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The Paradox of Constitutional Reforms in The Gambia: Implications for
Democratic Transition

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II. Abstract

This study examines the persistent failure of constitutional reforms in The Gambia following the 2017 political transition, despite widespread domestic support and international backing. The transition, which marked the end of Yahya Jammeh's two-decade authoritarian rule, raised expectations for transition to democratic governance, including the adoption of a new constitution to replace the 1997 Constitution. Through a qualitative case study approach, the research employs Elster's theory of constitution-making, along with theories of political settlement and elite bargaining, to analyse the motivations, constraints, and interests that shaped the constitution-making process. Drawing from policy documents, media publications, and academic literature, the study identifies elite fragmentation as a primary reason that undermines constitutional reforms in The Gambia. Other factors, such as a lack of political will, institutional weaknesses, and the continued influence of authoritarian-era elites, also emerge as contributing factors to undermining the constitutional-making process, according to the findings. The findings reveal that while the Constitutional Review Committee (CRC) Draft Constitution represented a progressive and inclusive framework, its rejection by parliamentarians underscored the dominance of narrow political interests over national consensus. The study concludes that the failure of constitutional reform will continue to have a significant impact on Gambia's future democratisation process. It then offers policy recommendations for inclusive, transparent, and elite-consensual constitution-making processes, contributing to the broader discourse on democratic transitions in Africa.

III. List of Abbreviations

| <i>Abbreviation</i> | <i>Meaning</i> |
|---------------------|---|
| APRC | Alliance for Patriotic Reorientation and Construction |
| BBC | British Broadcasting Corporation |
| CEC | Coalition Executive Committee |
| CRC | Constitutional Review Commission |
| CSO | Civil Society Organisation |
| ECOWAS | Economic Community of West African States |
| ECOMIG | ECOWAS Mission in The Gambia |
| GDC | Gambia Democratic Congress |
| GMC | Gambia Moral Congress |
| GPDP | Gambia Party for Democracy and Progress |
| IC | Independent Candidate |
| MoU | Memorandum of Understanding |
| MP | Member of Parliament |
| NA | National Assembly |
| NCP | National Convention Party |
| NRP | National Reconciliation Party |
| PDOIS | People's Democratic Organisation for Independence and Socialism |
| PPP | People's Progressive Party |
| TRRC | Truth, Reconciliation and Reparations Commission |
| UDP | United Democratic Party |
| UNDP | United Nations Development Programme |
| V-Dem | Varieties of Democracy |

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Chapter 1: Introduction

1.1 Brief background of the study

The 2016 election outcome marked a significant political shift in The Gambia, ending more than two decades of autocratic rule and ushering in a democratic transition that has profoundly shaped the country's political trajectory. It was the first time the country not only experienced regime change through democratic means, but also removed a repressive and the longest-serving president at the time (Njie & Saine, 2019). The end of Yaya Jammeh's era, a self-proclaimed billion-year president, has raised hopes high for reforms in The Gambia, whose rulership was characterised by excessive executive power, repression, politicised institutions, and the culture of impunity (Njie & Saine, 2019). For more than two decades, Jammeh ruled the country with an 'iron fist', jailing opponents, kidnapping political critics, abducting dissidents, and systematically repressing citizens (TRRC Report, 2021; Jeng, 2019). These legacies continue to shape Gambia's political trajectory and undermine the reform efforts hoped for by the Gambian people.

When Jammeh came to power through a military coup in 1994, the military junta suspended the First Republican Constitution of The Gambia, 1970 (hereafter the 1970 Republican Constitution), and ruled by decrees (Mendy, 2024; Nabaneh, Abebe, & Sowe, 2022; Njie & Saine, 2019). Moreover, Jammeh remained in power under a transitional military junta called the Armed Forces Provisional Ruling Council (AFPRC) for two years. Afterwards, in 1996, the transitional military junta organised an election, at which Jammeh had already formed his political party, the Alliance for Patriotic Reorientation and Construction (APRC), which he contested and won with a landslide victory. Following these developments, a new constitution was adopted, giving birth to the Second Republican Constitution of The Gambia, 1997 (hereafter the 1997 Constitution). And then Jammeh went on to win four consecutive elections before the eventual defeat in 2016 by the Coalition forces (Kora & Darboe, 2017).

Apart from the Constitution being born out of dictatorial governance structures, the 1997 Constitution was amended several times, *inter alia*, removing the presidential term limit, changing provisions regarding Independence Electoral Commission, giving the president the power to appoint the Chief Judge (Conte, 2021), to suit the incumbent president and enabled him to stay in power. Indeed, president Jammeh overstayed in power until at a point that he thought it was not possible to remove him from power in any means possible to an extent that

he vowed to rule the country for ‘a billion years’ (BBC, 2011), reflecting the extent of his authoritarian ambition and disregard for democratic norms such as presidential term limits, free election among others. According to Njie and Saine (2019), a dictator of such calibre would never organise an election when they know they will lose; however, Jammeh’s confidence leading up to the polls in 2016 was a political error that many dictators could avoid.

The hope to replace the 1997 Constitution born out of dictatorial tendencies, with a new constitution suitable for a democratic state, was the result of the 2016 Coalition, dubbed by political scientists as a ‘marriage of convenience’ (Njie & Saine, 2019). Democratisation, development, and Constitutional review were among the top promises made by the Coalition, leading to their landslide victory in 2016 (Houlihan, 2019). However, as Nabaneh (2020) noted, change alone was insufficient to transition to democratic governance in The Gambia; the ousting of President Jammeh was merely the first step. According to Kronberg (2021), there is a nexus between constitutional review and a functioning democracy. This makes it apparent that the country needed a new constitution built on democratic norms and the rule of law.

At the beginning of the transition, to fulfil their promise, the Coalition government launched the landmark Constitutional Review Commission (CRC) with 11 commissioners tasked with reviewing the old constitution and drafting a new one to usher in a third republican constitution founded on the rule of law and democratic norms. This was the wish of the majority of Gambians. According to Nabaneh (2020), the formulation of a new constitution was a “key pillar of National Transitional Justice.” The CRC managed to successfully draft a constitution that reflects the wishes of the Gambians. Additionally, the reviewing and drafting process has been very inclusive and consultative. However, the CRC Draft Constitution reached a dead end when parliamentarians rejected the proposed Promulgation Bill, 2020 (Nabaneh, 2020). If the proposed Constitutional Bill, 2020, had been accepted, it would have seen the promulgation of a new constitution and the repeal of the 1997 Constitution (Nabaneh, 2020).

The Draft Constitution introduced several measures aimed at enhancing and strengthening democracy. “This includes a presidential term limit, limits on executive power, measures to ensure greater political inclusion for marginalised groups (including women, youth and persons with disabilities) and a comprehensive Bill of Rights chapter, compliance with international and regional human rights standards” (Nabaneh, 2020). However, its rejection served as a clear indication that ending a dictatorship was just the first step, a point underpinned

by Huntington (1993), who stated that the death of the dictatorship does not guarantee the emergence of democracy.

It is worth noting that many African countries have experienced a surge in democratisation since the end of the Cold War (Cheeseman, 2015). However, moving away from authoritarianism and adopting a constitution suitable for a democratic state has become a challenging task for African states, as new regimes must confront the lingering effects of authoritarian legacies. Bad legal frameworks and a lack of adherence to the rule of law are at the heart of these difficulties. Indeed, constitution-making is a daunting task. According to Houlihan (2019) constitution-making entails several considerations; in short, it is a conglomeration of different issues, such as the redistribution of access to power and resources, the recognition of identity, the protection of both individual and collective rights, negotiation, and bargaining. Therefore, a high-stakes decision-making process is needed to draft and adopt a new constitution successfully. This is not possible without collaboration among political elites.

The Gambia presents a compelling case of the continental dilemma of post-authoritarian democratic transition and the paradox of constitutional reform. The Gambia's experience clearly illustrates the challenges of achieving a political settlement in a post-authoritarian era. It is evident that more polarised political elites can serve as stumbling blocks to issues of national interest, especially when a proposed bill or measure is not in their favour or threatens their political power (Nabaneh, 2020).

1.2 Research problem and question

Despite the political upheaval and promising reforms, The Gambia continues to languish under autocratic legacies, characterised by executive dominance, personalised rulership, patronage-based political networks, weak institutions, and corruption (Njie & Saine, 2019). It is clear that these features do not disappear overnight. Hence, one of the anecdotal pieces of evidence is that it is quite challenging to transition to a fully fledged democracy in a post-authoritarian regime. Clearly, the tendency that the old elite would be recycled in the system is very high, and the implication is that they may resist changes, leading to the erosion of citizens' trust and hope in state institutions over time. The result is often a fragile democracy, vulnerable to crisis or backsliding, or what Linz and Stepan (1997) refer to as an environment of uncertainty due to the lack of established rules.

The V-Dem 2025 report indicated that President Barrow's re-election in 2021 saw him shift from his initial policies aimed at promoting transparency, freedom of expression, and freedom of association, leading to a slight decline of the country's Liberal Democratic Index (LDC) in 2023 and 2024, signalling a democratic backsliding (V-Dem, 2025). V-Dem attributed this decline to Barrow's attack on the media and arrest of journalists and political opponents, which raises concerns about the sustainability of the democratic transition in The Gambia.

Since the end of Jammeh's regime and the aftermath of the ensuing political settlement, the transitional Government has embarked on reforms, including the establishment of transitional justice institutions such as the Constitutional Review Commission (CRC) and the Truth, Reconciliation, and Reparation Commission (TRRC), along with institutional and other legal reforms. As mentioned earlier, the CRC was tasked with reviewing the old constitution, which had been built on dictatorial tendencies, and drafting a new one based on democratic norms and the rule of law. TRRC, on the other hand, was meant to probe into the heinous and barbaric human rights abuses meted out on Gambians and non-Gambians alike by the former regime (TRRC Final Report, 2019). These reform agendas were welcomed with high public hope and expectation, and they served as the main forces that enabled the ousting of the dictatorial regime from power in 2016.

However, despite these high hopes and levels of citizen participation, as well as support from civil society organisations and the international community, the proposed Draft Constitution was rejected by parliamentarians. This has stalled the most significant symbolic reforms in The Gambia, undermining the transition and perpetuating the autocratic legacies in the country, as Mendy (2024) refers to it, in a situation where a constitution exists without constitutionalism. Given that constitutional reform is a foundation for any political transition, its failure in The Gambia would signify a regression in the country's democratic transition, on one hand; and also expose a lack of commitment on the part of the transitional government to democratic governance, on the other hand. Thus, undermining the citizens' aspirations for the sort of democracy they yearn for. This further raises concerns about the commitment of political elites and the lingering impact and resilience of dictatorial legacies, affirming that more polarised and fragmented political elites might have a conflict of interest, leading to the deadlock of the most important national events. This proposition reflects The Gambia's failure to adopt a new constitution, a critical element in its democratic transition. Consequently, the

study seeks to understand the following fundamental question: Why have constitutional reforms not been successful in The Gambia since the 2017 transition, despite several attempts?

1.3 Research objective and hypothesis

This research examines the failure of constitution-making in post-authoritarian rule in The Gambia and its implications for democratic transition. It will thus analyse the 2020 Draft Constitution and what led to its failure through the following hypothesis: the fragmented and polarised political elites were a reason for the failure to promulgate a new constitution in The Gambia. Based on this hypothesis, the study will examine, among other factors, the role of presidential term limits, internal political interests, institutional weaknesses, historical legacies, the influence of civil society organisations, and the impact of international actors. The study will then provide comprehensive policy recommendations for a successful constitutional reform in The Gambia, which can also be generalised in the African context.

1.4 Significance of the study

This study is significant in two ways: both theoretically and practically. Practically, the study sits at the heart of human rights and democratisation, as it seeks to highlight pressing and persistent practical concerns (i.e., constitution-making and democratic transition in post-authoritarian regimes). Second, it will provide not only a lesson for policymakers, civil society organisations, and the international community, but also offer evidence-based recommendations for a constitution-making process that is free from elite biases and manipulations. Third, the research comes at a time when a second draft constitution dubbed ‘President Barrow’s draft’ has been (re) introduced in the parliament, which, due to its contentious nature, has been suspended for further notice. Therefore, the research will provide stakeholders with a more comprehensive understanding of the ongoing constitutional reforms.

Theoretically, the study aims to contribute to the growing body of literature on constitution-making in democratic transition. According to Elster (1995), constitution-making involves a process of negotiation and bargaining, especially among elites operating within a framework of constraints, interests, conflicts of interest, passions, and reasons. It is worth noting that democratisation process starts with making a democratic constitution. The study will also contribute to the study of political settlement and elite bargaining in pre- and post-conflict situations. Additionally, the study provides insights into the paradox of reform failure during a transition period, due to a more polarised and fragmented political elite, which will help refine existing theories of elite behaviour.

Chapter 2: Literature Review

2.1 Introduction

This chapter carries out a literature review of previous works on constitution-making and democratic transition in Africa. This chapter reviews and discusses the empirical literature on constitution-making and democratic transition in the context of a post-authoritarian regime. This will lay the groundwork for both theoretical and analytical chapters. Hart (2003) argues that constitution-making is related to how power is distributed, redistributed, and limited. Such a constitution-making has evolved from being an elite driven process to a more inclusive one, as traditionally, the public was only consulted for their consent on the final version; however, it is widely the case that those whom are affected by the outcome of the constitution are now a part and parcel of every stage of the constitution-making process (Hart, 2003). This chapter begins by reviewing the existing literature on democratic transition and constitution-making in Africa, followed by an examination of the situation in The Gambia. It then identifies the research gap that this research seeks to address.

2.2 Constitutional reforms in Africa

In Africa, many countries have experienced dictatorial rule at some point in their post-independence political history, making constitutional reform an important mechanism for transitioning from autocratic to democratic governance. Evidence from the literature suggests that because democratisations garnered pressure for constitutional reforms, it is not possible to transition without making a democratic constitution (Bannon, 2007). Ndulo (2003) argues that African states face numerous issues, including conflict and poverty, which necessitate the call for effective governance. He is of the view that the answer to these underlying and compounded problems entirely depends upon the adoption of constitutions by African countries that will stand the test of time (Ndulo, 2003). Therefore, the countries in transition embark on ambitious constitution-making processes following regime changes to break completely away from authoritarian legacies. Thus, many African countries went through this remarkable transformation and ‘generation of constitution-making’ in the 1980s and 90s, following the end of the Cold War, in order to promote good governance and constitutionalism, which are important pillars of democracy (Fombad, 2011; Wiseman, 1995).

Ghai and Galli (2006) contend that constitution-building has been a driving force for democratisation in Africa, yet in many cases, it faces the dilemma of external influence. Klug (2024) argues that twentieth-century efforts at constitution-making in Africa were primarily

driven by the promotion of good governance, which the Bretton Woods institutions, such as the World Bank and the International Monetary Fund, heavily influenced. Wiseman (1995) observes that African reforms were shaped by both political and economic conditionality, where aid and investment were primarily tied to the adoption of good governance principles. Notably, this encouraged many countries to adjust their policies and legal frameworks to meet these emerging global demands. Consequently, the use of expert commissions has been a prevalent characteristic of constitution-making processes in Africa (Bisarya, 2020).

Other scholars, such as Clapham (1993) and Ndulo (2001), stress the importance of acknowledging colonial legacies in fostering a democratic political culture as integral components of democratic consolidation through the institution-building process. Clapham (1993), in particular, maintains that one of the significant barriers to meaningful democratic reform in Africa is the institutional legacy of colonial rule, which left behind authoritarian structures that the successor domestic political elites capitalised on.

In many cases, a constitutional commission is established to carry out the drafting process. However, where the head of state or the president is responsible for appointing the constitutional commission, its independence will be compromised, and in this case, the drafting process can be manipulated or easily reflect the president's preferred model (Hatchard, 2001). Conversely, a greater need for a large population with a large amount of consultation must be taken into consideration, as can be evident in the case of South Africa (Hatchard, 2001). In other cases, such as Zimbabwe, even with public consultation, the president had a greater influence in both the constitution-making process and in deciding on the outcome of the final report by the Constitutional Commission (Hatchard, 2001).

Findings from Kirby and Murray's (2015) study on constitution-making in Anglophone Africa indicate that there have been at least 23 constitution-making attempts in Africa since the end of the Cold War, with some notable successes in countries like Namibia (1990), Uganda (1995), and Kenya (2010). However, there have been some significant failures, such as the 2005 constitutional referendum in Kenya 2005 and the contested outcome in Zimbabwe in 2013 (Kirby & Murray, 2015). With all the failures and successes in constitution-making in these countries, what they have in common is the commitment to popular participation by the people (Kirby & Murray, 2015). Such a commitment was made possible by the commitment African countries undertook under the African Charter for Popular Participation in Development and Transformation in 1990, which declared 'popular participation' as a fundamental right of the

people, especially on issues that directly affecting them (African Charter for Popular Participation and Development and Transformation, 1990).

In light of the commitments made under this charter, it would mean, at the very least, finding ways to make the process more democratic, transparent, and lend legitimacy to the constitution-making process (Ndulo, 2003). In the decades following the end of the Cold War, most Anglophone constitutions have increasingly incorporated public participation at every stage of the constitutional reform process, including agenda-setting and ratification (Kirby & Murray, 2015). However, in some countries where public participation was high, the outcome still became shocking. For instance, as highlighted above, in the case of Zimbabwe, the drafting process was consultative and inclusive, and Zimbabweans praised the final report as a good document; however, it was rejected by the president, despite his unilateral selection of the Constitutional Commission (Hatchard, 2001).

