. The resignation was also ruled as compliant with section 96(1) of the Constitution, which provides for the termination of the presidency. The Court also ruled that the joint sitting of the House of Assembly and the Senate to commence impeachment proceedings was lawful. This was because a joint sitting of the House and Senate to commence impeachment proceedings is mandated by section 97(1) of the Constitution. The change in government was, therefore, lawful.

However, some scholars, such as Alex Magaisa, maintained that this amounted to a coup, despite being referred to by other names. In Magaisa's words "It may be called by many names, but it is essentially a coup. A frog can be described in various ways, but it remains a frog."¹⁴⁶

¹⁴⁴ *Id.*

¹⁴⁵ CCZ10/18.

¹⁴⁶ Jordaan, *supra* note 139.

A Coup or a Constitutional Intervention?

The military is an institution many people in Zimbabwe believe is essential to the continued rule of the ZANU-PF party. The military has played a key role in Zimbabwean politics since the country gained independence from Britain in 1980.¹⁴⁷ The leadership of the ZDF had previously declared their loyalty and respect for then-President Mugabe and his party, ZANU-PF. This support played a crucial role in Mugabe's ability to withstand various internal and external attempts to remove him from power.¹⁴⁸ Masunungure¹⁴⁹ and Bratton¹⁵⁰ have argued that the military apparatus in Zimbabwe enable entrenchment of power and extended stay in office. For example, the former ZDF commander Vitalis Zvinavashe stated during a campaign in 2007:

Even if you do not vote for me, I do not care because I know President Mugabe will appoint me because of the role I played during the war. Even if you do not vote for me the President will know what to do. People might be offended with my remarks but that is the truth. My role during the war speaks for itself.¹⁵¹

Thus, the unfolding situation in Zimbabwe was a complex one.¹⁵²

On the one hand, the military's actions could be seen as a coup, as they involved the use of force to remove a democratically elected leader from power. On the other hand, the military claimed that its actions were necessary to 'restore order' and to 'protect the Constitution.'

¹⁴⁷ See generally Blessing-Miles Tendi, *The Army and Politics in Zimbabwe: Mujuru, the Liberation Fighter and Kingmaker* (Cambridge University Press, 2020).

¹⁴⁸ See Lucky Asuelime and Blessing Simura 'Robert Mugabe Against All Odds: A Historical Discourse of a Successful Life President?' (2013) 10(2) *African Renaissance*, pp 51-65,

¹⁴⁹ Eldred 'Zimbabwe's militarized, electoral authoritarianism' (2011) 65(1) *Journal of International Affairs*, pp. 47-64.

¹⁵⁰ Michael Bratton, *Power politics in Zimbabwe* (Lynne Rienner Publishers, 2014).

¹⁵¹ As cited in Ismael J. Muvingi 'The Politics of Entitlement and State Failure in Zimbabwe' (2008) 40(1) *Peace Research*, pp. 88.

¹⁵² Lucky E. Asuelime A' 'Coup or not a Coup' (2018) 5(1) *Journal of African Foreign Affairs*, pp. 5-24.

In general, ZDF described the military intervention as ‘Operation Restore Legacy’. Its true objective was to reinstate the ousted Vice-President and former ZANU-PF official, Mnangagwa, as President of the country, which he ultimately achieved.¹⁵³

Despite the contentious transition known in Zimbabwe as the ‘new dispensation,’ the regional and international community largely refrained from extensive commentary, enabling the Mnangagwa Government to focus on a reform-oriented agenda. Central to this approach was re-engaging with the international community to foster investment for development, a goal echoed by the MDC opposition during the same period.

In a normal situation, the military intervention in Zimbabwe would have attracted sanctions from regional and international organizations. However, the coup was popular with many Zimbabweans, which provided some legitimacy to the new Government with the AU reluctant to intervene.¹⁵⁴ Furthermore, South Africa and other SADC member States might have grown increasingly frustrated with Mugabe’s policies, which strained their economies by causing economic refugees to flee into their territories.

Emmerson Mnangagwa’s ascension to Zimbabwe’s presidency in 2017 marked a turning point for the country. The international community had been critical of Mugabe’s authoritarian rule, and his removal from power presented an opportunity for Zimbabwe to embark on a new path. The Mnangagwa administration promptly expressed its desire to implement a reformist agenda that involved actively re-engaging with the international community. This commitment to reintegrating into the global community, especially to

¹⁵³ T.J. Mudau & Dylan Yanano Mangani ‘Operation Restore Legacy : An Epitome of Mnangagwa Anti-Mugabe Narrative’ (2018) 7 *Ubuntu: Journal of Conflict Transformation*, pp. 179-202.

¹⁵⁴ Charles C. Nnaeme and Lucky E. Asuelime ‘African Union Questionable Legitimacy in Selected African Crises Regimes in 21st Century’ (2015) 4(2) *Journal of African Union Studies*, pp. 77-100.

attract essential investment for development, was also embraced by the opposition MDC during that period.¹⁵⁵

5.3. Conclusion

Zimbabwe and Uganda are two African countries that have experienced both electoral stability and regime change in recent years. In Zimbabwe, the long-time President Robert Mugabe was ousted from power in a military coup in 2017. In Uganda, the current President Yoweri Museveni has been in power since 1986 and has shown no signs of stepping down anytime soon.

Through this Chapter, I explain several factors that have contributed to the different outcomes in these two countries. One factor is the role of the military. In Zimbabwe, the military played a key role in ousting Mugabe from power. The military was unhappy with Mugabe's economic policies and his perceived mishandling of the country's affairs. In Uganda, on the other hand, the military has remained loyal to Museveni. This is likely due to the fact that Museveni has rewarded the military with generous benefits and has given them a significant role in the government.