In his analysis of unconstitutional changes of government in Africa, Omotola (2011) argues that the ruling party often deploys constitutional reforms in post-authoritarian African states as a strategy to extend its grip on power. Cheeseman (2015) notes that political control is linked to economic control, which contributes to the elites' resistance against constitutional reforms that tend to open up a pathway for more political competition. Bisarya (2020) argues that although popular participation is widely acknowledged and increasingly prominent in such constitution-making, there exists a high level of influence from the part of the political elites. In examining Kenya's constitution-making experience, Bannon (2007) further highlighted the role of procedural rules in shaping the legitimacy of constitution-making efforts in emerging democracies.

Similarly, Omotola (2011) argues that constitutional amendment as part of the broader constitutional reforms aim at tenure prolongation, plays a pivotal role in this particular case, as this is achieved through manipulation of state institutions and the co-optation of political elites and in many cases, in Africa, the incumbent take state resources as an opportunity to buy the loyalty of lawmakers and influential political figures, thereby ensuring the passage of amendment that would not otherwise face public resistance. Scholars such as Jammeh (2011) emphasise the implications of a constitution that lacks legitimacy due to an exclusive constitution-making process. According to him, numerous instances of Africa's civil tension, such as coups and civil conflicts, emanated from a constitutional arrangement that lacks inclusivity, which ultimately became a source of instability on the continent (Jammeh, 2011).

Jammeh's argument is exemplified by Kenya's 2005 referendum on the draft constitution, where an overwhelming number of voters rejected the proposed text; the primary reason for the rejection was that the draft retained excessive executive powers, the very issue that had initially prompted demands for constitutional reform (Kimenyi, 2006). What made the case of Kenya more aggravated is that the government significantly amended key provisions in the draft constitution (Kimenyi, 2006).

Other examples of this phenomenon include Zimbabwe in 1990s, where the process began as a people-driven constitution reforms effort, but despite the commission producing a draft supported by the majority, President Mugabe, concerning about provisions that could limit his power, altered the content of the text considerably, leading to its rejection by the parliamentarians (Hatchard 2001). Likewise, Zambia in 2016 followed the same pattern (Kirby & Murray, 2015).

Haynes (2003) provides a comprehensive insight into the complex nexus between institutional reforms and democratic consolidation in a post-authoritarian context. In his study on Ghana, he highlighted several issues as obstacles to democratic consolidation in post-authoritarian settings, including patronage politics, elite dominance, and weak enforcement of constitutional norms. However, while his work acknowledges that Ghana has successfully transitioned from authoritarian rule by adopting a functioning constitution based on democratic values, Haynes (2003) observes that a formal constitution alone was insufficient for democratic consolidation in Ghana. Similarly, Furley and Katalikawe (1997) contend that, as a result of the nature of political crises in Africa over the past few decades, constitutional frameworks are invariably insufficient to ensure sustainable democratic governance.

Unlike Ghana, which has at least adopted a functioning constitution, Jammeh (2011) stresses that many other African states lack the genuine commitment or political will to include presidential term limits in their constitutions, which is a significant setback for several African democracies. He maintained that although The Gambia, under Jawara's 30-year rule, was regarded as one of the leading democracies in Africa at the time, the absence of a presidential term limit in the constitution cast significant doubt on the country's democratic credentials. As a result, his long-term rule ended not through the ballot box but through the trend of post-colonial African military coup in 1994 (Jammeh, 2011), bringing into power the military-turned-civilian leader Yaya Jammeh, who also ruled for 22 years, winning four consecutive elections due to the lack of a presidential term limit in the Constitution.

The widespread drafting of a new constitution across African countries was an explicit acknowledgement of the need for a change in the status quo, leaning towards democratic governance. However, while some African countries have managed to adopt democratic constitutions, such as Ghana and South Africa, a considerable number of countries still operate under autocratic constitutions, including Uganda and Zimbabwe, among others.

2.3 Constitutional reforms in The Gambia

Following the fall of Jammeh's two decades of autocratic regime, the expectations for democratic renewal among Gambians and non-Gambians alike were high with the institution of the CRC and other reform agendas (Harris & Jaw, 2024). Like many African states emerging from dictatorial rule, The Gambia's effort to democratise the state was marked by a task of constitutional reforms (Nabanneh, 2020). However, the underlying tension among political factions surfaced as soon as the 2020 draft constitution was introduced to the National Assembly.

While literature on constitution-making in The Gambia dates back to the colonial era, most studies have focused on the post-independence period, particularly beginning with the 1965 Independence Constitution (Perfect, 2022). On the one hand, the Independence Constitution was based on the Westminster model, under which the Queen remained the Head of State of The Gambia (Jammeh, 2011). On the other hand, the drafting process was heavily influenced by colonial authorities, with all constitutional discussions taking place in England (Jammeh, 2011). It can be argued that it was an elite-driven constitution-making process, as only the leaders of the existing political parties at the time participated in the negotiation and the constitution-making process (Perfect, 2022). Thus, the Gambia's constitutional framework, inherited from British colonial rule, introduced the common law system and doctrines of equity, which essentially replaced the country's customary laws following their formal adoption in November 1888 (Jammeh, 2011).

Because the Independence constitution was regarded by many as a legacy of colonial rule, The Gambia, under President Jawara's rule, adopted a new constitution called the First Republican Constitution in 1970 (the 1970 Constitution). There was an earlier attempt by Jawara to adopt a Republican Constitution, which would unify the office of head of state and government, but this attempt failed in a referendum in 1965, just months after the country gained independence (Perfect, 2022). However, the second attempt to break away from the remnants of the colonial legacy was successful in the 1970 Referendum, with 70.5% of voters

voting in favour of the Bill, giving birth to the Second Republican Constitution of 1970 (Perfect, 2022). Though the new Constitution abolished the office of the Governor General that served as the representative of the Queen of England (who was the head of state of The Gambia), the newly adopted constitution still maintains some features of the Independent Constitution, making the Gambian style of administration a hybrid system (with some component of presidential and parliamentary system) (Jammeh, 2011).

When the Jammeh-led military junta seized power unconstitutionally, a new constitution, known as the Second Republican Constitution (the 1997 Constitution), was adopted, marking a complete shift to a presidential system with a clear separation of powers among the arms of government (Jammeh, 2011). Unlike the First Republican Constitution, which did not include presidential term limits, the Second Republican Constitution initially introduced term limits for the presidency, but in a bid to consolidate power, President Jammeh made several amendments to the 1997 Constitution, including the removal of presidential term limits (Harris & Jaw, 2024). The absence of term limits in both the First and Second Republican Constitutions ultimately enabled both presidents to overstay in power. While the first President (Dawda Jawara) ruled for over three decades and was only removed through a military coup, the second President (Yaya Jammeh) remained in power for more than two decades and could only be removed through a broad-based coalition effort.

This made it sacrosanct for the need for a new constitution that puts more emphasis on democratic principles. The passage of the CRC Act through an amendment to the 1997 Constitution was marked by a critical opportunity to recalibrate The Gambia's Constitutional order. However, this effort was quickly overshadowed by the inherent complexity of the constitution-making process. This process requires not only technical and political will but also resource challenges and a strong commitment from political elites (Akech, 2022), as well as consensus-building among these elites. The draft document, developed through extensive consultative processes both nationally and internationally and informed by public feedback, was firmly grounded in democratic principles (Zarifis, 2022). However, Harris and Jaw (2024) note that the CRC's transformative ambition encountered entrenched political resistance, elite fragmentation, and institutional inertia. They argue that the CRC, which reflects a more participatory and inclusive process, faced setbacks emanating from the lack of cross-party support and power struggle within the government's arms (Harris & Jaw, 2024).

This lack of commitment on the side of political elites in the constitutional review process, coupled with the need to revisit the discussion on reforming the 1997 Constitution, posed a significant setback to The Gambia's democratic transition (Daffeh, 2024). This is linked to the broader evolving challenges and progress in facilitating public participation and elite consensus-building in constitutional reform and navigating the distribution and exercise of power in transition, especially in a post-conflict context (Houlihan, 2020).

2.4 Gaps in the existing literature

The literature review provides a comprehensive explanation of the scholarly contributions to constitution-making and democratic transition in Africa and The Gambia. The review places special emphasis on post-authoritarian democratic transitions and constitution-making, with a particular focus on African countries. While scholars such Fombad (2011), Wiseman (1995), Klug (2024), Clapham (1993) and Ndulo (2001) put more emphasis on colonial legacies and the post-colonial policies on shaping and reshaping constitution-making efforts in Africa, others such as Jammeh (2011), Haynes (2003) Harris and Jaw (2024) underscore the internal political struggle, such as elite interest, weak institutions, and authoritarian legacies, as undermining factors to constitutional reforms. Bisarya (2020) made significant contributions to understanding the nexus between authoritarian regimes and the process of democratic transition and consolidation.

However, while this host of literature provides the foundation for further research in democratisation, many questions remain unanswered, one of which this study seeks to provide a comprehensive answer to. I acknowledge that the existing studies have explored a host of normative frameworks, challenges, and the process of constitution-making; however, there still exists a noticeable gap in empirical studies that critically and specifically examine 'the failure of constitution-making in a post-authoritarian context. Specifically, about The Gambia, there is a considerable research gap in this respect. Much literature on constitution-making in The Gambia places a particular focus on the evolution of the constitution-making process.

Cognisance of the rise and fall of Jammeh in 1994 and 2016, respectively, and the ensuing political settlement, the country has witnessed two unsuccessful constitution reform attempts since 2017. The case presented here, the constitution-making paradox, where widespread desire for political change has been stalled by former institutional legacies and elites' resistance, is understudied in academic literature. There is a lack of in-depth and context-specific analysis of how elite fragmentation and political settlement interact to impede

democratic transitional processes. Thus, this study addresses this empirical and theoretical gap by investigating the failure of constitution-making in The Gambia and addressing its implications for democratic transition. By exploring this, I can provide a comprehensive answer to why constitution-making fails in post-authoritarian settings, thereby filling the research gap.

2.5 Conclusion

This chapter provides a critical review of the existing literature on democratic transition and constitution-making in Africa and The Gambia. The review demonstrated that, while a significant body of literature exists on democratic transition and constitution-making, a noticeable gap still remains, particularly in country-specific analyses of why constitution-making fails in post-authoritarian contexts. In the literature, scholars have demonstrated how colonial legacies, institutional weaknesses, elite manipulation, and the role of international actors, as well as domestic factors, shape the outcome of the constitution-making process, particularly in African countries. In the case of The Gambia, the failure is primarily influenced by entrenched political fragmentation and the self-serving interests of the political elite.

Chapter 3: Theoretical Framework

3.1 Introduction

This chapter provides the theoretical foundation underpinning the analysis of The Gambia's constitutional reforms. This theoretical foundation is drawn from two frameworks: constitution-making, political settlement, and elite bargaining. These frameworks will therefore provide the theoretical tools for understanding the political dynamics, challenges, and paradoxes that characterise constitution-making and democratic transition in a post-authoritarian setting, presenting The Gambia as a case study. The chapter will first provide a conceptual understanding of constitutional reforms in transitional democracies, and then draw on Elster's work on constitution-making as the central analytical framework for investigating The Gambia's constitution-making process. Elster's insights into the 'Forces and Mechanisms' that shape the constitution-making process, particularly his emphasis on constraints and motivation, offer a valuable lens for unpacking the constitutional reforms. Then, I will examine theories of elite bargaining and political settlement to understand how elite behaviour can lead to reform failures.

3.2 Conceptual understanding of constitutional reforms in transitional democracies

This section conceptualises constitutional reforms within the context of transitional democracy. As noted earlier, it is impossible to have a complete democratic transition without a functioning constitution, grounded on democratic values. Many, if not all, transitional governments embark on constitution-making, making it a precondition for democratic transition. This also implies that a democratic transition, in which constitution-making forms a cardinal pillar, presupposes the existence of a previous nondemocratic regime. I therefore argue that all transitional democratic regimes emerge from the overthrow of a previous authoritarian or nondemocratic regime, whether through a democratic process or undemocratic means. As a starting point, it is worth acknowledging the contested nature of key terms such as democratic transition and constitution-making, as they are applied in this work. Gallie (1956:169) defines contested concepts as "concepts the proper use of which inevitably involves endless disputes about their proper uses on the part of their user." This implies that defining such concepts becomes problematic, as scholars will not agree on a single definition, resulting in a definitional issue. Therefore, this paper does not provide a single definition of these terms, but instead relies on key scholarly definitions and provides context for them.

Heywood (2013) contend that an effective constitution requires both the existence of constitutional rules and the capacity of those rules to constrain governmental power and establish constitutionalism. According to him, “Constitutionalism can, thus, be said to exist when government institutions and political processes are effectively constrained by constitutional rules” (Heywood, 2013, p. 337). According to this definition of constitutionalism, its practical application is only possible in a democratic constitutional framework where political values and institutions are separated by creating a network of checks and balances. Constitutionalism is thus the practice of limited government through the presence and existence of an effective constitution that clearly defines the role of government institutions. Hotchber (2021) argues that a newly established constitution, founded on democratic norms, seeks to manage conflict by delineating the responsibilities of various political actors and instituting formal mechanisms for resolving disputes not only among governmental bodies but also between the government and broader society.

Akech (2022) stresses that in order to give legitimacy to the constitution and the making process, the latter has to be inclusive, transparent, and voluntary, since constitutions are made in an exceptional moment of popular mobilisation, not just a constitution, but the one that reflects democratic values. Most scholars recommend the use of more participatory tools or popular mechanisms, such as constitutional conventions and referenda, to engage the public directly in the process of drafting new constitutions in the emerging democracies (Elster, 1995; Partlett, 2012).

O’Donnell and Schmitter (1986) stress the inherent uncertainty about transition, often resulting from confusion. Due to such uncertainty, political actors are likely to be divided along partisan lines and pursue personal interests. According to the authors, what is certain about transition is the beginning of the dissolution of authoritarian legacies, leading to the establishment of a sort of democratic regime or backsliding into authoritarian rule or other options, such as a revolutionary approach. This, of course, results in the political elite getting into the concept of pact, as alluded to by O’Donnell and Schmitter (1986), which helps diffuse the transition risk by negotiating for more permanent arrangements. The concept of pact will be discussed in the subsequent section; however, it is essential to note how the presence of uncertainty during transition can impact the entire reform agenda.

3.3 Constitution-making theory

In this section, I will draw on Elster's (1995) most influential work on constitution-making: *Forces and Mechanisms in the Constitution: The Making Process*, which provides a comprehensive theoretical foundation for understanding constitution-making processes, as well as other key theoretical contributions. Just like Huntington (1993) theorised the waves of democratisation, arguing that democratisation has occurred in three distinct waves, Elster's work identifies seven waves of constitution-making since the late eighteenth century. His sixth wave is particularly relevant to this work as it is connected to the fall of dictatorships, not in African countries, but elsewhere in southern Europe. Although this wave does not directly refer to African countries, the recent wave of constitution-making in Africa follows the same patterns of post-authoritarian constitutional reforms as those seen in other regions. While Elster (1995) deliberately left out Africa's constitution-making experience, his arguments are framed in sufficiently general terms, making them valid for analysing any contemporary constitution-making process.

Elster (1995) argues that constitutions are made within a framework of constraints, motivations, and collective decision-making mechanisms. He distinguishes between two types of constraints that surface during the constitution-making process: upstream and downstream constraints. While upstream constraints refer to the limitations imposed on the constitution-making bodies, downstream constraints are created by the constitutional assembly along the way. Downstream constraints include requirements for parliamentary approval and the politicisation of the referendum. He argues that the constitution-making process is not merely a technical or legalistic exercise, but is deeply influenced by political undertakings characterised by the interaction of institutional constraints and human motivation.

Elster also categorises interest, passion, and reason as both individual and collective motivations in the constitution-making process, and he warns against constitution-making that is driven by political motivation rather than long-term outcomes.

Owing to these conceptual and theoretical undertakings, constitution-making in a post-authoritarian context is a complex and challenging process. Whitehead (2003) opines that drafting a new constitution for emerging democracies is a daunting task, as many emerging democracies remain struggling with incomplete democratisation, in which constitution writing forms the cardinal pillar. Additionally, there is an indication that creating a constitution

becomes more complicated when political elites see the creation of the new constitution as an opportunity to redefine the political environment to their advantage.

3.4 Political settlement and elite bargaining

In this section, I will draw on theories of political settlement and elite bargaining. By definition, political settlement conveys the underlying agreement, often informal, that defines how power is distributed among competing groups in society (Khan, 2010). Khan (2010) argues that political settlements are based on compromises and represent the balance of power between competing groups in society. Drawing from an economic perspective, Khan attempts to formulate a new theoretical basis for understanding how institutional outcomes are shaped by the underlying distribution of power in society, where he emphasises the effectiveness of institutions when they are compatible with the distribution of power. He argues that if powerful groups are not benefiting from power sharing, this will motivate them to unite and alter the institution with whatever means necessary. He further argues that institutions do not emerge from nowhere, but rather only when they align with the interests of powerful actors, making his perspective particularly important in the context of post-authoritarian institution-building processes.

Similarly, Parks and Cole (2010) postulate that the central element sustaining a political settlement is the alignment of interests among elite factions within the dominant coalition. As such, political settlements are a decisive factor influencing the extent of institution-building or peace-building efforts, whether successful or not. On the one hand, Khan (2010) contends that institutions only endure when they align with the interests of powerful actors. On the other hand, Parks and Cole (2010) highlighted how the sustainability of political settlement depends upon the sustainability of the interests of the dominant elite coalition.

3.5 Understanding the role of political elites in post-authoritarian governance

Political elites have a greater role in the post-authoritarian era, especially the transitional justices. Bisarya (2020) postulates that the political reforms rest on the political elites as a result of the high level of influence and power they possess. Constitutions are primarily the result of elite pacts, even though they are presented as collective processes involving the broader population (Bisarya, 2020). He maintains that a constitution often emerges during a period of uncertainty, an argument underpinned by O'Donnell and Schmitter (1986), as highlighted earlier. Although these authors did not define or make clear what they

meant by ‘a period of uncertainty,’ the point remains valid, as countries transitioning from authoritarian rule often face uncertainty, political instability, difficulty in consensus building, making elite bargains a dominant feature of constitution-making and the whole transitional processes in a post authoritarian context. Similarly, O’Donnell and Schmitter (1986) note that pacts are provisional measures aimed at avoiding undesirable outcomes, thereby paving the way for a lasting conflict-resolution mechanism, which may later become entrenched in law or incorporated into the constitution as a standard procedure for political elites and the state apparatus. Thus, a pact-based transition becomes possible when there exists some degree of unity or consensus among political elites; however, where internal division exists within the elites, the outcome is more likely to be an imposed transition (Schmitter, 2018).

Similarly, Linz and Stepan (1997) argue that civilian-led regimes, emerging from non-democratic regimes, possess greater institutional capacity to manage democratic transition. They postulate that political elites, mainly civilians, have a stronger link to society, thereby playing a more significant role in democratic reforms. However, they also note that their dominant role in transitional processes tends to drive elite-led liberalisation, which may be short of full democratisation, especially when they get a firm hold on state power. Their position underscores the significant influence of elites during democratic transition, especially during the transition from an authoritarian regime or other nondemocratic regime. The elites may choose to utilise such power either to reinforce the democratic transition or hinder it, leading to backsliding in the transition process. In either case, the political elites remain powerful forces during the transition period, whose decisions shape the entire transition process.

On a more practical level, one of the most significant arenas in which the role of political elites is evident is to advance political change, which involves the final steps in transferring a society from autocracy to a democratic dispensation (Diop, 2021). However, it is also clearly evident that the role of political elites in regime transformation, notably from autocracy to democracy, is not an easy task; yet, much of the recent democratic constitution-making has effectively been championed by the elites (Schmitter, 2018). The elites are therefore regarded as key architects of what Schmitter (2018) refers to as the ‘rule of the game’, underscoring their dominant role in political transition, often under the guise of reform.

From the theoretical literature, several difficulties impede the constitution-making process, the first of which is the problem of elite consensus. This remains a formidable

challenge in creating a new constitution in a polity with fragmented elites, especially in a post-authoritarian setting. Brandt et al. (2011) argue that such a challenge may arise not only from the necessity of reform but also from the nature of the reform and the best process to achieve it. Arato (1995) reinforces their argument in the concluding section of his seminal work, “Forms of Constitution-Making and Theories of Democracy,” where he notes the difficulties associated with organising a consensual drafting procedure for constitution-making and the process of public participation, as can be seen in historical examples. As Abebe et al. (2019) note, creating a successful constitution entails early consensus-building and negotiation on institutional design, decision-making procedures within institutional settings, and establishing practices and norms for interpreting, implementing, and sustaining the constitution following its adoption. In this case, the absence of a unified elite and/or political climate is a stumbling block to the constitution-making process.

3.6 Conclusion

As noted above, the collapse or failure of the old political order leads to the making of a new constitution in order to establish a new political order (Heywood, 2013). Constitutional reforms, therefore, enable the current government to transition from authoritarian practice to democratic governance. As Elster (1995) and Heywood (2013) pointed out, constitution-making is often born out of moments of transformation and can be designed through either a participatory or an elite-driven process. When constitutions are based on the former, they reflect the interests of the wider society and increase their legitimacy by including the citizens in the whole process (Brandt et al., 2011; Elster, 1995). However, suppose it is based on the latter. In that case, the outcome may not reflect the interests of the masses, resulting in a lack of legitimacy and a tendency to reinforce the existing power imbalance (Bisarya, 2020; O’Donnell & Schmitter). Such a distinction between participatory and elite-driven constitution-making holds a particular significance from the perspective of democratic transition.

Chapter 4: Research Methodology

4.1 Introduction

This chapter outlines the methodological approach of this research, beginning with a justification for the adoption of qualitative research in this study. It then describes the research design, case selection, data collection methods, and the study's limitations. In light of the complexity and political nuances surrounding constitutional reforms in post-authoritarian and transitional contexts, such as The Gambia, qualitative research was deemed the most appropriate research method for presenting a case of constitutional reform failure in a post-authoritarian context. This will enable our understanding of the perception and political dynamics that shaped and continue to shape the Gambia's reform agenda since the inception of the transition in 2017.

4.2 Qualitative research

This study employs a qualitative research methodology to gain a deeper understanding of the complexities of constitutional reforms for governments in transition, particularly in a post-authoritarian era. Qualitative research methodology is suitable for this study, as it can capture nuanced meanings, interpretations, and social processes, particularly in the context of the constitution-making process, which is complex and fragmented, especially when the political elite are divided. Qualitative methodology is also well-suited to this study, as it seeks to understand the perspectives of those involved in the process. According to Bryman and Bell (2019), qualitative research methodology enables the researcher to see through the eyes of the participants, providing a deep description of those being studied and understanding what they say. Similarly, Creswell and Poth (2018) define qualitative research as a research process in which the researcher not only adopts a flexible and evolving approach to inquiry, but the data collection is done in a neutral ground that is sensitive to those being studied, wherein both inductive and deductive methods are used for data analysis to identify patterns or themes.

This research methodology is essential in this study, as it seeks to understand the failure of constitution-making in The Gambia, despite the promises and numerous attempts. Qualitative studies offer researchers a range of approaches, such as case studies (Creswell & Poth, 2018), enabling a more tailored investigation of complex and unique cases, as seen in the case under review: the failure of constitutional reforms in The Gambia.

2.3 Research design

This research will employ a single-case study design, presenting The Gambia as the case study, owing to its recent transition from long-term authoritarian rule and the ongoing crisis of constitutional making. I am firmly convinced that the case of The Gambia, despite its uniqueness, can be generalised to other post-authoritarian African states. This is because political elites in Africa exhibit similar patterns of behaviour in transitional settings, particularly in their approach to power consolidation, institutional manipulation, and resistance to reform, as elaborated in the theoretical framework. Additionally, I employed a case study design in this study, as Flyvbjerg (2011) suggests, which is an intensive approach that involves more detail, richness, completeness, and depth in the unit of study. As opposed to the commonsensical understanding of a case study by scholars like Campbell and Stanley (2011), who doubt the generalisability of a single case and its inability to contribute to scientific development, Flyvbjerg (2011) asserts with a more optimistic view on the generalisability of a single case. He asserts that one can generalise based on a single case, and the lack thereof does not imply that such knowledge cannot contribute to scientific development. Therefore, it is correct to elucidate that a single case study is a worthwhile research design as it allows for generalisability, hypothesis testing, and knowledge accumulation.

Therefore, this case of The Gambia will allow me to understand and elucidate a contemporary political divide and its implications on Gambia's democratic transition. The Gambia is not the first African country to have experienced this phenomenon, as countries such as Zimbabwe, Kenya, Zambia, Ghana, and Nigeria, among others, have undergone a unique but similar political and social upheaval. My in-depth knowledge of The Gambia's political trajectory is a valuable inspiration and will give me the leverage to overcome this case. Additionally, my research question aligns with and is suitable for an explanatory case study design.

4.4 Case selection

Selecting The Gambia as a case study in this research was first inspired by the paradox in constitutional reforms in The Gambia since the beginning of the transition in 2017. The transitional government, led by President Adama Barrow, who had been a staunch critic of the 1997 Constitution, rejected it for lacking provisions essential for advancing democratic governance. Ironically, it also rejected the 2020 Draft Constitution, which is grounded in democratic values. This Draft Constitution was widely embraced by the Gambian people and

the international community for its progressive provisions, including presidential term limits, electoral reforms, and checks on executive power, all of which were absent in the 1997 Constitution. To make matters worse, President Barrow's government introduced yet another draft constitution that removed many of the most crucial democratic safeguards, further fuelling controversy and public distrust. Such inconsistencies in post-authoritarian governance are responsible for many failed transitions in Africa.

Second, a lack of consensus among political elites has led to the collapse of the Coalition forces, exacerbating problems in the democratic transition and hindering the formulation of a new constitution. However, the urgent need for a new constitution to ensure democratic governance and consolidation cannot be overemphasised. Making a new constitution was the primary focus of political bargaining in the pre-2016 election, which brought together several opposition parties and independent candidates under a unified Coalition force. A significant pillar of the Coalition manifesto was constitutional reforms. There have been a couple of studies conducted on The Gambia's recent and ongoing political transition, but the question of why the constitutional reforms have not been successful in The Gambia since the transition in 2017 remains unanswered. To understand a conflict situation, it is essential to examine the underlying causes.

Third, The Gambia is an important case from the perspective of inclusive and exclusive elite bargaining in effecting democratic transition, which may face challenges in maintaining coherent political engagement in a post-authoritarian democratic society (Jeng, 2019). This is usually engendered by a conflict of interest over position sharing, party, and personalised politics, leading to a more fragmented and polarised political landscape. The case of The Gambia is a clear manifestation of this compounding array of issues. Although anecdotal evidence suggests that the country has experienced some positive developments since the transition in 2017, a democratic transition cannot be fully completed without constitutional reforms. That is the primary focus of the study, and one of the reasons for this case selection is the examination of constitution-making in the post-authoritarian context.

Fourth, looking at the historical factors leading to Jammeh's 'rise and fall' from power and the ensuing political impasse and political settlement makes the case of The Gambia unique and worthy of consideration for academic research. The case of The Gambia highlights the challenges of achieving a political settlement in a post-authoritarian society. Post-authoritarian states face several challenges, inter alia, democracy backsliding. The Gambia's democratic

transition is at a crossroads, with the risk of backsliding, as all attempts to formulate a new constitution have proven futile. The implication here is that the Government leadership stands at a very good chance of using the same tool its predecessor used against the Gambians.

Finally, this study will contribute to the growing body of literature on democratic transition and constitution-making, political settlement, and elite bargaining with a particular emphasis on post-authoritarian regimes. By presenting the case of The Gambia, which is under study, the study will contribute to the development of theory in constitution-making, political settlement, and elite behavior. Since the findings aim to inform both academic discourse and practical policy-making, they propose an alternative approach to political settlement in post-authoritarian transitional governance, emphasising inclusive and sustainable constitutional reform processes. This will enrich the existing body of literature on democratisation in Africa and beyond, and contribute to broader global discussions on democratic transitions. My in-depth knowledge of The Gambia's political trajectory will enable me to present an evidence-based study, grounded in contextual understanding and free from bias, thereby offering a nuanced analysis of the challenges and prospects of constitutional reform in post-authoritarian settings.

4.5 Data collection method

This study relies on both primary and secondary data. The primary method of data collection includes, but is not limited to, the following: official documents, such as the Coalition Memorandum of Understanding (MOU); both the 1997 Constitution and the 2020 Draft Constitutions; and online media publications, including newspaper articles, TV interviews, and talk shows. These TV interviews and talk shows will target the prominent members of the Coalition. This will enable me to gain a deeper understanding of the positions of Coalition members and their stances on constitutional reforms before and after the Coalition's disintegration. The secondary data will focus on academic literature, including books, journal articles, and peer-reviewed works, on democratisation in Africa and The Gambia, democratic transition and consolidation, and constitution-making in a post-authoritarian context. This will provide a theoretical background and case analyses. Foundational texts and recent research will be reviewed to situate The Gambia's experience within the broader scholarship.

4.6 Limitations

Like any academic research, this study has limitations that may affect the depth of the findings. To provide a transparent account of the research, I acknowledge the following limitations, which will help guide future researchers, particularly those investigating constitution-making, democratic transition, and related research areas. First, there is the absence of interview data, which I initially intended to do as a central part of the empirical analysis. The research method heavily relies on primary data. The intended method of primary data collection involves semi-structured interviews with the following stakeholders: National Assembly Members, active and credible members of a Civil Society Organisation, a university lecturer, and those involved in transitional justice, specifically the CRC. These interviews would have been conducted with a broad consideration of ethnic issues and party inclination. In The Gambia, people are highly likely to be inclined towards political parties based on ethnic lines. The interviews were expected to provide insight into the motivations and constraints that shape the Constitution-making process, directly from the stakeholders. However, as part of the rules governing research at the University of Malta, the researcher is required to submit an ethics form to the University's Ethics Committee, which I have done. Unfortunately, it was not approved in time to enable me to carry out the semi-structured interviews.

Second, there was not sufficient time from the moment I laid my hands on some of the key important primary documents, such as the Coalition MoU and Manifesto, to the study's deadline. This may also impact the depth of analysis, as I intended to conduct a thorough analysis of these important documents for this research. I initially thought these documents would be easily accessible online, as they are of public concern, but unfortunately, that was not the case.

4.7 Conclusion

This chapter outlines the research methodological approach. It justifies why qualitative and single-case study research is suitable for the study. The Gambia was selected as a case study primarily due to its recent and unique political trajectory, from authoritarian rule to some form of democracy, and the unsuccessful attempts at constitutional reforms. The chapter also highlights the data collection method, in which both primary and secondary data will be utilised. Although the study aimed to incorporate semi-structured interviews with stakeholders, the ethical form was not approved in time to proceed with the semi-structured interviews, which is an acknowledgement of the study's limitation.

Chapter 5: Empirical Analysis

5.1 Introduction

This chapter presents the empirical findings, which contain the results obtained from applying various methods and methodological approaches. The analysis offers a comprehensive understanding of the events and political dynamics that led to the democratic transition and subsequently contributed to the failure of political reforms in The Gambia. It will first compare the 1997 Constitution and the 2020 Draft Constitution, so that it is clear what important provisions the 2020 Draft Constitution carries that make it a democratic constitution. This comparison will be limited to only those provisions that carry democratic themes. The chapter will then analyse the 2016 Coalition Memorandum of Understanding (MoU). And then analyse two distinct periods of elite bargaining and political settlement that led to the formation of the Coalition and its subsequent fragmentation, as well as the implications this has for Gambia's democratic transition. It will finally conclude with summary of the findings and recommendations.

5.2. Comparison of the 1997 Constitution and 2020 Draft Constitution

As mentioned earlier, the 2020 Draft Constitution was a document intended to dismantle the legal architecture that had sustained over two decades of Jammeh's autocratic rule. The Draft Constitution introduces numerous provisions that are tenable for democratic governance and are not present in the 1997 Constitution, as well as strengthening many of the provisions found in the 1997 Constitution. These provisions not only reflect on international best practices, but also lessons learned from the country's recent political history. For example, the 1997 Constitution does not include provisions on national values and principles, leadership and integrity, or the Bill of Rights. However, the 2020 Draft Constitution provides comprehensive provisions on these democratic themes. Furthermore, media freedom and access to information, gender balance and fair representation of marginalised groups, fiscal responsibility and transparency, among other issues, have gained more weight in the 2020 Draft Constitution than in the 1997 Constitution. Table 1 illustrates a comparison of key aspects of the 2020 Draft Constitution and the 1997 Constitution. The provisions highlighted in the table below share democratic themes with both constitutions, but differ in scope.