Finally, the international community has played a role in the different outcomes in Zimbabwe and Uganda. In Zimbabwe, the international community was critical of Mugabe's human rights record and his economic policies. This pressure from the international community helped to create an environment in which the military coup was more likely to succeed. In Uganda, on the other hand, the international community has been more supportive of Museveni. This support from the international community has helped to insulate Museveni from pressure to step down.

¹⁵⁵ Aaron Rwodzi 'Democracy, Governance and Legitimacy in Zimbabwe since the November 2017 Military Coup' (2019) 38 *Cadernos De Estudos Africanos*, pp.193–213.

The different outcomes in Zimbabwe and Uganda suggest that there is no single factor that determines whether a country will experience electoral stability or regime change. Rather, a combination of factors, including the role of the military, the strength of the opposition, and the international community, all play a role.

Chapter Six:

Constitutional Authoritarianism

Scholars debate the terminology used to describe regimes that combine elements of authoritarian rule with a constitutional framework. At the heart of this debate is the question of how much weight to give to the presence of a constitution versus the reality of limited democratic practices.

Continuing from the insightful case studies in the previous Chapters (Chapters 4 and 5), this section presents a novel and significant theoretical, analytical, and empirical contribution to the concept of ‘constitutional authoritarianism’ and the gradual shift to constitutional democracy. It outlines the central tenets of constitutional authoritarianism and examines the elements involved. This Chapter advocates for the use of the concept of ‘constitutional authoritarianism’ over ‘authoritarian constitutionalism’ in the context of the three case studies, highlighting its potential role in understanding authoritarian regime breakdown or lack thereof.

This Chapter also provides a conceptual and analytical framework for constitutional authoritarianism, which appears to be constitutional while undermining its principles.

6.1. Constitutional Authoritarianism: A Conceptual Framework Map

This study is rooted in the framework of ‘constitutional authoritarianism,’ which posits that the constitution and its institutional features, often associated with democracy, play significant roles in the survival of authoritarian regimes and, in some instances, facilitating swift transitions to democracy. To better understand the events in The Gambia,

Uganda, and Zimbabwe, this study utilizes the concept of “constitutional authoritarianism,” which has not been previously applied in analyzing authoritarianism in these three case studies.

Constitutional authoritarianism remains a newly-coined concept and is still heavily contested regarding the correct terminology. Scholars are divided on whether to use “constitutional authoritarianism” or “authoritarian constitutionalism” to use. As stated by Lachmayer, constitutional authoritarianism is a category of authoritarianism that utilizes constitutional law to legitimize and stabilize authoritarian regimes.¹ However, unlike the normative concept of *constitutionalism*, constitutional authoritarianism creates a facade of democracy by keeping some constitutional elements, but it weakens or undermines key institutions to control the government.

There continue to be a number of debates around the concepts of constitutional authoritarianism and authoritarian constitutionalism. One debate is about the definition of these terms. Niembro, in conceptualizing authoritarian constitutionalism, acknowledges that on the surface, the term may seem “absurd and nonsensical,” but a more careful examination of the misalignment between the exercise of power and constitutionalism, results to a “perplexing category.”² He further argues that it “emphasizes the tension between the exercise of power within ill-defined limits, lack of accountability, and how the ruling elite executes and masks its violence under the forms of the constitution, and the idea of constitutionalism.”³

¹ Konrad Lachmayer ‘Counter-Developments to Global Constitutionalism’ in (October 31, 2018) in Martin Belov (ed.) *Global Constitutionalism and Its Challenges to the Westphalian Constitutional Law* (2018), pp. 81–101.

² Roberto Niembro, “Conceptualizing Authoritarian Constitutionalism. A Latin American view,” *Völkerrechtsblog*, (July 17, 2017).

³ *Id.*

Lachmayer, on the other hand, responded to this by stating that the “use of the term *authoritarian constitutionalism* in an academic or public debate is misleading, conceptually wrong and politically dangerous.”⁴ He argues that “authoritarianism is not a characteristic of constitutionalism, [which] is also not a characteristic of authoritarianism.”⁵ In other words, authoritarianism and constitutionalism are mutually exclusive terms and that the usage of “authoritarian constitutionalism” conflates the two concepts and thus result in conceptual ambiguity.⁶

This debate is further illustrated by the work of two scholars, Hernandez and Tushnet. Hernandez’s paper, “Constitutional Authoritarianism and the Prospects of Democracy in the Philippines,” examines the effects of constitutional authoritarianism using martial law on Philippine society, particularly on its political institution.⁷ However, Hernandez does not define what constitutional authoritarianism is or justify the use of the term.

On the other hand, Tushnet examines the idea of authoritarian constitutionalism in his case study of Singapore. He defines authoritarian constitutionalism as “a system of government that combines reasonably free and fair elections with a moderate degree of repressive control of expression and limits on personal freedom.”⁸ He makes a defense of the normative appeal of constitutionalism by recognizing other forms of constitutionalism

⁴ Lachmayer, *supra* note 1, p.10.

⁵ *Id.*

⁶ Andreas Schedler, *Concept Formation in Political Science* (CIDE Working Papers, 2010).

⁷ Carolina G. Hernandez ‘Constitutional Authoritarianism and the Prospects of Democracy in the Philippines’ (1985) 28(2) *Journal of International Affairs, Dilemmas of Democracy*, pp. 243-258.

⁸ Mark Tushnet, ‘Authoritarian Constitutionalism ‘ (2015) 100 *Cornell Law Review*, p. 391.

other than liberal constitutionalism.⁹ This justification often arises when grappling with persistent ethnic conflict and other entrenched social and political issues.

However, Tushnet argues that Singapore is not a bad place for dissenters of the regime, as they might be denied access to government benefits, but few are forced into exile or arbitrarily arrested and detained.¹⁰ Similarly, Isiksel through her review of Turkey also argues that, according to the logic of authoritarian constitutionalism, this encompasses a political regime that “takes its constitution *seriously*.”¹¹

Barros has also used the term ‘authoritarian constitutionalism’ to describe the Chilean context during Pinochet’s regime, arguing that the regime used constitutional law to legitimize its rule, even though it also restricted the rights of the people and undermined the rule of law.¹² He argues that the key to understanding authoritarian constitutionalism is institutional imitation of government power, which “constrain actors by defining how things can be done, who can do them, and under what conditions, usually along with some device to enforce these rules.”¹³ Based on the military junta’s actions including the introduction of a constitution and institutions such as a constitutional court, these constraints led to the “plebiscite of October 5, 1988, which triggered the 1990 return to democracy.”¹⁴

However, for Tushnet, this raises the issues of an implied lack of efficacy in institutional constraints and thereby argues that “the normative commitment to constraints on

⁹ *Id.*, p. 394.

¹⁰ *Id.*, pp. 460-461.

¹¹ Emphasis added. Turkuler Isiksel, ‘Between Text and Context: Turkey’s Tradition of Authoritarian Constitutionalism’ (2013) 11(3) *International Journal of Constitutional Law*, p. 704.

¹² Robert Barros Personalization and Institutional Constraints: Pinochet, the Military Junta, and the 1980 Constitution (2001) 43(1) *Latin American Politics and Society*, pp. 5–28.

¹³ *Id.*, p. 7.

¹⁴ *Id.*, p.6.

public power, [based on his description] of how constitutionalism operates in Singapore, might be a truly distinguishing characteristic of authoritarian constitutionalism.”¹⁵ He argues that this normative commitment is what distinguishes authoritarian constitutionalism from other forms of authoritarianism.

In sum, the debate over the terminology for authoritarian constitutionalism will likely continue for some time. For this dissertation, authoritarian constitutionalism focuses on the institutional constraints on power, while constitutional authoritarianism focuses on using constitutional text, interpretation, and other constitutional features and institutions for authoritarian ends.

In utilizing the case studies to contribute to our understanding of constitutional authoritarianism, I center on the regime type as a way of understanding the term ‘authoritarian’ rather than the constitution having authoritarian elements. I have argued elsewhere that even though the 1997 Constitution of The Gambia encompasses “provisions [in the Constitution] that are repugnant to natural justice or at variance with international human rights law [which] must be expunged or amended,” but does not make the Constitution an authoritarian one.¹⁶ Thus, I utilize the concept of ‘constitutional authoritarianism,’ a system that uses legal formalities as a facade to mask underlying authoritarian rule. The leader may go through the motions of following the constitution, but they hold absolute power because there are no real mechanisms to hold them accountable.

¹⁵ Tushnet, *supra* note 8, p. 438.

¹⁶ Satang Nabaneh “New Gambia and the remaking of the Constitution” *ConstitutionNet* (March 16, 2017) <http://www.constitutionnet.org/news/new-gambia-and-remaking-constitution>.

6.1.1.What is Constitutional Authoritarianism?

While constitutional authoritarianism and authoritarian constitutionalism are two terms that are often used interchangeably, there are some important differences between the two. Authoritarian constitutionalism is a term used to describe a complex phenomenon where a regime possesses some characteristics of both a constitution and an authoritarian system. However, the meaning of 'constitutionalism' differs from its use in democratic settings. There are two keyways to understand it:¹⁷

- Limited Constitutionalism: This perspective acknowledges the presence of a constitution and potentially some independent institutions. However, these features are weak or incomplete. They might offer some checks on power, but ultimately serve the regime's interests and don't effectively constrain the leader.
- Façade of Constitutionalism: This view emphasizes how authoritarian regimes may use constitutions and legal processes for their own benefit. These tools become a way to legitimize their rule rather than genuine limitations on power. The constitution can be easily manipulated or ignored due to the lack of strong checks and balances.

Examples of authoritarian constitutionalism drawn from Latin American countries include Chile (1973-1988), Brazil (1964-1985) and Mexico (1934-1994).¹⁸ It is not simply about having a constitution, but rather, how that constitution is used and the limited power it holds in constraining the authoritarian leader or party.

On the other hand, it has been asserted that “When an authoritarian government produces a constitution and laws but there are no institutional limits on power (‘no

¹⁷ Andrea Pozas-Loyo and Julio Ríos-Figueroa ‘Authoritarian Constitutionalism,’ in Conrado Hübner Mendes, Roberto Gargarella, and Sebastián Guidi (eds) *The Oxford Handbook of Constitutional Law in Latin America*, pp. 340-353.

¹⁸ *Id.*, p.345.

constitutionalism'), we have an instance of 'constitutional authoritarianism'." ¹⁹ Latin American examples include Dominican Republic (1930-1961) and Argentina (1930-1932 and 1943-1946). ²⁰ In essence, authoritarian constitutionalism encompasses the imposition of institutional limitations on authority, and constitutional authoritarianism involves leveraging constitutional provisions and their interpretation to advance authoritarian goals.

This conceptualization is helpful given that one school of thought views 'constitutional authoritarianism' as an extension of a long-standing tradition of constitutionalism. In this perspective, 'constitutionalism' represents a set of desirable principles for structuring government power, including limitations on executive authority, checks and balances, and respect for individual rights. ²¹ However, these principles may be applied within a framework that is not fully democratic. As Olaka-Onyango states:

A merely worded or eloquently phrased document means nothing if the context in which is it supposed to operate is harsh and hostile – a context in which you may have a constitution without constitutionalism. ²²

This underscores the importance of ensuring that democratic principles are upheld in practice, not just in theory.