Table 1: Comparison of the 1997 Constitution and the 2020 Draft Constitution.

| Key aspects | 1997 Constitution | 2020 Draft Constitution | Relevance |
|-------------------------|---|---|--|
| Powers of the President | <p><u>Appointments subject to legislative confirmation</u></p> <p>Under the 1997 Constitution, section 164 provides that the appointment of the ombudsman and their deputies by the President must be confirmed by the National Assembly. Their removal is also subject to interference by the National Assembly; for example, the National Assembly appoints a tribunal to oversee the removal process.</p> | <p><u>Appointments subject to legislative confirmation</u></p> <p>Under the 2020 Draft Constitution, the National Assembly confirms numerous presidential appointments, which include, but are not limited to, cabinet ministers, the electoral commission, the Prerogative of Mercy Committee of the Director of Public Prosecutions, the Chairperson of the National Commission for Civic Education, the of justices of the Supreme Court, members of independent institutions, members of the Land, Environment and Natural Resources Commission, and the chairperson of the National Commission for Civic Education.</p> | <p>In modern democracies, executive powers, especially those vested in the President, are limited to prevent authoritarian rule. When the president exercises too much power without checks, it often results in governance issues such as corruption, mismanagement, embezzlement, nepotism, and patronage. This concentration of power also undermines the strength and independence of state institutions. The draft constitution seeks to address this potential abuse by introducing a requirement for presidential appointments to be confirmed by the National Assembly, ensuring appointees meet both constitutional and other relevant standards.(Factsheet, 2020).</p> |
| | <p><u>Power exercise without consultation of the NA</u></p> <p>Under the 1997 Constitution, the president exercises considerable power without consulting the National Assembly. The President appoints the Vice President, Secretaries of State (Ministers), the Director of Public Prosecutions, and other officials. The Constitution also empowered the President to nominate five National Assembly members without any consultation.</p> | <p><u>Power exercise without consultation NA</u></p> <p>Under the 2020 Draft Constitution, the President is empowered to appoint the Vice President and remove a minister without consulting any institutions. However, while the president can remove ministers without any confirmation, their appointment must be confirmed by the National Assembly.</p> | |
| Presidential election | <p>The 1997 Constitution is based on a simple majority system (meaning the candidate with the highest number</p> | <p>The 2020 Draft Constitution is based on an absolute majority system (meaning the candidate with two-thirds of the total vote becomes the winner). If any candidate failed to secure a two-</p> | <p>The absolute majority system of presidential elections enables citizens to make the best choice, as political leaders join forces if any candidate fails to secure a two-thirds majority, thereby providing</p> |

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| | <p>of votes becomes the winner.</p> | <p>thirds majority, then it goes to a runoff.</p> <p>It also establishes the principles of the electoral system, including the freedom to exercise political rights, fair representation of women in elective public bodies, and fair representation of youth and persons with disabilities (PWDs) (Sec. 74, 2020 Draft Cons.).</p> <p>The 2020 Draft Constitution also provides for Gambians in the diaspora. For example, Gambians in the diaspora can run for presidency if they provide evidence of three annual visits to the country within a year before the elections.</p> | <p>legitimacy to the presidential election (Factsheet, 2020).</p> <p>Additionally, if citizens in the diaspora have full franchise, it will enable them to continue contributing to the political development of their home country.</p> |
| <p><i>Presidential term limit</i></p> | <p>There is no presidential term limit in the 1997 Constitution. Section 63 only provides that the president serves for five years, but does not limit the number of terms.</p> <p>Note: A presidential term limit was initially included in the Constitution, but it was later removed through a constitutional amendment by the former president Yaya Jammeh.</p> | <p>Section 102 of the Draft Constitution mandates the President two five-year terms. Meaning if a president completes two terms, they can compete in presidential elections again (Sec. 102, 2020 Draft Cons.).</p> | <p>The idea of a presidential term limit serves as a check on presidential power, as the president will be more prudent in avoiding arbitrary actions; thus, it strengthens democratic institutions.</p> <p>Additionally, it increases the opportunities for a new generation of political leaders to introduce fresh ideas and potential policy changes (Factsheet, 2020).</p> |
| <p><i>Secularism</i></p> | <p>Under the 1997 Constitution, Section 1(1) refers to The Gambia as “a sovereign secular Republic,” which would mean that the government, or any authority or individual, cannot impose any religion on anybody.</p> | <p>However, under the Draft Constitution, the word “secular” was removed, sparking considerable debate during the second reading by members of parliament. However, even with the removal of this provision, the President, as well as other authorities, are prohibited from establishing a state religion. Although The Gambia is a Muslim-majority country, its citizens have the right to manifest and practice the religion of their choice without state interference, as guaranteed by provisions on</p> | <p>The guarantee of religious freedom will ensure that The Gambia respects the fundamental freedoms of conscience, religion, thought, belief, and opinion, all of which are essential components of a robust democracy.</p> |

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| | | the freedoms of conscience, religion, thought, belief, and opinion, as well as the country's commitment under international law. | |
| <i>Bill of Rights</i> | The 1997 Constitution provides some rights, but not as comprehensive as those outlined in the 2020 Draft Constitution. For example, it does not include socio-economic rights. | The 2020 Draft Constitution provided a comprehensive Bill of Rights. It provides new rights while retaining and improving upon the rights outlined in the 1997 Constitution. The draft constitution also expands the scope of state obligations for certain rights, such as socio-economic rights. | The Draft Constitution strengthens adherence to democratic principles by expanding both the range and depth of rights guaranteed to citizens. The Bill of Rights affirms The Gambia's commitment to fundamental freedoms, which are core elements of a strong democratic framework. The Draft Constitution also broadens socio-economic protections. |
| <i>Freedom of Expression</i> | Under the 1997 Constitution, section 25 provides the right to freedom of expression but does not explicitly define its scope and meaning. | Section 46 of the Draft Constitution expands the right to freedom of expression. The right applies to everyone and now contains three elements: the freedom to seek, receive, impart information or ideas; freedom of artistic creativity; and academic freedom and freedom of scientific research. The draft constitution does not limit how individuals express themselves, for example, online or through the radio. Individuals cannot be punished for freely expressing themselves; however, there are some limitations. Ideas and information expressed must not aim to promote war, incite others to violence, or break the law. Individuals cannot advocate for ethnic or religious hatred. | Expression is a form of political participation, as it allows individuals to voice their concerns to political leaders and participate in the management of public affairs, and is central to democratic governance. Thus, right is recognised under human rights treaties ratified by The Gambia, including the African Charter on Human and Peoples' Rights and the International Covenant on Civil and Political Rights. |
| <i>Independent Electoral Commission (IEC)</i> | Under the 1997 Constitution, the IEC comprised a chairperson and four members. The President appoints the members but must consult with the Judicial and Public Service Commissions; The President has the power to remove IEC members from office. | Like the 1997 constitution, the IEC is comprised of the chairperson and four members appointed by the President; however, the National Assembly must confirm their appointments with 60% approval (Sec. 218, 2020 Draft Cons.). Stringent conditions are established for the removal of IEC members. For example, it requires the | The Draft Constitution enhances the independence of the Independent Electoral Commission (IEC), as stringent measures are designed to avoid the arbitrary dismissal of its members. Mandating a 60% approval threshold in the National Assembly for IEC appointments will promote a culture of dialogue and compromise within the legislature. This process is expected to boost |

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|---|---|--|--|
| | | establishment of an independent tribunal to hear complaints. | public trust in the Commission's leadership and empower the IEC to conduct free, fair, and credible elections without external pressure or interference. |
| <i>Anti-Corruption Commission (ACC)</i> | Under the 1997 Constitution, there is no provision on ACC, but an Act of the National Assembly can create it. However, there is no detail about the commission's mandate or the tenures of commissioners and staff. | Under the Draft Constitution, provisions exist regarding the ACC and its mandates. The ACC is an independent institution, comprised of three commissioners and other staff. The ACC, as outlined in the 2020 Draft Constitution, has a broad mandate aimed at combating corruption and embezzlement of public funds. | The ACC is a crucial institution for strengthening accountability and combating corruption. The ACC can also improve the prospects for democratic elections and lend legitimacy to presidential appointments. Before the IEC accepts a candidate's application for President, the appointment of the vice president and ministers, among others, requires the ACC to receive a declaration of assets. They must also declare their assets, verifying that they are fit to serve in their positions. A declaration of assets helps the ACC, and in turn, citizens, better understand if government officials used state resources to enrich themselves (Factsheet, 2020). |

The table above highlights the flaws in the 1997 Constitution that have led to a high demand for a new constitution, one that promotes democratic governance and accountability. Apart from its strong provisions, the 2020 Draft Constitution is inclusive, participatory, and transparent, offering a solid foundation for the future of Gambians with a clear framework for the separation of powers, adequate checks and balances, and well-established rules governing political conflicts (Saine, 2020). As illustrated in Table 1, several provisions in the 2020 Draft drastically reduce the President's power. For instance, most presidential appointments, such as cabinet ministers, the IEC, and Supreme Court judges, must be confirmed by the National Assembly. Aside from the checks and balances between the arms of government, Table 1 also illustrates that the 2020 Draft Constitution included a comprehensive chapter on the Bill of Rights, encompassing economic, political, social, and cultural dimensions. Importantly, the presidential term limit was going to be a significant milestone in ending self-perpetuating rule.

Additionally, the 2020 Draft Constitution also accommodated the diasporas. These new provisions in the Draft Constitution represented a clear breakaway from autocratic tendencies that the current Constitution upholds. Had the 2020 Draft Constitution received support from the parliamentarians in the second readings, it would have proceeded to a referendum in 2021,

and by all indications, it would have garnered overwhelming support (Jaw, 2020). Based on the 2018 Afrobarometer survey, Table 2 below illustrates the percentage of support for several key provisions. The death of the Draft constitution has dashed the hope of the Gambians for the reforms they have yearned for, and it will have profound implications for the future political transition of The Gambia.

Table 2: Support for key provisions of the Draft Constitution

| Key Provisions | Support by Percentage |
|--|------------------------------|
| Term limit | 87% |
| Ministerial appointment approval by the NA | 86% |
| Quota system for women representatives in the NA | 85% |
| Absolute majority for the Presidential elections | 72% |

Afrobarometer survey, 2018.

In addition, the 2019 International Republican Institute (IRI) survey supported the Afrobarometer's findings, with 87 percent of Gambians giving strong support for the need for a new constitution and 60% rating the CRC's work positively. However, even those who supported the 1997 Constitution still believe that it needs to undergo serious amendments.

5.3. The Coalition MoU

The landmark political development in Gambia's political history witnessed the coming together of seven opposition political parties, one independent presidential aspirant, and civil society organisations (CSO) to agree upon adopting a national convention that set forth the methods of selecting a presidential candidate to challenge the incumbent in the 2016 presidential election (Foroyaa, 2016). In the press release by the opposition parties and the independent candidate that formed the Coalition, as well as the invited civil society organisations, these forces reaffirm their commitment to put aside their differences with what they regard as "supreme National Interest", and thus agree on the following:

1. To hold a National Convention comprising 10 delegates from each region selected by each signatory party and Presidential aspirant from Civil Society, who are accorded the key mandate to elect one of the aspiring presidential candidates to be the flag-bearer of the Coalition for the 1st December 2016 Presidential Election.
2. To set up Technical Committees that are charged with the mandate to work out the modalities required to hold the National Convention (Foroyaa, 2016).

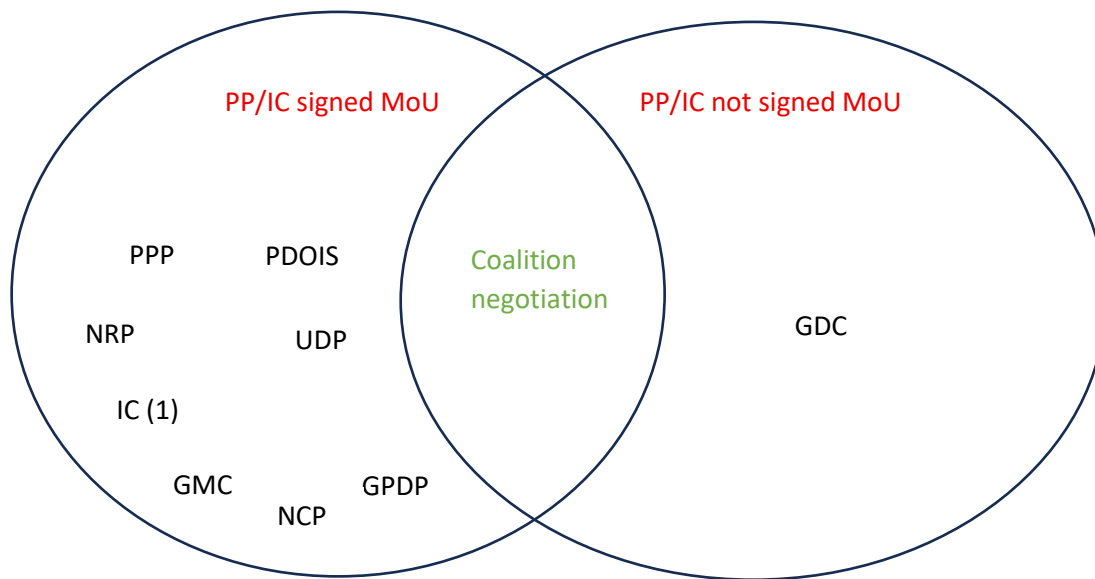
However, the Gambia Democratic Congress (GDC) refused to sign the Memorandum of Understanding (MoU) due to a procedural issue related to the selection method of the

flagbearer (Foroyaa, 2016). The party made a last-minute proposal for an open primary as a method of selecting the flagbearer, as opposed to a convention, which they initially agreed with alongside other opposition parties (Foroyaa, 2016). An open primary would therefore have allowed every voter to participate in the voting process without any restrictions on the number of voters, as proposed by the GDC. However, this proposal was rejected by the other opposition forces, as it was deemed too late for such an amendment, as the proposal was presented on the very day the MoU was scheduled to be signed. The opposition Coalition forces, therefore, adhered to the initial agreement to hold a national convention, which would limit the number of voters to 10 delegates from each political party and the independent candidate, covering all seven regions in the country (Coalition MoU, 2016). In her closing remark on the final day of the negotiation, Fatoumatta Jallow Tambajang, a representative of civil society organisations, who was also serving as the chair, appreciated the effort made by the signatories of the MoU which will mark the beginning of what she described as “a democratic process that comes to salvage the Gambia as a country and Gambians as a people.” Even with GDC exclusion, the agreement reflects a broad elite consensus, indicating that when a common course unites the elite, they can transcend partisan politics. Table 3 illustrates the political parties and the independent candidate who participated in the political bargaining process. And Figure 1 illustrates those who signed the MoU and those who did not.

Table 3: Political Parties (PP)/Independent Candidate (IC) that participated in the 2016 Coalition Negotiation

| Opposition parties/Independent | Leaders | Years of est. |
|---|--------------------------------|---------------|
| United Democratic Party (UDP) | Ousainou Darboe (Adama Barrow) | 1996 |
| People’s Democratic Organisation for Independence and Socialism (PDOIS) | Halifa Sallah | 1986 |
| National Reconciliation Party (NRP) | Hamat Bah | 1997 |
| Gambia Democratic Congress (GDC) | Mama Kandeh | 2016 |
| People’s Progressive Party (PPP) | Omar Jallow | 1959 |
| National Convention Party (NCP) | Lamin B Darboe | 1975 |
| Gambia Moral Congress (GMC) | Mai Ahmad Fatty | 2009 |
| Gambia Party for Democracy and Progress (GPDP) | Henry Gamez | 2004 |
| Independent Candidate (IC) | Isatou Touray | 2016 |

Figure 1: PP/IC that signed the MoU and that did not sign the MoU



As illustrated in Figure 1, GDC was the only opposition party to the negotiation that did not sign the MoU. Despite the exclusion of the GDC at this unprecedented moment in Gambia’s political history, the rest of the political parties mobilise themselves for a common course. As evident in the fourth paragraph of the preamble of the MoU, the Coalition of these parties was committed to putting their differences aside in the supreme interest of the country, supporting an independent candidate elected at the so-called National Convention (Coalition MoU, 2016). Eventually, Barrow emerged as the flagbearer of the Coalition, thus committing himself to the following conditions as enshrined in the MoU:

1. Head a transitional government for a period of three years;
2. Not support any party during the transition period;
3. Not seek for re-election until after the five years after the transition period;
4. Make a pledge to respect and uphold all the conditions circumscribing his or her tenure as established by the coalition;

As enshrined in the tenure of office and conduct of the flagbearer, he can only serve the mandate of 3 years as a transitional president. This would mean that his role is to complete the three-year term and then organise a peaceful and transparent election. The flagbearer himself, Adama Barrow, publicly confirmed this in an interview with Nichols Haque of Doha-based Al Jazeera in 2017, that the Coalition comprises “eight parties that came together as a coalition, and I am the head. There was an agreement that I would be transitional president for three years, then the parties would come back and we would get a level playing field, then we would have an overhaul of the system” (Al Jazeera, 2017) Again, he told the Senegalese journalist during his inauguration in Senegal that the Coalition government will establish democratic

principles and a strong foundation for the country for electoral reforms and a level playing field for all, and then return to the polls to elect a new president after three years, as per the Coalition agreement (cited from Africanews, 2020).

At this point, it was evident that the broad consensus had paid off, but it would only be short-lived, as, sooner rather than later, when the coalition won and assumed office, the flagbearer failed to fulfil most of the conditions enshrined in the MoU. One of the first conditions the president violated was the issue of support for any political parties, as evident in his broad-based support for the UDP, for instance, during the 2017 parliamentary election, when the president openly supported UDP candidates (Standard, 2017).

5.4 Inclusive and exclusive elite bargaining and political settlement

In this section, I analyse two distinct periods of elite bargaining and political settlement in The Gambia. The first period draws its analysis from the pre-2016 election era, and the second period focuses on the post-2016 political settlement. While the first period of elite bargaining was characterised by a broad elite consensus and a relatively stable political settlement aimed at regime change, the second period was marked by an increased political crisis, growing elite fragmentation arising from personal interests and partisan politics, leading to a failed constitutional reform. These periods were marked by critical junctures. According to Capoccia and Kelemen (2007) critical junctures are relatively brief periods in which the choices made by key actors have a heightened potential to shape the long-term institutional and political outcomes. These authors are of the view that this period is characterised by an expanded range of feasible options that can have a significant impact on the subsequent outcomes (Capoccia & Kelemen, 2007). The analysis will therefore take a brief pause at each critical juncture.

5.4.1 The first period: the Coalition 2016 pact

The events leading to the 2016 polls were marked by unprecedented political bargaining among opposition parties, culminating in the formation of the historic 2016 Coalition, as highlighted above. This consensus among the political elites was driven by shared interest among the opposition elites: to unseat Jammeh from power, who had ruled the country with an authoritarian grip for more than two decades (Harris & Jaw, 2024). According to Mai Fatty, leader of the Gambia Moral Congress (GMC) and a member of the Coalition, the 2016 Coalition was primarily driven by the effort to remove Jammeh from office (Cham, 2020). This collective objective enables a political settlement to be reached among all the opposition

political parties in The Gambia, following the signing of the so-called MoU, except for one opposition party, the Gambia Democratic Congress (GDC) (Perfect, 2022). This was unprecedented, as it is the first time in Gambia's political history that all opposition political forces (except one) and civil society organisations have committed to a common course of action. During the signing ceremony of the MoU, Halifa Sallah, the leader of People Democratic Organisation for Independence and Socialism (PDOIS) and spokesperson of the Coalition 2016, stated that the time has come for The Gambia to end a self-perpetuating rule and impunity through the individual selected as the flagbearer (The Gambia Today, 2017).

However, it is worth noting at this point that during this period of elite bargaining, the leader of the main opposition party, United Democratic Party (UDP), Lawyer Ousainou Darboe, was imprisoned (Harris & Jaw, 2024; Ceesay, 2016). Political commentators argue that Lawyer Darboe's absence created a vacuum that made it easier for the coalition negotiations to progress and a political settlement to be reached (Harris & Jaw, 2024). Historically, Darboe had insisted on leading opposition alliances, which led to the failed political bargaining in 2005 in anticipation of the 2006 presidential election (Jawo, 2020); asserting that the UDP, as the largest opposition party with the broadest support base, should naturally provide the presidential candidate (Harris & Jaw, 2024). His absence, therefore, removed a major stumbling block to reaching a consensus (Africanews, 2020).

Most importantly, his absence from the negotiation table led to the election of Adama Barrow as the coalition's flagbearer, who then stepped forward as the UDP candidate during the selection process. Note that Ousainou Darboe, who was in prison, was the flagbearer of UDP and would have contested had he not been in prison during this period. However, his absence made it possible for Adama Barrow to step in as the UDP candidate for the Coalition flagbearer selection, who ultimately won. Nonetheless, Adama Barrow, who emerged as the victor, is affiliated with the UDP party and at least makes sense to the imprisoned UDP party leader, Ousainou Darboe. Indeed, Barrow's victory surprised many political commentators as, apart from the fact that he had never taken part in active politics and the fact that he was not well-known in active politics, he did not attain any higher educational qualification, nor did he possess any leadership credentials (Harris & Jaw, 2024). This led political analysts to doubt his ability to move the country forward when he was voted into office (Perfect, 2017).

5.4.2 The second period: disintegration of the Coalition

The presidential election was held on 1 December 2016, and the Coalition defeated Yaya Jammeh with a landslide victory, bringing an end to Yaya Jammeh's 22 years of rule (Al Jazeera, 2016). Jammeh, who initially accepted the defeat, in a televised phone call with incoming president Adama Barrow, later reneged on it a week later, plunging The Gambia into a political impasse (The Guardian, 2016). This political crisis was later settled when the Economic Community of West African States (ECOWAS) sent a Senegalese-led force called ECOMIG (ECOWAS Mission in Gambia), which forced the former President, Yaya Jammeh, into exile in Equatorial Guinea, and the newly elected president was sworn-in in the neighbouring country of Senegal (Al Jazeera, 2017).

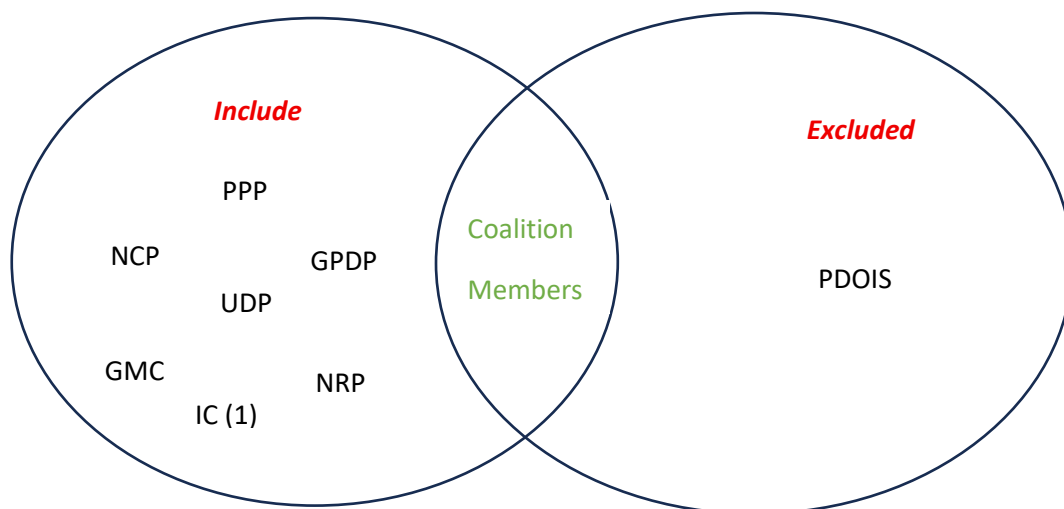
Following the resolution of the political impasse through international involvement, the Coalition now had the opportunity to form a new cabinet to implement the reforms it had promised the Gambians. This was the most important aspect of the political settlement in the post-2016 period, characterised by phrases such as 'new Gambia,' 'new democratic dispensation,' and 'The Gambia has decided,' among Gambians. At the level of the Coalition, this period was marked by power sharing among the forces that came together to effect the change. The power-sharing procedures were outlined in the MoU. The Coalition Executive Committee (CEC) was the principal policy-making arm of the Coalition and comprises all the ministerial position holders (Coalition MoU, 2016). In a sense, all presidential appointments and dismissals must be done in consultation with the CEC (Coalition MoU, 2016).

In contrast to this MoU provision, Section 71 of the 1997 Constitution grants the President the power to appoint and dismiss any cabinet member without such consultation (The 1997 Constitution). Aside from the roles of president and CEC, the MoU also contained broad reforms aimed at ending impunity and self-perpetuating rule through the establishment of constitutional and institutional safeguards (Coalition MoU, 2016). This can be achieved by promoting values and practices that would ensure participatory democracy, good governance, the rule of law, justice, and human rights (Coalition MoU, 2016). In fact, these features were also embedded in the Coalition manifesto, making institutional reforms a key component of the political bargaining in 2016. Indeed, the Coalition established institutions to carry out such reforms. However, these reforms were stalled by the gradual and growing fragmentation among the political elites, driven by personal interests.

This period of political settlement, marked by growing conflict of interest among the coalition members, ultimately led to the fragmentation of the alliance that was supposed to champion the reforms hoped for by the Gambians. This ultimately marked the beginning of failed reform efforts, notably the rejection of the 2020 Draft Constitution. This resonates with the arguments of Khan (2010) and Parks and Cole (2010), who argue that institutions only endure when they align with the interests of powerful actors, on the one hand, the sustainability of political settlements depends on the sustainability of the interests of the dominant elite coalition, on the other hand. Therefore, the endurance of the Coalition as an institution in the post-2016 period could not be sustained, as the broad-based elite consensus that had enabled the regime change immediately faced polarisation based on partisan politics and personal interests.

Before discussing the factors responsible for such political fragmentation, it is worth noting the power-sharing arrangements with key Coalition members. Figure 2 illustrates how power was distributed among Coalition members according to the provisions outlined in the MoU. As embedded in the MoU, the transitional cabinet shall comprise not more than 19 ministries, and the Cabinet position(s) will be allocated in consultation with each signatory stakeholder of the CEC (Coalition MoU, 2016). The CEC, as earlier mentioned, consists of the flagbearer and three representatives from each signatory party stakeholder, as well as the independent candidate. At this point, the MoU was in full force, as all the conditions put forth therein were strictly adhered to. However, over the three years, President Barrow began to consolidate his power and increasingly sidelined the MoU (Perfect 2022).

Figure 2: The first Cabinet



Also noteworthy here is that Fatoumatta Tamba Jallow, who served as the representative of the CSOs, was appointed as Vice President. Several factors contributed to the shift from inclusive to exclusive elite bargaining. The first issue related to inclusionary and exclusionary political settlement emanates from power sharing when the coalition forces assume power. As shown in Figure 2, ministerial positions were allocated to all Coalition members except the leader of the PDOIS, Halifa Sallah, who excluded himself from the Cabinet, citing the importance of parliamentary positions in transitional governments over ministerial positions. He argued that he could better serve democratic reform by remaining in the National Assembly, where he believed his legislative oversight would be more critical in correcting systemic injustices and overseeing government accountability (The Fatu Network, 2017). He asserts that:

“I think the analysts got it all wrong when they questioned my decision not to take a ministerial position, because we are talking about building a new Gambia and for that to happen you have to build institutions and one of those institutions is the executive where I don’t want to be part of, rather the legislature is where I prefer to be... I refused to take a ministerial post, because if I do so my ministerial colleagues may be doing other things that I may be adverse to, but I may not under those circumstances be able to scrutinise them because they are sovereign ministries” (The Fatu Network, 2017).

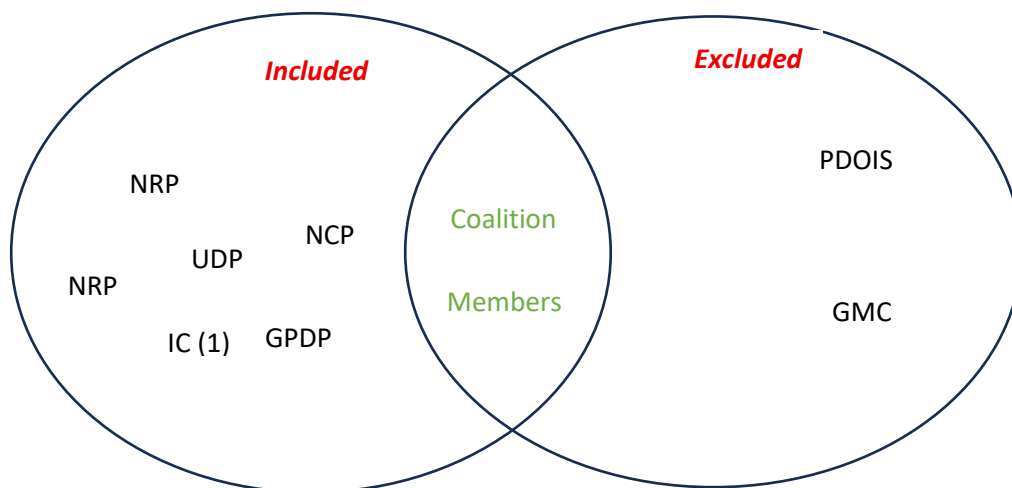
The position of Halifa Sallah at this critical juncture (first critical juncture) can be interpreted as both a principled political decision on the one hand, and a strategic positioning within the framework of political settlement in the transition period. And it reflects on the significant tension between institution-building and elite accommodation, central in the arguments of (Khan, 2010; Parks & Cole, 2010). The argument here is that in a clear-cut, inclusive elite bargaining, according to Papagianni (2008), multiple political actors are integrated into the decision-making process to stabilise the transition, as can be evident in the pre-2016 election era. Invariably, Sallah's opting for a legislative seat instead may be framed as a way of isolation from the very principle that brought the Coalition forces together. However, it is also important to view this from another angle. His decision to opt for a legislative seat might also be interpreted as an alternative form of inclusion, with a greater emphasis on oversight and accountability rather than co-optation, as alluded to and foreseen by Sallah himself. In either case, this initial era of post-2016 election political settlement marked a very critical point in the sustainability of the Coalition.

The second issue associated with the inclusionary and exclusionary political settlement was when the flagbearer of the Coalition and President Adama Barrow gradually centralised

power by dismissing and appointing government officials unilaterally. This was not done in light of the Coalition MoU, but in light of the power vested in the President by the 1997 Constitution. Section 71(3) of the said Constitution reads: “The President shall appoint ministers of State...” and Section 74 reads: “The office of the Minister shall become vacant (C) on his or her appointment being revoked by the President.” Therefore, President Barrow relied on this constitutional provision and disregarded the Coalition MoU, which stated that appointments and dismissals of Cabinet members must be made in consultation with the CEC. Figure 3 below shows a gradual reduction of coalition members when the president completely put aside the MoU and shifted to the Constitutional power vested in him.

Note: At this time, President Adama did not belong to any political party but was affiliated with the UDP party. This is because, as stipulated in the Coalition MoU, any candidate who becomes the Coalition's flagbearer must resign from their current party and contest under the Coalition ticket. This is also in line with a section of the 1997 Constitution, which indicated that no person contesting a presidential election shall belong to more than one party.

Figure 3: First Cabinet – Gradual reduction of Coalition members

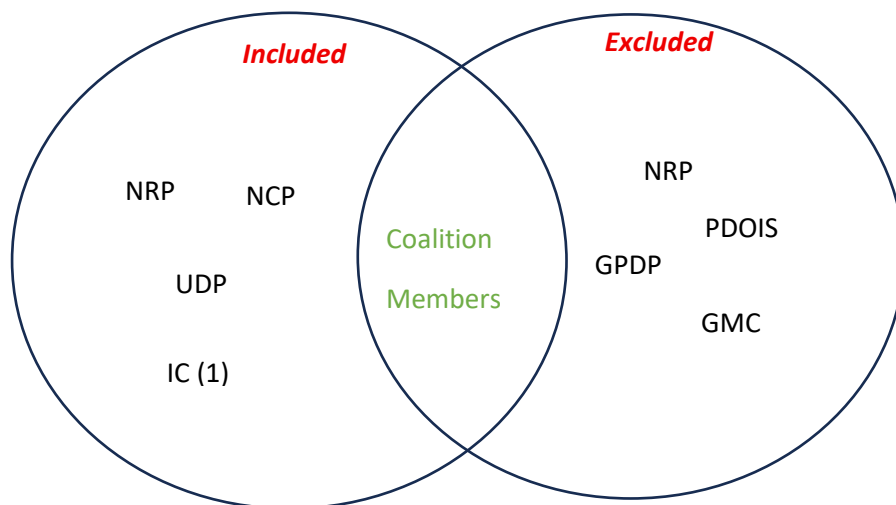


As illustrated in Figure 3, the first victim of the trend of dismissal was Mai Ahmed Fatty of GMC and the Minister of Interior, who was removed from his ministerial position in 2017 and redeployed to a diplomatic service (Anews, 2017; What’s On-Gambia, 2017). Mai Fatty’s dismissal was made unilaterally by President Adama without consultation with any Coalition member or the CEC, as mandated by the Coalition MoU. His dismissal was linked

to an alleged corrupt act (What’s On-Gambia, 2017). However, Mai Fatty denied this allegation and indicated that President Barrow sacked him without giving him any reason (Standard, 2017).

The first Cabinet reshuffle by President Adama Barrow occurred in 2018, following the dismissal of Mai Fatty (GMC) in 2017. This time saw the dismissal of the Vice President, Fatoumatta Tambajang (who represented the CSOs during the political bargaining); Youth and Sports Minister, Henry Gomez (GPDP); the Finance Minister, Amadou Sanneh (UDP member) and Agriculture Minister Omar Jallow (PPP), a veteran politician who had served under the First Republic of The Gambia for many years, and he was a staunch proponent of the Coalition’s three-year transition agreement (Gunjur Online, 2018). In addition, Demba Ali Jawo, who was not a Coalition member but given a ministerial position, was also dismissed. Figure 4 below illustrates the drastic exclusion of Cabinet members following the first Cabinet reshuffle.

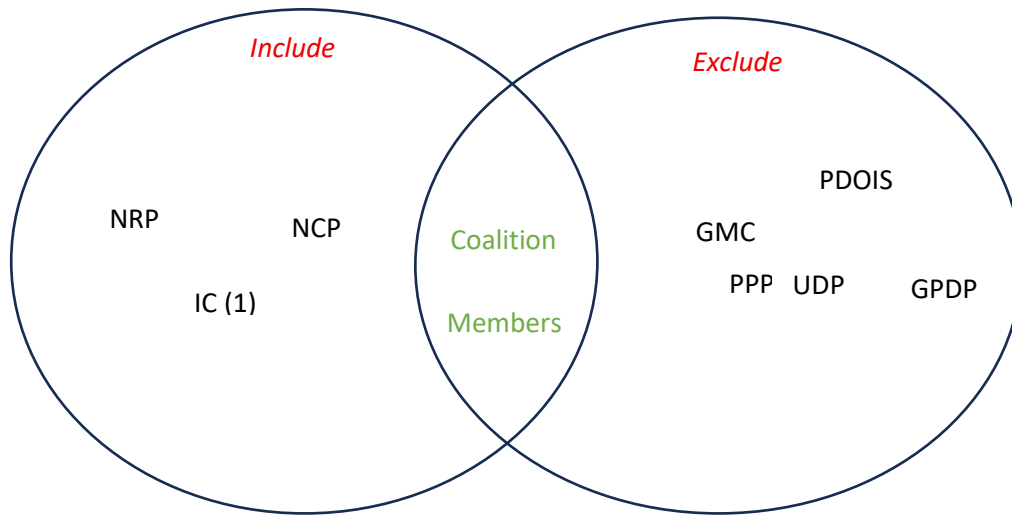
Figure 4: Second Cabinet (after the first Cabinet reshuffle)



Furthermore, the second critical Juncture is the dismissal of UDP key figures, including the party's leadership, Lawyer Ousainou Darboe, whom President Barrow referred to as his “political godfather” (Harris & Jaw, 2024). Ousainou Darboe, who served as Foreign Minister before being appointed the Vice President, was dismissed alongside key figures of the UDP, including Amadou Sanneh, Minister of Finance (who was dismissed in the first Cabinet reshuffle), and Lamin N. Dibba, Minister of Forestry (Africanews, 2019). This comes as President Barrow’s quest to do another Cabinet reshuffle (second Cabinet reshuffle), a power

vested in him by the 1997 Constitution. Figure 5 below illustrates that the Coalition, formed by seven political parties, was reduced to only two political parties and the independent candidate amidst the most crucial moment of the constitutional reform.