African nations, in crafting their Constitutions, have opted for executive branches wielding immense power, often concentrated in a single leader. This trend stems from a confluence of influences. While traditional African governance systems may have contributed certain elements to these leadership structures., the legacy of colonialism plays

¹⁹ *Id.*, p. 348.

²⁰ *Id.*, p. 345.

²¹ Charles M. Fombad 'Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa' (2007) 55 (7) *American Journal of Comparative Law*, pp. 1-45.

²² Joseph Olaka-Onyango 'Constitutionalism in Africa: Yesterday, today and tomorrow' in Joseph Olaka-Onyango *Constitutionalism in Africa: Creating Opportunities, Facing Challenges* (2002), p.2.

a major role, with concepts of centralized executive power from that era continuing to hold sway. As Ndlovu-Gatsheni notes:

African institutions and African leadership were destroyed by colonialism, then the colonialists invented their own versions and called them African institutions, traditions and customs.²³

Poku and Mdee write about this colonial afterlife, relating that:

The notion that authoritarianism was appropriate mode of rule were part of the colonial political legacy. Ironically, it was ultimately this curious identity of interest between new elites and the colonial oligarchy which facilitated the peaceful transfer of power to African regimes in most colonial Africa. What emerged from the postcolonial agreement, therefore, was above all an agreement between national elites and the departing colonizer to receive a succession state and maintain it with as much continuity as possible.²⁴

From this perspective, it becomes clear that African nations are grappling with the challenge of reconciling the desire for self-determination with the inherited structures of colonial rule, leaving them with the complex task of building democratic institutions on a foundation shaped by an authoritarian past.

Finally, the principle of separation of powers, though present, has been redefined. While the framework of distinct branches might exist on paper, the reality is a far cry from this ideal. The balance of power leans heavily in favor of the Executive, leaving the intended checks and balances significantly weakened. As a result, the Executive branch in Africa wields a far broader range of authority than originally envisioned by the separation of powers principle.²⁵

²³ Sabelo J. Ndlovu-Gatsheni *Decolonization, Development and Knowledge in Africa: Turning Over a New Leaf* (2020), p. 30.

²⁴ Nana Poku and Anna Mdee *Politics in Africa* (2011) p. 22.

²⁵ Charles M Fombad 'An Overview of the Separation of Powers under Modern African Constitutions' in Charles M Fombad (ed) *Separation of Powers in African Constitutionalism* (2016), p. 70.

The theory of limited government in liberal constitutional theory was exemplified by the American revolutionaries after they won the war for independence against Great Britain, proclaiming:

We hold these Truths to be self- evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness— That to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed, that whenever any form of Government becomes destructive of these Ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its Foundation on such Principles, and organizing its Powers in such form, as to them shall seem most likely to effect their Safety and Happiness.²⁶

Consequently, they established a system of government based on the principle of separation of powers and federalism.

The other school of thought takes a more skeptical view. They see ‘constitutional authoritarianism’ as simply a way of utilizing constitutional law within an authoritarian context, without any inherent commitment to democratic ideals. In this view, authoritarian regimes may create constitutions that serve to legitimize their rule, but these documents often lack the substance or enforcement mechanisms to truly constrain power or protect individual rights.

Authoritarian regimes are not averse to adopting constitutional frameworks, and their motivations for doing so are multifaceted. One key driver is international legitimacy. A constitution, even a flawed one, can provide a veneer of legality and adherence to rule of law, enhancing the regime’s standing in the global community. This can be crucial for attracting foreign investment, gaining access to international organizations, and deflecting criticism from democratic nations.

²⁶ The American Declaration of Independence (July 4, 1776), preamble para 2.

Beyond international optics, a constitution can function as a tool for managing dissent as discussed earlier. By establishing a (potentially manipulated) framework for political participation, the regime offers a channel for grievances to be expressed, albeit within tightly controlled boundaries. This creates the illusion of a democratic process, potentially appeasing some segments of the population and deflecting pressure for genuine democratic reforms.

Furthermore, a constitution can be a strategic instrument for dividing and weakening the opposition. By setting the ground rules for political activity, the regime can constrain opposition groups and force them to operate within a system designed to favor the incumbent power. This can create internal divisions within the opposition as they grapple with whether to engage in a rigged system or advocate for a complete overhaul.

a. Distinguishing Marks of Constitutional Authoritarianism

While a constitution typically serves as a foundation for democratic rule, it can be manipulated to create a facade of legitimacy in regimes that restrict core democratic freedoms. This phenomenon of constitutional authoritarianism is characterized by several key features.

Constitution and Laws Exist: A constitution and legal framework are established, creating an illusion of legitimacy. This thinking aligns existing literature, which is particularly helpful at identifying the mechanisms through which elections stabilize authoritarian rule.²⁷

²⁷ See for example, Johannes Gerschewski ‘The Three Pillars of Stability: Legitimation, Repression, and Co-Optation in Autocratic Regimes’ (2013) 20(1) *Democratization*, pp. 13–38; and Lee Morgenbesser ‘Elections in Hybrid Regimes: Conceptual Stretching Revived’ (2014) 62(1) *Political Studies*, pp. 21–36.

No Institutional Limits on Power: There are no checks and balances within the system to effectively constrain the leader or ruling party. Power in a constitutional authoritarian regime is typically concentrated in the hands of a single individual or group, such as a President, Prime Minister, or ruling party. This group may use its power to suppress dissent and maintain its grip on power. As outlined in Chapter 2, a crucial aspect in comprehending African constitutionalism is the enduring legacy of colonialism. This is seen in the importation of colonial laws, which during colonialism was the maintenance of colonial States and at the time of independence, and the imposition of a ‘liberal constitutional system’ modeled on the former colonizers’ model as a condition for the right to self-determination.

Manipulation of the Legal System: The Constitution and laws are used to justify actions rather than genuinely limit power. This can involve frequent amendments or interpretations that favor the regime.

The restriction of political rights and freedoms: Constitutional authoritarian regimes will often restrict political rights and freedoms, such as the right to freedom of speech, assembly, and association.

Proponents of ‘constitutional authoritarianism’ argue for its clarity and emphasis on the true nature of these regimes. This term avoids any confusion about these being democratic systems. It prioritizes the analysis of power dynamics, highlighting how power remains concentrated in the hands of the authoritarian leader or party, regardless of a constitution's existence. However, critics argue that ‘constitutional authoritarianism’ might be overly simplistic. Completely dismissing the ‘constitutional’ aspect ignores the

potential for these regimes to evolve or offer limited spaces for participation, even if flawed.

Additionally, the term ‘authoritarian’ can encompass a spectrum of regimes. ‘Authoritarian constitutionalism’ might acknowledge this nuance by suggesting a specific type of authoritarianism that uses a constitution for specific purposes.

6.2 Demonstrations of Constitutional Authoritarianism

The Gambia during the Jammeh regime, who ruled the Gambia from 1994-2016, is an applicable example of an authoritarian regime in which the Constitution was not able to limit his behavior. As indicated in Chapter 3, The Gambia has the 1997 Constitution that guarantees certain rights and freedoms, such as freedom of speech and assembly. However, these rights and freedoms were often restricted in practice using laws, regulations, and other measures. For example, Jammeh’s government was accused of using repressive laws to silence dissent. In 2009, the Government passed the National Security Act which gives the Government broad powers to detain people without charge. The Government also used the law to restrict the activities of civil society organizations. Jammeh’s Government was also accused of using violence against its opponents. In 2014, the Government was accused of using tear gas and rubber bullets to disperse peaceful protests. In 2016, the Government was accused of killing nine people during a protest. Jammeh’s government was also accused of manipulating elections. In the 2011 elections, the opposition party, the United Democratic Party (UDP), accused the Government of rigging the elections. The Government denied these accusations.

Thus, the Constitution did not constrain power. This led to him amending the 1997 Constitution more than 50 times.²⁸ Instead the Constitution was aimed at providing some sort of legitimacy to his regime.

Another example of constitutional authoritarianism comes from Uganda. Uganda has a constitution that guarantees certain rights and freedoms, such as freedom of speech and assembly. For example, the Government of Uganda has been accused of using repressive laws to silence dissent. In 2005, the Government passed the Public Order Management Act, which gives the Government broad powers to regulate public gatherings. The Government has also been accused of using violence against its opponents. In 2016, the Government was accused of using tear gas and water cannons to disperse peaceful protests. The Government of Uganda has also been accused of manipulating elections. In the 2016 elections, the opposition party, the Forum for Democratic Change, accused the Government of rigging the elections. The Government has denied these accusations. The current President of Uganda, Yoweri Museveni, has been in power since 1986. Museveni has been accused of human rights abuses, including the suppression of dissent and the use of violence against his opponents. Museveni has also been accused of rigging elections.

The last example within this category comes from Zimbabwe. Zimbabwe has a constitution that guarantees certain rights and freedoms, such as freedom of speech and

²⁸ See generally Satang Nabaneh 'Attempts at Constitutional Reform in The Gambia: Whither the Draft Constitution?' *IACL-AIDC Blog* (September 29, 2020) <https://blog-iacl-aidc.org/2020-posts/2020/9/29/attempts-at-constitutional-reform-in-the-gambia-whither-the-draft-constitution>; Satang Nabaneh 'Why The Gambia's quest for a new constitution came unstuck – and what next' *The Conversation* (October 6, 2020) <https://theconversation.com/why-the-gambias-quest-for-a-new-constitution-came-unstuck-and-what-next-147118>.

assembly. However, these rights and freedoms are often restricted in practice using laws, regulations, and other measures. For example, the government of Zimbabwe has been accused of using repressive laws to silence dissent. In 2013, the government passed the Access to Information and Protection of Privacy Act, which gives the government broad powers to regulate the media. The Government has also been accused of using violence against its opponents. In 2016, the Government was accused of using tear gas and water cannons to disperse peaceful protests. The Mugabe Government had also shown a willingness to restrict the rights of the people and to manipulate elections.

The examples of these three countries contribute to our understanding of constitutional authoritarianism in a number of ways. First, it shows that constitutional authoritarianism is not a monolithic phenomenon. There are a variety of ways in which authoritarian regimes can use constitutional law to legitimize their rule. In the case of Zimbabwe, the Government of Mugabe has used repressive laws to silence dissent and to manipulate elections. In the case of The Gambia, the Government of Yahya Jammeh used constitutional law to legitimize his rule, but he also used violence and repression to silence his opponents. In the case of Uganda, the Government of Yoweri Museveni has used a combination of constitutional law, repression, and violence to maintain its grip on power.

In general, constitutional authoritarianism can pose a threat to democracy by allowing authoritarian regimes to use constitutional law to undermine the rule of law and infringe upon the rights of people. This can make it difficult for citizens to hold their governments accountable, leading to a decline in democratic values.

Several factors can contribute to the rise of constitutional authoritarianism, including economic inequality, political instability, and weak democratic institutions.

Overcoming constitutional authoritarianism requires tackling several challenges, such as the need for strong democratic institutions, a robust civil society, and international support.