Figure 5: After the second Cabinet reshuffle



Political commentators regard these consistent and sequential dismissals by President Barrow as a deliberate pattern to consolidate power with a blatant disregard for the Coalition agreement (Harris & Jaw, 2024; Perfect, 2022). It also reflects Barrow's shift from an inclusive political settlement towards a more exclusive centralisation of power. This move contributed significantly to elite fragmentation and the eventual collapse of the political settlement that underpinned political reforms in The Gambia. Khan (2010) and Di John and Putzel (2009) postulate that during a political settlement, if the power-sharing agreement is driven by personal interest, it will eventually undermine the very political settlement that seeks to unify forces for a collective interest.

The third issue (also the third critical juncture) was when the president refused to honour the most important provision in the coalition MoU, which stipulated that he would serve only a three-year transitional mandate, after which a level playing field would be created for all political parties to hold a fresh election (Africanews, 2017). This refusal was met with a high level of discontent and a manifestation of betrayal not only among his Coalition partners but also across Gambia's civil society, ultimately leading to the most consequential civil mobilisation in the recent history of The Gambia, called 'Three Years Jotna' (Three Years is UP) (Harris & Jaw, 2024). This movement attracted both domestic and international observers,

who widely viewed it as a new era in Gambian politics. The president's unwillingness to step down sparked a debate about morality and personalism in African politics, where leaders often deliberately fail to honour their promises.

However, the 'Three Years Jotna' mobilisation, initially seen as an opportunity for popular accountability, eventually became divisive. This demonstration, intended to be another turning point in Gambian politics, especially in terms of national unity, was subsequently politicised, leading to a flaw in the demonstration against politicians who do not honour their promises. Several factors contributed to this outcome. First, a segment of the population interpreted the movement as being instigated by the UDP, whose leadership allegedly sought to destabilise the government in pursuit of power gain following his dismissal as a vice president (The Point, 2019). While this may be a one-sided story, this perception has strong support, and it is compounded by the inconsistent position of UDP Leader, Lawyer Ousainou Darboe, during his term as vice president and after his dismissal.

While serving as Vice President, Darboe publicly defended Barrow's right to serve the full five-year constitutional term, warning that anyone seeking to force Barrow to step down would face legal consequences (The Standard, 2018). However, after his dismissal from the Government, Ousainou Darboe again and boldly shifted his initial position on the question of constitutional mandate to a question of Coalition MoU, calling on President to honour the agreement embedded in the Coalition MoU and encouraging mass protest should the president fail to step down after the three-year term elapse (Jawo, 2019). This inconsistency not only undermines Ousainou Darboe's credibility but also further polarises public opinion, showcasing a stark conflict between legality and morality.

The second issue that complicated the political landscape during this period was the emergence of ethnic undercurrents within the discourse. As mentioned earlier, Adama Barrow was not well-known in Gambian politics and had never been actively involved in it. He has spent most of his life in the UK as a shop security guard before he returned to The Gambia as a real estate agent (Harris & Jaw, 2024). Many UDP supporters and the broader Gambian public assumed that Barrow was a Mandinka by heritage, given his early affiliation and key contributions to the party (Saine, 2020). This ethnic dimension thus added another layer of fragmentation to the already fragile Coalition, illustrating how elite bargaining failures can often be exacerbated by ethnic and identity-based grievances (Horowitz, 2000; Lindberg & Morrison, 2008). This also suggests that, while party ideology and leadership may influence

party militants, the latter can also be significantly influenced by the opinions of party militants. Meanwhile, following the dismissal of UDP members from the Cabinet, including his political godfather, Barrow registered his political party on 31 December 2019 (Gambiana, 2019), marking the complete demise of the Coalition.

Finally, the recycling of former regime political elites in the transitional government not only brought about discontent among the general public but also served to undermine the very reforms that the coalition initiated, such as the so-called TRRC and institutional reforms. Among the elites that served the former regime(s) and were appointed in the Barrow administration are indicated below:

Foreign Minister, Mamadou Tangara, and Finance Minister, Mambury Njie, held the same posts and many others in the Jammeh era. Nuha Touray, appointed Secretary General and Head of the Civil Service in 2020, was Cabinet secretary under Jammeh. Minister of Defence, Sheikh Omar Faye, was Gambian Ambassador to the US, and Minister of Interior, Yankuba Sonko, was Inspector General of Police in the Jammeh government. Seedy Njie was Information Minister during the Impasse and is now part of Barrow's NPP and Deputy Speaker of Parliament. The UDP is not immune with former Secretary General, Momodou Sabally, and former APRC MP, Suku Singhateh, joining its ranks. Remarkably, the veteran politician, Fatoumata Tambajang, served in all three regimes: she was Barrow's Vice-president, a Secretary of State in Jammeh's initial junta, and an advisor to Jawara. (Harris & Jaw, 2024, p. 58).

Again, the idea that Jammeh's political elite had a distinct orientation has raised questions about the extent of continuity in personnel between the Jammeh and Barrow administrations. Nonetheless, Barrow's refusal to honour the so-called three-year agreement demonstrates both the fragility of political pacts, especially when such pacts are not enforceable by law, and also exposes how personal ambition, political inconsistencies, and ethnic dogma can intersect and destabilise political settlement, especially in a transitional government.

5.5 Drafting a new constitution (The 2020 Draft Constitution)

Following the transition and the initial political settlement, the Coalition Government embarked on both legal and institutional reforms. According to Nabaneh (2020), as part of the new government's vision to transition from autocracy to democracy, the goal is to draft a new constitution and create mechanisms to hold perpetrators accountable for their past human rights violations. Several institutions were established to carry out the reform agenda of the Coalition Government. The first of these institutions was the most praised TRRC, which investigated the heinous human rights violations committed by the former President, Yaya Jammeh. This was followed by the establishment of the CRC, tasked with reviewing the 1997 Constitution and

drafting a new one, which ultimately became the 2020 Draft Constitution, rejected by the parliamentarians. This Draft Constitution was envisioned as a tool that would enable democratic governance in The Gambia. This period also saw the emergence of security sector reforms, which were a key priority of the National Development Plan (Barchet & Birchinger, 2022). However, this section focuses more on the CRC.

5.5.1 Constitution Review Commission (CRC)

The CRC was established in June 2018 and serves as a body to ‘draft a new Constitution for the Republic of The Gambia’ (CRC Website, 2018). This constitutional reform was meant to build the foundation for good governance and democracy, which was core in the Coalition campaign promises, forming the foundation for a new transitional justice program (Nabaneh 2020; Perfect, 2022). This comes as a result of the failure of the 1997 Constitution to promote democratic governance (Perfect, 2022). The review process started in 2018 with the appointment of eleven members under the CRC Act, 2017. As highlighted elsewhere, the CRC’s mandate was twofold: first, to review the 1997 Constitution and draft a new one; second, to prepare a report on the new draft. As part of the CRC's mandate was the broad-based consultation, both at home and in the diaspora, to ensure that the draft reflected the wishes of the masses (CRC, 2018).

This consultation started with the preparation of a comprehensive list of 369 questions, which was circulated to the public to gain opinions (Nabaneh, 2020). The initial nationwide tour took place in November 2018, followed by further consultation in early 2019, which included household and online surveys, before the publication of the first draft in November 2019 (CRC Draft, 2019). Importantly, dialogue was held with various actors, including political parties, central and local governments, as well as civil society organisations. Additionally, consultations were held with Gambians in the diaspora in Europe, the United States, the United Kingdom, Saudi Arabia, and several other African countries (CRC Website, 2019). The CRC’s final report, released in March 2020, highlighted that over 9,000 individuals and 100 organisations were consulted, making the process the most inclusive constitutional drafting exercise in Gambian history (CRC Final Report, 2020).

The Draft Constitution proposed several transformative provisions, including a two-term limit for the presidency, enhanced checks and balances, and expanded protections for human rights (CRC Final Report, 2020). It also created measures to ensure greater political inclusion of marginalised groups (including women, youth, and persons with disabilities) and

a comprehensive Bill of Rights provision compliant with international and regional human rights standards (Nabaneh, 2020). Particular interest to the people was the presidential term limit, as it would have seen a president serve for no more than two consecutive five-year terms (Perfect, 2022). Essentially, this would mean that President Barrow would have to serve for only one more term, a point that was discussed earlier.

Following this extensive consultation and in-depth research, the commission produced the first draft, which was published on 15 November 2019. Again, this was followed by another round of nationwide and public consultation tours to gather feedback from the public on the first draft of the constitution after its publication (CRC Website, 2019). After receiving a wide range of public feedback and opinions on the first draft, the CRC submitted a final version to the President on 30 March 2020 (CRC Final Report, 2020). The bill was therefore tabled before the National Assembly (NA) on 14 September 2020.

The Draft Constitution was the complete opposite of the 1997 Constitution. The 1997 Constitution was out of democratic reach due to frequent amendments and the former president's complete disregard for the rule of law, as illustrated earlier in Table 1. According to Harris and Jaw (2024) the 1997 Constitution was amended more than 55 times. The quest to change this system, as highlighted earlier, led to the 2016 political bargaining and the subsequent removal of the dictatorial president. However, this hope was dashed, as despite the progressive provisions in the Draft Constitution, the Promulgation Bill failed to receive two-thirds of the vote.

Several factors are responsible for this failure; however, before analysing them, it is essential to examine the NA members who voted in favour of and against the Promulgation Bill. Table 4 below illustrates the national assembly members who voted for the Bill and those who voted against it, along with the political parties to which they belong.

Table 4: Breakdown of votes for and against the Draft Constitution

| Political Parties | No. of Seats in NA | Voted Yes | Voted NO | Abstention |
|-------------------|--------------------|-----------|----------|------------|
| UDP | 23 | 23 | 0 | 0 |
| PDOIS | 4 | 3 | 0 | 1 |
| GDC | 4 | 2 | 2 | 0 |
| NRP | 5 | 0 | 5 | 0 |
| APRC | 5 | 0 | 5 | 0 |
| PPP | 2 | 1 | 0 | 1 |
| IC | 9 | 0 | 9 | 0 |
| Nominated Members | 5 | 2 | 2 | 1 |
| Total | 57 | 31 | 23 | 3 |

Total seats at the NA: 57

Voted Yes: 31

Voted No: 23

Abstention: 3

Requirement to pass the bill: 42

Note: The independent seats in the National Assembly differ from the independent candidate who participated in the Coalition bargaining in 2016. Additionally, only one independent candidate secured a seat in the National Assembly in the 2017 parliamentary election. The number increased to 9 due to the UDP's dismissal of 8 of its party members in the National Assembly, who were deemed loyal to President Barrow. Notably, the nominated members are also worth mentioning. The constitution mandates President Adama Barrow to nominate five members. Examining the votes as illustrated in the table, the nominated members were also divided, as most, if not all, of the nominated members were drawn from the UDP. However, at the time of the debate on the Promulgation Bill, some nominated members were still loyal to the UDP, while others were loyal to Adama Barrow.

When the Bill was tabled before the National Assembly in September 2020, it failed to pass the required three-quarters threshold (42 votes) needed for a Constitutional Bill to pass to the next stage, as illustrated in Table 4. It garnered only 31 votes in favour, with 23 against, and 3 abstentions. According to Section 226 2(b) and 4(b) of the 1997 Constitution:

A bill for an act of the National Assembly under this section shall not be passed by the Assembly or presented to the president for assent unless 2(b) the bill is supported on the second and third readings by votes of not less than three quarters of all the

members of the National Assembly,” “226(b) a bill for an Act of the National Assembly altering any of the provisions referred to in subsection 7 shall not be passed by the National Assembly or presented to the president for assent unless 4(b) the bill is supported on the second and third reading by the votes of not less than three quarters of all the National Assembly Members. (The 1997 Constitution).

As illustrated in Table 4, the two-thirds majority is equal to 42 seats, marking the end of the Promulgation Bill. The vote reflected deep divisions within the ruling Coalition and among opposition parties. Moreover, at this point, out of the seven political parties that formed the Coalition, all were dismissed except NRP, NCP, and the Independent Candidate, as illustrated in Figure 3. On the rejection of the Promulgation Bill, Mai Fatty, the leader of GMC and former Coalition member, lashed out at NRP (one of the two remaining political parties in the Cabinet) Members of Parliament for giving their full allegiance to the political ambition of the President against the people of the Gambia, as five of the NRP parliamentarians all voted against the Bill (Gambiana, 2020). A similar sentiment was expressed by Mama Kandeh, the leader of GDC, a standout political party during the Coalition negotiations, who stated that the decision to reject the Bill was based on personal interest rather than national interest (The Standard, 2020). The deepening of elite fragmentation and political manoeuvring ultimately sealed the Draft's fate.

The defeat of the Draft Constitution in Parliament further fragmented the Members of Parliament, with President Adama Barrow supporters and the rest of the MPs (Jawo, 2020). As illustrated in Table 4, the “Yes” camp failed to meet the required threshold of 42 votes to move the Bill to the next stage. During the parliamentary debate on the Promulgated Bill, two important issues arose: the issue of presidential term limit, which also revolves around the retroactive clause, and the other issue was the question of secularism. While secularism was debated, an issue that political commentators see as an excuse by the Barrow camp to support their position in rejecting the proposed Bill, Demba Ali Jawo, who also served in the first Cabinet (but not the Coalition member) and was later dismissed, argue that the Barrow supporters would go at any length using all trivial excuses to block the Bill from passing to another level, knowing that president Barrow would not be able to seek for third term should the Bill is passed (The Fatu Network, 2020).

Also worth noting is that many of the UDP members in the National Assembly who remained loyal to President Barrow were later dismissed from the UDP, allowing Adama Barrow to exert complete influence over them. In addition to the UDP defected party member, was the support base Barrow received from the APRC, the party of the former regime (Harris

& Jaw, 2024). The political polarisation shifted from an interparty level to an intra-party level, making the constitution-making process highly uncertain. According to Jawo, the majority of the MPs who voted against the bill were defected members from the UDP party (The Fatu Network, 2020). This intra-party division could also be evident in the GDC, where party members holding a seat in the National Assembly were split in two, with two voting in favour and the other two against. As illustrated in Table 4, this split was also evident in PPP, as well as in the nominated members.

After the National Assembly rejected the Draft Constitution, people were divided in their opinions about its consequences for the country. While some were concerned about the revival of Gambia's democratic transition, others were outraged by the substantial amount of resources, both human and financial, spent on drafting the Constitution. Over one hundred million Dalasi (D100,000,000), approximately 1 million euros (1,000,000), was spent on providing the Draft (Jawo, 2020). Then all the attention was turned to the President, as all those who voted against it manifested their support for him (Jawo, 2020). This was also reflected in the debate surrounding the most contentious clauses, which would prevent the president from seeking a third term, as well as the provision that requires his ministerial appointments to be confirmed by the National Assembly, provisions that had preoccupied the president and his Cabinet.

With what many regarded as the premature death of the Draft Constitution, there were only a few options left for the country to pursue in order to proceed with the democratic transition. First, to review and amend some of the draconian provisions in the 1997 Constitution (Halifa Sallah, the leader of PDOIS, advocated for this since the inception of the transition, but did not get support). Second, reintroduced the failed Draft. Third, start all over again. In any case, the country needed a constitution in order to transition to democracy successfully. In addition, the split of politicians in the National Assembly, which Jawo refers to as a battle line, would have consequences for any future Bill of public interest.

However, numerous efforts, both nationally and internationally, were made to revive the Draft Constitution, but to no avail. On 14 December 2020, Halifa Sallah, the leader of PDOIS, attempted to revive the Draft Constitutional Bill in the National Assembly, but was rejected by the parliament speaker (The Standard, 2020), who was, of course, nominated by the President. In addition, the former President of Nigeria, Goodluck Jonathan, also tried to organise a mediation talk around the document between key stakeholders such as, the President,

political parties and parliamentarians but some political parties, such as PDOIS appear frustrated and did not participate in the negotiation talks (The Standard, 2020). However, at least this mediation discussion appears to address other issues, except for the issue surrounding the application of retroactivity to Barrow's first term. Moreover, Barrow supporters in parliament, such as MP Saikou Marong, made it very clear that they would not support any law that includes a retroactive clause (Jaw, 2020). With a significant need for a new constitution in The Gambia, Jonathan made a second attempt in February 2021, but it was unsuccessful (The Standard, 2021).

This raised serious concerns about the elite's commitment to democratic transition. Analysts have argued that some political elites, including members of President Barrow's administration, opposed the Draft primarily because of the retrospective enforcement of term limits and stricter presidential powers, which could threaten Barrow's re-election prospects, as can be seen in the behaviours of Barrow's supporters in the Parliament (Sillah, 2021; Gaye, 2020). This would mean that the focus of the ruling party was more on tenure prolongation, which has been central to Omotola's (2011) arguments. It also confirms Khan's (2010) observation that institutional reforms often fail when they conflict with the interests of dominant political elites. Similarly, Di John and Putzel (2009) argue that institutional endurance depends on elite consensus and shared expectations.

The failure of the draft thus underscores the fragile nature of post-authoritarian transitions, particularly when inclusive bargaining breaks down. Drawing on Elster's framework, it is clear that upstream and downstream constraints were evident in The Gambia's constitution-making process. The 1997 Constitution limits the scope of constitutional reforms, while political fragmentation shapes the parameters within which the CRC operates. Furthermore, the main point of contention was the presidential term limit and the application of the retroactive clause imposed by the drafters.

While the drafting process itself was hailed for its transparency and participation, the rejection in parliament revealed the underlying tensions between elite preferences and public aspirations. According to Nabaneh, the Draft was killed by political partisanship and an extreme form of political polarisation as a result of the breakdown of consensus-building within the political elites (Standard, 2020).

5.6 Implications of the political fragmentation of elites for constitutional reforms

As can be evident in the empirical findings and supported by theories, when elites are fragmented, it affects institution-building. For instance, in their comparative study of Zimbabwe, Lebas and Munemo (2019) argue that polarisation is not merely a reflection of pre-existing social divisions, such as ethnic cleavages, but is often a deliberate strategy deployed by political elites to perpetuate their hold on power. These authors believe that elite-driven polarisation extends beyond elite circles into society at large, eroding democratic trust and thereby weakening reform efforts (Lebas & Munemo, 2019).

As highlighted earlier, during the pre-2016 era, which was marked by political bargaining aimed at ousting President Jammeh, there was a high level of elite cohesion. However, its aftermath resulted in the unravelling of this cohesion, not least due to ideological differences, but also access to power, struggles for positions, and future leadership prospects, especially when the president reneged on the promises he had undertaken under the Coalition MoU and also aspired to a third term. Evidence from the existing literature suggests that the ruling party often deploys constitutional reforms in post-authoritarian African states as a strategy to extend its grip on power (Omotola, 2011; Cheeseman, 2015). Again, as can be evident in the case of Zimbabwe, where elite fragmentation stems from liberation struggles, which was of course linked to who control the economics, leading to failed institutional reform for a very extended period (Lebas & Munemo, 2019), Barrow's breakaway from the Coalition key figures like the leaders of the two biggest opposition parties in The Gambia, stalled the constitutional reforms.

The implication is that it marks a significant setback in Gambia's democratic transition, preventing the country from advancing towards democratic governance. As noted elsewhere in the literature, constitutional reform in The Gambia is a cornerstone to breaking away from dictatorial legacies, and the lack thereof only prolongs the country's democratic transition. As noted by Rustow, if there is a failure to resolve some political questions, especially at the early stage of transition, it will damage the prospect of democracy.

This led to the rejection of the 2024 Draft Constitution, introduced in 2024 and widely regarded as President Barrow's Draft, due to the amendments made under the influence of the Executive (Voice Out Digital, 2024). On the day of finalising this dissertation, a second reading was done on the 2024 Draft and was again rejected by the parliamentarian. The 2024 Draft

Constitution was the reviewed version of the 2020 Draft Constitution. According to What's On – Gambia (2025), there were only 52 amendments made to the 1997 Constitution by Yaya Jammeh in 19 years, compared to 126 changes made to the 2020 Draft Constitution by President Adama Barrow and reintroduced to the National Assembly as the 2024 Draft. According to Momodou Malcolm Jallow, the changes introduced by the Gambian government in the 2024 Draft Constitution mark a concerning departure from the aspirations of the Gambian people for a democratic society characterised by good governance, accountability, and the rule of law (The Standard, 2024). He maintained that the amendments made to the 2020 CRC Draft Constitution undermine both the progress made towards strengthening democratic institutions and future governance of The Gambia (The Standard, 2024).

In the 2024 Draft Constitution, key provisions were removed, including "Leadership and Integrity" and a chapter on "Decentralisation of Power," among others. Equally, amendments were made to several key provisions, such as restrictions on the right to petition and assembly, the right to free primary and secondary education (a right that is guaranteed under international conventions such as the Universal Declaration of Human Rights and the Convention on the Rights of the Child) (The Draft Constitution, 2024). The changes made to the 2020 Draft constitution were confirmed by Dr. Ismaila Ceesay, the Minister of Information, Media, and Broadcasting, who stated that the 2020 Draft took significant power from the president, creating a potentially lame-duck president, which he regarded as dangerous in a presidential system (Kerr Fatou, 2025).

While the government, particularly President Adama Barrow, was widely blamed for influencing the rejection of the 2020 Draft Constitution, the main opposition party, the United Democratic Party (UDP), has been perceived as the primary force behind the rejection of the 2024 Draft. Regardless of which political camp may have driven the failure of each of the Drafts, the recurring theme is clear: deep political fragmentation continues to undermine consensus-making in The Gambia, posing a serious obstacle to constitutional reform and democratic transition in the country.

5.7 Conclusion

This chapter presents a detailed empirical analysis that underpins the political dynamics shaping The Gambia following the 2017 transition. The chapter highlights how the pre-2016 election was marked by consensus, driven by a shared goal of ending self-perpetuating rule; however, disintegration quickly ensued as personalised politics resurfaced, leading to a more fragmented political elite. The shift from inclusive to exclusive political settlement resulted in such political fragmentation. The empirical data support the hypothesis that the fragmentation of political elites led to the failure of constitutional reforms in The Gambia, as evident in the behaviour of the political elites as soon as they assumed office. The 2020 Draft Constitution was embraced by the Gambians but failed at the second reading in the NA, stalling Gambia's democratic transition. Additionally, its revised version, named the 2024 Draft Constitution, has also been rejected at the second reading at the National Assembly. This indicates that The Gambia's democratic transition is at serious regression.

Chapter 6: Conclusion (Findings, Policy Recommendations)

6.1 Summary of findings

The study examines the failure of constitution-making in The Gambia since the country's transition from autocratic rule to some form of democratic governance in 2017. The study demonstrates that the transition from long-term authoritarian rule to a democratic system of governance is inherently complex and often undermined by the self-interest of political elites. In particular, the study found that despite high hopes for constitutional reforms following the departure of the repressive leader, Jammeh, the 2020 and 2024 Promulgation Bill failed at the second reading in the National Assembly. The finding attributed this failures to promulgate a new constitution to elite fragmentation and a failure in political settlement arising from exclusive political settlement. The study found that the political settlement was not implemented in accordance with the agreement that binds the political forces together, resulting in political fragmentation.

Chapter 6.2 reveals that when different political groups are committed to the same course, they are highly likely to set aside their differences and unite to work towards achieving that goal, as evident in the formation of the 2016 Coalition. This subsection reveals that all the opposition political parties except one come together to form the Coalition-2016 to effect political change.

Chapter 6.3.1 found that the initial political bargaining in the pre-2016 election era was marked by a broad elite consensus arising from inclusive elite bargaining. However, Chapter 6.3.2 found a shift in political settlement from an inclusionary to an exclusionary approach. The research, therefore, reveals that this shift has led to elite fragmentation, which significantly contributed to the failure of constitutional reform.

Moreover, the study found that the 1997 Constitution was widely perceived as flawed, with 87 percent of Gambians expressing strong support for a new constitution. The study also found that the methodology employed by the Constitutional Review Commission was a highly inclusive and participatory process, and the final draft was widely regarded as reflective of the will of the Gambian people. This can be evident by the strong support for key provisions in the Draft Constitution, 87 percent for the presidential term limit, 86 percent for ministerial appointment to be approved by the National Assembly, 85 percent quota system for women representatives in the National Assembly, and 72 percent for the absolute majority for the Presidential elections, respectively.

Additionally, the findings suggest that political fragmentation is likely to have a lasting impact on The Gambia's democratic transition, as demonstrated by the rejection of the 2024 Draft Constitution. Consequently, future researchers may wish to explore the extent to which institutional design in post-authoritarian states can be structured to withstand political fragmentation and facilitate successful constitutional reform. Such research would be particularly valuable for informing future pact-based political settlements in The Gambia's democratisation process, as the country continues to grapple with a deeply fragmented political landscape. Moreover, this line of inquiry would make a meaningful contribution to the expanding body of literature on post-authoritarian democratic transitions and constitutional reforms, both within Africa and in broader comparative contexts. The recommendations below, which serve to provide an alternative approach to post-authoritarian democratic transition, can also serve as a possible research area(s) for the emerging scholars who want to research democratisation and constitution-making in a post-authoritarian context.

6.2 Policy recommendations

1. Political elites must make and uphold genuine commitments to reform.

One of the study's key findings is the role that political elites play in democratic reforms, both positively and negatively. The evidence from the findings suggests a stark inconsistency between the promises made by political elites in the pre-2016 election era and their actions in the post-election era. To overcome this paradox, political elites must move beyond symbolic promises to a more pragmatic commitment toward national interest and democratic transformation, rather than partisan politics. The argument is that the constitution must not be used as a tool to promote self-perpetuating rule or power consolidation, but as a nation-building tool grounded on democratic values. O'Donnell and Schmitter (1986) stress the possibility of uncertainty during political transition. Due to such uncertainty, political actors are likely to be divided along partisan lines and pursue personal interests. According to these authors, what is certain about transition is the beginning of the dissolution of authoritarian legacies, leading to the establishment of a sort of democratic regime or even backsliding into authoritarian rule or other alternatives, say a revolutionary approach. To mitigate this risk, O'Donnell and Schmitter (1986) introduce the concept of pacts, an elite agreement that helps diffuse the transition risk by negotiating for more permanent arrangements. At least the pact that was formed was a temporary one, or merely an agreement to help them unseat Jammeh. However, following the removal of Jammeh and its ensuing political settlement crisis, The Gambia's political transition began to face an array of uncertainties, including a fragile elite

consensus, shifting political alliances, and, more importantly, the lack of implementation of transitional justice mechanisms. This continues to undermine Gambia's democratic transition. Therefore, political elites must recommit themselves to a genuine political pact to progressively advance the country's political transition.

2. Elites must be held accountable for their words and political agreements

Elite bargaining, which led to the formation of the 2016 Coalition Memorandum of Understanding, played a crucial role in effecting political change. However, the failure of the elites to honour the promises embedded in the Coalition agreement significantly contributed to the failure of the 2020 draft constitution, as can be evident in the key findings. This calls for a mechanism to ensure political elites uphold their promises. Therefore, any further constitution that should be made in the Gambia must include a provision guiding such agreements. The early fragmentation of the political elite reveals that personal interests often take precedence over national interests. This suggests that a shared commitment to democratic reform did not solely drive the formation of Coalition 2016, but was also driven by a desire to gain access to state power. Once the common objective of unseating the authoritarian incumbent was achieved, underlying divisions resurfaced, undermining the prospects for sustained collaboration. This resonates with Khan's (2010) argument that if powerful groups are not benefiting from power sharing, they will unite to alter the institution using whatever means necessary. Khan argues that institutions do not emerge from nowhere, but rather only when they align with the interests of powerful actors, making his perspective particularly important in the context of The Gambia's 2020 Draft Constitution failure. Where power-sharing arrangements cease to serve the interests of those involved, elites are likely to abandon or alter institutional commitments in pursuit of their own agendas. In such settings, reform promises may be easily compromised if they conflict with the strategic ambitions of influential actors. Situating The Gambia in these theoretical claims, empirical findings reveal how a shift in elite bargaining shaped the country's political transition. This, therefore, calls for political elites to make genuine promises and work towards their realisation.

3. Elite bargaining should not be primarily based on access to power, but rather on a genuine commitment to democratic change.

The 2016 Coalition has been described as a 'marriage of convenience' (Njie & Saine, 2019), where political elites set their differences aside to achieve regime change, only to later fragment due to power-sharing arrangements. For a sustainable democratic transition, elite

coalitions must not be formed merely for electoral victories or regime change; instead, they should reflect on the long-term implications of the democratic transition. Elites must demonstrate political maturity and responsibility by prioritising citizen welfare over power-sharing arrangements and by avoiding actions that reinforce authoritarian legacies.

4. More dialogue and elite consensus around constitutional reforms

To revive the constitution-making process, political elites must set aside their differences and reengage in a serious dialogue around both the 2020 and 2024 Draft Constitutions. A significant finding of the study was that the failure of the 2020 Draft Constitution was primarily due to elite fragmentation leading to a lack of political consensus. Scholars such as Brandt et al. (2011) argue that successful constitution-making in transitional settings requires a broad-based political settlement achieved through compromise and consensus. Therefore, there should be a renewed effort for an inter-party dialogue.

5. Strengthen civic education through civil society engagement

Civil society organisations (CSOs) must expand their role beyond advocacy to include sustained civic education and public engagement. The inclusive nature of the CRC's consultation process was one of its strengths; however, broader democratic participation depends on continuous public education. CSOs should invest in educating the public not only on the ongoing constitution-making process but also on core democratic values such as constitutionalism, the rule of law, participation, and accountability (Ndulo, 2003; Cheeseman, 2015). An informed citizenry is crucial for holding elites accountable and ensuring that constitutional reforms accurately reflect the public's aspirations.

6. Youth must be positioned as agents of democratic change

The youth of The Gambia represent a demographic majority and a critical force for change. Their active involvement in civic life, political dialogue, and reform advocacy is essential to ensure long-term democratic consolidation. Youth-led organisations should be supported to engage in constitution-making, electoral participation, and policy debates. As noted by Zarifis (2022), empowering youth in transitional contexts enhances democratic legitimacy and sustainability. Creating civic spaces, mentorship opportunities, and youth representation in governance structures will help transform the youth from passive observers into active agents of democratic transformation.

7. Bibliography

- African Union. (1990). *African Charter for Popular Participation in Development and Transformation*. ARUSHA. Retrieved from: <https://issafrica.s3.amazonaws.com/site/uploads/POPULARPPARTCHARTER.PDF> [Accessed 3 July 2025].
- Africanews. (2020). Unpacking Gambia's Three-Year Pact: Constitution vs Coalition MoU. *Africanews Website*. Retrieved from: <https://www.africanews.com/2020/01/28/unpacking-gambia-s-three-year-pact-constitution-vs-coalition-mou/>. [Accessed 1 July 2025].
- Afrobarometer. (2018). Survey Findings on Constitutional Provisions in The Gambia. *Afrobarometer*. Retrieved from: https://www.afrobarometer.org/wp-content/uploads/2022/02/ab_r7_dispatchno338_gambias_draft_constitution_reflects_citizen_preferences.pdf. [Access 1 July 2025].
- Akech, J. G. (2022). "Building Democracy After Dictatorship – A Case Study of Constitutional Design in Post-Jammeh Gambia," in *The Gambia in Transition: Towards a New Constitutional Order*. University of Pretoria, South Africa: Pretoria University Law Press (PULP).
- Al Jazeera. (2016). Yahya Jammeh Loses to Adama Barrow in Gambia Election. *Al Jazeera Website*. Retrieved from: <https://www.aljazeera.com/news/2016/12/2/yahya-jammeh-loses-to-adama-barrow-in-gambia-election>. [Accessed 1 July 2025].
- Anews. (2017). Gambia: President Sacks Key Coalition Partner. *Anadolu Agency*. Retrieve from: <https://www.anews.com.tr/world/2017/11/11/gambia-president-sacks-key-coalition-partner> [Accessed 1 July 2025].
- Arato, A. (1995). "Forms of Constitution Making and Theories of Democracy". *Cardozo Law Review*, 17(2), 191–232.
- Bannon, A. L. (2007). "Designing a Constitution-Drafting Process: Lessons from Kenya." *The Yale Law Journal*. 116(8):1824. doi:10.2307/20455777.
- Barchet, A., & Birchinger, S. (2022, November 9). Security Sector Reform in the Gambia – The historic roots of current challenges. *PRIF Blog. Peace Research Institute Frankfurt*. Retrieved from: <https://blog.prif.org/2022/11/09/security-sector-reform-in-the-gambia-the-historic-roots-of-current-challenges/> [Accessed 3 July 2025].
- Bayo, K. M. (2020). OPINION: Alliance and Coalition Politics in The Gambia 1960–2016: A Preliminary Analytical Survey. *The Point*. Retrieved from: <https://thepoint.gm/africa/gambia/article/opinion-alliance-and-coalition-politics-in-the-gambia1960-2016-a-preliminary-analytical-survey>. Accessed on 1 July, 2025.