6.3. Conclusion

Constitutional authoritarianism is a concerning trend that is on the rise in today's world. Several countries, including Russia, China, and Turkey, are now considered constitutional authoritarian regimes. This rise has significant implications for understanding authoritarian regimes. Firstly, it suggests that the traditional distinction between democracies and authoritarian regimes is becoming less clear. Secondly, it indicates that authoritarian regimes are becoming more sophisticated in their exercise of political power. It also implies that the international community will need to find new ways to address the challenge of authoritarian regimes in the future.

Finally, there is a debate about the implications of constitutional authoritarianism and authoritarian constitutionalism for democracy. Some scholars argue that these regimes threaten democracy because they undermine the rule of law and the rights of the people. They argue that these regimes make it more difficult for people to hold their governments accountable.

On the other hand, there are scholars who present a contrasting view, suggesting that these regimes might not necessarily be a threat to democracy. They propose that constitutional authoritarianism could serve as a stepping stone from authoritarianism to democracy. According to this perspective, these regimes can offer a platform for democratic reforms and contribute to the establishment of democratic institutions. This argument provides a nuanced understanding of the potential benefits of constitutional authoritarianism.

Chapter Seven:

Conclusion

If we are to remain free, if we are to enjoy the full benefits of Africa's rich resources, we must unite to plan for our total defense and the full exploitation of our material and human means, in the full interests of our peoples. 'To get it alone' will limit our horizons, curtail our expectations, and threaten our liberty.¹

7.1. Main Findings

This study has sought to explain **how leaders are replaced in contemporary (semi-competitive) authoritarian regimes**. In answering this key question, the following related questions are addressed:

1. Why do semi-competitive authoritarian regimes hold elections?
2. Why do semi-competitive elections not usually produce democratic outcomes? In other words, how do elections produce continuity in authoritarian regime survival?
3. What and who is responsible for dictators losing elections – the dictator or the opposition?

In addressing the research questions, the study lays out three sets of arguments.

The first concentrates on why authoritarian regimes conduct elections. The second concentrates on what accounts for stability or change. For the third, I develop an argument that while dictators meddle with their constitutions and other legal frameworks to stay in power, these same legal instruments facilitate their downfall.

In investigating the motivations behind authoritarian regimes holding elections, I argue that elections serve as a legitimization tool. Authoritarian regimes strategically hold elections to gain legitimacy from both domestic and international actors. These elections

¹ Kwame Nkrumah, *Africa Must Unite* (1963) xvii.

mainly serve to maintain the status quo rather than represent a genuine democratic process. Early chapters of this dissertation discussed the debate surrounding elections. Some scholars view them as simply reflecting pre-existing political and economic trends. Others, however, see elections as having a causal impact, potentially triggering regime transitions. This research acknowledges Andreas Schedler's notion of elections having contingent effects.² The varied outcomes of the elections analyzed in this dissertation highlight this point. The elections led to vastly different results.

Furthermore, the outcomes of these crucial elections led to an even greater divide between nations where opposition parties emerged victorious and those where they did not, emphasizing the significant impact of elections in specific scenarios.

In 2021, Museveni secured his sixth presidential term with 58.64% of the total votes in the presidential elections, thereby extending his 35-year tenure in office.³ Thus, Uganda's continued progression as a semi-competitive regime can be attributed to an overconcentration of executive power and a pattern of manipulating the Constitution and its features to consolidate and maintain control. As Aili Mari Tripp notes:

The paradoxes of the Museveni regime are thus typical of the dilemmas confronting poor hybrid regimes, which are neither fully democratic nor fully authoritarian. This is not to say that their leaders should not be held accountable or that individual leadership qualities and values do not matter. Nor can one conclude in a deterministic manner that countries cannot depart from the predicted mold. Rather, it is simply necessary to recognize that the problems of governance in a country like Uganda generally transcend the behavior of individuals in power.⁴

² Andreas Schedler 'The Contingent Power of Authoritarian Elections' in Staffan Lindberg (ed.) *Democratization by Elections: A New Mode of Transition?* (2009), pp. 291–313.

³ 'Museveni declared winner of disputed Uganda presidential election' *Aljazeera* (January 16, 2021).

⁴ Aili Mari Tripp, *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime* (2010), p. 6.

These observations highlight the need to consider broader governance issues beyond individual leadership qualities and behaviors.

Secondly, this dissertation demonstrates that regimes adopting more authoritarian practices can inadvertently foster support for the opposition among both regime allies and citizens. Regimes who rely heavily on authoritarian control might inadvertently encourage opposition movements as indicative in The Gambian case.⁵ This happens when citizens and regime allies become disillusioned with the increasing repression. A unified opposition party poses a significant threat to authoritarian rule. Such coalitions offer a credible alternative for dissatisfied citizens and potentially lead to the dictator's defeat in an election. This finding aligns with Diamond's observation that opposition victories in hybrid regimes require exceptional mobilization, unity, and strategic maneuvering.⁶

Through an advancement of the conceptual and analytical framework of 'constitutional authoritarianism', I showcase the paradox of Constitutions. This describes the strategy of authoritarian regimes to exploit existing constitutions and their interpretations to serve their own authoritarian agenda. They use the constitution as a tool to legitimize their actions and further consolidate their power. Here, authoritarian leaders often manipulate constitutions to solidify their power, but these legal frameworks can ironically contribute to their downfall. Think of a bird locked in a cage. Constitutional authoritarianism is like a cage that looks beautiful and ornate from the outside, with strong bars that keep the bird trapped inside. The bird can flutter around within the cage, but it

⁵ Satang Nabaneh 'Prospects for Democratic Consolidation in The Gambia' in Tom Gerald Daly and Dinesha Samararatne (eds.) *Democratic Consolidation and Constitutional Endurance in Asia and Africa* (2024), pp. 203- 226.

⁶ Larry J Diamond 'Thinking About Hybrid Regimes' (2002) 13(2) *Journal of Democracy*, pp. 24.

cannot escape its confinement. It is like a prison that's been decorated to look nice, but it is still a prison.

In contrast, authoritarian constitutionalism is like a cage that is a bit rusty and has a broken latch. The bird is still mostly confined, but it might be able to sneak out occasionally or perch on the edge of the cage. The cage still exists, but it is not as strong as the other one, and the bird might be able to find some limited freedom within its constraints. Thus, I argue that that inherent contradictions or power imbalances within these Constitutions can create unforeseen vulnerabilities for the regime, as The Gambia shows.

It is also important to acknowledge that authoritarian leaders in mixed regimes present a puzzling paradox. This analysis argues against a simplistic view of their strength or weakness. On the one hand, these leaders show surprising resilience. They can maintain control despite facing opposition movements such as the case of Uganda with President Museveni. Additionally, the electoral systems themselves often make it difficult to unseat them. However, the analysis also reveals vulnerabilities. While opposition parties face limitations, the freedom authoritarian leaders have to maneuver within the system might be overestimated. Relying heavily on repression and economic control can backfire, making them appear desperate and potentially creating an opening for democratic movements. The Gambian case further illustrates this. Leaders resorting to increased authoritarian tactics emboldened the opposition and the citizenry to vote him out of power.

Similarly, a lack of strong opposition can be a double-edged sword, leading to complacency and a disconnect from the people's needs. This dissertation highlights the importance of a nuanced understanding of power in mixed regimes. Authoritarian leaders

may appear strong, but their actions can have unintended consequences, creating opportunities for democratic change.

7.2. Beyond the case studies

This research has a unique and important approach by incorporating the concept of constitutional authoritarianism to analyze significant political events such as the removal of authoritarian leaders in a political system dominated by a ‘politics of permanent fear,’ as defined by Perlmutter.⁷ The first examines the anomalous event of a military-turned-civilian dictator in The Gambia losing a post-colonial African election for the first time. The second analyzes a comparable case where an electoral challenge, despite sharing key variables, failed to unseat a dictator. By contrasting these outcomes, the study aims to illuminate the factors hindering similar electoral breakthroughs. Finally, the research explores a successful leadership removal through military backing and an impeachment process. These significant political events offer rich empirical and theoretical insights for understanding political change in Africa.

This dissertation not only sheds light on leader turnover in authoritarian regimes but also contributes to the understudied theory of constitutional authoritarianism. A grounded theory approach, as advocated by Creswell, is particularly fitting.⁸ This approach is ideal when existing theories are insufficient to explain a process – in this case, the potential for constitutions to be used against, rather than for, authoritarian leaders. The research aims to challenge the notion of constitutions as mere window dressing and posit that they can be instruments for both regime consolidation and leader removal. This

⁷ Amos Perlmutter, *Modern Authoritarianism: A Comparative Institutional Analysis* (1981), p. 20.

⁸ John W. Creswell, *Qualitative Inquiry and Research Design: Choosing among Five Approaches* (2013), p.88.

challenges the current debate on the role of Constitutions in Africa and elsewhere, pushing the boundaries of understanding regarding Constitutions, subsidiary legislation, and safeguarding institutions within authoritarian contexts. Ultimately, the study aspires to contribute to the ongoing policy debate, both within Africa and internationally, regarding the sources and future trajectories of political transformation on the continent. The phenomenon of authoritarian leaders losing elections, despite seeming control, has become increasingly relevant. This trend coincides with the rise of ‘competitive authoritarian’ regimes – systems blending authoritarian practices with electoral competition—that emerged during the global democratization wave. Here, I draw implications particularly given the growth of competitive non-democratic regimes and resurgence of coups.

7.2.1. Elections and Competitive Authoritarianism

Most African countries operate in the ‘foggy zone between liberal democracy and closed authoritarianism.’⁹ Over the past three decades, the implementation of democratic reforms and the conduct of periodic elections in Africa have been increasingly exploited as a means of survival by autocratic leaders.¹⁰ Specifically, elections have become a convenient tool for maintaining the presence of opposition parties within the political arena, ensuring that regimes retain their semblance of democracy while avoiding accusations of authoritarianism.

Africa’s recent history seems contradictory. Multiparty elections, a hallmark of democracy, are held regularly across the continent. Yet, true democracy appears to be

⁹ Andreas Schedler ‘Elections without Democracy: The Menu of Manipulation’ (2002) 13(2) *Journal of Democracy* 37.

¹⁰ Tavishi Bhasin and Jennifer Gandhi ‘Timing and Targeting of State Repression in Authoritarian Elections’ (2013) 32 *Electoral Studies* 620-631.

receding, not flourishing. This phenomenon can be explained by the concept of electoral authoritarianism. Here, regimes manipulate democratic processes – elections and institutions – to create a facade of legitimacy, despite the underlying lack of fair competition.

The specific form this takes can vary. Some regimes exert complete dominance, with pre-determined election results. Others allow a semblance of competition, but with the outcome heavily tilted in their favor (competitive authoritarianism). Still others maintain a system where one party consistently holds power for extended periods. These variations depend on factors like the predictability of election results, the ruling party's share of votes and seats, and their duration in power.¹¹

7.2.1. The Resurgence of Coups

African Union's (AU) nearly three-decades-long prohibition of unconstitutional changes of government has not eradicated military coups. Africa has a long history of military intervention in politics. Since 1952, nearly 100 coups have reshaped the continent's political landscape. The 1990s brought hope for democratic change, but recent years have seen a worrying trend. The number of coups in the past few years rivals that of the entire previous decade (2010-2019) and echoes the dark period of widespread authoritarian rule in the mid-1970s to mid-1980s.¹² Since 2020, Africa has experienced at least seven successful coups and three unsuccessful ones. Gabon joined a growing list of African nations experiencing military takeovers in recent years.