- BBC. (2011). Yahya Jammeh Vows to Rule Gambia for ‘One Billion Years’. *BBC Website* Retrieved from: <https://www.bbc.com/news/world-africa-12773579>. [Access on 1 July 2024].
- Bisarya, S. (2020). “A Decade of Constitution-Building Processes: Some Reflections from International Experts,” in *Annual Review of Constitution-Building: 2019*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance.
- Brandt, M., Cottrell, J., Ghai, Y. & Regan, A. (2011). *Constitution-Making and Reform: Options for the Process*. Interpeace.
- Bryman, A. & Bell, E. (2019). *Social Research Methods*. Fifth Canadian edition. Don Mills, Ontario, Canada: Oxford University Press.
- Campbell, D. T., & Julian C. S. (2011). *Experimental and Quasi-Experimental Designs for Research*. Belmont, CA: Wadsworth.
- Capoccia, G. & Daniel, K. (2007). “The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism.” *World Politics* 59(3):341–69. doi:10.1017/S0043887100020852.
- Ceesay, H. (2016). Darboe & 18 Others Jailed for 3 Years. *The Point*. Retrieved from: <https://thepoint.gm/africa/gambia/article/darboe-18-others-jailed-for-3-years>. [Accessed 1 July 2025]
- Cham, P. M. (2020). Mai Outlines Objectives of Coalition 2016. *The Point*. Retrieved from: <https://thepoint.gm/africa/gambia/headlines/mai-outlines-objective-of-coalition-2016>. [Accessed 1 July 2025].
- Cheeseman, N. (2015). *Democracy in Africa: Successes, Failures, and the Struggle for Political Reform*. 1st ed. Cambridge University Press.
- Clapham, C. (1993). “Democratisation in Africa: Obstacles and Prospects.” *Third World Quarterly* 14(3,):423–38.
- Conte, J. (2021). “The Role of Parliaments in SSG: The Case of The Gambia.” *DCAF Geneva Centre for Security Governance*.
- CRC (2020). The Gambia: Final Report of the Constitutional Reform Commission 2020. *CRC Website*. Retrieved from: https://constitutionnet.org/v1/item/gambia-final-report-constitutional-reform-commission-2020?utm_source=chatgpt.com [Accessed 1 July 2025]
- Creswell, J. W., & Poth, C. N. (2018). *Qualitative Inquiry & Research Design: Choosing among Five Approaches*. Fourth edition. Los Angeles: SAGE.
- Daffeh, A. (2024). “Towards Democratic Consolidation in The Gambia: Assessing the Post-Jammeh Era.” *International Journal of Research in Education, Humanities and Commerce* 05(01):332–41. doi:10.37602/IJREHC.2024.5129.
- Diop, M. B. (2021). “The Role of African Elites in West African Countries.” *Africa Centre for Research and Policy Studies*.

- Di John, J., & Putzel, J. (2009). *Political Settlements*. University of Birmingham. Governance and Social Development Resource Centre (GSDRC).
- Elster, J. (1995). "Forces and Mechanisms in the Constitution-Making Process." *Duke Law Journal* 45(2):364. doi:10.2307/1372906.
- Flyvbjerg, B. (2011). *Case study*. In N. K. Denzin & Y. S. Lincoln (Eds.), *The SAGE Handbook of Qualitative Research* (4th ed., pp. 301–316). SAGE Publications.
- Fombad, C. M. (2011). "Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects." *Buffalo Law Review*. Vol.59.
- Furley, O. & Katalikawe, J. (1997). "Constitutional Reform in Uganda: The New Approach." *African Affairs* 96(383):243–60. doi: 10.1093/oxfordjournals.afraf.a007827.
- Gallie, W. B. (1956). "Art as an Essentially Contested Concept." *The Philosophical Quarterly* 6(23):97. doi:10.2307/2217217.
- Gambiana. (2019). President Barrow Registers His New Political Party as He Eyes a Second Term. *Gambiana Website*. Retrieved from: https://gambiana.com/president-barrow-registers-his-new-political-party-as-he-eyes-a-second-term/#google_vignette [Accessed 1 July 2025].
- Gunjur Online. (2018). President Barrow Reshuffles Cabinet: Why Their Heads Rolled. *Gunjur Online Website*. Retrieve from: <https://www.gunjuronline.com/post/2018/06/29/president-barrow-reshuffles-cabinet-why-their-heads-rolled> [Accessed 1 July 2025].
- Haque, N. (2017). Al Jazeera Interviews Gambia's New President Adama Barrow [Video]. Al Jazeera Website. Retrieved from: YouTube @ <https://www.youtube.com/watch?v=shAZ15HQ57k>. [Accessed 1 July 2025].
- Harris, D. & Jaw, S. M. (2024). "A 'New Gambia'? Managing Political Crisis and Change in an African Small State." *Commonwealth & Comparative Politics* 62(1):45–64. doi:10.1080/14662043.2024.2308948.
- Hart, V. (2003). "Constitution Making and the Right to Take Part in a Public Affair." In *Framing the State in Times of Transition*, United States Institute of Peace. Retrieved from: https://www.usip.org/sites/default/files/Framing%20the%20State/Chapter2_Framing.pdf?utm_source=chatgpt.com. [Access 1 July, 2024].
- Hatchard, J. (2001). "Some Lessons on Constitution-Making from Zimbabwe." *Journal of African Law* 45(2):210–16. doi:10.1017/S0221855301001705.
- Haynes, J. (2003). "Democratic Consolidation in Africa: The Problematic Case of Ghana." *Commonwealth & Comparative Politics* 41(1):48–76. doi:10.1080/713999609.
- Heywood, A. (2013). *Politics*. 4. ed. Basingstoke, Hampshire: Palgrave Macmillan.
- Horowitz, D. L. (2000). *Ethnic Groups in Conflict* (2nd ed.). *University of California Press*.

- Hotchner, B. (2021, May). "Autocratic Influence in Democratic Transitions: How the Timing of Constitutional Reform Impacts Democratic Consolidation," *College of William & Mary*.
- Houlihan, E. C. (2019). "The How and Why of Participatory Constitution-Building: (Re)Examining Expectations, Processes and Outcomes in The Gambia and Mongolia." in *Annual Review of Constitution-Building: 2019*. International Institute for Democracy and Electoral Assistance.
- Houlihan, E. C. (2020). "Introduction." In *Annual Review of Constitution-Building: 2019*. Stockholm, Sweden: International Institute for Democracy and Electoral Assistance.
- Huntington, S. P. (1993). *The Third Wave: Democratization in the Late Twentieth Century*. Nachdr. Norman, Okla.: Univ. of Oklahoma Press.
- Jallow, M. M. (2024). From Promise to Peril: Why the Gambia's 2024 Draft Constitution Falls Short. *The Standard Newspaper*. Retrieved from: <https://standard.gm/from-promise-to-peril-why-the-gambias-2024-draft-constitution-falls-short/> [Accessed 1 July 2025].
- Jammeh, O. A. S. (2011). *The Constitutional Law of the Gambia: 1965-2010*. Bloomington, IN:
- Jaw, S. M. (2020). *The Gambia: Why MPs Just Shot Down the Popular New Draft Constitution. African Arguments*. Retrieved from: https://africanarguments.org/2020/09/the-gambia-why-mps-just-shot-down-the-popular-new-draft-constitution/?utm_source=chatgpt.com [Accessed 1 July 2025].
- Jawo, M. (2019). Darboe: Barrow Should be Faithful and Respect the Coalition 2016 Agreement. *The Point*. Retrieved from: [Darboe: Barrow should be faithful and respect the Coalition 2016 agreement - The Point](#) [Accessed 1 July 2025].
- Jawo, D. A. (2020). Battle Lines Drawn After National Assembly Debate. *The Fatu Network*. Retrieved from: <https://fatunetwork.net/battle-lines-drawn-after-national-assembly-debate/> [Accessed 1 July 2025].
- Jeffang, K., & Bah, M. S. (2016). 7 Opposition Parties, Independent Sign Coalition Agreement. *Foroyaa*. Available online at <https://foroyaa.net/7-opposition-parties-independent-sign-coalition-agreement/>. Accessed on 1 July 2025.
- Jeng, A. (2021). "Gambia's Democratic Transition: A Case Study of How Political Elites Shape Democratic Transition," *Uppsala University*.
- Kerr Fatou (2025). Dr. Ceasay: UDP and Allied Independent Denied Gambians a New Constitution. Facebook.
- Khan, M. H. (2010). "Political Settlements and the Governance of Growth-Enhancing Institutions." *ResearchGate*
- Kimenyi, M. S. (2006). *The Demand for Power Diffusion: A Case Study of the 2005 Constitutional Referendum Voting in Kenya* (Working Paper No. 2006-11). University

- of Connecticut, Department of Economics. Retrieved from https://digitalcommons.lib.uconn.edu/econ_wpapers/200611 [Accessed 1 July, 2025].
- Kirby, C., & Murray, C. (2015). "Constitution-Making in Anglophone Africa: 'We the People'?" In M. Ndulo & M. Gazibo (Eds.), *Growing Democracy in Africa: Elections, Accountable Governance and Political Economy* (pp. 86–113). Cambridge Scholars Publishing. Available Online https://www.researchgate.net/publication/277009337_Constitution-Making_in_Anglophone_Africa_We_the_People Access on 1 July, 2025
- Klug, H. (2024). "African Constitutionalism: Between Power, Persuasion, and Irrelevance?" *Law & Social Inquiry* 49(2):1259–65. doi:10.1017/lsi.2024.10.
- Kora, S. & Darboe, M N. (2017). "The Gambia's Electoral Earthquake." *Journal of Democracy* 28(2):147–56. doi:10.1353/jod.2017.0031.
- Kronberg, A. (2021). *We Just Want a Constitution: Gambian Civil Society in Democratic Consolidation*. Uppsala University.
- Lindberg, S. I., & Morrison, M. K. C. (2008). Are African voters Really Ethnic or Clientelistic? Survey Evidence from Ghana. *Political Science Quarterly*, 123(1), 95–122.
- Linz, J. J. & Stepan, A. C. (1997). *Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe*. 2. print. Baltimore, Md.: Johns Hopkins Univ. Press.
- Mendy, O. (2024). "A Constitution without Constitutionalism: A Gambian Paradox." *International Journal of Law and Public Policy (IJLAPP)* 6(1):19–28. doi:10.36079/lamintang.ijlapp-0601.607.
- Nabaneh, S. (2020). Constitutional Law Development in The Gambia: 2020. *The Standard*. Retrieved from: <https://standard.gm/constitutional-law-developments-in-the-gambia-2020/> [Accessed 1 July, 2025].
- Nabaneh, S. (2020). *Attempts at Constitutional Reform in The Gambia: Whither the Draft Constitution?* Law Hub Gambia. *ResearchGate*. Retrieved from: <https://www.researchgate.net/publication/344526477>. [Access 1 July, 2024].
- Nabaneh, S., Abebe, A. & Sowe, G. eds. (2022). *The Gambia in Transition: Towards a New Constitutional Order*. Pretoria: Pretoria University Law Press (PULP).
- National Youth Parliament, Activista The Gambia, Beakanyang, & Gambia Participates. (2020). *Factsheet on the 2020 Draft Constitution of The Gambia*. Retrieved from: <https://www.gambiaparticipates.org/static/website/publications/constitutional/2020-Draft-Constitution-Factsheet.pdf> [Accessed 3 July 2025].
- Ndulo, M. (2003). "The Democratization Process and Structural Adjustment in Africa." *Indiana Journal of Global Legal Studies* 10(1):315. doi:10.2979/gls.2003.10.1.315.

- Ndulo, M. (2001). "Constitution-making in Africa: Assessing Both the Process and the Content." *Public Administration and Development* 21(2):101–17. doi:10.1002/pad.163.
- Njie, E, & Saine, A. (2019). "Gambia's Billion Year President: The End of an Era and the Ensuing Political Impasse." *Journal of African Elections* 18(2):1–24. doi:10.20940/JAE/2019/v18i2a1.
- O'Donnell, G. A., & Schmitter, P. C. (1986). *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*. Baltimore: Johns Hopkins University Press.
- Omotola, J. S. (2011). *Unconstitutional Changes of Government in Africa: What Implications for Democratic Consolidation?* Uppsala: Nordiska Afrikainstitutet.
- Parks, T., & William, C. (2010). "Political Settlements: Implications for International Development Policy and Practice." doi:10.13140/RG.2.2.17925.01768.
- Partlett, W. (2012). "The dangers of popular constitution-making". *Brooklyn Journal of International Law*, 38(1), 193–??.
- Perfect, D. (2022). "Making Constitutions in The Gambia." In *The Gambia in Transition: Towards a New Constitutional Order*. Pretoria University Press.
- Maclean, R., & Graham-Harrison, E. (2016). The Gambia's President Jammeh Concedes Defeat in Election. *The Guardian*. Retrieved from: <https://www.theguardian.com/world/2016/dec/02/the-gambia-president-jammeh-concede-defeat-in-election>. [Accessed 1 July 2025].
- Saine, A. (2020). "Gambia's 2020 Final Draft Constitution: A Critical Political-Economy Perspective." *The Standard*. Retrieved from: <https://standard.gm/gambias-2020-final-draft-constitution-a-critical-political-economy-perspective/> [Access 1 July, 2025].
- Schmitter, P. C. (2018). "Democratization: The Role of Elites," in *The Palgrave Handbook of Political Elites*. London, United Kingdom: Macmillan Publishers Ltd.
- The Fatu Network. (2017). Halifa talks on Life back in Parliament. Retrieved from: <https://fatunetwork.net/halifa-talks-life-back-parliament/> [Accessed 1 July 2025].
- The Gambia Today (2017). Hon. Halifa Sallah on The Day Barrow was Elected as Flag Bearer of The Coalition 2016. [Video] Facebook. Retrieved from: <https://www.facebook.com/watch/?v=716888741834725>. [Accessed 1 July 2025].
- The Point. (2019). UDP is Behind 3 Years Jotna. The Point. Retrieve from: <https://thepoint.gm/africa/gambia/article/udp-is-behind-3-years-jotna> [Accessed on 1 July 2025].
- The Standard. (2020). Halifa Vows to Persuade NAMs to Rescind Decision on Draft Constitution. *The Standard Newspaper*. Retrieved from: <https://standard.gm/halifa-vows-to-persuade-nams-to-rescind-decision-on-draft-constitution0/> [Accessed 1 July 2025].

- The Standard. (2017). Mai Breaks Silence. *The Standard*. Retrieved from: <https://standard.gm/mai-breaks-silence/> [Accessed on 1 July 2021].
- The Standard. (2020). Jonathan Arrives to Help National Dialogue on Constitution. *The Standard Newspaper*. Retrieved from: https://standard.gm/jonathan-arrives-to-help-national-dialogue-on-constitution/?utm_source=chatgpt.com [Accessed 1 July 2025].
- TRRC. (2021). Soldiers With a Difference: The Armed Forces Provisional Ruling Council (AFPRC) Junta (Vol. 2). Final Report of the Truth, Reconciliation and Reparations Commission. Retrieved from <https://www.moj.gm/downloads>. [Access 1 July 2025].
- V-Dem Institute. (2025). *Democracy Report 2025: 25 Years of Autocratization – Democracy Trumped?* University of Gothenburg. Available online @<https://www.v-dem.net/publications/democracy-reports>. [Access 1 July 2025].
- Voice Out Digital. (2024). Gambia’s 2024 Draft Constitution Presented for First Reading in Parliament. *Voice Out Digital*. Retrieved from: <https://voiceoutdigital.com/gambias-2024-draft-constitution-presented-for-first-reading-in-parliament/> [Accessed 1 July, 2025].
- What's On-Gambia. (2017). Here is what Actually Happened After Mai's Sacking. *What's On Gambia*. Retrieve from: https://whatson-gambia.com/here-is-wh.at-actually-happened-after-mai-s-sacking/?utm_source=chatgpt.com. [Accessed 1 July 2025].
- What's On-Gambia (2025). Parliament rejects the 2024 Draft Constitution. Facebook.
- Whitehead, L. (2003). *Democratization: Theory and Experience*. Reprinted. Oxford: Oxford Univ. Press.
- Wiseman, J. A. (n.d.). “Democracy and Political Change In Sub-Saharan Africa.”
- Zarifis, I. N. (2022). “The Transitional Justice Imperative in Protecting Human Rights in The New Gambia,” in *The Gambia in transition: Towards a new constitutional order*. Pretoria University Law Press (PULP).

Appendix

Appendix A: The 1997 Constitution

This provides selected provisions from the 1997 Constitution that have authoritarian tendencies:

- Section 63: provides for a Presidential term of office but no term limit;
- Section 25: provides for freedom of speech, but without sufficient protection;
- Sections 70, 71, 79, 84: concentrates too much power on the executive without adequate checks from the legislature.

Appendix B: The 2020 Draft Constitution

This provides selected provisions from the Draft Constitution reflecting democratic principles:

- Section 102: introduce a two-term limit for the presidency;
- Section 74: electoral reforms, including franchise for the diaspora;
- Section 46: strengthen freedom of expression;
- Sections 38-72: Provides a comprehensive Bill of Rights, including socio-economic rights.

Appendix C: Coalition Memorandum of Understanding/Manifesto

This provides key commitments taken by the political elites under the MoU:

- a three-year transition;
- non-partisanship of the transitional president;
- a peaceful election after the three-year transition
- constitutional and other reforms

Appendix D: 2024 Draft Constitution

Appendix E: Research Ethics Application

This provides a note on the ethics application process. Due to administrative delays in the approval of the ethics form by the University of Malta Research Ethics Committee, semi-structured interviews were not conducted as initially planned.

Appendix F: Grammarly

This appendix acknowledges the use of Grammarly throughout the dissertation.

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