¹¹ See Michael M Miller 'The Strategic Origins of Electoral Authoritarianism' (2017) *British Journal of Political Science*, 17-44.

¹² ACCORD 'From fighting Jihadists to fighting Juntas: Explaining the recent resurgence of military coups in Africa, and how to prevent recurrence' (August 31, 2023).

The central African country's coup on August 30, 2023, followed similar events in Niger (July 2023), Burkina Faso (2022), Chad, Guinea, and Sudan (all in 2021), and Mali (2020).¹³ Public frustration with the state of their democracies has become a breeding ground for military takeovers in Africa, particularly in the Sahel.¹⁴ While the details of each coup differ, a common thread emerges – a sense that elected governments have failed to deliver on their fundamental promises. Citizens yearn for freedom, security, and economic development, yet these basic needs remain unfulfilled.

This disillusionment stems from several sources. Flawed elections and manipulations of term limits have eroded public trust in the democratic process. People grapple with unmet social and economic needs, while ongoing security threats seem insurmountable under the current civilian leadership. In some former French colonies like Mali, Burkina Faso, Niger, and Gabon, the legacy of French foreign policy adds another layer of discontent. Past support for dictatorships and economic interventions perceived as favoring France over local populations still rankles. More recently, French military interventions in the Sahel region have yielded disappointing results, further fueling public frustration. These combined factors have created a situation where some citizens view military intervention as a desperate solution to their problems.

Recently, Mali, Burkina Faso and Niger expressed their intention to withdraw from the Economic Community of West African States (ECOWAS).¹⁵ Despite promises of

¹³ Mali had a 'coup within a coup' nine months after. See Adeyole O. Akinola (2021). 'The sudden proliferation of coups in West Africa and the Sahel bodes ill for the democratic project in Africa' *Daily Maverick* (October 6, 2021).

¹⁴ Gwinyai R. Taruvinga, G.R. 'The Resurgence of Military Coups in Africa: The Case of West Africa and the Sahel' in Adeyole O. Akinola (ed) *Contemporary Issues on Governance, Conflict and Security in Africa* (2023), pp. 147-157.

¹⁵ 'Niger, Mali, Burkina Faso announce withdrawal from ECOWAS' *Aljazeera* (January 28, 2024).

reviving democracy, military takeovers in Africa often lead to a decline in governance as the Gambian case shows.

7.3. Limitations of the Study

This research, particularly my fieldwork, presented several ethical hurdles, some anticipated and others encountered directly. The most prominent of these concerns anonymity and safety. Thus, I prioritized informant safety due to the high risk of retaliation they could face for simply associating with me. Rather than directly quoting interview excerpts, I have chosen to integrate their valuable insights into the existing body of knowledge. This means drawing on the themes, ideas, and experiences shared by interviewees to enrich my understanding of the topic. By weaving these insights into the analysis, I can offer a more nuanced picture of the issue at hand. This approach allows me to leverage the interviewees' unique perspectives while focusing on the broader research context.

However, data quality is another significant challenge specific to research in non-democracies. Scholars studying non-democratic regimes face a critical dilemma: ensuring the accuracy, validity, and reliability of their data. While skepticism towards individual perceptions and opinions is always important, it becomes even more crucial in contexts where participants might have strong reasons to conceal their true feelings.

7.4 Avenues for Further Research

This research addresses the puzzling behavior of dictators who, despite appearing to wield absolute control, opt to hold elections. The project investigates why authoritarian leaders, backed by robust state institutions and influential allies, would even entertain the idea of elections. It explores link between constitutional authoritarianism and elections,

probing why dictators might uphold a veneer of legitimacy by adhering to certain constitutional provisions, such as holding elections. The findings of this study are crucial in understanding the complex dynamics of authoritarian regimes and their strategies for maintaining power.

Moreover, this study aims to develop an empirical understanding of the intriguing phenomenon of dictators being defeated in elections. This analysis not only enriches theoretical discussions but also provide practical insights for policymakers and political scientists, aiding in the formulation of effective strategies for political transitions.

This research builds on the concept of constitutional authoritarianism and proposes an analytical framework to comprehend the dynamic developments that pave the way for a gradual transition towards constitutional democracy. The primary aim is to make a significant contribution to the ongoing debate on the role of law in facilitating political transitions, thereby shaping the discourse, and influencing future research in this field.

Looking forward, case studies that digs deeply into the transitions of specific countries can provide a comprehensive and detailed view. It is crucial to analyze the specific events, actors, and strategies that triggered and facilitated the shift. This could involve identifying key turning points in the transition process, examining the role of social movements, opposition parties, and international actors in pushing for democratic reforms, and analyzing how legal challenges and interpretations have impacted the transition.

Finally, expanding the analysis by comparing and contrasting transitions across different regions or political systems is timely. It can offer valuable insights, revealing commonalities and variations in the mechanisms and factors contributing to successful transitions or lack of. Assessing the influence of specific political and cultural contexts on

the transition process and evaluating the effectiveness of different strategies employed by various actors in different countries would enrich the understanding. For example, Africa and Latin America share a history of authoritarian rule, and both regions are grappling with similar challenges in their transitions to democracy. A South-South dialogue, where these regions share experiences and strategies, can be immensely valuable.

By pursuing these research avenues, a richer understanding of how transitions from constitutional authoritarianism to democracy occur can be achieved. This has the potential to provide valuable insights for actors seeking to promote democratic change, thereby contributing to the advancement of democratic reforms.

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